

The Smoke-free: (Private Vehicles) Regulations (Northern Ireland) 2021

**Guidance for enforcement officers on the prohibition
on smoking in private vehicles carrying children**

Version 1 January 2022

In offering this advice it must be clearly understood that:

- legislation may change over time and the advice given is based on the information available at the time the guidance was produced – it is not necessarily comprehensive and is subject to revision in the light of further information;
- only the courts can interpret statutory legislation with any authority; and
- this guidance is provided as advice only and authorities should seek their own legal advice where appropriate.

January 2022

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1. Purpose of the guidance

From 1 February 2022 the existing Smoke-free Law, which makes public places and work premises and vehicles smoke-free, is being extended. The Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021 will require all private vehicles to be smoke-free when they are enclosed, contain more than one person and a person under 18 is present in the vehicle. So it will be an offence:

- for someone to smoke in a private vehicle with someone under age 18 present; and
- for a driver not to stop someone smoking.

Note: electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking.

The purpose is to protect children from the harm to their health caused by exposure to second-hand smoke in vehicles.

It has been clearly demonstrated that smoke-free legislation has been a major public health success story. It has been popular with the public, is easily complied with and is effectively achieving its objectives. Popular public support when the law was introduced in 2007 meant that very high compliance levels were quickly achieved¹. The health gains include: 1200 fewer emergency admissions to hospitals in England for heart attacks² (a reduction of 2.4%) in the first year following implementation; reduced incidence of childhood asthma in Scotland³; and an increase in the number of people cutting down or quitting smoking⁴. Adult prevalence rates in Northern Ireland have fallen from a pre-legislation rate of 25% in 2006/07 to 17% in 2019/20.

With all legislation there is always the opportunity for local interpretation and for adjusting requirements according to local circumstances. The aim of this guidance is to ensure a consistent approach to the application of the legislation so that children travelling in private vehicles are properly protected from second-hand smoke and drivers and adult users of private vehicles are treated fairly.

The Chartered Institute of Environmental Health (CIEH) in consultation with the Department of Health (DoH), the Police Service of Northern Ireland (PSNI), the Public Health Agency (PHA) and Environmental Health Northern Ireland (EHNI), have developed this guidance to help enforcement officers to use the new requirements to best effect.

In the light of experience of implementation this guidance may be amended and updated to which end the CIEH welcomes any comments or suggestions for future amendments. These should be sent to adminni@cieh.org

It has been clearly demonstrated that smoke-free legislation has been a major public health success story. It has been popular with the public, is easily complied with and is effectively achieving its objectives.

2. Background to the legislation

Existing measures

The Smoke-free Laws in force in Northern Ireland since 2007 are ensuring that adults and children are fully protected from the harms of second-hand smoke when using public transport and when travelling in public service and work vehicles. However, there are no restrictions on smoking in private vehicles except when they are used primarily in connection with work activities, in which case they are then required to be smoke-free at all times even when in use for private purposes.

Opening the car windows or using the car fan or even its air-conditioning is not enough to stop the harmful effects of smoke on children^{10,11,12}. A CIEH Northern Ireland study¹³ in 2012 found that smoking in cars results in PM2.5 levels (fine particles), both in partial and high ventilation scenarios, that exceed the WHO 24-hr guidelines and concluded that levels of PM2.5 in a vehicle where someone is smoking may rise to levels which can be considered hazardous to health regardless of the amount of ventilation. The only way to provide effective protection is to prevent exposure to second-hand smoke in the first place and that means stopping people from smoking in vehicles when children are present.

Protecting children's health

The evidence of damage to children's health from exposure to second-hand smoke is clear and extensive⁵. The Government's independent Scientific Committee on Tobacco and Health (SCOTH) reported that smoking in the presence of children is a cause a variety of adverse health effects⁶. These include increased susceptibility to lower respiratory tract infections such as pneumonia and bronchitis, worsening of asthma, middle ear disease, and decreased lung function.

There is no 'safe' level of exposure to second-hand smoke⁷ and in confined areas such as cars and other motor vehicles, it is known to be hazardous to health and especially for children's health⁸. In Northern Ireland, 18% of 11-16 years olds who reported living with an adult smoker, also reported that adults smoke in the family car when children are present. The 2019/20 NI Health Survey showed that 92% of respondents who own a family car do not allow smoking in their car when children are present⁹.

Need for additional measures

As with the case for prohibiting smoking in enclosed workplaces and public places, there is strong evidence to support extending the prohibition on smoking to cars carrying children¹⁴.

The evidence clearly shows that:

1. Children with a smaller lung capacity and body weight are more adversely affected by nicotine and the airborne particulates in tobacco smoke than adults;
2. Smoking in a vehicle can generate high levels of airborne particulates due to the small volume of air in the vehicle and also the potential for it to be recycled without cleaning;

3. The mechanisms commonly used in efforts to allow second-hand smoke to escape from vehicles (opening windows and sunroofs) are not effective, since the positive air pressure outside the vehicle causes the tobacco smoke-laden air to remain within the vehicle;
4. The level of airborne particulates in a vehicle remains elevated long after a cigarette has been extinguished, and may not return to pre-cigarette level for several hours¹⁵.

It is also the case that children being carried as passengers in a car cannot remove themselves from what is a toxic and health damaging environment since they have no control over the vehicle or the conduct of the driver or passengers.

