

Explanatory Memorandum to the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2015

This Explanatory Memorandum has been prepared by The Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services

2 May 2015

1. Description

1.1 The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2015 (“the proposed Regulations”) aim to protect children under the age of 18 from exposure to environmental tobacco smoke when travelling in private vehicles.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 The relevant sections of the UK Parliament’s Children and Families Act 2014, enabling these Regulations to be made, were commenced, for the purposes of making regulations, on 1 October 2014.

2.2 Parliament voted in favour of similar regulations in England which will come into force on 1st October 2015.

3. Legislative background

3.1 Section 95 of the UK Children and Families Act 2014 amended the UK Health Act 2006 to give Welsh Ministers regulation-making powers to make private vehicles smoke-free places when carrying children under the age of 18.

3.2 The National Assembly passed a Legislative Consent Motion in relation to the relevant sections of the Children and Families Act 2014 on 4th February 2014. The explanatory notes to section 95 of the Health Act 2006 provide:

“404. This section amends smoke-free legislation (the UK Health Act 2006) to provide the Secretary of State, or Welsh Ministers in relation to Wales, with the power to make regulations to provide for a private vehicle to be smoke-free when a person under the age of 18 is present in the vehicle. The Health Act 2006 contains two offences in relation to vehicles that are designated as smoke-free under the regulations: smoking in a smoke-free vehicle and failure by the person in control of the vehicle to prevent smoking in a smoke-free vehicle.”

“405. The Health Act 2006 includes a power to provide for penalty notices in relation to the offence of smoking in a smoke-free vehicle and this section amends that Act to allow penalty notices to also be used for the offence of failing to prevent smoking in a vehicle when a person under the age of 18 is present.”

“406. All regulations made under these powers will be subject to the affirmative procedure.”

3.3 The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2015 can only be made if, following a plenary debate, a majority of AMs vote in favour of making the regulations.

4. Purpose & intended effect of the legislation

4.1 The purpose of the Regulations is to extend the existing smoke-free legislation by setting out the circumstances when private vehicles are smoke-free and to:

- allow the use of fixed penalty notices (FPNs) for relevant offences in smoke-free vehicles, and
- designate the police as an enforcement authority for these measures.

4.2 The intended effect of the Regulations is to:

- protect under-18s from the health harms associated with exposure to second-hand smoke in private vehicles
- decrease the number of under-18s exposed to second-hand smoke in private vehicles
- encourage action by smokers to protect under-18s from second-hand smoke in other areas
- contribute to a reduction in health conditions in children caused by exposure to second-hand smoke.

4.3 Prohibiting smoking in private vehicles carrying children under the age of 18 supports and promotes the following articles of the United Nations Convention on the Rights of the Child (UNCRC);

- Article 3 – the best interests of the child
- Article 24 - a child's right to protection in consideration of the dangers and risks of environmental pollution.

Evidence of the harms associated with second-hand smoke in private vehicles

4.4 Environmental tobacco smoke or second-hand smoke (SHS) is the smoke released into the atmosphere by cigarettes, pipes, cigars or other smoked tobacco products.

4.5 Second-hand smoke in the confined space of a vehicle produces very high concentrations of chemicals and carcinogens within that space¹. This is the case even when the person is smoking with the window of the vehicle open.

4.6 Exposure to second-hand smoke is a substantial threat to children's health. It can leave them vulnerable to a variety of health conditions such as lower respiratory tract infections, asthma, middle ear disease and other serious infections. Children cannot escape from the toxic chemicals contained in second-hand smoke when travelling in vehicles because they cannot choose not to be in the vehicle, and may not feel able to ask an adult to refrain from smoking.

4.7 The Health Act 2006 and the Smoke-free Premises etc. (Wales) Regulations 2007 were introduced to protect employees and the public from the harmful effects of

¹ The impact of smoking cigarettes on particulate levels in private vehicles. Chartered Institute of Environmental Health, Wales, March 2011

second-hand smoke. The legislation covers public and work vehicles but does not extend to private vehicles.

