



Response to the consultation on: **Smoke-free private vehicles carrying children under 18**

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About ASH Wales Cymru

ASH Wales Cymru is the only public health charity in Wales whose work is exclusively dedicated to tackling the harm that tobacco causes to Welsh communities. Further information about our work can be found at www.ashwales.org.uk

We are engaged in a wide range of activities including:

- Advocating for tobacco control public health policy
- Undertaking tobacco control research projects
- Training young people and those who work with young people to provide factual information about the health, economic and environmental effects of smoking
- Engaging young people and professionals working with young people through the ASH Wales Cymru Filter project
- Bringing health information and advice to the heart of the community
- We also oversee the Wales Tobacco or Health Network (a network of over 300 individual members) and the Wales Tobacco Control Alliance (an alliance of 35 voluntary and professional bodies in Wales), providing forums for sharing knowledge and best practice.

General observations

ASH Wales Cymru considers the draft Regulations to be well drafted and fit for purpose. We support their early passage by Welsh Government and believe that they will enjoy wide public support and will lead to significant public health gains. This conclusion is shared by the wider public health community, including the British Lung Foundation, which has led the campaign for the legislation.

However, we believe that, at some point in the future, the scope of the Regulations should be extended to cover smoking in all private vehicles, not simply those in which children are present. In our detailed response to the consultation questions we include evidence for this proposal. We believe that the Regulations should be formally reviewed, perhaps two years after they are first implemented, and that this could give Welsh Government an opportunity to consider whether they should then be extended as we suggest.

Our response to this consultation mirrors closely our submitted response to the equivalent consultation paper covering England recently released by the Department of Health. We strongly believe that in view of the closely knit transport network across the Anglo-Welsh border and the provisions for enforcement by the police, it is imperative that implementation proceeds simultaneously in both England and Wales.

Consultation questions

Question 1: Do you agree with the proposal to make it an offence to smoke in an enclosed private vehicle when there is more than one person present and a person under the age of 18 is present?

Yes. Smoking in cars causes harm in at least four ways:

- harm to the smoker from inhaling tobacco smoke;
- harm to other adults and children in the vehicle from inhaling secondhand smoke;
- harm to children and young people of witnessing smoking by adults, which is known to make it more likely that they will themselves begin to smoke; and
- harm because of the greater risk of accidents resulting from driver distraction and inattentive blindness.

Evidence of the harm of inhaling secondhand smoke is well established. Secondhand smoke contains a cocktail of carcinogens including arsenic, cadmium, formaldehyde and benzene. Exposure to these and the other pollutants within secondhand smoke, especially fine particles, increases the risk to the individual of illness, hospital admission and death. ¹

The Royal College of Physicians estimates that each year in the UK exposure of children to secondhand smoke causes:

- over 20,000 cases of lower respiratory tract infection
- 120,000 cases of middle ear disease
- at least 22,000 new cases of wheeze and asthma
- 200 cases of bacterial meningitis
- 40 sudden infant deaths – one in five of the total.²

Exposure to secondhand smoke in cars can reach levels far higher than levels experienced in buildings. A single cigarette smoked in a stationary car with its windows closed can produce a level of secondhand smoke eleven times higher than the level found in an average bar where smoking is permitted. In a moving car, the level of secondhand smoke produced by this single cigarette is still exceptionally high at seven times the average level of the smoky bar.³

Children and young people are also affected by witnessing smoking as a normal adult behaviour. For example, children who live with parents or siblings who smoke are up to 3 times more likely to become smokers themselves than children of non-smoking households.⁴ In 2012, 26% of 11-15 year olds reported being exposed to secondhand smoke in their family's car and 30% in someone else's car.⁵

Since smoking rates remain markedly higher among poorer social classes it follows that smoking in private vehicles is likely to be a significant contributor to health inequalities. In addition, we know that children and young people are influenced by the behaviour that they see around them. Therefore reducing their levels of exposure to environmental tobacco smoke may also impact upon their propensity to take up smoking.

Question 2: Do you agree that the offence of smoking in a private vehicle when a person under the age of 18 is present should fall on the person smoking regardless of age?

Yes. It would be illogical to create offences of smoking in private vehicles with children present, but not apply them to any smoker regardless of age.

Question 3: Do you agree that the offence of failure to prevent smoking in a private vehicle when a person under the age of 18 is present should apply to the driver regardless of age?

Yes. It is reasonable to make all drivers, regardless of age or of whether they hold a full or provisional licence, responsible for ensuring that smoking does not occur in vehicles with children present. All drivers already have a range of legal responsibilities as a consequence of being in charge of their vehicles.

Question 4: Do you agree with the proposal for the new offences to apply to caravans and motor caravans when they are being used as vehicles but not when they are being used as homes?

Yes. ASH Wales Cymru supports the principle that smoking in private vehicles with children present should be unlawful, whereas smoking in the home is a private matter, although it should be strongly discouraged, particularly in homes where children are present. Therefore, where vehicles have a dual use as temporary or permanent homes, the law should distinguish between occasions when they are used as homes and occasions when they are used as vehicles.

