

**EXPLANATORY MEMORANDUM TO  
THE SMOKE-FREE (PREMISES, VEHICLE OPERATORS AND PENALTY  
NOTICES) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2021  
S.R. 2021 No. 332**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred by Articles 9(2), 10(3) and 15(1) of, and paragraph 4 of Schedule 1 to, the Smoking (Northern Ireland) Order 2006. It is subject to the negative resolution procedure.
- 1.3 The Rule is to come into operation on 1 February 2022.

**2. Purpose**

- 2.1 The Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021 require private vehicles in Northern Ireland to be smoke-free where they are enclosed, there is more than one person present, and one of those present is under the age of 18. This Rule completes the enforcement regime by amending the Smoke-free (Premises, Vehicle Operators and Penalty Notices) Regulations (Northern Ireland) 2007 to provide that the driver of such a vehicle is responsible for ensuring that smoking does not take place. The Rule also replaces the original forms set out in Schedules 1 and 2 of those regulations with new fixed penalty notice forms. These forms introduce the words “enforcement authority” alongside “district council”, as the Police Service of Northern Ireland will also be an enforcement agency in respect of smoke-free private vehicles. The new form at Schedule 2 also makes reference to the new offence of failing to prevent smoking in a private vehicle.

**3. Background**

**Legislative background**

- 3.1 Section 5 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 amended the Smoking (Northern Ireland) Order 2006 to give the Department of Health regulation-making powers to make private vehicles smoke-free places when they are carrying children under the age of 18. This is explained in the Explanatory Memorandum for the Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021.
- 3.2 There are two relevant offences: smoking in a smoke-free place<sup>1</sup> and failing to prevent smoking in a smoke-free place<sup>2</sup>. Under current legislation, a fixed penalty notice (FPN) can be issued for the offence of smoking in a smoke-free

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<sup>1</sup> Article 8 of the Smoking (NI) Order 2006

<sup>2</sup> Article 9 of the Smoking (NI) Order 2006

place. However, a person accused of failing to prevent smoking in a smoke-free place would be referred directly to the courts. The Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021 introduce provisions to allow an FPN to be issued where such an offence is in relation to a private vehicle.

### **Policy Background**

- 3.3 As set out in the Explanatory Memorandum to the Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021, protecting the population from exposure to secondhand tobacco smoke is a key objective in the Department's ten-year tobacco control strategy.
- 3.4 Children are particularly vulnerable to the effects of second-hand smoke as they breathe more rapidly and inhale more pollutants per pound of body weight than adults.
- 3.5 In April 2007, smoke-free legislation was introduced in Northern Ireland to protect employees and the public from the harmful effects of SHS in public and work premises and vehicles. This legislation does not extend to private vehicles.

### **Exposure to SHS in private vehicles**

- 3.6 A significant number of children in Northern Ireland say that they are exposed to secondhand smoke in private vehicles. In 2019, the Young Persons' Behaviour and Attitude Survey (YPBAS) found that 18% of 11-16 years olds who reported living with an adult smoker, also reported that adults smoke in the family car when children are present. These children will often have no option with regards to whether they travel in a smokefree vehicle or not.
- 3.7 Research shows that the levels of secondhand smoke which build up in enclosed vehicles, even where there is some ventilation, exceed international indoor air quality guidance values<sup>3</sup>.

## **4. Consultation**

- 4.1 A consultation on the draft Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021 ran from 6 January to 3 March 2017. A total of 43 responses were received from a wide variety of stakeholders including: district councils; health and social care organisations; the voluntary and community sector; professional bodies; and tobacco manufacturers. However, given the technical nature of these amendment regulations, they were not consulted on.
- 4.2 No changes were made to the regulations as a result of the consultation responses.

## **5. Equality Impact**

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<sup>3</sup> Semple, S et al (2012) *Secondhand smoke in cars: assessing children's potential exposure during typical journey conditions*, 2012, Tobacco Control – 21(6) 578-583

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise on the proposals to restrict smoking in private vehicles carrying children and concluded that they do not have any significant implications for equality of opportunity. The measures will not affect any of the section 75 groups disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

## **6. Regulatory Impact**

- 6.1 A regulatory impact assessment was not considered necessary because the proposals will result in no, or negligible, costs or savings.

## **7. Financial implications**

- 7.1 The financial implications for enforcement bodies will be negligible.

## **8. Section 24 of the Northern Ireland Act**

- 8.1 The Department believes that the regulations are compatible with Section 24 of the Northern Ireland Act 1998.

## **9. EU implications**

- 9.1 Not applicable.

## **10. Parity or Replicatory Measure**

- 10.1 This Statutory Rule applies only to Northern Ireland. Similar legislation is already in force in the rest of the UK.
- 10.2 England and Wales were granted regulation-making powers under the Children and Families Act 2014 to ban smoking in cars when under 18s are present, and both countries commenced regulations from 1 October 2015. In Scotland, similar provisions under the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 were commenced from 5 December 2016.

## **11. Additional Information**

- 11.1 Not applicable.