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SPICe Briefing

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

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The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill sets out measures to prohibit smoking in private motor vehicles containing children when the vehicle is in a public place

This briefing provides information on exposure to second hand smoke and examines the main provisions of the Bill.



The Scottish Parliament
Pàrlamaid na h-Alba

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EXECUTIVE SUMMARY

The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill creates a new criminal offence for any adult (aged 18 or over) who smokes in a private motor vehicle in the presence of a child (under 18 years of age) while that vehicle is in a public place. The aim of the Bill is to protect children from second-hand smoke in a confined space i.e. private vehicle.

The Bill also seeks to contribute to the wider issue of smoking and work towards a smoke-free Scotland by engendering a culture shift and an awareness of the harm caused by smoking in the presence of children.

International research has established the health risks from exposure to second-hand smoke. Public health groups state that there is no safe level of exposure to SHS, so smoke-free environments are the only effective way to protect against the harmful effects of exposure to SHS. Due to physiological factors, children exposed to SHS are at increased risk of contracting a range of respiratory diseases.

The Bill applies to private motor vehicles. Vehicles used for public transportation (including taxis and private hire vehicles) are already covered by the smoking ban (Smoking, Health and Social Care (Scotland) Act 2005). The provisions within the Bill also apply to convertibles with the roof down, but motor cycles, mopeds, powered bicycles, scooters and mobility aids are excluded. Subject to meeting certain criteria, vehicles used as people's homes are exempt from the Bill.

Police Scotland would be responsible for enforcing the legislation and offences will be triable under summary procedure with a maximum fine of level 3 on the standard scale (currently £1,000). Police officers would also have the option of issuing a fixed penalty notice as an alternative to prosecution.

According to the Financial Memorandum the costs to Police Scotland for enforcing the legislation and the Court Service for processing the legislation would be minimal, although these actual costs were not stated in the Financial Memorandum.

INTRODUCTION

The [Smoking Prohibition \(Children in Motor Vehicles\) \(Scotland\) Bill](#) was, together with the [Policy Memorandum](#) and [Explanatory Notes](#), including the Financial Memorandum introduced in the Scottish Parliament on 15 December 2014 by Jim Hume MSP. The Policy Memorandum to the Bill sets out the policy objectives as

“creating a new criminal offence for any adult (aged 18 or over) who smokes in a private motor vehicle in the presence of a child (under 18 years of age) while that vehicle is in a public place.”

The aim of the Bill is to protect children from second-hand smoke in a confined space i.e. private vehicle.

SMOKING

There is much international research which shows that smoking, including second-hand smoke, of tobacco products is harmful to health. Second-hand (passive) smoking is where a person inhales smoke directly from the burning end of a cigarette (or other device) being smoked by another person, or inhales smoke exhaled by that other person. Second-hand smoke (SHS) contains thousands of known chemicals, at least 250 of which are known to be carcinogenic or otherwise toxic (World Health Organization, 2011). The pro-smoking groups for example the Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST) believe that the “scientific evidence” is not conclusive. FOREST believes that a clear causal connection between exposure to SHS and illness in non-smokers has not been established.

Second-Hand Smoke and Health

There is research to show the negative health impacts of SHS. For example, more than 600,000 deaths per year worldwide are caused by second-hand smoke (World Health Organization, 2011). There are increased risks of heart disease, respiratory diseases and cancer (World Health Organization, 2011). The World Health Organization states that there is no safe level of exposure to SHS and so it believes that smoke-free environments are the only effective way to protect against the harmful effects of exposure (World Health Organization, 2009).

Due to physiological factors, children exposed to SHS are at increased risk of contracting a range of respiratory diseases. Children’s developing respiratory tract is generally more sensitive to environmental pollutants. Children have a higher breathing frequency and inhale more air per body volume compared with adults. This results in a higher rate of exposure compared with adults in the same environment.

[Action on Smoking and Health Scotland \(ASH Scotland\)](#) , 2013, identified that children —

“have smaller airways, faster rates of respiration and immature immune systems. Because of differences in respiration, infants inhale increased quantities of particulates, and through greater hand to mouth contact can absorb quantities through ingestion.”

Research has shown that there are direct links between a child’s exposure to second-hand smoke and a range of illnesses. These include sudden infant death, asthma, respiratory infections and conditions including bronchitis and pneumonia, meningitis and middle ear disease (Royal College of Physicians, 2010).

