STATUTORY INSTRUMENTS

2015 No. 939

PUBLIC HEALTH

The Smoke-free (Vehicle Operators and Penalty Notices) (Amendment) Regulations 2015

Made - - - -	*26th March 2015*
Laid before Parliament	*27th March 2015*
Coming into force - -	*1st October 2015*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(3) of, and paragraph 4 of Schedule 1 to, the Health Act 2006(**a**).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Smoke-free (Vehicle Operators and Penalty Notices) (Amendment) Regulations 2015 and they come into force on 1st October 2015.

(2) These Regulations apply in relation to England.

(3) In these Regulations "the 2007 Regulations" means the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007(**b**).

Amendment of the 2007 Regulations

2. The 2007 Regulations are amended as follows.

Failing to prevent smoking in smoke-free private vehicles

3. For regulation 2 of the 2007 Regulations substitute the following—

"**2.**—(1) The persons set out in paragraphs (2) and (3) of this regulation are under a duty corresponding to that in section 8(1) of the Act to cause any person who is smoking in a smoke-free vehicle to stop smoking.

(2) In respect of a vehicle that is smoke-free by virtue of regulation 11(1) of the Smoke-free (Exemptions and Vehicles) Regulations 2007(**c**)—

(a) a driver;

(b) any person with management responsibilities for the vehicle; and

(c) any person on a vehicle who is responsible for order or safety on it.

(3) In respect of a vehicle that is smoke-free by virtue of regulation 11(1A) of the Smoke-free (Exemptions and Vehicles) Regulations 2007, the driver."

(**a**) 2006 c.28. As to the meaning of "the appropriate national authority" see section 82(1) of the Health Act 2006.
(**b**) S.I. 2007/760.
(**c**) S.I. 2007/765.

Form of fixed penalty notice

4.—(1) In regulation 3(2) of the 2007 Regulations, for "the offence of smoking in a smoke-free place under section 7 of the Act." substitute—

"(a) the offence of smoking in a smoke-free place under section 7 of the Act; and

(b) the offence of failing to prevent smoking in a vehicle under section 8 of the Act, where the vehicle is smoke-free by virtue of regulation 11(1A) of the Smoke-free (Exemptions and Vehicles) Regulations 2007."

(2) For the penalty notice form 2 in Schedule 2 to the 2007 Regulations, substitute the penalty notice form 2 in the Schedule to these Regulations.

Signed by authority of the Secretary of State for Health.

Jane Ellison
Parliamentary Under-Secretary of State,
Department of Health

26th March 2015

SCHEDULE Regulation 4(2)

Form 2 – Smoking in a smoke-free vehicle / Failing to prevent smoking in a smoke-free private vehicle

[NAME OF ENFORCEMENT AUTHORITY]
[ADDRESS OF ENFORCEMENT AUTHORITY]
HEALTH ACT 200:
SECTION 7 (OFFENCE OF SMOKING IN A SMOKE-FREE PLACE)

SECTION 8 (OFFENCE OF FAILING TO PREVENT SMOKING IN A SMOKE-FREE PLACE: PRIVATE VEHICLE)

FIXED PENALTY NOTICE

PENALTY AMOUNT £50
PART 1
RECIPIENT COPY

Penalty notice number:

_____

Full name of alleged offender:

_____

Address of alleged offender:

_____

_____

_____

Post code:

_____

Date of birth (if known):

_____

Male/female (circle one)

I, _____ (name), an authorised officer of [name of enforcement authority] under section 10 of the Health Act 2006, have reason to believe that you committed an offence under (tick one box)

□ Section 7 of the Health Act 2006 (smoking in a smoke-free place(**a**)), or

□ Section 8 of the Health Act 2006 (failing to prevent smoking in a smoke-free place: private vehicle(**b**))

within premises, a place or vehicle in relation to which [name of enforcement authority] has enforcement responsibilities.

The circumstances alleged to constitute the offence are that at:

_____ (time) on _____ (date)

you, at/on the following premises, place or vehicle (where alleged offence took place, including address, if any):

_____

_____

_____

_____

being premises, a place or vehicle to which the provisions of section 7 or 8 of the Health Act 2006 applies, allegedly (details of offence):

_____

_____

_____

(**a**) Section 7(1) of the Health Act 2006 provides that smoke-free places include smoke-free premises and smoke-free vehicles.

(**b**) By virtue of regulation 11(1A) of the Smoke-free (Exemptions and Vehicles) Regulations 2007, a private vehicle is smoke-free when it is enclosed, there is more than one person present in the vehicle and a person under the age of 18 is present in the vehicle.

This notice offers you the opportunity of discharging any liability for conviction for that offence by payment of a fixed penalty of £50 (fifty pounds). No proceedings will be taken for this offence before the expiration of 29 days beginning with _____ [insert date on which this notice is given]. You will not be liable to conviction for the offence if you pay the fixed penalty within that period. In this Form this period is referred to as the 29 day period.

