Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Y Pwyllgor Iechyd a Gofal Cymdeithasol
The Health and Social Care Committee

Dydd Mercher, 1 Gorffennaf 2015
Wednesday, 1 July 2015

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Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y Cyhoedd o Weddill y Cyfarfod ac o Eitem 1 y Cyfarfod ar 9 Gorffennaf
Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public from the Remainder of the Meeting and from Item 1 of the Meeting on 9 July

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 Chief Medical Officer
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

Siân Giddins	Dirprwy Glerc Deputy Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Catherine Hunt	Ail Glerc Second Clerk
Llinos Madeley	Clerc Clerk
Philippa Watkins	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 09:30.
The meeting began at 09:30.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[1] **David Rees:** Good morning. Can I welcome Members and the public to this morning's meeting of the Health and Social Care Committee of the National Assembly for Wales? Can I remind Members that the meeting is bilingual and, therefore, if you wish to have translation from Welsh to English simultaneously, it is available on the headphones on channel 1? If you prefer to have amplification to help you understand, then please use channel 2. In the meeting, it is not intended to have a fire alarm today, so, if one goes off, please follow the directions of the ushers. Can I remind Members and guests and witnesses to switch all of your mobile phones off and any other electronic equipment that may interfere with the broadcasting equipment?

[2] We haven't received any apologies this morning, so we can go straight into the next item on the agenda.

09:31

Bil Iechyd y Cyhoedd (Cymru): Sesiwn Dystiolaeth 1
Public Health (Wales) Bill: Evidence Session 1

[3] **David Rees:** This morning's agenda is to take evidence from the Minister in relation to the Public Health (Wales) Bill that has been laid before the Assembly. Can I welcome Mark Drakeford, the Minister for Health and Social Services? Minister, would you like to introduce your team with you this morning, please?

[4] **The Minister for Health and Social Services (Mark Drakeford):** Chair, thank you very much indeed. I'm joined by Dr Ruth Hussey, the chief medical officer, Sue Bowker, who is the head of tobacco policy at the Welsh Government, Dewi Jones, who is here from the Welsh Government's legal services, and Chris Tudor-Smith, who is the senior responsible officer for the public health Bill.

[5] **David Rees:** Thank you very much, Minister. Obviously, we have some questions for you, and we'll go straight into questions, if that's okay with you.

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

[7] **David Rees:** Can we start with a question from Gwyn Price?

[8] **Gwyn R. Price:** Thank you, Chair. Good morning, everybody. What is your response to the suggestion that the Bill, as drafted, lacks ambition and misses the opportunity to introduce measures to tackle some of the more significant public health issues, for example, obesity? What consideration has the Welsh Government given to using the existing legislation powers to tackle obesity?

[9] **Mark Drakeford:** Thank you very much, Gwyn. Well, no, I don't agree that the Bill lacks ambition; I think the Bill is radical. I think the Bill is far-reaching and I think, within the constraints of the powers that we have available to us, it does all the things that we have been able to identify of a legislative nature that allow us to take the public health agenda forward here in Wales.

[10] I think I was very clear, in relation to the White Paper, to the very rich set of organisations that we're lucky enough to have in Wales that have an interest in public health, that, if there were ideas that we had not yet identified that they were able to contribute to the Bill, then I was very keen indeed to hear from them. But there are three tests that I think have to be applied to any ideas of the sort that you have been asking about: first of all, are the ideas legislative in nature? Secondly, are they within the legislative competence of the National Assembly for Wales? And, thirdly, are they ideas that lie within the broad title of the Bill, which is to do with public health? I think we've managed to extend the range of ideas in the Bill, as a result of consultation. But there are real constraints on us, and those constraints are particularly there in the field of obesity.

[11] You asked where we've used the powers that we already have in that area. Well, we have powers under the Food Safety Act 1990, and that's why were able, at the end of August last year, to introduce mandatory labelling of food in Wales, so that it's clearer to the consumer what the nutritional content of any food they are purchasing might be, and, therefore, its likely impact on obesity. We committed in the White Paper to using legislation, but not the public health Bill, to set nutritional standards in pre-school and care home settings, and we're committed to doing that and we'll be bringing proposals forward on that front very shortly. We lobby the UK Government, where the legislative powers, on the whole, tend to sit. I've written recently, with health Ministers in Northern Ireland and Scotland, to try and urge the Secretary of State in England to be more mandatory in his requirements of the food industry, to introduce, for example, folic acid in flour, which is a very important public health measure, in my view, in relation to pregnancy—a simple thing that could be done to have a big impact. We are agreed on it, Scotland's agreed on it, Northern Ireland is agreed to it; we don't have the power to do it, and we're yet to persuade the Department of Health to share our view on that. But, wherever we have powers ourselves, we use them, and where we don't have powers directly, we attempt to influence the debate.

[12] **Gwyn R. Price:** Thank you, Chair.

[13] **David Rees:** We have questions now from John, Elin and then Altaf.

[14] **John Griffiths:** In terms of your thinking around this public health legislation, Minister, and health inequalities in particular, and ideas that you'd like to see coming forward, do you think the legislation, as it is currently proposed, will have enough impact on health inequalities in Wales, and would you be particularly receptive to ideas that would address those health inequalities in terms of what additional content might develop?

[15] **Mark Drakeford:** Thank you, John. Well, look, my starting point is that public health legislation, of all the things that we do in health, is the side of our work that has the greatest impact on health inequalities and has from the very first stirrings of public health legislation in terms of clean water and the avoidance of cholera—you know, the greatest impact of that legislation was in places like Merthyr, where the risk of cholera was greatest—and that great tradition of the inequality impact of public health legislation, I think, is as true today as it was then. There are specific examples of that in the Bill that you have in front of you. I think anything we do in the field of tobacco has an inequality impact, because we know that smoking prevalence remains highest in the most disadvantaged communities. So, anything we can do to bear down on the harm that tobacco creates will have its greatest impact in a health inequalities sense.

[16] A very important part of the Bill, from my point of view, is the setting up of pharmaceutical needs assessments, and we know that, in Wales, we are lucky enough that our community pharmacies are strongest in our most deprived communities, and, therefore, the impact that community pharmacy can have, by extending its reach in the way that the Bill proposes, will have the greatest impact in those communities. So, the Bill has some specific

inequality impacts, as well as the general impact that all public health legislation has on the inequalities agenda.

[17] On your second question, then, I'm very keen to say to the committee, just as I said in relation to the White Paper, that if there are ideas that we have missed that could be added to the repertoire of things we're able to do in the Bill, then provided those things pass those tests that I set out—they've got to be legislative, they've got to be within competence, and they've got to be public health in nature—then, if, during Stage 1, the committee takes evidence and there are ideas—and we've had ideas already suggested on the floor of the Assembly—then I will be very keen to read what the committee has to say about that and to try and do it in as positive a way as I can.

