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Smoking in private vehicles carrying children

In February 2016, Members of the Northern Ireland Assembly voted in favour of an amendment contained within the Health (Miscellaneous Provisions) Bill (2015) to ban anyone from smoking in private vehicles (such as cars) carrying children.

This paper explores:

- the health risks associated with exposure of children to second-hand smoke, and the dangers posed by smoke toxins in private vehicles;
- the use of legislation and policy to change people's behaviour;
- arguments for and against the introduction of a ban;
- the position in Northern Ireland - compared with the rest of the United Kingdom and the Republic of Ireland, which have recently introduced similar bans; and
- if there is any evidence from elsewhere regarding the efficacy of smoking bans in private vehicles carrying children.

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Key points

- Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland, causing around 2,300 deaths each year.
- The dangers associated with second-hand (passive) smoke are well documented and protecting people from it remains a major public health issue.
- Scientific evidence demonstrates that there are no safe levels of exposure to second-hand smoke. This is known to cause numerous health problems, and children are particularly vulnerable.
- Health problems relating to children in this context include lower respiratory tract infections, bacterial meningitis, middle ear disease, and sudden infant death syndrome to name but a few.
- There is also a considerable cost burden to the health service for treating patients exposed to second-hand smoke.
- Smoke-free policies can be categorised as those that impact *public areas* and those that impact *private areas*.
- All jurisdictions in the United Kingdom (UK) and the Republic of Ireland (ROI) enacted smoke-free laws several years ago to protect citizens from the dangers of second-hand smoke. This makes it an offence to smoke in virtually all enclosed *public* places and workspaces.
- Despite the success of smoke-free legislation, laws in Northern Ireland do not extend to protect children (or adults) either in private dwellings or private vehicles, which is where they are most likely to be exposed to second-hand smoke.
- But in December 2015, the Minister for the Department of Health, Social Services and Public Safety (DHSSPS) in Northern Ireland proposed to amend the law through the Health (Miscellaneous Provisions) Bill. In February 2016, the Northern Ireland Assembly voted in favour of the amendment meaning that smoking in *private* vehicles carrying *children* will almost certainly be prohibited.
- The UK and the ROI have recently introduced similar legislation whereby fines or prosecutions can be imposed on anyone (driver or passenger) found guilty of an offence.
- There is evidence that levels of tobacco toxins caused by smoking in vehicles places children at risk, even in ventilated conditions. Nevertheless, the true extent to which children are at risk of second-hand smoke in private vehicles is not known.
- The main justification for such a change in the law is to protect children from the dangers of second-hand smoke by using legislative, rather than voluntary means to get people to change their behaviour. Such measures have also been used in an attempt to make people's behaviour safer within private vehicles – for example, the mandatory wearing of seatbelts, a ban on driving whilst intoxicated, and restrictions on mobile phone use. In terms of enforcement, various penalties can be imposed which help act as a deterrent.
- Aside from the public health benefits of protecting children against the risks of second-hand smoke, advocates suggest that a ban on smoking in private vehicles carrying children is justifiable because children are not fully autonomous, are more vulnerable to

the effects of second-hand smoke, and less able to act or speak-up in terms of protecting their own interests.

- Whilst public opinion seems to suggest an appetite for a ban, critics argue that such a move criminalises smokers, invades their civil liberties, and that any such ban will be almost impossible to enforce.
- It is envisaged that a change to the law, like the mandatory wearing of seatbelts in cars, will largely be self-enforcing; even though penalties will apply if a person is found guilty of committing an offence.
- Only a handful of countries outside of the UK and ROI have introduced similar bans. Yet there is a lack of evidence to suggest that they actually work in the context of private vehicles. Evaluating the efficacy of such a ban on people's private space is difficult to accomplish or observe.
- The introduction of a ban on smoking in cars in the presence of one group, in this case children, raises questions as to whether or not the ban should extend to other specific groups, such as pregnant women, the elderly; or more widely, to an outright ban on smoking in private vehicles.

1. Introduction

The regulation of smoking in private vehicles (such as cars) carrying children is a devolved matter. The main policy objective for a mandatory ban is to protect children from the dangers of second-hand smoke. However, bringing forward legislation in this area gives rise to a number of questions:

- Does the risk of toxin exposure from smoking in private vehicles where children are present justify a ban?
- If a ban is introduced, how will it be enforced and evaluated?

This paper considers these issues in the context of the Department of Health, Social Services and Public Safety's (DHSSPS) recent proposal to amend the law to prohibit smoking in private vehicles carrying children in Northern Ireland.¹

2. Background: Smoking and second-hand smoke

Although smoking rates have declined over recent decades, smoking remains the single greatest cause of preventable illness and premature death in Northern Ireland. One in four adults are smokers in Northern Ireland² and statistics show that around 2,300 deaths are caused from smoking each year.³

Around 80% of second-hand smoke⁴ (or passive smoking) is invisible and odourless, and this can inadvertently make people think that it is safe to smoke around others.⁵ Yet evidence suggests that there are no safe levels of exposure to second-hand smoke.^{6,7} Breathing in other people's smoke is dangerous and can cause a wide range of adverse health problems.⁸ The danger comes from more than 4000 chemicals contained in tobacco smoke⁹, of which at least 250 are known to be harmful and more than 50 are known to cause cancer.¹⁰

¹ The amendment is proposed in the Health (Miscellaneous Provisions) Bill (2015).

² DHSSPS (2013) Smoke-Free Legislation in Northern Ireland - A Three Year Review. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-smoke-free-three-year-review.pdf>

³ DHSSPS (2012) Ten Year Tobacco Control Strategy for Northern Ireland. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-10-year-strategy.pdf>

⁴ Second-hand smoke is the combination of side-stream smoke, i.e. smoke that is emitted between puffs of burning tobacco (cigarettes, pipes or cigars), and mainstream smoke, i.e. smoke that is exhaled by the smoker.

⁵ NHS Website. Protect your family from secondhand smoke. Available online at: <http://www.nhs.uk/smokefree/why-quit/secondhand-smoke#CUZmziaxlv4dHSu.97>

⁶ Department of Health (England), Smoking in private vehicles carrying children - consultation on proposed regulations to be made under the Children and Families Act 2014 July 2014. Available online at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329885/Smoking_in_cars_carrying_children.pdf

⁷ Royal College of Physicians (RCP, 2010) Passive smoking and children. A report of the Tobacco Advisory Group of the RCP London, 2010. Available online at: <http://shop.rcplondon.ac.uk/products/passive-smoking-and-children>

⁸ Scientific Committee on Tobacco and Health (2004). Secondhand smoke: a review of the evidence since 1998.

London: Department of Health. Available online at: http://www.smokefreeengland.co.uk/files/scoth_secondhandsmoke.pdf

⁹ Second-hand smoke contains a mixture of carcinogens including arsenic, cadmium, formaldehyde and benzene.

¹⁰ World Health Organisation. 10 Facts on Second-Hand Smoke, Available online at: www.who.int/features/factfiles/tobacco/tobacco_facts/en/index5.html

2.1 Health impacts of second-hand smoke on children

According to the American Surgeon General's Report (2006)¹¹ “*the scientific evidence is now indisputable: secondhand smoke is not a mere annoyance. It is a serious health hazard that leads to disease and premature death in children and nonsmoking adults*”. This conclusion echoes the findings of a detailed review of the evidence by the Royal College of Physicians into *Passive Smoking and Children* in 2010.¹²

Medical experts also warn that children and unborn babies are more susceptible to the harmful effects of second-hand smoke than adults.¹³ This is partly because their immune systems and lungs are less developed; they breathe more rapidly and their smaller bodies can absorb more toxins.

Two main ways that tobacco-related harm from second-hand smoke can impact on children before birth and through their young lives are:

- via active or passive smoking by the mother of unborn babies in the womb¹⁴,
- through exposure to second-hand smoke in indoor and outdoor environments - especially if their parents are smokers.

The World Health Organization has extensively assessed the burden of disease associated with second hand smoke, both at national and local levels.¹⁵ It critiqued the strengths and weaknesses of numerous research reviews and meta-analyses on the potential health dangers associated with second-hand smoke. Its findings support a growing body of evidence about the increased health risks associated with second-hand smoke exposure in children.

These include:

- lower respiratory tract infections - such as pneumonia and bronchitis;
- bacterial meningitis;
- asthma;
- middle ear disease;
- decreased lung function;

¹¹ Department of Health and Human Services USA: A Report of the Surgeon General (2006) The Health Consequences of Involuntary Exposure to Tobacco Smoke. Available online at:

<http://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

¹² Royal College of Physicians (RCP, 2010) Passive smoking and children. A report of the Tobacco Advisory Group of the RCP London, 2010. Available online at: <https://cdn.shopify.com/s/files/1/0924/4392/files/passive-smoking-and-children.pdf> Chapt 5.

¹³ British Medical Association (2015) The Smoke-free (Private Vehicles) Regulations 2015 Parliamentary Brief. Available online at: <http://www.bma.org.uk/-/media/files/pdfs/working%20for%20change/policy%20and%20lobbying/pa-briefsmokefreevehicles-04-02-2015.pdf>

¹⁴ DHSSPS The Ten Year Tobacco Control Strategy for Northern Ireland. Available online at:

<https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-10-year-strategy.pdf>, p19.

¹⁵ Öberg, M. et al. (2010) Second-hand smoke – Assessing the burden of disease at national and local levels. Environmental Burden of Disease Series No. 18 Geneva: World Health Organization. Available online at: http://www.who.int/quantifying_ehimpacts/publications/SHS.pdf

- sudden infant death syndrome.^{16,17,18,}

In addition to potential health risks linked to second-hand smoke, its effects also place a considerable financial burden on the health service in terms of GP visits, hospital admissions, and for drug treatments, such as respiratory drugs for asthma.^{19,20}

3. Law and policy

Over the last 20 years there have been immense changes by government bodies on how tobacco use is controlled. However, smoke-free policies are different to other policies to reduce tobacco use because they are not only aimed at smokers but also at non-smokers - and the risks to their health.

