



# Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016

2016 asp 3

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 17th December 2015 and received Royal Assent on 21st January 2016**

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—
  - (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 use as living accommodation and which, at the time the smoking occurs, is parked and is being used as living accommodation.
- (3) 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.

### **Commencement Information**

**II** [S. 1](#) in force at 5.12.2016 by [S.S.I. 2016/259](#), [reg. 2](#)

## **2 Fixed penalties**

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

### **Commencement Information**

**I2** [S. 2](#) in force at 5.12.2016 by [S.S.I. 2016/259](#), [reg. 2](#)

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*Changes to legislation:* There are currently no known outstanding effects for the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016. (See end of Document for details)

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### 3 Powers to enter and require information

- (1) An authorised officer of a local authority may enter and search a private motor vehicle which is parked within the area of the local authority in order to ascertain whether an offence under section 1 has been or is being committed there.
- (2) A person who—
  - (a) an authorised officer of a local authority reasonably believes—
    - (i) is committing or has committed an offence under section 1, or
    - (ii) has information relating to such an offence, and
  - (b) fails without reasonable excuse to supply the officer with the person's name and address on being so required by the officer,
 commits an offence.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Commencement Information

**I3** [S. 3](#) in force at 5.12.2016 by [S.S.I. 2016/259](#), [reg. 2](#)

### 4 Interpretation

- (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.

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- (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”.

## **5 Regulations**

- (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) Regulations under the following provisions are subject to the affirmative procedure—
  - (a) section 4(3),
  - (b) paragraph 2 of the schedule,
  - (c) paragraph 11(a) of the schedule,
  - (d) paragraph 12 of the schedule.
- (3) Regulations under paragraph 11(b) of the schedule are subject to the negative procedure.

## **6 Commencement**

- (1) Sections 4 and 5, this section, section 7 and paragraphs 11 and 12 of the schedule come into force on the day after Royal Assent.
- (2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Different days may be appointed for different purposes.

## **7 Short title**

The short title of this Act is the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016.

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## SCHEDULE

*(introduced by section 2)*

### FIXED PENALTY FOR OFFENCE UNDER SECTION 1

#### *Power to give fixed penalty notices*

- 1 (1) An authorised officer of a local authority may, if having reason to believe that a person is committing or has committed an offence under section 1 within the area of the local authority, give that person a fixed penalty notice.
- (2) A constable may, if having reason to believe that a person is committing or has committed an offence under section 1, give that person a fixed penalty notice.
- (3) 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.

#### **Commencement Information**

**I4** [Sch. para. 1](#) in force at 5.12.2016 by [S.S.I. 2016/259](#), [reg. 2](#)

- 2 A fixed penalty notice for an offence under section 1 may not be given after such time relating to the offence as may be prescribed by regulations made by the Scottish Ministers.

#### **Commencement Information**

**I5** [Sch. para. 2](#) in force at 5.12.2016 by [S.S.I. 2016/259](#), [reg. 2](#)

#### *Contents of fixed penalty notice*

- 3 (1) A fixed penalty notice must identify the offence under section 1 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,
  - (c) the method or methods 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.
- (3) The person specified under sub-paragraph (2)(b) must be the local authority in the area of which the offence was alleged to have been committed or a person acting on its behalf.

#### **Commencement Information**

**I6** [Sch. para. 3](#) in force at 5.12.2016 by [S.S.I. 2016/259](#), [reg. 2](#)