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[The Health and Social Care Committee](#)

23/09/2015

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Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn
ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

*The proceedings are reported in the language in which they were spoken in
the committee. In addition, a transcription of the simultaneous interpretation
is included.*

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies	Llafur Labour
Altaf Hussain	Ceidwadwyr Cymreig Welsh Conservatives
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Gwyn R. Price	Llafur Labour
David Rees	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Lindsay Whittle	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Katherine Devlin	Cymdeithas Fasnach y Diwydiant Sigaréts Trydanol Electronic Cigarette Industry Trade Association
Tom Pruen	Cymdeithas Fasnach y Diwydiant Sigaréts Trydanol Electronic Cigarette Industry Trade Association
Edward Woodall	Cymdeithas y Siopau Cyfleus Cyf Association of Convenience Stores Ltd

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Sian Giddins	Dirprwy Clerc Deputy Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Cath Hunt	Clerc Clerk
Philippa Watkins	Y Gwasanaeth Ymchwil Research Service

*Dechreuodd rhan gyhoeddus y cyfarfod am 09:59.
The public part of the meeting began at 09:59.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions

[1] **David Rees:** Good morning. Can I welcome Members and the public to this morning's session of the Health and Social Care Committee? We will be continuing our evidence collection on the Public Health (Wales) Bill. Can I remind Members, please, to turn off your mobile phones or other electronic equipment, which may interfere with the broadcasting equipment? There is no fire alarm scheduled for today, so if one does take place, please follow the directions of the ushers. The meeting is bilingual, so if you need simultaneous translation from Welsh to English at any point, headphones are available, and it's channel 1. If you need amplification for any reason, then headphones are available, and it's channel 2. We've received apologies this morning from Kirsty Williams and John Griffiths, but there'll be no substitutes for either. We're going to move on then to the next item.

10:00

Bil Iechyd y Cyhoedd (Cymru): Sesiwn Dystiolaeth 11 Public Health (Wales) Bill: Evidence Session 11

[2] **David Rees:** This is the first of two scrutiny sessions in which we will be focusing on Part 2 of the Bill, which relates to smoking and the use of nicotine-inhaling devices. And the Tobacco Retailers' Alliance were also invited to provide oral evidence, but unfortunately they were unable to attend today, but they have provided written evidence, which we've had support for through our research services.

[3] We move on to this morning's session, and can I welcome Katherine Devlin from the Electronic Cigarette Industry Trade Association, and Tom Pruen from the same association?

[4] **Ms Devlin:** Good morning.

[5] **David Rees:** Good morning, and can I thank you for the written evidence you've provided to the committee? Obviously, the intention of this session is to explore some of that information a little bit further to try and

extract some views and opinions, and perhaps evidence that supports, one way or the other, the proposals in the Bill. We'll go straight into questions and I'll start off with Gwyn Price.

[6] **Gwyn R. Price:** Thank you, Chair. Good morning, both. Smokers are well-accustomed to being unable to smoke inside public places and workplaces. Why would being able to use an e-cigarette indoors be likely to encourage more smokers to quit, in your opinion, and what evidence is there to support this?

[7] **Mr Pruen:** In terms of evidence, possibly the industry trade association is not the best organisation to speak to; there are some consumer organisations that I'm sure would be able to give you a more thorough answer on that one. But, certainly, in terms of the benefits that electronic cigarettes can provide, they're all dependent on their ability to appeal to smokers as a better alternative to smoking, whether that be for financial, health or ease-of-use reasons. It all adds to the appeal of them to people who, in many cases, are reluctant to quit or unable to quit. So, it's very much the case that the appeal to consumers is what makes electronic cigarettes have such potential, and anything that detracts from that obviously will then deter some smokers.

[8] In terms of where they're used, if you're in your local pub with your normal group of friends, if you're a smoker and you have to go outside, you are then, sort of, somewhat outcast, whereas if your friends are sat around the table with their electronic cigarettes, indoors out of the weather, particularly as winter's approaching and it gets to be quite uncomfortable outdoors quite frequently, it's then another tool that effectively uses peer pressure to convince people to use the products, whereas otherwise that wouldn't really exist; if they go outside with the smokers, then it's all the same.

[9] **David Rees:** Alun.

[10] **Alun Davies:** I've read your evidence and I've looked through a number of different articles and pieces of work on the subject. I remain entirely and completely unconvinced by your arguments. To me, the ban on smoking in enclosed areas was and has been a complete success in terms of what it's seeking to achieve. And, intuitively, if you're smoking an e-cigarette you are smoking—I accept the arguments that you're going to make, but you are—and you are normalising an activity that is probably the biggest killer in

Wales today. My feeling is that the Government's position here in terms of treating e-cigarettes and nicotine cigarettes as being a similar sort of activity is entirely a fair proposition and proposal to make, and at a time—. You know, I represent Blaenau Gwent and I see the impact of high rates of smoking in my life. It appears to me that we want to remove the action of smoking as a part of normal everyday activity, whether it's social or not. And what the Government is proposing is not a draconian thing about banning e-cigarettes, as some of your literature has said; it's actually bringing e-cigarettes into line with what we do with tobacco and that, to me, seems an entirely reasonable and fair proportion to make.

[11] **Mr Pruen:** I would, with respect, disagree with you on a number of points there.

[12] **Alun Davies:** I anticipated you might.

[13] **Mr Pruen:** First of all, using an electronic cigarette is not smoking. Although it generates some—

[14] **Alun Davies:** What is it, then?

[15] **Mr Pruen:** It's generally referred to as vaping, on the same logic. If you set something on fire and breathe in the smoke, we refer to it as smoking. If you activate an electronic cigarette and breathe in the vapour, we refer to it as vaping. And although they are visually similar, in terms of chemical composition, they are completely, utterly worlds apart.

[16] Secondly, in terms of normalisation, I don't think that the use of electronic cigarettes can normalise smoking, in large part because smoke has a very distinctive and quite unpleasant smell, and the vapour from electronic cigarettes doesn't. It also doesn't stain walls, fingertips or have a lingering smell. So, they are quite distinct. The use of electronic cigarettes indoors might normalise the use of electronic cigarettes, but if that increases the chance of people switching to them from smoking, is that a bad thing? Because, as you quite rightly pointed out, it's the smoking that kills. So, if we normalise the use of electronic cigarettes—. Bearing in mind that, despite the efforts of everyone in tobacco control and public health, between 20 and 25 per cent of the population still smoke, so it's actually still quite normal. The proportion of the population who use electronic cigarettes is quite small. So, in effect, it's more normal to smoke than it is to use an electronic cigarette. So, normalising the use of electronic cigarettes potentially, actually, has quite

considerable health benefits.

[17] **Alun Davies:** I've read these arguments; I just don't find them convincing, I'm afraid. At the end of the day, I appreciate the points that you're making, but I think that you're making very narrow points, if you don't mind me saying so, and I'm trying to make a much broader and wider point about the place of the activity of smoking in our society and the action of holding an electronic cigarette, breathing in, vaping or whatever you call it—I've never heard anybody outside these walls call it that, by the way—and then exhaling the rest of it, is designed in order to mimic smoking, I would argue. It's absolutely designed to do that, and by designing it for that purpose in that way, and allowing that activity to take place in a place where we wouldn't allow tobacco to be smoked, we are renormalising the cultural acceptance of smoking as a reasonable activity.

[18] **Mr Pruen:** Again, I would respectfully disagree, on the basis that, even to people who vape electronic cigarettes, the smell and the presence of second-hand smoke is generally quite offensive. So, they're a group of people who've converted from a dangerous activity to a safe one, who are effectively then becoming more hostile to the activity they've switched from. So, if anything, it doesn't renormalise smoking; it de-normalises it even further on that basis.

