

# Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[The Health and Social Care Committee](#)

21/10/2015

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

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Public from the Remainder of the Meeting

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
John Griffiths	Llafur Labour
Altaf Hussain	Ceidwadwyr Cymreig Welsh Conservatives
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Lynne Neagle	Llafur Labour
Gwyn R. Price	Llafur Labour
David Rees	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Lindsay Whittle	Plaid Cymru The Party of Wales
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

**Eraill yn bresennol**  
**Others in attendance**

Sue Bowker	Pennaeth Cangen Polisi Tybaco, Llywodraeth Cymru Head of Tobacco Policy Branch, Welsh Government
Mark Drakeford	Aelod Cynulliad, Llafur (Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (The Minister for Health and Social Services)
Dr. Ruth Hussey	Prif Swyddog Meddygol Cymru Chief Medical Officer for Wales
Dewi Jones	Yr Adran Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services Department, Welsh Government
Chris Tudor-Smith	Uwch-swyddog Cyfrifol, Llywodraeth Cymru Senior Responsible Officer, Welsh Government

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

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

*Dechreuodd rhan gyhoeddus y cyfarfod am 10:00.*  
*The public part of the meeting began at 10:00.*

**Cyflwyniadau, 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, during which we will take our final session of evidence on the Public Health (Wales) Bill? Can I remind Members the meeting is bilingual? If you require simultaneous translation from Welsh to English, the headphones are available and this is on channel 1. If you require amplification, then the headphones are available, on channel 2. I also require Members to either turn their mobiles onto silent or turn them off, along with any other equipment that may make a noise or interfere with the broadcasting equipment. There is no scheduled fire alarm this morning. So, if one does take place, please follow the directions of the ushers. We have not received any apologies this morning, so we can go straight into the meeting.

10:01

**Bil Iechyd y Cyhoedd (Cymru): Sesiwn Dystiolaeth 18**  
**Public Health (Wales) Bill: Evidence Session 18**

[2] **David Rees:** Can I welcome the Minister for Health and Social Services, Mark Drakeford, to the meeting? Can I also welcome Dr Ruth Hussey, chief medical officer; Chris Tudor-Smith, who is the senior responsible officer for

the Bill; Sue Bowker, who is the head of the tobacco policy branch; and, Dewi Jones, one of the legal advisers to the Welsh Government? Thank you, Minister, and thank you for the written response and additional information we've received since the first meeting we had on 1 July. I'm sure you've been aware of the various evidence sessions we've taken. As a consequence of that, there are some questions that have arisen that Members will want to put to you. With that in mind, we'll go straight into questions. Can I remind the Minister—? In the first session, I went from back to front in relation to the Bill. I intend to do the same, to ensure we cover all aspects of the Bill and all parts of it. Gwyn will ask the first question.

[3] **Gwyn R. Price:** Thank you, Chair. Good morning, everybody. Could you give the reasons why health impact assessments were omitted from the White Paper and, subsequently, the Bill?

[4] **The Minister for Health and Social Services (Mark Drakeford):** Thank you, Gwyn, for that question. Members will remember that the Bill originated in a Green Paper. The Green Paper rehearsed two tracks that the Government could have followed in relation to public health legislation. It rehearsed the case for a health-in-all-policies approach and then it rehearsed a series of practical measures that could be taken in the field of public health to improve the health of people in Wales. We set out in the White Paper how we were going to pursue those twin tracks. The health-in-all-policies approach was to be pursued through the Well-being of Future Generations (Wales) Bill, as it was then, and that's where health impact assessments discussion went on to take place; whereas the Bill in front of this committee was designed to pick up those much more practical and specific proposals that had emerged as part of the Green Paper discussion. That's why HIAs don't appear in the White Paper and they don't appear in the Bill, because they were pursued elsewhere as part of the Government's legislative programme. That is why the Well-being of Future Generations (Wales) Act 2015, as it became, places improved health as one of the national wellbeing goals to be pursued here in Wales. That's the way that health impact assessments will be taken forward, as part of the rounded assessments that that Act now requires to be undertaken when there are major developments proposed by local authorities and others.

[5] It's important for me just to be clear, Chair, that none of this means that health impact assessments are not taking place, because health impact assessments take place all the time in Wales. There are Members around the table, I can see, who will remember the Nant-y-gwyddon issue in the very

first Assembly—a major issue in the first Assembly with a special committee set up, chaired by my good friend Dr Richard Edwards. As a result of that, Public Health Wales set up its Welsh health impact assessment support unit. It's been there ever since 2001. It provides support on a regular and routine basis for those health impact assessments that are carried out in Wales.

[6] **David Rees:** Thank you, Minister. Lindsay.

[7] **Lindsay Whittle:** Thank you, Chair. Minister, I just want to query the priorities, really, of a public health Bill. For me, if you look at the biggest issue facing Wales and its population, I think it's obesity. I'm wondering where that fits in with the previous Bills you've just mentioned. There are lots of others as well, but I won't bore the committee by mentioning them. For me, the biggest priority, I think, to tackle, before many of these—and I'm not saying these are not important—but obesity must be our main priority. Have we missed a golden opportunity?

[8] **Mark Drakeford:** I think I'd like to answer Lindsay Whittle in this way: first of all by agreeing with him about the real importance of obesity as a public health issue, and to remind the committee that I said early on in the proceedings of this Bill that, where there were organisations that believed we had missed legislative opportunities, we would go back to them and ask them to tell us what specific legal and legislative steps they thought we should take to address the issue that they had identified. Obesity was clearly one of them. So, we did go back to a series of organisations that had said, 'Why is obesity not covered in the public health Bill?', and said to them: 'Tell us what, in law, you would like us to do to address that problem.' Truthfully, what came back was a rich set of policy ideas—quite an interesting set of practical practice ideas to do with the pathway and things that this committee has taken a direct interest in during this Assembly term. But if you ask the question, 'So, what would you put into a public health Bill? What piece of legislative change that is within the competence of the National Assembly to take?', then, actually, there were very few ideas that we were able to take forward. So, I don't think the Bill misses an opportunity, because I don't think this is the vehicle through which that very important issue is best taken forward. We will take forward some of the ideas that have come forward as a result of the Bill, but they turn out not to be legislative ideas; they turn out to be policy and practice ideas to address the very serious issue that Lindsay Whittle has raised.

[9] **Lindsay Whittle:** Thank you. I don't wish to explore this further,

Chair—not at this moment.

[10] **David Rees:** Minister, you have mentioned the Well-being of Future Generations (Wales) Act 2015. Does it explicitly identify health impact assessments within it to ensure that the wellbeing strand is there?

[11] **Mark Drakeford:** Well, Chair, you and Members will remember the debate that happened during Stage 3 of that Bill, where an amendment was moved specifically to identify health impact assessments on the face of the Bill. The amendment wasn't, if I remember correctly, put to a vote because the Minister in charge of the Bill explained the way in which health impacts would be taken into account within the wider and more rounded set of impacts that that Bill will require to be identified and explored when changes are being taken forward. Let me say: I will read very carefully what this committee has to say on this matter and think, as this Bill goes forward, whether there is anything further that could be done.

[12] **David Rees:** Okay. Thank you, Minister. We move on now to Part 6 of the Bill, which is the issue in relation to public toilet access. Lindsay.

[13] **Lindsay Whittle:** Thank you, Chair. Minister, a number of stakeholders have questioned whether the duty to write a strategy by local authorities will actually have any impact on the actual provision and accessibility of public toilets. Can we big it up for the Llansteffan and Llanybri Community Council, which suggested that the Bill should be less cautious and should place a direct requirement on public and private bodies to provide and maintain adequate numbers of public toilets and facilities?

[14] **Mark Drakeford:** Well, thank you, Lindsay, for pointing to that debate. I'm very familiar with both Llansteffan and Llanybri—very near where I was born. We've had this debate during the passage of the Bill, and I rehearsed the position I came to in front of the committee last time, and I don't think I'm able to change my mind on it. I think requiring local authorities to prepare and publish a strategy for toilets for use by the public is a genuine step forward. It is what the House of Commons select committee that looked at this recommended. It, too, stopped short of saying that you should place a duty on local authorities to implement the strategy, because that is a matter for its local democratic processes and its local democratic accountability to take account of. What we will do is make sure that members of any council and voters in any council area will see the strategy that the council has published. I think the fact of publishing a strategy will do a lot to identify

those facilities that are available already and do more to publicise them so that people know, if there are toilets paid for by the public in an arts centre, in a leisure centre and so on, that those are genuinely available for members of the public to use. I think it will engender some more imaginative schemes. The Welsh Senate of Older People, whose campaign this has been, tells us that, in a survey of their members, their members say that they are prepared to pay a modest charge to use facilities that they know will be clean and properly looked after and of a standard that they would expect.

[15] We align the production of the strategy with the cycle of local authority elections and, if, in the end, a local authority hasn't done what it ought to do to implement the strategy that it itself will have drawn up in consultation with its local population, then people will have the ability to pass their verdict on that at that ballot box. I think that is the right way to cut these responsibilities.