Exposure to SHS in vehicles involves higher concentrations of health-threatening chemicals than in larger, open areas (Amos et al, 2008).

This point is explained in the Scottish Government's latest tobacco control strategy, '[Creating A Tobacco-Free Generation: A Tobacco Control Strategy for Scotland](#)', which was launched in March 2013. The publication states:

“If someone smokes inside a car, the concentration of second-hand smoke increases very quickly due to the confined space of the vehicle. Even if windows are opened or air conditioning is used, the harmful particles remain in the atmosphere long after the visible smoke has disappeared [...]

Exposure to second-hand smoke in cars is harmful to all occupants, but especially to children who have little or no control over their environment.”

Levels of second-hand smoke will vary depending on the ventilation conditions such as air conditioning or opening of windows. Researchers have examined concentrations of airborne fine particulate matter, PM_{2.5}, present in vehicles under a range of driving conditions (i.e. with the windows open or the use of air conditioning) to investigate the exposure of SHS in vehicles. PM_{2.5} is used as a marker for SHS, but is likely to underestimate the true health hazard of SHS because it does not take account of all the other harmful toxins and pollutants. A study was undertaken in 2012 in Glasgow and the east of England to measure levels of fine particulate matter in the rear passenger area of cars where smoking does and does not take place during more natural driving circumstances. A summary of the research and the results are provided below:

“Fine particulate matter (PM_{2.5}) was used as a marker of SHS and was measured and logged every minute of each car journey undertaken by smoking and non-smoking study participants. PM_{2.5} concentrations were strongly linked to rate of smoking (cigarettes per minute). The use of air conditioning and opening of car windows were very common during smoking journeys, but PM_{2.5} concentrations were still found to exceed WHO indoor air quality guidance at some point in the measurement period during all smoking journeys.” (Semple et al, 2011)

This shows that even under even some ventilation conditions tobacco smoke pollution, as measured by levels of PM_{2.5}, occurs in vehicles at a level that is likely to be harmful to health. This study was quoted in a number of submissions (e.g. MRC, University of Aberdeen, ASH Scotland) to the Health and Sport Committee's recent consultation on the Bill. The [individual responses](#) to this consultation and a [summary of the written responses](#) can both be found on the Scottish Parliament website.

The restriction of a vehicle also means individuals are unable to move away from the smoke.

PREVALENCE OF SECOND-HAND SMOKE IN CARS

It is difficult to accurately determine the prevalence of smoking in cars, in particular how frequently children are exposed to SHS. ASH Scotland has inferred from surveys that it is likely that at least 5% of young teenagers in Scotland are in vehicles where smoking occurs (ASH Scotland, 2013).

A recent UK study found that the average concentration of SHS in a car was around a third of that found in Scottish pubs prior to smoke-free legislation and around three times World Health Organization air quality guidelines (Scottish Government, 2013).

New figures from Scottish Schools Adolescent Lifestyle and Substance Use Survey ([SALSUS](#)) report that in 2013, 22% of 13 and 15 year olds in Scotland were exposed to SHS in cars at least 'sometimes', with 7% reporting exposure during 'all/most' of their car journeys.

Some of the pro-smoking groups and tobacco companies feel that the research shows that relatively few adults smoke in a car with children. For example in their response to the consultation led by Jim Hume, MSP, see section below on consultation, on the proposals for the Bill in 2013 FOREST stated this in their response. FOREST felt that the Bill is a “disproportionate response to a relatively rare problem”.

SMOKING HABITS

It is a wide held belief that children who are exposed to smoking behaviours are more likely to take up the habit themselves (Royal College of Physicians, 2010). However, the Imperial Tobacco Company in their submission to the consultation on the proposed Bill in 2013 (see section below on consultation) stated that there is no credible evidence that further restrictions will reduce consumption or prevent children from starting to smoke.

ROAD SAFETY

While improving road safety is not a stated objective of the Bill, it has been quoted by some as a potential benefit (references). Smoking is believed to have an adverse impact on road safety as it creates a form of driver distraction where the driver’s attention is focused away from control of the vehicles. Smoking, along with other behaviours such as trying to read maps, tuning a radio, and eating and drinking, are classified as distractions to be avoided under section 148 of the Highway Code. Such distractions could be a cause or contributory factor to some road accidents in Scotland. However FOREST suggests that there is no evidence that smoking while driving is a major distraction to the driver and there are no records of smoking being the cause of road accidents.