From 1 February 2022 the Smoke-free (Private Vehicles) Regulations Northern Ireland 2021 will address this by:

- prohibiting any person from smoking or having lighted tobacco products in a car or any other vehicle which is enclosed, contains more than one person and a person under 18 is present in the vehicle; and
- making it an offence for the driver to fail to prevent smoking, in a car or any other private vehicle which is enclosed, contains more than one person and a person under 18 is present in the vehicle.

Opening the car windows or using the car fan or even its air-conditioning is not enough to stop the harmful effects of smoke on children. The only way to provide effective protection is to prevent exposure to second-hand smoke in the first place and that means stopping people from smoking in vehicles when children are present.

3. Overall approach and enforcement policy

Anticipated compliance

The experience in the UK to date, like that of other countries who have introduced comprehensive smoke-free legislation, is that this type of legislation is widely supported by the public, that high rates of voluntary compliance and self-enforcement can be anticipated and that there will therefore be only a minimal need to employ enforcement measures¹⁶.

There has been growing public support for this particular extension of the smoke-free requirements to include a prohibition on smoking in private cars when children are present, with 98% support amongst the general public¹⁷.

The extensive public awareness campaign provided by the Public Health Agency, which precede the introduction of this legislation, will support early compliance by building awareness of the requirements through the use of social marketing activities. The campaign will focus on the fact that the regulations are being introduced to protect children and young people from exposure to harmful second-hand tobacco smoke whilst in a private vehicle (an enclosed environment), raise awareness of the harm that second-hand tobacco smoke can cause to children and young people, and encourage public support and adherence. These, and the promotional work of the various tobacco control alliances and campaigning bodies, are all likely to increase public approval and acceptance.

Roles and responsibilities

A dual enforcement role between District Councils and PSNI has been adopted in relation to the Regulations.

The Police have a key role in detecting and dealing with offences against this legislation. This is because they have existing powers to stop moving vehicles and are able to enforce this legislation as part of their usual road safety responsibilities, which include the proper use of child car seats, seat belts and mobile phones.

District Councils also have responsibilities and powers to appoint authorised officers to deal with individual offences when discovered or reported to them and to generally support the building of compliance through information and advice campaigns as well as by working alongside the police in taking targeted enforcement measures.

Enforcement policy

In order to ensure that a fair, proportionate and consistent approach is being taken, authorised officers will need to demonstrate that any enforcement action being taken is in accordance with the principles of their employer's enforcement policy.

Voluntary use of signs

The Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021 do not make any requirement for no-smoking signs to be displayed in a private vehicle when a person who is under the age of 18 years old is present inside the vehicle.

However the voluntary use of no-smoking signs could be employed by vehicles owners and drivers to inform and advise the occupants not to smoke when a child is present.

The experience in England to date, like that of other countries who have introduced comprehensive smoke-free legislation, is that this type of legislation is widely supported by the public, that high rates of voluntary compliance and self-enforcement can be anticipated and that there will therefore be only a minimal need to employ enforcement measures.

4. Enforcement agencies and authorised officers

Enforcement authorities

The Smoke-free (Private Vehicles) Regulations (Northern Ireland) 2021 designate the following as enforcement authorities in respect of vehicles which are smoke-free by virtue of Article 8(2) of The Smoking (NI) Order 2006:

- (a) a District Council of Northern Ireland; and
- (b) the Police Service of Northern Ireland.

Transfer of enforcement functions

The legislation allows for the transfer of, enforcement functions from one enforcement authority to the other under arrangements made between the transferring and receiving authorities. An investigation could therefore be started by the police or district council where the offence took place and then transferred to the other authority. Such an arrangement must have the agreement of the receiving authority.

An agreed template for the sharing of enforcement referrals between District Councils and Police is attached at Appendix 7.

Authorised officer

An authorised officer is any person who is authorised in writing, either generally or specifically, by an enforcement agency to act in matters under The Smoking (Northern Ireland) Order 2006.

5. Legislative requirements relating to smoke-free vehicles

Smoking

The definition of smoking is set out in Article 2 (2) The Smoking (Northern Ireland) Order 2006:

(a) “smoking” refers to smoking tobacco or anything which contains tobacco, or smoking any other substance; and

(b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco or being in possession of any other lit substance in a form in which it could be smoked.

It follows therefore that smoking includes the use of cigarettes, cigars and pipes, including waterpipes (shisha) as well as the use of herbal substances.

Electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking.

Existing requirements

Article 6 of the Smoking (Northern Ireland) Order 2006 provides power for regulations to require vehicles to be smoke-free. A vehicle means any type of vehicle, train, vessel or other means of transport except aircraft and ships and hovercrafts in respect of which regulations could be made under Section 85 of the Merchant Shipping Act 1995.

Regulation 12 (5) of the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007 provides that an enclosed vehicle shall be smoke-free if it is used:

- by members of the public or a section of the public, whether or not for reward or hire; or
- in the course of paid or voluntary work by more than one person, even if the persons who work there do so at different times or only intermittently (“work vehicle”).

This means that children are already fully protected from exposure to second-hand smoke when they are using public transport and travelling in public service and work vehicles.

Private vehicles

In accordance with Regulation 12 of the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007 a private vehicle is a vehicle used primarily for the private purposes of a person who:

- owns it; or
- has a right to use it which is not restricted to a particular journey.

