



Department  
of Health

# Government response to the consultation on smoking in private vehicles carrying children



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# Government response to the consultation on smoking in private vehicles carrying children

**Prepared by**

Department of Health Tobacco Programme

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## Executive summary

In February 2014, Parliament voted in favour of legislation that gave the Secretary of State powers to bring forward regulations to make private vehicles carrying children smokefree. These regulation-making powers are at Section 95 of the Children and Families Act 2014.

The Government will proceed with the introduction of regulations to end smoking in private vehicles carrying children in England and has consulted on draft regulations. The purpose of the consultation was to seek views on the draft regulations before they are made.

This report has been prepared and published by the Department of Health to provide an overview of the responses received and a summary of the main themes that emerged in response to the specific questions asked in the consultation document. It also sets out how we will amend the regulations to reflect the information gathered during the consultation.

# 1. Overview of the consultation

## Purpose of consultation

- 1.1. The Department of Health has responsibility for improving public health, including reducing tobacco use through the implementation of comprehensive tobacco control strategies.
- 1.2. The Department has broad policy objectives to improve public health by:
  - discouraging young people from taking up smoking;
  - encouraging people to quit smoking;
  - helping people who have quit, or who are trying to quit, to avoid relapse back to smoking; and
  - reducing people's exposure to secondhand smoke from tobacco products.
- 1.3. The aims of the regulations on smoking in private vehicles carrying children are to:
  - Protect children from the health harms associated with exposure to secondhand smoke in private vehicles;
  - Encourage action by smokers to protect children from secondhand smoke; and
  - In time, lead to a reduction in health conditions in children caused by exposure to secondhand smoke.
- 1.4. Under the regulations, existing smokefree legislation as set out in the Health Act 2006 will be extended, so that it would be an offence to:
  - smoke in a private vehicle with someone under age 18 present; and
  - fail to prevent smoking in a private vehicle with someone under age 18 present.
- 1.5. The purpose of the consultation was to seek the views of interested people, organisations and businesses on draft regulations to end smoking in private vehicles carrying children and how these provisions would work in practice.
- 1.6. To inform policy development, we asked for information on the practicalities of implementing and enforcing the regulations. We also sought views on the consultation-stage impact assessment and equality analysis which were published alongside the consultation document.
- 1.7. The consultation document, which includes the draft regulations, is available on the Department of Health's website at:  
<https://www.gov.uk/government/consultations/proposals-to-make-private-vehicles-smokefree-when-carrying-children>

## Consultation exercise

- 1.8. On 15 July 2014, the Department of Health launched a six-week public consultation on draft regulations to end smoking in a private vehicle carrying children. Consultation respondents were invited to answer 6 questions (listed at [Appendix A](#)).

## Purpose of report

- 1.9. This report has been prepared and published by the Department of Health. It gives an overview of the consultation responses received and summarises the main themes which emerged. It also sets out the Government's response to the points raised and how the regulations will be amended.



## 2. Overview of responses

2.1. This chapter provides an overview of the responses received to this consultation.

### Collation, analysis and interpretation of consultation responses

2.2. The Department of Health engaged TONIC Consultants Ltd to assist with collating and undertaking initial analysis of consultation responses. The Department of Health has undertaken further detailed analysis and consideration of the issues raised in consultation responses.

2.3. This report provides an overview of all the responses received and reflects the main themes that emerged in response to the specific questions asked in the consultation document.

### Number of responses received

2.4. There were a total of 201 responses to the consultation, with the majority coming from organisations including health organisations and local authorities. The breakdown of the responses is as follows:

- 118 from organisations (59%)
- 61 from members of the public (30%)
- 19 from health or social care professionals (9%)
- 3 from businesses (1%)

2.5. Responses were received via Citizenspace, the Government's consultation portal, via email and also in hard copy by post. **Appendix B** sets out details of the organisations who responded to the consultation with the exception of any who wished to remain anonymous.

2.6. To meet our obligations under the World Health Organization's Framework Convention on Tobacco Control (FCTC), we asked all respondents to our consultations to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry and 11 respondents declared that they had such links.

