

SMOKING PROHIBITION (CHILDREN IN MOTOR VEHICLES) (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

The structure of the Act

Schedule – Fixed penalty for offence under [section 1](#)

16. The schedule makes detailed provision about FPNs. Paragraph 1 defines the circumstances in which FPNs may be given, and who may issue the notices (that is, an authorised officer of a local authority (sub-paragraph (1)) or a police constable (sub-paragraph (2))). The fixed penalty is an alternative to prosecution – that is, it allows the offender to pay a modest amount in return for avoiding any risk of a criminal conviction and a potentially much higher fine.
17. [Paragraph 2](#) allows the Scottish Ministers to set, by regulations, the maximum period between an offence being committed and a FPN being issued.
18. [Paragraph 3](#) prescribes the content of the FPN, which must describe the circumstances of the alleged offence. It must also state the amount of the penalty, details of when and how it can be paid (payment must be made to the local authority for the area in which the offence was committed) and the consequences of failing to do so (i.e. the risk of prosecution). The FPN must also provide contact details for a person to whom representations about it may be made. This is to allow the person to whom it is issued to challenge the FPN if, for example, he or she denies committing the offence or believes there were extenuating circumstances.
19. [Paragraph 4](#) sets the amount of the fixed penalty as £100 and the period in which it must be paid as 29 days. The 29-day period allows a full four weeks to pay the fixed penalty, not including the day on which the offence was committed. Both the amount and the period are variable by regulations under paragraph 12 (see below), and there is a discretionary power for a local authority to extend the period for payment in an individual case.
20. [Paragraph 5](#) sets out the consequences of payment and non-payment of a fixed penalty. It provides that no proceedings (i.e. prosecution) can be commenced within the 29-day period, nor may proceedings be commenced or continued after that period has ended if payment has been made during it, or if the local authority has accepted payment after that time. Sub-paragraph (4) sets out what is to count as sufficient evidence of payment having been made.
21. [Paragraph 6](#) enables a recipient of a FPN to request a hearing in relation to the offence. The request must be made in writing to the local authority and submitted within 29 days of the FPN being issued. The local authority which is to hold the hearing must notify the procurator fiscal that a request for a hearing has been made. The period between submission of the written request and receipt by the requester of the outcome of the hearing does not count towards the 29- day period for payment.

These notes relate to the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (asp 3) which received Royal Assent on 21 January 2016

22. [Paragraph 7\(1\)](#) provides for the withdrawal of a FPN where the local authority considers that it ought not to have been given – including on the basis of representations made by the person to whom the FPN was issued, and considered by the local authority under paragraph 7(3). Paragraph 7(2) explains the consequences of withdrawal of a FPN.
23. [Paragraph 8](#) provides that FPNs are to be treated as withdrawn once any proceedings are under way. This means that the person prosecuted will no longer have the opportunity of avoiding conviction by paying £100.
24. [Paragraph 9](#) provides for the recovery of unpaid fixed penalties. After the expiry of the 29-day period for payment the local authority can recover the unpaid penalty in the same way as a sum of money in respect of which decree has been granted in civil proceedings.
25. [Paragraph 10\(1\)](#) enables an individual who disputes the local authority’s attempt to recover an unpaid penalty to apply to the sheriff for a declaration that the fixed penalty cannot be recovered under paragraph 9 as payment was made on time, or that there was an undue delay in the local authority’s response to the individual’s request for a hearing. Paragraph 10(2) provides that the sheriff may declare whether or not payment was made on time, or whether a hearing was validly requested and took place within a reasonable time and, therefore, whether or not the penalty is enforceable.
26. [Paragraph 11\(a\)](#) gives the Scottish Ministers the power to make regulations regarding the application by local authorities of fixed penalties paid under the schedule (for example, to provide that a proportion of the revenue be used to offset the administrative costs involved). Paragraph 11(b) gives the Scottish Ministers the power to make regulations regarding arrangements for the preparation and publication of statements of account relating to fixed penalties. Regulations under paragraph 11(a) are subject to the affirmative procedure; regulations under paragraph 11(b) are subject to the negative procedure (see section 5).
27. [Paragraph 12](#) provides the Scottish Ministers with powers to make regulations prescribing the circumstances in which a FPN may not be issued, to provide for and alter the approved methods of payment of penalties, to amend the fixed penalty amount, and to alter the time period in which payment must be made. Any such regulations are subject to the affirmative procedure (see section 5).