



Chartered  
Institute of  
Environmental  
Health

# Smoking in private vehicles carrying children – consultation on proposed regulations to be made under the Children and Families Act 2014

Department of Health

Submission from the Chartered Institute of Environmental Health

Prepared by Ian Gray, Principal Policy Officer  
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# The Chartered Institute of Environmental Health

As a **Chartered professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy. We are a **registered charity** with over 10,000 members across England, Wales and Northern Ireland.

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## Section 1 - Statement from the Chartered Institute of Environmental Health (CIEH)

- 1.1 The CIEH has a longstanding involvement in tobacco control activities and we campaigned for over 20 years for protection for workers from secondhand smoke. We have had important roles in the development and implementation of smoke-free legislation and we continue to provide technical advice and practical guidance, particularly to local authority regulatory officers who are involved in securing compliance, the majority of which are environmental health officers.
- 1.2 Our Principal Policy Officer, who has prepared our response to this consultation, is recognised as an expert in developing and securing compliance with smoke-free legislation.
- 1.3 The CIEH does not have any direct or indirect links to, or receive funding from, the tobacco industry.

## Section 2 - Introduction

- 2.1 The CIEH has fully supported all of the Government's initiatives to create smoke-free environments with the aim to both protect health and reduce smoking prevalence.
- 2.2 We are aware that the campaign for this legislation has been robustly led by the British Lung Foundation (BLF) whose primary focus has been the need to promote this as a further measure for the protection of children from the harmful effects arising from adults smoking in cars when children are present. The approach of the BLF has been supported by the key public health organisations, in particular the Smokefree Action Coalition<sup>1</sup> of which the CIEH is a founding member.
- 2.3 It will be our intention to play a full and active part in the implementation of this proposed legislation. In particular we will seek opportunities to inform and support our members, particularly those employed as environmental health officers, and other local authority authorised officers, and we wish to assist the Police Services in understanding and applying their enforcement roles and responsibilities in this area.
- 2.4 However, the CIEH has previously made clear our belief that the success of the Government in implementing legally enforceable measures to protect people from the

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<sup>1</sup> Smokefree Action Coalition <http://www.smokefreeaction.org.uk/>

harmful effects of secondhand smoke and to provide them with smoke-free environments, has been firmly based on the scientific evidence which overwhelmingly supports such measures and provides the necessary justification. Such justification is particularly important in situations where it is necessary for the law to take effect in areas which people may regard as their 'private space'. One such private space is what the person regards as their 'home' and the other, for many people, is their private motor vehicle.

- 2.5 There can be no doubt that an enclosed motor vehicle is one of the worst places to smoke and can have serious effects on children's health and a thorough and concise exposition of the issues is provided by a recent ASH Research Report: *Secondhand Smoke: the impact on children*, March 2014.<sup>2</sup>
- 2.6 The CIEH, and other public health organisations and campaign groups, are not satisfied that the proposed measure, whilst clearly a step in the right direction, is an adequate safeguard in itself. This is because the proposed regulations will only prohibit smoking in a vehicle whilst children are 'present'. Those who wish to get around the law can continue to smoke immediately before children enter the vehicle. Also, the products of previous smoking will also be present in the form of chemical deposits in the fabric and upholstery of the vehicle and continue to present a hazard to children even when smoking is not taking place. The Royal College of Physicians has previously called for the banning of smoking in all vehicles in its report *Passive Smoking and Children*<sup>3</sup> and this position is also supported by other medical and professional bodies including the Royal College for Paediatrics and Child Health and the British Medical Association.
- 2.7 For these reasons, and others relating to ease of enforcement and the need to remove smoking as a driver distraction<sup>4</sup>, the CIEH wish to eventually see a complete prohibition on smoking in all motor vehicles at all times and not simply when children are present.
- 2.8 We note that paragraph 13 of the draft Regulations on standardised packaging includes the provision that the Secretary of State must from time to time carry out a review of these Regulations, set out the conclusions of the review in a report, and publish a report.<sup>5</sup>
- 2.9 The CIEH recommends that a similar provision is included in the proposed regulations and that the review required to be carried out by the Secretary of State should specifically include consideration of the evidence for extending the requirements so as to prohibit smoking in all motor vehicles.

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<sup>2</sup> [http://www.ash.org.uk/files/documents/ASH\\_596.pdf](http://www.ash.org.uk/files/documents/ASH_596.pdf)

<sup>3</sup> [Royal College of Physicians Parliamentary Briefing: Passive Smoking and Children](#): May 2012

<sup>4</sup> See evidence provided by CIEH to [All Party Parliamentary Group on Smoking and Health: Inquiry into Smoking in Private Vehicles](#): 2011. See particularly 'Regulation of smoking in private vehicles'.

