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

I1 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**

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)*

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.

(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.

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)*

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**

The amount of the penalty and the period for payment

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.

(3) The local authority may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so.

Commencement Information
I7 Sch. para. 4 in force at 5.12.2016 by S.S.I. 2016/259, **reg. 2**

Effect of notice and payment of penalty

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 by the local authority after that time.

(4) In proceedings for the offence, a certificate which—

(a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority, 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.

Commencement Information
I8 Sch. para. 5 in force at 5.12.2016 by S.S.I. 2016/259, **reg. 2**

Request for hearing

6 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence under section 1.

(2) A notice requesting a hearing under sub-paragraph (1) must be in writing and must be sent by post or delivered to the person specified under paragraph 3(2)(b) in the fixed penalty notice at the address so specified.

(3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

(4) Where a person has requested a hearing in accordance with this paragraph—

(a) the local authority must hold the hearing,

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(b) the person authorised for the purpose by the local authority of the area in which the offence was committed must notify the procurator fiscal of the request, and

(c) the period for payment of the fixed penalty must be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

Commencement Information
I9 Sch. para. 6 in force at 5.12.2016 by S.S.I. 2016/259, **reg. 2**

Power to withdraw notices

7 (1) If the local authority considers (whether after holding a hearing under paragraph 6 or not) that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom it was given a notice withdrawing the fixed penalty notice.

(2) Where a notice under sub-paragraph (1) is given—

(a) the local authority must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and

(b) no proceedings are to be commenced or continued against that person for the offence in question.

(3) The local authority must consider any representations made by or on behalf of the recipient of the fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

Commencement Information
I10 Sch. para. 7 in force at 5.12.2016 by S.S.I. 2016/259, **reg. 2**

Effect of prosecution on notice

8 Where proceedings for an offence under section 1 in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

Commencement Information
I11 Sch. para. 8 in force at 5.12.2016 by S.S.I. 2016/259, **reg. 2**

Recovery of unpaid fixed penalties

9 Subject to paragraphs 7 and 8, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it is enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Commencement Information
I12 Sch. para. 9 in force at 5.12.2016 by S.S.I. 2016/259, **reg. 2**

Judicial determination of enforcement of fixed penalty

10 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 9 may apply to the sheriff for a declaration that the fixed penalty is not enforceable on the ground that—

(a) the fixed penalty was paid before the expiry of the period for paying, or

(b) the person has made a request for a hearing in accordance with paragraph 6 and no hearing has been held within a reasonable time after the request.

(2) On an application under sub-paragraph (1), the sheriff may declare—

(a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,

(b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 6,

(c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and

accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

Commencement Information
I13 Sch. para. 10 in force at 5.12.2016 by S.S.I. 2016/259, **reg. 2**

General and supplementary

11 The Scottish Ministers may make regulations about—

(a) the application by local authorities 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.

12 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed by regulations made by the Scottish Ministers.

(2) The method or methods by which fixed penalties may be paid may be prescribed by regulations made by the Scottish Ministers.

(3) The Scottish Ministers may by regulations—

(a) modify paragraph 4(1) so as to substitute a different fixed penalty,

(b) modify paragraph 4(2) so as to substitute a different period for the period for the time being specified there.

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