

To: ENVIRONMENT POLICY BOARD

On: 25 January 2017

Report by: DIRECTOR OF COMMUNITY RESOURCES

Heading: The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016

1. SUMMARY

- 1.1 The legislation entitled the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 came into force on 5 December 2016.
- 1.2 This legislation makes it an offence for any adult to smoke within a motor vehicle in a public place whilst someone under the age of 18 is present. It is not an offence under this legislation to use an e-cigarette or vape in a vehicle whilst a child is present.
- 1.3 There is an exception to the prohibition which takes account of members of the Travelling community and holiday-makers who use their vehicles as permanent or temporary homes.
- 1.4 This legislation is an extension to the current prohibition of smoking in public places under the Smoking, Health and Social Care (Scotland) Act 2005 that came into force in Scotland in March 2006 and enforcement will be carried out by the same personnel and using a similar approach.
- 1.5 The smoking legislation in public places included the offence to smoke in work vehicles and this legislation extends to vehicles where children are present.
- 1.6 This report seeks to extend the Council scheme of delegation to allow officers to enforce the new legislation.
- 1.7 If approved, all relevant enforcement and authorised officers within the Council will be authorised to enforce this legislation as part of their daily duties. Police Scotland also

has a power to issue a fixed penalty notice under this legislation, however in practice the legislation will be enforced predominantly by the Renfrewshire Wardens based within Community Resources.

- 1.8 Should any person break the prohibition, they will be guilty of a criminal offence which, on summary conviction, could result in a fine not exceeding level 3 on the standard scale (currently £1,000).
- 1.9 Relevant and authorised enforcement officers have the powers to issue a fixed penalty notice of £100 to the offender to allow them to discharge liability and avoid prosecution. It is anticipated that this will be the most usual enforcement route in the first instance.
- 1.10 The offender has 29 days to pay the fixed penalty notice following which they can be referred to the Procurator Fiscal for non-payment of the fine.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Environment Policy Board:
 - i. Notes the commencement of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 on 5 December 2016.
 - ii. Notes the enforcement options i.e. fixed penalty notices available to the Council's authorised enforcement officers in enforcing this legislation.
 - iii. Notes the intention to work with Police Scotland to ensure all fixed penalties are collated and reported as part of regular Community Safety updates.
 - iv. That an amendment to the Scheme of Delegations to authorise the Council's enforcement officers in terms of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 be approved.

3. BACKGROUND

- 3.1 The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 received Royal Assent on 21 January 2016.
- 3.2 The legislation comes into force from 5 December 2016 following the commencement regulations being presented to parliament on 9 September 2016.
- 3.3 Similar legislation was brought into force in England and Wales on 1 October 2015, however to date, there has been limited enforcement, particularly by Police.

3.4 The legislation states:

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.

3.5 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 has been or is being committed there.

3.6 The act clearly defines the meaning of key words including:

- Adult
- Child
- Motor vehicle
- Motor cycle
- Public place

3.7 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. As a result, it is not an offence to use an e-cigarette or vape in a vehicle whilst a child is present.

3.8 The Act clearly states the content to be provided within a fixed penalty notice including a description of 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 fixed penalty notice 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 fixed penalty notice if, for example, he or she denies committing the offence or believes there were extenuating circumstances.

3.9 To date there has been limited guidance from the Scottish Government with regards to the implantation of the legislation.

3.10 A public campaign started in November 2016 with radio adverts advising that it is an offence to smoke in a vehicle whilst a child is present.

3.11 This report seeks authority to enforce the legislation along the same lines as the other smoking enforcement carried out by Renfrewshire Council. Since March 2006, Enforcement Officers have been able to issue fixed penalty notices for the offence of smoking in an enclosed public place and this enforcement would be carried out in a similar fashion.

- 3.12 As changes to the Council scheme of delegation is not delegated to the Environment Policy Board, the Environment Policy Board is asked to refer the paper to Council seeking approval to extend the authority of enforcement officers to include powers under the new legislation.
- 3.13 If approved, it has been agreed with Police Scotland K Division that all fixed penalties issued by Council Enforcement Officers and Police Officers will be collated and reported as part of regular Community Safety Updates through the Community Safety Partnership Hub.
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Implications of the Report

1. **Financial** – The enforcement of this legislation will come from internal resources.
 2. **HR & Organisational Development** – none
 3. **Community Planning**

Community Care, Health & Well-being – the legislation fits directly into this area of the Community Plan and protects children who are deemed to be exceedingly vulnerable to tobacco smoke.

Safer and Stronger- none
 4. **Legal** – the legislation came into force on 5 December 2016.
 5. **Property/Assets**-none
 6. **Information Technology** - none
 7. **Equality & Human Rights**- the Recommendations contained within this report are currently being assessed in relation to their impact on equalities and human rights.
 8. **Health & Safety** – none
 9. **Procurement** – none
 10. **Risk** – none
 11. **Privacy Impact** - none
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List of Background Papers

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Author: Oliver Reid, Head of Public Protection

e-mail: oliver.reid@renfrewshire.gcsx.gov.uk