<sup>5</sup> [Standardised packaging of tobacco products: draft regulations](#)

## Section 3 – Responses to the Consultation Questions

**Question 1: The regulations make it an offence to smoke in an enclosed private vehicle when there is more than one person present and a person under the age of 18 is present. This offence would fall on the person smoking regardless of their age. Do you have any comments on this approach?**

- 3.1 The draft regulations being consulted on are intended to be an extension of existing smoke-free regulations, including those that make provisions for smoke-free premises and vehicles.
- 3.2 In relation to the existing smoke-free provisions, there are potentially two offences committed when a person smokes in a premises or vehicle in contravention of the law:
  - Section 7(2) Health Act 2006 - Person who smokes in a smoke-free place or vehicle (any person smoking)
  - Section 8(4) Health Act 2006 - Person having management or control of smoke-free premises or vehicle fails to stop a person from smoking there (manager or person in control)
- 3.3 The UN Convention on the Rights of the Child, ratified by the UK government in 1991, states that a child “means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”. The age of criminal responsibility is the age at which, in the eyes of the law, a child is capable of committing a crime and therefore old enough to stand trial and be convicted of a criminal offence. In England, Wales and Northern Ireland, the age of criminal responsibility is 10 years and in Scotland it is 12 years, although a 2002 report from the UN Committee on the Rights of the Child criticised this low age limit and recommended that the UK Government “considerably raise the minimum age of criminal responsibility”<sup>6</sup>
- 3.4 In practice the ability and willingness of local authority regulatory officers to take enforcement measures against persons under the age of 18 years are restricted by enforcement policies and public interest considerations. This includes the service of legal notices, such as fixed penalty notices as well as the instigation of legal proceedings.
- 3.5 The proposed omission of an age-related exemption for the offence of smoking in a private vehicle when a child is present will pose particular difficulties.
- 3.6 Firstly, it may appear perverse to be taking enforcement measures against a child in whose best interests the action is intended to be taken. Should such measures be taken, they may well attract adverse publicity and undermine the high levels of public support already established for the proposed legislation. It is reported that the proposal to prohibit smoking in cars when children are present enjoys wide public support, with around 78% of the general public and 62% of smokers supporting the measure in a 2011 YouGov poll commissioned by ASH.<sup>7</sup> In Parliament, during the passage of the Children and Families Act, Peers voted in favour of this measure with

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<sup>6</sup> NSPCC Fact Sheet: Legal definition of a child, July 2013, available at [http://www.nspcc.org.uk/Inform/research/briefings/definition\\_of\\_a\\_child\\_wda59396.html](http://www.nspcc.org.uk/Inform/research/briefings/definition_of_a_child_wda59396.html)

<sup>7</sup> P27, [All Party Parliamentary Group on Smoking and Health: Inquiry into Smoking in Private Vehicles](#): 2011

222 votes to 197 and MPs voted 376 to 107.<sup>8</sup> It is the opinion of the CIEH that similar high levels of public and parliamentary support would not be obtained if it were believed that these necessary enforcement measures could be applied to children themselves.

- 3.7 Secondly, this does not accord with similar provisions in law where 'adults' are expected to take responsibility for the behaviour of 'children'. The most relevant of these are the requirements relating to the wearing of seatbelts. In this case the driver is responsible in law for ensuring that a seat belt is worn by a child passenger, up to the age of 13 years. An 'adult passenger' aged 14 years or more is responsible for their own compliance.<sup>9</sup>
- 3.8 The CIEH recommends that the Department of Health should include an age-related exemption in the proposed regulations. The inclusion of an age-related exemption would make it clear that responsibility needs to be taken by the driver of the vehicle as the person 'having management or control' of the smoke-free vehicle<sup>10</sup>
- 3.9 It is not intended that an age-related exemption should apply in respect of the driver of the vehicle, since all drivers, regardless of whether they hold a full or provisional licence, already have a range of legal responsibilities based on the premise that they are in charge of their vehicles.

**Question 2: Do you have any comments regarding the proposal for the new offences to apply to caravans and motor caravans when they are being used as vehicles but not when they are being used as homes?**

- 3.10 It is accepted that the caravan or motor caravan can be a primary residence for some families, including members of travelling communities and people holidaying from this country or abroad. Smoking inside private residential dwellings is not against the law and it is right that this should extend to caravans and motor homes when they are functioning as dwellings and when they are **both** stationary and not on the road.
- 3.11 The use of the Road Traffic Act definition of a road<sup>11</sup>, which also includes public car parks and lay-bys, is sensible and practical. However, the Highway Code contains a cautionary note: "It is important to note that references to 'road' therefore generally include footpaths, bridleways and cycle tracks, and many roadways and driveways on private land (including many car parks). In most cases, the law will apply to them and there may be additional rules for particular paths or ways. Some serious driving offences, including drink-driving offences, also apply to all public places, for example public car parks."<sup>12</sup>
- 3.12 Whilst it may be anticipated that some Police Officers will be familiar with these definitions, it may not be true of all police staff and even less likely of local authority

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<sup>8</sup> Votes took place during: Children and Families Bill, HoL Report Stage on 29 January 2014 and HoC Consideration of Lords' Amendments on 10 February 2014.