### Comments on the policy

2.7. **Chapter 3** sets out the responses to the consultation questions. There consultation questions focussed on the detail of the regulations but it was also possible to deduce respondent's general views on the policy intention. Of the responses we received we consider that 78% supported the draft regulations, 15% did not and the remaining responses were unclear.

2.8. Over 90% of the responses from organisations supported the proposed approach set out in the draft regulations. Local authorities and local tobacco control alliances made up the biggest proportion of organisations who responded. The responses from members of the public displayed mixed views on the draft regulations in general terms.

- 2.9. Almost all responses from health or social care professionals supported the policy and none were expressly opposed to it. A few responses came from businesses and all of these opposed the draft regulations although they supported the policy intentions.
- 2.10. There was general agreement among all respondents (whether in support of or opposing the policy) that reducing children's exposure to secondhand smoke is important but there was some disagreement on how to achieve this.
- 2.11. Some felt that regulation was the correct approach, with some wanting to go further and end smoking in private vehicles altogether regardless of the age of the people in the vehicle. Others preferred a behaviour change approach of social marketing and awareness campaigns.
- 2.12. Most responses also highlighted the importance of education in tackling this issue to raise awareness among adults of the harms to children and young people of secondhand smoke, either in addition to or instead of the regulations.
- 2.13. Some responses gave details of surveys conducted during the consultation period. The AA reported a populous poll conducted in August 2014 which showed 70% of their members were in support of the regulations, with women slightly more likely to support the proposals than men and older people more likely to be against the proposals than younger people.
- 2.14. The Tobacco Manufacturers Association conducted a poll of adult smokers in August which found that 12% of those who responded would continue to smoke when there were children in their car and over 70% of smokers felt that it would be either difficult or impossible to enforce the regulations.

### Limitations to elicit representative samples of public opinion

- 2.15. The consultation process was not intended or designed to elicit representative samples of public opinion, instead it sought information, comments and views on the draft regulation, impact assessment and equality analysis.
- 2.16. It is in the nature of open consultation exercises that, generally, it is only those who already have an interest in the subject respond to the questions. The nature of consultation exercises means that respondents are self-selecting, and cannot therefore be considered to be a representative sample of public opinion.

## 3. Responses to the consultation

- 3.1. People were invited to respond to 6 consultation questions in the consultation document and this chapter summarises the key themes that emerged from each of these questions.

### Question 1

The regulations make it an offence to smoke in an enclosed private vehicle when there is more than one person present and a person under the age of 18 is present. This offence would fall on the person smoking regardless of their age. Do you have any comments on this approach?

- 3.2. In general, those who responded to this question were supportive of the proposal that the offence would fall on the person smoking regardless of age. Some respondents were uncomfortable with the idea of criminalising children. Others suggested that in practice it was unlikely that anyone under 18 would be taken to court and questioned the ability of those under 18 to pay large fines in the event of court action.
- 3.3. Some responses suggested that the regulations should include an age-related exemption and some argued for flexibility for those enforcing the provisions. Other responses proposed that the offence should apply when people under age 17 were present to match the minimum driving age. Some felt that more responsibility should rest with the driver in cases where the person smoking was under 18.
- 3.4. There were also suggestions that clarification about when offences would take place would be helpful, for example when the only passenger is under 18 and is smoking and the driver is over 18.

### Government response

- 3.5. We have considered the comments and suggestions about age-related issues. These regulations would be part of the current smokefree laws and so must be consistent with them. The current laws mean that people of any age (including those under age 18) are committing an offence if they smoke in other smokefree place such as on a bus or in a restaurant. We wish to maintain this consistency and so do not intend to introduce an age-related exemption.
- 3.6. We agree with the importance of a flexible approach to enforcement. Enforcement officers currently have discretion in deciding, for example whether to issue a warning or a fixed penalty notice and they will have the same discretion under these regulations. Experience of the current smokefree legislation does not suggest that many cases will result in court action. Decisions will depend on the specifics of each situation. Guidance will provide advice on aspects enforcement officers can consider in making such decisions and on determining when an offence has taken place.

### Question 2

Do you have any comments regarding the proposal for the new offences to apply to caravans and motor caravans when they are being used as vehicles but not when they are being used as homes?