4.8 In March 2011 The Chartered Institute for Environmental Health Wales published research¹ which looked at the impact of smoking cigarettes in private vehicles. It recognised that exposure to second-hand-smoke can give rise to significant health impacts and that there is no 'safe' level of exposure. The report found that high levels of harmful particulate matter from tobacco smoke is still present in cars up to two hours after lighting up and that opening the car window does little to reduce the risk of harm to children.

4.9 A report published in March 2010 for the Royal College of Physicians² showed that passive smoking in the UK can lead to a host of chronic diseases which are entirely avoidable:

- children subjected to passive smoking face an increased risk of lower respiratory tract infection, middle ear disease, wheezing, asthma and bacterial meningitis
- it is estimated that passive smoking causes over 20,000 cases of lower respiratory tract infection, 120,000 cases of middle ear disease, at least 22,000 new cases of wheeze and asthma, and 200 cases of bacterial meningitis in UK children each year
- living in a household in which one or more people smoke more than doubles the risk of sudden infant death
- children growing up with parents or siblings who smoke are around 90 per cent more likely to become smokers themselves.

4.10 These cases of disease in children, caused by passive smoking, result in over 300,000 UK general practice consultations, and about 9,500 hospital admissions in the UK each year.

Measures taken to address children's exposure to second-hand smoke in private vehicles

4.11 The introduction of the Health Act 2006 and the Smoke-free Premises etc. (Wales) Regulations 2007 was followed by a decline in overall second-hand smoke exposure among children in Wales (CHETS Wales)³. However, the decline occurred to a greater extent among children with more moderate exposure levels, with limited changes among children of smokers or children from poorer families.⁴

² Passive Smoking and Children. A report by the Tobacco Advisory Group of the Royal College of Physicians March 2010

<https://www.rcplondon.ac.uk/sites/.../passive-smoking-and-children.pdf>

³ Holliday, J., Moore, G., & Moore, L. (2009). Changes in child exposure to secondhand smoke after implementation of smoke-free legislation in Wales: a repeated cross-sectional study. *BMC Public Health*, 9(1), 430.

⁴ Moore, G. F., Holliday, J. C., & Moore, L. A. R. (2011). Socioeconomic patterning in changes in child exposure to secondhand smoke after implementation of smoke-free legislation in Wales. *Nicotine & Tobacco Research*, 13(10), 903-910.

4.12 In 2007 and 2008, repeated cross sectional surveys (CHETS Wales) examined changes in child exposure to second-hand smoke after the smoke-free legislation came into force. The surveys asked 1,601 primary school age children whether smoking was allowed in their family car, van or truck and whether they were in a car the previous day where someone was smoking. Results showed:

- 18% (23% of those children who said that their family owned a car and they knew whether smoking was allowed in it) reported that smoking was allowed in their family vehicle
- 7% reported being exposed to second-hand smoke in a car the previous day.

4.13 On 13th July 2011 the First Minister announced the Welsh Government's intention to mount a campaign to tackle children's exposure to second-hand smoke. The First Minister also announced that legislative options would be pursued if children's exposure to second-hand smoke did not fall sufficiently within three years.

4.14 The Fresh Start Wales media campaign was launched in February 2012 to raise awareness of the dangers of second-hand smoke and to persuade people to make a behavioural change not to smoke in their cars when children were present. During the campaign period 40,000 Fresh Start packs, to help smokers protect themselves and their families from second-hand smoke and to support them to give up smoking, were distributed across Wales. The campaign ended in March 2014 but a dedicated website continues to run.

4.15 The Tobacco Control Action Plan for Wales was issued in February 2012. The plan outlines a range of measures to reduce the harm caused by smoking and particularly aims to protect children and young people from the harms associated with passive smoking and to reduce inequalities in health.

Latest evidence of children's exposure to second-hand smoke in private vehicles in Wales

4.16 During the period of the Fresh Start Wales campaign research surveys were commissioned among different age groups to monitor the prevalence of smoking in cars carrying children.