Prior to 1 February 2022 there have been no restrictions on smoking in private vehicles except when they are used primarily in connection with work activities, in which case they are then required to be smoke-free at all times even when in use for private purposes.

New requirements from 1 February 2022

Part 1 of the Health Miscellaneous Provisions Act (NI) 2016 provides for the prohibition of smoking in private vehicles when children under 18 are present.

Section 5 of the Act makes amendments to the Smoking (NI) Order 2006 to allow for regulations 'to provide for a private vehicle to be smoke-free where a person under the age of 18 is present in the vehicle'.

The Smoke-free (Private Vehicles) Regulations NI 2021 amend Regulation 12 of the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (NI) 2007 so as to include, within the meaning of the term smoke-free vehicle, the following:

A vehicle, and any part of a vehicle if:

- (a) it is enclosed;
- (b) there is more than one person present; and
- (c) a person under the age of 18 is present in the vehicle.

Meaning of the term enclosed

A vehicle, or part of a vehicle, is enclosed where it is enclosed wholly or partly by a roof and by any door or window that may be opened. Roof means any fixed or moveable structure or device which is capable of covering all or part of the vehicle, including any canvas, fabric or other covering.

Solo motorcycles and scooters would not normally be included within the above description. However there are two-seater enclosed sidecars as well as so called 'covered scooters' which have provision for a passenger. Similarly

there are two-person mobility scooters which may be fitted with fixed and removable roof and side covers (similar to golf buggies). These multiple seat versions could be considered to be enclosed vehicles.

A vehicle does not need to be smoke-free when its roof is removed or completely stowed away so that it does not cover any part of a compartment in which persons are present. A compartment includes each part of the vehicle which:

- is constructed or adapted to accommodate persons; and
- is or may from time to time be wholly or partly covered by a roof.

This means that a convertible car, or coupe, with the roof completely down and stowed, is not enclosed and therefore is not covered by the legislation.

A vehicle is still considered enclosed when doors, windows and sun-roofs are open.

A person is still considered to be smoking in the vehicle when they are holding the cigarette out of the window, and when they are smoking whilst sitting in an open doorway or whilst leaning out of the vehicle.

Caravans and motor caravans

The new smoke-free requirements apply to a caravan or motor caravan, but not:

- if it is stationary and not on a road; or
- when it is stationary and on a road but is being used as living accommodation.

This is to take account of the fact that caravans and motor caravans when stationary are analogous to rooms in a property, and can be considered to be, and treated the same as being, a person's 'home'. When a motor

caravan is being driven on the roads however it is a vehicle and must be smoke-free if there is a child under 18 years being carried in it. Passengers should not, of course, be carried in towed caravans at any time.

“Caravan” means a trailer which is designed for road use and provides mobile living accommodation and “motor caravan” means a motor vehicle which is constructed or adapted for the carriage of passengers and their effects and which contains, as permanently installed equipment, the facilities which are reasonably necessary for enabling the vehicle to provide mobile living accommodation for its users.

The term ‘living accommodation’ is not defined, but the everyday meaning would be that the accommodation provided by the caravan or motor caravan was provisioned with food, clothing and bedding and was in use as a shelter together with any facilities for washing, dressing and sleeping. The expectation would be that the facilities were ‘in use’ and not simply available for use and that the purpose of use was over a period of time and not a temporary stop being taken in the course of a journey.

Determining when a caravan or motor caravan is on a road

A road is defined as having the same meaning as in the Road Traffic Order and includes any highway, road or street open to, or used by, the public and includes every carriageway, footway, reservation and traffic island on it and any parking area in a public place.

Article 2 of the Road Traffic (NI) Order 1995 stipulates that a ‘road’ in Northern Ireland includes a public road and any street, carriageway, highway or roadway to which the public has access. Whether or not the public has access to a road is a question of fact. If a member of the public has to act in defiance of an expressed or implied prohibition, then that will not be considered a road to which the public has access (see: *Cox v White* [1976] RTR 248).

A road has been held in the case of *Worth v Brooks* [1959] Crim LR 885 to include pavements and boundary grass verges.

If any part of a vehicle is on a road, even where it is partly or mostly on some other private land, the vehicle can be treated as being on a road - *Randall v Motor Insurers’ Bureau* [1969] 1 All ER 21.

A car park is not a road - *Clarke v Kato* [1998] 1 WLR 1647.

6. Offences and defences

Offences

(See also the 'Smoke-free vehicles decision-making flowchart' in Appendix 1 and the 'Table of offences and penalties' in Appendix 2.)

There are two offences:

- for someone to smoke in an enclosed private vehicle with someone under age 18 present;

and

- for a driver not to stop someone smoking.

Note: electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking.

The law applies to both moving and stationary vehicles, although the regulations do not specify that a vehicle must be on a public road to be subject to enforcement action. Enforcement bodies will therefore wish to consider their own policies and practices in relation to enforcement on private premises eg driveways. There is an exemption for stationary caravans and motor caravans when being used as living accommodation (see Section 5 'Legislative requirements relating to smoke-free vehicles').

Smoking in a private vehicle

From 1 February 2022 the Smoke-free (Private Vehicles) Regulations (NI) 2021 amend the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (NI) 2007 to prohibit any person from smoking in any enclosed private vehicle when another person under the age of 18 years old is present inside the vehicle.

This applies to both the driver and any passengers.

