

Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill

Police Scotland

1. Do you support the Bill? Please provide reasons for your position.

Police Scotland supports the Bill as a means of addressing the public health issue presented by smoking in vehicles in the presence of children. This position is supported by the evidence presented in relation to the negative health impacts of passive smoking, as described in the accompanying consultation documents. Police Scotland would, however, question the decision to make the police solely responsible for enforcement.

2. Do you think the Bill (if enacted) would achieve its aim of protecting children from the effects of second-hand smoke and their health? Please provide an explanation for your answer.

Police Scotland does not hold the necessary expertise in respect of such matters to judge whether this would be the case. Clearly the evidence submitted suggests this to be the case and Police Scotland is not in a position to submit evidence to the contrary. The introduction of legislation prohibiting smoking in public places has clearly had a positive affect on smoking habits and it could be argued that this Bill represents a natural extension to that original legislation.

3. Is there anything in the Bill you would change? If yes, please provide more details.

See response to question 4.

4. Who do you think should have responsibility for enforcing the proposed legislation and why?

The Bill proposes that the police will be the sole enforcement authority and it is suggested that this needs to be carefully considered. As a public health issue is it proportionate or necessary to justify the use of limited police resources to enforce it? The proposed legislation will only have an impact on public health and, whilst commendable, does not sit comfortably within the Police Scotland Policing Plan and the Force Priorities.

Police Scotland would therefore question the use of police resources to enforce this legislation and their diversion from work focusing on the Force Priorities such as Organised Crime and Counter Terrorism, for example. The work of Road Policing officers in particular is focused on reducing road casualties and tackling road crime and whilst this is a broad remit, there is little, if any, room for matters of public health.

This position was articulated to Scottish Government during the consultation period, along with an acceptance that by the very nature of the offence the police may have to take some responsibility for enforcement. Police Scotland did, however, suggest that there may be other more proportionate options; including extending the role of authorised officers of the council (as legislated

under existing statutory measures for tobacco control) to deal with the behaviours described, in order that Local Authorities may share responsibility for enforcement. Enforcement by Local Authority officers could be undertaken in the vicinity of schools, for example, where children are dropped and collected by car.

In addition, Police Scotland would highlight other potential consequences of the legislation as any such action taken by the police in this context has broader implications for the parent or guardian of a person under 18 than perhaps envisioned by the Bill. Following detection of an offence the envisaged outcome would also include the raising of a Child Concern Form which would be shared with the Named Person. It is suggested this approach would support GIRFEC principles and the Children and Young Persons (Scotland) Act 2014 in terms of the broader wellbeing of children and young persons and would also apply to any other 'Corporate Parent' who was given power to enforce the legislation, i.e. Local Authorities.

Finally, the potential for third-party reporting of such behaviour is also raised by Police Scotland. The legislation may prompt members of the public to report observed offences to the police, necessitating a police investigation in to the circumstances. Given the nature of the offence and the 'children' factor it is reasonable to assume that well-meaning members of the public may wish to report such matters to the police. Whilst the probable level of third-party reporting cannot be gauged it again raises questions as to the whether the use of limited police resources to investigate a public health matter of this kind is necessary and proportionate.

In summary, Police Scotland would contend that the potential impact on the police, as the sole enforcement authority, may be more than that first envisioned by the Bill.

5. What type of vehicles do you think should be exempt from the legislation and why?

Police Scotland agrees with the exemptions as outlined in the legislation.

6. What is your view on the Bill's provision for a defence that the person smoking could not have reasonably know that the other occupants of the vehicle were under 18?

Police Scotland agrees with the proposed defence provision.

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