

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

[AS INTRODUCED]

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Schedule—Fixed penalty for offences under section 1

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 58-EN. A Policy Memorandum is printed separately as SP Bill 58-PM.

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

[AS INTRODUCED]

An Act of the Scottish Parliament to prohibit smoking in private motor vehicles in the presence of children, subject to limited exceptions; and for connected purposes.

1 Offence of smoking in a motor vehicle with children

(1) It is an offence for an adult to smoke in a private motor vehicle when—

- 5 (a) there is a child in the vehicle, and
(b) the vehicle is in a public place.

(2) Subsection (1) does not apply to a private motor vehicle that is designed or adapted for human habitation and which, at the time the smoking occurs, is parked as described in subsection (3).

10 (3) For the purposes of subsection (2) a vehicle is parked if it is parked for the purpose of providing human habitation for not less than one night and is being used for that purpose.

(4) It is a defence for a person charged with an offence under subsection (1) to show that, at the time the smoking occurred, the person reasonably believed all other occupants of the vehicle to be adults.

15 (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

2 Fixed penalties

The schedule provides for fixed penalties for offences under section 1.

3 Interpretation

20 (1) In this Act—

“adult” means a person aged 18 or over,

“car” means a motor vehicle which is not—

- (a) a goods vehicle, or

(b) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used,

“child” means a person under the age of 18,

“motor cycle” means a mechanically propelled vehicle which is steered by means of handlebars attached to the front wheel,

“motor vehicle” means a mechanically propelled vehicle, other than a motor cycle, that is intended or adapted for use on roads,

“private hire car” has the meaning given by section 23(1) of the Civic Government (Scotland) Act 1982,

“private motor vehicle” means—

(a) any car which is not a public transportation vehicle, and

(b) any other motor vehicle which is used primarily for the private purposes of the person who owns it or of a person having the right to use it, provided that such right to use a vehicle does not include a reference to a person whose right to use the vehicle derives only from having paid, or undertaken to pay, for the use of the vehicle and its driver,

“public place” means a place to which the public, or a section of the public, has access whether on payment or otherwise,

“public transportation vehicle” means any vehicle available to the public as a means of transportation and includes a taxi and a private hire car,

“taxi” has the meaning given by section 23(1) of the Civic Government (Scotland) Act 1982.

(2) In this Act, “to smoke” means to smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.

(3) The Scottish Ministers may by regulations alter any of the following definitions in subsection (1)—

“car”,

“private motor vehicle”,

“public transportation vehicle”.

4 Regulations

Regulations made under section 3(3) or paragraph 8 or 9 of the schedule are subject to the affirmative procedure.

5 Commencement

(1) Sections 3 and 4, this section, section 6 and paragraphs 8 and 9 of the schedule come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force at the end of the period of 6 months beginning with the day of Royal Assent.

6 Short title

The short title of this Act is the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2015.

SCHEDULE
(introduced by section 2)

FIXED PENALTY FOR OFFENCES UNDER SECTION 1

Power to give fixed penalty notices

- 5 1 (1) A constable who has reason to believe that a person is committing or has committed an offence under section 1 may give that person a fixed penalty notice in relation to that offence.
- (2) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence under section 1 by payment of a fixed penalty.
- 10 2 A fixed penalty notice may not be given more than 14 days after the day on which the offence is believed to have been committed.

Contents of fixed penalty notice

- 15 3 (1) A fixed penalty notice must identify the offence to which it relates and the date on which the offence is believed to have been committed and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice must also state—
- (a) the amount of the penalty and the period within which it may be paid,
- (b) the person to whom and the address at which payment may be made,
- 20 (c) any method by which payment may be made,
- (d) the person to whom and the address at which any representations relating to the notice may be made,
- (e) the consequences of not making a payment within the period for payment in accordance with the notice.
- 25 (3) The person specified under sub-paragraph (2)(b) must be such clerk of court as is specified in the fixed penalty notice.
- (4) The person specified under sub-paragraph (2)(d) must be a person at such office of the Police Service of Scotland as is specified in the fixed penalty notice.

Amount of fixed penalty and period for payment

- 30 4 (1) The fixed penalty for an offence under section 1 is £100.
- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given.

Effect of notice and payment of penalty

- 35 5 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of an offence under section 1.
- (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

- (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted after that time.
- (4) Subject to sub-paragraph (3), proceedings may be commenced at any time after the end of the period for payment, and after such commencement payment of the penalty must not be accepted.
- (5) In proceedings for the offence, a certificate which—
- (a) purports to be signed by the clerk of court specified in the fixed penalty notice, and
 - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,
- is sufficient evidence of the facts stated.

Power to withdraw notices

- (1) A constable may issue to the person to whom a fixed penalty notice has been given, and to the clerk of court specified in the fixed penalty notice, a notification withdrawing the fixed penalty notice—
- (a) at a time when proceedings have not been commenced, and
 - (b) if, in light of representations made under paragraph 3(2)(d) or for any other reason, the constable considers that a fixed penalty notice ought not to have been given.
- (2) Where a notice of withdrawal under sub-paragraph (1) is given no proceedings are to be commenced against that person for the offence in question.

Repayment of fixed penalty

- Where—
- (a) a notice of withdrawal under paragraph 6(1) is given, or
 - (b) proceedings for an offence in respect of which a fixed penalty notice has been given are commenced (other than proceedings which are precluded by paragraph 5(3)),
- any amount which has been paid by way of penalty in pursuance of the fixed penalty notice is to be repaid by the court.

Regulations

- The Scottish Ministers may make regulations about—
- (a) the application of fixed penalties paid under this schedule,
 - (b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this schedule.
- The Scottish Ministers may by regulations—
- (a) modify paragraph 4(1) to substitute a different fixed penalty,
 - (b) modify paragraph 4(2) to substitute a different period for payment of a fixed penalty,

- (c) make provision about the method or methods by which a fixed penalty may be paid.

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