

ANGUS COUNCIL

COMMUNITIES COMMITTEE – 28 FEBRUARY 2017

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

REPORT BY HEAD OF LEGAL AND DEMOCRATIC SERVICES AND HEAD OF REGULATORY AND PROTECTIVE SERVICES

ABSTRACT

This purpose of this report is to advise members of the implementation of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016, seek approval as to the administration of the Council's functions and duties, to appoint suitably qualified and experienced officers to give fixed penalty notices under this Act; and to note the process by which a person may give notice requesting a hearing in respect of an offence under the Act.

1. RECOMMENDATIONS

It is recommended that the Committee:

- i) notes the implementation of the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 with effect from 5 December 2016,
- ii) notes that, with effect from this date, it is an offence for an adult to smoke in a private motor vehicle when there is a child in the vehicle and the vehicle is in a public place,
- iii) agrees that administration of the Council's functions and duties under the Act be undertaken by Regulatory and Protective Services,
- iv) agrees to delegate authority to the Head of Legal and Democratic Services, in consultation with the Head of Regulatory and Protective Services, to authorise suitably qualified and experienced officers to give fixed penalty notices under the Act; and
- v) notes that requests to hold a hearing at the request by or on behalf of a person with a fixed penalty notice in relation to an offence committed under the Act will be heard and determined by the Environmental Appeals Sub-Committee of the Communities Committee.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME AGREEMENT/COPORATE PLAN

This report contributes to the following local outcome contained within the Angus Community Plan and Single Outcome Agreement 2013-2016:

- Our communities are safe, secure and vibrant

3. REPORT

- 3.1 The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 ("the Act") came into force on 5 December 2016. This Act made it a criminal offence for an adult to smoke in a private motor vehicle when there is a child in the vehicle and the vehicle is in a public place.

- 3.2 In terms of interpretation, an adult is defined as a person over the age of 18 years old and a child as a person under 18 years old. Private motor vehicle does not include a taxi or private hire car and a public place means a place to which the public, or a section of the public, has access whether on payment or otherwise.
- 3.3 An authorised officer of a local authority, or a constable, may, if having reason to believe that a person is committing or has committed an offence under the Act, give that person a fixed penalty notice. The fixed penalty for an offence under the Act is £100 and the period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given. A local authority may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so. A fixed penalty notice may not be given after 21 days beginning with the day after the day on which the offence took place.
- 3.4 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 the Act. Where a person has requested a hearing the local authority must hold the hearing and the period for payment of the fixed penalty must be calculated so that the period beginning with the giving of the notice and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account. If the local authority considers 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. In addition, 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.
- 3.5 Given the above, and to give effect to the Act, it is submitted that the Council must establish a process to authorise officers to give fixed penalty notices. It is proposed that administration of this function will be carried out by Regulatory and Protective Services and that Environmental Health Officers and Community Safety Officers will be authorised to give fixed penalty notices. In accordance with previously agreed authorisation processes, it is recommended that Committee authorise the Head of Legal and Democratic Services, in consultation with the Head of Regulatory and Protective Services, be granted delegated authority to authorise suitably qualified and experienced officers to give fixed penalty notices under the Act.
- 3.6 Lastly, the Council is required to establish a procedure whereby persons who have been given a fixed penalty notice can request a hearing and agree a forum for holding such a hearing. The Council's Standing provide that the Environmental Appeals Sub-Committee is authorised to consider any representation or hold any hearing in respect of any fixed penalty or similar notice that the Council is entitled, or may become entitled, to serve, give or issue by or under any enactment, insofar as they relate to the functions within the remit of the Communities Committee. Accordingly, this Sub-Committee will deal with requests for hearings.

4. FINANCIAL IMPLICATIONS

Regulations made under the Act provide that:-

- (i) Each local authority must keep an account of its income and expenditure in respect of the administration and enforcement of the Act,
- (ii) At the end of each financial year any deficit in the account must be made good out of the local authority's general fund and, subject to paragraph (4), any surplus must be applied to purposes connected with the improvement of the amenity of the area of the local authority or any part of that area,
- (iii) If the local authority so determines, any amount not applied in any financial year, instead of being or remaining so appropriated may be carried forward in the account kept under (i) above to the next financial year; and
- (iv) Each local authority must, as soon as practicable after the end of each financial year, prepare and send to the Scottish Ministers a statement of account to include the account of their income and expenditure kept under (i) above and an account of any action taken by it under paragraph (ii) or (iii) above in respect of any deficit or surplus in their account for the financial year.

It is not yet known how many fixed penalty notices will be given in terms of the Act and, accordingly, how much income the Council will receive as a result.

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