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

[19] **Elin Jones:** Rwy'n gwerthfawrogi'r hyn yr ŷch chi wedi ei ddweud, Weinidog, ac, i fynd yn ôl i'r pwynt ynglŷn â gordewdra a'r modd y mae deddfwriaeth yn gallu cynorthwyo atal a lleihau gordewdra, un o'r llefydd y mae deddfwriaeth wedi cael ei defnyddio i gyfyngu ar werthiant tybaco a chyfyngu ar werthiant alcohol yw trwy sicrhau bod sut y mae tybaco ac alcohol yn cael eu gwerthu, a lle maen nhw'n cael eu gwerthu, yn cael ei reoli a'i reoleiddio. Fe fedrid edrych i wneud hynny gyda rhai cynhyrchion â lefel uchel o siwgr, p'un ai a ydy hynny'n bop neu'n swîts, sydd, wrth inni fynd trwy'r *tills* ym mha archfarchnad bynnag, reit yn y fan honno ar y diwedd. A ydych wedi ystyried cynnwys, mewn deddfwriaeth o'r math yma, rhyw fath o gyfyngiad ar *point of sale* o fewn llefydd gwerthu ar fwyd a diod sydd yn cyfrannu'n uchel tuag at ordewdra?

Elin Jones: I appreciate what you've had to say, Minister, and, to return to the point on obesity and the way in which legislation could assist in preventing or reducing obesity, one of the areas where legislation has been used to limit the sales of tobacco and the sales of alcohol is by ensuring that the way in which tobacco and alcohol are sold, and where they are sold, is controlled and regulated. You could consider doing that with some products with a high sugar content also, such as pop or sweets, which, as we go through the tills in any supermarket, are right there at the end. Have you considered including provisions in legislation of this kind for some sort of limitation on point of sale sales in terms of food and drink that have a high impact in terms of obesity?

[20] **Mark Drakeford:** Gadeirydd, yn ystod y cyfnod pan roeddwn yn cymryd pethau i mewn ar y Papur Gwyn, nid wyf yn cofio gweld y syniad yna yn y cyfnod yna. Ond, wrth gwrs, rwyf wedi clywed y syniad yna pan gyhoeddwyd Bil Iechyd y Cyhoedd (Cymru). Rwyf wedi cael cyfle i siarad gyda'r Gweinidog dros iechyd yn yr Alban, lle mae mwy o bwerau gyda nhw. Maen nhw wedi gwneud mwy o bethau ym maes alcohol yn enwedig. Felly, mewn archfarchnad, nid ydyn nhw'n gallu rhoi alcohol ar werth yn yr archfarchnad gyda phopeth arall. Mae alcohol mewn lle arbennig yn yr archfarchnad, y tu ôl i bopeth arall. Maen nhw'n meddwl bod hynny wedi cael effaith. Rwy'n hollol barod, gyda'n cyfreithwyr a gyda'r prif swyddog meddygol, i weld a yw hynny'n syniad y gallwn ei fabwysiadu wrth fynd drwy broses

Mark Drakeford: Chair, during our consideration of the White Paper, I don't recall seeing that idea being proposed. But, of course, I have heard similar comments made during the publication of the Public Health (Wales) Bill. I've had an opportunity to speak to the health Minister in Scotland, where they have more powers. They have done more in the area of alcohol, particularly. So, in a supermarket, for example, they can't display alcohol with everything else in the supermarket. Alcohol is in a designated area of the supermarket, behind everything else. They believe that that has had an impact in Scotland. So, I'm entirely willing, with the assistance of our lawyers and the chief medical officer, to see if that is an idea that we may be able to adopt as we go through the Bill process.

y Bil.

[21] **Elin Jones:** A allwn ni ofyn am nodyn oddi wrthych chi fel Llywodraeth ynglŷn â'r *competence* o gwmpas deddfu yn y maes yna?

Elin Jones: Could we ask for a note from you as a Government on the competence surrounding legislating in that area?

[22] **Mark Drakeford:** Rwy'n hollol hapus i roi hynny.

Mark Drakeford: I'd be perfectly happy to provide that.

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

[24] **Altaf Hussein:** Thank you, Chairman. Good morning. Regarding obesity, really, in Wales, it is said that parents will be outliving their children, because of obesity. No parent would like to have that—you know, to see their children dying because of obesity. We know, in schools, there is physical inactivity. Physical education should be compulsory. Is there a way that we can, wherever they have—? For instance, in Swansea, they have these grounds available from the local government, but they are closing them and selling them for new developments. Is there a way that we can legislate that, if grounds are available within schools that belong to local councils, they should not really be sold to anybody?

[25] **Mark Drakeford:** Well, that's a debate that has been very alive in the National Assembly over a number of years. It was the subject of legislation brought forward by Dr Dai Lloyd, if I remember correctly, in an earlier Assembly. So, it's a debate that we have certainly had. Where the point that has been made connects potentially to this Bill is in the area of health impact assessments—whether decisions made in other spheres of activity have an impact on health. If the committee takes evidence on that point, and it's been a lively debate in the consultation that's been carried out around the Bill, then, of course, I will read very carefully what the committee has to say on that.

[26] **David Rees:** Thank you, Minister. I'm going to move on now. Obviously, the Bill has distinctive parts within it, and each distinctive part deals with a different aspect of public health. So, I hope to be able to tackle each of those aspects so we can show we cover all areas of the Bill, Minister. Effectively, we're going to work backwards, and we'll start with Part 6 and a question from Gwyn Price.

[27] **Gwyn R. Price:** Yes, thank you, Chair, is there inconsistency between the Bill's requirements and the financial climate local authorities are operating in?

09:45

[28] **Mark Drakeford:** Well, Chair, I certainly understand where that question is coming from. These are very, very tough times for local government, and we have to think very carefully indeed about placing new obligations on local authorities where our ability to fund those new obligations is equally limited. The balance the Bill strikes, therefore, is between putting a duty on local authorities to produce, publish and review a strategy for the provision of toilets for use by the public, but stopping short of placing a duty on the local authorities to implement that strategy. If we were to place a duty on them to implement that strategy, I think we would be obliged to find the money to support that implementation, and we are not likely to be in that position. So, the balance I have struck is the balance that the House of Commons Communities and Local Government Select Committee came to when they discussed this matter. They concluded that it was right for Government to set the requirement for the production of a strategy. It was then for local authorities, in their relationship with their local populations, to discharge that strategy, and that the accountability was to their local populations, and if local populations felt that a particular administration in a local authority

had not done the job that they would like them to do, then there would be a democratic opportunity for people to make that conclusion clear. So, I agree that it's a difficult issue. I think we've managed to balance it in the best way we can. It's a very important matter indeed for many parts of local communities. In the future, they will see that their local authority has to prepare, publish and review a strategy. They have to show in their strategy how they intend to meet the need that they will have identified, because they must carry out a needs assessment. It will then be for the democratic accountability of local government to decide whether local authorities have carried out the work that they have identified as needing to be done.

[29] **David Rees:** Lindsay, do you want to come in?

