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

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DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of Jim Hume MSP. Its purpose is to assist consideration by the Delegated Powers and Law Reform Committee, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of provisions in the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill conferring powers to make subordinate legislation. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill Provisions

2. Section 1 creates a new criminal offence committed by an adult who smokes in a private motor vehicle containing a child while that vehicle is in a public place. Subsections (2) and (3) provide that the offence is not committed where the vehicle has been designed or adapted for human habitation, has been parked for the purpose of providing such accommodation for not less than one night and is being used for that purpose. Subsection (4) provides a defence where the adult in question reasonably believed all other occupants of the vehicle to be adults. Subsection (5) contains the maximum penalty on summary conviction.

3. Section 2 introduces the schedule, which contains a fixed penalty scheme applicable to offences under the Bill and which constitutes an alternative to prosecution.

4. Section 3 contains definitions, including a power to alter certain of these by subordinate legislation. Section 4 sets out the procedure for all enabling powers in the Bill, including two further powers in the schedule. Sections 5 and 6 cover commencement and short title.

Rationale for Subordinate Legislation

5. The Bill contains three powers to make subordinate legislation which are delegated to the Scottish Ministers. These powers are new, and no existing powers are amended or repealed. The powers are explained in detail in the following paragraphs, but in considering if and how provision should be set out in subordinate legislation rather than on the face of the Bill the member has had regard to:
This document relates to the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill (SP Bill 58) as introduced in the Scottish Parliament on 15 December 2014

- the need to strike a balance between the importance of ensuring full Parliamentary scrutiny of the core provisions of the Bill and making proper use of Parliamentary time;
- the possible need to change provisions in a way which responds to changes in the wider legislative environment relating to smoking;
- enabling a flexible and responsive approach on matters of administrative detail;
- the need for flexibility to respond to changes in the value of money over time.

DELEGATED POWERS

Section 3(3)- Alteration of definitions

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure

Provision

6. Section 3(3) confers power on the Scottish Ministers to alter certain of the definitions set out in section 3(1). These are the definitions of “car”, “private motor vehicle” and “public transportation vehicle”.

Reason for taking power

7. These definitions are based on counterparts in regulation 1(2) of the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (S.S.I. 2006/90) (“the 2006 Regulations”). The 2006 Regulations were made under the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”) and give effect to the ban on smoking in public places contained in Part 1 of that Act. The provisions of the 2005 Act and 2006 Regulations apply regardless of the presence of children on the relevant no-smoking premises. Under schedule 2 paragraph 8 to the 2006 Regulations, private vehicles are exempt from the ban introduced by the 2005 Act. Most private vehicles would in any case require to be excluded from the ban by section 4(2) and (4) of the 2005 Act.

8. The aim of this Bill is to introduce a smoking ban in private motor vehicles when children are present. There is no intention to encroach into areas which are already covered by the regime under the 2005 Act and 2006 Regulations. At the same time, the policy is to cover all motor vehicles which would fall within the private vehicles exemption under that regime, provided that none of the specific exceptions in the Bill apply. For this reason, it is important to be able to align definitions in this Bill with corresponding definitions under the 2005 Act (currently contained in the 2006 Regulations).

9. This could of course be achieved by further primary legislation to reflect any changes in the 2005 Act/2006 Regulations regime. However, given that the 2006 Regulations may be amended or replaced by subordinate legislation, it was considered appropriate to give the Scottish Ministers the power to adjust corresponding definitions in this Bill by the same means.
Choice of procedure

10. Given that the power enables the amendment of primary legislation, the affirmative procedure is considered appropriate for its exercise.

Schedule paragraph 8- Application of fixed penalties and preparation of accounts

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Provision

11. Paragraph 8 of the schedule enables the Scottish Ministers to make provision about the application of fixed penalties paid under the Bill, and the preparation and publication of accounts relating to these. Under paragraph 3(2)(b) and (3), fixed penalties are to be paid to the relevant clerk of court.

Reason for taking power

12. This power will enable Ministers to control the spending of fixed penalties in the public interest. For example, Ministers may be content for the courts to retain a proportion of the fixed penalties received by them to cover their administrative costs, subject to satisfactory accounting.

Choice of procedure

13. These are considered to be largely matters of administrative detail, while provision about the application of fixed penalties may involve issues regarding the use of public resources which Ministers are best placed to judge at any given time. Given the latter aspect, the affirmative procedure is regarded as appropriate.

Schedule paragraph 9- Payment of fixed penalty

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Provision

14. Paragraph 9 of the schedule confers power on the Scottish Ministers to substitute a different sum for the fixed penalty specified in paragraph 4(1) (£100); to substitute a different period for payment from that specified in paragraph 4(2) (29 days) and to make provision about payment methods.

Reason for taking power

15. The first power is required to keep pace with changes in the value of money or the wider economic environment. Changes to the payment period might also be used to reflect economic changes such as alterations in the frequency of typical salary payments. Provision about payment
methods could be used to reflect the current and future financial processes within the courts, which may in turn move in response to changes in payment technologies.

**Choice of procedure**

16. Given the potential level of interest in the amount of the penalty and the fair and efficient operation of the fixed penalty system, the affirmative procedure is considered to be appropriate.
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