POLICY NOTE

THE SMOKING PROHIBITION (CHILDREN IN MOTOR VEHICLES) (SCOTLAND) ACT 2016 (FIXED PENALTY NOTICE) REGULATIONS 2016

SSI 2016/403

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by paragraphs 2 and 11 of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 ("the 2016 Act"). The instrument is subject to the affirmative procedure.

Policy Objectives

2. Section 1 of the 2016 Act makes it an offence for an adult to smoke in a car with a child present. Section 2, and the schedule to that Act, create a fixed penalty regime which local authorities may apply where there is reason to believe that an offence has been committed. The Regulations make provision which will stipulate the time after which a fixed penalty may not be given and detail how local authorities should apply and account for the penalties paid.

3. Regulation 1(1) brings the Regulations into force on 5 December 2016 which is the date when the provisions of the 2016 Act will have effect by virtue of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (Commencement) Regulations 2016. This will allow local authority officers or a police officer to impose a Fixed Penalty Notice on an adult (aged 18 or over) who smokes in a private vehicle with a child (under 18 years of age) on board where there is reason to believe that an offence has been committed under the 2016 Act.

4. The time after which a Fixed Penalty Notice may not be given is set in regulation 2 as being 21 days after the day on which the offence took place.

5. Regulation 3 concerns how local authorities apply the penalties, the keeping of accounts as well as the preparation and publication of statements of account.

Consultation

6. There was public consultation for the Bill which included the general provisions on fixed penalty notices. There is therefore no requirement for full consultation on this instrument. However, COSLA, Police Scotland and the Society of Chief Officers of Environmental Health Services in Scotland were consulted to agree on the specific details in this instrument.

Impact Assessments

7. No impact assessments are required for this instrument as the specific details being brought into force will in themselves have no impact on the public, businesses, third sector organisations, Police Scotland or the Scottish Administration. Any impact from this instrument would be on local authorities, as the instrument prescribes the way in which councils must keep accounts for fixed penalties collected. However, this mirrors the way council accounts must be kept for existing fixed penalties for other smoking offences and so any impact would be limited.

Financial Effects

8. All costs associated with the fixed penalty notice scheme were set out in the Financial Memorandum for the Bill. The terms of this instrument makes no changes to the costs or to funding. We anticipate that costs will be absorbed within existing budgets.

Population Health Directorate
Scottish Government