[30] **Lindsay Whittle:** Thank you, Chair. I don't wish to be rude, and please don't feel that, but I think that's a bit of a platitude, to be honest, because local government has suffered cuts from this national Government—and I appreciate this national Government has suffered cuts from the British national Government. But to just simply say, 'Well, you know, there's not much we can do', you are washing your hands of it, I believe. If Sarah Rochira were here, she would say that there are many pensioners who are prisoners in their own communities because they can't go out. Minister, you had a scheme where businesses could receive, I think, a grant of £500 if they opened their toilets to the public. It was very successful in some boroughs that I represent in my region—a very good take-up; in others, the take-up was practically nothing at all. That scheme has now stopped, though, I believe. Are there any plans to reinvent a new scheme to enable these pensioners to get out? Many people take tablets and, as they get older, they do need to use the toilet a lot more.

[31] **Mark Drakeford:** Chair, the inquiry that this committee carried out I think identified three ways in which local authorities could strengthen the provision of toilets for use by the public without that needing to become a huge extra burden on local council tax payers. First of all, the committee said that there were many ways that the public purse was already paying for toilets that can be used by the public, but that these were poorly advertised and often regarded by pensioners, for example, as toilets that were not really for them. So, these are toilets that are available in libraries, in arts centres, in community centres and in other council buildings. You may remember the evidence that was taken here, where pensioner groups said, 'We know that there are toilets available in the local community centre, but we're afraid to go in there because we think we'll be challenged: "What are you doing here. You're not to come in here just to use the toilet".' Well, I think that is completely wrong. In an era of very severe restraint, when the public purse is already paying for those facilities, I think part of a strategy for any local authority ought to be to make it clear that those facilities are genuinely available for the public.

[32] Secondly, the committee said that the evidence that you took was that the public is prepared to pay modest amounts for toilet facilities that they would regard as properly maintained, safe to use, and hygienically looked-after. So, in a difficult era, councils will need to look at that. Then, thirdly, the committee said that there was money already in the system to encourage businesses to be part of an overall strategy. The money that the Welsh Government provided went into the RSG in the way that our system requires after a certain number of years of being a special grant. So, the money hasn't gone. The money is still there; the money is still in the coffers of local authorities, and I agree with what Lindsay has said about them using that money to encourage more local businesses to be part of the scheme, learning from the best. Lindsay Whittle is absolutely right that the experience around Wales was very variable. Some businesses took the money, advertised it and local authorities published lists of places that were part of the scheme and so on, and other places took the money, put it in their pockets and told nobody about it.

[33] **David Rees:** Can I just clarify something? Obviously, as you indicated, authorities

will look at the strategies and establish their strategies, but is there a possibility of inconsistencies across Wales as a consequence of being able to implement those strategies?

[34] **Mark Drakeford:** Well, the Bill allows the Welsh Government to publish guidance to local authorities on the discharge of the duties that we will place on them if the Bill succeeds. I would expect that that guidance would include a template, which would advise local authorities on the content of any strategy but also how that strategy might be produced. In this particular regard, I think we have to recognise that the needs of different parts of Wales will be very different. This is an area where local authorities will need to devise a scheme that meets the particular geographical and other characteristics of their areas. But we will provide a template so that it will be possible to compare the way that local authorities in different parts of Wales have gone about discharging the duty that will be placed on them.

[35] **David Rees:** Okay. I've got questions from John and Kirsty and then will move on to the next topic.

[36] **John Griffiths:** Yes. On that topic, Minister, I think, as Lindsay said, the previous scheme had some successes as well as perhaps some failures, but in terms of engaging business, some businesses saw a real business advantage because, obviously, footfall increased and they were getting better general sales as well as benefiting financially from the incentives. So, I certainly think it could work and, as you say, there are various community groups—there are transport providers. But I think it's important, Chair, in terms of that guidance or the legislation itself that local authorities are encouraged to engage and make sure there's co-operation from that broad range of potential providers. So, I think it's going to be really important to get that right if we're not going to have variance that's problematic around Wales. Just in terms of the fact they have to produce a strategy but implementation is largely a matter for them, will there be any evaluation, monitoring or performance measuring in place as part of this?

[37] **Mark Drakeford:** Thank you, Chair. On the first point, I completely agree that, where this was done successfully in the business world, it was because businesses saw the business advantage to them in doing so. And I think that will be true of that wider range of settings that are already heavily subsidised by the public purse. An arts centre in my constituency, for example, runs a very successful cafe and restaurant and things around it, which subsidise lots of their arts activities. Now, they need people to come through the door, and I think this strategy will help to do that, and we need to encourage businesses to think about it in the same way.

[38] In terms of evaluation, there is a post-implementation evaluation strategy set out in the regulatory impact assessment that was included with the explanatory memorandum. I think we will need bespoke approaches to evaluation for the different strands in the Bill, because they're all quite specific pieces of public health activity. But, for every one, we set out in the RIA how we intend to do that. We will have to do it in a way that tries to be as frugal with the costs involved as we can be, and so we concentrate on using data that are already available within the system or will become available as a result of the Bill and then using the independent advisory mechanisms that already exist in Wales around public health to be part of the evaluation approach.

[39] **David Rees:** Kirsty has a short question and we move on to pharmaceutical services after that. Kirsty.

[40] **Kirsty Williams:** The Bill as currently drafted puts the emphasis on the production of these plans for local authorities and local authorities alone. Do you see no role at all for Welsh Government in the discharge of its functions that it should too have an oversight? So, for instance, travelling public on trunk roads, for instance. Does the Welsh Government have

no responsibility to ensure that there is an overarching network of toilets, for instance, as part of its responsibilities?

[41] **Mark Drakeford:** Well, that is an interesting point, Chair, which I hadn't thought of specifically in relation to the Bill. Of course, Kirsty will be particularly aware that Edwina Hart, in her transport role, has recently found some money to support two sets of public toilets—both within Kirsty's constituency?

[42] **Kirsty Williams:** Yes, in Rhayader and Builth Wells.

[43] **Mark Drakeford:** But for the reasons that the Member has set out because of their significance in relation to major roads and the need for them to be maintained. So, I don't at all dispute the argument that Welsh Government has some broader responsibilities in this area than the Bill sets out. The Bill is about local authority responsibilities in this regard.

[44] **Kirsty Williams:** Thank you, Minister.

[45] **David Rees:** Elin, quickly.

[46] **Elin Jones:** Do you envisage that your national guidance here would rule out the community use of toilets in some public buildings that are heavily subsidised? I'm thinking of schools, GP surgeries, hospitals and leisure centres. Do you think that, in regulations or in guidance, you will look to provide guidance on ruling out the use of some public buildings for community toilets?

[47] **Mark Drakeford:** I don't think the guidance will rule in or rule out in the sense that it is for local authorities to make those assessments, and they'll need to make them in their specific sets of circumstances. I agree that, in the list that Elin Jones has just set out, I don't envisage toilets in GP surgeries being made available to people other than those people using the surgeries. I would expect that leisure centre facilities might be available to more than people who are just going in to play squash. So, you know, I think it will be for local authorities to make that judgment. Our guidance is likely to give them some help in doing that, but I don't think we are going to rule in or out. It will be for them to make that determination.

