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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 403**

**PUBLIC HEALTH**

**The Smoking Prohibition (Children in Motor Vehicles)  
(Scotland) Act 2016 (Fixed Penalty Notices) Regulations 2016**

*Made* - - - - *30th November 2016*

*Coming into force* - - *5th December 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 2 and 11 of the schedule to the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 5(2) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament<sup>(2)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (Fixed Penalty Notices) Regulations 2016 and come into force on 5th December 2016.

(2) In these Regulations “the Act” means the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016.

**Time after which a fixed penalty notice may not be given**

2. The time prescribed under paragraph 2 of the schedule to the Act is 21 days beginning with the day after the day on which the offence took place.

**Application by local authorities of fixed penalties and account keeping**

3.—(1) In this regulation—

(a) paragraphs (3) and (4) apply in relation to the application by local authorities of fixed penalties paid under the schedule of the Act;

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(1) [2016 asp 3](#).

(2) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) paragraphs (2) and (5) apply in relation to the keeping of accounts, and the preparation and publication of statements of account, by local authorities in relation to fixed penalties under the schedule of the Act.

(2) Each local authority must keep an account of its income and expenditure in respect of the administration and enforcement of section 1 and the schedule of the Act.

(3) 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.

(4) 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 paragraph (2) to the next financial year.

(5) 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 paragraph (2) and an account of any action taken by it under paragraph (3) or (4) in respect of any deficit or surplus in their account for the financial year.

St Andrew's House, Edinburgh  
30th November 2016

*AILEEN CAMPBELL*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in relation to the fixed penalty notice regime under section 2 of and the schedule to the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (“the Act”).

By virtue of paragraph 1 of the schedule to the Act an authorised officer of a local authority may issue a fixed penalty notice if they have reason to believe that a person is committing, or has committed, an offence under section 1 of the Act (offence of smoking in a motor vehicle with children) within the local authority area. These regulations prescribe the time after which a fixed penalty notice may not be issued (regulation 2) and make provision regarding the application by local authorities of fixed penalties paid under the schedule and requirements for account keeping (regulation 3).