Two main smoke-free policy types exist: those that are mandated by law or regulation, and those that are voluntarily adopted. In addition, smoke-free policies can be categorised as those that impact *public areas* and those that impact *private areas*. A more detailed account of the history of these policies and the tobacco debate surrounding their implementation can be found in the literature elsewhere.²¹

3.1 Legislative action to change people's behaviour

According to the National Institute of Clinical Excellence (NICE), legislation provides a powerful tool for influencing change in people's behaviour and improving population health.²² Legal regulation can accomplish its goals directly, through fear of sanctions or desire for rewards, and also indirectly, by changing attitudes or moral beliefs about the regulated behaviours.²³

Yet policy-makers have a difficult task in ensuring that any interventions - such as mandatory bans - are based on sound evidence base and policies that work.²⁴ In these instances, legislation is usually only considered where efforts to achieve change via voluntary means have not fully addressed the problem.²⁵

Even where there is enough evidence to justify legislative action, multiple factors can impede success – such as the level of stakeholder buy-in; if the intervention is

¹⁶ Cancer Research UK. Passive Smoking. Available online at: <http://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/passive-smoking>

¹⁷ Centre for Disease Control and Prevention. Second-hand smoke (facts). Available online at: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/

¹⁸ World Health Organisation. Background paper: Smoking and Sudden Infant Death Syndrome. Available online at: <http://www.who.int/tobacco/media/en/mitchell.pdf>

¹⁹ Nursing in Practice (June 2013) Second-hand smoke costs NHS £23m just for children. Available online at: <http://www.nursinginpractice.com/article/secondhand-smoke-costs-nhs-%C2%A323m-just-children>

²⁰ Royal College of Physicians. Parliamentary Briefing: Passive smoking and children, May 2012 <https://cdn.shopify.com/s/files/1/0924/4392/files/passive-smoking-and-children.pdf>

²¹ Hyland A et al. (2012) Smoke-free air policies: past, present and future. Tobacco control. Available online at: <http://tobaccocontrol.bmj.com/content/21/2/154.full>

²² NICE Guidance Legislating for Health: Locating the Evidence. Available online at:

<https://www.nice.org.uk/guidance/ph29/evidence/legislating-for-health-locating-the-evidence-428640302>

²³ Bilz, K & Nadler, J. (2013) Law, moral attitudes and behavioural change. Oxford Handbook of Behavioural Economics and the Law

²⁴ Smith, K. (2013) Understanding the influence of evidence in public health policy: What can we learn from the 'Tobacco Wars'? Social Policy and Administration. Vol 47, p382.

²⁵ Moore, G et al. (2015) Prevalence of smoking restrictions and child exposure to secondhand smoke in cars and homes: a repeated cross-sectional survey of children aged 10–11 years in Wales. BMJ Open. Available online at: <http://bmjopen.bmj.com/content/5/1/e006914.full>

supported by lobby groups; or whether the proposed law is enforceable.²⁶ Part of the difficulty is that any public health benefit needs to be balanced against the intrusion into people's behaviours that are considered *private*. Evaluating the efficacy of such interventions is also complex. For example, any changes can be difficult to observe or measure if they concern a person's personal or private space.²⁷

Some examples of how human behaviour has been "curbed" through the use of legislative bans are presented below.

- Several years ago, the United Kingdom (UK) and the Republic of Ireland (ROI) enacted smoke-free laws.²⁸ The main goal was to protect citizens from the dangers of second-hand smoke and improve health outcomes. Another outcome was to de-normalise smoking. Although the legislation differs in detail between jurisdictions, it carries the same principles; that it is an offence for anyone to smoke in enclosed *public* places and workspaces. There are however, a few limited exemptions where smoking may take place in designated rooms.²⁹ The law also includes vehicles used for work purposes – such as taxis and buses.³⁰ However, private dwellings and private vehicles are not covered under the legislation.
- A number of legislative measures have also been introduced in an attempt to make people's behaviour safer within private vehicles - which is a heavily regulated area of the law.³¹ This includes mandatory seatbelt use, a ban on hand-held mobile phone use for drivers, and prohibiting driving whilst intoxicated, to name but a few.

These examples of mandatory bans have a number of penalties attached to them, should someone be found guilty of committing an offence.^{32,33} Each has been accompanied by awareness campaigns³⁴ which help to increase compliance and act as a deterrent (i.e. from the perceived fear of "being caught").

²⁶ Wong, G, et al (2011) Policy guidance on threats to legislative interventions in public health: a realist synthesis. BioMed Central Public Health. Available online <http://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-11-222>

²⁷ NICE Guidance Legislating for Health: Locating the Evidence. Available online at:

<https://www.nice.org.uk/guidance/ph29/evidence/legislating-for-health-locating-the-evidence-428640302>

²⁸ Legislation came into effect in the ROI in 2003, Scotland in 2006, Wales and Northern Ireland in 2007. See: Royal College of Physicians (RCP, 2010) Passive smoking and children. Online at: <http://shop.rcplondon.ac.uk/products/passive-smoking-and-children> p2 and The Department of Health Ireland, Tobacco free Ireland (2013) <http://health.gov.ie/wp-content/uploads/2014/03/TobaccoFreeIreland.pdf> p49.

²⁹ This includes for example, bedrooms in hotels and guesthouses (but not dormitories). See for example - NI Direct website - Smoking regulations in Northern Ireland. <http://www.nidirect.gov.uk/smoking-regulations-in-northern-ireland>

³⁰ Gov.uk website. Smoking at work: the law. Available online at: <https://www.gov.uk/smoking-at-work-the-law>

³¹ See The Official Highway Code for Northern Ireland. Available online at <http://www.nidirect.gov.uk/highway-code-english-may-2014.pdf?rev=2> p125

³² NI Direct website. Smoking regulations in Northern Ireland. Available online at: <http://www.nidirect.gov.uk/smoking-regulations-in-northern-ireland>

³³ See for example, NI Courts and Tribunals Service website. Fixed Penalties – legislative changes and NI Direct website. Drink driving penalties <http://www.nidirect.gov.uk/drink-driving-penalties>.

³⁴ See for example NI Direct website. Tough new road safety penalties. Available online at:

<http://www.northernireland.gov.uk/news/news-doe/news-doe-june-2007/news-doe-040607-tough-new-road.htm>

3.2 Position in Northern Ireland

This section of the paper describes some of the key legislative and policy developments relating to second-hand smoke in Northern Ireland:

- Smoke-free legislation (as described above) was introduced in Northern Ireland in 2007.³⁵ When under consideration, this legislation faced much opposition from smokers, tobacco companies and lobby groups. However public attitudes soon changed after its introduction and the acceptance of smoke-free laws quickly became “the norm”.³⁶ It was also believed by some at the time that this would displace smoking inside the home, but a review of the evidence both locally and further afield would suggest that this has not been the case.^{37,38}
- Since the introduction of the legislation in Northern Ireland, three reviews have been published by the DHSSPS in 2009³⁹ and 2013⁴⁰ and by the Institute of Public Health in Ireland in 2014.⁴¹ The latest review suggests high compliance amongst smokers and high public acceptance levels, improved air quality and increased awareness of the risks of smoking indoors. Several survey sources within the review showed stricter rules on smoking in the home over time since the introduction of the legislation. The presence of children was also related to whether smoking in the home or car was acceptable or not.⁴²
- A number of more ad hoc developments in smoke-free policies in *outdoor public places* have gradually been implemented at rail, bus stations, schools, and hospital sites too. However, to date, there is no central register of activity.⁴³
- Alongside the legislation, several policy developments have taken place. For example, the DHSSPS has set *child health* as a public health priority. This focusses on giving children the best start in life,⁴⁴ improving outcomes and reducing health inequalities. In 2012, the DHSSPS also published its Ten Year Tobacco Control Strategy for Northern Ireland⁴⁵ where one of its key priorities

³⁵ The Smoking (Northern Ireland) Order (2006) bans smoking in all enclosed or substantially enclosed public places and workplaces in Northern Ireland. Available online at: <http://www.legislation.gov.uk/nisi/2006/2957/contents>

³⁶ Purdy, J. et al. (2014) Smoke-free spaces: Progress in reducing exposure to second-hand smoke in Northern Ireland incorporating the five year review of smoke-free legislation. Dublin: Institute of Public Health in Ireland. <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-smoke-free-final-report-2015.pdf> p10

³⁷ Purdy, J. et al. (2014) Smoke-free spaces: Progress in reducing exposure to second-hand smoke in Northern Ireland incorporating the five year review of smoke-free legislation. Institute of Public Health in Ireland. <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-smoke-free-final-report-2015.pdf>

³⁸ Callinan JE et al (2010) Legislative smoking bans for reducing secondhand smoke exposure, smoking prevalence and tobacco consumption. Cochrane Database of Systematic Reviews, Issue 4. Art. No. CD005992.

³⁹ DHSSPS (2009) Smoke-free Legislation in Northern Ireland - A One Year Review. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-smoke-free-one-year-review.pdf>

⁴⁰ DHSSPS (2013) Smoke-free Legislation in Northern Ireland - A Three Year Review. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-smoke-free-three-year-review.pdf>

⁴¹ Purdy, J. et al. (2014) Smoke-free spaces: Progress in reducing exposure to second-hand smoke in Northern Ireland incorporating the five year review of smoke-free legislation. Institute of Public Health in Ireland. <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-smoke-free-final-report-2015.pdf>

⁴² Ibid

⁴³ Ibid, p16.

⁴⁴ Public Health Agency (NI) Website. Give every child the best start in life. Available online at: <http://www.publichealth.hscni.net/directorate-public-health/health-and-social-wellbeing-improvement/give-every-child-best-start-life>

⁴⁵ DHSSPS (2012) The Ten Year Tobacco Control Strategy for Northern Ireland. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-10-year-strategy.pdf>

includes the need to protect others, particularly children, from the toxins produced by second-hand smoke.⁴⁶

3.3 Second-hand smoke: in the car and at home

Despite the aforementioned efforts to reduce exposure to second-hand smoke in Northern Ireland, the current law does not extend to protect children (or adults) either in private dwellings or private vehicles (the latter of which is currently under consideration). These are two places where children and non-smokers are most likely to be exposed to second-hand smoke. Furthermore, children living in disadvantaged households are more likely to be exposed to second-hand smoke than those from less socially deprived communities,⁴⁷ which leads to greater levels of health inequalities amongst them.⁴⁸

Whilst second-hand smoke pertaining to the home environment is beyond the scope of this paper, it is also important to note that it is difficult to make comparisons between the level of risk in the home environment and private vehicles. For example, children may be subject to car journeys of varying lengths, frequencies, ventilation, size of the space, and the amount of smoke toxins they are exposed to. The same sorts of variations apply to the risk of second-hand smoke exposure in the home, although as previously discussed, the scientific evidence suggests that there are no safe levels of exposure to second-hand smoke.