[19] **Alun Davies:** I presume you'll provide us with the evidence for the use of the word 'safe'. It's quite a profound word.

[20] **Mr Pruen:** Relatively safe would be a more precise—

[21] **Alun Davies:** Relatively. So, you're going to qualify it now.

[22] **Mr Pruen:** Yes.

[23] **David Rees:** Well, you've sparked off some interested parties now. I've got questions from Altaf, then Lindsay, then Elin, then Darren.

[24] **Altaf Hussein:** Yes, I wanted to comment really on what Alun has described. What is smoking? When we say 'cigarette smoking', why don't we say 'smoking e-cigarettes'? What is hookah, and what is shisha? Are they the same, vapour and smoke?

[25] **David Rees:** I appreciate that you represent the electronic industry and

therefore not necessarily some of the other products.

[26] **Mr Pruen:** Broadly, when we refer to smoking, what we refer to is igniting something so that it burns, and in the case of tobacco products, rather than smoked food, then inhaling the smoke, and the smoke is made of the particles and the products of combustion. So, smoke is made of small, solid lumps and various liquid chemicals generated by breaking down the material that was set on fire into all kinds of strange, weird and wonderful chemical compounds, and it's broadly the same whether it's tobacco, shisha or anything, in fact, that is set on fire. There is no real qualitative difference between marijuana smoke and tobacco smoke. Smoke is broadly smoke, and the same health risks in fact apply to third world countries where there's lots of cooking over open fires indoors as from other kinds of smoke exposure, like tobacco, because, broadly, smoke, as a class of compound, is pretty nasty, whereas the vapour from electronic cigarettes is a solution heated until it turns, basically, into a gas. There's absolutely no combustion. There can be some minor heat-breakdown products, but it's at very low levels prepared compared with smoke. There aren't particulates in the same way because the droplets are formed from condensed liquid, so they're liquid and not solid. The chemical composition of smoke is heavy on things like polyaromatic hydrocarbons, which is your tar in cigarette smoke. It's generally pretty carcinogenic, pretty nasty. Most of that is completely absent from electronic cigarette vapour, because it's not produced by combustion.

[27] **Altaf Hussain:** Has it been a cause of a fire in any case?

[28] **Mr Pruen:** I'm sorry?

[29] **Altaf Hussain:** Electronic cigarettes—have they been a cause of fire?

[30] **Mr Pruen:** There have been some incidents involving batteries, which have resulted in fires, but that's specific to the battery technology rather than electronic cigarettes. We also get it with laptops and phones, but it's worth bearing in mind that one of the leading causes of house fires is still smoking articles—as the fire brigade refer to them—and I think it runs to something like 5,000 a year caused by tobacco and smoking articles, whereas I think we're running at something like two a week for batteries. So, again, there is a significant difference there in terms of safety.

[31] **David Rees:** On that argument, could I just clarify one point? It's been reported that there are a lot of people who actually don't stop smoking and

take up e-cigarettes—it's a combination of both. So, there's still a likelihood that a lot of people will still smoke at home and use e-cigarettes, perhaps, in more public places.

[32] **Mr Pruen:** Yes, there are definitely a certain number of people who use electronic cigarettes where they can't smoke and smoke where they can smoke. According to Action on Smoking and Health's statistics, it works out that, basically, for every two people who use both, there is one person who only vapes. Having said that, things like nicotine replacement therapy are approved and recommended for cutting down to quit, because one of the predictors of successful quitting is reducing the number of cigarettes you smoke. We would broadly expect the same pattern to apply to electronic cigarettes, although, equally, one of the things that's required to stop smoking is a certain level of willpower and desire to want to quit. For some people, that just doesn't exist, and, therefore, it would be unreasonable to expect that, even if they cut down using e-cigs, they'd quit, because they just simply don't want to. On the other hand, these are also the people who are unlikely to quit by any other method, so it's not liable to make any sort of statistical difference in the long run.

[33] One of the big data sets on smoking rates is Robert West's smoking toolkit survey. Based on the data he has, he estimates that there are about an extra 20,000 non-smokers as a result of e-cig use. I can't really speak to his methodology—you'd have to ask directly—but that's his estimate.

[34] **Ms Devlin:** Can I just add to that, Mr Chair? At any given point in time, if you assess the number of people who are solely smoking, solely vaping or dual using, you're always going to find a fair amount of dual use in the population of people who have just started vaping to try it out, with a view to perhaps switching completely, or for whatever the reason. So, in those early stages, from many smokers, they are still reliant on their cigarettes, their tobacco cigarettes. So, while they're trying out their vaping device, they'll also be continuing to smoke. So, at any given time, you're likely to have a larger number, necessarily, of dual users than is necessarily reflective of what will end up being the numbers who are fully quit. But we do, as Tom said, have enough data now—some of the statistics from ASH and Robert West's data—to plot this over a longer period of time, over several years now, and show that, actually, where you've got two dual users, you've also got one who has fully switched.

[35] **David Rees:** Okay. Lindsay.

[36] **Lindsay Whittle:** Don't get too all doom and gloom, because I'm quite liking some of your evidence. I'm from a generation that grew up living in a smoke-filled home, and when I went out, as I got older, I went to smoke-filled pubs and clubs. I think it's a much better environment now we've banned smoking. I have friends who no longer smoke 40 cigarettes a day; they're down to about five and they vape, as you say, and it is a well-known phrase—'vaping'. But I am concerned about the e-cigarette flavours. I only glance at the stalls and the supermarkets and shops, but could you explain it to me? All these flavours sound as though they are designed to encourage young people—you know, the vanillas and the bubble gums. I quite like bubble gum, and vanilla sounds quite nice to me. Is that encouraging young people according to the evidence from your society? Do you think young people are taking this up, or are you still maintaining that people are vaping instead of this nicotine-horrible-smell smoking? Because you can smell smokers. I can smell them a mile off. I can't smell a vaper at all, I'm afraid.

10:15

[37] **Mr Pruen:** Well, there's nothing to be afraid of with that. I think the issue of flavours is a somewhat complicated one. One of the things that is generally assumed is that adults don't like flavours. I think we can, by a brief poll perhaps, identify them as completely fallacious. Adults like things that taste interesting. It's not just the province of children. One of the dramatic things about giving up smoking is that your sense of taste recovers. Obviously, once you can taste things, the last thing you want to taste is tobacco, because, as flavours go, it doesn't actually have very much to recommend it. At that point, you know, different things appeal to different people. Lots of people like the fruit-flavoured vapour. It doesn't appeal to me in the slightest, but for some people, that's what they want as an alternative to smoking. They don't want something that tastes of smoke because it tastes moderately disgusting.

[38] As a trade association, we've always maintained that these are adult products for adults who smoke. Our policy has always been that our members should not sell to anyone under 18, even if the products are nicotine free, and an electronic cigarette is now a product. So, our members have wide ranges of flavours—probably 150 in some cases—which have never been marketed to children. The flavour ranges are developed in response to requests from the people they sell to. Equally, there is the potential for some of the flavours to potentially appeal to and be marketed to

children, and we would take a very hostile view of that, as with the Advertising Standards Authority and, indeed, everybody. It's in no-one's interests to create a new generation of nicotine addicts, be they smokers or not. Fortunately, the evidence so far suggests that, even before the mandated age limit comes in October, with youth use, although experimentation is quite frequent, almost none of them go on to regular use, which is a very positive sign.

[39] **Lindsay Whittle:** Okay. Thank you. Just a comment, really: I'm always horrified when I see a 10-year-old smoking. I'm puzzled when I see them vaping. There's a hint of worry there, that's all. Thank you.

[40] **David Rees:** Elin.