[16] **Lindsay Whittle:** Could I thank the Minister for his reply? I suppose I should declare an interest: I'm still a member of a local authority and, as Members will know, I was previously the leader of Caerphilly County Borough Council. Often, at times of cutbacks, these provisions are sometimes the first to go. Many local authorities throughout Wales are actually closing public toilets where they did charge people. So, it shows there's something wrong with the cost-effectiveness of that. You quoted the House of Commons. I rather hoped that we'd be a bit better than the House of Commons when we established the National Assembly for Wales and that we would do things differently. That's why I think, Minister, it's important that you really should grasp the nettle with your Bill. Whilst a strategy is marvellous, strategies sit on shelves. Let's just do it. Let's just do it.

[17] **Mark Drakeford:** Chair, if I was in a position of being able to pass new money to local authorities in Wales to support a duty that the National Assembly for Wales would have placed on them, I think that argument would be a strong argument, but the truth of the matter is that, in the times we are in, there will be no new money that I will be able to find to support such a duty. Therefore, I do not think that it is a legitimate course of action for me to advocate to you that we should place a duty on local authorities that we cannot assist them to discharge.

[18] As I say, I think that the duty to prepare a strategy is a real step forward. I think it will give new prominence to this whole issue. I think it will result in real improvements by local authorities as they make sure that all



those things they pay for already are properly advertised and known to their local populations and, if their local populations place a higher priority on this than on the other things that local authorities have to provide, and which local authorities struggle to provide in an era of real austerity, then that's a dialogue to be had between the local authority and its voters, rather than between us and them.

[19] **David Rees:** Kirsty.

[20] **Kirsty Williams:** Thank you, Chair. Minister, the emphasis on improving provision in this very important area of public health has been completely abdicated by national Government, which has given the responsibility to local government. Do you not see that there is any national responsibility a national Government has for ensuring this area of public policy is advanced? You say that local populations will be able to make a judgment on local decisions made by councillors, but there are many people who travel around Wales—who are required to travel around Wales or want to travel around Wales—who will have no impact on being able to make a judgment through the ballot box because a lack of provision in Newtown cannot be voted on by a resident of Cardiff, who found themselves not able to access a public facility in that part of Wales. Is there no role for national Government here?

10:15

[21] **Mark Drakeford:** Well, Chair, I think, ever since duties were first placed in relation to toilets for use by the public, which go back to the 1930s, successive Governments of all persuasions have believed that this is a duty best discharged locally rather than nationally, and insofar as there is a debate about which level of Government the responsibility should sit at, it's tended to be whether it should be between community councils or county councils, rather than believing that the provision of local toilets is a matter for the National Assembly to determine. So, I don't think that there is a case in the round for drawing the responsibility up to national level, but I do think that Kirsty made some important points.

[22] **Kirsty Williams:** What about national oversight?

[23] **Mark Drakeford:** Well, I think that this Bill is about the Assembly providing new requirements in this area. What I was going to say is that where Government Ministers have recognised some locations that are of greater importance than simply for locals, then you will know that my

colleague Mrs Hart has provided some additional funding to support the provision of public facilities, where she comes to the conclusion that these are of more than local significance. So, I think, in a pragmatic way, the Welsh Government has shown a willingness to do some of the things that Kirsty has suggested. I don't think it amounts to a wholesale transfer of responsibility in this area from local to national level.

[24] **David Rees:** Okay. Can I just—

[25] **John Griffiths:** Could I come in?

[26] **David Rees:** John.

[27] **John Griffiths:** Just on the role of the Welsh Government, Minister, I wonder if you could say a little bit about how the Bill and guidance might ensure that the needs of particular groups are addressed through the strategies that are developed.

[28] **Mark Drakeford:** Yes. Thanks, John, for that. Well, the information we've already supplied alongside the Bill makes it clear that any strategy that is prepared and published by a local authority must show how toilets for use by the public will include changing facilities for babies and changing places for disabled people. So, that is already explicit in the material that we have provided. I see, in some of the evidence that the committee has received, concerns for other groups—homeless people, for example—in this area, and I think that those are points that have been well made. We will make sure that in the guidance that we will supply to local authorities alongside this Bill, and alongside the Equality Act duties that they will have to make sure that they discharge in the preparation and publication of any strategy, we draw those wider concerns to their attention and make sure that they address them.

[29] **David Rees:** Okay. Thank you. Well, there are no further questions on this part of the Bill. We will move on to Part 5, which is the pharmaceutical services element of the Bill. Gwyn, do you want to ask a question here?

[30] **Gwyn R. Price:** Yes. The British Medical Association and the Dispensing Doctors' Association are concerned about the potential impact of the Bill on dispensing GP practices and services in rural areas. I'm very concerned about that in my constituency and in our rural areas, where GPs have indicated to me that, because of the Bill, they could lose income and have to close their

practices. Could you comment on that, please, Minister?

[31] **Mark Drakeford:** Well, thanks, Gwyn, for that important point, which I followed during the passage of the Bill. I've had correspondence from the General Practitioners Committee Wales on that issue. It's important to say that those organisations that do represent doctors, like the BMA and GPC Wales, are very supportive of this part of the Bill in general in its aim to strengthen pharmaceutical services across Wales. The issue of dispensing doctors is a real one, which I recognise. I think there are lots for us to learn from the experience of pharmaceutical needs assessments in England in relation to some of the unintended consequences there may have been there in relation to dispensing doctors. So, as a result, I wrote to Dr Charlotte Jones in reply to the concerns that she raised, and I've done two things to try and meet the genuine concerns that you've identified. First of all, I've made it clear that we wish to invite GPC Wales onto the group that will design the detail of how pharmaceutical needs assessments will be conducted in Wales. So, they will have a seat at the table to make sure that those concerns are actively attended to, and I've made it clear to GPC Wales—and I'm very happy to put it on the record again this morning—that I expect pharmaceutical needs assessments to reflect consideration of the contribution of all providers in addressing local health needs. In other words, the contribution of dispensing doctors will be explicitly recognised as part of the pharmaceutical needs assessment and not left to the end, where they could be a casualty of the wider strategy.

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

[33] **Mark Drakeford:** I think Dr Hussey might want to—

[34] **David Rees:** Dr Hussey.

[35] **Dr Hussey:** Could I add a point? I'd take us back to the primary care plan, which you'll be familiar with. The whole theme of the primary care plan is the 64 clusters of primary care teams, in the wider sense, that look at the needs of local communities, and the underpinning mantra, if you like, is matching services to needs. So, I think it's really important. I visited a practice in north Powys, where they were providing dental services and they had a pharmacy in there and they were working as a whole team. The nearest facilities were miles away. So, I think, whatever we do, we've got to weigh up how the policy helps different communities, with different needs and different models of service, and weigh up the benefits of those. So, I think

there isn't a single solution, but we must make sure that the needs assessment properly understands what it is that people need, and then the practicalities of what the options might be to meet those needs.

[36] Just in support of what's been said, I think involving people who are at the front line delivering those imaginative solutions in areas where there's not an easy way of bringing those services together, will be a really important part of the conversation of how we do the needs assessment well.

[37] **Gwyn R. Price:** Yes. Well, I can appreciate that, but where I come from and attend public meetings, the concern is out there and I'm very concerned that, particularly in Markham, you know, we've got places there where I'm very concerned that people are out in numbers and they want to be considered and I don't want them to be rushed over. That's where I'm coming from.

[38] **David Rees:** Altaf.

[39] **Altaf Hussain:** Just a small point about the availability of the medicines out of hours and during weekends: people do visit pharmacies and they tell them, 'Okay. You can buy some medicines that are available over the counter, like paracetamol, ibuprofen—anything', but, they can't prescribe it, and many of the patients have to pay for it, and they say, 'No', since, in Wales, we don't pay for a prescription. While that is available in the rest of England, you pay for it. So it is difficult there to buy—. Here, patients are saying, 'No, no. We need to have a prescription', which they can't do. Then, they have to go to the A&E department and wait there for four hours to get that paracetamol. Can that be changed? I've had a word with a lot of people in pharmacies.

[40] **Mark Drakeford:** I'm grateful to Altaf for raising that point and I hope he will be reassured to know that, very recently, the rule has been changed. So, now, community pharmacies in Wales are, in those emergency circumstances, able to prescribe directly at no charge to the patient. Darren will know that we did this first in north Wales, where it had an immediate and very beneficial effect on out-of-hours services, diverting some hundreds of appointments over a single weekend directly to community pharmacies to do exactly what Dr Hussain has asked about. So, it's a very important point, and I hope you'll be reassured that, very recently—so I can see why people might not have been aware of it—the rules have changed in Wales in the direction he advocated.

[41] **Altaf Hussain:** Thanks.

[42] **David Rees:** Thank you. There are no other questions on pharmaceutical services. Can we move on, then, to Part 4 of the Bill, which relates to special procedures? John Griffiths will start the questions.

[43] **John Griffiths:** Yes, thank you, Chair. During our evidence-taking sessions, Minister, we heard that there is some concern about people undergoing tattooing or other special procedures, such as piercing, whilst intoxicated. I wonder whether you might consider more explicit provision in the Bill to introduce greater safeguards against that taking place.