[48] **David Rees:** Okay. Can we move on to the pharmaceutical services, Minister, as Part 5 of the Bill? Can I ask the first question on pharmacy services? Clearly, this Government has a strong emphasis upon community pharmacies and has done a lot to promote community pharmacies. But, to an extent, is there an admission that the Bill is actually having to address some of the issues that community pharmacies are not working fully at this point in time; or is it intending to actually make sure that there is a legal situation for community pharmacies?

[49] **Mark Drakeford:** Chair, what the Bill sets out to do is to reform the law that has been in place for over 20 years now, which regulates what we call 'control of entry' into the pharmaceutical market. We have had a regulated system in Wales. I think we've been right to have that, but I have come to the conclusion that the regulatory regime is too narrow. While I think, as you said, we've done a great deal—and this committee has always taken a very strong interest and has been very supportive of the contribution that community pharmacy makes here in Wales—I think we have run up against some of the constraints of the current arrangements. So, as you will know—and I know there are Members around this table who have constituency issues of exactly this sort—there sometimes are potential new outlets that wish to establish themselves in an area and, at the moment, all a local health board is able to take into account in deciding whether or not to allow that new entrant is whether there is another pharmacy that provides dispensing services within a certain geographical distance from the potential new entrant. So, it cannot take into account the fact that, down the road,

there may be a pharmacist that does dispensing but nothing else—nothing of the range of public health services that we are concerned about—whereas the new entrant would be prepared not just to offer dispensing, but a whole range of other services that might have an impact on public health, and the new entrant gets turned down because our current rule book focuses exclusively on dispensing.

10:00

[50] So, I think we've done a great deal to try and maximise the contribution that community pharmacy makes in Wales, but we need now to move a step further to allow local health boards to carry out a pharmaceutical needs assessment in their areas. If they find that there are gaps, that there is a dispensing pharmacist, but that pharmacist does not provide flu vaccination, does not provide emergency contraception, does not provide smoking cessation services—all the things we know that the public health remit of community pharmacies can successfully discharge—then the new rule book will allow them, first of all, to go to the existing provider and see whether they are prepared to add to the range of services that they provide and if they are not in a position to do that, to allow new entrants and even to canvass for new entrants to come in to provide that wider range of pharmaceutical services to meet the needs of the local population. That's why I think this is a particularly important part of the Bill in the impact it will have on public health and on the inequality that lies behind it.

[51] **David Rees:** Thank you. Gwyn.

[52] **Gwyn R. Price:** Following on from that, Minister, does the Bill, as drafted, ensure a more integrated approach to identifying the pharmaceutical needs of communities, including, for example, considering the contribution of dispensing doctors?

[53] **Mark Drakeford:** Well, in drawing up a pharmaceutical needs assessment, local health boards will have to consider both the services that are already provided through community pharmacies, and also the services that dispensing doctors provide in that area. That will be important in some rural areas of Wales, in particular where the need for doctors to be dispensing doctors remains an important part of the service that they provide. So, yes, the Bill will allow for that. We will, quite definitely in this instance, in the requirements that we make of local health boards, have a common approach to pharmaceutical needs assessments. That will make sure that we have that integrated approach to it that encompasses dispensing doctors, community pharmacists and other players who are important in this field.

[54] **Gwyn R. Price:** Are the stakeholders fully involved in this approach?

[55] **Mark Drakeford:** Well, this part of the Bill was very strongly supported by Community Pharmacy Wales, the Royal Pharmaceutical Society and local health boards. We do have a very strong relationship with this sector in Wales. We have over 700 community pharmacies right across Wales and in some parts of Wales, they are, not the last man standing—that would be wrong—but they are the outlet around which the rest of the high street revolves. Nick Ramsay's committee, when he was chairing the business committee, produced a report on the importance of community pharmacies on the high street. And, we're lucky enough to have a very strong engagement with the sector, both for these purposes and for those wider economic benefit purposes too.

[56] **Gwyn R. Price:** Yes. I was touching on the rural more than the high street, in some cases.

[57] **Mark Drakeford:** One of the challenges for the sector is that there is wide variability between different community pharmacy contractors. The very best provide all the things that we've been talking about and do all the things that Community Pharmacy Wales tell you

about when they come and give evidence to you. There are other community pharmacy contractors who are much more old-fashioned, if I was to use that expression, in the way that they think of themselves. They think of themselves as dispensers of medicines and they run a shop alongside it. There is some evidence that there are a slightly higher number of those sorts of outlets in rural communities compared to the wider range of services that some others will provide. It's a challenge for the sector to lever up the performance of all its members to that of its best. We work with them in a positive way to try and make sure that that is the direction of travel for the whole sector.

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

[59] **Darren Millar:** Minister, I welcome the freeing up of the market in this area, and I think it is important that there is a full range of services available to everyone in Wales on an equal basis. One of the concerns that has raised its head, certainly in my constituency, and I know elsewhere in Wales, is the length of time it takes to determine a new application for a pharmacy, and I see nothing in the Bill specifically that could address that. Obviously, you're going to have regulation-making powers in this area. What are your intentions in terms of prescribed timescales by which decisions must be made when an application for pharmaceutical services is made by an individual business that wants to establish itself in a locality?

[60] **Mark Drakeford:** I might ask Chris if he will answer this specific one. The general point is one I very much recognise. The current system, I think, too often leads to conflicting and contested relationships between potential new entrants and the local health board, with protracted legal disputes between the two. My ambition is that with a new, planned approach of this sort it will be much clearer to everybody what it is that the health board is looking to support, that it will be able to identify the potential suppliers of those services, work positively with them, and that we will see fewer of those disputatious instances, and that there will be a swifter way of making sure that we can maximise the contribution of community pharmacy. But I will ask Chris to say whether we've put any specific time limits into the way that this part of the Bill will operate.

[61] **Mr Tudor-Smith:** I think that, generally, one of the benefits we see of the new approach is, because there will be a pharmaceutical needs assessment, the applications that go to local health boards will be targeting any gaps that are observed in that assessment. So, the applications will be less speculative because they'll have an assessment to which to apply to for any gaps. So, one of the benefits we'll see is that we expect fewer applications, because they'll have a report in which to make their direct application. We haven't so far directly thought about the timescale for those applications, but we're very open, as part of the guidance, to that sort of issue being included in the guidance.

[62] **Darren Millar:** I have just one final question in relation to this. Obviously, sometimes, it may be necessary, or it may be in the interests of a pharmacy, to relocate itself, particularly if GP premises, et cetera, might be relocating in a locality. That process seems to be extraordinarily onerous in terms of obtaining permissions to relocate, even within a community, in the space of—there's one in my locality—just half a mile, and it took in excess of nine months to secure the agreement of the local health board, in which time a new GP practice had been established and it was very inconvenient for patients to obtain their medicines. So, what are you going to do to shortcut that process, which is needlessly bureaucratic and onerous?