Although governments are seeking to reduce the level of second-hand smoke exposure in private homes and cars, the home environment is less likely to be subject to smoke-free legislation, as the DHSSPS comments “*now we must turn our attention to preventing exposure to second-hand smoke in the home. The key to success in this area will involve campaigning to change attitudes rather than changing the law*”.⁴⁹ This approach was echoed more recently by the BMA (2015) which suggested that the home environment “*is not suited to a regulatory or legislative approach, and should be supported by high impact and sustained public health campaigns*.”⁵⁰

4. Smoking in private vehicles

One of the biggest issues arising from smoking in a private vehicle is the risk to the other passengers, particularly non-smokers, who can be involuntarily exposed to second-hand smoke. Yet despite extensive research in this area,⁵¹ it is not possible to quantify how much risk children are at.

⁴⁶ Ibid, p6.

⁴⁷ Institute of Public Health in Ireland (IPH) and the Tobacco Free Research Institute Ireland (2013) A Tobacco-Free Future - An all-island report on tobacco, inequalities and childhood. Available online at: <http://www.publichealth.ie/sites/default/files/documents/files/A%20Tobacco-free%20Future.pdf> p12.

⁴⁸ Ibid p52.

⁴⁹ DHSSPS (2009) Smoke-free Legislation in Northern Ireland - A One Year Review. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-smoke-free-one-year-review.pdf>

⁵⁰ BMA (2015) Promoting a tobacco-free society, p12. Available online at: <http://www.bma.org.uk/-/media/files/pdfs/about%20the%20bma/how%20we%20work/board%20of%20science/promoting-a-tobacco-free-society.pdf>

⁵¹ See for example: Pawson, R et al (2011) Myths, facts and conditional truths: What is the evidence on the risks associated with smoking in cars carrying children? Canadian Medical Association Journal, Vol. 183 no 10. Available online at: <http://www.cmaj.ca/content/183/10/E680.short>

A number of studies have attempted to measure the concentration of tobacco smoke pollutants and air quality in private vehicles under different driving conditions.^{52,53,54,55} However, problems exist with interpreting the results because of the wide range of test conditions applied (such as ventilation, vehicle speed etc.) and as a consequence, results have varied widely. In addition, there have been some inaccurate claims reported about the dangerous levels of second-hand smoke particles in private vehicles.⁵⁶ For example, the BMA was originally quoted as saying that “studies had demonstrated that the concentration of toxins in a smoke-filled vehicle was 23 times greater than that of a smoky bar”. This claim was challenged due to a lack of evidence. Consequently the BMA updated its figures stating that studies had shown that “the concentration of toxins in a smoke-filled vehicle could be up to 11 times greater than that of a smoky bar.”⁵⁷

Regardless of the discrepancies, the research is also clear that smoking in vehicles can place passengers at a greater risk of second-hand smoke exposure due to the confined internal environment.⁵⁸ Whilst opening a window or using air-conditioning reduces the level of toxins and carcinogens, exposure remains high^{59,60} and greatly exceeds international indoor air quality guidance values.⁶¹ It has also been suggested that refraining from smoking when driving where children are present is not sufficient to prevent the harmful effects of tobacco smoke.⁶² This is because residual toxins - known as third-hand smoke, can linger in the vehicle’s interior materials long after a cigarette has been extinguished.

4.1 How many children might be exposed to second-hand smoke in the car?

In order for an additional smoke-free policy to be implemented, it is important to have an understanding of the scale of the problem. However, given that children may be subject to different conditions in any given car journey, the true extent of the problem of exposure to second-hand smoke cannot be calculated. Furthermore, it is not possible

⁵² Rees V.& Connolly G. (2006) Measuring air quality to protect children from secondhand smoke in cars. *American Journal of Preventive Medicine* 31, 363-366.

⁵³ Semple, S. et al (2012). Secondhand smoke in cars: assessing children’s potential exposure during typical journey conditions. *Tobacco Control*. 2012;21(6), pp.578-83.

⁵⁴ Kabir Z, et al., (2009). Second-hand smoke exposure in cars and respiratory health effects in children. *European Respiratory Journal*, 34, pp.629-633.

⁵⁵ Sendzik T, et al, (2009). An experimental investigation of tobacco smoke pollution in cars. *Nicotine and Tobacco Research*, 11(6),pp.627–634.

⁵⁶ See for example, MacKenzie, R. et al, (2010) Second-hand smoke in cars: How did the “23 times more toxic” myth turn into fact? Available online at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871202/>

⁵⁷ Full Fact website (November 2011) : BMA on firmer ground with revised figures. Available online at:

<https://fullfact.org/news/smoking-cars-bma-firmer-ground-revised-figures/>

⁵⁸ BMA (2015) The Smoke-free (Private Vehicles) Regulations 2015 Parliamentary brief. Available online at: <http://www.bma.org.uk/-/media/files/pdfs/working%20for%20change/policy%20and%20lobbying/pa-briefsmokefreevehicles-04-02-2015.pdf>

⁵⁹ Ott W, et al (2007) Air change rates of motor vehicles and in-vehicle pollutant concentrations from secondhand smoke. *Journal of Exposure Science and Environmental Epidemiology*; 18: 312-325.

⁶⁰ Sánchez-Jiménez, A. Exposure of children to second-hand smoke in cars. *Journal of Environmental Health Research* Volume 11 Issue 2.

⁶¹ Semple, S. et al (2012). Secondhand smoke in cars: assessing children’s potential exposure during typical journey conditions. *Tobacco Control*. 2012;21(6), p.578

⁶² British Medical Association (2013) Smoking in Vehicles, A briefing from the Board of Science. Available online at: p6 http://bmaopac.hosted.exlibrisgroup.com/exlibris/aleph/a21_1/apache_media/C26VF5SDJ4KQ1PMFJCV2VK1G1RPTN4.pdf

to rely upon self-reported survey data; likewise estimates are limited and must be treated with caution.

Nevertheless, as an indication, figures published in the UK and ROI suggest that:

- In England the government estimates that three million children are exposed to secondhand smoke in their family car.⁶³ The Government has also quoted figures from the British Lung Foundation that indicate that the majority of children in its survey (86%) would like smoker(s) in their cars to stop, but that they are often too afraid or embarrassed to ask.⁶⁴
- In Northern Ireland, 15% of adult respondents who had children in the *Northern Ireland Health Survey* (2014/15) allowed smoking in the family car; (20% allowed smoking in the family home).⁶⁵
- In Wales, research data from the child's perspective showed that 9% of children reported that smoking was allowed in their family car in 2014. This figure was higher (18%) in 2008.⁶⁶
- Also from a child's perspective, in the Republic of Ireland, the Irish Health Behaviour in School-aged Children Survey (2014) indicated that almost one in every five children aged between 10 and 17 reported being exposed to second-hand smoke in cars.⁶⁷

Conversely, others, such as the *Tobacco Manufacturers Association*, have posited that the number of people who smoke in their car when children are present is significantly smaller than figures suggest, and this would therefore be a weak justification for legislative action.⁶⁸

4.2 Appetite for a ban?

Successful implementation of legislation depends to some degree on the extent to which it is supported by the public, and this is especially true of laws that apply to private or individual behaviour.⁶⁹

⁶³ Public Health England website: Second-hand smoke campaign returns this week. Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402878/PHE_Smokefree_Homes_and_Cars_press_release_09_02_15.pdf

⁶⁴ Explanatory Memorandum of the Smoke Free (Private Vehicles) Regulations. Available online at: http://www.legislation.gov.uk/ukdsi/2015/9780111126004/pdfs/ukdsiem_9780111126004_en.pdf p3.

⁶⁵ Institute of Public Health in Ireland (IPH) and the Tobacco Free Research Institute Ireland (2013) A Tobacco-Free Future - An all-island report on tobacco, inequalities and childhood. Available online at: <http://www.publichealth.ie/sites/default/files/documents/files/A%20Tobacco-free%20Future.pdf> p15. Sample was weighted for age and sex and based on 3,489 respondents regarding smoking in cars.

⁶⁶ Moore G. et al. (2015) Exposure to second-hand smoke in cars and e-cigarette use among 10-11 year old children in Wales. *BMJ Open*. Available online at: <http://bmjopen.bmj.com/content/5/1/e006914.full> The study reported findings from a survey of sample of 1,601 nationally representative children aged 10-11 years in Wales.

⁶⁷ Department of Health and National University of Ireland, Galway. The Irish Health Behaviour in School-aged Children (HBSC) Study 2014. Available online at: <http://health.gov.ie/wp-content/uploads/2015/12/HBSC2014web2.pdf>. This study sample included 230 schools / 13,611 pupils.

⁶⁸ See Tobacco Manufacturers Association website: Smoking in Private Vehicles. Available online at: <http://www.the-tma.org.uk/policy-legislation/smoking-in-private-vehicles/> p2.