[44] **Mark Drakeford:** Well, Chair, I've been following this debate in front of the committee since Darren Millar raised it with me the last time I was here to talk to the committee about it. I'll set out this morning how I think the Bill will allow us to address that matter, but there are a number of occasions this morning, I think, where I will say that I will read carefully what the committee concludes on this, particularly in relation to, John, your very final point as to whether or not something ought to be on the face of the Bill in this area. The way that I see the Bill addressing the issue at the moment is through the mandatory licensing conditions, which are set up in section 52 of the Bill, so you will know that both the individual, as a practitioner, and the premises from which they practice will have to be in line with the new requirements of the Bill. We will create a licensing condition that provides that a licence holder should not perform a special procedure on a person who is under the influence of alcohol or drugs to such an extent that they are unable to understand the pre-procedure information, which is now a requirement for any provider to provide. They will have to make sure that they go through a pre-procedure consultation with a user, and that will have to be recorded on the forms that the individual has to complete to show that that has been done.

[45] I'm also minded to include, by way of mandatory licence conditions, a direct requirement for the individual themselves to confirm that they are not under the influence of alcohol or drugs before the procedure is undertaken. I intend to use the mandatory premises approval conditions to make it clear that the premises themselves must include notices advertising that body piercing or tattooing will not be carried out on any person under the influence of alcohol or drugs. So, those are three specific ways in which I'm very happy to confirm to the committee today we will use section 52 of the

Bill to address the concerns that have been raised here. I understand that that does not amount to identifying this issue specifically on the face of the Bill as one of the things that will be covered by mandatory licensing conditions, and I will, as I say, read carefully what the committee's advice will be on that matter.

[46] **John Griffiths:** I'm grateful for that indication, Minister, that you will pay careful attention to the committee's report on that. Could I move on to another matter, Chair? In terms of the age limit of 18 for intimate piercing, we've had evidence that it would be better if that was the age limit for piercing, because it would be more consistent with other provisions, and also it would reflect what witnesses thought was the most appropriate level of maturity in order to make that sort of decision. Do you have sympathy with that view?

[47] **Mark Drakeford:** I have sympathy with the general proposition that you can have a debate about what the right age point for decision making in this area would be. In coming to the limit of the age of 16, I took advice that looked at whether 14 was the right age and whether 18 was the right age. Committee members will know that we are much more alert today than we were, maybe in the past, and certainly at the time when the tattooing age was set, by law flowing from the Gillick competence test and by the obligations that this Assembly has taken on itself in relation to UNCRC things. Children have rights and young people have rights, and it's—at what point do you think you strike the balance between protecting a child or young person, without disproportionately trespassing on those rights to make decisions for themselves?

[48] Now, at the age of 16, you can leave school, you can get married and you can have sexual intercourse by consent. You are in charge of your life in a whole range of very, very important areas. I understand completely that, you know, there is a debate to be had, but, having thought it through and seen the advice that I've seen, I came to the conclusion that, for this purpose, 16 was the right balance to strike between making sure that children are properly protected, but recognising that, by the time you come to the age of 16, there are aspects of your life over which you are entitled to have direct control yourself.

[49] **David Rees:** Okay?

[50] **John Griffiths:** Yes, fine.

[51] **David Rees:** Lynne.

[52] **Lynne Neagle:** The committee has heard about a bewildering array of body modification procedures, as part of our evidence taking, some of which I'd probably rather forget, such as tongue splitting, scarification, branding and sub-dermal implants. Have you given any consideration to extending the list of procedures covered by the Bill to include any of those?

10:30

[53] **Kirsty Williams:** You forgot the tashing.

[54] **Lynne Neagle:** Sorry?

[55] **Kirsty Williams:** You forgot the tashing.

[56] **Lynne Neagle:** Tashing. Okay.

[57] **David Rees:** Don't ask. [*Laughter.*]

[58] **Elin Jones:** Or Google it.

[59] **Mark Drakeford:** Well, I'm particularly squeamish myself in relation to some of these things, so I'm not intending to do it myself. I think we believe that the four special procedures identified at this point in the Bill cover, at the moment, the vast bulk of procedures that are carried out. Section 76 of the Bill allows further procedures to be added in future. Those regulations will be via the affirmative procedure, so it would mean that there would be proper consultation with the providers of such services and with the local authorities that would be responsible for enforcing the Bill in relation to them and that the National Assembly itself would always have an opportunity to debate whether or not that was the right point at which to add those procedures to the Bill. For the most part, I think it is better that we start with those things that we know are the most prevalent, allow the system to establish itself and allow local authorities to get to grips with the new obligations we are placing on them here and then to add other procedures in the future, where we have the evidence that they are widespread and of concern.

[60] The one issue that Lynne mentioned where I think the case is

strongest for moving at this point to add procedures to the Bill is in relation to tongue splitting. I think you've received some quite compelling evidence about the need to ensure that that activity is properly controlled and overseen, and I'm happy to indicate this morning that I—provided the Bill proceeds to that stage—will bring forward a Government amendment at Stage 2 to respond to that particular procedure.

[61] **Lynne Neagle:** Thanks.

[62] **David Rees:** Kirsty.

[63] **Kirsty Williams:** I appreciate that the list could be longer, but it seems to me that, throughout all this, the issue of tattooing has been at the forefront, following the outbreak in Newport, and that's been the big driver behind wanting to do something. I wasn't being flippant about the tashing. It's exactly the same procedure in terms of the needle going into the skin, but my understanding—the way the Bill is currently drafted talks about pigmentation. Tashing uses ashes from a deceased person, and the tattoo is made up of that. That, technically, isn't a pigment, but it's still an invasive procedure. There is also a new trend for tattooing with tattoos that are only visible under ultraviolet light, so, by day, you don't look as if you've got any tattoo on you, but, when you go to a nightclub—. Again, that technically isn't a pigment and, therefore, isn't covered, potentially, by the legislation, but they all involve a needle breaking the skin in the way—. So, I don't understand why the Government wants to regulate regular tattooing when there are other procedures, carried out by similar individuals, with, I would have guessed, exactly the same risk for public health, that aren't covered because of this issue of what constitutes a pigment or a tattoo.

[64] **Mark Drakeford:** I'm very grateful to Kirsty for raising those issues, and it's a difficult part of this whole field, isn't it, where things move so fast, to know how quickly you want the law to anticipate things that may happen or whether you think that the law is better used to address those things that you know about firmly, and then have a procedure to allow the law to capture more things as the field becomes more apparent? The advice I'm getting at this moment is that tashing is actually caught by the definition of tattooing within the Bill, but I'm very happy that we will look carefully at the record of what Kirsty has said and reply to her and then to you, Chair, so that committee members can see just what our response might be.

[65] **Kirsty Williams:** Thank you.



[66] **David Rees:** John.

[67] **John Griffiths:** Just on enforcement generally, Minister, we've heard evidence that there may be a burgeoning of backstreet and illicit tattooing and, indeed, body piercing and concern that local authorities and their environmental health officers are, perhaps, rather under-resourced, at least in some authorities. There are real concerns about enforcement. Could you say a little bit about your view as to the validity of those concerns, and to what extent it is a matter for local authorities, or to what extent the Bill, and you as Minister, may be able to ensure adequate enforcement?

[68] **Mark Drakeford:** Thank you, John. In some ways, this goes back to the point that Lindsay was pressing me on earlier in relation to placing a duty on local authorities to implement a strategy, where my reply was that I was reluctant to do that when I knew I couldn't fund the duty. So, what this Bill does, where we are placing new duties on local authorities in relation to special procedures and in relation to the tobacco retailers register, is to allow local authorities to raise the funds to support the new duties that we are placing on them. So, in the case of special procedures, we are replacing an outdated system, where there was a one-off registration fee that lasted for a lifetime, with a modernised licensing system that will ensure that a cycle of funding is available to local authorities to support them in the discharge of these duties. Local authorities will be able to charge fees to recover the costs of licensing, approval and registration procedures, and to cover the costs of running and enforcing the schemes for successful applications. I know there's a balance to be struck here again between wanting to make sure that we have an income stream for local authorities to do this important job without making the fees of such a level that they become a burden on legitimate businesses. But we are having to make sure that local authorities get the resources they need to do this very important job, and the Bill allows that to happen.

[69] How will that help with the point that you started with? Well, I think the Bill is really strong in this area. At the moment, it is very difficult indeed, both for members of the public and for any enforcement officer, to see the difference between a legitimate business that meets all the standards that you would expect it to meet and those people who practice scratching and other procedures in an entirely unregulated and not acceptable way. What this Bill will do is to make sure that those people who are at the proper end of the business are recognised for the way that they conduct that business.

They will have a licence, they will display the licence and, if you don't have a licence to display, you are operating outside the law. So, the ability to spot backstreet practitioners and other people who don't do it in the right way is really strengthened by this Bill. It is strengthened for enforcement purposes and, most importantly of all, it is strengthened for the user of the service as well. So, I think this is a really strong part of this Bill, and the ability to charge fees to go alongside it will make sure that local authorities are able to discharge these responsibilities properly.

