

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM: CHILDREN AND FAMILIES BILL**

### **Draft Legislative Consent Motion**

1. The draft motion, which will be lodged by the Cabinet Secretary for Health and Wellbeing, is:

“That the Parliament agrees that the relevant provisions of the Children and Families Bill, introduced in the House of Commons on 4 February 2013, relating to the retail packaging of tobacco, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

### **Background**

2. This memorandum has been lodged by Alex Neil, Cabinet Secretary for Health and Wellbeing, under Rule 9.B.3.1(c)(i) of the Parliament’s standing orders. The Children and Families Bill (“the Bill”) was introduced in the House of Commons on 4 February 2013. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

### **Content of the Children and Families Bill**

3. The provisions of the Bill generally extend only to England and Wales and seek to reform legislation relating to the following areas:

- adoption and children in care
- aspects of the family justice system
- children and young people with special educational needs
- the Office of the Children’s Commissioner for England
- statutory rights to leave and pay for parents and adopters
- time off work for ante-natal care
- the right to request flexible working

4. Amendments introduced by the UK Government on 16 December 2013 do, however, extend to Scotland and provide for powers to make regulations to standardise tobacco packaging. These amendments were tabled for Report stage at the House of Lords and, while they relate to potential harm to under 18s (and people over the age of 18), they are largely separate from the other subject matter in the Bill.

5. A previous LCM to allow the UK Government to amend the provisions in the Adoption and Children Act 2002 in relation to the establishment of a statutory Adoption Register for the UK, was passed by the Parliament on 21 May 2013.

## **Provisions that relate to Scotland**

6. The amendment tabled on 16 December 2013 provides for powers which would enable the Secretary of State to make regulations governing the retail packaging of tobacco products, in order to reduce the risk of harm or promote, people's health.

7. The provisions would allow the Secretary of State to make regulations about the markings, appearance, materials, size and shape and other aspects relating to the packaging and bundling of tobacco products. The provisions also allow for the creation of offences relating to those regulations and set out the purposes for which such regulations are to be made. These purposes are to effectively reduce harm and to promote health by reducing the attractiveness and appeal of tobacco products and their use, whether these effects are felt before or after an individual is 18.

8. Provision is further made in the Bill to ensure that the Secretary of State must seek the consent of Scottish Ministers (and similar provision made for Wales and Northern Ireland) for any regulations which would be within the legislative competence of the Scottish Parliament.

## **Reasons for seeking a legislative consent motion**

9. Following the UK Government's view that it would not proceed with legislation, Scottish Ministers took the view that the evidence was clear, and the public health case compelling, that action needed to be taken to protect the Scottish public. To that end, the intention to bring a Bill to the Scottish Parliament in 2014/5 was announced as part of the Programme for Government.

10. In the changed context of a UK commitment to plain packaging, a single regime across all parts of the UK is desirable. Separate standardised packaging regimes would almost certainly present significant difficulties.

11. Enabling powers for the UK Secretary of State to make regulations for plain packaging in Scotland in an Act of the United Kingdom Parliament needs a Legislative Consent Memorandum, because measures to protect public health fall within devolved competence. The amendment will therefore require the legislative consent of the Scottish Parliament.

12. Provision is also made in the Bill to ensure that the Secretary of State must seek the consent of Scottish Ministers (and similar provision made for Wales and Northern Ireland) for any regulations which would be within the legislative competence of the Scottish Parliament. This adjustment to the executive functions of Scottish Ministers will also require the legislative consent of the Scottish Parliament.

## **Consultation**

13. The Department of Health held a UK wide joint consultation with the Scottish Government, the Welsh Assembly Government and the Northern Ireland Executive on standardised packaging, from 16 April to 10 August 2012. The aim of the

consultation was to explore whether there was evidence to demonstrate that the standardised packaging of tobacco products would have an additional public health benefit, beyond existing tobacco control initiatives. The Scottish Government reserved the right to decide the best way forward for Scotland.

<https://www.gov.uk/government/consultations/standardised-packaging-of-tobacco-products>

14. Following analysis of the Scottish consultation responses, Scottish Ministers announced in *Creating a Tobacco-Free Generation* that they supported standardised packaging but would await decisions across the rest of the UK before deciding on next steps. Following the UK government's decision not to proceed with standardised packaging at that point, Scottish Ministers announced in the 2013/14 Programme for Government that the Scottish Government would consult on next steps and introduce legislation in 2014/15.

15. On 28 November 2013, the UK Government announced it was to commission a further independent review of the evidence for standardised tobacco packaging and that this would report in March 2014, at which point a decision to use these enabling powers to implement the policy would be made.

16. There has been close official working on the details of the amendments since the announcement was made on 28 November, but clearly, the normal timescales for discussion and consideration of such provisions by the Scottish Government and the Scottish Parliament have been significantly curtailed.

### **Financial implications**

17. In themselves, the powers being sought carry no cost. At the point of making and implementing regulations, a full impact assessment will be required.

### **Conclusion**

18. The decision to table amendments to the Bill was taken quickly and with little notice, which means that the timescales for obtaining the legislative consent of the Parliament are severely constricted. Nevertheless, extending the relevant provisions of the Bill to apply in Scotland is a sensible and appropriate step to ensure the effective implementation of an important public health measure.

19. It is the view of the Scottish Government that it is in the interests of the Scottish people and good governance that the relevant provisions, as outlined above, which fall within the executive competence of Scottish Ministers or the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

**Scottish Government  
December 2013**