- 3.7. Many respondents felt the regulations should apply equally to motorhomes and caravans. Some felt that it would be an infringement of privacy, arguing more broadly that the Government should not be legislating for what people do in their homes or vehicles.
- 3.8. Responses commented on the potential for the regulations to infringe upon the rights of members of the Gypsy and Traveller community. Some felt that the definitions in the regulations offered sufficient protection; others suggested that further clarification was needed to ensure the regulations would not unfairly prejudice those whose vehicles were also their primary residence. One respondent advised that regardless of whether or not a caravan or motor home is on the road, it remains the home of the Gypsy or Traveller concerned.
- 3.9. Some responses commented that it was already illegal to carry passengers in a caravan while it was being towed and others sought clarification on how the exemption would work in practice.

### Government response

- 3.10. We recognise that these provisions will be of particular relevance to Gypsies and Travellers and intend that children in these communities have the same protections as all children when they are in private vehicles.
- 3.11. The regulations are not intended to regulate smoking in people's homes so the draft regulations included an exemption so that the offences would not apply when a caravan or motor caravan is stationary and not on the road. The meaning of 'road' is such that it includes laybys and verges and it has become clear that there are certain times when these vehicles will be parked on the road and being used as a home. We therefore intend to include an additional exemption in the regulations that applies to caravans and motor caravans that are stationary and on the road but are being used as living accommodation.
- 3.12. This exemption will involve a reasonable assessment of all the circumstances to confirm how the vehicle is being used. Guidance will provide advice on this and how enforcement officers may look for indications that normal living activities are taking place and on use of this exemption more broadly.

### Question 3

Do you have any comments about the intentions regarding the enforcement of the proposed regulations?

- 3.13. Most respondents to this question considered that the police were best placed to manage the enforcement of this legislation. Some considered that it would be unhelpful to put an additional duty on the police. Others pointed to the valuable experience local authorities have in enforcing other smokefree legislation, which could be used to support the police in enforcing this policy, and felt that local authority involvement could reduce the burden on the police.
- 3.14. Responses raised a number of scenarios that would benefit from greater explanation, for example:
- how to assess whether someone was smoking in a moving vehicle;
  - whether it would be possible to see a child in a vehicle or know whether a baby seat was being used;
  - how to verify the ages of people if they give false information; and
  - that there may be confusion between cigarettes and electronic cigarettes
- 3.15. Some responses commented that the regulations would not be enforceable and some suggested that broadening the provisions to cover all vehicles would make enforcement more straight forward. Some felt that the legislation had a high level of public support and would be largely self-enforcing.
- 3.16. Some responses suggested that people may try to hide their cigarettes which could lead to distracted driving. Many respondents were supportive of the level of fine proposed in the smokefree cars legislation; some felt it was too low or too high.

### Government response

- 3.17. We envisage that local police officers will largely take forward enforcement in conjunction with wider functions on road safety. We agree that the existing experience within local authorities will be of particular help to the police in enforcing these regulations. We intend to facilitate sharing this knowledge through guidance and the scenarios and questions in the responses provide helpful suggestions for areas the guidance should cover. We also agree that local authorities have an enforcement role and will be able to assist in building compliance locally.

**Question 4**

Do you want to draw to our attention to any issues on the practicalities of implementing the regulations as drafted?

- 3.18. Most respondents suggested that the regulations should be supported by education and public awareness campaigns to make sure people were aware of the changes to the law as well as the harms from secondhand smoke for children. Some commented that such a campaign was important to secure high levels of compliance and some respondents suggested that an awareness programme would be more successful in reducing smoking in vehicles carrying children than introducing regulations.
- 3.19. In addition to the comments on scenarios that would benefit from greater explanation which are reflected above, some responses mentioned cross country boundaries between England and Wales and England and Scotland and some felt that open top cars should not be exempt from the regulations.
- 3.20. Some consultation responses suggested that the regulations should include a statutory requirement to review their effectiveness as similar requirements have been included in other tobacco legislation.

**Government response**

- 3.21. We agree with the importance of social marketing campaigns. The Department of Health and Public Health England will continue to encourage voluntary action protect children from the harms from exposure to secondhand smoke. This means promoting positive behaviour change among smokers through social marketing campaigns that will help build awareness of the legislation before it comes into force. We also agree that it is important to evaluate tobacco legislation and consider its effectiveness and intend to include a requirement to review the regulations within five years of it coming into force.