Failing to prevent smoking in a private vehicle

From 1 February 2022 the Smoke-free (Premises, Vehicle Operators and Penalty Notices) (Amendment) Regulations (NI) 2021 amend the equivalent 2007 regulations to make it an offence for the driver to fail to prevent smoking in an enclosed private vehicle when another person under the age of 18 years is present inside the vehicle.

This offence will be in addition to the offence committed by the driver if they are smoking.

Note - it is therefore possible for the driver to be guilty of 2 offences namely:

1: **smoking**; and

2: **failing to prevent smoking.**

If the driver is the only person smoking then technically they are still guilty of the 2 offences. Since the issue of FPNs is at the discretion of enforcement authorities, they may consider that the issue of only one FPN remains appropriate in this situation (ie for smoking offence).

Establishing the age of a person

It will be necessary to establish whether there is a person in the vehicle under the age of 18.

In practice, it is likely that the legislation will be enforced in fairly obvious cases. There is no specific legislative provision relating to establishing age. However, the Smoking Order sets out the relevant powers of authorised officers and requires “any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose.” For the offence of obstruction of an officer, the Order states (at Article 12 (2)) that “Any person who without reasonable cause fails to give to an authorised officer, acting in exercise of his functions under this Order, any facilities, assistance or information which the authorised officer requires of him for the performance of those functions commits an offence.” This includes making a statement that is false or misleading (either knowingly or recklessly) and the offence, on summary conviction, is liable to a level 3 fine. The powers of authorised officers are set out at Appendix 6.

Enforcement authorities’ enforcement policies may refer to obtaining information on age and asking questions of minors.

Anyone who smokes in a smoke-free private vehicle when a person under 18 is present would be guilty of an offence, regardless of their own age. This is the case with the current Smoke-free Legislation and therefore this is a consistent approach.

How the law applies to 17 year olds and younger people

As passengers:

- the law is in place to protect all children and young people under age 18 so no one should smoke in the vehicle when they are present; and
- people of any age who do smoke in the vehicle commit an offence, and the enforcement officers will be expected to use their discretion in deciding on the appropriate action to take.

As drivers:

- the law applies to every driver - including those aged 17 and those with a provisional driving licence. If a passenger is smoking then the driver could be committing an offence if they fail to stop them; and
- the law does not apply if the driver is 17 years old and is on their own in the vehicle.

Powers of entry and offence of obstruction

Powers of entry are contained in Schedule 2 of the Smoking (NI) Order 2006 and allow authorised officers (on production of authority if requested) to: enter at any reasonable hour (in the case of a vehicle this would include any time that it was occupied); to carry out an inspection and examination; to take samples and retain physical evidence; and to “require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose”.

Article 12 of the Smoking (NI) Order 2006 provides for the offence of obstruction by any person who intentionally obstructs an authorised officer, or:

- without reasonable excuse, fails to give any facilities, assistance or information which the officer reasonably requires; or
- makes a statement which is false or misleading.

A person who commits an offence of obstruction is liable to a fine of up to level 3 on standard scale (currently up to £1000).

Defences

The Smoking (NI) Order 2006 provides the following defences:

Article 8 (3) offence - Smoking in a smoke-free place:

- that he did not know, and could not reasonably have been expected to know, that the premises or vehicle were smoke-free.

Article 9 (4) offence - Failing to prevent smoking in a smoke-free place:

- that he took reasonable steps to cause the person in question to stop smoking; or
- that he did not know, and could not reasonably have been expected to know, that the person in question was smoking; or
- that on other grounds it was reasonable for him not to comply with the duty.

7. Enforcement actions

Enforcement options

In relation to private vehicles enforcement action can be taken in respect of two separate offences under the Smoking (NI) Order 2006:

Article 8 (2) Person who smokes in a smoke-free vehicle (any person smoking);

Article 9 (3) Person having the management or control of a smoke-free vehicle fails to stop a person from smoking there (driver).

Deciding the course of action

As with all enforcement measures, action taken should be fair, proportionate and consistent. A Police officer has the ability to use their discretion in deciding what enforcement action to take. Additionally, in the case of District Council officers, enforcement action is decided upon with reference to enforcement policy of the particular council.

Use of fixed penalty notices

(Appendix 4 contains a fixed penalty notice flowchart)

An authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under Article 8 (2) or Article 9 (3) of the Order may give that person a Penalty Notice in respect of the offence.

Offenders being issued with a FPN can decline to accept it and may opt for a trial. They may also be prosecuted should they fail to pay the penalty required by the FPN having accepted one. They may not however accept a FPN and also opt for trial (i.e. pay a discounted amount to discharge the FPN but contest the matter in court).

The person issued with the FPN may:

- pay the penalty, within the 29 day payment period or taking advantage of the discounted rate for early payment. Payment of the FPN discharges all liability and the matter is closed and not recorded as a conviction; or
- give notice in writing to the enforcement authority requesting a Court hearing in respect of the offence for which they have received the FPN. Legal proceedings may then be brought against them before the end of the penalty payment period with the enforcement authority relying on the evidence used to support the issuing of the FPN as the evidence to support the prosecution. If the person changes their mind and then pays the discounted or penalty amount, then the proceedings may not be continued; or
- fail to pay the penalty before the 29 day payment period elapses. Legal proceedings may then be brought against them for the offence to which the penalty relates, not the failure to pay the penalty, with the enforcement authority relying on the evidence used to support the issuing of the FPN as the evidence to support the prosecution.