[41] **Elin Jones:** A major part of the argument for a ban on e-cigarettes in enclosed public places has been the fear of renormalisation of smoking. In your evidence you say that electronic cigarettes are increasingly dissimilar to tobacco cigarettes. We've also heard evidence that enforcement of the ban on smoking in enclosed public spaces has become more difficult with the introduction of e-cigarettes, especially those that are similar-looking to cigarettes. Can you tell us a little bit about what the industry is doing to make e-cigarettes increasingly dissimilar to tobacco cigarettes?

[42] Then I also have another question that's slightly different and that's on the point of sale of electronic cigarettes—the concern that Lindsay has just raised in terms of making them an attractive product at point of sale, on counter, to young people in particular, and whether you have any views on the point of sale of e-cigarettes being dealt with in the same way as e-cigarettes, and that is that they are hidden from public view and only requested.

[43] **David Rees:** We'll deal with the two questions separately, if that's okay with you.

[44] **Ms Devlin:** Can I just deal with the likeness to cigarettes? This is the one I use. It looks nothing like a cigarette.

[45] **Elin Jones:** Yes. I know that there are those around, and then there are others.

[46] **Ms Devlin:** The thing is that there is a significant shift away from what

we call the first generation devices, which do look like a tobacco cigarette. They look very alike a tobacco cigarette, but, increasingly, those products have been found to be less effective, they don't perform terribly well and they're not terribly appealing to smokers who have made the switch. So, increasingly, we're seeing people move, perhaps not all the way to the really big ones such as those we use, but to a middle ground, and it definitely does not look like a tobacco cigarette, really, at all.

[47] **Elin Jones:** So, do you have any evidence you could share with us in terms of the proportion of the industry now?

[48] **Ms Devlin:** The data that we've gathered is—. It was in March that we last gathered the data directly from the industry sector and at that point it looked as though it was approximately a third of the market in the UK that was just the cigalike type—the ones that look like a cigarette—with two thirds having moved on.

[49] **Mr Pruen:** But, equally, that's broadly—. The cigalike form factor refers to something that has the same dimensions as a cigarette, but even with those, quite frequently, some of them have either blue or green LEDs to make them more dissimilar to a cigarette, or are coloured, rather than being the traditional orange and white of a cigarette. In many ways, it's not actually a response to attempt to make them less like cigarettes, as just an evolution of them is a product in its own right.

[50] A lot of this is driven by consumer demand; people wanted batteries that lasted longer and cartridges that didn't need filling up or replacing so often. And it's very much in response to what consumers have wanted. Increasingly, what people want is not something that looks like a cigarette and the vast majority of the products, either by LED colour, body colour or sheer size, are now not anything like cigarettes.

[51] **Ms Devlin:** If I may, in terms of enforcing the smoke-free premises legislation, ASH and the Chartered Institute of Environmental Health issued a statement—I think it was 18 months ago now—about the fact that, even where they do look like cigarettes, it's really difficult to understand how any confusion between the two could be sustained, when you have the complete absence of the unpleasant smell of smoke and all the detritus that's left behind after smoking activity has taken place. You know, these don't produce cigarette butts and you don't have old papers and wrappers and goodness knows what cluttering up the place.

[52] There are obviously concerns around environmental waste; we are talking about electronic waste and electronic products that, at the end of life, have to become waste electronics, but there are good regulations and rules in place that govern that. But in terms of actual on-the-ground enforcement activity to ensure that the smoke-free premises legislation is enforced, we agree with ASH and the Chartered Institute of Environmental Health that it's very difficult to see how any such confusion could be sustained.

[53] **Mr Pruen:** For example, if I lit a cigarette in this room, it would be apparent to everyone that I'd done so; they would be able to smell it, whereas if I had a puff on an electronic cigarette, no-one would know, because the smell just isn't there and the smoke doesn't hang in the air—

[54] **Ms Devlin:** Well, there's no smoke.

[55] **Mr Pruen:** So, they are not only visually dissimilar, but the difference between smoke and vapour is fairly significant. The vapour doesn't hang in the air in the same way and it certainly doesn't smell in the same way that smoke does; it's not at all pervasive. So, there are quite clear differences.

[56] **David Rees:** Before we move on to the second question, you both indicated clearly that you vape. Can I ask whether you both smoked prior to that?

[57] **Mr Pruen:** Yes.

[58] **Ms Devlin:** Yes.

[59] **David Rees:** And do you still smoke?

[60] **Mr Pruen:** No.

[61] **Ms Devlin:** No. Twenty-seven years a smoker, six and a half years a vaper, and I can't go back to smoking, because I've got my taste buds back and it tastes revolting.

[62] **David Rees:** Okay. And the second question from Elin was—

[63] **Elin Jones:** Point of sale.

[64] **David Rees:** —in relation to the point of sale.

[65] **Mr Pruen:** It's a slightly difficult one. I mean, honestly, we would not support any kind of marketing of any form that marketed the products directly to children. We would view that as being horrifically inappropriate. By the same token, having them on sale in the same places where tobacco is sold, but more visually, is again another nudge to people to choose them over cigarettes, potentially. If they're tucked away in the tobacco cupboard, shut away out of sight—if people don't know to ask for them, they won't, whereas if they were front and centre and more visually striking than the tobacco displays that are, as you know, hidden away, then, again, it provides another nudge for people to think, 'Well, maybe I should try one'. So, we would view the point of sale one as a slightly difficult one in that, yes, we don't want any products of this kind marketed to children, but, equally, they should be aggressively marketed to existing smokers.

[66] **David Rees:** On that point, before I bring in Gwyn Price, you want to further it on.

[67] **Elin Jones:** Yes.

[68] **David Rees:** I'll let you go first. Go on.

[69] **Elin Jones:** Only to say that I find that reasonably unconvincing, because there's a difference between tobacco being now hidden behind some kind of—what's it called?—shutter—that's the word I'm looking for—and what seems to me to be becoming increasingly present, namely the e-cigarettes on the counter and, therefore, actively promoted when you're actually paying at a counter. That's a major difference, and, to me, it feels as if they are being actively promoted, if not pushed on consumers, just in the same way—. This is not just e-cigarettes, this is sweets and all kinds of different things that are there on the counter, but actively promoted and, I suspect, paid for in terms of presence on the counter. So, I'm not persuaded that e-cigarettes should be there on counters and as prominent, because, of course, they do contain nicotine, and we've heard evidence in this committee about the health disbenefits of nicotine and especially nicotine addiction.

[70] One of the concerns that I've had during the evidence taking has been the information that's available to consumers on the nicotine content of e-cigarettes and the various liquids, because the level of intensity of nicotine in many of them can vary significantly, and consumers may not always be

straightaway aware of that and could, in fact, be contributing towards increasing the level of addiction, rather than helping to decrease their addiction to nicotine as well as tobacco.

[71] **Mr Pruen:** In terms of nicotine labelling, it's actually a requirement that the products are labelled with the amount of nicotine they contain under consumer chemical labelling legislation, and, certainly, we've always required our members to verify that the product in the bottle matches the label. Increasingly, there is reasonably good quality control across the rest of the industry. But, it's also worth bearing in mind that electronic cigarettes aren't as good at delivering nicotine as tobacco cigarettes, so it's not clear from that whether they can actually increase addiction, although, equally, by function, they are designed to effectively maintain it, just as an alternative delivery method to smoke. But, certainly, in terms of consumer information, every product should have its nicotine level labelled on it, and if it isn't there then that's breaking existing legislation.

[72] **David Rees:** Gwyn, do you want to come in on this point?

[73] **Ms Devlin:** Mr Chair, can I just raise another point on that, in that one of the biggest concerns that we have is the lack of enforcement of the existing legislation? There is a significant problem with insufficient resourcing and funding of trading standards officers who are there to carry out the enforcement activities. This is a major concern for our members within the industry and it should be a concern for consumers and, indeed, this Assembly.

[74] **David Rees:** Is that the enforcement on the smoking ban?