[63] **Mark Drakeford:** I think the Bill will address that very directly, actually, because the problem with the current arrangement is that the grounds on which the local health board is able to agree something are so narrow that they end up having to find ways round it in order to accommodate the sort of thing you've just described. This will be a much more

straightforward way for the local health board to be able to say, 'That outlet is meeting a pharmaceutical need in that community'. Geography is not the issue. It's meeting the need that is the issue, and if it needs to go on meeting the need and can do it, I think it would be one of the benefits of the Bill that it would address exactly that sort of issue, which Darren will probably be aware is not just in his constituency; I see a whole string of these happening across Wales. The Bill will help.

[64] **Darren Millar:** So, it will address that in the regulations, and you're open to consideration of prescribing timescales.

[65] **Mark Drakeford:** It will help it, I think, on the face of the Bill, because of the way that the Bill constructs a pharmaceutical needs assessment, and we will definitely look at the timescales.

[66] **Darren Millar:** Okay, thank you.

[67] **David Rees:** Thank you, Minister. I want to move on now to the next parts of the Bill, Parts 3 and 4, actually, which relate to special procedures and to intimate piercings. Do you want to start off, Kirsty?

[68] **Kirsty Williams:** Yes, thank you, David. Minister, what evidence do you have as a Government to support the need for legislation covering the specific areas of the special procedures, and why those special procedures, above and beyond things like dermal fillers, Botox injections, chemical peels and colonic irrigation? These are potentially invasive procedures. I'm interested to find out why tattooing, acupuncture, electrolysis and body piercing are deemed to need to be regulated but other procedures are not. What's the evidence for that approach?

[69] **Mark Drakeford:** Thank you very much. Well, Chair, I think there are known and well-reported health risks connected with skin-piercing procedures, if they are carried out in an unhygienic fashion. There is good research evidence, reported in the *American Journal of Infection Control*, a large study reported in the *British Medical Journal* in England, in which over a quarter of people who had had cosmetic piercing procedures experienced complications, and over half of those were severe enough to lead them to need further medical help. If we didn't have evidence otherwise, we have evidence very recently from Newport, of course, where we've had over 550, I think, people who've had to be contacted by the local health board as a result of unhygienic activities by a local tattoo parlour owner in two or three different parlours. Over 400 of those people have come back to the health board to have the follow-up tests. I think we've had nine people who've been hospitalised as a result of what has gone wrong in Newport. We've had one person having to stay in hospital for over three weeks as a result of the harm that has been created. So, I think there is more than adequate evidence for us to know that, where these procedures are carried out in a way that is not adequately regulated and is unhygienic in nature, it poses a risk to public health, and that's why the Bill takes the approach it does.

[70] Why the four procedures that are currently identified on the face of the Bill? Well, they all have skin piercing as their common characteristic, and I think that's what distinguishes them from some of the other things that Kirsty Williams just set out, some of which are certainly beyond my own level of competence. Why not dermal fillers, though, or some of the other things you mentioned? Because, at the moment, they are still caught up in the aftermath of the Sir Bruce Keogh review of non-surgical cosmetic procedures. So, the Prime Minister asked Sir Bruce Keogh to carry out a review of all of these things, and that report has been published, and is with the Department of Health. It makes a series of recommendations, which, if they were to be implemented, would secure legislation at a UK level in relation to those procedures. Now, I think, understandably enough, the general

election has intervened on the timetable of a number of things that have had an impact on this Bill, and that is one of them. I have been in contact with the Department of Health, and I know that this is something that they are actively considering. If, however, the Department of Health decide not to go ahead in a way that would secure the Assembly's support—because I imagine we would need a legislative competence motion, potentially, in some of these areas—then we have regulation-making powers in the Bill that allow Welsh Ministers to add further procedures to the special procedures register. That would be through the affirmative procedure, so they would have to come in front of the National Assembly for agreement. At the moment, my position has been that, while the Keogh review is still under active consideration and when there could be legislative action elsewhere that would be of wider benefit to Wales, we should be prepared to stand back and allow that process to run its course, because it should be running its course in the short term, not the long term. If it doesn't or if it doesn't do so satisfactorily, then I think the Bill allows us to return to the issue and to add some further procedures to the Bill.

10:15

[71] **Kirsty Williams:** I take your point with regard to dermal fillers and Botox, and that they are a type of procedure that is under consideration by Keogh. I'm not aware that, for instance, tongue splitting and colonic irrigation are part of that review. I'm just interested as to why regulation of acupuncture, for instance, is seen to be a real need in terms of promoting public health, but colonic irrigation—which, let's face it, by its very nature is invasive and actually, potentially, given the intimate nature of that procedure, could have a whole series of other issues associated with that—is not going to be regulated, because the consequences of colonic irrigation going wrong, from my understanding, would be very serious. If we're judging it as how many people end up in hospital or what the potential is for people to end up in hospital, then I just wonder why the inconsistency—why acupuncture is regarded as potentially needing to be regulated and dangerous, but colonic irrigation and tongue splitting are not.

[72] **Mark Drakeford:** In the end, Chair, these are always matters of judgment. These are procedures on a spectrum. At the moment, the Bill draws the line where it does because the four procedures we have identified have something in common and happen on a scale where we think they're worth including. I remain open-minded on whether there are other procedures that ought to be added to the Bill at this stage, or whether those are procedures that ought to be considered as part of the regulation-making power that the Bill allows. If the committee takes evidence on those matters and comes to a conclusion about them, then I'm very open to listening to what the committee has to say. There is no line of principle that we have drawn between one thing and another; it's how far you go down the list of potential things. You can argue about where the line should be drawn. I would be very open to hearing what the committee has to say on where the committee believes that line ought to be drawn at present.

[73] **Kirsty Williams:** It would be really helpful to have a note on the scale of problems that we know about, from tattooing down to ear piercing. I'm just interested in what the scale of the problem is.

[74] **David Rees:** If the Minister could provide that information, it would be helpful.

[75] **Mark Drakeford:** Whatever information we have, we are very happy for the committee to have it too.

[76] **David Rees:** I've got follow-up questions now from Lindsay, John, Elin and Darren.

[77] **Lindsay Whittle:** Thank you, Chair. Minister, I noticed that, for intimate piercing,

it’s illegal to perform this on anyone who is under the age of 16. I’m concerned about piercing of any sort; I see it on young children, babies even. I don’t know whether you’d considered bringing that into the Bill at all. You mentioned the city of Newport where we had an issue. These shops are springing up in every single Valleys town now, and I’m concerned about the resources for local authority health inspectors. I noticed there is some money in the costs to help cover that, but is that really enough? Have you any evidence to suggest you’ve put enough money in, please, because health inspectors have a huge duty here and we’ve already heard from yourself about one shop and 500 people and a number of people hospitalised? That’s a major cost to Joe Public, who perhaps—. I have no issues on tattoos and piercings if that’s what people want, but I know that some of my constituents are concerned about that.