**Question 5**

Do you have any additional evidence that ending smoking in private vehicles when children are present would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?

- 3.22. Some responses supplied further information relating to the impact of secondhand smoke and health inequalities. Some advised that lower socio-economic groups have higher prevalence rates for smoking and so considered that the regulations would have a positive effect on health equality. Respondents also cited evidence relating to vehicles or other confined spaces and some provided local level data on the impacts of secondhand smoke.

- 3.23. As set out in response to question 2, some sought confirmation the regulations would not impact unfairly on the Gypsy and Traveller community, commenting that they are ethnic groups for the purpose of the Equality Act.
- 3.24. Some consultation responses raised the possibility that people with mental health conditions could be disadvantaged because of the regulations as they consider that nicotine provides relief from some mental health symptoms but they would not be able to smoke in their vehicle when they otherwise would have done. Some considered that as evidence shows that children who grow up with parents or siblings who smoke are more likely to become smokers themselves then the regulations may also have benefits in reducing the uptake of smoking by young people.
- 3.25. Others provided information that they considered showed that the impact of secondhand smoke has been exaggerated.

### Government response

- 3.26. We carried out an equality analysis to examine the potential impact of regulations to end smoking in private vehicles, which we have revised after considering the consultation responses. As explained earlier, we will include an additional exemption for caravans and motor caravans that are stationary and on the road but are being used as living accommodation.
- 3.27. The regulations should benefit children under 18 years of age who are currently exposed to secondhand smoke in private vehicles in England. We believe that the regulations may have a bigger positive health impact on young people who are from communities where smoking prevalence is higher, and may help to reduce health inequalities caused by the use of tobacco. In our assessment of the impact on equality of this measure, we have concluded that it does not create or increase any unlawful discrimination, harassment or victimisation of any particular group by age, gender, race, religion, ethnicity, sexual orientation or disability. It is a wide-ranging public health measure aimed at protecting the health of all children in England.

#### Question 6

Do you have any evidence that would inform the consultation-stage impact assessment including any evidence or information which would improve any of the assumptions or estimates we have made in the consultation-stage impact assessment?

- 3.28. Some responses considered that the success of the policy should not be measured by how many vehicles are stopped or the number of fines levied. There were a number of proposed positive impacts including reduced levels of exposure to secondhand smoke in vehicles by children, that the legislation would contribute to reshaping social norms around smoking and that there would be reductions in traffic accidents and roadside litter. Responses also considered that the impact assessment should give more detail of the health impact benefits of introducing the policy.

- 3.29. Others considered that the prevalence of adults smoking in vehicles carrying children was lower than stated, meaning the threat from secondhand smoke was lower and the regulations were therefore a disproportionate response to the issue.

### Government response

- 3.30. We prepared a consultation-stage impact assessment for the draft regulations to accompany the consultation document and have prepared a final impact assessment based on the most up to date cost estimates and benefits associated with this policy which have been revised following the consultation.
- 3.31. We have addressed the aspects set out above in more detail in the impact assessment but continue to consider that secondhand smoke is a serious health hazard and that there is no harm-free level of exposure.
- 3.32. Our final impact assessment confirms that this policy does not impact on business. The better regulation framework does not apply to measures that do not regulate business, and the Regulatory Policy Committee does not consider impact assessments in these cases.

## 4. Next steps

- 4.1. We are grateful to all who took the time to respond to the consultation. Secondhand smoke is particularly harmful to children and we intend to introduce regulations to end smoking in private vehicles carrying children. We will amend the regulations that we consulted on to include a requirement to carry out a review and to include an exemption for caravans and motor caravan that are stationary and on the road but are being used as living accommodation.
- 4.2. We intend to lay the regulations as soon as possible and, subject to Parliamentary approval, we anticipate the new offences would come into force on 1 October 2015.



