



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

Bill Number:	SP Bill 58
Introduced on:	15 December 2014
Introduced by:	Jim Hume MSP (Members' Bill)
Passed:	17 December 2015
Royal Assent:	21 January 2016

Passage of the Bill

The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill was introduced in the Parliament on 15 December 2014 by Jim Hume MSP. Stage 1 commenced on the 9 June 2015, with the Health and Sport Committee as the lead committee.

The Committee took oral evidence on the Bill at its meetings on 9, 16 and 23 June and published its [stage 1 report](#) on 24 September 2015. Consideration of the Bill at stage 1 concluded with the [stage 1 debate](#) on 8 October 2015.

Consideration of amendments at stage 2 took place at the Committee [meeting on 17 November 2015](#).

Following the [stage 3 debate](#) on 17 December 2015, the Bill was passed and received Royal Assent on 21 January 2016.

Purpose and objectives of the Bill

The purpose of the Bill was to protect children from the harmful effects of exposure to second-hand smoke in a confined space by prohibiting smoking in private motor vehicles in the presence of children.

Provisions of the Bill

The Bill sought to make it an offence for an adult to smoke in a private motor vehicle when there is a child in the vehicle, and the vehicle is in a public place.

Parliamentary consideration

Stage 1

In its Stage 1 report, the Health and Sport Committee supported the general principles of the Bill. The Committee considered that the Bill would bring Scotland into line with England and Wales, and that its general principles would complement the Scottish Government's tobacco control strategy.

The Committee supported the Bill's proposal to make the person smoking an offending person, as this ascribed responsibility to the person causing harm to the child's health. It also recommended that, whilst the person smoking should be held criminally responsible, a similar sanction should be in place for the driver. The Committee considered that this would offer added child protection and mirror similar legislation on children's safety, such as seatbelt laws for children aged 14 and under.

In terms of the enforcement and detection aspects of the Bill, the Committee supported the Bill's proposal to make Police Scotland responsible for enforcing the legislation using its existing powers to stop vehicles. It also supported the Scottish Government's proposal to extend the enforcement powers to local authorities considering that this would maximise the advice, education and publicity provided to the public about the legislation.

However, the Committee's stage 1 report identified several issues that arose in evidence where the Bill could potentially be strengthened or benefit from further consideration. These predominately related to the exemptions in the Bill, liability for the offence, and its enforcement. While the Committee supported the use of a fixed penalty notice, it suggested consideration of an alternative such as putting an education programme in place.

In the stage 1 debate there was discussion around whether an amendment should be lodged for an exemption for convertible vehicles with the roof down and stowed away. However, this did not progress on the basis of the evidence provided by the University of Aberdeen that a child who is within 1m of a cigarette will still be exposed to second-hand smoke.

Stages 2 and 3

Most amendments to the Bill were lodged at Stage 2.

The main amendments agreed to included refining the exemption for vehicles being used as living accommodation and the removal of the defence that the person smoking reasonably believed all other occupants of the vehicle to be adults.

In accordance with the views of the Scottish Government and Police Scotland, the Bill was amended so that responsibility for enforcement would be shared between police and local authority environmental health officers. A new section was also inserted to reflect the joint enforcement regime, granting entry and search powers to authorised officers of a local authority and allowing them to obtain the name and address of a person whom they

reasonably believe might be committing, or might have committed, an offence under section 1 or whom they reasonably believe to have information relating to such an offence. Those powers were based on similar powers available to local authority officers under the Smoking, Health and Social Care (Scotland) Act 2005.

A further amendment provided similar powers to local authorities in respect of enforcement and the administration of fixed-penalty notices to those provided in the 2005 act which the Minister believed would allow for a consistent approach.

The amendments which would have made it an offence for the driver of a car knowingly to permit another adult to smoke in the car when a child was present (which had been suggested by the Committee in its report) were rejected at the request of the Minister. The Minister considered that it was important to send a clear and consistent message that all adults were responsible for their own behaviour when it came to protecting the health of children from second-hand smoke in cars. She also believed that the person smoking should be responsible for committing the offence and that there should be no confusion or uncertainty about who is ultimately responsible for an individual adult's decision to break the law.

Jim Hume MSP also argued that he was not in favour of driver liability for a number of reasons e.g. that they may not necessarily be in a position of authority in relation to other adults in the vehicle, but he was primarily concerned that the proposals would add unnecessary complexity to a Bill that was seeking to be as uncomplicated and easy to enforce as possible.

The Minister stated that she was committed to running a national campaign to raise awareness of the new offence and the final amendment which was agreed to aimed to allow Scottish Ministers to commence the legislation when the campaign has been developed and launched.

Further amendments to the Bill, tabled at stage 3 by Jackson Carlaw MSP, including a 5 year sunset clause, were defeated in the stage 3 debate.

The Bill was subsequently passed on 17 December 2015 and received Royal Assent on 21 January 2016.