[70] **John Griffiths:** Just further to that, Minister, that income stream, then, from the charging of fees, will that have to be used for enforcement purposes or purposes related to this legislation, or could local authorities use it in any way that they wish?

[71] **Mark Drakeford:** I'm just taking advice, but I think the answer is that we've constructed the Bill in such a way that the fee income is dedicated to the purpose for which the income is being collected.

[72] **David Rees:** Lynne.

[73] **Lynne Neagle:** That's what I wanted to ask.

[74] **David Rees:** Okay. Can I ask, Minister: the level 3 fine, the maximum value, is identified as £1,000, and yet the industry indicates that that may not be sufficient to deter illegal trading, to an extent that some people may feel that they could earn that, perhaps, in a week, and it's no deterrent to them. The sunbed legislation has a maximum fine of £20,000, but we know that the maximums are not often used within the jurisdiction area. Have you any thoughts about increasing it so it is actually a greater deterrent?

[75] **Mark Drakeford:** Thank you, Chair. I've been following closely the evidence given to the committee on this matter, and I'm very happy to indicate today that should you come to a conclusion, when you look at all the evidence, that the level of fines currently identified in the Bill are not adequate for the purpose, then I will look positively at those conclusions and will look to review the level of fines in this part of the Bill. I'm able to give an explicit commitment this morning in relation to the level of fine for performing an intimate piercing on a person who is under the age of 16, and I intend to bring forward a Government amendment at Stage 2 very much in response to the arguments you've just made, Chair, to move the level of fine from a level 4 fine, which is where the Bill currently places it, to an unlimited

fine, which is currently what is available in the sunbed legislation. So, specifically in relation to intimate piercing, I will bring forward an amendment on that matter. If the committee has views more generally about the level of fines needing to be strengthened in the Bill, then I will look positively at that conclusion, should you come to it.

[76] **David Rees:** Thank you. The other issue, Minister, is that we talked about the cosmetic procedures, and you indicated in your earlier evidence that you were waiting for the Keogh review to look into this. Have we had any progress on that matter? Because, again, it's been brought to our attention, the use of Botox and various other techniques used—some of them interesting. How are you actually addressing those particular issues so that we licence and ensure that regulations are placed on those procedures?

[77] **Mark Drakeford:** I'll probably look for some assistance on this specific point, but just to recap with the committee that there are matters—Botox, for example—that have been the subject of the Keogh review of cosmetic surgery. That is being taken forward at the UK level, but it isn't definitively taken forward yet—we're waiting for the UK Government's definitive response to it—but we do know that the UK Government is working on that response and has published some material showing what it is doing to see how the Keogh conclusions could be implemented at a UK level. So, there are some things where I think, if we can get a UK solution to them, it is better do it that way. So, we continue to keep a close watching brief on the way that the UK Government's thinking on that matter is developing.

[78] **David Rees:** Okay. And, finally, there's been some confusion with the intimate piercing issue and the female genital mutilation question. I just want to ask the question: are you assured that there is no overlap or interference with the 2003 Act in relation to FGM?

[79] **Mark Drakeford:** I am very sure in my mind, Chair, that these are very different matters and that there is no overlap directly between them, but I've seen that not everybody has been as clear about the distinction as maybe we would have hoped they would be. As you know, in the procedures of the National Assembly, the Government will bring forward a revised explanatory memorandum at the end of Stage 2 on this matter, and I'm happy again to give an undertaking this morning that, when we produce the revised explanatory memorandum, we will set out more fully and explicitly the distinction between the procedures that this Bill has responsibility for oversight of, and the way that female genital mutilation, which is a criminal

offence already and doesn't need this Bill to attend to that—the way in which the law already addresses that awful matter.

[80] **David Rees:** Are there any other questions on special procedures? I've got one final one in that case. On tongue piercing—not tongue splitting; tongue piercing—evidence has been brought to us that actually there have been some difficulties experienced by dentists who have come across situations of tongue piercing, where actual swelling has taken place and therefore caused harm or possible harm to the individual. Clearly, the Bill should be looking at protecting and ensuring the protection of individuals who undergo these procedures. Have you considered the inclusion of tongue piercing into intimate piercing?

[81] **Mark Drakeford:** Yes. I'm sorry if I inadvertently ended up using the wrong term in my answer earlier; I should have referred to 'tongue piercing' rather than 'tongue splitting'. And, as I've already indicated, of the list of things that Lynne identified earlier, that is the one that I feel already we will add to the four special procedures currently in the Bill, and I'll do that at Stage 2.

[82] **David Rees:** Just tongue piercing, not tongue splitting?

[83] **Mark Drakeford:** I'm sorry; I don't claim to be as on top of the detail of some of this as maybe you are. [*Laughter.*]

[84] **David Rees:** Tongue splitting was a major issue.

[85] **Elin Jones:** So, you just intend to put tongue splitting on the— [*Inaudible.*]

[86] **Mr Tudor-Smith:** No, the intention in relation to the issues covered, really, by intimate piercing, where the age restriction is below the age of 16, is that tongue piercing should be added to that list.

10:45

[87] **Mark Drakeford:** I will write to committee members to set out exactly what I currently intend to do at Stage 2. You will know then what the Government is already persuaded of, and, if there are further things that you think we ought to be thinking about in relation to that, then I'm sure they'll be very helpfully identified in the Stage 1 report.

[88] **David Rees:** I think it's important to clarify, because the tongue piercing issue would have been intimate piercing, which has an age limit on it. Tongue splitting would have been a procedure, which is separate.

[89] **Mark Drakeford:** I don't intend to confuse you any further on this topic this morning, Chair. I'm afraid I've already—

[90] **David Rees:** We'll look forward to receiving—

[91] **Mark Drakeford:** —but I will write to you to make sure that it's clear what our current thinking is, and then I'll be very pleased to see your advice on where you think that has taken us.

[92] **David Rees:** Okay. Thank you. It is important that we get that cleared up when we talk about that. Okay, thank you. If there are no further questions on that, then we'll move on to Parts 2 and 3 of the Bill, which clearly highlight—. I'm sure you'll appreciate, Minister, that we received a lot of correspondence and evidence in relation to these particular sections of the Bill, particularly chapter 1. So, we'll go straight into questions in relation to Parts 2 and 3 of the Bill, and start off with Alun.

[93] **Alun Davies:** Yes. Thank you very much. Actually, I wanted to start off with a question to you, Minister, on something that isn't in the Bill, but which does create, I think, the framework for your provisions on e-cigarettes particularly. I am concerned to understand your views on the tobacco products directive, and how you believe the legislation in this Bill will fit into that. If I understand, and if I recall correctly, this directive was first proposed under the Irish presidency some years ago, and was agreed by Council of Ministers in Commission, but encountered some opposition in the Parliament. That's my recollection; correct me if I'm wrong. It would be useful for me to understand the view of the Welsh government on this, and how you believe that the TPD might aid your objectives and how you see this legislation fitting into those provisions.

[94] **Mark Drakeford:** I thank Alun for that question, because I think that's very important background to the proposals that the committee sees in this part of our Bill. And Mr Davies is absolutely right; it was the Irish presidency, the Irish health Minister at the time, Dr Reilly, who navigated the TPD through the European levels of discussion. I'm keen just to remind the committee of what the UK position was in relation to the TPD, because we as

a Welsh Government were very strongly supportive of the position taken by UK Ministers during those negotiations. The proposal of the presidency, and of the Council of Ministers, was that electronic cigarettes should be regulated as a medicine. That was the position taken by Jeremy Hunt; it was the position taken by two successive public health Ministers. And Alun is quite right to say that that position was overturned on the floor of the European Parliament.

[95] I just want to be completely clear that, had the UK Government's position prevailed, had the position of Conservative Ministers in Whitehall succeeded at the European level, there would be no need for the proposals that this Bill brings forward in relation to e-cigarettes because they would be regulated as a medicine, and the dangers that are potentially there from them being used in a recreational way would not apply. Now, that proposition was put to a vote on the floor of the European Parliament. Labour Members from Wales supported the UK Government's position, and Plaid Cymru supported the UK Government's position as well. It was the failure of the Irish presidency's position and the UK Government's position to prevail that has led us to the position we are in today. That doesn't mean to say that there aren't some very important things in the TPD that we will still want to make sure happen here in Wales, and we are working closely with UK Ministers to make sure that that happens.

[96] **David Rees:** Just before Alun comes back, just for public clarification, TPD is the tobacco products directive of the European Union—if anyone's not quite clear on that. Alun.

[97] **Alun Davies:** Sorry, it's too easy to fall into this jargon. I presume, therefore, in line with the usual precedent, that the Department of Health in England will lead on the transposition of this European legislation into law in the United Kingdom and that you will be doing so in Wales. Do you have any indications from the United Kingdom Government that they will be continuing to pursue the same policy as they did a year or two years ago?