The law already recognises this distinction in relation to caravans. Regulation 90 of the Road Vehicles (Construction and Use) Regulations 1986 states that: *“no person shall use, or cause or permit to be used, on a road a wheeled trailer in which any person is carried and which is a living van having either (a) less than 4 wheels; or (b) 4 wheels consisting of two close-coupled wheels on each side.”* Therefore, it is only lawful for such vehicles to be driven on the road if passengers are carried in the towing vehicle.

Question 5: Do you have any comments regarding the enforcement of the proposed changes to the law?

As with provisions on smoke-free public places under the Health Act 2006 (and other legislation such as the requirement for drivers and passengers to wear seatbelts), the crucial test of success will be whether the law is widely observed by the public, and therefore requires little enforcement. Therefore, ASH Wales Cymru strongly recommends that the Welsh Government and Public Health Wales collaborate on a major advertising and social marketing campaign in the months immediately before and after the legislation comes into force, to ensure a high level of public understanding of the legislation and its underlying justification.

In light of our previous comment on the need for the coordinated introduction of this regulation in both England and Wales, any major advertising and social marketing campaign should also be coordinated with the UK Government and Public Health England to ensure that the public on both sides of the border receive the same clear messaging and that the campaign takes place over the same time period.

Public support for legislation to protect children from exposure to smoke in cars is already high. Research conducted by YouGov for ASH Wales Cymru in 2014 found that 79% of all adults supported a ban on smoking in cars with children under 18.⁶ Surveys conducted on a quarterly basis by Beaufort Research on behalf of the Welsh Government demonstrate similar levels of support.⁷ This suggests that an advertising and marketing campaign would start from a strong base of public support for the legislation.

ASH Wales Cymru supports the proposal that enforcement should be largely the responsibility of police officers, as part of their general duties in relation to road safety. We also support the proposal that the police should be supported in their enforcement activity by authorised local authority officers. We recommend that the Association of Chief Police

Officers should be asked to collaborate with the Local Government Association and with relevant professional bodies such as the Chartered Institute of Environmental Health to develop a strategic approach to enforcement of this legislation.

ASH Wales Cymru supports the proposal that enforcement officers should be empowered to issue fixed penalty notices in relation to both offences.

Question 6: Do you agree that the use of electronic cigarettes should be prohibited in private vehicles when there is more than one person present and a person under the age of 18 is present?

ASH Wales Cymru welcomes the Welsh Government including a question on whether electronic cigarettes need to be considered in future regulations because of the potential enforcement, health and safety issues regarding their use.

In terms of the health issues surrounding electronic cigarettes in particular the evidence needs to be closely monitored, especially in relation to children and exposure to electronic cigarettes.

Question 7: Is there anything else that we should be taking into account in relation to smoking in private vehicles when a person under the age of 18 is present?

Identifying whether children are present in vehicles where smoking is taking place may present an additional issue in relation to the proposed new Regulations. For example, it may be very difficult for an enforcement officer to see whether a booster seat is carrying a small child or not. Regulations which simply banned smoking in private vehicles altogether would not present the same challenges.

We note that paragraph 13 of the draft Regulations on standardised packaging provides that:

“Review

13.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations,

(b) set out the conclusions of the review in a report, and

(c) publish the report.”⁸

We believe that it would also be appropriate to provide for a review of Regulations on smoking in private vehicles with children present, which we suggest should be first carried out after two years. As well as considering all matters in relation to the application and enforcement of the Regulations, we suggest that this review should consider whether the scope of the Regulations should be extended to cover all smoking in private vehicles.

We note that this option was not considered in preparing the Impact Assessment for the draft Regulations. It should be noted that in March 2010 the Royal College of Physicians called for the banning of smoking in all vehicles in its report *Passive Smoking and Children*.⁹ This policy is also supported by other medical and professional bodies including the Royal College for Paediatrics and Child Health and the British Medical Association.

References

- ¹ Scientific Committee on Tobacco and Health: *Secondhand Smoke – Review of Evidence Since 1988*: 2004.
- ² Royal College of Physicians Parliamentary Briefing: *Passive Smoking and Children*: May 2012.
- ³ Evidence summarised in All Party Parliamentary Group on Smoking and Health: *Inquiry into Smoking in Private Vehicles*: 2011.
- ⁴ Leonardi-Bee J, Jere ML, Britton J. Exposure to parental and sibling smoking and the risk of smoking uptake in childhood and adolescence: a systematic review and meta-analysis. *Thorax* 15 Feb. 2011 doi: 10.1136/thx.2010.153379.
- ⁵ *Smoking, Drinking and Drug Use among Young people in England, 2012*. Health and Social Care Information Centre, Leeds, 2013.
- ⁶ The poll total sample size was 1,093 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all Welsh adults (aged 18+).
- ⁷ Latest figures available from <http://wales.gov.uk/docs/caecd/research/2014/140715-smoking-cars-carrying-children-monitoring-public-attitudes-november-2013-update-en.pdf>.
- ⁸ *Standardised packaging of tobacco products: draft regulations*
- ⁹ Royal College of Physicians: *Passive Smoking and Children*: 2010