⁶⁹ Royal College of Physicians. Passive smoking and children. Chapter 8 of A report of the Tobacco Advisory Group of the Royal College of Physicians. London, RCP, March 2010, <https://cdn.shopify.com/s/files/1/0924/4392/files/passive-smoking-and-children.pdf> p134

Survey research indicates that there is general support for banning smoking in cars carrying children⁷⁰ and that smoking in cars has declined considerably in recent years.⁷¹ As evidence about the ill-effects of second-hand smoke grows, it seems likely that the public is more inclined to support a smoking ban in private vehicles carrying children, based on the awareness of the dangers brought to the fore from previous smoke-free measures.⁷²

Another way to gauge public attitudes is through opinion polls. These are only indicative and cannot be relied upon as being truly representational. They have however, been consistent in showing support for a ban on smoking in private vehicles carrying children, for example:

- A poll in 2010 by the Royal College of Physicians found that 77% of adults in England would support a total ban on smoking in motor vehicles carrying children under the age of 18 years.⁷³
- A YouGov poll in March 2014 suggested that around 75% of Scottish adults agreed with a ban on smoking in cars carrying children.⁷⁴
- In Northern Ireland, Chest Heart and Stroke commissioned an opinion poll in 2014 relating to a ban on smoking in cars when children are present. 82% of respondents were in support of a ban.⁷⁵

4.3 Main arguments in support of a ban

The main arguments put forward in support of a ban on smoking in private vehicles carrying children are summarised below:

- Substantial medical evidence demonstrates the harmful effects of second-hand smoke on children. In addition, toxicity levels of second-hand smoke can be particularly intense in confined spaces like cars. Implementing smoke-free measures, it is argued, is the only way to protect children against these harms.⁷⁶
- Public health gains: Research evidence, including a recent Cochrane Review (2016),⁷⁷ demonstrates that smoke-free bans are effective in reducing exposure

⁷⁰ Thomson, G and Wilson, N. (2009) Public attitudes to laws for smoke-free private vehicles: a brief review. *Tobacco Control*. 18: 245-61. Available online at: <http://www.ncbi.nlm.nih.gov/pubmed/19052041>

⁷¹ Welsh Government. 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, p8. Available online at <http://gov.wales/docs/caecd/research/2014/140715-exposure-secondhand-smoke-cars-ecigarette-use-among-10-11-year-olds-chets-2-en.pdf>

⁷² Pawson, R. et al (2013) Public opinion and policy making. *Social policy and administration* Vol 47, no 4 p444.

⁷³ Royal College of Physicians. Passive smoking and children. Chapter 8 of A report of the Tobacco Advisory Group of the Royal College of Physicians. London, RCP, March 2010, <https://cdn.shopify.com/s/files/1/0924/4392/files/passive-smoking-and-children.pdf>

⁷⁴ YouGov Plc. Total sample size was 1064 adults. Fieldwork was undertaken between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

⁷⁵ Northern Ireland Chest, Heart and Stroke: Available online at: <http://nichs.org.uk/865/smoking-in-cars-carrying-children> The Millward Brown Omnibus is a bi-monthly survey, each being conducted amongst a fresh and fully representative sample of 1,000 respondents across Northern Ireland. Each Omnibus is quota controlled to ensure demographic representation in terms of age, sex, socio-economic grouping and religion, and geographically spread across approximately 80 pre-selected electoral wards.

⁷⁶ Nabi-Burza E, et al. (2012) Parents smoking in their cars with children present. *Pediatrics* 130(6): p1472.

⁷⁷ Cochrane Review (2016) Does legislation to ban smoking reduce exposure to second-hand smoke and smoking behaviour? http://www.cochrane.org/CD005992/TOBACCO_does-legislation-ban-smoking-reduce-exposure-secondhand-smoke-and-smoking-behaviour

to second-hand smoke.^{78,79} Benefits have been reported in nearby jurisdictions^{80,81} and further afield, as the WHO describes: “[Jurisdictions] observed an immediate drop in levels of second-hand smoke, a decline in levels of second-hand smoke components in the population, and significant and immediate health improvements in workers previously exposed to second-hand smoke.”⁸² Proposed changes to extend smoke-free laws are likely to positively impact on children exposed to second-hand smoke in cars.⁸³

- Children are not fully autonomous and less able to remove themselves from a private vehicle, or speak-up in terms of protecting their own interests.⁸⁴
- There are potential harms from children witnessing smoking as normal adult behaviour from their parents or carers. This is said to increase their risk of smoking in later life.⁸⁵ Therefore advocates suggest that legislation would further contribute to reshaping social norms around smoking.⁸⁶
- There are also concerns about the potential harm that may result in accidents from the driver’s temporary loss of full control of the vehicle when smoking.⁸⁷
- Educational campaigns to get people to change their behaviour are insufficient on their own.⁸⁸ Legislation and active enforcement strategies (e.g. publicity and warnings) are therefore, also needed.⁸⁹ Others suggest that the ban, akin to mandatory seat belt use, will largely become “self-enforcing”.⁹⁰

4.4 Inclusion of other groups?

In addition to these arguments, campaigners have suggested that the smoking ban should be widened to include all private vehicles, regardless of the age of passengers

⁷⁸ Gov.uk website. The impact of smoke free legislation in England: Evidence Review (2011) Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216319/dh_124959.pdf

⁷⁹ British medical Journal (2002) Effect of smoke-free workplaces on smoking behaviour: systematic review. Available online at: <http://www.bmj.com/content/325/7357/188?variant=full-text&referer=www.clickfind.com.au>

⁸⁰ Institute for Policy Research. The impact of smoke free legislation - evidence from research. Available online at: <http://www.bath.ac.uk/ipr/policy-briefs/smokefree-legislation.html>

⁸¹ Gov.uk. The impact of smoke free legislation in England: Evidence Review (2011) Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216319/dh_124959.pdf

⁸² Öberg, M. et al. (2010) Second-hand smoke – Assessing the burden of disease at national and local levels. Environmental Burden of Disease Series No. 18 Geneva: World Health Organization. Available online at: http://www.who.int/quantifying_ehimpacts/publications/SHS.pdf p60.

⁸³ British Medical Association (2013) Smoking in Vehicles, A briefing from the Board of Science. Available online at: http://bmaopac.hosted.exlibrisgroup.com/exlibris/aleph/a21_1/apache_media/C26VF5SDJ4KQ1PMFJCV2VK1G1RPTN4.pdf

⁸⁴ ASH Smoking in cars factsheet. Available online at: http://ash.org.uk/files/documents/ASH_714.pdf

⁸⁵ Royal College of Physicians. (2010) Passive smoking and children. A report by the Tobacco Advisory Group of the Royal College of Physicians. Available online: <https://cdn.shopify.com/s/files/1/0924/4392/files/passive-smoking-and-children.pdf>

⁸⁶ Department of Health, England (2014) Government response to the consultation on smoking in private vehicles carrying Children. Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384319/smoking_in_vehicles_govresponse.pdf p14.

⁸⁷ Leonardi-Bee J, et al: (2011) Exposure to parental and sibling smoking and the risk of smoking uptake in childhood and adolescence: a systematic review and meta-analysis. Thorax:66 (10):847-55.

⁸⁸ Royal College of Physicians. (2010) Passive smoking and children. A report by the Tobacco Advisory Group of the Royal College of Physicians. Available online at: <https://cdn.shopify.com/s/files/1/0924/4392/files/passive-smoking-and-children.pdf?15599436013786148553>

⁸⁹ Wong, G, et al (2011) Policy guidance on threats to legislative interventions in public health: a realist synthesis. BioMed Central Public Health. Available online <http://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-11-222>

⁹⁰ House of Commons Debate 10 February 2014 c621; cited in House of Commons Library Research Paper, Barbry C. et al (2015) Smoking in public places

or the driver;^{91,92} or vulnerable groups - such as the elderly and disabled who are dependent on their parents or carers.⁹³

Furthermore, media reports state that Italy has introduced a ban on smoking in cars carrying children and pregnant women.⁹⁴ Whilst the dangers of smoking and second-hand smoke around pregnant women have been well documented in the literature, protection of the unborn child in the context of smoking in private vehicles seems to have gained little attention.

5. Issues with imposing a ban

Despite the positive effects that existing smoke-free policies have had on health and air quality,⁹⁵ a number of counter arguments have been put forward in opposition to a ban. Some examples include:

- A fear that the government is “going too far” by invading people's civil liberties; privacy and personal space⁹⁶; operating a nanny state⁹⁷; penalising people, and curtailing their freedom.⁹⁸
- The pro-smoking Group, FOREST⁹⁹, suggests that such a measure is excessive and that people should not be criminalised for smoking in a private vehicle. Their view is that the evidence regarding the effectiveness for such a measure is inconclusive¹⁰⁰ and that there is no need for the legislation as only a small minority of people engage in this type of behaviour in their own car.¹⁰¹
- That education, rather than legislation, would be a more appropriate way forward.¹⁰² For example, the Tobacco Manufacturers Association suggest that

⁹¹ BMA (2015) Promoting a tobacco-free society. Available online at: <http://www.bma.org.uk/-/media/files/pdfs/about%20the%20bma/how%20we%20work/board%20of%20science/promoting-a-tobacco-free-society.pdf> p11.

⁹² ASH consultation response to the Department of Health consultation document: “Smoking in Private Vehicles Carrying Children – Consultation on Proposed Regulations to be made under the Children and Families Act 2014” http://www.ash.org.uk/files/documents/ASH_949.pdf p1.

⁹³ British Medical Association (2013) Smoking in Vehicles, A briefing from the Board of Science. Available online at: http://bmaopac.hosted.exlibrisgroup.com/exlibris/aleph/a21_1/apache_media/C26VF5SDJ4KQ1PMFJCV2VK1G1RPTN4.pdf

⁹⁴ See New Europe website: Italy: severe fines for smokers. Available online at: <http://neurope.eu/article/italy-severe-fines-for-smokers/>

⁹⁵ Royal College of Physicians (RCP, 2010) Passive smoking and children. A report of the Tobacco Advisory Group of the RCP London, 2010. Available online at: <http://shop.rcplondon.ac.uk/products/passive-smoking-and-children> p21.

⁹⁶ Evidence to Health and Sport Committee by FOREST. Available online at: http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Inquiries/CMVL-Forest.pdf

⁹⁷ NI Assembly Hansard: Health (Miscellaneous Provisions) Bill: Second Stage debate

⁹⁸ Tobacco Manufacturers Association website: Smoking in Private Vehicles. Available online at: <http://www.the-tma.org.uk/policy-legislation/smoking-in-private-vehicles/>

⁹⁹ FOREST stands for - Freedom Organisation for the Right to Enjoy Smoking Tobacco

¹⁰⁰ YouGov website ‘Ban smoking in cars’. Available online at: <https://yougov.co.uk/news/2011/11/24/ban-smoking-cars/>

¹⁰¹ Ibid

¹⁰² The Northern Echo (January 2014) Opposing sides have their say on proposals to ban smoking in cars with children present. Available online at: http://www.thenorthernecho.co.uk/features/leader/10972510.Opposing_sides_have_their_say_on_proposals_to_ban_smoking_in_cars_with_children_present/

initiatives like the *Fresh Start Wales* campaign are a much better approach.^{103,104}

- That anti-smoking campaigners may subsequently target people smoking alone in their car, or in their own homes.¹⁰⁵

5.1 Enforcement

Another frequently cited criticism concerns how practical a ban on smoking in private vehicles carrying children will be to enforce; given the resources required to do so, and the impact on police time. A number of other enforcement issues which have been raised include:

- A recent RAC survey (2015) suggested nine out of ten motorists (92%) did not have confidence that the new smoking ban in private vehicles carrying children would be effectively enforced.¹⁰⁶
- Some stakeholders representing the police have suggested in the media that the ban could create another level of bureaucracy and be ineffective unless an educational, non-confrontational approach is taken in order to ensure the relationship with the public is not damaged.^{107,108}
- Other potential problems identified include:
 - how to assess whether someone was smoking in a moving vehicle;
 - whether it would be possible to see a child/baby in a vehicle;
 - how to verify the ages of people if they give false information; and
 - the possible confusion between cigarettes and electronic cigarettes.¹⁰⁹

¹⁰³ See freshstartwales.co.uk website. This campaign has the aim of raising awareness of second-hand smoke and encouraging restrictions on smoking in cars carrying children.

