

## Motoring offences

### Smoke-free vehicles

Introduced by the Health Act 2006, the smoke-free legislation is another example, like it or not, of how our behaviour behind the wheel of our vehicle is being increasingly regulated. We have set out for your benefit, a summary of the law to remind you how it may affect you when you are driving.

#### The law

An enclosed vehicle and any enclosed part of a vehicle must be smoke-free if it is used:

1. by members of the public or a section of the public (whether or not for reward or hire)
2. in the course of paid or voluntary work by more than one person (even if those persons use the vehicle at different times, or only intermittently).

What this means is that most enclosed vehicles used by the public or for work purposes must be smoke free.

#### Convertibles

A vehicle with a detachable or stow-away roof is exempt provided that in its stowed away/detached form, it does not cover part of the vehicle. Therefore, a convertible vehicle will not have to be smoke free when the roof is fully retracted/removed.

#### Vehicles used by the public

The smoke-free regulations will apply to taxis, buses, trains. In some limited cases, this will apply to ships or hovercraft. Aircraft are already subject to legislative control. It would also appear that if a vehicle is used to give a client/customer a lift, then it would have to be smoke-free.

#### Vehicles used for work purposes

The Regulations apply to an enclosed vehicle if it is used in the course of paid or voluntary work by more than one person (even if those persons use the vehicle at different times, or only intermittently). Two points to note here:

1. note that the determining factor is 'use', not 'ownership' – a privately owned vehicle used for work purposes would be required to be smoke free (subject to the exemption below)
2. also note that this applies to voluntary workers – 'paid or unpaid'

The smoke-free regulations will therefore apply to pool cars, delivery lorries where there could be more than one driver or a driver's mate, or a vehicle which has one primary driver but is occasionally used by others.

## Exemption

A vehicle is not classed as being used in the course of paid/voluntary work where it is used primarily for the private purposes of the owner/person who has an unrestricted right to use it.

- Where the primary (unrestricted) use of the vehicle is for private purposes, it would be exempt. No definition of 'primary', for example private v business mileage is a natural method of distinguishing.
- What is less clear is what happens when a vehicle is handed over to another employee for them to use permanently.

## Compliance

Obligations are placed on the driver, a person with management responsibilities for the vehicle and any person on a vehicle who is responsible for order or safety on it, to ensure that the vehicle is smoke free.

The international smoke-free sign (70mm in diameter) must be displayed in every compartment of the vehicle.

Managers prosecuted for failing to prevent smoking in a smoke-free vehicle can avail themselves of a due diligence defence. As it is a legal requirement to display a no-smoking sticker, it is unlikely that a due diligence defence will succeed if based simply on a manager placing a sticker in a vehicle. Managers should consider updating fleet policies and sending to all drivers.

Care will also need to be taken in identifying those vehicles that must be smoke free. All 'pool' vehicles will need to be smoke free as it is anticipated that they are used primarily for work purposes. In cases of company cars where there is a primary user, but where other persons have access to the vehicle on occasions, consideration will have to be given to the overall use of the vehicle by reference to, for example, 'business' versus 'private' mileage. In light of the need to keep vehicles smoke-free if giving lifts to clients/customers, or where use by more than one person cannot be ruled out, managers may wish to consider adopting a 'no smoking' policy in relation to all vehicles used whilst on company business.

## Penalties

- Failure to display a no smoking sign carries a maximum penalty of £1,000 on conviction or £200 fixed penalty (£150 if paid within 15 days).
- Smoking in a smoke free place carries a maximum penalty of £200 on conviction or £50 fixed penalty (£30 if paid within 15 days).
- Persons controlling or being concerned in the management of smoke vehicles and failing to stop a person smoking there carries a maximum penalty of £2,500 on conviction with no option of a fixed penalty.

### Also note that:

- under the Environmental Protection Act 1990 it is already an offence if smokers litter the public highway (smoking materials and smoking waste) and they can be subject to a fixed penalty or risk prosecution. The fixed penalty will be £75 unless the Local Authority specifies a different amount.

## Contact

For further information or advice, please contact:

Philip Somarakis

E: [philip.somarakis@bllaw.co.uk](mailto:philip.somarakis@bllaw.co.uk)

T: 01865 254 277

This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed.

Blake Laphorn uses the information it holds about you to contact you where necessary if (for instance) you have registered to attend a seminar that we are hosting or have requested information regarding the services that we provide. We will also use it to administer, support, improve and develop our business and to contact you for your views on our services, as well as to let you know about other products and services which we offer which may be of interest to you. We may send them by post, telephone or fax, email or SMS. If you would rather NOT receive further information by any particular format, or at all, or if your details need updating, please contact Kelly Benfield on 01865 253268 or by email at [Kelly.benfield@bllaw.co.uk](mailto:Kelly.benfield@bllaw.co.uk).

We will not disclose any of your personal identifiable information to any third parties without your express permission to do so, unless we believe that we should do so to comply with the law.