4.17 In February 2013, Cardiff University was commissioned to carry out a further study of primary school age children's exposure to second hand smoke in cars and elsewhere⁵ which allowed for comparisons to be made with CHETS Wales. The study aimed to provide data on current exposure levels, and how these have changed since 2008. The 2014 CHETS Wales 2 survey replicated components of these earlier surveys, recruiting a sample of 75 schools, and collecting questionnaire data from 1,601 children within those schools. Key findings of the study show that:

⁵ Exposure to second-hand smoke in cars and e-cigarette use among 10-11 year old children in Wales. CHETS Wales 2 key findings report <http://wales.gov.uk/statistics-and-research/smoking-cars-carrying-children/?lang=en>

- 9% (11% of those children who said their family owned a car and that they knew whether smoking was allowed in it) reported that smoking was allowed in their family vehicle
- 4% reported being exposed to second-hand smoke in a car the previous day.

4.18 In addition 20% of children with smoking parents, reported that smoking is allowed in their family car; a decline from 35% in 2008.

The following table shows comparisons to CHETS Wales on the frequency (and percentage) of children reporting smoking restrictions in car:

		Smoking allowed in family car?				In car where someone smoking yesterday?
		Yes	No	Don't know	No car	
Whole sample	2007	327 (20.4)	926 (57.8)	231 (14.4)	118 (7.4)	107 (6.9)
	2008	288 (18.0)	965 (60.3)	234 (14.6)	114 (7.1)	107 (6.7)
	2014	141 (8.9)	1140 (71.7)	195 (12.3)	115 (7.2)	57 (3.6)
Children of smoking parents	2007	301 (38.6)	272 (34.9)	114 (14.6)	92 (11.8)	102 (13.5)
	2008	259 (34.8)	284 (38.2)	123 (16.5)	78 (10.4)	98 (13.3)
	2014	131 (19.6)	371 (55.5)	87 (13.0)	79 (11.8)	46 (7.0)

4.19 Children were also asked how often people smoked in their family car when they were inside it and how often they were in a car where someone was smoking (i.e. any car rather than just the family car). Slightly higher estimates of exposure to smoking in the family vehicle were obtained where children were asked how often people smoked in their vehicle (rather than whether it was 'allowed'), with 15% reporting that people did smoke in their car while they were inside it sometimes (12%) or almost every day (3%).

4.20 Although poorer families were less likely to own a car, among children who reported that their family did own a car, children from the poorest families were substantially more likely to report that smoking was allowed in it than were those from more affluent families (17% as opposed to 7%). Despite their families being less likely to own a car, children from the poorest families were also almost twice as likely to report that they were in a car where smoking took place almost daily or sometimes (5% and 31%) than were their most affluent peers (2% and 18%).

4.21 The 2009-10 Health Behaviour in School Aged Children (HBSC) study in Wales⁶ indicated that 20 % of 11-16 year old children in Wales (i.e. across secondary school

years 7 to 11) reported being exposed to second-hand smoke the last time they travelled in a car. The survey was repeated in 2013-14 with a sample of approximately 9,000 pupils from 80 schools. Data show the proportion reporting being exposed to second-hand smoke last time they travelled in a car has fallen to 13%, with minimal variation between age-groups. This trend among secondary school-aged children is very similar to that found in the CHETS studies.

4.22 It is clear that during the period of the Fresh Start Wales campaign, and the associated awareness raising of the dangers of second-hand smoke in cars, the number of children exposed to second-hand smoke in cars has reduced, however, the results of the research show that there remains a cohort of adults who continue to smoke when children are present in private vehicles. Although the situation has improved over the last two years, the research findings show a sizeable minority of young people are still being exposed to second-hand tobacco smoke in cars.

4.23 In September 2011, Beaufort Research was commissioned to include questions on attitudes to smoking in cars carrying children and awareness of the campaign in their Omnibus surveys⁷. There were four waves of data collection. Key findings from the most recent survey of adults in Wales carried out in November 2013 show that 84% of respondents agreed that smoking should be banned in cars carrying children.