¹⁰⁴ See Tobacco Manufacturers Association website: Smoking in Private Vehicles. Available online at: <http://www.the-tma.org.uk/policy-legislation/smoking-in-private-vehicles/> p2.

¹⁰⁵ Evidence to Health and Sport Committee by FOREST. Available online at: http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Inquiries/CMVL-Forest.pdf

¹⁰⁶ RAC survey based on 1,750 responses. (28 September 2015) Majority of motorists believe new smoking ban in cars in England and Wales won't be enforced. Available online at: <http://www.rac.co.uk/press-centre#/pressreleases/majority-of-motorists-believe-new-smoking-ban-in-cars-in-england-and-wales-won-t-be-enforced-1224678>

¹⁰⁷ The Irish Times (December 2015). Enforcement of car smoking ban may be 'passive'; Will the ban on smoking in cars with children work? Available online at: <http://www.pressreader.com/ireland/the-irish-times/20151219/281586649552468/TextView>

¹⁰⁸ BBC news (October 2015) Car smoking ban comes into force. Available online at: <http://www.bbc.co.uk/news/health-34402622>

¹⁰⁹ Department of Health, England (2014) Government response to the consultation on smoking in private vehicles carrying Children. Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384319/smoking_in_vehicles_govresponse.pdf p12.

6. International examples of bans

The majority of the world's population are living in countries still not covered by fully smoke-free laws.¹¹⁰ Research indicates, however, that smoking in private vehicles when children are present is prohibited in at least 25 jurisdictions worldwide.¹¹¹

Table 1 presents a selection of countries where a ban on smoking in private vehicles carrying children is in operation. Each jurisdiction has applied its own age restrictions.

¹¹⁰ Oberg et al. (2011) Worldwide burden of disease from exposure to second-hand smoke: a retrospective analysis of data from 192 countries. *The Lancet*. Vol 377, (9760), Available online at:

<http://www.sciencedirect.com/science/article/pii/S0140673610613888>

¹¹¹ Hyland A et al. (2012) Smoke-free air policies: past, present and future. *Tobacco control*. Available online at:

<http://tobaccocontrol.bmj.com/content/21/2/154.full>

Table 1. Countries that have imposed bans on smoking in vehicles carrying children¹¹²

Country	Policies/proposals
United States of America (USA)	A number of jurisdictions in the USA have banned smoking in private vehicles while a child is present. In 2008, the State of California banned smoking in vehicles when a person present is under the age of 18. Other States that have introduced similar legislation include: Arkansas, which banned smoking in vehicles when children under 6 were present (from March 2011); Maine, which banned smoking in vehicles when children under 16 were present; and Louisiana, which banned smoking in vehicles when children under 13 were present (in 2006) as well as a number of cities in other States.
Canada	In 2007, the Canadian Medical Association (CMA) called for a nationwide ban on smoking in vehicles that transport children. Since then, 9 out of 13 provinces and territories in Canada have introduced smokefree vehicle legislation when children are present. ⁵⁶ These include British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and Yukon Territory.
Australia	All but one state in Australia (Northern Territory) have now banned smoking in vehicles where children are present. Each state defines the prescribed maximum age of a 'child' should be: under 16 (New South Wales, South Australia, and Queensland), under 17 (Western Australia) and under 18 (Victoria and Tasmania).
South Africa	In 2009, new legislation came into force which makes it illegal for adults to smoke in a vehicle where there is a child under 12.
Cyprus	In 2004 Cyprus introduced smokefree legislation making it illegal for adults to smoke in a vehicle carrying a child under 16.
Bahrain	In 2009 Bahrain introduced smokefree legislation making it illegal for adults to smoke in a vehicle where there is a child present.
United Arab Emirates	In 2010 the United Arab Emirates introduced smokefree legislation making it illegal for adults to smoke in a vehicle carrying a child under 12.
Mauritius	In 2009 Mauritius introduced smokefree legislation making it illegal for drivers to smoke in a vehicle carrying passengers.
Puerto Rico	In 2007 Puerto Rico introduced smokefree legislation making it illegal for adults to smoke in a vehicle carrying a child under 13.

6.1 How effective have the bans been?

Very few formal evaluations on smoking bans in private vehicles have been published to date.¹¹³ Not only will it take time for bans to become effective, but each jurisdiction has its own variations on the particulars of their bans. In addition, as previously discussed, evaluating the efficacy of such a ban on people's private space is difficult to

¹¹² Table extracted directly from: British Medical Association (2013) Smoking in Vehicles, A briefing from the Board of Science. Available online at: p10

http://bmaopac.hosted.exlibrisgroup.com/exlibris/aleph/a21_1/apache_media/C26VF5SDJ4KQ1PMFJCV2VK1G1RPTN4.pdf

¹¹³ NICE Guidance Legislating for Health: Locating the Evidence. Available online at:

<https://www.nice.org.uk/guidance/ph29/evidence/legislating-for-health-locating-the-evidence-428640302> p13.

accomplish, especially when based on limited sample sizes and self-reported measures.

Is also difficult to determine whether the effectiveness of the ban is dependent on the coexistence of wider smoke-free policies that help change the social norms around smoking and increase knowledge of the health risks of second-hand smoke.¹¹⁴ In addition, it remains uncertain if people will over time become less concerned with adhering to the ban - particularly if there is a lack of enforcement, which could mean rates of exposure may subsequently revert to higher levels.

The Department of Health in England and the Scottish Government have stressed that measuring the impact of the ban is not about counting the number of fines given out, but about changing people's behaviour so that the number of children exposed to second hand smoke is reduced.^{115,116}

Some limited evidence from elsewhere would suggest that the introduction of a ban in private vehicles has had positive outcomes.¹¹⁷ One study in Canada found that smoking in cars with children declined significantly - following the introduction of provincial bans, relative to provinces that did not introduce a ban.¹¹⁸ Another Canadian study of 7 provincial policies banning smoking in cars with children found that rates of exposure to second-hand smoke in cars declined in all provinces from 26% in 2004 to 18% in 2012.¹¹⁹

7. Changes to the law in the UK and Republic of Ireland

As previously discussed, the rest of the UK and the ROI have only recently introduced legislative measures to protect children from second-hand smoke in *private vehicles*. Similar measures are now likely to become law in Northern Ireland, which was the last of these jurisdictions to announce its intention to bring forward such a ban (December 2015).¹²⁰ Each jurisdiction has its own fine/penalty structure if people break the law, as shown in table 2 overleaf.

¹¹⁴ Ibid

¹¹⁵ The Scottish Government Tobacco Control Strategy, Creating a Tobacco-Free Generation, p17. Available online at: <http://www.gov.scot/resource/0041/00417331.pdf>

¹¹⁶ Personal correspondence with author and Department of Health, England on 28.1.16.

¹¹⁷ See for example, Report Card Canada: Effectiveness of bans against smoking inside private vehicles in Canada. Available online at:

<http://www.canceradvocacy.ca/reportcard/2013/Effectiveness%20of%20Bans%20Against%20Smoking%20Inside%20Private%20Vehicles%20in%20Canada.pdf>

¹¹⁸ Nguyen, H. (2013) Do smoke-free car laws work? Evidence from a quasi-experiment. *Journal of Health Economics*, 32 pp. 138–148

¹¹⁹ Elton-Marshall (2015) Do provincial policies banning smoking in cars when children are present impact youth exposure to secondhand smoke in cars? *Preventative Medicine*. Available online at: <http://www.sciencedirect.com/science/article/pii/S0091743515002236>

¹²⁰ NI Assembly, 8.12.15 HSSPS Minister statement on the Health (Miscellaneous Provisions) Bill.

Table 2. Enacted and proposed legal framework to prohibit smoking in vehicles carrying children (UK and ROI)

	Legislation/ Regulations	Date ban was introduced	Ban applies to:	Penalties/fines
England and Wales	Section 95 of the <i>Children and Families Act 2014</i> .	October 2015	Private vehicles (e.g. cars); The driver and smoking passengers in vehicles carrying children under 18.	The two offences relating to smoking in private vehicles are subject to fixed penalty notice(s) of £50. A maximum penalty on summary conviction is up to £1,000.
Scotland	<i>Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016</i>	Act became law on 21 January 2016.	Private vehicles; The driver and smoking passengers in vehicles carrying children under 18.	Fixed penalty notice of £100. An offence is liable on summary conviction to a fine not exceeding level 3, or £1000.
Republic of Ireland	<i>Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014</i>	1 January 2016	Private vehicles; The driver and smoking passengers in vehicles carrying children under 18.	Offences will be subject to a fixed penalty notice of €100. Maximum penalty of €1,000 e.g. for giving misleading or false information.
Northern Ireland	Changes proposed through the <i>Health (Miscellaneous Provisions) Bill</i> .	In February 2016 the NI Assembly voted in favour of a ban. It is due to come into force in 2017.	Private vehicles; The driver and smoking passengers in vehicles carrying children under 18.	Not determined at time of writing; but likely that two offences relating to smoking in private vehicles will be subject to fixed penalty notice of £50, and a maximum penalty on summary conviction of £1,000. ¹²¹

The following sections of the paper examine the legislation in the UK and the Republic of Ireland in more detail. As these laws have recently been introduced, it is unknown at present how effectively the ban will impact on people's behaviour and how any change will be measured.

¹²¹ Personal correspondence with author and DHSSPS on 28.1.16.