Withdrawal of notices

There is no right of appeal against the service of a FPN but the person on whom the FPN is served may ask questions or put forward information that they feel relevant to the issuing of the FPN. Should such information suggest that for example the FPN has been incorrectly issued then the enforcement authority may give notice in writing to the person and withdraw the FPN. If any monies have already been paid, these must be repaid.

Failure to pay a Fixed Penalty Notice

If a person on whom a FPN has been issued fails to pay the penalty within the 29 day payment period the enforcement authority may institute legal proceedings for offence to which the Penalty Notice relates.

8. Police support for enforcement actions

Joint activities

It is expected that the Police and Local Authorities will collaborate on enforcement action, for example when carrying out local road safety operations, when the Police will use their powers to stop vehicles and the Local Authority can take enforcement action in respect of offences.

Police enforcement

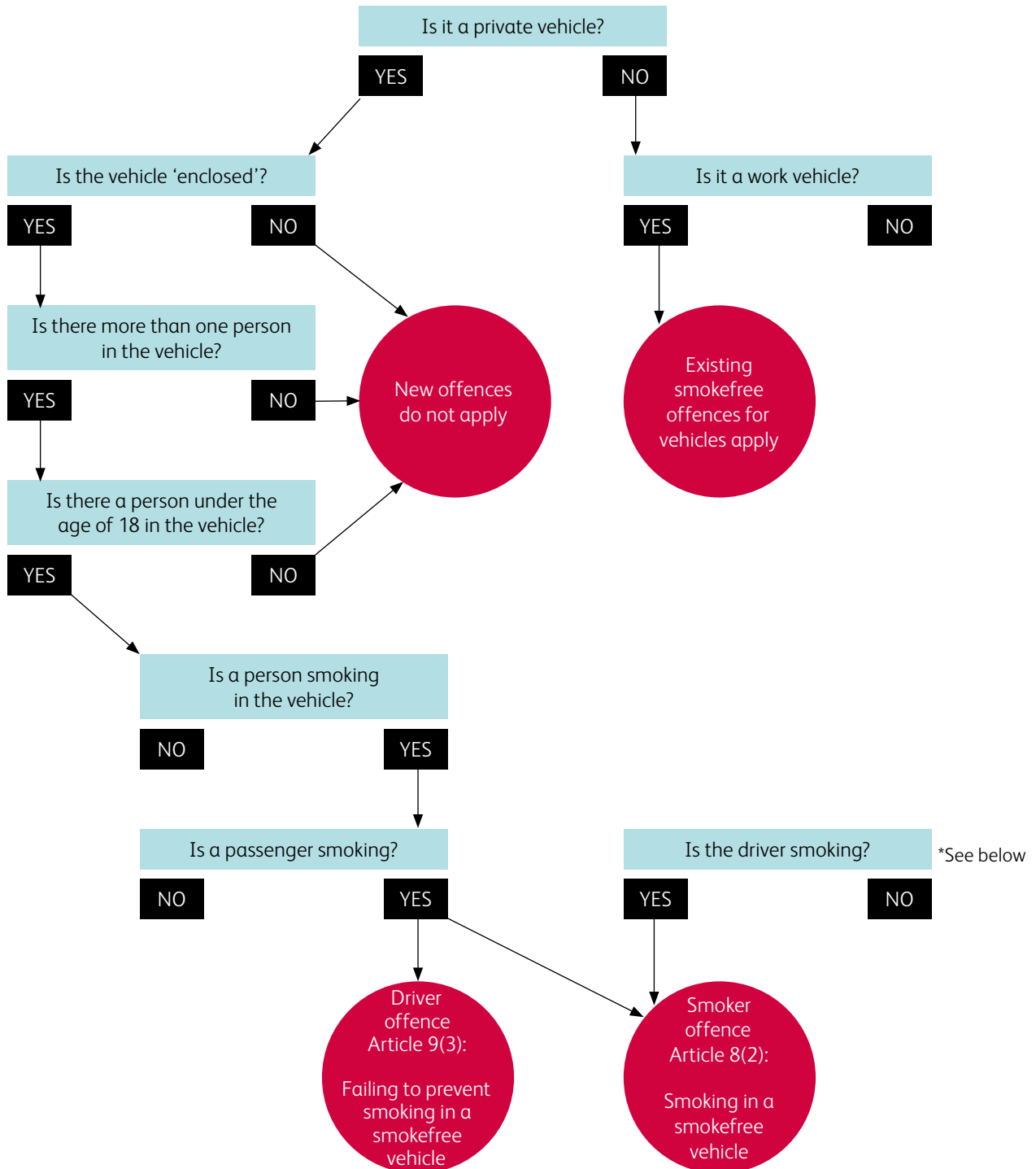
The Police Service is currently devising a Fixed Penalty, these offences which they anticipate will be available early in 2022.

Where an investigation is being undertaken, the legislation allows for the enforcement functions to be transferred between enforcement authorities under arrangements made between the transferring and receiving authorities. An investigation could therefore be started by the Police or District Council where the offence took place and then transferred to the other enforcement authority. Such an arrangement must have the agreement of the receiving authority.

This means for example, that in the event of any delay to the introduction of the Police Fixed Penalty Notice, where the Police observe individual offences which justify enforcement action they can report these to the relevant District Council for their consideration of enforcement action (i.e. service of a Fixed Penalty Notice). This arrangement is permitted in the legislation and is described in this guidance under the heading of 'Transfer of enforcement functions' in section 4.