EFFECTIVE INTERVENTIONS

Other countries, including Canada, Australia, and several US states and territories, have already implemented bans on smoking in cars with children present.

As of 18 December 2014, [Ireland's legislation to ban smoking in cars](#) transporting children under 18 years of age became law.

In England the Children and Families Act 2014 gave the Secretary of State for Health the power to legislate against smoking in private vehicles when children are present. Regulations were approved in February 2015 and the law will enter into force on 1 October 2015. A ban to stop people from smoking in cars when children are present was passed in the Welsh assembly in June 2015.

There is some evidence from Canada that legislative interventions can be effective in reducing children’s exposure to second-hand smoke in vehicles. The researchers used Canadian survey data from children aged 10 and over to evaluate whether legislation reduces children’s exposure to second-hand smoke in cars.

The study found that the legislation reduced the proportion of children exposed to second-hand smoke by around 10% relative to the period before the law was implemented and in provinces that did not adopt such laws (Nguyen, 2013)

CIVIL LIBERTIES

This Bill is seen by some as removing or limiting their choice and freedom to smoke in their own car. Therefore they view it as infringing on their civil liberties and believe that the private space is not an appropriate area for intervention. The pro-smoking groups and some tobacco companies feel that the proposed Bill is disproportionate to what is required to solve a relatively rare issue i.e. smoking in the car where children are present. They also feel that it is again restricting people undertaking what is ultimately a legal activity, i.e. smoking. They also believe that the state is intervening in areas they should not be interfering in, for example, in parenting and in people's private lives.

FOREST in their submission to the consultation on the proposed Bill in 2013 (discussed in the next section of this briefing) felt that it was another example of government interfering unnecessarily in people's private lives. The Japan Tobacco International in their response to the proposal stated that:

“...any proposal to ban smoking in private domains is disproportionate, unjustified and unnecessary ... and likely to amount to ... an interference with the right to respect for private life protected by national law (the Human Rights Act 1998) and international law (including Article 8 of the European Convention on Human Rights)”.

This was also advocated by The International Coalition Against Prohibition in their submission to the consultation on the proposals.

CONSULTATION BY JIM HUME MSP

In May 2013, Jim Hume MSP lodged a proposal for a Members' Bill in the Scottish Parliament which sought to prohibit smoking in private vehicles while a child under 16 years of age is present. The proposal was accompanied by a [consultation document](#) which sought the views of stakeholders on the proposals. The consultation period ran from 28 May to 30 August 2013.

There were 161 responses to the consultation. 88 were submitted direct to the member and a further 73 were completed through an online survey conducted by the British Heart Foundation, which linked to the full consultation document and asked identical questions.

A [summary of the consultation responses](#) showed that 84% of all respondents supported the proposed Bill. The main reason for supporting the proposal was to protect the health of a vulnerable section of society i.e. children. The main reason for not supporting the proposed Bill was that they felt there was a lack of evidence to support the proposal and a ban on smoking in cars would restrict their activity in private property i.e. their own car.

The Tobacco Manufacturers Association in their response to the consultation on the proposals for the Bill in 2013 believed that campaigns which aim to reduce smoking in the proximity of children are likely to be more effective drivers of behavioural change than unnecessary and burdensome legislation. In the recent consultation by the Health and Sport Committee there were a few submissions from organisations who felt that the Bill should be accompanied by a mass media campaign if they were going to be effective.

The Health and Sport Committee issued a call for written evidence on the proposed Bill in April 2015. In general, respondents to the call for evidence were supportive of the Bill. Information on the individual submissions to this consultation can be found on the [Scottish Parliament website](#). A summary of these written submissions can be found in the SPICe report also on the [Scottish Parliament website](#).

CURRENT LEGISLATIVE FRAMEWORK

The [Smoking, Health and Social Care \(Scotland\) Act 2005](#) was passed and included provisions to prohibit smoking in enclosed public places. This Act was primarily about reducing the levels of SHS in certain environments, however some environments were not covered by this legislation including private homes and vehicles. The Scottish Government published '[Creating A Tobacco-Free Generation: A Tobacco Control Strategy for Scotland](#)', in March 2013. This strategy contained the key aim of making Scotland a tobacco-free country by 2034. The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill aims to address the issue of smoking in private vehicles by prohibiting smoking in private vehicles where children are present while that vehicle is in a public place. The Scottish Government is supportive of the general principles of the Bill.