7.1 England and Wales

In February 2014, MPs in England voted in favour of an amendment to the Children and Families Bill which would bring in a ban on smoking in private vehicles where children are present.¹²²

Section 95 of the *Children and Families Act 2014*¹²³ entitled “Smoking in a private vehicle” amends the Health Act 2006¹²⁴ to give the Secretary of State regulation-making powers to make private vehicles smoke-free places when carrying children under the age of 18.¹²⁵ The law changed in October 2015 and it is now illegal to smoke in a car (or other vehicle) with anyone under 18.¹²⁶ The law applies to England and Wales.¹²⁷ The wording of Section 95 is provided in Appendix 2.¹²⁸

The two offences in the new regulations are as follows:

- for a person of any age to smoke in a private vehicle when someone under 18 is present;
- for a driver not to stop a person smoking in these circumstances¹²⁹

The regulations apply to every driver (and smoking passengers) – including drivers aged 17, and those with a provisional driving licence. The law also applies to:

- any private vehicle that is enclosed wholly or partly by a roof;
- when people have the windows or sunroof open, or the air conditioning on;
- when someone smokes in the open doorway of a vehicle.

However, the regulations do not apply to:

- e-cigarettes (also known as vaping);
- a driver who is 17 years old if they are on their own in the car; yet the law does apply if there is someone else under 18 in the car;
- a convertible car with the roof completely down.
- motorhomes or campervans (motor caravans) and caravans when they are being used as a home.¹³⁰ This is because the policy aim is for the regulations to apply to vehicles and not homes.

At present, local authorities (such as local councils) in England and Wales are designated as the “enforcement authorities” for smoke-free legislation in enclosed public spaces and workplaces. However, the new legislation to include private vehicles

¹²² House of Commons Debate (10 February 2014), c627

¹²³ The Children and Families Act 2014. Available online at: <http://www.legislation.gov.uk/ukpga/2014/6/section/95/enacted>

¹²⁴ Health Act (2006) Available online at: <http://www.legislation.gov.uk/ukpga/2006/28/contents>

¹²⁵ Explanatory Memorandum to the Smoke-free (Private vehicles) Regulations 2015. Available online at:

http://www.legislation.gov.uk/ukdsi/2015/9780111126004/pdfs/ukdsiem_9780111126004_en.pdf p1.

¹²⁶ Gov.uk. Smoking in vehicles. Available online at: <https://www.gov.uk/government/news/smoking-in-vehicles>

¹²⁷ Department of Health website: Smoking in vehicles <https://www.gov.uk/government/news/smoking-in-vehicles>

¹²⁸ Also available online at: <http://www.legislation.gov.uk/ukpga/2014/6/section/95/enacted>

¹²⁹ Fresh Start Wales. Frequently asked questions Available online at: <http://freshstartwales.co.uk/why-a-fresh-start/faqs>

¹³⁰ Explanatory Memorandum to the Smoke-free (Private vehicles) Regulations 2015. Available online at: http://www.legislation.gov.uk/ukdsi/2015/9780111126004/pdfs/ukdsiem_9780111126004_en.pdf

means that police forces are also included as enforcement authorities.¹³¹ This is because, unlike local authorities, the police are able to request that a vehicle stops if they suspect that an offence is being committed.

Both the driver and a smoking passenger (if applicable) can receive a fixed penalty notice of £50 for the offence of either smoking or failing to prevent smoking in a private vehicle.¹³² Enforcement officers use their discretion to decide whether to issue a warning or a fixed penalty notice, or whether to refer an offence to court.¹³³

Public awareness campaigns about the changes in the law have been carried out in association with public health authorities in Wales¹³⁴ and in England.¹³⁵ For the latter, the campaign focused on raising awareness using posters, advertising space on buses, radio and the internet.¹³⁶ For the first three months of the law coming into effect in 2015, it appears that offenders were given warnings, rather than fines, to allow public awareness about the offences to increase.¹³⁷

The Government has stated the importance in evaluating the regulations to consider their effectiveness. Hence, the regulations include a requirement to review the regulations within five years of them taking effect.¹³⁸

7.2 Scotland

In Scotland, a Member's Bill was introduced by Jim Hume (MSP) on 15 December 2014, entitled the *Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill*.¹³⁹ The Bill was passed in December 2015 and received Royal Assent on 21 January 2016.¹⁴⁰ The Act is presented in Appendix 3.¹⁴¹

The Act prohibits smoking by any person (driver or passenger) aged 18 or over in a private vehicle in the presence of a child under 18, while that vehicle is in a public place. Like in England and Wales, there are some exceptions to the prohibition. These

¹³¹ The Guardian (September 2014) Police plan grace period for ban on smoking in cars with children. Available online at <http://www.theguardian.com/society/2015/sep/30/police-grace-period-smoking-ban-cars-children>

¹³² Explanatory Memorandum to the Smoke-free (Private vehicles) Regulations 2015. Available online at http://www.legislation.gov.uk/ukdsi/2015/9780111126004/pdfs/ukdsiem_9780111126004_en.pdf p2.

¹³³ Department of Health Guidance (2015) Rules about tobacco, e-cigarettes and smoking: 1 October 2015. Available online at: <https://www.gov.uk/government/publications/new-rules-about-tobacco-e-cigarettes-and-smoking-1-october-2015/new-rules-about-tobacco-e-cigarettes-and-smoking-1-october-2015>

¹³⁴ Fresh Start Wales. Available online at: <http://freshstartwales.co.uk/>

¹³⁵ Public Health England. Secondhand smoke campaign launch coincides with vote ending smoking in cars with children. Available online at: <https://www.gov.uk/government/news/secondhand-smoke-campaign-launch-coincides-with-vote-ending-smoking-in-cars-with-children>

¹³⁶ Personal correspondence with author and Department of Health, England on 28.1.16.

¹³⁷ The Guardian (September 2015) Police plan grace period for ban on smoking in cars with children. Available online at: <http://www.theguardian.com/society/2015/sep/30/police-grace-period-smoking-ban-cars-children>

¹³⁸ Explanatory Memorandum to the Smoke-free (Private vehicles) Regulations 2015. Available online at: http://www.legislation.gov.uk/ukdsi/2015/9780111126004/pdfs/ukdsiem_9780111126004_en.pdf p6.

¹³⁹ Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill. Available online at:

http://www.scottish.parliament.uk/S4_Bills/Smoking%20Prohibition%20Bill/b58s4-introd.pdf

¹⁴⁰ Scottish Parliament website. Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill - See more at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/84734.aspx#sthash.4rmtkooy.dpuf>

¹⁴¹ Also available online at: <http://www.legislation.gov.uk/asp/2016/3/contents/enacted>

take account of members of the Travelling community and holiday-makers who use their vehicles as permanent or temporary homes.¹⁴²

Breach of the law in Scotland is a criminal offence, and a fixed penalty notice regime is provided as an alternative means of enforcement. The Act provides for the defence that the person charged reasonably believed all other occupants of the vehicle were over 18.¹⁴³ A person who commits an offence will be subject to a fixed penalty notice of £100. This is given by an authorised officer of a local authority or a police constable to the smoking passenger (if applicable), and the driver. The penalty must be paid within 29 days. This allows the offender to pay a more modest amount in return for avoiding any risk of a criminal conviction and a potentially much higher fine; otherwise the person committing the offence would be liable on summary conviction to a fine not exceeding £1,000.

The Policy Memorandum states that it is envisaged that the legislation would be enforced as part of routine monitoring of traffic offences, in the same way as legislation on seatbelts and the use of mobile phones is enforced.¹⁴⁴ The Memorandum also states that the Bill's proposer, Mr Hume (MSP), estimates that the cost of a high-profile campaign to support the new law would cost be between £250,000 and £300,000.¹⁴⁵

7.3 Northern Ireland

On 30 November 2015, the Minister for Health, Social Services and Public Safety introduced the *Health (Miscellaneous Provisions) Bill* to the Northern Ireland Assembly.¹⁴⁶ Part 1 of the Bill largely mirrored the nicotine products regulations adopted by England and Wales, contained within the Children and Families Act 2014. However, the Bill as introduced did *not* contain any proposals to ban smoking in vehicles carrying children.

The Bill's Second Stage debate was held in the Northern Ireland Assembly on 8 December 2015.¹⁴⁷ During the debate, the Health Minister announced that on reflection, he intended to bring about a change in policy by introducing an amendment that would ban smoking in private vehicles carrying children.¹⁴⁸ The amendment is contained within Part 2 of the Bill, which is contained within Appendix 4 of this paper.

¹⁴² Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill as amended at Stage 2, Revised explanatory notes. Available online at: http://www.scottish.parliament.uk/S4_Bills/Smoking%20Prohibition%20Bill/SPBill58AENS042015Rev.pdf p.1.

¹⁴³ Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill. Memorandum by the Scottish Government to the Health and Sport Committee. Available online at: http://www.scottish.parliament.uk/S4_HealthandSportCommittee/SGDocs/Memorandum_by_The_Scottish_Government.pdf

¹⁴⁴ Smoking prohibition (Children in motor vehicles) (Scotland) Bill. Memorandum by the Scottish Government to the Health and Sport Committee. Available online at: http://www.scottish.parliament.uk/S4_HealthandSportCommittee/SGDocs/Memorandum_by_The_Scottish_Government.pdf

¹⁴⁵ Ibid, p3.

¹⁴⁶ A copy of the Bill and its accompanying Explanatory and Financial Memorandum is available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/health-miscellaneous-bill/>

¹⁴⁷ NI Assembly Hansard Health (Miscellaneous Provisions) Bill. Second stage debate. Available online at <http://data.niassembly.gov.uk/HansardXml/plenary-08-12-2015.pdf>

¹⁴⁸ NI Assembly, 8.12.15 HSSPS Minister statement on the Health (Miscellaneous Provisions) Bill.

During the Bill's Consideration Stage on the 22 February 2016, Members of the Northern Ireland Assembly voted in favour of the amendment to ban smoking in private vehicles carrying children.¹⁴⁹

The amendment will enable changes to be made to the Smoking (Northern Ireland) Order 2006¹⁵⁰ in order to provide the Department of Health, Social Services and Public Safety (DHSSPS) with regulation-making powers to create offences in relation to private vehicles where children under 18 are present.¹⁵¹

The Minister confirmed that the regulations are unlikely to come into effect until 2017 and it is envisaged they will be reviewed 3 years after implementation.¹⁵² The regulations will create two new offences regarding private vehicles carrying children, namely:

- smoking in a private vehicle
- failing to prevent someone smoking in a private vehicle.

