

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

CHILDREN AND FAMILIES BILL: AMENDMENT IN RELATION TO SMOKING IN PRIVATE VEHICLES CARRYING A PERSON OR PERSONS UNDER THE AGE OF 18

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.
- (h) Regulation of the retail packaging of tobacco products. The Secretary of State is taking powers that will enable him to make regulations, on a UK wide basis, to (1) regulate the retail packaging of tobacco products; (2) regulate the markings on and appearance of tobacco products; and (3) create associated offences.

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought to the amendment, tabled on 04 February 2014 which amends the Health Act 2006 so that the appropriate national authority may make regulations providing for a private vehicle to be smoke-free when a person (or persons) under the

age of 18 is present in the vehicle. Provided the National Assembly for Wales consents to this Motion, the amendment will apply to Wales, as well as England; with the appropriate national authority for Wales being the Welsh Ministers.

6. Sections 5, 9, 10 and Schedule 1 of the Health Act 2006 will be amended to give the Welsh Ministers specific regulation making powers to prohibit smoking in cars where a person (or persons) under the age of 18 is present. The overall effect of the proposed amendment is that:
 - i. Welsh Ministers can make regulations which will make it an offence to smoke in a private vehicle carrying a person or persons under 18. The regulations will also make it an offence for the person who has control of a private vehicle to fail to prevent a person from smoking whilst a person or persons under the age of 18 is present in the vehicle;
 - ii. Regulations may provide for enforcement by an appropriate officer of a local authority and/or a constable.
 - iii. Constables and local authority enforcement officers will have the power to issue fixed penalty notices to those who smoke in a private vehicle when children are present and the Welsh Ministers may make regulations which allow constables and local authority enforcement officers to issue fixed penalty notices to those who have control of a private vehicle but who have failed to stop others smoking when a person (or persons) under the age of 18 is present in the vehicle;
 - iv. Welsh Ministers may make regulations amending Schedule 1 of the Health Act 2006 (fixed penalty notices);
 - v. Regulation making powers of the Welsh Ministers are subject to the affirmative resolution procedure.
7. 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 smoking in cars where a person (or persons) under the age of 18 is present – a subject which falls 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

8. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Government Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales as soon as possible.
9. This amendment gives clear powers for Welsh Ministers to make regulations prohibiting smoking in cars carrying children and create associated offences should a decision to do so be taken following the evaluation of the Fresh Start Wales campaign.

10. The amendment provides regulation-making powers to Welsh Ministers, subject to affirmative procedures, which means that a debate and vote on the issue will be necessary before regulations can be made.
11. The amendment allows for police constables to be used to enforce any such regulations. Without these enabling powers, any regulations made under the current powers in section 5 of the Health Act 2006 on smoking in private vehicles with children would have to rely on local authority enforcement alone.

Financial implications

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

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Minister for Health and Social Services
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