[78] **Mark Drakeford:** I share all those concerns, Chair. What I think the Bill does in relation to special procedures is that, for the first time, it will give members of the public the confidence of knowing that if a certificate is in the window, then that is an outlet that has been properly inspected, the standards of hygiene are what you would need them to be, the training of staff is what you would want it to be, there will be pre-procedure and post-procedure advice, aftercare, given to people, and both the premises and the staff are fit to carry out the duties that they purport to provide. And if you haven’t got the certificate up there, then you’re not licensed to operate. So, for the first time, members of the public will be able to distinguish between, and be part of the policing, indeed, of a system, in which I think standards will be raised and actually the status of the profession will be raised as well. That’s why there’s been strong support for the register from those people who position themselves at the very best end of the current arrangements.

[79] There are balances to be struck and human rights issues to be considered as to where the law intervenes to make something obligatory rather than to improve the advisory character of a system. And in relation to a ban on procedures on children, what the Bill introduces is a ban on intimate cosmetic piercing of children below the age of 16. And it is a ban; it is not a system in which if you turn up with a note from your parent you can overcome the ban. It is a straightforward system in which no cosmetic piercing of an intimate nature can be carried out on a child under the age of 16. We considered the question that Lindsay has raised: should there be further safeguards for procedures of any sort on a child? And there, I think, we’re advised that the balance of human rights obligations, the rights of a child considerations and so on, didn’t take us into that territory.

[80] **John Griffiths:** Could I just come back to the recent example of the incident in Newport, Minister, because, obviously, that’s a very recent and worrying example of what can happen when things do go wrong and the need for this sort of legislation to tighten things up? I recently met with the Aneurin Bevan health board on other issues, but they did mention the tattoo parlour and several hundred people having to worry and be very anxious in terms of whether their health had been affected, and, as you say, lots of referrals and in some cases treatment. So, I think it would be good to know whether that recent example has really been looked at in detail in terms of whether this legislation as proposed would have minimised the risks of those sorts of incidents happening, and whether there’s any need to add or to tweak things at all in the light of that experience. I just wonder whether there’s been the level of communication with the local health board and others to understand the fit between this legislation and that recent history.

[81] **Mark Drakeford:** We’ve been very keen to draw on the experience in Newport in our thinking as the Bill has come forward. We had decided on this approach in advance of the Bill, but we’ve certainly met officers of Newport council and the local consultant in communicable diseases to make sure we’ve captured their experience in the Bill. I think we are confident that the licensing system that the Bill sets up would have had a direct impact in those circumstances because the person would not have been able to have operated in the way

that they did without having satisfied the conditions that will have to be satisfied in order to be on the register. And given what we know, it seems highly unlikely that they would have been able to do that and members of the public would have been aware of that. Part of the Bill is a requirement on local authorities to publicise the register, so that if someone is thinking of finding somewhere to have a procedure done, you would know the places that had been legitimated by this system. I think, as Lindsay said, there is a proliferation of these sorts of outlets and, as a member of the public, you've got no real way of knowing at the moment—no reliable way of knowing—whether you're putting yourself in the hands of an organisation that will take good care of you and do the job in the way that it should be done, or whether that isn't the case at all. The Newport experience is very useful to us in that way.

[82] Connected to it, but indirectly, is a piece of work that answers the point that, I think, Kirsty asked, about evidence. I think we've collected some evidence of the extent of this sort of procedure in different age groups and nearly 10 per cent of piercings of people under the age of 16 turned out to be intimate cosmetic piercings, which was a surprise to me, because the evidence from the White Paper was that, by and large, people who carry out these procedures act in a self-policing way and don't carry out intimate cosmetic piercing of children. But, in the evidence that we've collected, I think it was 8.5 per cent of all the piercings of people under the age of 16 fell into that category. I think that does give us some significant evidence of the need to act.

[83] **David Rees:** Okay. Elin.

[84] **Elin Jones:** Jest gofyn roeddwn i eisiau: mae'r Mesur yn glir yn rhoi'r cyfrifoldeb am redeg y system drwyddedu yma ar awdurdodau lleol. Mae'n faes newydd o waith i ryw raddau i'r rhan fwyaf o'r awdurdodau lleol. A wnaethoch chi gysidro o gwbl rhoi'r cyfrifoldeb i fyrddau iechyd lleol yn hytrach nag i awdurdodau lleol yn y maes penodol yma?

Elin Jones: I just wanted to ask: the Bill clearly places the responsibility of running this licensing system on local authorities. It's a new area of work, to a certain extent, for most of our local authorities. Did you consider at all giving the responsibility to local health boards rather than to local authorities in this specific area?

[85] **Mark Drakeford:** Mae pethau mae awdurdodau lleol yn gallu eu gwneud nawr yn y maes ac y mae pethau rŷm ni wedi eu gwneud i roi mwy o bwerau cyfreithiol iddyn nhw allu gwneud pethau. Yn Wrecsam, er enghraifft, maen nhw wedi defnyddio'r system sydd ganddynt yn barod, ond mae Wrecsam yn sefyll mas ychydig bach fel un awdurdod lleol yng Nghymru sydd wedi mynd i lawr y llwybr yna. Ble mae'r pwerau eraill yn Lloegr? Er enghraifft, yr awdurdodau lleol sydd â'r pwerau. I ni, mae'n ffitio i mewn gyda'r gwaith y mae'r *environmental health officers* yn ei wneud yn barod yn y maes yma a dyna pam yr ydym wedi dod i'r penderfyniad i roi'r cyfrifoldeb i'r awdurdodau lleol yng Nghymru.

Mark Drakeford: There are things that local authorities can do now in this area and there are certain things that we have done to empower them in a legal sense to do certain things. In Wrexham, for example, they have made use of the system that's already in place, but Wrexham does stand out rather as the one local authority in Wales that has gone down that particular route. Where are the other powers in England? For example, it is the local authorities that have the powers. For us, it fits in with the work that the environmental health officers are already doing in this area and that's why we have come to the decision to hand the responsibility to the local authorities in Wales.

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

[87] **Lynne Neagle:** Mine was a similar point to Elin's really. It was just about the resourcing of that. I hear what you're saying that environmental health are already involved in

this kind of work, but my experience of my own environmental health department is that they are seriously under pressure. We have placed other duties on them through the scores on the doors and things like that. How confident are you that they are going to be adequately resourced and are there any plans to make any additional funding available?

[88] **Mark Drakeford:** I am acutely aware of the issue of resourcing and the position of local authorities. We've done our best to construct the Act in a way that allows it to recover the costs that the Bill will create. So, in this particular instance, local authorities will be able to charge fees to recover the cost of licensing approval and registration procedures and to cover the costs of running and enforcing the scheme for successful applications. In this part of the Bill, we think it is best left to local authorities to determine the level of fees to be raised and how they will be collected, but we will be clear with local authorities that those fees ought to be retained by the enforcing department in the authority in order to offset the costs of providing the service.

[89] In other parts of the Bill, where we have fixed-penalty arrangements, fixed-penalty costs will go to the local authority. Where it goes above a fixed-penalty intervention and there are fines, fines go back to the court service, but where fixed-penalty arrangements are in place, that's another way in which local authorities will be able to help recover some of the costs of enforcement, for example, in relation to the tobacco retailers register. So, we've done our best in designing the Bill to find ways in which local authorities will be able to create revenue streams to meet the new obligations that they will be discharging.