You can pay a discounted amount of £30 (thirty pounds) if you pay within the period of 15 days beginning with _____ [insert the date on which this notice is given]. If the 15th day is not a working day, you may pay on the next working day. "Working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. In this Form this period is referred to as the 15 day period.

Information for the immediate attention of the person who has been issued this penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty are at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at Part 4 of this notice. If you have any questions, or if you wish to discuss this notice, please contact [insert name and address of enforcement authority and contact details].

_____ _____

Signature of authorised officer Date of issue

PART 2

INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS PENALTY NOTICE:

You have received this notice because the authorised officer of [name of enforcement authority] named in Part 1 of this notice has reason to believe that you have committee the offence of

i) smoking in smoke-free premises or vehicle; or

ii) failing to prevent smoking in a smoke-free private vehicle.

as described in Part 1. Within the 29 day period specified in Part 1, you must either pay the penalty or request that the matter be heard by a court. You may not do both.

If you fail to do either, [name of enforcement authority] as an enforcement authority by virtue of section 10 of the Health Act 2006, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free place is liable on summary conviction to a fine not exceeding level 1 on the standard scale. A person found guilty of the offence of failing to prevent smoking in a smoke-free private vehicle is liable on summary conviction to a fine not exceeding level 4 on the standard scale(**a**).

(**a**) Currently £2,500 – see section 37 of the Criminal Justice Act 1982 (c.48) as amended by section 17 of the Criminal Justice Act 1991 (c.53).

PART 3
PAYING THE PENALTY

The amount of the fixed penalty is £50 (fifty pounds). It must be paid within the 29 day period which is specified in Part 1.

You can pay a discounted amount of £30 (thirty pounds) if you pay within the 15 day period which is specified in Part 1. If you choose to pay this penalty, no further action will be taken in respect of the alleged offence described as Part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you. Payment may be made by completing Part 3A below and sending it with payment to the address stated in that Part, or by completing Part 3A below and paying in person at [name and address of enforcement authority].

Acceptable methods of payment include cash, cheque, postal order or money order OR online at the following web address [address for making online payments]. Cheques, postal orders or money orders should be made payable to [name of enforcement authority]. If you choose to pay this penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for this payment of the penalty, you must ask for one at the time of the payment, and if paying by post, you must provide a stamped, self-addressed envelope.

WARNING: LATE PAYMENT WILL NOT BE ACCEPTED, YOU WILL NOT BE SENT A REMINDER.

PART 3A

PAYMENT OF FIXED PENALTY ISSUED UNDER SECTION 7 OR 8 OF THE HEALTH ACT 2006

(OFFENCE OF SMOKING IN A SMOKE-FREE PLACE OR OFFENCE FAILING TO PREVENT SMOKING IN A SMOKE-FREE PRIVATE VEHICLE)

This slip must accompany all payments

To: [Name and address of enforcement authority where payment should be sent]:

Penalty notice Number:
_____

I enclose the amount of:
(tick one box)
□ £30 (if the payment is made within the 15 day period specified in Part 1)
□ £50 (if the payment is made within the 29 day period specified in Part 1)

Full name of alleged offender: _____

Address of alleged offender:
_____

_____

_____

_____Post code: _____

Signature
_____

Date
_____

PART 4

REQUESTING A COURT HEARING

If you choose to request a court hearing, you must within the 29 day period do so by completing Part 4A and sending it to [name of enforcement authority], or by writing to [name of enforcement authority] at the address state in Part 4A, giving your details, the penalty notice number (which can be found in Part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this penalty notice (the person named at Part 1) may request a court hearing.

PART 4A
HEALTH ACT 2006:
(OFFENCE OF SMOKING IN A SMOKE-FREE PLACE UNDER SECTION 7 OR OFFENCE OF FAILING TO PREVENT SMOKING IN A SMOKE-FREE PRIVATE VEHICLE UNDER SECTION 8)

REQUEST FOR ALLEGED OFFENCE TO BE DEALT WITH BY A COURT OF LAW

To: [Name and address of enforcement authority]

Penalty notice number: _____

I wish to be dealt with by a court of law for the alleged offence.

Full name of alleged offender: _____

Address of alleged offender: _____

_____

_____

_____Post code: _____

Signature _____

Date _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under Chapter 1 of Part 1 of, and Schedule 1 to, the Health Act 2006 contain provisions which relate to smoke-free places (premises and vehicles) in England. They amend the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 ("the 2007 Regulations").

Regulation 2 of these Regulations amends regulation 2 of the 2007 Regulations so as to provide that the driver of a private vehicle that is smoke-free is under a duty to cause persons to stop smoking in that vehicle.

Regulation 3 replaces the Penalty Notice form in Schedule 2 to the 2007 Regulations with the Penalty Notice form in the Schedule to these Regulations which means that the form can be used for the offence of failing to prevent smoking in a smoke-free private vehicle under section 8 of the Health Act 2006, as well as the offence of smoking in a smoke-free place under section 7 of that Act.

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