

# **SMOKING PROHIBITION (CHILDREN IN MOTOR VEHICLES) (SCOTLAND) BILL**

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## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

### **CONTENTS**

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill introduced in the Scottish Parliament on 15 December 2014:

- Explanatory Notes;
- a Financial Memorandum;
- Jim Hume's statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 58-PM.



## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Non-Government Bills Unit on behalf of Jim Hume MSP, the member who introduced the Bill. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **OVERVIEW OF THE BILL**

3. The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill prohibits smoking by an adult in any private motor vehicle in the presence of a child, while that vehicle is in a public place. There are exceptions to the prohibition which take account of members of the Travelling community and holiday-makers who use their vehicles as permanent or temporary homes. Breach of the prohibition is made a criminal offence. A fixed penalty notice regime is provided as an alternative means of enforcement.

### **COMMENTARY ON SECTIONS**

#### **The structure of the Bill**

4. The Bill has six sections and a schedule. Sections 1 and 2 comprise the main provisions of the Bill. Section 3 deals with interpretation, section 4 with regulations, section 5 with commencement and section 6 sets out the Bill's short title.

5. The schedule sets out the details of the fixed penalty notice (FPN) regime.

#### **Section 1 – Offence of smoking in a motor vehicle with children**

6. Section 1 sets out the offence created by the Bill. With one exception (and subject to the defence contained in subsection (4)), the offence is committed in any situation where an adult (i.e. person aged 18 or over) smokes in a private motor vehicle when a child (i.e. person under the age of 18) is also present in the vehicle and the vehicle is in a public place.

7. The exception is set out in subsection (2). Read together with subsection (3), this provides that the offence is not committed if the vehicle is designed or adapted for human habitation – a motorhome for example – and is parked, and is being used, for the purpose of providing human habitation for at least one night (for example, by a member of a Travelling community, or by a holiday-maker).

8. Subsection (4) creates a defence for a person who is charged with an offence under subsection (1) if that person can show that, at the time the smoking occurred, he or she reasonably believed all the other occupants of the vehicle to be adults (i.e. persons aged 18 or over). In such circumstances, a FPN could still be validly issued, but it would be open to the alleged offender to refuse to pay the penalty and rely on the defence in any consequent court proceedings.

9. Subsection (5) deals with the penalty for committing the offence in subsection (1) which, on summary conviction, is a fine not exceeding level 3 on the standard scale (currently £1,000). In practice, FPNs will normally be offered as an alternative to prosecution therefore any such fine is only likely to be incurred if a FPN was not paid, a decision was then made to prosecute the person concerned for the section 1 offence, and the person was then convicted in the Sheriff or Justice of the Peace Court (which would decide the amount of the fine, up to the maximum allowable, according to the facts and circumstances).

## **Section 2 – Fixed penalties**

10. This section introduces the schedule to the Bill, which describes the arrangements for fixed penalties for offences under section 1. The provisions of the schedule are described in greater detail below.

## **Section 3 – Interpretation**

11. Section 3 sets out definitions of key terms used in the Bill. Reading these definitions together means that “private motor vehicle” excludes motor cycles, scooters and mobility aids which are steered by means of handlebars attached to the front wheel. Public transportation vehicles (including taxis and private hire vehicles) are also excluded since smoking in them is already an offence under the Smoking, Health and Social Care (Scotland) Act 2005, which prohibits smoking in enclosed public spaces. Several of the definitions contained in section 3 (“car”, “private motor vehicle” and “public transportation vehicle”) are based on those in the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (made under the 2005 Act). These definitions are used to define the scope of the private vehicles exemption under the 2005 Act/2006 Regulations, and are also used to determine what is a “private motor vehicle” falling within the scope of the offence under section 1 of the Bill.

12. Section 3(3) allows the Scottish Ministers to alter, by regulations, certain definitions contained in section 3, namely “car”, “private motor vehicle” and “public transportation vehicle”. As stated above, these definitions are based on counterparts in the 2006 Regulations which are amendable by subordinate legislation. It is desirable, therefore, to provide powers for Ministers to be able to adjust the relevant definitions in this Bill so that an alignment can be maintained with corresponding definitions under the 2005 Act.

## **Section 4 – Regulations**

13. Section 4 provides that regulations made under section 3(3) or paragraph 8 or 9 of the schedule are subject to the affirmative procedure (that is, they require approval by resolution of the Parliament).

## **Section 5 – Commencement**

14. Section 5 provides for the commencement of the Bill. Sections 3 and 4, this section and section 6 come into force the day after Royal Assent, as do paragraphs 8 and 9 of the schedule.

15. Paragraph 8 of the schedule allows the Scottish Ministers to make regulations about the application of fixed penalties and the arrangements for accounting for income received, while paragraph 9 includes the power to make provision about methods of payment. Commencing these paragraphs immediately after Royal Assent will allow regulations to be put in place in advance of any FPNs being issued.

16. The remaining provisions come into force at the end of the period of six months beginning with the day of Royal Assent. The six month period is designed to allow time to publicise the ban, to carry out any necessary training and to update administrative systems in the Police, Court and Procurator Fiscal services.

## **Schedule – Fixed penalty for offences under section 1**

17. The schedule makes detailed provision about FPNs. Paragraphs 1 and 2 define the circumstances and timescales in which FPNs may be given. The FPN is an alternative to prosecution – that is, it allows the offender to pay a modest amount in return for avoiding any risk of a criminal conviction and a potentially much higher fine. The FPN may not be given more than 14 days after the day on which the offence is believed to have been committed. This 14 day period will allow time for any further investigation into the apparent offence – such as checking evidence of the ages of those in the vehicle.

18. Paragraph 3 prescribes the content of the FPN, which must specify the date and describe the circumstances of the alleged offence. It must also state the amount of the penalty, details of when and how it can be paid and the consequences of failing to do so (i.e. the risk of prosecution). The FPN must also provide contact details for a person to whom representations about it may be made. This is to allow the person to whom it is issued to challenge the FPN if, for example, he or she denies committing the offence or believes there were extenuating circumstances.

19. Paragraph 4 sets the amount of the fixed penalty as £100 and the period in which it must be paid as 29 days. The 29-day period allows a full four weeks to pay the FPN, not including the day on which the offence was committed. Both the amount and the period are variable by regulations under paragraph 9 (see below).

20. Paragraph 5 sets out the consequences of payment and non-payment of a FPN. It provides that no proceedings (i.e. prosecution) can be commenced within the 29-day period, nor may proceedings be commenced or continued after that period has ended if payment has been made during it.

21. Paragraph 6(1) provides for the withdrawal of a FPN prior to commencement of proceedings where a constable considers that it ought not to have been given – including on the basis of representations made by the person to whom the FPN was issued. Paragraph 6(2)

