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

[91] **Darren Millar:** Thank you. Obviously, Minister, the Bill refers to four special procedures. You've, very helpfully, in your explanatory memorandum set out the cost of access to NHS services following a piercing procedure, but you don't break that down by the four different procedures, on the face of the Bill.

10:30

[92] Do you have a breakdown that you could make available to the committee? Because I suspect most of them are not in relation to, well, at least two of the procedures on the list.

[93] **Mark Drakeford:** Chair, I don't know whether we have a breakdown at specific procedure level, but, as part of the information that I've already agreed to supply, if we have it, we'll include that in it.

[94] **Darren Millar:** Thank you. And just one final question: what consideration have you given to prohibiting piercing procedures from going ahead for people of any age if they are intoxicated, given the fact that there are many people living with regret, having undergone a tattoo procedure, or an ear-stretch procedure, in the aftermath of a night out? That is an issue that the Bill does not seem to cover at all.

[95] **Mark Drakeford:** I'll ask colleagues if anybody will add to what I'm about to say on this, but my understanding of that is that, as part of getting the licence to operate, you will have to show that you have pre-intervention procedures in place—in other words, that someone has a consultation with you and explains to you what the procedure will involve, what its impact will be, how it will last through the rest of your life, potentially, and all of that, and there will be a cooling off period, potentially for someone to go away and think about that. A proper way of operating that would be, if someone felt that the person in front of them wasn't in a position to understand the advice that they were being given, then a cooling off period would be an obligatory part of the way that you operate it and part of how you persuade the local authority that you're a fit person to have the licence. But I'll just check

whether anybody has anything more to add to that.

[96] **Mr Tudor-Smith:** Clearly, we could include that as part of the conditions, if the committee felt that was appropriate.

[97] **Mark Drakeford:** I think it's implicit at the moment, but if you thought it should be explicitly included—.

[98] **Darren Millar:** Given that we're explicitly excluding certain individuals from having these sorts of procedures, I think it would be helpful to have something like that on the face of the Bill, to make it very clear.

[99] **David Rees:** Committee has taken note of that, and I think that's something that we'll discuss.

[100] **Mark Drakeford:** I understand very much the point that is being made.

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

[102] **David Rees:** Well, in that case, I'd like to move on now to Part 2 of the Bill, which clearly relates to the relationship to tobacco. There are obviously three chapters here that I want to discuss. Can we look at chapters 2 and 3 in the first instance, which relate to the regulation of retailers in the Bill and sales to under-18s? Perhaps we'll just start off with this: how do you think this Bill will actually enhance the reduction of uptake by under 18-year-olds as a consequence of the legislation placed within it?

[103] **Mark Drakeford:** Well, Chair, that is exactly the purpose of these parts of the Bill. They are focused on making more effective the range of tools we have available to us to help prevent the take-up of smoking amongst people who are below the legal age to do so. I think I said earlier that one of the ways in which the Bill has been partly shaped has been as a result of activity at Westminster, and there were a number of issues brought forward—I think accelerated forward—as a result of the general election, and we were very pleased to take advantage of them. So, proxy purchasing, plain packaging and smoking in cars where children are present are all examples of other things in this field that would have appeared in this Bill, had we not been able to take advantage of accelerated action at the Westminster level.

[104] How, though, do we enforce some of those things, like proxy purchasing? Well, the tobacco retailers register, for us, is a very important way of strengthening the ability of the system to police the measures that we have put in place. We are drawing on experience from Scotland in this area, because they already have a tobacco retailers register. What that does is to make it absolutely clear to local authority enforcement officers where tobacco is being sold. At the moment, they don't have a comprehensive list of that sort, they have fragmented evidence. This Bill will lead to a fully comprehensive and consolidated knowledge of where tobacco is being sold. It will therefore allow them to police the system that the Assembly has set up in this regard. That's the key purpose of the register and why we think it will add materially to our ability to do what you said in your opening question.

[105] **David Rees:** In that case, can I ask this question? Obviously, there's also mention of the accessibility via, shall we say, online mechanisms. I suppose the question we want to know is how we're going to monitor and enforce that aspect, because, as we all understand, online these days is easy, it's accessible, and very often we don't know what comes to the door because it's in a sealed package.

[106] **Mark Drakeford:** Well, we will work with the industry in the first instance. The

industry tell us that they already have voluntary codes of practice in this area in which their deliverers are told that they are not to hand over tobacco products to someone who is below the age at which tobacco can be purchased. The law is meant to prevent that in relation to alcohol. So, the legal position on alcohol is very clear. What we will do is to make the legal position in relation to tobacco equally explicit. We think it will strengthen the hand of the industry, therefore, in making its voluntary arrangements effective. There will be some training required of people who deliver products to people's houses so that they can be better aware of whether the goods that they are delivering contain tobacco within them. We will monitor the operation of this part of the Bill through our local authority partners, who will be responsible for the oversight of it. It was a measure that we included in our White Paper as a matter of discussion, in a way, to see what the reaction to it would be. But it came back very strongly supported by organisations who are keen to support us in the work we are doing to try always to make it clear that we don't want tobacco to be part of a normal, socially acceptable way of going about things, and particularly that we do not want to put things that are so potentially harmful in the way of children and young people.

[107] **David Rees:** If we go on to chapter 1, then, relating to smoking and use of nicotine inhaling devices in relation to this matter, John, do you want to start?

[108] **John Griffiths:** Yes, sure. One of the key issues, and one that you've clearly identified, Minister, is whether the use of e-cigarettes normalises the act of smoking and will then result in more people taking up smoking—and obviously creating an even greater strain on the health service and a greater impact on the health of individuals and communities as a result. Is there evidence that you can point to to substantiate that normalisation effect and those consequences?

[109] **Mark Drakeford:** John, you know that what I am able to do is to point very clearly to strong evidence of the risk of normalisation. I've always been as clear as I can be, but what I am doing in this part of the Bill is to balance risks. There will be evidence that people can point to that suggests that normalisation is not taking place. There is equally evidence that points to the very significant risk of normalisation. My job as health Minister is to protect the health of the people of Wales. When I am presented with two sets of evidence, one that says harm may not happen, and one that says harm may happen, then I think it's my responsibility to act on the precautionary principle and to take seriously the evidence that says that harm may happen and to act in a way that would make sure that that harm—or to reduce the risk of that harm. I certainly think that that is the case in relation to normalisation. There is plenty of evidence, there is plenty of academic evidence, there is plenty of clinical evidence, and there is plenty of evidence from very senior organisations in the health field that says that this is a risk that we have to act to mitigate. My job is to balance the evidence. E-cigarettes are a very new phenomenon. We won't have definitive evidence for many years to come. What I don't think we ought to be prepared to do as a committee or as a National Assembly is to take the risk that, in 10 years' time, we will look back and say how much we wished we had acted then, before the harm had occurred. So, Chair, if I can, I will just read one example of the sort of evidence that I rely on. Here's the Royal Pharmaceutical Society:

[110] 'It's alarming to see e-cigarettes being marketed to our young people. Use of e-cigarettes is increasing in Wales and other parts of the UK, particularly among younger age groups. If we don't act now, there is a danger that smoking will become the "normal" thing to do again. E-cigarettes could become the gateway to tobacco. We do not believe this is a risk worth taking.'

