

EXECUTIVE COUNCIL

PUBLIC

Title:	Smoking (Designation of Vehicles) Order 2017.
Paper Number:	12/17
Date:	25 th January 2017
Responsible Director:	Health and Social Services
Report Author:	Attorney General
Portfolio Holder:	The Hon Mike Summers
Reason for paper:	To present to Honourable members the draft Smoking (Designation of Vehicles) Order and request their approval.
Publication:	Yes
Previous papers:	None
List of Documents:	Smoking (Designation of Vehicles) Order

1. Recommendations

Honourable Members are recommended to:

- 1.1 approve the Smoking (Designation of Vehicles) Order; and
- 1.2 approve the making of the Smoking (Designation of Vehicles) Order and its publication in the Gazette.

2. Additional Budgetary Implications

- 2.1 None

3. Executive Summary

- 3.1 Smoking in cars with children present in the car has been shown to be particularly injurious to their health. Prohibiting this will make a significant contribution to children's health as well as encouraging adults to reduce or stop smoking.
- 3.2 The Order is made under section 6 of the Smoking (Prohibition) Ordinance (No. 12 of 2010) which provides that the Governor may designate vehicles to which the smoking

ban applies. This Order will prohibit people from smoking in vehicles when they are carrying children.

- 3.3 The Children Ordinance defines a child as someone who is under 18 and this definition is used in this Order.

4. Background and Links to Islands Plan and Directorate Business Plan/s

4.1 Under the Islands Plan 2014-2018 the Legislative Assembly has committed to “*place renewed emphasis on health prevention and ensure the safety and security of children*”.

4.2 A motion was tabled before the Legislative Assembly requesting for legislation to be made to prohibit smoking in vehicles whilst carrying children.

5. Options and Reasons for Recommending Relevant Option

5.1 The attached Order gives effect to the motion and is the only option required to address the issue.

6. Resource Implications

6.1. Financial Implications

None

6.2. Human Resource Implications

None

6.3. Other Resource Implications

6.3.1 The creation of a new offence may involve additional police and court time in processing possible offenders. The extent of this is unknown and it is to be hoped that the deterrence effect will be significant.

6.3.2 The Chief of Police has advised that a ban on smoking in cars which are carrying children will be difficult to enforce although the introduction of fixed penalty notices in future may make it easier. This said, the deterrent effect is likely to be beneficial and the limitations on enforcement should not prevent us from taking steps intended to prevent harm to children.

7. Legal Implications

7.1 The Smoking (Prohibition) Ordinance (No. 12 of 2010) provides under section 6 that the Governor may designate vehicles to which the smoking ban applies. The attached Order designates vehicles other than public vehicles carrying children as vehicles to which the smoking ban applies. Smoking in public vehicles is already banned under current legislation.

7.2 Section 7 provides that the designation may be for an indefinite or a specified time and further that it may be conditional on the specific circumstances or conditions being

satisfied. The Order provides under paragraph 4 that the designation applies at all times (indefinitely).

7.3 The Ordinance creates the offence and provides for the penalty under section 22. A person who smokes in breach of the smoking ban is guilty of an offence and on conviction is liable to a fine up to level 1 on the standard scale.

8. Environmental & Sustainability Implications

8.1. None

9. Significant Risks

9.1 None

10. Consultation

10.1 This motion was discussed in the Legislative Assembly and at the Executive Council. The motion was also discussed with the Chief of Police and his comments have been included in this paper.

11. Communication

The publication of the paper will be adequate.

21.12.16

SUBSIDIARY LEGISLATION

PUBLIC HEALTH

Smoking (Designation of Vehicles) Order 2017

S.R. & O. No. of 2017

Made: 2017
Published: 2017
Coming into force: on publication

I make this Order under sections 6 and 7 of the Smoking (Prohibition) Ordinance (No. 12 of 2010) on the advice of Executive Council.

1. Title

This Order is the Smoking (Designation of Vehicles) Order 2017.

2. Commencement

This Order comes into force on publication in the *Gazette*.

3. Interpretation

“child” means any person under the age of 18 (*as defined under the Children Ordinance*)

4. Designation of vehicles

Vehicles (other than public vehicles) carrying children are designated as vehicles to which the smoking ban applies.

5. Conditions

This designation applies indefinitely unless revoked.

Made 2017

C. Roberts C.V.O.,
Governor.

EXPLANATORY NOTE
(*not part of the Order*)

This Order is made under section 6 of the Smoking (Prohibition) Ordinance (No. 12 of 2010) which provides that the Governor may designate vehicles to which the smoking ban applies. Section 7 provides that the designation may be for an indefinite or a specified time and further that it may be conditional on the specific circumstances or conditions being satisfied. This Order designates vehicles other than public vehicles carrying children as vehicles to which the smoking ban applies. It further provides under paragraph 4 that the designation applies at all times (indefinitely). Public vehicles are already provided for the Ordinance.

The Ordinance creates the offence and provides for the penalty under section 22. A person who smokes in breach of the smoking ban is guilty of an offence and on conviction is liable to a fine up to level 1 on the standard scale. Section 23 of the Ordinance further provides for the offence for failure to comply with the duty to prevent others from smoking. This section also includes defences.