BILL'S PROVISIONS

Information in the following paragraphs have drawn on the Policy Memorandum and Explanatory Notes which accompany the Bill (Scottish Parliament, 2015b; Scottish Parliament, 2015c).

The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill creates a new criminal offence for any adult (aged 18 or over) who smokes in a private motor vehicle in the presence of a child (under 18 years of age) while that vehicle is in a public place. A public place is defined according to the Policy Memorandum as:

“a place which the public (or section thereof) have access (including, in particular, a public road). The offence would not extend to private driveways, for instance.”

The offence will apply only to the person smoking, whether that person is driving or not.

The Bill is a public health measure and is not aiming to introduce a road traffic offence. The Bill seeks to contribute to the wider issue of smoking and work towards a smoke-free Scotland by engendering a culture shift and an awareness of the harm caused by smoking in the presence of children (Scottish Parliament 2015b).

VEHICLES

The Bill will apply to private motor vehicles. At present, vehicles used for public transportation (including taxis and private hire vehicles) are already covered by the smoking ban (Smoking, Health and Social Care (Scotland) Act 2005). The provision would also apply to convertibles with the roof down, but vehicles which are “steered by means of handlebars attached to the front wheel” such as motor cycles, mopeds, powered bicycles, scooters and mobility aids are exempt.

There was some disagreement among the submissions to the Health and Sport Committee on whether convertibles with the hood down should be exempt from the Bill. Some of the submissions agreed with the Bill that convertible cars with the top down should be covered by it. This is because they felt that some of the scientific evidence shows that the air exchange or ventilation will have limited impact on concentration reduction of SHS and will still therefore impact on children’s health (University of Aberdeen). Some other submissions thought it would be difficult to enforce if convertible cars were excluded (e.g. East Dunbartonshire Tobacco Alliance). Other submissions felt that convertible cars with the roof down should be excluded from the Bill (e.g. NHS Ayrshire and Arran, British Lung Foundation).

There are some further exceptions to some vehicles within the Bill. For example an offence would not be committed if the vehicle is designed or adapted for “human habitation” (people’s homes or their living accommodation) and if the vehicle is parked and is being used for the purpose of “human habitation” for at least one night. In the recent consultation or call for evidence led by the Health and Sport Committee on this Bill a number of submissions agreed with vehicles being used as living accommodation being exempt from the proposed legislation (e.g. Glasgow City Council, The Law Society of Scotland, NHS Forth Valley). A summary of the written submissions can be found on the [Scottish Parliament website](#).

DEFENCE

There is a defence for a person who is charged with an offence under this Bill. If the 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 (persons aged 18 or over). In such circumstances it is envisaged that a fixed penalty notice could be 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.

There was some disagreement among the submissions to the Health and Sport Committee on whether this defence should be included in the Bill or not. Some submissions, (e.g. Glasgow City Council, University of Aberdeen), did not want the defence included because they did not think it would work as a defence. For example they were not clear on what “reasonably believed” means legally i.e. how would you prove that you “reasonably believed” that the other occupants were all over 18. Other submissions thought that the defence should be included. A summary of the written submissions can be found on the [Scottish Parliament website](#).

ENFORCEMENT

Police Scotland would be responsible for enforcing the legislation. In the recent consultation or call for evidence led by the Health and Sport Committee the majority of submissions felt that Police Scotland should be responsible for enforcing the legislation. One respondent, Children in Scotland, felt that environmental health officers within local authorities should enforce the Bill. Police Scotland felt that authorised local authority officers should share enforcement with police officers. This is a view shared by the [Scottish Government](#). A summary of the written submissions can be found on the [Scottish Parliament website](#).

The penalty for committing the offence, which on summary conviction, is a fine not exceeding level 3 on the standard scales (currently £1,000). However there will be the option for police officers of issuing fixed penalty notices as an alternative to prosecution. The Fixed Penalty Notice is currently £100. In practice the fine will only be incurred if a fixed penalty notice was not paid. A decision would then be made to prosecute the person concerned for the offence and if prosecuted the person could then be convicted in the Sheriff or Justice of the Peace Court. They would decide the amount of the fine, up to the maximum allowable (currently £1,000) according to the facts and circumstances.

