

## SMOKING IN VEHICLES USED FOR WORK

Set out below is a summary of the position under English law on the smoking ban and how it affects the use of company vehicles and how the laws differ in other parts of the United Kingdom.

### England

The Smoke-free (Exemptions and Vehicles) Regulations 2007 came into force on 1 July 2007.

The position in respect of company vehicles is that:

Enclosed vehicles which one or more persons use for work will be no-smoking premises and covered by the ban. The ban applies to cars/vans/lorries **at all times** if they can be used by one or more persons (as driver or passenger) in the course of paid or voluntary work, regardless of whether they are in the vehicle at the same time;

A vehicle is not used at work if it is 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.

Therefore, smoking will be prohibited in all vehicles which are used primarily for business purposes by more than one person. Vehicles used primarily for private purposes or for business purposes only by the driver are exempt and employees can smoke in those vehicles. Examples

A company car used solely by one employee and not used by anyone else for work either as a driver or passenger is exempt and does not need to be smoke free;

A privately owned car used occasionally for business purposes is exempt;

A car shared by one or more employees but only ever used by one at a time (a pool car) is covered by the ban and must be smoke free **at all times**;

A chauffeur driven car is covered by the ban and must be smoke free **at all times**;

A van used by two employees, one who smokes and another who doesn't is covered by the ban and must be smoke free **at all times**;

A vehicle used by two plus employees all of whom smoke is covered by the ban and must be smoke free **at all times**;

A vehicle that would otherwise be smoke free but which has a roof that can be stowed or removed will not be required to be smoke free when the roof is completely stowed/removed.

**All passenger carrying vehicles are covered by the ban, this includes sleeper/tour busses.**

All vehicles covered by the ban should display no-smoking signs (the no-smoking symbol at least 70mm in diameter) in each compartment of the vehicle in which people can sit (penalty for non-compliance is a fixed penalty notice of £200 (*or £150 if paid within 15 days*) or a maximum fine of £1,000 if convicted by a court).

The company has a duty to prevent smoking in smoke free vehicles (the penalty for breach is a maximum fine of £2,500 on conviction). Compliance requires the taking of reasonable steps, which might include (in addition to displaying signs):  
Removing ashtrays; Introducing a smoke free policy;  
Training of staff to understand the new law and their responsibilities under it (individuals caught can be issued with a fixed penalty notice of £50 (*or £30 if paid within 15 days*) or a maximum fine of £200 on (conviction).

### **Northern Ireland (NI)**

The Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007 came into force on 30 April 2007.

The wording relevant to vehicles is identical to that in the English Regulations. Therefore, the legislation should be applied in the same way as for England.

### **Wales**

The Smoke-free Premises etc (Wales) Regulations 2007 came into force on 2 April 2007

The wording relevant to vehicles does not materially differ to that in the English Regulations. Therefore, the legislation should be applied in the same way as for England.

### **Scotland**

The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 came into force on 26 March 2006.

The Regulations differ to the law applicable in England (Wales and NI) in that: "No-smoking premises" cover vehicles (including cars) which one or more persons use for work;

Car is defined as any mechanically propelled road vehicle which is **not** a goods vehicle or motor cycle or a vehicle not commonly used as a private vehicle and unsuitable to be so used (which might cover vans).

They define "private vehicles" (which are exempt) as "**any car** which is not a public transportation vehicle

...and any other vehicle used primarily for private purposes".

The guidance issued by the Scottish Executive provides that if you use a car (your own or company car) for business purposes, it will be exempt unless it is being used as a private taxi. Vans and lorries are covered if used by one or more persons at work.

Therefore, the guidance suggests that the exemption (that any car is exempt) overrides when premises will be smoke free. The effect being that unlike the position in England, all cars are exempt in Scotland even if used for work by more than one person (unless a private hire car).

Whilst this may not have been the intended outcome there are, as yet, no reported test cases. The enforcers in Scotland are likely to follow the guidance and therefore the position would appear to be more relaxed north of the border in terms of company cars than it is for the rest of the UK.