[98] **Mark Drakeford:** I don't think the policy position has changed in principle, because UK Ministers were very clear in their advice during the coalition period that they believed that e-cigarettes should be regulated as a medicine and not as a consumer product. It is for UK Ministers to take forward the transposition, which is scheduled for May of next year. At the moment, that date may be difficult to achieve, given the level of challenge to the tobacco products directive from the tobacco industry and the e-cigarette

industry. So, the TPD is in front of the European courts because of Totally Wicked—an e-cigarette company—and because of challenges from Philip Morris International and from British American Tobacco, who are seeking further to undermine the protections offered to the public through the TPD. But once we have the results of those challenges, then the UK Government will be responsible for making sure that all the things that are still in the TPD apply here in Wales.

[99] I think it was a pretty shocking set of evidence that I heard this committee getting from witnesses earlier in the process, who wanted to argue in front of you that the TPD should be weakened and that the protections it currently provides, which are far short of what the UK Government originally had hoped for, should be weakened even further.

[100] **Alun Davies:** I certainly didn't think that was very impressive evidence, I must say. I think most of us would like to see the TPD established as it is today or, in fact, strengthened. But one of the things that concerns me about the growth of e-cigarettes is the advertising, which appears to me to be aimed at a youth market—a young market—and it doesn't appear to me—. We hear the industry saying that this is a means of enabling and helping people to give up smoking and that it's a tool, if you like, to be used in smoking cessation, but the advertising that we're seeing employed by the industry says something somewhat different—that this is an entirely harmless product. It certainly appears to me to be targeted at a youth market, from some of the advertising that I've seen and the flavourings and the rest of it. So, are you convinced, Minister, that the statutory provisions that you have in this legislation are sufficient to respond to the dangers that you have identified?

[101] **Mark Drakeford:** I thank Alun for that important question. Chair, would you mind if I just set out some general thoughts on this aspect of the Bill, because it arises directly out of that question? The Bill, as you know, aims to strike the right balance between capturing the positive potential that e-cigarettes have to reduce harm—and I'll recognise that—with helping to reduce the risks that they may pose to wider public health. That's what this part of the Bill tries to do—it tries to strike the right balance. Let me just remind the committee that this is not a Bill that bans e-cigarettes—it does nothing of the sort. It promotes their use in harm reduction; it tries to prevent the risks that come with their promotion as a recreational use. This balancing act, I thought, was very well set out in the British Medical Journal on 15 September last, when, in a direct discussion of the e-cigarette debate,

it said,

[102] ‘Where there is uncertainty about risks, the precautionary principle should apply.’

[103] That’s been my position all the way through. I’ve never argued in front of this committee that the evidence is decisive and that we know for certain what the balance of risks and possibilities is. You have heard from some people that the help afforded by e-cigarettes is so significant that nothing should get in the way of their promotion. You will also have heard and seen evidence from equally eminent individuals and organisations that the harms to enforcement, of renormalisation, and as a gateway to tobacco smoking are such that their use must be properly regulated.

[104] In that uncertain space, the precautionary principle must apply, and, if I could say so, I thought that a number of Plaid Cymru Members made exactly this point very properly in relation to fracking yesterday. It was exactly what Plaid Cymru Members were arguing—that the state of science is uncertain, that there are some people who say that fracking will do a lot of good, there are some people who say that it will do harm, and where there is uncertainty, the precautionary principle must prevail. And I think that, if you had struck out the word ‘fracking’ and put in the word ‘e-cigarettes’, you know, things that Plaid Cymru Members said yesterday—you would find exactly—

[105] **David Rees:** Minister, I appreciate your view, but we are going to focus on e-cigarettes.

[106] **Mark Drakeford:** There we are. I’m just saying that’s the principle. The same *BMJ* article—[*Interruption.*] Well, I hope you might look seriously at that argument, because I think that argument is actually exactly where I am in relation to e-cigarettes. The same *BMJ* article went on to say that where people’s health is concerned, in the absence of scientific consensus, the burden of proof has to lie with those who argue that no harm exists, not with those who are concerned at harm.

[107] So, my position, to come back to Alun’s point, I think is best represented in the further written evidence provided to this committee by the UK’s Faculty of Public Health. You received that evidence on the first—it was dated 1 October. That written evidence begins by emphasising the faculty’s support for e-cigarettes as part of a harm reduction strategy, and it makes a



series of suggestions as to how that potential could be further strengthened, but it then goes on to say that there are real, research-based concerns as to how their more general use and promotion is being conducted by the industry. And so it goes on in its letter to suggest a series of actions to prevent harm and, in doing that, it directly supports this Bill's intention—it singles it out—and says that, in order to address that risk, it supports this Bill's intention to bring the use of e-cigarettes into line with conventional cigarettes in enclosed public spaces. And it does so explicitly on the grounds that this Government has used: those of renormalisation and the gateway effect.

[108] **David Rees:** I'll come back to Alun, and then I want to move on to a couple of questions. One question, then we'll come back.

[109] **Alun Davies:** I don't disagree with the analysis, Minister. I think that, intuitively, I would accept and see where you're coming from. The problem I have is that the evidence doesn't necessarily sustain that intuitive approach. When I approached this issue, I had no issue at all with the proposal in the Bill. I would prefer us to do this on a European scale, through the TPD, but we are where we are and we need to move forward. How would you respond, though, Minister, to the suggestion in the evidence that we received that, in fact, the evidence isn't neatly split 50:50, one way or the other—that it could go one way or it could go the other. The evidence that we've received has been, at times, quite clear that by reducing the ability of people to use e-cigarettes, by restricting their place, if you like, in society and the rest of it, what you're actually doing isn't simply balancing harm or taking a precautionary approach to the potential harm in the future; what you're actually doing is creating harm today by making it more difficult for people to give up using tobacco products and, therefore, the approach that you're taking isn't precautionary but one that creates harm, and it creates harm to people today.

[110] **Mark Drakeford:** Well, Chair, obviously, I've heard those arguments. I may reply to them myself in a moment, but I think that, on that particular issue, I'll ask Dr Hussey, if you don't mind, as the chief medical officer, to take that point first.

[111] **David Rees:** Dr Hussey.

11:00

[112] **Dr Hussey:** Thank you, Chair. I think it's fair to say that, over the months that we've been hearing the emerging evidence—as someone who has to form a view on the advice, based on the evidence that's emerging—I have gone through a lot of questioning myself. What's it telling us? Is it giving us a clear signal one way or the other? Do we know, with more clarity, where we should go? We are dealing with scientific uncertainty and balancing emerging evidence—day in day out, in fact—on what we really understand to be the place of e-cigarettes. The other thing I'm very mindful of is that some of the harms we learnt about from tobacco, for instance, took decades to understand. The biological harm took that long to actually emerge.

[113] I was thinking the other day, cannabis was also one that took years for us to work out the understanding of the balance of those risks. So, I think we have to try and make the best sense of—are there signals that young people are interested? Do they know about these products? Yes, they do. Are they experimenting? Yes. Do we know how that will progress? We can't predict the future. We can't be certain. We will be speculating to some extent, but we can use evidence from other situations to come to some form of judgment there.

[114] On the other side, on putting restrictions, I've heard two arguments. One is that people might think it's a signal that e-cigarettes are as harmful as tobacco. The evidence that we've got—. ASH themselves looked at the change in people's perception of the safety of e-cigarettes. On one hand, it shows there's been an increase in people who think they're less safe. On the other hand, you've got an increase in people, over half, who think they're safe. So, again, it's that balancing of the evidence. So, the bigger group actually think they're relatively safe. We've had the reports from Public Health England talking about an estimate of safety, and it's very much an estimate of the likely impacts. So, it's trying to balance all of that.

[115] Then the other angle is, by limiting use in public spaces—and that's only what we're talking about, and a large proportion of public places already adopt this approach—what impact it will have on people's aspiration to use them. Will it have some impact that will encourage people to stop using them? In the space of time when we've seen a number of public places bringing in restrictions in those public places, actually, the growth of use of e-cigarettes, I think, is up by half a million in Great Britain. That's the latest figures I've seen. So, again, trying to make sense of that evidence, which is probably, on balance—we've got some consensus—they do have a role. We're still unclear how effective they are to help quitting, but, we know that some

people find them useful. We're all agreed in the consensus I've seen from a number of bodies that we don't want to encourage their use in children and young people—there is universal clarity there—and that the prime objective here is to get people to quit smoking. That's where the harm is.

[116] Again, the motivators for using e-cigarettes, including things like cost—relatively inexpensive and available—those motivators are quite strong. So, the restriction on the use in public places, in relative terms to all of those issues, seems to be quite a small step in helping to balance not wanting to renormalise it and exposing people in those public places against the potential benefits that may be emerging for people who do find them useful to quit. So, that's where I'm finding my position in terms of the balance of the evidence.

[117] **David Rees:** I've got other Members now who want to come in on questions. So, I've got John and Kirsty and Darren.