[75] **Ms Devlin:** On everything—on, for example, the consumer legislation that requires that the labelling matches what's in the bottle. With all of the consumer protection legislation that exists, without enforcement, it's difficult to actually ensure that the standards are there to protect consumers. Thank you.

[76] **David Rees:** Gwyn, do you want to come in on this point, and then Darren?

[77] **Gwyn R. Price:** Just touching on that with enforcement and enforcement officers, do you agree that it is more difficult, really, when you see a cloud of vaping smoke coming from a distance, without the smell, and

somebody comes up to the enforcement officer and says, 'They're smoking in a non-smoking area,' he goes over and they're vaping, actually? So, they have said it's very difficult for them to enforce that, and it will be even worse if we allow the vaping smoke to go in.

[78] **Mr Pruen:** Obviously, from a distance, there is a great deal of visual similarity, although, even in a reasonably large indoor space, it will soon become apparent, through smell if nothing else, that it was smoke, not vapour. Outdoors is a lot more difficult because, although vapour disappears much more quickly, outdoors smoke tends to as well. Obviously, you can't get much more well ventilated than the outdoors. So, the potential does exist in an outdoor space. On the other hand, in an outdoor space, it's difficult to identify anything at a large distance, if you like. You know, there is the potential for places that feel that that's a problem to introduce a voluntary ban. We certainly wouldn't say that people can't introduce a voluntary ban on the use of the products if it suits their own issues and policies. What we would strongly feel is that it's inappropriate to deny the choice to those places that don't see that it's an issue.

10:30

[79] **David Rees:** Darren.

[80] **Darren Millar:** Thank you, Chair. Just one brief follow up to a question that was raised about the appearance of cigarettes: would you welcome some regulation that prescribed the appearance of e-cigarettes and their content to make sure that they could not look like a traditional cigarette?

[81] **Ms Devlin:** I'm not convinced that's helpful, really, in this context, because the innovation and development that's happening in the sector anyway is moving very rapidly away from the form factor, because the form factor is so limiting in what the performance of the product can do. If you're stuck with that shape and small size of battery, then it's just not going to last long enough for the consumer, and there's not enough—

[82] **Darren Millar:** But I think you suggested that about a third of e-cigarettes are still in that older format.

[83] **Ms Devlin:** That was back then, and I suspect it's moved a fair way since then.

[84] **Darren Millar:** But obviously, one of the Government's aims is to stop normalising smoking, and, obviously, the appearance of smoking could potentially continue to normalise it. So, if those sorts of products were regulated in terms of their appearance—they couldn't appear to be like a traditional cigarette—it may help the Government to achieve its aims in another way. Do you accept that?

[85] **Ms Devlin:** Conceivably.

[86] **Mr Pruen:** It's one of those things where, clearly, there is a market for devices that look like cigarettes, because they're still on the market and people still buy them. But whether the utility of that is outweighed by making sure they can't be mistaken for tobacco cigarettes—there is a certain logic to that, because obviously the mechanism of use will always bear a certain visual similarity, but there is no reason, really, why the devices have to.

[87] **Ms Devlin:** Can I just follow up on that? I would be slightly concerned about the notion of removing the option of a cigalike from smokers. I speak as someone who lost my husband to smoking-related cancer at the age of 31, so I'm very aware of the issues on a public health level with this. My point is this: if a smoker believes that what they want is something that is as much like a cigarette as possible, and if that's the only way that they're going to be able to take that first step into switching away from smoking and into vaping, they may not feel that they can go straight to something like this, or something better; they may need the comfort and familiarity of something that looks and feels a lot like a cigarette to begin with. Restricting access to those could have the potential to have detrimental unintended consequences, but, on balance, it may be that this Assembly and the Minister decides that actually that's a sensible way forward, and I don't think that we would object to it too strongly.

[88] **Mr Pruen:** But again, there are ways of doing it without necessarily removing the form factor. You could specify that they can't be largely white and light up orange, because something that's a black tube and lights up green is unlikely to be mistaken for a cigarette. So, there certainly is the potential there.

[89] **Darren Millar:** Okay. You're the trade industry. The Minister is concerned that essentially these products can be a gateway into smoking. What evidence is there from your customer base, if you like, of people commencing their addiction to nicotine through e-cigarettes rather than

through smoking and coming to e-cigarettes?

[90] **Mr Pruen:** Well, the short answer would be that there isn't any. Every time we ask our members or survey their customers or talk to the vapers we meet in the street, they're all ex-smokers who are somewhat amazed and astounded and hugely pleased that they've been able to get away from smoking, because most of them have been smoking for 20 years or more—because there does seem to be an early middle age switch to electronic cigarettes. I've never, although I have tried to, found someone whose first use of nicotine was an electronic cigarette. Statistically, none of the surveys really turn them up so, yes, there is effectively no evidence for such a person existing, really. Theoretically, they must, although, of course, bearing in mind that electronic cigarettes deliver nicotine at a slower rate than tobacco cigarettes and don't have some of the other chemicals in smoke that actually enhance the addictiveness of tobacco cigarettes, it may well be the case that people who start using electronic cigarettes as their first source of nicotine are less likely to get addicted in the first place, so they would become more the equivalent of a social smoker, where they might use the product occasionally, but they're not addicted. Obviously, that's something that we'll learn more about as we get more statistics, because the thing at the moment is that the statistics are pretty much dominated by ex-smokers, and the other groups are too small to meaningfully assess. But, bearing in mind what we know about the way they deliver nicotine and the constituents of the vapour, it's not unreasonable to suppose that might be the case.

[91] **Darren Millar:** And what motivates your customers to come through the doors? When they come through the doors for the first time into an e-cigarette store, what brings them in? You're the experts on your customers.

[92] **Ms Devlin:** It's been word of mouth for the vast majority—

[93] **Darren Millar:** I'm not talking in terms of the advertising, but they're motivated by what? Presumably, they want to reduce harm to themselves from tobacco smoke.

[94] **Mr Pruen:** Predominantly it's people who want to carry on using nicotine but in a safer way, because obviously there is huge awareness that smoking is dangerous and, a lot of people, although they'd like to quit, they don't really want to. This is one of the reasons why relapse rates are so high and a lot of people fail to quit. So, electronic cigarettes offer an alternative but, obviously, without the smoke. So, health is probably the single largest

motivator, but there are also people who do it purely on a financial basis. Obviously, it's particularly appealing to people on lower incomes, because the cost saving is huge.

[95] **Ms Devlin:** And, of course, we generally see an upturn, as we approach the autumn and winter seasons, in people who want it for the convenience of not having to go outside into the bad weather with the smokers. We all see them every year, out there shivering in the snow trying to have their fix. So, that is an incentive. It's a key driver for many of them, but it comes generally second to the health and the financial implications.

[96] **Darren Millar:** You've already suggested that around a third of vapers are people who have previously been smokers and have completely quit—

[97] **Ms Devlin:** Much more.

[98] **Darren Millar:** Did you say a third?

[99] **Mr Pruen:** That's the statistic, as of the last time a large survey was done.

[100] **Darren Millar:** Okay, so a third, and then the other two thirds are either replacing smoking or reducing the smoking over time.

[101] **Ms Devlin:** Yes.

[102] **David Rees:** Can I clarify one point? You said 'the last time a large survey was done'; when was that, as far as the figures you are using?

[103] **Mr Pruen:** The last large-scale survey was published in, I believe, May by ASH.

[104] **Darren Millar:** You've talked of relapse, there; obviously there are lots of organisations now that have voluntary bans, if you like, on the use of e-cigarettes on their premises. What evidence is there to suggest that people who are e-cigarette users go on to relapse as a result of those voluntary bans?