<sup>9</sup> 'The Highway Code' Rules for drivers and motorcyclists (Rule 99), available at <https://www.gov.uk/rules-drivers-motorcyclists-89-to-102/seat-belts-and-child-restraints-99-to-102>

<sup>10</sup> This is the same wording as contained in Section 8(4) of the Act: Person having management or control of smoke-free premises or vehicle fails to stop a person from smoking there.

<sup>11</sup> Section 192 of the Road Traffic Act 1988, available at: [www.legislation.gov.uk/ukpga/1988/52/section/192](http://www.legislation.gov.uk/ukpga/1988/52/section/192)

<sup>12</sup> 'The Highway Code': 7. The road user and the law, available at <https://www.gov.uk/using-the-road-159-to-203/the-road-user-and-the-law>

staff who are not involved in work relating to road provision and maintenance matters. In any guidance to accompany these regulations clarification should be given on the process of determining whether the Road Traffic Act definition will apply.

**Question 3 - Do you have any comments about the intentions regarding the enforcement of the proposed regulations?**

- 3.13 The CIEH supports the intention that enforcement will be largely the responsibility of police officers, as part of their general duties in relation to road safety. We also anticipate that local authorities will want to authorise some of their own officers so that they can take part in campaigns to promote compliance and deal with offences when information and advice fail to have effect.
- 3.14 The use of fixed penalty notices in relation to smoke-free offences has been proven to be an effective method. Their employment for these proposed offences is supported. It is noted that the enforcement body retains the ability to refer an alleged offence directly to court to be dealt with, which they might decide to use in the case of a persistent offender.
- 3.15 The aim, as with previous smoke-free legislation, will be to achieve high levels of voluntary compliance. Key elements in establishing high levels of voluntary compliance lie in public information campaigns and a workforce of authorised officers able to demonstrate that checks on compliance will be made and enforcement measures will be employed where necessary.
- 3.16 The first of these key elements was emphasized in the report of Professor Anna Gilmore et al of the Tobacco Control Group at the University of Bath into the health impact of the smokefree public places provisions of the Health Act 2006. This stated in its conclusions that: *"future interventions need to take account of the important role played by public knowledge. Evidence suggests that mass media campaigns make a difference to public understanding"*.<sup>13</sup>
- 3.17 The second of these key elements was achieved through extensive preparation of the authorised officer workforce through the provision of guidance<sup>14</sup> and training (utilising the guidance) so as to create confidence and consistency in approach. The CIEH will be pleased to share its experience and make available its expertise to support the successful introduction of this proposed legislation.

**Question 4: Do you want to draw our attention to any issues on the practicalities of implementing the regulations as drafted?**

- 3.18 A private vehicle would be required to be smoke-free when it is enclosed, there is more than one person present and at least one of the persons present is under the age of 18 years.

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<sup>13</sup> [University of Bath: The Impact of Smokefree Legislation \("Smoking Ban"\) Evidence from Research](#)

<sup>14</sup> See guidance listed on CIEH website page [http://www.cieh.org/policy/smokefree\\_workplaces.html](http://www.cieh.org/policy/smokefree_workplaces.html)

- 3.19 The CIEH does not anticipate any difficulties with the understanding of whether a vehicle is enclosed.
- 3.20 The use of the word 'present' means that it will not be necessary for the authorised officer to prove, in relation to a stationary vehicle, that it had been 'carrying' a child, i.e. that the vehicle had made a journey or that it was about to do so. The simple observation of the presence of a child in the vehicle would be sufficient.
- 3.21 There will be difficulties in correctly determining the ages of people who refuse to provide this or give false information. Documentary proof of age may not be available and independent witnesses unavailable. Similarly there will be refusals to provide names and addresses and vehicle ownership details, should these be required. Where the vehicle is stationary and the driver's seat is not occupied, or the driver is absent from the vehicle, then it may be necessary to establish who is in control of the vehicle e.g. who is in possession of the keys to the vehicle. Police Officers are best placed to deal with all such situations.

**Question 5: Do you have any additional evidence that banning smoking in private vehicles when children are present would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?**

- 3.22 The CIEH does not have any additional evidence in these matters.

**Question 6: Do you have any evidence that would inform the consultation-stage impact assessment including any evidence or information which would improve any of the assumptions or estimates we have made in the consultation-stage impact assessment?**

- 3.23 The CIEH notes that it is anticipated that compliance levels of 95% can be achieved. These levels of compliance have been achieved and exceeded in relation to other areas of smoke-free legislation. This was established through a system of monthly reporting by local authorities of compliance levels in their geographical areas. It is not clear what arrangements will be made for recording and reporting compliance in respect of this legislation by local authorities and Police services.