The regulations may also allow the flexibility to apply to e-cigarettes.

Like other neighbouring jurisdictions, and subject to a public consultation exercise on the draft regulations, it is envisaged that a fixed penalty notice system will be applied, should an offence occur. Although no policy proposals have been published to date, these offences are likely to be the same level as the current offence for smoking in a public vehicle (e.g. on a bus).¹⁵³ Under the 2006 Order, a fixed penalty notice for the offence of smoking in a smoke-free place is currently £50 (discounted to £30 if paid within 15 days) and the person is liable on summary conviction to a fine not exceeding level 3 (£1000).¹⁵⁴ It is also probable that a driver could also be given a fixed penalty notice of £50 for the offence of failing to prevent smoking in a smoke free place.

In addition to the public consultation, the DHSSPS has also advised that further work will be required between it, the Department of Justice and the Police Service of Northern Ireland (PSNI) around enforcement, and how this will operate in the regulations.¹⁵⁵ As the enforcement of tobacco control legislation is currently carried out by authorised officers in District Councils (who notably do not have the "stop and search" powers that the PSNI have) it is likely that the DHSSPS will consider a dual enforcement approach, as is in place in nearby jurisdictions.

The DHSSPS was unable to say at the time of writing whether a public awareness campaign on the changes will be implemented by the Public Health Agency, as this will

¹⁴⁹ Further details on the debate are available at: NI Assembly Hansard: Health and Personal Social Services (Amendment) Bill: Consideration Stage <http://data.niassembly.gov.uk/HansardXml/plenary-22-02-2016.pdf> p75 onwards

¹⁵⁰ Smoking (Northern Ireland) Order 2006. Available online at: <http://www.legislation.gov.uk/nisi/2006/2957/contents>. The 2006 Order made provision for the prohibition of smoking in enclosed public places and workplaces.

¹⁵¹ Letter from Minister to Chair of HSSPS Committee; correspondence dated 5.1.16.

¹⁵² NI Assembly Hansard: Health and Personal Social Services (Amendment) Bill: Consideration Stage <http://data.niassembly.gov.uk/HansardXml/plenary-22-02-2016.pdf>

¹⁵³ Personal correspondence with author and DHSSPS on 28.1.16.

¹⁵⁴ The Smoking (Northern Ireland) Order 2006 Available online at: http://www.legislation.gov.uk/ukxi/2006/2957/pdfs/ukxi_20062957_en.pdf

¹⁵⁵ Personal correspondence with author and DHSSPS on 28.1.16.

be decided at a later date. Any subsequent costs associated with awareness raising campaigns have not yet been established.¹⁵⁶

7.4 Republic of Ireland

In the Republic of Ireland, the Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Bill passed its final stage in Dáil Éireann on 18th December 2014, where it was voted through unanimously. It was first introduced into the Houses of the Oireachtas by Senators Crown, van Turnhout and Daly. Their proposals were supported by Government and subsequently taken through the legislative process.¹⁵⁷

Known as the *Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014*,¹⁵⁸ the Act bans smoking in private vehicles by drivers and passengers carrying children under 18. It came into effect on 1 January 2016, and is due to be accompanied by an educational campaign.¹⁵⁹ Further details on the Act's wording are detailed in Appendix 5.

Under the Act, it is an offence for anyone to smoke a tobacco product (this does not include e-cigarettes) in a vehicle where a child is present, and it will also be an offence to allow someone else to smoke in the vehicle. Offences will be enforced by the Gardaí and carry a fixed penalty of €100 - with the option of tougher penalties of up to €1,000 for example, for failing to stop, for refusing to give their name and address, or providing a false or misleading address.¹⁶⁰ Non-payment of the fine within 28 days will lead to an increased fine. If still unpaid after 56 days, a prosecution will be initiated.

¹⁵⁶ Personal correspondence with author and DHSSPS on 28.1.16.

¹⁵⁷ Department of Health, Ireland. Varadkar announces start date for smoking ban in cars where children are present. Available online at: <http://health.gov.ie/blog/press-release/varadkar-announces-start-date-for-smoking-ban-in-cars-where-children-are-present/?qclid=CNu0546fxcoCFRW3GwodqYFWw>

¹⁵⁸ Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014. Available online at: <http://www.irishstatutebook.ie/eli/2014/act/40/enacted/en/print>

¹⁵⁹ Department of Health, Ireland. Varadkar announces start date for smoking ban in cars where children are present. Available online at: <http://health.gov.ie/blog/press-release/varadkar-announces-start-date-for-smoking-ban-in-cars-where-children-are-present/?qclid=CNu0546fxcoCFRW3GwodqYFWw>

¹⁶⁰ Ibid

Appendix 1: World Health Organisation: Recommendations on smoke-free policies

Based on lessons learnt from a number of countries which have adopted smoke-free legislation, the World Health Organization also recommends the following to policy makers in regard to limiting exposure to second-hand smoke:

- Legislation that mandates smoke-free environments (not voluntary policies) is necessary to protect public health;
- Legislation should be simple, clear, enforceable, and comprehensive;
- Anticipating and responding to the tobacco industry's opposition, often mobilised through third parties is crucial;
- Involving civil society is central to achieving effective legislation;
- Education and consultation are necessary;
- An implementation and enforcement plan, as well as infrastructure for enforcement are essential; and
- Implementation of smoke-free environments must be monitored and, ideally, their impact measured and experiences documented.¹⁶¹

¹⁶¹ Öberg, M. et al. (2010) Second-hand smoke – Assessing the burden of disease at national and local levels. Environmental Burden of Disease Series No. 18 Geneva: World Health Organization. Available online at: http://www.who.int/quantifying_ehimpacts/publications/SHS.pdf p60.

Appendix 2: England and Wales: Section 95 - Children and Families Act 2014 (England and Wales)

- (1) The Health Act 2006 is amended as follows.
- (2) In section 5 (smoke-free vehicles) -
- (a) after subsection (1) insert -
- “(1A) Regulations under this section may in particular provide for a private vehicle to be smoke-free where a person under the age of 18 is present in the vehicle.”,
and
- (b) in subsection (2), for “The regulations” substitute “Regulations under this section”.
- (3) In section 9 (fixed penalties), after subsection (1) insert—
- “(1A) The appropriate national authority may by regulations provide that, in the circumstances specified in the regulations, an authorised officer of an enforcement authority (see section 10) who has reason to believe that a person has committed an offence under section 8(4) in relation to a vehicle in relation to which the authorised officer has functions may give the person a penalty notice in respect of the offence.”
- (4) In section 10(1) (power to designate bodies or descriptions of body as enforcement authorities) -
- (a) after “designating the” insert “persons or”, and
- (b) after “descriptions of” insert “person or”.
- (5) In section 79 (orders and regulations) -
- (a) in subsection (4) (powers to which affirmative procedure applies), in paragraph (a) (powers in Part 1), for “or 8(7)” substitute “, 8(7) or 9(1A)”,
- (b) in that subsection, in paragraph (f) (powers in Schedule 1), for “or 8” substitute “, 8 or 17”, and
- (c) after that subsection insert-
- “(4A) No statutory instrument containing regulations under section 9(1A) or paragraph 17 of Schedule 1 may be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”
- (6) In Schedule 1 (fixed penalties), after paragraph 16 insert -
- “Power to amend or modify Schedule*
- The appropriate national authority may by regulations -
- (a) amend this Schedule so as to modify its application in relation to penalty notices issued by an authorised officer of an enforcement authority of a particular kind, or
- (b) provide for this Schedule to apply with modifications in relation to such notices.”

Appendix 3: Scotland - Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016

An Act of the Scottish Parliament to prohibit smoking in private motor vehicles in the presence of children, subject to limited exceptions; and for connected purposes.

1 Offence of smoking in a motor vehicle with children

(1) It is an offence for an adult to smoke in a private motor vehicle when—

- (a) there is a child in the vehicle, and
- (b) the vehicle is in a public place.

(2) Subsection (1) does not apply to a private motor vehicle that is designed or adapted for use as living accommodation and which, at the time the smoking occurs, is parked and is being used as living accommodation.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

2 Fixed penalties - The schedule provides for fixed penalties for offences under section 1.

3 Powers to enter and require information

(1) An authorised officer of a local authority may enter and search a private motor vehicle which is parked within the area of the local authority in order to ascertain whether an offence under section 1 has been or is being committed there.

(2) A person who—

- (a) an authorised officer of a local authority reasonably believes—
 - (i) is committing or has committed an offence under section 1, or
 - (ii) has information relating to such an offence, and

(b) fails without reasonable excuse to supply the officer with the person's name and address on being so required by the officer, commits an offence.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4 Interpretation

(1) In this Act—

“adult” means a person aged 18 or over,

“car” means a motor vehicle which is not—

- (a) a goods vehicle, or
- (b) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used,

“child” means a person under the age of 18,

“motor cycle” means a mechanically propelled vehicle which is steered by means of handlebars attached to the front wheel,

“motor vehicle” means a mechanically propelled vehicle, other than a motor cycle, that is intended or adapted for use on roads,

“private hire car” has the meaning given by section 23(1) of the Civic

Government (Scotland) Act 1982,

“private motor vehicle” means—

- (a) any car which is not a public transportation vehicle, and
- (b) any other motor vehicle which is used primarily for the private purposes of the person who owns it or of a person having the right to use it, provided that such right to use a vehicle does not include a reference to a person whose right to use the vehicle derives only from having paid, or undertaken to pay, for the use of the vehicle and its driver,

“public place” means a place to which the public, or a section of the public, has access whether on payment or otherwise,

“public transportation vehicle” means any vehicle available to the public as a means of transportation and includes a taxi and a private hire car,

“taxi” has the meaning given by section 23(1) of the Civic Government (Scotland) Act 1982.

(2) In this Act, “to smoke” means to smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.

(3) The Scottish Ministers may by regulations alter any of the following definitions in

subsection (1)—

“car”,

“private motor vehicle”,

“public transportation vehicle”.

5 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Regulations under the following provisions are subject to the affirmative procedure—

- (a) section 4(3),
- (b) paragraph 2 of the schedule,
- (c) paragraph 11(a) of the schedule,
- (d) paragraph 12 of the schedule.

