EXPLANATORY MEMORANDUM TO

THE SMOKE-FREE (PRIVATE VEHICLES) REGULATIONS (NORTHERN IRELAND) 2021
S.R. 2021 No. 328

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 Articles 6, 7(2)(b), 10(1B) and (3), 11(1A) and (1B) and 15(1) of, and paragraphs 5, 8 and 18 of Schedule 1 to, the Smoking (Northern Ireland) Order 2006. It is subject to the draft affirmative resolution procedure.

1.3 The Rule is to come into operation on 1st February 2022.

2. Purpose

2.1 The Rule extends the existing smoke-free legislation by setting out the circumstances when private vehicles are smoke-free (ie when they are enclosed, there is more than one person present, and one of those present is under the age of 18) and goes on to:

- allow the use of fixed penalty notices (FPNs) for offences in relation to smoke-free private vehicles; and
- designate both the Police Service of Northern Ireland and district councils as enforcement authorities for all smoke free vehicles..

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.

3.2 The existing smoke-free legislation makes enclosed public and work premises and vehicles smoke-free. There are two relevant offences: smoking in a smoke-free place[1] and failing to prevent smoking in a smoke-free place[2]. Under current legislation, a fixed penalty notice can be issued for the offence of smoking in a smoke-free place. However, a person accused of failing to prevent smoking in a smoke-free place would be referred directly to the courts. This rule introduces provisions to allow an FPN to be issued where such an offence is in relation to a private vehicle.

[1] Article 8 of the Smoking (NI) Order 2006
[2] Article 9 of the Smoking (NI) Order 2006

3.3 District councils are currently responsible for enforcing smoke-free legislation. This Rule will also designate the Police Service of Northern Ireland as an enforcement authority for smoke-free vehicles.

3.4 Existing legislation requires a no-smoking sign to be displayed in all smoke-free places (premises and vehicles)[3]. This Rule excludes smoke-free private vehicles from this requirement.

3.5 A further Statutory Rule is required to amend the Smoke-free (Premises, Vehicle Operators and Penalty Notices) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 94). This amending Rule will reflect the extension of the policy relating to smoke-free private vehicles when it comes to failing to prevent smoking in a smoke-free vehicle and the form of fixed penalty notices as set out in SR 2007 No. 94. Those Regulations, "The Smoke-free (Premises, Vehicle Operators and Penalty Notices (Amendment) Regulations (Northern Ireland) 2021", will be subject to negative procedure.

Policy Background

3.6 Protecting the population from exposure to secondhand tobacco smoke is a key objective in the Department's ten-year tobacco control strategy. Second-hand smoke (SHS) is a combination of mainstream smoke exhaled by smokers and side stream smoke which is given off by the burning end of a cigarette, cigar or pipe. The long-terms effects of regular exposure to SHS include higher risk of lung cancer, coronary heart disease, chronic respiratory symptoms and asthma.

3.7 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. The Royal College of Physician's 2010 report affirmed that children exposed to second-hand smoke have an increased risk of asthma, lower respiratory infections, bronchitis, middle ear disease, bacterial meningitis and sudden infant death syndrome as well as general reduced respiratory function.[4]

3.8 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

3.9 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

[3] The Smoke-free (Signs) Regulations (Northern Ireland) 2007

[4] *Passive Smoking and Children* – A Report by the Tobacco Advisory Group of the Royal College of Physicians – March 2010

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.

3.10 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[5].

4. Consultation

4.1 A consultation on the draft regulations 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.

4.2 No changes were made to the regulations as a result of the consultation responses.

5. Equality Impact

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 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.

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[5] 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

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.