

## Law update: smoking in a car with a child present

### The rationale

As of 1 October 2015, it became illegal for anyone to smoke in a vehicle when they have someone under the age of 18 with them.

The driving force behind this change in the law was a study conducted by Newcastle University, Public Health England and Fresh Smoke Free North East. The researchers found that even with a window open, the second-hand smoke children could be exposed to included dangerous levels of chemicals such as arsenic, formaldehyde and tar. It was found that there was no safe way for children to avoid second-hand smoke when travelling in cars, which can lead to meningitis, bronchitis, pneumonia, cancers and exacerbation of conditions such as asthma.

### When the law applies

The new law applies if you are found to be smoking with a child present in the following circumstances:

- If you are smoking in a private vehicle enclosed wholly or partly by a roof
- If you are smoking with the windows or sunroof open, or with air conditioning
- If you sit smoking in the open doorway of a vehicle

It is clear from this legislation that the offence is not limited to the driver of a vehicle and the vehicle does not need to be moving at the time for the offence to be committed. However, the new law will not apply to in the following circumstances:

- If you are smoking in a convertible car with the roof completely down
- If you are smoking e-cigarettes (vaping)
- If the smoker is a driver who is 17 years old and is alone in the car

Motorhome and caravan owners will also be caught by this new law. Somewhat confusingly, it will only be an offence if found smoking with a child present when the motorhome or caravan is being used as a vehicle. Once it is stationary and being used as living quarters, it is not an offence.

### Penalties

The penalties include a warning, a fixed penalty notice or, if the police officer considers it absolutely necessary, it will be referred to be resolved at the Magistrates' Court. It is not clear at this stage when the police will refer the offence to the courts, and the only guidance so far is that it will be for the officers to 'exercise discretion'. We anticipate that those who may fall into this category would be summonsed to court for this offence having been identified as persistent offenders who have already received warnings and fixed penalty notices.

The law applies to both the driver and the smoker, who could be fined £50. Be warned, if you are both the driver and the smoker, you could be fined twice!

If you would like more information about this new law or have received a warning or fixed penalty notice for this offence but would like to appeal the decision, a member of our team will be able to assist.

If you would like advice about this new law or any other driving offence, please contact:

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