[118] **John Griffiths:** One thing I'm concerned about, Minister, is the effect on others in enclosed public spaces—people who are not using e-cigarettes—and the effect on their health from the use of those e-cigarettes nearby. So, I've put questions to previous evidence givers on this. You referred to the UK's Faculty of Public Health and I think it does say in their study that there is some toxic effect on bystanders of the use of e-cigarettes in enclosed public spaces. It seems to be that, if we fail to restrict the use of e-cigarettes in enclosed public spaces, there will be increasingly—or, certainly, given the expected growth of use of e-cigarettes—a new factor, if you like, adding a pollutant to that air. I think we've got this new evidence from the UK Faculty of Public Health that points in that direction and gives substance to those concerns. So, I just wonder, really, whether you think, as a Government and as a Minister, you have given enough prominence to that aspect of the issues—the effect on bystanders in enclosed public spaces—and whether you think greater prominence, perhaps, should be given to those concerns. Is there any other evidence emerging that reinforces the points made by the UK faculty?

[119] **Mark Drakeford:** Thank you, John, for that. Just to be clear, Chair, the three grounds that we have always used in support of our modest proposals in this part of the Bill are that: unless you do bring the use of e-cigarettes into line with conventional cigarettes in enclosed public spaces, you will make the enforcement of the tobacco ban more difficult to achieve; that it will lead to renormalisation; and that it will lead to a gateway effect as far as

children are concerned. So, we have never relied on the line of argument that John has just put forward. I remember being asked this question—I think by Kirsty—the last time I appeared before you. My answer really is the same now as it was then, but it's not for me to make this case. What we have secured in Wales is that, in enclosed public spaces, the air you breathe is clean. That's the position we want to preserve. It's for those people who think that the level of air quality should be lowered to make that case, and that's what allowing people to use an e-cigarette in places where they cannot use a conventional cigarette achieves.

[120] You're quite right, John, to say that the UK Faculty of Public Health said that the toxic effects of e-cigarette aerosols on bystanders are poorly understood, but they are clearly greater than zero. In other words, the only thing that the use of an e-cigarette in a place where you can't use a conventional cigarette can do to air quality is to make it worse, and to make any risks that exist higher for bystanders. Now, I think that last time I was here, I quoted the evidence that was emerging through Dr Hussey's counterpart in California—that e-cigarette aerosols contain at least 10 chemicals on California's list of chemicals known to cause cancer, birth defects or other reproductive harms. I think you've asked me whether there was any further evidence that had emerged since I was last here, and there is a report published this month. It's a report again published in California by the watchdog—the equivalent of our Natural Resources Wales in the Californian context. It looked at 97 different types of e-cigarettes to analyse what they gave off in terms of vapour. It found that, in 50 of the 97, the vapour had higher levels of one or both of the two cancer-causing chemicals that it analysed, above the levels permitted in California. In one case, the level of formaldehyde emitted by the e-cigarette was 470 times higher than the safe limit identified in Californian law. So, we don't rely on this, because it isn't for me to rely on it. It's for those people who are keen to see e-cigarettes being used in enclosed public spaces to explain to all those other members of the public why the air that they will breathe in future will be less secure than the air they breathe today. That's the position that they will have to defend, rather than me.

[121] **David Rees:** Minister, before we move on, obviously, we try to keep up as best we can with the research that is continually coming out. I wonder if you could pass us details of the links to that research. It would be very helpful.

[122] **Mark Drakeford:** Of course.

[123] **David Rees:** John, do you want to come back briefly?

[124] **John Griffiths:** No, that's fine thank you, Chair.

[125] **David Rees:** Kirsty.

[126] **Kirsty Williams:** Thank you very much. Could you clarify the position of heated tobacco products, and whether they are addressed in this legislation?

[127] **Mark Drakeford:** I will ask Sue, who probably knows the detail of that better than I would.

[128] **Ms Bowker:** We believe the definition that's in the Bill does cover heated tobacco products.

[129] **Kirsty Williams:** Okay, thank you for that clarification. Dr Hussey said just now that children are aware of e-cigarettes and they experiment with them. Would you agree with me, Dr Hussey, that that's what young people do—they experiment with a whole host of products, whether that be alcohol, nicotine, e-cigarettes, perhaps legal highs, illegal drugs—but is there any evidence that young people currently using e-cigarettes are young people who have experimented and that have gone on to use them with sustained use, or actually would you agree with the UK Faculty of Public Health, that said in the evidence they gave to us that, in the UK, regular electronic cigarette use is almost exclusively confined to young people who have previously smoked traditional tobacco products? Actually, in the evidence that we received from Cancer Research UK, Ash Wales and Professor John Britton of the UK Centre for Tobacco and Alcohol Studies, there is literally no evidence that, actually, young people using these e-cigarettes were not smokers beforehand.

[130] **Dr Hussey:** It's an interesting area to try and tease out what the research is telling us. I think there are clear signs, as you rightly say, that young people are using them—they're available; they can get hold of them. I think that our estimate was, of the surveys and trying to work out how much use there is in Wales, that possibly up to about 25,000 children and young people between 11 and 16 have probably used them or tried them, and of those, about half are probably are never-smokers. So, it's trying to work out, based on what we know about behaviours, mimicking of the hand-to-mouth actions—all the things we know from conventional tobacco—and trying to

predict what might happen in a few years' time. There's research that says that, sometimes, it can take some years for that behaviour to develop. So, it's quite hard to predict how that might go. Where we are now is as you describe—limited use in terms of regular use amongst young people—but it's one that has to be very carefully monitored. The consensus that's emerged from everybody, as far as I can see, is that more research is required on use amongst children and young people to really understand what's happening in that particular group. I think everybody recognises from the evidence I've seen that that's the group we're most worried about in terms of really trying to quickly understand the place that these products are taking in their lives.

[131] **Kirsty Williams:** Thank you. So, the issue is there isn't clear evidence, there is a consensus that there needs to be further research, and that research needs to happen because we cannot reach a settled point. Can I move on to the other evidence that was supplied by Cancer Research UK and Professor John Britton? I'm sure you'd agree with me that those two organisations and individuals are certainly no apologists for the tobacco industry. Professor Linda Bauld said:

[132] 'the risk is that we will overregulate, and I think, with the public places restriction, for me, the key thing is the message that it sends. It's not an evidence-based measure; it sends a message that these products are as harmful as smoking and should be treated in the same way as tobacco, and they are not tobacco and they need to be dealt with differently.'

[133] The professor went on to say:

[134] 'If we could move all of our smokers onto electronic cigarettes permanently, you would save, certainly across the UK, and I can't give you a figure for Wales, but across the UK, maybe 5 million premature deaths. This is a massive public health opportunity, and any mixed message that says, 'We should be very cautious about these products,' is missing the point—missing a golden opportunity to improve public health now.'

[135] When we talk about the precautionary approach and wanting to ensure we don't take any action that leads to harm, should the precautionary approach not be applied to the views of people like the professor and Cancer Research UK that, in moving forward to the proposals in the legislation, actually, you could be damaging and putting at risk what those organisations—who don't support the tobacco industry in any way—want, which is to reduce harm from what we all agree is harmful, which is

traditional tobacco products?

11:15

[136] **David Rees:** You did answer some of this in Alun Davies's question, Minister.

[137] **Mark Drakeford:** I'm happy to answer that point. Kirsty has read out extracts from two witnesses. I disagree with almost every single proposition in what was said to you by the first of the two people that you read out; I think they are simply assertions of a point of view rather than anything the committee should take any more seriously. I take more seriously the second witness, because I agree with the first half of what he had to say and then simply disagree with him on the second part. I said to you earlier that there are some people who you have heard from who say that the advantages to be gained from e-cigarettes are so significant that nothing should be allowed to stand in their way, and that's the point that that witness was making to you. Where I depart from him is this: I agree with the first part of his proposition, that there are very important public health gains that can be made from e-cigarettes when they are properly used in a harm-reduction way and targeted at those people who are already users of tobacco. There's nothing in this Bill at all that gets in the way of that happening, and where the UK Faculty of Public Health suggests ways in which their effectiveness as a harm reduction measure could be strengthened, I'm happy to say today that I will look at the things that they suggest, to see whether there are any things we could learn from those suggestions here in Wales.

[138] Where I depart from the second person that Kirsty quoted from is in then suggesting that, in order to reap the potential benefits from e-cigarettes, we should do nothing to control their use; that we should allow them to be used anywhere that anybody likes, at any time. I think that the evidence, not definitive evidence—. It's never been our claim that you can definitively come to a position on this; it's where you put the balance of risk, and the balance of risk from allowing e-cigarettes to be used where we have stopped conventional cigarettes from being used creates more harm than it does good. It's a very modest proposal; anywhere you can use a conventional cigarette, you will be able to use an e-cigarette. Anywhere where it can be used for harm-reduction purposes, it will be advocated as part of a harm-reduction strategy. But where there is credible evidence—not definitive evidence, but credible evidence—from the organisations that this committee has heard from, who say to us that unless we do things to stop them

undermining the ban on conventional cigarettes, from allowing all that ground we've so painfully gained in stopping conventional cigarettes from becoming normal, to lose all that ground, and from opening them up as a gateway product to children, then we must take some modest measures to stand in the way of that harm. Your second witness doesn't want that to happen; I do.

