

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

CHILDREN AND FAMILIES BILL: AMENDMENT IN RELATION TO THE REGULATION OF RETAIL PACKAGING OF TOBACCO PRODUCTS, THE REGULATION OF TOBACCO PRODUCTS THEMSELVES AND THE CREATION OF ASSOCIATED OFFENCES

1. This supplementary Legislative Consent Memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Children and Families Bill (the “Bill”) was introduced in the House of Commons on 4 February 2013. The Bill can be found at:
<http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Education (DfE) to make legislative changes to reform support to children and families. The first half of the Bill seeks to improve services for children and young people by reforming the systems for adoption, Looked after Children, family justice and Special Education Needs. The second half seeks to encourage growth in the childcare sector, shared parental leave and ensuring children in England have strong advocates for their rights.
4. The Bill includes provisions relating to;
 - (a) Adoption - to deliver on reforms to: reduce delays in the adoption system; widen the use of ‘Fostering for Adoption’; improve the support available to adopters and the arrangements for the recruitment and assessment of prospective adopters and to make the Adoption and Children Act Register a statutory register in its application to England.
 - (b) Reform of the family justice system in England and Wales^[1] to tackle delays in public law cases;
 - by implementing a 26 week time-limit for care and supervision cases; reduce the excessive use of experts' reports; remove unnecessary duplication; and ensure the impact of the child is considered when timetabling decisions are made, and

^[1] FJR review of the family justice system for England and Wales and written statement

<http://wales.gov.uk/topics/childrenyoungpeople/parenting/help/justice/;jsessionid=F5E2D1B1C006F79F4176E6D249D006D4?lang=en>
<http://wales.gov.uk/about/cabinet/cabinetstatements/2012/familyjusticereviewupdate/?lang=en>

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- in private family law - by requiring parents to attend a family mediation and assessment meeting before applying to court; send a clear signal to separated parents that courts will take account of the principle that both should continue to be actively involved in their children's lives where that is safe and consistent with the child's welfare; and introduce a new "child arrangements order" so that the courts can make full use of powers to direct parents to undertake activities aimed at helping them to make child arrangements work; and streamline divorce processes for the courts.
- (c) To reform the Special Educational Needs (SEN) system in England to; improve support for 16-25 year olds, offer a personal budget to children and families, require better collaboration between services; clearer information about the support available; streamline assessment processes and plans.
- (d) Childcare including to increase flexibilities for childminders by the introduction of childminder agencies.
- (e) Looked after children: to require every local authority in England to designate an officer to act as its 'Virtual School Head' (VSH) for the children it looks after; clarify the right to an assessment for support for young carers; and enable the Secretary of State to bring forward new regulations with the aim of raising standards in children's homes.
- (f) Office of the Children's Commissioner for England – to enhance the commissioner powers in promoting and protecting children's rights and greater independence from UK Government. The changes will apply to the Commissioner's role in promoting and protecting the rights of children in the devolved administrations, but only in relation to non-devolved matters.
- (g) Shared Parental Leave and Flexible Working; to introduce a system for shared parental leave and shared statutory parental pay as well as reform the system that gives individuals the right to request flexible working.

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought to the amendment, tabled on 16 December 2013, which will give the Secretary of State enabling powers to make, regulations to (1) regulate the retail packaging of tobacco products; (2) regulate the markings on and appearance of tobacco products; and (3) create associated offences. Provided consent to the amendment is given by the relevant legislatures, these Regulations would apply to Wales, Scotland and Northern Ireland as well as England.
6. "Tobacco product" is defined as a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed. "Retail

packaging” in relation to a tobacco product means the packaging in which it is, or is intended to be, presented for retail sale. “Retail sale” means sale otherwise than to a person who is acting in the course of a business which is part of the tobacco trade.

7. The Secretary of State may make regulations if he considers that the regulations may contribute at any time to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18. The Secretary of State may also consider whether the regulations may contribute at any time to reducing the risk of harm to, or promoting, the health or welfare of people aged 18 or over.
8. The overall effect of the proposed provision is to give the Secretary of State the power to make regulations:
 - (a) about the retail packaging of tobacco products. In particular regulations may impose prohibitions, requirements or limitations relating to: the markings on the retail packaging of tobacco products (including the use of branding, trademarks or logos); the appearance of and materials used for such packaging; the size, texture and shape of such packaging; the means by which such packaging is opened; the materials attached to or included with tobacco products; any other features which could be used to distinguish between tobacco products; the number of individual tobacco products contained in an individual packet and the quantity of a tobacco product contained in an individual packet;
 - (b) that make provision imposing prohibitions, requirements or limitations relating to the markings on tobacco products (including the use of branding trademarks or logos); the size, appearance, flavour and shape of such products and any other feature of tobacco products which could be used to distinguish between different brands of tobacco product;
 - (c) to create offences which may be committed by persons who produce or supply tobacco products or the retail packaging for tobacco products which breach the prohibitions, requirements or limitations set out in the regulations;
 - (d) that amend, repeal or revoke or otherwise modify any provision made by or under any enactment in order to give effect to regulations containing provisions set out in (a), (b) or (c) above.
9. The amendment also provides that the Secretary of State must obtain the consent of the Welsh Ministers before making regulations which contain provisions which (if contained in an Act of the National Assembly for Wales) would be within the legislative competence of the Assembly. The amendment contains identical provisions in relation to Scotland and Northern Ireland.

10. The amendment to the Bill extends to the whole of the United Kingdom.
11. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to the regulation of retail packaging of tobacco products; regulation of tobacco products and the creation of associated offences – subjects which fall under the health and health services and social welfare headings in Part 1 of Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

12. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.
13. The proposed amendment would enable the Secretary of State to make regulations which apply to the whole of the UK. There are, in the view of the Welsh Government, clear advantages to such an approach:
 - (a) regulations regulating the retail packaging of tobacco products and the appearance of tobacco products themselves would come into force across the whole of the UK at the same time. This will minimise opportunities for consumers to seek to purchase tobacco products in conventionally branded packages;
 - (b) there would be no differentiation in the requirements for retail packaging of tobacco products nor the appearance of tobacco products themselves across the UK. This would minimise any burdens upon businesses and aid enforcement of the new requirements as there would be no cross-border issues. It would also be consistent for consumers of tobacco products;
 - (c) it is considered that the public health message will be more clearly communicated by a consistent strategy relating to the retail packaging of tobacco products across the whole of the UK as well as reflecting the importance that each of the administrations place in this area of public health.

Financial implications

14. There are no anticipated direct financial implications for the Welsh Government.

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Minister for Health and Social Services
December 2013