[105] **Mr Pruen:** There isn't really any evidence at all, because what we generally hear from consumers is that they avoid places that don't let them use electronic cigarettes—

[106] **Darren Millar:** So, they go elsewhere.

[107] **Mr Pruen:** So, obviously, it's not quite as sweeping as a compulsory ban would be.

[108] **Darren Millar:** That's certainly the case if they can choose a restaurant, but what if their employer has imposed a ban and they're having to go to the same smoking shed? Presumably, they can't just up sticks and go to a different employer, can they?

[109] **Mr Pruen:** No. There hasn't really been any great feedback on that that I've ever heard. Certainly, there have been people who complain bitterly that they've been forced into a smoking area and have to be exposed to second-hand smoke, because obviously, once they're a non-smoker, that's as irritating to them as is it to everyone else.

[110] **David Rees:** But, effectively, that's hearsay. There's no evidence.

[111] **Ms Devlin:** There isn't evidence.

[112] **Mr Pruen:** No, but, again, there's feedback from consumers on this, and it might benefit the committee to speak to one of the consumer organisations, because they're more likely to be in touch with that than we are.

[113] **Darren Millar:** How difficult would it be for your organisation, or ASH, et cetera, to undertake surveys of people in those sorts of situations? Is that something you could readily provide information to the committee on, perhaps?

[114] **Mr Pruen:** It would be very difficult because, effectively, if you ask the people that's been a problem for, you've self-selected a sample. Whereas, if you select a random group of people, there's a very good chance that they won't include any of the people you're interested in. So, it would be a very difficult survey to run, unfortunately, because it would be very useful information to have.

[115] **Darren Millar:** The Government's primary concern is children and young people, and wanting to reduce the rates of smoking amongst children and young people. We've already talked about the flavours. How many

children and young people—and, when I say young people, I mean up to the age of, say, 25—present in your shops and stores looking for access to e-cigarettes?

[116] **Ms Devlin:** What we hear from retailers who are running those stores and who are forward-facing in the sense that they're directly dealing with the public is that it's extremely rare for minors or anyone that they would want to challenge 25, for example—many of them are operating that sort of system voluntarily—and it's very rare for them to see anybody coming in. I think one of the retailers I was speaking to recently suggested that there might have been one in the past three months or something that looked under 18 and was asked for ID and actually was over 18—he was 19. So, it doesn't seem to be—. And I suppose it's very much like what happens with children and smoking. You know, teenagers will experiment with smoking, but they're not going into the shops to buy the cigarettes—they're getting them by other means. And I would expect that where this experimentation at the very low level that the surveys continue to indicate is happening—the sort of 1 or 2 per cent, maybe 1ish per cent, of never-smokers who are children who are trying it—it's likely that they're not going into the shops to try and get them, because it's more sneaky than that. It fits better with the risk-taking behaviour for them to try and get it by other means, in a sense. Do you see what I mean?

[117] **Darren Millar:** Yes.

[118] **Ms Devlin:** But, again, it's quite anecdotal; it's difficult to pin it down.

[119] **Darren Millar:** Obviously, children and young people are quite price-sensitive, I suppose. Do you think there are other ways of potentially achieving the Government's aims of discouraging the use of e-cigarettes by children and young people and the ability to take up a nicotine addiction, perhaps by having a minimum price on e-cigarettes, or something of that nature?

[120] **Mr Pruen:** It's a very difficult one, because most of the products, certainly when you get into the larger stuff, although the ongoing costs are quite cheap, the set-up costs are quite expensive. And, of course, there is the thing that one of the groups with the high-smoking rates that the products really need to appeal to are those on low incomes. So, there will be a real risk of pricing them out of the market as well. So, I think pricing is something where, again, although the intention would be good, the potential

for unintended consequences is quite serious.

[121] **Darren Millar:** I mean, what about—. Lots of the—. What did you call them earlier on? The ones that look like cigarettes.

[122] **Mr Pruen:** Cigalikes.

[123] **Darren Millar:** Cigalikes. Some of those, I've noticed, they're disposable, aren't they? Is there an issue there perhaps that could be addressed?

[124] **Mr Pruen:** Certainly, they'd be the most affordable ones but, again, they have a very useful niche as a kind of 'try before you commit real money' for smokers, especially those on low incomes, because while they're more than willing to set aside the money for their cigarettes or tobacco, spending an equivalent portion of that money on something else would be a huge concern to them, because obviously, if it doesn't work, they then still need to go and buy the cigarettes or tobacco. So, again, the idea in principle makes sense, but the potential for unintended consequences would worry me.

[125] **Darren Millar:** You've mentioned people on low incomes a number of times. Essentially, you seem to be making a case that this is having a disproportionate impact on poor people.

[126] **Mr Pruen:** I'm not sure if it's disproportionate—

[127] **Darren Millar:** If the Government's proposed legislation, that is—.

[128] **Mr Pruen:** Potentially, because the thing is that anything that affects availability and price will affect those groups that already have a higher smoking prevalence more, and obviously that does include people on lower incomes generally. So, there is the potential for the impact to be disproportionate on that demographic.

[129] **Darren Millar:** On people in, say, Blaenau Gwent.

[130] **David Rees:** Alun's got that one question. [*Laughter.*] Alun.

[131] **Alun Davies:** Listening to some of the debate this morning, it appears that there seems to be an argument that e-cigarettes are as good for you as an apple. Now, I'm not quite sure I buy that. If the claims that are being

made are in any way true or accurate for e-cigarettes, why is it that manufacturers do not seek to have them regulated as a medicine, as a tobacco-reduction product?

10:45

[132] **Mr Pruen:** The problem with medicines regulation is that the products were never really designed to fit within the framework. One of the things they don't really do is deliver a controlled dose per activation; it's down to the user and how they use it, much as it would be with a tobacco cigarette. But the other problem is that, for most of the mid to high-range products, different components come from different manufacturers, and it's broadly impossible to fit that within the medicines licensing regime. So far, the only products that they have actually attempted to be licensed as medicines—and bearing in mind, in some cases, it's nearly five years since they started down that route—come from companies with multimillion pound budgets. Generally, they're tobacco companies who've also invested in electronic cigarettes that went down the medicinal route and they still haven't succeeded in getting one through, with their budgets. Most of the electronic cigarette industry is made up of fairly small companies and they couldn't even begin to think about the costs involved in that, and the experience of the tobacco companies suggests that it wouldn't actually work anyway.

[133] **Alun Davies:** So, the reality is, then, that you can't actually prove to a regulatory authority that the claims that are being made would actually result in a significant use of these products as nicotine reduction. I can understand the economics of some of that, but the reality is, the hard reality is, that, within a much stricter regulatory environment, the claims that are made, partly in your evidence, but also elsewhere, simply could not be sustained.

[134] **Mr Pruen:** I think it's fairly safe to say that a claim that they are significantly safer than smoking would be childishly easy to prove. All of the toxins that are present in cigarette smoke are either completely absent or present at—

[135] **Alun Davies:** But that's not the question I asked you. The question was on nicotine reduction.

[136] **Ms Devlin:** So, you mean used for quitting?

[137] **Alun Davies:** Yes.

[138] **Mr Pruen:** Well, they're not really designed for nicotine reduction; they're designed as an alternative source of nicotine that doesn't expose you to smoke.

[139] **Alun Davies:** So, it's not a product that is designed in order to reduce nicotine.

[140] **Ms Devlin:** No.

[141] **Mr Pruen:** No, it's a product that's designed—

[142] **Alun Davies:** So, it's a nicotine-based product, which is produced for people's enjoyment.

[143] **Ms Devlin:** It replaces the nicotine that you'd normally get from smoking. So, in a way, it's the same principle as the nicotine replacement therapy medications, but it's in the consumer sphere rather than in the medicinal sphere, both for economic reasons, but also, as Public Health England identified recently in a Public Health England report, it may be that a certain level of the appeal for smokers of e-cigarettes lies in the fact that they are not medicines any more than tobacco cigarettes are medicines. It's a choice issue—

[144] **Alun Davies:** I accept that might well be the case.