[139] **Kirsty Williams:** From a philosophical point of view, for me, any imposition on a person's liberty has to be judged very, very carefully, and even a modest imposition on an individual's liberty, I think, has to be justified. You say that there is evidence from both sides, but I would reiterate the point that Alun made; this is not a 50/50 split of the evidence; this is not evidence that is equally balanced on both sides. We have consistently failed to see, in this committee, over recent weeks, that balanced evidence in relation to the two justifications that the Government is putting forward. We have not seen overwhelming evidence to suggest that these are a gateway product, and we have not seen any overwhelming evidence, not even definitive, but not even overwhelming evidence, that this is a product that renormalises smoking. There are some people that have suggested that, but it's not just not equivocal; it is simply not overwhelming, Minister. Surely, before you impose restrictions on people's liberties, there has to be more compelling, unequivocal evidence than people have been able to produce in this committee so far.

[140] **Mark Drakeford:** I profoundly disagree with that point of view. The idea that you have to have overwhelming evidence is not a test that any sensible person would wish to apply in this area. The evidence is equivocal. The position of the Government is supported by your chief medical officer, by the British Medical Association, by the World Health Organization, by the Welsh Medical Committee, the Welsh Dental Committee, by the Royal College of General Practitioners, by the Royal College of Midwives, by the Royal Pharmaceutical Society and by a long list of other very serious and credible individuals and organisations that I can relay to this committee. It is absolutely not good enough to say that all their views can be simply set to one side and not account for anything because they do not amount to overwhelming evidence that harm is not being created. All those people tell you that harm is at risk of happening and that there are things that you can do as legislators to prevent that harm. I think that you should listen to that very carefully indeed.

[141] The idea that it is for public health physicians to prove to you



overwhelmingly that harm will not happen and that that's the proper test to apply—it really isn't at all. The test is the one that the *BMJ* set out on 15 September: that where there is uncertainty in science and where some credible and serious people tell you that harm could happen and where others tell you that harm might not happen, it's for those people, who say that harm won't happen to convince you, and not those people who say that harm could happen—harm that you could prevent. That's what this Bill, in its very modest way, is trying to do.

[142] **David Rees:** I think we've explored that particular avenue quite a lot this morning. So, if we could move on to different questions, Darren.

[143] **Darren Millar:** Minister, can I first of all congratulate you for doing what many people thought was not possible? You brought together the tobacco industry and anti-smoking campaigners and cancer charities, which I think is a formidable achievement.

[144] You have described again this morning, as you did in the previous session that we had with you, your proposals as being 'modest' proposals. When the smoking ban was introduced on nicotine products, that was described as a huge step towards reducing harm from smoking—and it was. These proposals are not modest, are they? They're actually a significant step in restricting the ability of those people who are reducing harm to themselves and other people by using e-cigarettes as opposed to smoking. Do you accept that your proposals are not modest and that they are not the small step that the chief medical officer actually set out? They are actually quite significant.

[145] **David Rees:** I will reiterate: we've answered these questions quite substantially this morning, Minister, but if you want to add anything to that.

[146] **Mark Drakeford:** Of course I'm very happy to answer that. The proposals in this Bill—let me remind Members and let me remind Darren in particular—are far, far less restrictive than the proposals that his party and his Ministers advocated right through the tobacco products directive procedure. Had your Minister succeeded, as I hoped that they had, then e-cigarettes would only be available as a medicine. Let's remember that not a single e-cigarette has yet succeeded in getting a licence as a medicine. So, if your Government had succeeded, and your party had succeeded, the restrictions on e-cigarettes would be far more draconian than this proposal.

[147] **Darren Millar:** I'm not asking—

[148] **David Rees:** Let the Minister finish.

[149] **Mark Drakeford:** So, in that sense, this proposal is far more modest than what was on the table, and promoted by his party and his Ministers, with my very strong support, only a couple of years ago. He's right to say that the big step forward was the banning of tobacco products in enclosed public spaces. What I don't want to see is for us to lose the ground that this Assembly managed to gain and that's why I bring these, as I say, modest proposals in front of the National Assembly.

[150] **Darren Millar:** You've made a number of references to air quality in enclosed public spaces, and I agree with you that we need to protect, where possible, the quality of that air. Do you accept that other pollutants—and I'll describe them as pollutants—impact on air quality, including air fresheners, cleaning products, chemicals and bio-odours, and that even opening a window, if an enclosed public space is next to a road or a door, can introduce more harm into that environment than your proposals seek to reduce as a result of an e-cigarette ban in enclosed public spaces?

[151] **Mark Drakeford:** Well, of course I understand that there are already pollutants in the air and that air quality is a very important matter. My position is that I do not wish to add to the pollutants that are already there. His position is that he does.

[152] **Darren Millar:** That is not—

[153] **David Rees:** That's not Darren's position on this point.

[154] **Darren Millar:** My point is, Minister, that you're not taking any action to reduce the impact of those pollutants on air quality. Why not?

[155] **Mark Drakeford:** It's an entirely spurious argument, Chair, and—

[156] **Darren Millar:** It's not a spurious argument.

[157] **Mark Drakeford:** As you know, we are taking actions in relation to other things. Here is a problem we can solve. Why does the Member think that pointing to other problems that are more difficult to solve somehow makes it less important to solve those problems that I can solve?

[158] **David Rees:** Could I also remind Members to focus on the Bill, please?

[159] **Darren Millar:** I'm focusing on the Bill—

[160] **David Rees:** I'll come back to you, Darren, then I'll come back to you, Kirsty.

[161] **Darren Millar:** Can I also ask: you've mentioned this issue of normalising smoking, and I would not wish to normalise smoking either, but do you accept that the evidence suggests that smoking prevalence is declining as a result of the increasing use of e-cigarettes?

[162] **Mark Drakeford:** No, Chair, I don't think the evidence is a definitive—

[163] **Darren Millar:** You don't think it's definitive.

[164] **Mark Drakeford:** I don't think the evidence is as causal as that question suggests. You're trying to suggest that because of one thing, something else is happening. Let me put this back to you, Chair, in this way: Kirsty Williams made great play at one point of evidence from New York, where she tried to imply that the ban on e-cigarettes had causally created a rise in smoking. Now, the latest prevalence rates of smoking in New York have gone down again, despite the ban on e-cigarettes. Now, people who are in her position want to argue, causally, that they've gone down because e-cigarettes are there. She wasn't right in her first suggestion. It wouldn't be right to argue, causally, that connection in the second either. There may be an association, and that's why this Bill doesn't do anything to stop e-cigarettes being used for harm reduction purposes, but the idea that there is a causal connection between the use of e-cigarettes and smoking prevalence levels is absolutely not established.

[165] **David Rees:** Okay, final point.

[166] **Darren Millar:** Yes, final point. Children. We are all concerned about not wanting to promote the use of these products or other products amongst children, particularly where any addiction to any substance is concerned, but do you accept that the action that has been taken at a UK level to ban the sale of e-cigarettes to under-18s is the most important action that could have been taken and that, given that you supported the ban, we should await the evidence as a result of that ban's commencement on 1 October before we

rush headlong into taking action in respect of e-cigarettes, which may actually result in more people being put at harm from smoking and at risk of smoking tobacco rather than using e-cigarettes, given that the evidence suggests that they are 95 per cent less harmful than smoking tobacco?

[167] **Mark Drakeford:** Well, let me start by agreeing with the first point that Darren made. I'm very pleased that we have moved at a UK level to ban the sale of e-cigarettes to people under the age of 18 from 1 October this year, and I agree that that is an important step forward. Do I agree with him that we should wait to see whether children are being harmed before we take action? Certainly not. My position is that—

[168] **Darren Millar:** With respect, I didn't say that. I said, 'wait to see the impact of that'.

[169] **Mark Drakeford:** Yes, well, the impact could be—and, I think, plausibly could be—that children will be harmed as a result of the renormalisation and the gateway effect of e-cigarettes. He wants to wait to see whether children have been harmed and then act on it.

[170] **Darren Millar:** No, I don't. That is not what I'm saying.

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

[172] **Mark Drakeford:** Well, that would be the effect, I believe, of his—. I'm not trying to make an attacking point here. I'm just trying to say there's two ways of thinking about this. You take Darren's point of view, which is, wait to see what happens and then, if harm is happening, act to try and diminish it, or you take my point of view, which is, the evidence says that harm very plausibly could happen and, therefore, you should act now to prevent it. If the evidence in future crystallised around the arguments that harm wasn't a genuine possibility, we would think again, but we would have stopped the harm from happening, rather than waiting to see whether it happens and then acting afterwards. That's what we did with tobacco, and look how we're still struggling to pull back.

11:30

[173] **David Rees:** I'm conscious, Minister, that time is catching us up. I've got two people who want to ask questions. Just to let you be informed, we are aware that there is perhaps one particular product that has been licensed

but is not on the market.

[174] **Mark Drakeford:** It's not on the market. It's been licensed, but it's not been sold.

[175] **David Rees:** It's just for clarification purposes. Gwyn, have you got a quick question?

[176] **Gwyn R. Price:** Yes. Minister, you've covered a lot of what I was going to say. There's quite a long list of witnesses—a large number of individuals and organisations that provided written evidence. But, Minister, is it true that every NHS organisation in Wales and every individual Welsh local authority that replied to the consultation were in favour of this aspect of the Bill?