Appendices 1–7

Appendix 1: Decision-making flowchart for smoke-free vehicles



*1. It is possible for the driver to be guilty of 2 offences – smoking and failing to prevent smoking.
 2. If the driver is the only person smoking then technically they are still guilty of the 2 offences. Since the issue of FPNs is at the discretion of enforcement authorities, they may consider that the issue of only one FPN remains appropriate in this situation (ie for smoking offence).

Appendix 2: Table of offences and penalties

Offence under the Smoking (NI) Order 2006	Defence under the Smoking (NI) Order 2006	FPN IF PAID IN 15 DAYS	FPN IF PAID IN 29 DAYS	Maximum court awarded fine IF FOUND GUILTY
Article 8 (2) Person who smokes in a smoke-free vehicle (any person smoking)	Article 8 (3) It is a defence for the person charged to show that they did not know and could not reasonably have been expected to know that it was a smoke-free vehicle.	£30	£50	Level 3 on standard scale – currently up to £1000
Article 9 (3) Person having the management or control of smoke-free vehicle fails to stop a person from smoking there (driver)	Article 9 (4) It is a defence for the person charged to show that they took reasonable steps to cause the person in question to stop smoking or that they did not know and could not reasonably have been expected to know that the person in question was smoking or that on other grounds it was reasonable for them not to comply with the duty.	£30	£50	Level 4 on standard scale – currently up to £2500
Article 12 Any person who intentionally obstructs an authorised officer or who fails to give assistance when requested to do so or who gives false or misleading information		N/A	N/A	Level 3 on standard scale – currently up to £1000

Appendix 3: Fixed penalty notice guide

Schedule 1 to the Smoking (NI) Order 2006 sets out the Fixed Penalty Notice Scheme that applies to the Order.

The Fixed Penalty Notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence by payment of a Fixed Penalty.

The information required to be provided with a Fixed Penalty Notice is set out in the Smoke-free (Premises, Vehicle Operators and Penalty Notices) Regulations 2007 as amended by the Smoke-free (Premises, Vehicle Operators and Penalty Notices) (Amendment) Regulations 2021

A Fixed Penalty Notice must:

- identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence;
- state the amount of the penalty and the period within which it may be paid;
- state the discounted amount and the period within which it may be paid;
- state the consequences of not making a payment within the period for payment;
- state the person to whom and the address at which payment may be made;
- state the method or methods by which payment may be made; and
- state the person to whom and the address at which any representations relating to the notice may be made.

Payment periods

The full amount of the Fixed Penalty as stipulated in the Fixed Penalty Notice will be payable and must be paid within 29 days beginning with the day on which the notice is given.

However, a discounted amount is payable instead of the full amount if payment is made before the end of the period of 15 days beginning with the day on which the Fixed Penalty Notice is given (if the last day does not fall on a working day, the period for payment of the discounted amount is extended until the next working day).