[145] **Ms Devlin:** So, in terms of reducing the amount of nicotine, no, that's not what they're designed for. Some people do choose to do that; there are some consumers who switch to vaping away from smoking and then try to take down their nicotine and eventually quit completely all use of nicotine. But it's very important to distinguish between the need to quit smoking and the need to quit nicotine use.

[146] **Alun Davies:** I accept that.

[147] **Ms Devlin:** And, of course, they're different—

[148] **Alun Davies:** I accept that, but the point I was making is a somewhat different one. The—

[149] **David Rees:** I'm conscious of the time.

[150] **Alun Davies:** So am I. A lot of the evidence that we've received is that this is a product that is used, as you've just suggested, to reduce nicotine consumption. However, you can't actually—none of your products are regulated in that way, and you've said this morning, in answer to my earlier question, that you wouldn't seek that level of regulation. So, it is a product that is designed for and manufactured to be a nicotine product designed for people's enjoyment. Now, if that's the case, I don't understand your objection to it being treated in exactly the same way as tobacco cigarettes, which are also nicotine products designed for people's enjoyment. So, if that's the case, I don't understand your objection to the regulations that the Government is introducing, which doesn't seek to ban e-cigarettes, but simply seeks to place them in the same regulatory category as other nicotine products like tobacco cigarettes in the way that's currently regulated in terms of enclosed public areas.

[151] **Mr Pruen:** The difference, I would suggest, is very clear. We have two products in the consumer space that deliver nicotine recreationally. One is tobacco cigarettes, which will lead to the death of one in two users. The other is electronic cigarettes, which are estimated to be at least 95 per cent safer. So, do we treat them as the same product or do we recognise that one of them has the potential to attract people away from the product that kills people and, therefore, make it more accessible and more available? Because what we're saying by treating them the same is that it doesn't matter whether you're using electronic cigarettes or whether you're smoking, it's all the same, but clearly that's not the case.

[152] **Ms Devlin:** Actually, we do have further evidence that we can supply to this committee from a stop smoking service in England, who has now a year's worth of data on the work that she's been doing, working with behavioural support to use vaping products alongside the medicinal products. I would be very happy to provide that to the committee.

[153] **David Rees:** That would be very helpful, if you could supply the committee with that information and evidence. I'm conscious of the time—we have overrun the time allocated, but I want Elin to ask her question.

[154] **Elin Jones:** I just want to follow up, then, on this issue of, 'Do we treat them the same as cigarettes?' If the committee ends up being persuaded of the need to guard against renormalisation, one way of guarding against that could be banning it in all public places, but it could also be to treat them

differently to cigarettes through a more proportionate ban, a different kind of ban. We could, for example, specify on the legislation itself—on the Bill itself—that there would be a ban in certain public places: so, public buildings, public transport and places that serve alcohol and food or drink and food. That may be a more proportionate response to that. Do you have any views on something of that nature, which treats them differently, but also guards against some of the concerns that have been raised by the Minister and in evidence from others?

[155] **Mr Pruen:** I think it's fair to say that we don't really view, as an industry, renormalisation as very likely because of the difference between the products and particularly the difference in exposure to bystanders, both in terms of safety, but also in terms of offence. Second-hand smoke is, to most people, quite offensive, whereas second-hand vapour, generally, is not. Every ban that is enacted, whether of limited scale or universal scale, will tend to reduce the appeal of the product to smokers. And, obviously, to gain the maximum advantage, we want the maximum number of smokers to switch. So, everything that reduces the appeal, even a little bit, might potentially have an impact. Because, obviously, what we'd love is for everyone to stop smoking and to start using electronic cigarettes and then either go on to quit nicotine or not, depending on how they feel about it. So, everything that drives people to switch from one to the other we think is a good thing and anything that interferes with that is potentially problematic.

[156] **Ms Devlin:** It's also important to recognise the message that it sends to the public.

[157] **David Rees:** So, the simple answer is that you don't think that 'limited' is appropriate either.

[158] **Mr Pruen:** 'Limited' is a difficult one in and of itself because, if you take somewhere like a pub, disproportionately pubs are visited by smokers in comparison to non-smokers. So, they're an ideal environment in which to normalise electronic cigarettes at the expense of smoking; they're an ideal venue for that and peer pressure from people who have already switched can act on people who haven't. Whereas, of course, if it's banned and you're sending the vapers out with the smokers, you can't do that, because they're all in the same boat—they're all using their products outdoors as if they're the same.

[159] One of the things that's really driven electronic cigarettes is the fact

that committed smokers have started using them and converting their friends. It's not the people who are already, in many cases, inclined to quit; they are people who almost complain that they accidentally quit—again, anecdotally. But peer pressure can really play a key role in getting people to switch away from smoking and the pub is the centre of that for a lot of people.

[160] **David Rees:** I'm going to stop you there because we've gone beyond our time allocation. Can I thank you very much for your evidence this morning? It's been very helpful. You will receive a copy of the transcript for any factual inaccuracies. If you do identify any, please let the clerks know as soon as possible. So, once again, thank you very much for your time.

10:54

Bil Iechyd y Cyhoedd (Cymru): Sesiwn Dystiolaeth 12 Public Health (Wales) Bill: Evidence Session 12

[161] **David Rees:** We're going to move straight on, if that is okay with Members, to item 4, evidence session 12, where we are to receive representation from the Association of Convenience Stores. Good morning. Can I welcome Edward Woodall—head of policy and public affairs with the Association of Convenience Stores?

[162] **Mr Woodall:** That's right, yes.

[163] **David Rees:** Can I thank you also for the written paper that we've received in advance of this morning's session? You represent those in the retail sector who are obviously involved, particularly in the selling of products, and I know the important area here is perhaps the registration question. We'll go straight into questions, if that's okay with you. Gwyn.

[164] **Gwyn R. Price:** Good morning. Obviously, you are against registration, but could I ask you, if we followed the Scotland example and there was no charge, would you still be against registration?

[165] **Mr Woodall:** Well, when the Scotland model was originally proposed, obviously, we were against that model coming in, just because, again, we thought, you know, it's about whether it's the most effective measure to deal with the ambitions of the public health Bill, which is about reducing youth smoking rates and increasing compliance for retailers. I'm not sure that the

register is the right way to go ahead with that. Now, talking from experience with retailers in Scotland, the administration of that scheme has been quite light touch, but it's still a burden that they have to bear. So, even without the charge, I don't think we would support the registration scheme, simply because I don't think it's going to be effective in delivering on those ambitions that you have.

[166] **Gwyn R. Price:** Right, thank you. Could we have your views on including e-cigarettes? Should they be treated the same as tobacco in relation to a register, if a register was—.

[167] **Mr Woodall:** We've supported the harmonisation of e-cigarettes with tobacco in terms of the register across other Governments in the UK, simply because we've supported the increase in the age restriction as well, because it gives retailers clarity, ultimately. When we polled our members about the sale of e-cigarettes, they were using the tobacco restrictions anyway. So, we were very happy to have it harmonised, have it clarified in legislation, that this is how they should be using it.

[168] **Gwyn R. Price:** Thank you for that.

[169] **David Rees:** On that particular point, we've received evidence that e-cigarette products are being sold in a variety of outlets, including hairdressers. Would a register actually formulate and strengthen the ability of enforcement, to ensure that only the responsible businesses are actually selling these products and we can be assured that they are selling them only to 18-year-olds plus?