[177] **Mark Drakeford:** That's absolutely true. Chair, every local authority in Wales that replied supported our position, and so did the Welsh Local Government Association. Every health organisation in Wales, in terms of health boards, NHS trusts and the Welsh NHS Confederation, also advised you to agree with this part of the Bill.

[178] **David Rees:** Elin, can we be quick because of the timetable?

[179] **Elin Jones:** Dau fater nad ydynt wedi cael eu codi hyd yn hyn. Yn wahanol i chi, Weinidog, rwyf yn gweld rhywfaint o werth i'r hyn yr oedd yr Athro Linda Bauld yn ei ddweud yn y pwyllgor diwethaf, lle'r oedd hi'n dweud y dylid trin tybaco yn wahanol i e-sigaréts. Yn y cydestun hwnnw, a ydych chi wedi rhoi unrhyw ystyriaeth i osod ar wyneb y Mesur llefydd penodol lle y dylid gwahardd defnydd yr e-sigaréts? Yn hytrach na phob man cyhoeddus, gallech ystyried cynnwys trafniadaeth gyhoeddus neu fannau sy'n gwerthu bwyd a diod, a gallech fod yn fwy 'specific', ac felly trin y ddau beth yn wahanol.

**Elin Jones:** Two matters that haven't been mentioned up until now. Differently to you, Minister, I see some value to what Professor Linda Bauld said in the last committee meeting, when she said that tobacco should be treated differently to e-cigarettes. In that context, have you given any consideration to placing on the face of the Bill specific places where the use of e-cigarettes should be prohibited? Rather than every public place, you could consider being specific and including public transport or places that sell food and drink, so that you can be more specific and then treat the two things differently.

[180] Wedyn, un mater nad ydym wedi'i drafod yn y fan hon: hyd yn oed os byddai'r ddeddfwriaeth yn cael ei phasio fel y mae ar hyn o bryd, byddai e-sigaréts a sigaréts yn dal yn cael eu trin yn wahanol yng Nghymru o ran sut maen nhw'n cael eu harddangos ar gyfer eu gwerthu. Ar hyn o bryd, nid yw sigaréts yn cael eu harddangos ar gyfer eu gwerthu bellach, ond byddai e-sigaréts, hyd yn oed os byddai'r Bil hwn yn cael ei basio, yn dal yn gallu cael eu gwerthu mewn llefydd penodol iawn ac amlwg iawn mewn siopau, ac yn y blaen. Rydym yn gwybod bod hynny'n digwydd ar hyn o bryd. Felly, a ydych chi wedi ystyried o gwbl cynnwys yr elfen o newid neu wahardd arddangos cyhoeddus mewn siopau ar gyfer e-sigaréts, a'u gosod nhw yn yr un categori, wedyn, â thybaco?

[181] **Mark Drakeford:** Diolch yn fawr iawn i Elin Jones am y cwestiynau yna.

Then, another matter that we haven't discussed in this place: even if this legislation were to be passed as it currently stands, to all intents and purposes e-cigarettes and cigarettes would still be treated differently in Wales in terms of how they are displayed for sale. At the moment, cigarettes aren't displayed for sale, but e-cigarettes, even if this Bill were to pass, would still be able to be sold in very specific places and very prominent places in shops, and so on. We know that that happens at present. So, have you considered at all including an element of changing or prohibiting the public display in shops of e-cigarettes, and placing them in the same category as tobacco?

**Mark Drakeford:** Thank you very much to Elin Jones for those questions.

[182] In relation to the first one, I think we've already given some indications of places where we would make exceptions to the general rule that we want to institute—of making e-cigarettes not useable where conventional cigarettes are. So, I've already indicated in the explanatory memorandum, for example, that in respect of a consulting room in a pharmacy, where e-cigarettes are being used as part of a harm reduction strategy—a piece of work with that individual—and where someone needs to be shown how to get the maximum harm-reduction possibility from an e-cigarette, we would exempt those consulting rooms because they would be used for harm-reduction purposes. I've already said as well that, where e-cigarettes are being used on a film set in place of a conventional cigarette for artistic purposes, we'd exempt that setting as well. I'm very happy to offer to meet with the Member and discuss with her whether there are any other specific exemptions that she thinks would assist in this way. But, the way I

would be exploring it would be slightly different to the way that she has.

[183] **Elin Jones:** Very different.

[184] **Mark Drakeford:** I think the general rule should be that they are not to be used, and if there are places that are properly exempted from that rule, I would be very happy to discuss with her whether she thinks there are priority places that that should apply to.

[185] In relation to her second point—the point of sale—I’m very keen to listen to what the committee concludes on that. I’m very attracted to the case that she makes. The thing I would need to learn from the committee is how you think we would address the three tests that I always have to answer when I’m being asked this by you, which are: first of all, is it within competence? Or, does that get captured by consumer protection, which is not devolved to Wales? It does very specifically say in the 2006 Act, ‘including the sale and supply of goods to customers’. Is there a way around the competence issue? Are we satisfied that, in human rights terms, we are not trespassing on the ability of the person providing the service in that way? If your advice to me is that those problems are addressable, I would be very keen to look at the issue the Member has raised.

[186] **David Rees:** Thank you, Minister. I’m very conscious of the time and we have already overstepped the mark. Just one final point from me, in one sense: we’ve literally just touched on Chapters 2, 3 and 4 of Part 1, because we spent a lot of time on Chapter 1. But have you done an analysis of the impact of the retailers register in Scotland? If so, could you perhaps feed that analysis into the committee?

[187] **Mark Drakeford:** Chair, in a way, I don’t think it is for the Welsh Government to do an analysis of the Scottish Government’s actions in that field. I have, however, discussed it with the Scottish health Minister and their tobacco control plan for Scotland provides a commitment to review the retailers register as it is operated in Scotland. When that review is completed and is available, I’ll certainly make sure it’s shared with the committee. The Scottish health Minister was very positive about the experience of the register in Scotland and we’ve learnt a lot in the way that we’ve constructed this part of the Bill from the experience they’ve already had.

[188] **Darren Millar:** Can I just ask a brief follow-up on that? Obviously, there’s no charge to be on the register in Scotland, which is different to the

proposals here. Do you want to reflect on that?

[189] **Mark Drakeford:** Yes. Thank you, Chair. It takes us back to the discussions we've had already about making sure that local authorities are in funds to do this important job. Our proposal is for a £30 registration fee plus £10 for any other premises that the same organisation may have. We think that that's set at a level that is commensurate to the advantages that the retailer themselves will get from being on the register. And we've listened very carefully to the industry. We're not going to charge for re-registration. We're not going to do it that way. I think it's a proportionate way of doing it. We have listened carefully to what's been said.

[190] **David Rees:** Have you also listened to perhaps the outlets for e-cigarettes, for example? We hear now there's an expansion of outlets. Would it be considered, in relation to tobacco products, extending that to nicotine products?

[191] **Mark Drakeford:** Two points on that, Chair. You asked about the experience in Scotland. They are about to do exactly what we are proposing here, in making a single register that covers both tobacco and e-cigarette products. We've also listened to the industry—this is Darren's point—where they've said to us that trying to keep two registers going, with two separate sets of obligations on them and two separate sets of costs, would not be sensible. So, we intend to have a single register covering both.

[192] **David Rees:** Okay. Thank you for the extra time, Minister. I appreciate it. It's very clearly an important area for many people in Wales. Thank you very much. You will receive a copy of the transcript to check for any factual inaccuracies. If there are any, please let the clerking team know as soon as possible. Once again, I thank you and your team for your time this morning.

[193] **Mark Drakeford:** Thank you very much indeed.

11:38

### **Papurau i'w Nodi Papers to Note**

[194] **David Rees:** The committee will move on to item 5 on our agenda. Can we have papers to note? The first one is the minutes of the meeting held on 7 October. Are Members content to note that? The second one is the



additional information from the Electronic Cigarette Industry Trade Association, the UK Faculty of Public Health, which we've been discussing this morning, Crohn's and Colitis UK, and the BMA—all regarding the Public Health (Wales) Bill. Are you happy to note those? Finally, the correspondence from the Presiding Officer regarding the Business Committee's consultation of its legacy. We are going to give this further consideration in our meeting on 19 November. Are you happy to note that?

11:39

**Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y  
Cyhoedd o Weddill y Cyfarfod  
Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public  
from the Remainder of the Meeting**

*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'r cyfarfodydd ar 5 remainder of the meeting and for the Tachwedd ac 11 Tachwedd 2015 yn meetings on 5 and 11 November in unol â Rheol Sefydlog 17.42(vi).*

*accordance with Standing Order 17.42(vi).*

*Cynigiwyd y cynnig.*

*Motion moved.*

[195] **David Rees:** In that case, under Standing Order 17.42, I now ask the committee to resolve to exclude the public from the remainder of this session and also for the meetings on 5 and 11 November. Are you content? Therefore, we move into private session.

*Derbyniwyd y cynnig.*

*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:39.*

*The public part of the meeting ended at 11:39.*