(3) Regulations under paragraph 11(b) of the schedule are subject to the negative procedure.

6 Commencement

(1) Sections 4 and 5, this section, section 7 and paragraphs 11 and 12 of the schedule come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Different days may be appointed for different purposes.

7 Short title

The short title of this Act is the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016.

SCHEDULE (introduced by section 2)

FIXED PENALTY FOR OFFENCE UNDER SECTION 1

Power to give fixed penalty notices

1 (1) An authorised officer of a local authority may, if having reason to believe that a person is committing or has committed an offence under section 1 within the area of the local authority, give that person a fixed penalty notice.

(2) A constable may, if having reason to believe that a person is committing or has committed an offence under section 1, give that person a fixed penalty notice.

(3) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence under section 1 by payment of a fixed penalty.

2 A fixed penalty notice for an offence under section 1 may not be given after such time relating to the offence as may be prescribed by regulations made by the Scottish Ministers.

Contents of fixed penalty notice

3 (1) A fixed penalty notice must identify the offence under section 1 and give reasonable particulars of the circumstances alleged to constitute that offence.

(2) A fixed penalty notice must also state—

- (a) the amount of the penalty and the period within which it may be paid,
- (b) the person to whom and the address at which payment may be made,
- (c) the method or methods by which payment may be made,
- (d) the person to whom and the address at which any representations relating to the notice may be made,
- (e) the consequences of not making a payment within the period for payment.

(3) The person specified under sub-paragraph (2)(b) must be the local authority in the area of which the offence was alleged to have been committed or a person acting on its behalf.

The amount of the penalty and the period for payment

4 (1) The fixed penalty for an offence under section 1 is £100.

(2) The period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given.

(3) The local authority may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so.

Effect of notice and payment of penalty

5 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of an offence under section 1.

(2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

(3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the local authority after that time.

(4) In proceedings for the offence, a certificate which—

- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority, and
- (b) states that payment of an amount specified in the certificate was or was not received by a date so specified, is sufficient evidence of the facts stated.

Request for hearing

- 6 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence under section 1.
- (2) A notice requesting a hearing under sub-paragraph (1) must be in writing and must be sent by post or delivered to the person specified under paragraph 3(2)(b) in the fixed penalty notice at the address so specified.
- (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
- (4) Where a person has requested a hearing in accordance with this paragraph—
- (a) the local authority must hold the hearing,
 - (b) the person authorised for the purpose by the local authority of the area in which the offence was committed must notify the procurator fiscal of the request, and
 - (c) the period for payment of the fixed penalty must be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

Power to withdraw notices

- 7 (1) If the local authority considers (whether after holding a hearing under paragraph 6 or not) that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- (2) Where a notice under sub-paragraph (1) is given—
- (a) the local authority must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
 - (b) no proceedings are to be commenced or continued against that person for the offence in question.
- (3) The local authority must consider any representations made by or on behalf of the recipient of the fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

Effect of prosecution on notice

- 8 Where proceedings for an offence under section 1 in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

Recovery of unpaid fixed penalties

- 9 Subject to paragraphs 7 and 8, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it is enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Judicial determination of enforcement of fixed penalty

10 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 9 may apply to the sheriff for a declaration that the fixed penalty is not enforceable on the ground that—

- (a) the fixed penalty was paid before the expiry of the period for paying, or
- (b) the person has made a request for a hearing in accordance with paragraph 6 and no hearing has been held within a reasonable time after the request.

(2) On an application under sub-paragraph (1), the sheriff may declare—

- (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,
- (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 6,
- (c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

General and supplementary

11 The Scottish Ministers may make regulations about—

- (a) the application by local authorities of fixed penalties paid under this schedule,
- (b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this schedule.

12 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed by regulations made by the Scottish Ministers.

(2) The method or methods by which fixed penalties may be paid may be prescribed by regulations made by the Scottish Ministers.

(3) The Scottish Ministers may by regulations—

- (a) modify paragraph 4(1) so as to substitute a different fixed penalty,
- (b) modify paragraph 4(2) so as to substitute a different period for the period for the time being specified there.

Appendix 4: Northern Ireland - Proposed amendment to the Health (Miscellaneous Provisions) Bill

After clause 5 insert –

“PART 2 SMOKING IN A PRIVATE VEHICLE

(1) The Smoking (Northern Ireland) Order 2006 is amended as follows.

(2) In Article 6 (smoke-free vehicles)-

(a) After paragraph (1) insert-

“(1A) Regulations under this Article may in particular provide for a private vehicle to be smoke-free where a person under the age of 18 is present in the vehicle.”;

(1B) In paragraph (2), for “The regulations” substitute “Regulations under this Article”.

(3) In Article 10 (fixed penalties)-

(a) For the heading substitute “Fixed penalties”;

(b) In paragraph (1), for “or in a place or vehicle,” substitute “or in a place”;

(c) After paragraph (1) insert

“(1A) An authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under Article 7(5) or 8(2) in a vehicle in relation to which the authorised officer has functions may give that person a penalty notice in respect of the offence.

(1B) The Department may by regulations provide that, in the circumstances specified in the regulations, an authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under Article 9(3) in relation to a vehicle in relation to which the authorised officer has functions may give the person a penalty notice in respect of the offence.”

(4) In Article 11 (enforcement)-

(a) For the heading substitute “Enforcement”;

(b) In paragraph (1), for “premises, places and vehicles” substitute “premises and places”;

(c) After paragraph (1) insert-

“(1A) The Department may make regulations designating the persons or bodies or descriptions of person or body which are to be enforcement authorities for the purposes of enforcing, as respects vehicles, the provisions of this Order and regulations made under it.

(1B) The regulations-

(a) must specify the descriptions of vehicle in relation to which an enforcement authority has functions,

(b) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred back) to, and taken over by, another enforcement authority.

Appendix 5: Republic of Ireland - The Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014

Be it enacted by the Oireachtas as follows:

1. In this act:

“child” means a person who has not attained the age of 18 years;

“mechanically propelled vehicle” has the same meaning as it has in the Road Traffic Act 1961 ;

“Minister” means the Minister for Health;

“public place” has the same meaning as it has in the Road Traffic Act 1961 ;

“tobacco product” has the same meaning as it has in the Public Health (Tobacco) Act 2002 .

Prohibition on smoking tobacco product in mechanically propelled vehicle in which child is present

2. (1) The smoking by a person (including a child) of a tobacco product in a mechanically propelled vehicle in a public place and in which a child (or another child if the person smoking is a child) is present is prohibited.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) Where a person who contravenes *subsection (1)* is not the driver of the mechanically propelled vehicle concerned, the driver shall also be guilty of an offence.

(4) In proceedings for an offence under this section, it shall be presumed, until the contrary is shown, that a person who was present in a mechanically propelled vehicle in which the commission of the alleged offence occurred and who appeared to a member of the Garda Síochána, at that time, to be a child, was, at that time, a child.

(5) In proceedings for an offence under this section, it shall be a defence for a person to show that he or she reasonably believed that any person who was present in the mechanically propelled vehicle in which the commission of the alleged offence occurred had attained the age of 18 years.

(6) Without prejudice to *subsection (5)*, in proceedings for an offence under *subsection (3)* brought against the driver of the mechanically propelled vehicle concerned, it shall be a defence for that person to show that he or she—

(a) was, by reason of his or her driving of that vehicle, unable to prevent the commission of the alleged offence under *subsection (2)* by another person in that vehicle, or

(b) made all reasonable efforts to prevent the commission of the alleged offence under *subsection (2)* by another person in that vehicle.

Powers of member of Garda Síochána

3 (1) A member of the Garda Síochána may, where it appears to him or her that a person in a mechanically propelled vehicle in a public place and in which a child, or a person who appears to be a child, is present, is smoking a tobacco product—

(a) require the driver to stop the vehicle, and

(b) demand of any person in the vehicle whom the member suspects of committing an offence under section 2, his or her name and address.

(2) A person who—

- (a) fails to stop a mechanically propelled vehicle in compliance with *subsection (1)(a)*, or
- (b) on a demand being made of him or her under *subsection (1)(b)*, fails or refuses to give his or her name and address or gives information which is false or misleading, shall be guilty of an offence.

Fixed charge notice

4. (1) Where a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under *section 2*, he or she may serve on a person personally or by post at the address at which the person ordinarily resides or, at the time of the alleged offence, gave to the member or another member of the Garda Síochána, a notice (“fixed charge notice”) in the prescribed form stating that—
- (a) the person is alleged to have committed the offence,
 - (b) the person may, during the period of 28 days beginning on the date specified in the notice, make to a person specified in the notice at the address specified in the notice a payment of the prescribed amount accompanied by the notice,
 - (c) if the person does not make the payment specified in *paragraph (b)*, during the period of 28 days beginning on the expiration of that period, the person may make a payment as specified in the notice of an amount 50 per cent greater than the prescribed amount referred to in *paragraph (b)*,
 - (d) the person is not obliged to make the payment, and
 - (e) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) Where notice is served under *subsection (1)*—
- (a) the person to whom the notice applies may, during the period specified in the notice, make to a person specified in the notice at the address specified in the notice the payment specified in the notice, at the appropriate time so specified in relation to the payment, accompanied by the notice,
 - (b) the person so specified may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it,
 - (c) a prosecution in respect of the alleged offence shall not be instituted during the period specified in the notice, and if the payment so specified is made during the period, no prosecution in respect of the alleged offence shall be instituted.
- (3) A prosecution in respect of an offence under *section 2* shall not be instituted unless a fixed charge notice in respect of the alleged offence has been served on the person concerned under this section and the person fails to pay the appropriate amount of the fixed charge in accordance with the notice at the appropriate time specified in the notice in relation to the payment.
- (4) In a prosecution for an offence under *section 2*, the onus of proving that a payment in accordance with a fixed charge notice has been made lies on the defendant.
- (5) Income generated by the payment of amounts pursuant to fixed charge notices under this Act shall be disposed of for the benefit of the Exchequer in such manner determined by the Minister with the agreement of the Minister for Public Expenditure and Reform.

Regulations

5. (1) The Minister may make regulations prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.
- (2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Penalty

6. A person who is guilty of an offence under this Act shall be liable on summary conviction to a class D fine.

Short title and commencement

7. (1) This Act may be cited as the Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.