[170] **Mr Woodall:** Sure. I can't say about where else e-cigarettes might be sold. Of course, the people who are most likely to and will sign up to the register are those retailers that are legitimate retailers. So, you will not get people who are irresponsible generally signing up to this register, and, therefore, I don't know if it's going to help local authorities and trading standards agencies to narrow down those people who are perhaps trading illegally.

[171] **David Rees:** Okay. Darren.

[172] **Darren Millar:** Can I just ask you, in terms of the register in Scotland, what impact has that had on your members?

[173] **Mr Woodall:** I think, initially, there were concerns about the administrative burden. I commend how they've set up that scheme, because there are no costs for retailers and, also, there's one form that you can do online and set up. But, it's interesting; I was giving evidence to another committee in this room, talking about carrier bag charging and the administration of carrier bag charging, and the committee said, 'Well, it's only one piece of administration that the retailer has to contend with here; they've just got to record the number of carrier bags'. Well, I suppose, in the context of running their business, there are lots of regulations that they have to contend with. So, there's the carrier bag charge, where they have to record how many bags they sell, then there's another piece of administration in terms of the register that they also have to sign up to and, of course, in Wales, there's also a charge for that.

[174] **Darren Millar:** Do you accept that, if there is a retailer who's regularly selling to individuals who are underage, breaching the rules, as it were, that these are people who really ought not to be able to sell tobacco products and, therefore, having a registration system provides an opportunity, presumably, for them to be struck off a list and not able to sell them in the future?

[175] **Mr Woodall:** Yes, I agree.

[176] **Darren Millar:** So if there's someone who disregards the rules—. Because at the moment, there's nothing of that sort, is there?

[177] **Mr Woodall:** Well, if someone gets three penalties within a two-year period, they get a restricted premises order placed upon them and then they can't sell the product for however much the magistrate says. That's the same context as how the register will work as well. But, I completely agree with you, if someone is selling tobacco irresponsibly or selling illicit tobacco, by all means, stop them from selling it and put a restricted premises order or put a restricted sales order on them. But, there are already existing powers to do that.

11:00

[178] **Darren Millar:** So, if those powers are already sufficient, does this not make it an easier process, as it were, through the introduction of a register?

[179] **Mr Woodall:** Easier process for—?

[180] **Darren Millar:** Is it going to be easier for people to restrict, rather than having to go through magistrates' courts, et cetera?

[181] **Mr Woodall:** I'm not sure. If you look at Scotland, as far as there have been open figures in Scotland, there have been five retailers removed from the list since it was introduced in 2012, and that's at a cost to the taxpayer of £0.5 million. So, I don't know how effective that is in terms of actually removing more people.

[182] **Darren Millar:** And they had a similar 'three strikes and you're out'—

[183] **Mr Woodall:** Yes, three strikes over two years, and then you have to come off the list.

[184] **Darren Millar:** How effective was that? You mentioned five since 2012 under the new regime. What was it like before?

[185] **Mr Woodall:** I don't know what the figures were before the registration. I checked yesterday with the Scottish Government to try and find the up-to-date figures, but they can't—

[186] **Darren Millar:** Have you got any figures for Wales?

[187] **Mr Woodall:** I haven't for Wales, no, in terms of restricted premises orders.

[188] **Darren Millar:** Okay.

[189] **David Rees:** What is the extent of the illegal tobacco trade at the moment in Wales? Are you aware of that?

[190] **Mr Woodall:** I think, for Wales, according to ASH's figures, it represents 15 per cent of the overall sales of tobacco in Wales currently. So, it's a huge issue. In terms of the UK, it's about £2 billion, I think, in terms of lost money that goes to the Treasury.

[191] **David Rees:** In your association's view, what are the possible consequences upon the illegal tobacco trade if the register is put into place?

[192] **Mr Woodall:** Sorry, what's the—?

[193] **David Rees:** The possible consequences. Will it increase the illegal tobacco trade or reduce it?

[194] **Mr Woodall:** As I said before, I don't know if the people who are selling illicit tobacco are necessarily going to want to register on the list. I think that the illicit tobacco trade is probably more prominent not necessarily in shops—the most prevalence is from private dwellings, not from retailers. So, I'm not sure. From our perspective, what we'd actually like to see is more enforcement; more of local authority trading standards working closer with HMRC to share intelligence; and more funding put into those enforcement actions, rather than to have and build a register. I can't quite see how registering retailers will help local authorities target those people more often. What we have said as well is that tougher sanctions for selling illicit tobacco would be good. Looking at the sanctions that are already there—£5,000 fine, removal of products, disqualification of offender from driving, removing the premises that they're trading from, and—most crucially, one that is not used that we would increasingly like to use—the removal of the alcohol license. You can remove a retailer's alcohol license for selling illicit tobacco. So, there are a number of sanctions that already exist that can already be used that we think should be utilised more.

[195] **David Rees:** Is it one of your concerns that the current enforcement is not at the level it should be at?

[196] **Mr Woodall:** Yes.

[197] **David Rees:** There's a question as to whether additional requirements will actually be achieved.

[198] **Mr Woodall:** In terms of enforcement against illicit trade, we feel that the focus is on the borders, it's on disrupting supply chains and not at a local level. It's not tackling the shops that turn up, set up and are there for two weeks with big signs outside the front that say, 'We sell tobacco for £2 a pack'. Sometimes, HMRC and trading standards aren't quick enough to move in and be as quick as the criminals to catch them. Even when they do catch them, are they actually giving them the proper sanctions, whether it's custodial or big fines, to prevent them doing it in future?

[199] **Elin Jones:** I wanted to ask about point of sale of e-cigarettes. There's a huge difference currently because tobacco cigarettes are now behind

shutters and e-cigarettes seem to be increasingly on counters in small retail outlets and they're promoted at point of payment. I wonder whether you have any view on whether that is something that this legislation needs to look at. The Minister has chosen not to put anything on point of sale of e-cigarettes in this legislation. But, to me, it strikes a very different chord if cigarettes are behind shutters and e-cigarettes seem to be directly promoted to consumers in such a tantalising way.

[200] **Mr Woodall:** I understand you've just heard from the e-cigarette association—they're probably best placed to tell you about the marketing of that product. It think there's a clear distinction between the two products. The tobacco display ban is obviously there and has been long argued over. I think there's a distinction between the products. It appears that a lot of the health community, lots of people like Public Health England and ASH and those people seem to see e-cigarettes as an exit out of smoking. Therefore, we should probably distinguish where the products are displayed. I think they're not only displayed at the till just for promoting it. I think it's for practical reasons. They're quite an expensive product, in the context of a convenience store, so they want to have them near the till so they can see them and also control the age restriction on them as well. I think, over time, as we have more tobacco regulation come in—we've got the tobacco display ban; we're going to have standardised packaging—there will be less space used behind the till for tobacco products. So, in that instance, it may be that they're moved off the till and moved behind the till just so they're displayed in the same kind of area. But I wouldn't agree with putting them behind the displays.

[201] **Elin Jones:** Right, okay, I was about to ask you that. So, your view is that they should not be treated in the same way?

[202] **Mr Woodall:** No, they shouldn't be.

[203] **David Rees:** Can I ask what proportion of your members sells both products?

[204] **Mr Woodall:** Sell—

[205] **David Rees:** Both products—normal tobacco products and e-cigarette products.

[206] **Mr Woodall:** I don't have a hard figure for you there. We can ask the

question for you, but I would imagine that most retailers now would have some e-cigarette products in stores. The market's moved very quickly, so they're an important product for them.

[207] **David Rees:** Okay. You were highlighting your concerns about registration and, as a consequence, enforcement. You also indicated that perhaps you felt that there should be no registration fee. It's only £30 and it's £10 extra per premises in one sense.

[208] **Mr Woodall:** Yes.

[209] **David Rees:** If we do accept registration, isn't that a proportionate figure?