## Appendix A - Smoking in private vehicles carrying children - consultation questions about the proposed regulations

1. The regulations make it an offence to smoke in an enclosed private vehicle when there is more than one person present and a person under the age of 18 is present. This offence would fall on the person smoking regardless of their age. Do you have any comments on this approach?
2. Do you have any comments regarding the proposal for the new offences to apply to caravans and motor caravans when they are being used as vehicles but not when they are being used as homes?
3. Do you have any comments about the intentions regarding the enforcement of the proposed regulations?
4. Do you want to draw to our attention to any issues on the practicalities of implementing the regulations as drafted?
5. Do you have any additional evidence that banning smoking in private vehicles when children are present would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?
6. Do you have any evidence that would inform the consultation-stage impact assessment including any evidence or information which would improve any of the assumptions or estimates we have made in the consultation-stage impact assessment?

## Appendix B – Responses to the consultation

Note: Those respondents who indicated that they wanted their response to remain anonymous are not included in this list.

<b>Name of Organisation</b>	<b>Type of Organisation</b>	<b>Other Type of Organisation (described)</b>
Action on Smoking and Health	Non-Government Organisation - Health Related	
ASH Wales	Non-Government Organisation - Health Related	
Association of North East Councils / Making Smoking History in the North East Partnership	Other	Regional tobacco control partnership in the North East of England
Association of Respiratory Nurse Specialists (ARNS)	Other	Association of Respiratory Nurse Specialists
Association of school and college leaders (ASCL)	Other	Trade union and professional association
Barnsley Metropolitan Borough Council	Local Authority	
BCUHB	NHS Organisation	
Black Country Tobacco Control Alliance	Local tobacco control alliance	
Bristol City Council	Local Authority	
British Dental Association	Other	Professional association of dentists in the UK
British Dental Health Foundation	Non-Government Organisation - Health Related	
British Heart Foundation	Other	Charity
British Lung Foundation	Other	Charity
British Thoracic Society	Other	British Thoracic Society is a membership organisation for respiratory healthcare

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		professionals
Cambridgeshire County Council	Other	Individual response from Director of Public Health, Cambridgeshire County Council
Cancer Research UK (CRUK)	Non-Government Organisation - Health Related	
Chartered Institute of Environmental Health (CIEH)	Non-Government Organisation - Health Related	
Cheshire and Merseyside Tobacco Alliance (CMTA)	Local tobacco control alliance	
Chichester District Council	Local Authority	
Child health improvement programme and Sexual health team, Kent County Council	Local Authority	
City of Bradford Metropolitan District Council	Other	Yorkshire and Humber Public Health Speciality Registrars
Community Law Partnership	Other	Solicitor firm - specialising in housing and incorporates Travellers Advice Team
D-MYST The Agency	Other	On behalf of a youth advocacy group
Deacon Road Dental	Non-Government Organisation - Health Related	
Derwent Valley Partnership	Local Authority	
Dudley Metropolitan Borough Council	Local Authority	
Durham County Council	Local tobacco control alliance	Chair Smokefree county Durham Tobacco Alliance
Faculty of Public Health	Non-Government Organisation - Health Related	
Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST)	Other	Represents adults who choose to consume tobacco
FRESH – Smoke Free North East	NHS Organisation	

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Gateshead Council	Local Authority	
Gateshead Smokefree Alliance	Other	Smokefree Alliance
Gateshead, South Tyneside and Sunderland Stop Smoking Service	NHS Organisation	
Hampshire County Council Public Health	Local Authority	
Hartlepool Borough Council	Local Authority	
Hartlepool Smoke free Alliance	Local tobacco control alliance	
Healthwatch South Tyneside	Non-Government Organisation - Children Related	
Heart of Mersey (HoM) part of the Health Equalities Group	Other	Regional cardiovascular health charity
Hinckley and Bosworth Council	Other	Local authority regulatory services department
Kent Public Health Department	Local Authority	
Lancashire County Council	Local Authority	
London Borough of Newham	Local Authority	
London Borough Tower Hamlets Public Health	Local tobacco control alliance	
Lullaby Trust	Non-Government Organisation - Health Related	
Making Smoking History in the North East Partnership	Other	Regional tobacco control partnership in the North East of England
Middlesbrough Council	Local Authority	
Middlesbrough Tobacco Control Alliance	Local tobacco control alliance	
Newcastle City Council	Local Authority	
Newcastle Council for Voluntary Service	Non-Government Organisation - Other	provides support and development to local groups and organisations