In the response to the consultation on the proposals for the Bill in 2013 the Tobacco Manufacturers’ Association thought that the proposed legislation was unenforceable and would not achieve the aim of reducing the exposure of children to smoking in cars. This was also reflected in some of the recent submissions to the consultation led by the Health and Sport Committee on the proposed Bill.

A few organisations thought that the Bill may be difficult to enforce, but they felt this was outweighed by the positive impact on children’s health and wellbeing.

Further information on the consultation by the Health and Sport Committee, including the SPICe summary of written evidence, can be found on the [Scottish Parliament website](#).

FINANCIAL MEMORANDUM

FIXED PENALTY NOTICES

According to the Financial Memorandum it is estimated that the number of Fixed Penalty Notices issued annually as a result of the Bill will be about 200. This number is based on compliance with Scottish smoking legislation and other legislation affecting car users, (such as use of mobile devices while driving and the use of seatbelts), while taking account of estimates of the numbers of those in Scotland currently smoking in cars while children are present (currently 60,000). This figure is then combined with evidence of detection rates for similar offences in other legislatures.

SCOTTISH COURT SERVICE

The Scottish Court Service will be responsible for collecting sums payable under any Fixed Penalty Notices, which have been issued. The financial memorandum states that the Court Service is already familiar with this type of work so it is unlikely that there will be significant additional cost implications for the Court Service.

The Financial Memorandum indicates that approximately 55 penalties would likely be challenged or unpaid. This figure is based on information provided by the Court Service to the Non-Government Bills Unit within the Scottish Parliament on the number of challenged or unpaid penalties for similar car offences such as seatbelts and mobile devices.

Following the challenge or non-payment of a fixed penalty, the Police are required to complete a standard prosecution report to the Crown Office and Procurator Fiscal Service (COPFS) and the financial memorandum claims/states/estimates that 55 of these types of reports will have to be produced. It is a matter for the COPFS whether to prosecute on the basis of these reports it receives from the Police. Based on the rate of prosecutions arising as a result of the 2005 Act and other factors the FM believes it is likely that the number of prosecutions would be very low. Despite the fact that the number of prosecutions is anticipated to be low, some staff time will be required to review each case referred to the COPFS in order to reach a decision on whether prosecution is the appropriate course of action.

POLICE SERVICE OF SCOTLAND

The Police Service of Scotland will be responsible for enforcing the legislation, using existing powers to stop vehicles. The FM outlines that there could be some “minor costs” to the Police Service to amend some administration systems, provide training to inform police officers of the new offence and to produce standard prosecution reports for the COPFS.

SCOTTISH GOVERNMENT

The provisions of the Bill do not place any obligations directly on the Scottish Government, but it is envisaged that they would wish to publicise the ban and the ban is unlikely to succeed without publicity.

The FM estimates that the cost of a suitably high-profile campaign would be around the region of £250,000 to £300,000 if the Scottish Government decides to undertake this sort of campaign.

The FM anticipates that the cost of follow-up public information or social advertising campaigns will be linked with other campaigns and would not, therefore, impact on on-going expenditure beyond the year of legislation.

HEALTH BOARDS

The FM outlines that there could be short-term costs to NHS boards of providing more smoking cessation services. These services may increase because there is increased demand due to the Bill prompting more people to attempt to stop smoking. The FM details research which has suggested that smoking bans increase the rate of smoking cessation and quit attempts. For example the ban on smoking in enclosed public places, through the 2005 Act saw a significant increase in the number of prescriptions and sales for Nicotine Replacement Therapy, as many people used the ban as an incentive to quit smoking (Explanatory Notes). The evidence does suggest that the implementation of smoking bans is directly associated with particular changes in smoking-related behaviour such as attempts at quitting smoking and attending smoking cessation (Musiello, 2009). These costs could be offset by Health Boards having to treat less people with smoking-related illnesses. According to the FM it is estimated that it costs the NHS in Scotland around £400 each year to treat smoking-related illness. The [Scottish Public Health Observatory](#) estimated that a one per cent reduction in smoking prevalence would save around 540 lives a year; reduce smoking-attributable hospital admissions by around 2,300; and reduce estimated NHS spending on smoking-related illness by between £13 million and £21 million.

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