[210] **Mr Woodall:** Simply on the basis that we're following the model in Scotland, that scheme is set up and there is no cost there. I'm trying to understand what the retailers are getting for their £30 and their additional £10 for new stores. That does add up. There are 4,000 convenience stores in Wales, so it's tens of thousands of pounds were talking about across the entire sector at a time when they're under a lot of pressure from wage costs and Sunday trading and business rates and other things. So, it's still a cost for our members. I appreciate that it's £30, but that's still something they have to absorb. It comes back, again, to the principle of what the register does for that legitimate retailer who's signing up on that scheme. The idea that local authorities are going to increase the level of guidance and information they can pass on to the retailer I'm slightly sceptical about. I think lots of retailers go to other sources to get their information and guidance on compliance, particularly with tobacco. We have a primary authority scheme that gives them information on the tobacco display ban. A number of other trade associations do that. I think, also, there is the trade press. There are other avenues. I don't think necessarily the first point of contact is their local authority always.

[211] **David Rees:** Lindsay.

[212] **Lindsay Whittle:** I notice in some of the evidence that it says that retailers make 27p profit on a packet of cigarettes at £6.99. I didn't realise they were that expensive, but I've got no issue with that. There would be profit—I don't know how much. We saw some devices on the desks earlier on today, and there would be profit on selling those, wouldn't there?

[213] **Mr Woodall:** In terms of selling e-cigarettes and tobacco? Yes, of course, yes.

[214] **Lindsay Whittle:** So, it might be interesting, when you're asking your members whether they sell both tobacco and the new e-cigarettes, to ask what the profit is there.

[215] **Mr Woodall:** It will vary from product to product. The margin on e-cigarettes will be higher than tobacco—

[216] **Lindsay Whittle:** Yes I would think so.

[217] **Mr Woodall:** —simply because of the taxes and other things. I think it's about a 4 per cent or 5 per cent margin on tobacco products for retailers, and I can't say what it would be for e-cigarettes.

[218] **Lindsay Whittle:** Yes. I've no idea how much those devices cost, but there's bound to be a profit there. So, that would cover the registration fee, perhaps.

[219] **Mr Woodall:** Well, I can't say whether—. Obviously, retailers are trying to make a profit across their stores, and food deflation and cost are an issue for them. They're high-turnover, low-margin businesses, so it is a challenge for them.

[220] **David Rees:** The Government, in its explanatory memorandum, has actually stated this as one of the effects:

[221] 'combining a strengthened RPO regime with a national register will add benefit by enhancing existing levers available to local authorities for enforcement of tobacco and nicotine offences.'

[222] You don't think that actually will be the case.

[223] **Mr Woodall:** In terms of restricted premises orders increasingly being used?

[224] **David Rees:** Yes.

[225] **Mr Woodall:** They are used now. They are used now when there is intelligence to say that there is a store that is selling non-duty-paid goods.

[226] **David Rees:** And you don't think that this Bill actually adds strength to those levers.

[227] **Mr Woodall:** Well, I don't think that the register will add strength to that lever in terms of how it is going to help local authorities to identify illicit traders. I don't quite understand how that would happen. That's again going back to this example of Scotland. It would be interesting—. The Scottish Government have said that they're going to release a review of their register this year. So, we're interested to see how that's come out, and I'm sure that that would be of interest to the committee as well.

[228] **David Rees:** Yes, I'm sure it would. Do you have any idea when?

[229] **Mr Woodall:** I've asked the question. I'll come back as soon as I hear.

[230] **Darren Millar:** Can I just ask a question in relation to the way things work at the moment? So, if a store sells tobacco, there's no requirement for them to inform a local authority that they are selling tobacco, and therefore the local authority doesn't make periodic inspections or, you know, mystery shopper sort of visits to see whether they are selling outside of the existing laws.

[231] **Mr Woodall:** There's no requirement for retailers to register, or indeed a pub or, as you said, a hairdresser.

[232] **Darren Millar:** There's no requirement. Okay. So, that makes enforcement more difficult, doesn't it? If the local authority at least knows where everybody is who's selling tobacco, doesn't that help with enforcement?

[233] **Mr Woodall:** Well, in terms of our sector—in terms of the convenience store sector—it's pretty clear that they will be selling tobacco pretty much—

[234] **Darren Millar:** For the majority. I accept that.

[235] **Mr Woodall:** [*Continues.*]—and they also will be selling alcohol. Therefore, they have an alcohol licence, and you can identify them quite clearly.

[236] **Darren Millar:** Listen; I can fully appreciate that in terms of your line of

business, but obviously this is a register that would apply much more widely than just convenience stores. It would apply to other points of sale as well, beyond the convenience store sector. Isn't there some merit in having a register that allows local authorities to know where products are being sold, so that they can do the periodic checks?

[237] **Mr Woodall:** Well, I think that local authorities—

[238] **Darren Millar:** We've got the law changing in respect of the sale of e-cigarettes, for example, to minors very, very soon—in the coming weeks. You know, given that these sorts of products are being sold in all sorts of different places, as we've just heard, isn't there some merit in a local authority being able to identify where these places are, so that that can help with their enforcement efforts? You've complained about enforcement. This is one way of improving it.

[239] **Mr Woodall:** I think that local authorities and trading standards know their local communities and will know where things are sold. They do regularly test—purchase our members, and other people in the community do test those. It's quite robust. That is what they do. So, they don't have a problem identifying it now. The purpose of the register is to try and weed out the people who are trading badly, not trading within the regulations. I think that they already have the capabilities and powers to identify those people.

[240] **Darren Millar:** Well, there are two reasons. I mean, the Minister has said that he wants to know where products are being sold as well, and that it's not always easy actually for local authorities to identify, particularly with the proposed changes in terms of the regulations for the prohibition of sale to minors of e-cigarettes. Tobacco may be a different thing, but of course, this is not just tobacco; it's nicotine products as well, isn't it?

[241] **Mr Woodall:** Sure. Yes.

[242] **David Rees:** Do any other Members have questions? Obviously, it has been a very narrow focus, particularly in your evidence.

[243] **Mr Woodall:** Yes.

[244] **David Rees:** Can I thank you very much, therefore, for your time and for the written evidence? You will receive a copy of the transcript for any factual inaccuracies. Please, if there are any, let us know as soon as possible

so that they can be corrected. Once again, thank you very much for your time.

[245] **Mr Woodall:** Thank you. I'll try and find some more information from Scotland.

[246] **David Rees:** If you find the Scottish information, that would be very helpful.

[247] **Mr Woodall:** Thank you.

11:13

Papur i'w Nodi Paper to Note

[248] **David Rees:** Can I ask Members, therefore, to move on to item 5—paper to note? We've received correspondence from the Presiding Officer regarding the draft Wales Bill. Can we note that? We may well be considering this aspect next week when we look at our forward work programme.

11:14

Cynnig o dan Reolau Sefydlog 17.42(vi) a (ix) i Benderfynu Gwahardd y Cyhoedd Motion under Standing Orders 17.42(vi) and (ix) to Resolve to Exclude the Public

Cynnig:

Motion:

bod y pwyllgor yn penderfynu that the committee resolves to gwahardd y cyhoedd o weddill y exclude the public from the cyfarfod ac o eitem 1 yn y cyfarfod ar remainder of the meeting and item 1 1 Hydref 2015, yn unol â Rheolau of the meeting on 1 October 2015, in Sefydlog 17.42(vi) a (ix). accordance with Standing Orders

17.42(vi) and (ix).

Cynigiwyd y cynnig.

Motion moved.

[249] **David Rees:** Therefore, item 6. In accordance with Standing Orders

17.42(vi) and (ix), I propose that the committee meets in private for the remainder of this meeting and for item 1 of the meeting on 1 October. Are all Members content? Then, we will move into private session.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 11:14.

The public part of the meeting ended at 11:14.