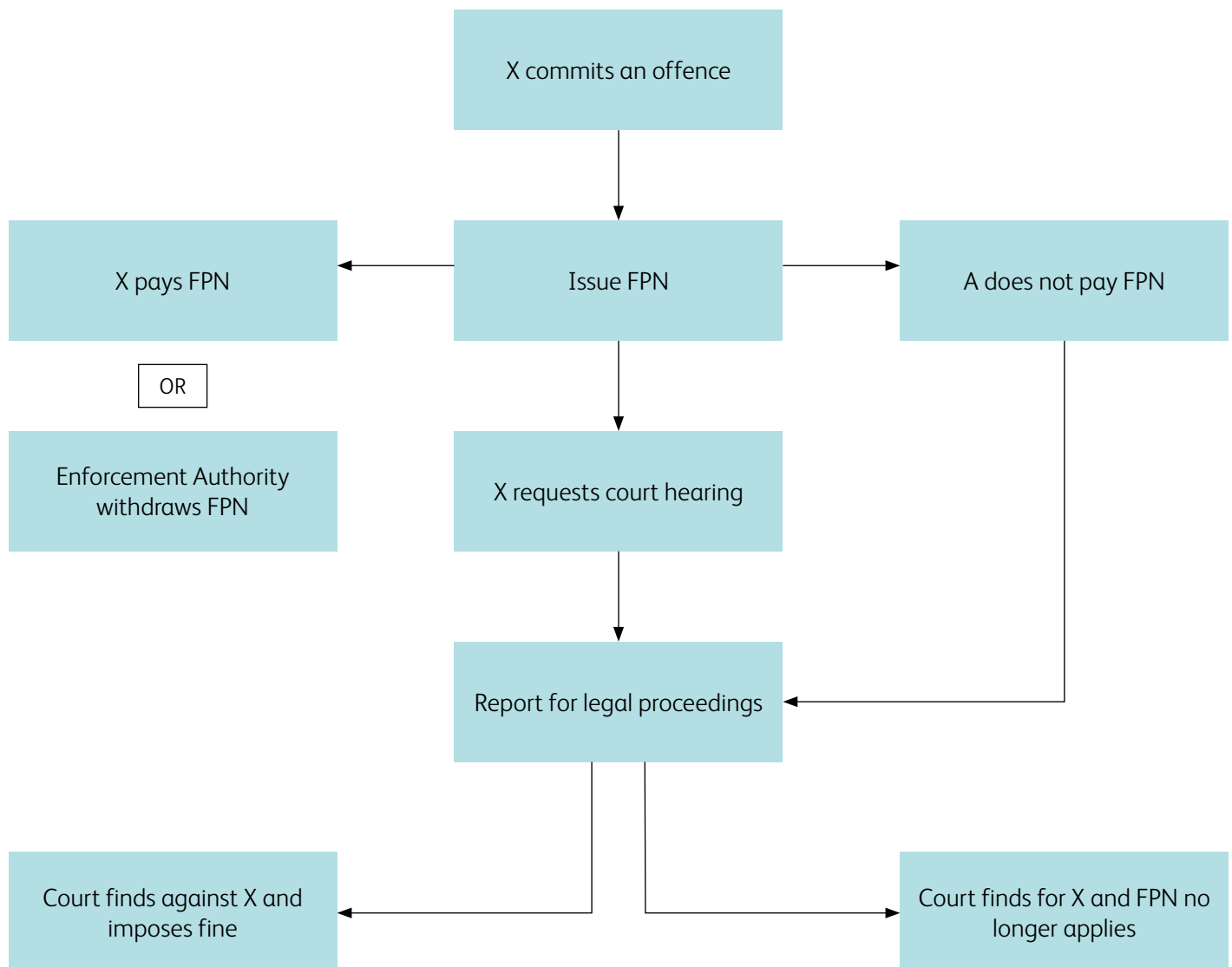
Template Fixed Penalty Notice

Appendix 5 contains a template Fixed Penalty Notice.

The regulations make provision for enforcement authorities to adapt the Penalty Notices to suit their own requirements in certain ways for example by adding additional information about payment arrangements and including the logo etc. of the enforcement authority. Any customising would need to be in line with [Regulation 4\(4\)](#) before making any changes to the template Fixed Penalty Notice or creating an alternative version.

To access the Fixed Penalty Notice Word document template, please [click here](#).

Appendix 4: Fixed penalty notice flowchart



Appendix 5: Fixed Penalty Notice template

The form on pages 24-28 is for illustrative purposes only.

To access the Word document template to download and use in your work, please [click here](#).

FORM 2

SMOKING IN A SMOKE-FREE PLACE / FAILING TO PREVENT SMOKING IN A SMOKE-FREE PRIVATE VEHICLE

[NAME OF ENFORCEMENT AUTHORITY]
[ADDRESS OF ENFORCEMENT AUTHORITY]

THE SMOKING (NORTHERN IRELAND) ORDER 2006:
ARTICLE 8 (OFFENCE OF SMOKING IN A SMOKE-FREE PLACE) AND
ARTICLE 9 (OFFENCE OF FAILING TO PREVENT SMOKING IN A SMOKE-FREE PLACE)

FIXED PENALTY NOTICE

PENALTY AMOUNT £50

PART 1

RECIPIENT COPY

Penalty Notice Number: _____

Full name of alleged offender: _____

Address of alleged offender: _____

_____ Post code: _____

Date of birth (if known): _____ Male/Female (circle one)

I, (name), an authorised officer of the [name of enforcement authority] under Article 11 of the Smoking (Northern Ireland) Order 2006, have reason to believe that you committed an offence under (tick one box):

- [] Article 8 of the Smoking (Northern Ireland) Order 2006 (smoking in a smoke-free place(a)); or
[] Article 9 of the Smoking (Northern Ireland) Order 2006 (failing to prevent smoking in a smoke-free place: private vehicle(b)).

(a) Article 8(1) of the Smoking (Northern Ireland) Order 2006 provides that smoke-free places include smoke-free premises and smoke-free vehicles.
(b) By virtue of regulation 12(1A) of the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007, a private vehicle is smoke-free when it is enclosed, there is more than one person present in the vehicle and a person under the age of 18 is present in the vehicle.

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

The circumstances alleged to constitute the offence are that at:

_____ *(time)* on _____ *(date)*

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

being premises, a place or vehicle to which the provisions of Article 8 or 9 of the Smoking (Northern Ireland) Order 2006 applies allegedly *(details of offence)*:

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

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

Information for the immediate attention of the person who has been issued with this Penalty Notice is at Part 2 of this notice. Details about how to pay this Fixed Penalty are at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at Part 4 of this Notice.

Signature of authorised officer

Date of issue

PART 2

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

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

- (i) smoking in a smoke-free premises or vehicle; or
- (ii) failing to prevent smoking in a smoke-free private vehicle

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

If you fail to do either, *[name of enforcement authority]* as an enforcement authority by virtue of Article 11 of the Smoking (Northern Ireland) Order 2006, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free premises or vehicle is liable on summary conviction to a fine not exceeding level 3 on the standard scale, as specified in Article 8(5) of the Smoking (Northern Ireland) Order 2006. A person found guilty of failing to prevent smoking in a smoke-free private vehicle is liable on summary conviction to a fine not exceeding level 4 on the standard scale as specified in Article 9(6) of the Smoking (Northern Ireland) Order 2006.

PART 3

PAYING THE PENALTY

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

You can pay a discounted amount of **£30 (thirty pounds)** if you pay within the 15 day period which is specified in Part 1.

