

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

## **MEMORANDUM BY THE SCOTTISH GOVERNMENT TO THE HEALTH AND SPORT COMMITTEE**

### **Introduction**

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Health and Sport Committee of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill, which was introduced by Jim Hume MSP on 15 December 2014.

### **Background**

2. The aim of the Bill is to prohibit smoking in private vehicles carrying a child or young person under the age of 18. This would create the new offence for an adult aged over 18 to smoke in a private motor vehicle carrying a child aged under 18 when the vehicle is in a public place. There would be an exemption for vehicles which function as people's homes while such vehicles are parked for not less than one night and are being used in that function. The offence would not apply to motor cycles. The Bill provides for the defence that the person charged reasonably believed all other occupants of the vehicle to be over 18.

3. This offence would be subject to a fixed penalty notice of £100. The offence would be liable on summary conviction to a fine not exceeding level 3, or £1000, on the standard scale. In the Policy Memorandum which accompanies the Bill, Police Scotland are designated as the responsible enforcement agency using existing powers to stop vehicles. The Policy Memorandum also states that it is envisaged that the legislation would be enforced as part of routine monitoring of traffic offences, in the same way as legislation on seatbelts and the use of mobile phones is enforced.

### **Discussion**

4. The Scottish Government's latest Tobacco Control Strategy, *Creating a Tobacco-Free Generation*, was published in March 2013. This included a commitment to raise awareness of the risks of smoking in homes and cars with children present and to support behavioural change. The strategy did not commit to bring forward legislation to ban smoking in cars with children, but neither did it rule it out for the future. In March 2014 the Scottish Government launched its *Take it Right Outside* campaign to encourage adults to smoke outdoors away from children. Alongside that, a target was set to reduce children's exposure to second-hand smoke from 12% to 6% by 2020.

5. Building on this, a proposal to ban smoking in cars carrying children was included in the recent Scottish Government Consultation on regulating e-cigarettes and strengthening tobacco control. That Consultation covered proposals under consideration for inclusion in the forthcoming Public Health Bill, announced in the Scottish Government's Programme for Government 2014-15. Inclusion in the Consultation was on the basis that this is an opportune time for the Government to

legislate on this matter, especially in light of the level of public support. A YouGov poll commissioned by ASH Scotland in March 2014 suggested that around 75% of Scottish adults agreed with a ban on smoking in cars carrying children. The Consultation launched on 10 October 2014 and ran until 2 January 2015.

6. There are some differences between the Member's Bill and what the Scottish Government would propose; these are set out below:

#### *Enforcement*

7. One of the key issues with the proposals to ban smoking in cars with children is enforcement. The accompanying documents for the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill make clear that Police Scotland would enforce the legislation. In contrast, the Scottish Government is open to a joint enforcement approach between Police Scotland Local Authority Environmental Health Officers.

8. While Police Scotland did not submit a response to Mr Hume's Consultation, they submitted a response in the form of a letter to the Scottish Government's Consultation and officials have met with representatives. They would favour the option of a joint enforcement approach with Local Authority agents. The Royal Environmental Health Institute of Scotland also support such an enforcement approach. Scottish Government officials will be continuing consultation with Police Scotland and Local Authorities.

#### *Exemptions*

9. The Scottish Government agrees in principle with the Bill's proposal to exempt vehicles which are parked and being used for human habitation and to exempt motor cycles, although some adjustment may be desirable. However, the Scottish Government would also propose an exemption which has the effect of excluding convertibles with the roof fully down and stowed away, as the air exchange would be much greater than in a fully or partially enclosed vehicle and so the effects of second-hand smoke would be minimal. The Department of Health and Welsh Assembly regulations also propose this exemption.

#### *Defence*

10. The Bill provides for the defence that the person smoking could not have reasonably known that the other occupants of the vehicle were under 18. Scottish Government would not propose such a defence as it is difficult to envisage how it could be used in practice.

#### *Commencement*

11. The Scottish Government would propose a change to allow Ministerial power to determine commencement date of the Bill, to allow an orderly start date which can be coordinated with any public information activity

### **The Bill and Other Legislation**

12. The Department of Health laid regulations for similar proposals on 17 December 2014 and the Welsh Assembly has obtained a Legislative Consent Motion to bring forward its own regulations. These measures will come into force on 1 October 2015. The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill has been introduced in advance the Scottish Government's own Public Health Bill and this gives the Committee an early chance to scrutinise the policy. In these circumstances, the Government sees merit in progressing the proposals in the context of this Bill, rather than along with the other measures in the forthcoming Public Health Bill.

### **Financial Implications**

13. If the Bill is passed, the Scottish Government would need to fund public information activity to raise awareness of the new legislation. This could build on the existing *Take it Right Outside* campaign which launched in March 2015. It is not possible to provide an accurate estimate of the cost of such activity, as this would depend upon the marketing strategy and creative approach decided upon. However, it is envisaged that the public information activity required would be comparable with that used to publicise the change in the drink-driving limit. The Financial Memorandum accompanying Mr Hume's Bill estimates the cost of a high-profile campaign to be £250,000-300,000.

14. There may also be enforcement costs associated with the Bill. It is envisaged that such legislation would be largely self-enforcing, following a comprehensive information campaign to alert the public to a change in legislation. In the Financial Memorandum accompanying the Bill, it is estimated that around 200 Fixed Penalty Notices would be issued annually for this offence.

15. If the Scottish Government's proposed amendment to the enforcement of the legislation is successful, there would likely be additional costs for Local Authorities. If Local Authorities enforced this measure as part of their day-to-day duties, it is again envisaged that there would be minimal additional operational costs, however there would be administrative costs associated with issuing Fixed Penalty Notices.

16. Paragraph 8(a) of the Schedule to the Bill allows Ministers to make regulations about the application of fixed penalty notices paid under this schedule.

### **Consultation**

17. Jim Hume MSP consulted on these proposals between 28 May 2013 and 30 August 2013. The consultation received 161 responses: 88 were submitted directly to the member and 73 to an online consultation conducted by British Heart Foundation. 84% of respondents indicated support for the proposal. The Scottish Government consulted on a range of measures to regulate electronic cigarettes and strengthen tobacco control, including banning smoking in cars with children, between 10 October 2014 and 2 January 2015. External analysis of the responses has not yet been conducted.

18. The issue of enforcement is one which has been raised during Scottish Government consultation with Police Scotland; it is discussed more fully above.

### **Scottish Government Position**

19. The Scottish Government supports the principles of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill. However, there are a number of differences between the proposals in this Bill and those of the Scottish Government, namely the lack of exemption for convertibles, the inclusion of a defence, the provision for automatic commencement and most significantly delegating Police Scotland as the sole enforcement agency. Ministers intend to work with the member in charge and the Committee to propose amendments to these aspects of this Bill.

### **Conclusion**

20. The Scottish Government recognises the harmful effects of second-hand smoke on bystanders, particularly upon children and young people and in enclosed spaces, such as vehicles. It also recognises the strong public, public health stakeholder and parliamentary support for these proposals and is committed to legislation on this matter. This Bill would build upon the Scottish Government's targets to halve the number of children exposed to second-hand smoke by 2020 and to create a tobacco-free generation by 2034. The Bill also contributes to the National Outcome of ensuring every child has the best start in life. The Scottish Government therefore supports the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill.

Population Health Improvement Directorate  
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