

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

SUPPLEMENTARY 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 of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill at Stage 2.
2. The memorandum refers to provisions in the Bill conferring power to make subordinate legislation which were added or amended at Stage 2. The memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

OUTLINE OF BILL PROVISIONS

3. The Bill 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. Section 2 of, and the schedule to, the Bill provide for a fixed penalty scheme applicable to offences under the Bill and which constitutes an alternative to prosecution. Under the Bill as introduced, enforcement of this scheme was in the hands of the police, with the fixed penalties themselves being paid to the local clerk of court. The Bill was amended at Stage 2 to provide for joint enforcement by the police and authorised local authority officers, with the penalties being payable to the local authority. This is the model used for enforcement of the fixed penalty regime in relation to the ban on smoking in public places imposed by the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”). The schedule to the Bill has been replaced with a new schedule which largely mirrors schedule 1 to the 2005 Act.
4. The Bill as introduced contained three powers to make subordinate legislation. No powers have been removed. Four additional powers have been added. The procedure applicable to one of the existing powers has been altered, while two existing powers have been slightly amended. Explanations of these matters are supplied below.

DELEGATED POWERS

Section 4(1) – Power to make incidental, supplementary etc. provision (added at Stage 2)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: as for the substantive power being exercised

Provision

5. 4(1) enables the Scottish Ministers to include incidental, supplementary, consequential, transitional, transitory or saving provision in any regulations made by them under any of the other powers contained in the Bill.

Reason for adding power

6. The new power would for example allow incidental, supplementary or consequential provision to be made in tandem with any exercise of the power contained in section 3(3) of the Bill to alter certain of the definitions in section 3(1). These are the definitions of “car”, “private motor vehicle” and “public transportation vehicle”, and are used to define both the scope of the offence under section 1 of the Bill and the scope of the private vehicles exemption from the ban on smoking in public places under the 2005 Act and associated regulations. The new power could also be used to ensure smooth transition to any new fixed penalty arrangements as a result of the exercise of the powers contained in paragraphs 2, 11 and 12 of the schedule to the Bill as amended at Stage 2.

Choice of procedure

7. It is considered appropriate that the procedure for making such provision should mirror the procedure for exercising the substantive power in question. It is not anticipated that any complex or sensitive provisions would require to be made in connection with the commencement power in section 5(2), for which see below.

Section 5(2) – Commencement (added at Stage 2)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: laid only

Provision

8. Section 5 of the Bill as introduced provided for commencement of all those provisions not coming into force on the day after Royal Assent to take place at the end of the period of six months beginning with the date of Royal Assent. As amended at Stage 2, section 5(2) confers a power on the Scottish Ministers to commence these provisions on such day as they may appoint. Section 5(3) permits different days to be appointed for different purposes.

Reason for adding power

9. After introduction, the Scottish Government announced its intention to support the Bill and its commitment to bringing it into force as soon as possible. In that context, it was considered appropriate to enable the exercise of some flexibility as regards commencement of those provisions not coming into force immediately, in particular to allow the timing to be coordinated with the Scottish Government's publicity campaign on the changes introduced by the Bill.

Choice of procedure

10. The power is subject only to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. This is standard for commencement regulations.

Schedule paragraph 2 – time limit for issuing fixed penalty notices (added at Stage 2)

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

Provision

11. Paragraph 2 of the schedule to the Bill as introduced provided that a fixed penalty notice could not be issued more than 14 days after the date of the alleged offence. This has been replaced with a power for the Scottish Ministers to set a time limit in regulations.

Reason for adding power

12. The new power mirrors that contained in paragraph 2 of schedule 1 to the 2005 Act, and promotes consistency with that schedule. The relevant time limit is currently set by S.S.I. 2006/90 regulation 4(1) at seven days. Given the move to the same joint enforcement model as that used for the ban on smoking in public places, it is considered desirable for time limits to be aligned in order to avoid confusion.

Choice of procedure

13. Affirmative procedure mirrors the procedure which applies to the corresponding power under the 2005 Act and is considered appropriate given the importance of the time limit for the administration of the fixed penalty scheme.

Schedule paragraph 11(a) – application of fixed penalties (amended at Stage 2)

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

Provision

14. The numbering of this provision has altered as a result of amendments at Stage 2 (it was formerly paragraph 8(a)). It enables the Scottish Ministers to make regulations about the application by local authorities (altered from simply “application” without further specification) of fixed penalties paid under the schedule.

Reason for amendment

15. The amendment is consequential on the move to a joint enforcement model, with penalties being payable to local authorities. Under the Bill as introduced penalties were paid to individual clerks of court, who would not necessarily be responsible for spending sums received.

Choice of procedure

16. The applicable procedure (affirmative) is unchanged.

Schedule paragraph 11(b) – keeping, preparation and publication of accounts (procedure altered at Stage 2)

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

Provision

17. The numbering of this provision has altered as a result of amendments at Stage 2 (it was formerly paragraph 8(b)), but its content remains the same. It enables the Scottish Ministers to make regulations about the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties paid under the schedule.

Reason for amendment

18. Only the applicable procedure has been altered. This is to give effect to a recommendation of the Delegated Powers and Law Reform Committee (see below) and to reflect the administrative nature of this provision.

Choice of procedure

19. This power was subject to the affirmative procedure in the Bill as introduced. Section 4(3) of the Bill as amended alters this to negative procedure, in line with the recommendation of the Delegated Powers and Law Reform Committee in its 28th report, 2015 (13 May 2015).

Schedule paragraph 12(1) – power to provide that fixed penalty notices not to be issued (added at Stage 2)

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

Provision

20. Paragraph 12(1) provides that fixed penalty notices are not to be given in any circumstances prescribed by the Scottish Ministers.

Reason for adding power

21. A corresponding power exists under schedule 1 paragraph 13(1) to the 2005 Act. This has not been exercised to date. However, given the move to an enforcement model based on the 2005 Act, it is considered preferable to enable provision of this type to be made in relation to fixed penalties under the Bill if such provision is ever made under the 2005 Act.

Choice of procedure

22. It is likely that there would be significant public and Parliamentary interest in any exercise of this power, therefore the affirmative procedure is considered appropriate. This is also the procedure applicable to the corresponding power under the 2005 Act.

Schedule paragraph 12(3) – methods for paying fixed penalty (amended at Stage 2)

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

Provision

23. This provision was formerly paragraph 9(c) of the schedule. It allowed the Scottish Ministers to make provision about payment methods. As amended, it enables them to prescribe the method(s) by which fixed penalties may be paid.

Reason for amendment

24. This amendment provides consistency with the corresponding provision in schedule 1 to the 2005 Act (paragraph 13(2)). The amended version narrows the scope of the power to prescribing the payment methods, rather than making more general provision about them. This meets the aim of not drawing enabling powers any wider than is necessary.

*This document relates to the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill
as amended at Stage 2 (SP Bill 58A)*

Choice of procedure

25. The applicable procedure (affirmative) remains unchanged.

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