If you choose to pay this penalty, no further action will be taken in respect of the alleged offence described at Part 1 of this Penalty Notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

Payment may be made by completing Part 3A and returning it with payment to the address stated in that Part, or by completing Part 3A and paying in person at the *[name and address of enforcement authority]*. Acceptable methods of payment include cash, cheque, postal order or money order.

Cheques, postal orders or money orders should be made payable to *[name of enforcement authority]*. If you chose to pay this penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post you must provide a stamped, self-addressed envelope.

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

PART 3A

**PAYMENT OF FIXED PENALTY ISSUED UNDER ARTICLE 8 OR 9 OF THE SMOKING
(NORTHERN IRELAND) ORDER 2006 (OFFENCE OF SMOKING IN A SMOKE-FREE
PLACE OR OFFENCE OF FAILING TO PREVENT SMOKING IN A SMOKE-FREE
PRIVATE VEHICLE)**

This slip must accompany all payments

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

Penalty Notice number: _____

I enclose the amount of:
(tick one box)

- £30 (if the payment is made within the 15 day period specified in Part 1)
 £50 (if the payment is made within the 29 day period specified in Part 1)

Full name of alleged offender: _____

Address of alleged offender: _____

Post code: _____

Signature

Date

PART 4

REQUESTING A COURT HEARING

If you wish to contest the issue of this Penalty Notice and have your case heard in a court of law, **you must** complete Part 4A in full and return it by post to the address stated in that Part within **the 29 day period**.

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

If you have any questions or any representations about this Penalty Notice, please contact *[name of enforcement authority and contact details]*.

PART 4A

**THE SMOKING (NORTHERN IRELAND) ORDER 2006: OFFENCE OF SMOKING IN
A SMOKE-FREE PLACE UNDER ARTICLE 8 OR OFFENCE OF FAILING TO
PREVENT SMOKING IN A SMOKE-FREE PRIVATE VEHICLE UNDER ARTICLE 9**

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

To: *[Name and address of enforcement authority].*

Penalty Notice number: _____

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

Full name of alleged offender: _____

Address of alleged offender: _____

Post code: _____

Signature

Date

Appendix 6: Powers of authorised officers - The Smoking (NI) Order 2006

The form on page 30 is for illustrative purposes only.

To access the Word document template to download and use in your work, please [click here](#).

SCHEDULE 2

POWERS OF AUTHORISED OFFICERS

1. An authorised officer has the right to do any of the following, on production (if required) of his written authority:
 - (a) at any reasonable hour, enter any premises (other than premises used only as a private dwelling house not open to the public) which he considers it is necessary for him to enter for the purpose of the proper exercise of his functions under this Order;
 - (b) there carry out such inspections and examinations as he considers necessary for that purpose;
 - (c) if he considers it necessary for that purpose, require the production of any substance or product, and inspect it, and take and retain samples of or extracts from it;
 - (d) take possession of any substance or product on the premises, and retain it for as long as he considers necessary for that purpose; and
 - (e) require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose.
2. An authorised officer may, if he considers it necessary for the purpose of the proper exercise of his functions under this Order, arrange for any substance, product, sample or extract mentioned in paragraph 1(c) or (d) to be analysed.
3. An authorised officer may make such purchases and secure the provision of such services as he considers necessary for the purpose of the proper exercise of his functions under this Order.
4. A person may not be required under paragraph 1 to give any information which he would be entitled to refuse to give in proceedings in the High Court on grounds of legal professional privilege.
- 5.—(1) A lay magistrate may exercise the power in sub-paragraph (3) if he is satisfied on a complaint in writing substantiated on oath:
 - (a) that for the purpose of the proper exercise of the functions of a district council under this Order there are reasonable grounds for entry into any premises (other than premises used only as a private dwelling house not open to the public); and
 - (b) of either or both of the matters mentioned in sub-paragraph (2).(2) The matters are:
 - (a) that admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant under this Schedule has been given to the occupier or a person who reasonably appears to the district council to be concerned in the management of the premises; and
 - (b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.(3) The lay magistrate may by warrant signed by him authorise any authorised officer to enter the premises, if need be by force.
- (4) Such a warrant continues in force until the end of the period of one month beginning with the date on which the lay magistrate signs it.
6. An authorised officer entering any premises by virtue of paragraph 1, or of a warrant under paragraph 5, may take with him such other persons and such equipment as he considers necessary.
7. If premises which an authorised officer is authorised to enter by a warrant under paragraph 5 are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as he found them.
8. If by virtue of paragraph 1(d) an authorised officer takes possession of anything, he must leave on the premises from which it was taken a statement giving particulars of what he has taken and stating that he has taken possession of it.
9. In this Schedule "premises" includes any place or vehicle.

Appendix 7: Smoking in a vehicle with a person under 18 form

The form on page 32 is for illustrative purposes only.

To access the Word document template to download and use in your work, please [click here](#).

SMOKING IN A VEHICLE WITH A PERSON UNDER 18 FORM

Witnessed By (Council/PSNI):

Date:

Vehicle Details

Registration Number:

Make:

Model:

Colour:

Any other Distinguishing features, e.g. branded:

Details of Offence

Day of Offence:

Date of Offence:

Time of Offence:

Incident Location:

Offence Committed By:

Additional Comments

Transfer of Authority

Date Transferred:

Transferred from (inc.email/contact details.):

Transferred to:

Reason for transfer:

To transfer to PSNI – email to zFPPC@psni.police.uk

To transfer to Council – email to relevant Council

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