4.24 Legislating to prohibit smoking in private vehicles when children under the age of 18 are present is considered to be the most appropriate way to eliminate harm and close the persistent inequalities gap in exposure to second-hand tobacco smoke. As with the existing smoke-free regulations the policy intention is to change behaviour, attitudes and health outcomes over time not the number of enforcement actions that are taken.

5. Consultation

5.1 Details of the consultation are included in the Regulatory Impact Assessment in Part 2. The consultation document can be accessed via the following link:

<http://wales.gov.uk/consultations/healthsocialcare/smoke-free/?lang=en>

Detail of the Regulations

6.1 Under the UK Health Act 2006, a smoke-free place is somewhere where smoking is not permitted. These Regulations amend The Smoke-free Premises etc. (Wales) Regulations 2007 to designate all road vehicles that are not already covered by existing smoke-free legislation as smoke-free places, when a child under the age of 18 is present in the vehicle. A private vehicle will become smoke-free when:

- it is enclosed

⁶ The 2009-10 Health Behaviour in School Aged Children (HBSC) study in Wales <http://wales.gov.uk/statistics-and-research/health-behaviour-school-aged-children/?lang=en>

⁷ <http://wales.gov.uk/statistics-and-research/smoking-cars-carrying-children/?lang=en>

- more than one person is present and
- a person under the age of 18 is present.

As with the existing smoke-free legislation, these Regulations do not apply to ships, hovercrafts and aircraft as they are covered under different legislation.

6.2 It will be an offence:

- to smoke in a private vehicle with someone under the age of 18 present
- if you are the driver, to fail to prevent smoking in a private vehicle with someone under the age of 18 present.

6.3 It will not be an offence for a person under the age of 18 to smoke if they are alone in a vehicle. This is because the requirement is for there to be more than one person present for a private vehicle to be smoke-free. However, if there is another person in the car, whether under 18 or over, the vehicle then becomes a smoke-free place. If the additional person is under 18, it is important for them to be protected by the legislation. If the additional person is over 18 it is an offence for the adult to smoke.

6.4 The regulations do not apply to motorhomes or campervans (motor- caravans) and caravans when they are being used as a home. This is because the policy aim is for the regulations to apply to vehicles and not homes.

6.5 In order to make sure that the penalties for both offences are proportionate, these regulations introduce a fixed penalty notice (FPN) for the offence of failing to prevent someone smoking in a private vehicle. In relation to existing smoke-free places this offence can only be dealt with in court with a maximum level four fine on summary conviction. This is because the 'failing to prevent' offence falls to the owner or manager of a business, or the driver of a public or work vehicle. Someone in this position has responsibilities to the public or their employees and a breach of such a responsibility is seen as too serious to be dealt with by a FPN. However, in the case of a private vehicle, it is considered more proportionate to have a FPN available for both offences.

6.6 Anyone who smokes in a smoke-free private vehicle with children present would be guilty of an offence regardless of their age (consistent with existing smoke-free legislation). The offence of failing to prevent smoking would apply to the driver of the vehicle in all instances, including provisional licence holders.

6.7 Local authorities enforce the existing smoke-free laws. These Regulations add police forces as enforcement authorities for smoke-free private vehicles because, unlike local authorities, they are able to request that a vehicle stops if they suspect that an offence is being committed. Local authorities would also be able to enforce the proposed regulations and there will be an important role for local authority regulatory officers in working jointly with police on local enforcement activities, as well as continuing their efforts to build compliance for smoke-free legislation generally.

6.8 Enforcement bodies will use their discretion in deciding whether to issue warnings, fixed penalty notices or whether to refer an alleged offence directly to court.

6.9 In addition to guidance, the Welsh Government and Public Health Wales will continue to help protect children from the harms from exposure to second-hand smoke by encouraging voluntary action. This means encouraging positive behaviour change among smokers through campaigns that will help build awareness.

6.10 The regulations will come into force on 1 October 2015.

7. Regulatory Impact Assessment (RIA)

A full cost analysis of the impact of the Regulations is included at part 2 of this document.