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Norfolk County Council Public Health	Local Authority	
North Lincolnshire Smokefree Alliance	Local tobacco control alliance	
Northern England Strategic Clinical Network	NHS Organisation	
Nottinghamshire health and Wellbeing Board	Local Authority	
Nottinghamshire's Strategic Tobacco Alliance Group (STAG)	Local tobacco control alliance	
Portsmouth City Council	Local Authority	
Public Health Directorate, Haringey Council	Local Authority	
Public Health Dorset	Local Authority	
Public Health Dorset	Local tobacco control alliance	
Public Health, Devon County Council	Local tobacco control alliance	
Public Health, West Sussex Council	Other	Local Authority Public Health Directorate
Redcar & Cleveland Borough Council	Local Authority	
Redcar & Cleveland Borough Council	Local tobacco control alliance	
Rochdale Borough Council - Health and Wellbeing Board	Local Authority	
Rotherham Tobacco Alliance	Local tobacco control alliance	
Royal College of Paediatrics and Child Health (RCPCH)	Non-Government Organisation - Health Related	
Royal College of Physicians	Other	
Royal College of Psychiatrists (RCPsych)	Other	Professional body responsible for education and raising standards in psychiatry.

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Salford City Council	Local Authority	
Scotswood Area Strategy	Other	Charity set up to improve the Scotswood area
Sefton Health and Wellbeing Board & Sefton's Tobacco Alliance	Other	Local Authority & Local Tobacco Control Alliance
Sheffield Tobacco Control Programme Accountable Board	Local Authority	
Shropshire Council	Local Authority	
Smoke Free Newcastle	Local tobacco control alliance	
Smoke free Northumberland Alliance	Local tobacco control alliance	
Smokefree Lincolnshire Alliance	Local tobacco control alliance	
Smokefree North East Lincolnshire	Local tobacco control alliance	
Smokefree Somerset Alliance	Local tobacco control alliance	
Smokefree South West	NHS Organisation	
South Tyneside Clinical Commissioning Group	NHS Organisation	
South Tyneside Council	Local Authority	
South Tyneside Council	Local Authority	
South Tyneside Council	Local Authority	
South Tyneside Tobacco Control Alliance	Local tobacco control alliance	
St Helens Metropolitan Borough Council	Local Authority	
Stockton Council	Local Authority	
Stockton Tobacco Control Alliance	Local tobacco control alliance	
Stop smoking service	Non-Government Organisation - Health Related	
Sunderland City Council	Local Authority	
Sunderland Tobacco Alliance	Local tobacco control alliance	

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Sure Start Fenham and North Fenham Children's centre	Other	NGO children related
Swindon Smokefree Alliance	Local tobacco control alliance	
Tameside MBC	Local tobacco control alliance	
The Association of Directors of Public Health (ADPH)	Non-Government Organisation - Health Related	
The Automobile Association (AA)	Other	Motoring organisation
The Imported Tobacco Products Advisory Council (ITPAC)	Other	Tobacco importers' representative organisation
The Newcastle upon Tyne Hospitals NHS Foundation Trust	NHS Organisation	
The Royal College of Radiologists	Non-Government Organisation - Health Related	
The smokefree cars advocacy campaign group (New Zealand)	Non-Government Organisation - Health Related	
The Tobacco Manufacturers ' Association (TMA)	Other	Trade association for tobacco manufacturers
Thurrock Council	Local Authority	
Tobacco Free Futures (TFF)	Other	Social enterprise
Tobacco free Luton	Local Authority regulatory services department	
Tower Hamlets Tobacco Alliance	Local tobacco control alliance	
Trading Standards Institute	Other	UK professional body for trading standards officers
UK Centre for Tobacco and Clinical Sciences Building	University or research organisation	
UK Health Forum	Other	UK centre for prevention of non-communicable disease
Warrington Borough Council	Local Authority	
Warwickshire County Council	Other	LA & Local Tobacco Control Alliance

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Wigan & Leigh Tobacco Control Alliance	Local tobacco control alliance	
Wiltshire Council	Local Authority	
Worcestershire Tobacco Control Alliance	Local tobacco control alliance	