[111] That's my position too. That's why we bring these very modest proposals in relation to e-cigarettes before you in this Bill.

[112] **John Griffiths:** Can I just follow that up, Chair? I think the precautionary approach

is well established and well understood in a whole range of areas of governmental responsibility and possible legislation, strategy and policy. So, it is a very strong guiding principle, and rightly so, I think. I think one of the issues that's come to me at meetings I've had with various bodies is that it's strongly felt, I think, that it's not simply an equation of whether not having the restrictions you propose might result in harm or might not, but that having those restrictions might itself result in harm on the basis that lots and lots of people are using e-cigarettes to give up smoking conventional cigarettes, and that trend is thought by some at least to be building momentum and might result in a huge health benefit because of that shift from tobacco products to e-cigarettes, and the sort of restrictions proposed in this Bill would prevent that happening to the extent that it otherwise would. So, there is potential harm to be factored into the equation in terms of the proposed restrictions as well as the precautionary equation that you've described.

[113] **Mark Drakeford:** Okay. Well, of course, I understand that argument very well, and it's why this Bill does nothing, in my view, to prevent e-cigarettes from being used for harm reduction purposes. We are not banning e-cigarettes in any way. Where there is evidence—. You know, you'd have to say, if you were looking at the evidence in a cold-eyed way, the Cochrane Collaboration, which is the best organisation we have to carry out reviews of evidence, says that the evidence for e-cigarettes being an effective means to giving up tobacco smoking is low. But I set that to one side, in a sense. If there is evidence out there that e-cigarettes can be used to help people to give up tobacco, that is a good thing and the Bill does not prevent that in any way. Is there evidence that bringing them into line with conventional cigarettes would stop people from using e-cigarettes in that way? Absolutely none.

[114] **John Griffiths:** Chair, I know there are a number of associated matters, but I'm sure that other Members of the committee will want to discuss those—

[115] **David Rees:** They do.

[116] **John Griffiths:** —so I'll leave it there.

[117] **David Rees:** Thank you. Gwyn, you wanted to come in on this question?

[118] **Gwyn R. Price:** Yes. Minister, have you got any examples of areas where e-cigarettes are banned at this moment in time?

10:45

[119] **Mark Drakeford:** Well, Chair, one thing I'm absolutely confident of is that what this Bill does is simply to bring the position in Wales into line with the way that the trend is going. Every single day you will find more and more places that are already doing what this Bill proposes. So, there are many, many examples—in the sports field, in arts and entertainment, in the hospitality industry, in transport, and in workplaces—where what this Bill proposes is already being done. So, for example, here in Cardiff, Cardiff Castle, the New Theatre, St David's Hall, the Wales Millennium Centre and the Millennium Stadium, all of those are places where e-cigarettes can only be used where conventional cigarettes can be used. If you went to Wimbledon this afternoon, you would not be able to use an e-cigarette there other than in places where conventional cigarettes are allowed. If you decide to go to the Ashes test in the SWALEC Stadium next week, that will be exactly the position that you will be in. If you chose to travel by train to any of those venues, if you were going on a Southern train, Gatwick Express, Thameslink, Great Northern, Transport for London, Virgin Trains, Eurostar, Northern Rail, ScotRail, Southeastern, London Midland and on Arriva Trains here in Wales, they already treat e-cigarettes in exactly the same way as conventional cigarettes. This is the way the world is going, and it's going at it at a significant rate. Only today, Chair, I read that, overnight, Oil & Gas UK have banned the use of e-cigarettes on offshore

platforms in the industry because of safety concerns with them. So, what this Bill proposes is where the rest of the world is already heading, where most of the rest of the world has already gone—because you know that countries right around the globe have already acted to do what we are proposing for Wales and much more—and where organisations that exist in Wales and the UK are there already.

[120] **Gwyn R. Price:** Thank you.

[121] **David Rees:** Elin, and then Kirsty.

[122] **Elin Jones:** Yes. You've chosen to replicate the banning of e-cigarettes exactly with the places of use for conventional cigarettes. Did you at all consider a different approach on e-cigarettes and just to introduce legislation to ban them in particular places—you've listed already some of those kinds of places that may be the most relevant places to ban the use of e-cigarettes; public transport, public buildings, places where food and drink are consumed or sold—so that there's a different approach to legislation on e-cigarettes to legislation on banning the use of conventional cigarettes? Did you consider that at all?

[123] **Mark Drakeford:** Well, I think that is a very interesting question and an interesting way of thinking about the whole topic. If the committee develop that idea during your consideration, I think that will be helpful. I think the way we have thought about it is slightly different so far, in that we bring e-cigarettes into line with conventional cigarettes. I think there's very good reason—for enforcement, as much as anything else—for being simple and clear in that sort of way rather than having a slightly more complicated set of places. In the statement of policy intent, which I'm sure you will all have been poring over, you will see that I do indicate in here already that we are prepared to consider some exceptions to that. So, we've come at it in slightly the opposite way. Instead of building up a mosaic of places, we start with the principle that what we did with tobacco was right, but recognise that e-cigarettes are not identical in that way, and there may be some places where exceptions would need to be made. So, the two that we identify in the statement of policy intent are that I'm open to the idea that e-cigarettes could be used in the film and cinema industry, without the harm that tobacco would provide there—so, we might make an exception there—and open to the possibility that pharmacy consulting rooms might be somewhere where you would want to make an exception if e-cigarettes were legitimately being used as part of a smoking cessation programme. So, it comes at the same issue but from a slightly different way.

[124] **David Rees:** Elin?

[125] **Elin Jones:** That's fine, because others want to—

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

[127] **Kirsty Williams:** The rationale behind the original smoking ban was to prevent harm to those who were inhaling second-hand smoke. Do you have any evidence that inhaling second-hand vapour is harmful to people's health?

[128] **Mark Drakeford:** Chair, that is not the basis on which we have brought forward this legislation. I've always emphasised the three pillars that we have used, which are enforcement, normalisation and the gateway possibility of e-cigarettes. But as I've been asked the question, let me just quote for the Member the California state health officer's report on e-cigarettes. It think it's a particularly important document, one I'd recommend to all Members to read. California has been probably the most successful place in the world in rolling back tobacco smoking. If we had levels of conventional tobacco smoking that they have achieved in California, we would be very pleased indeed. So, their work in this area is amongst the best in the world. Here is a report published earlier this year from their chief medical officer

equivalent. This is what they say in relation to the question that I've just been asked,

[129] 'While e-cigarettes pollute the air less than traditional cigarettes, contrary to popular belief, e-cigarettes do not emit a harmless water vapor, but a concoction of chemicals toxic to human cells…Although several studies have found lower levels of carcinogens in e-cigarette aerosol compared to smoke emitted by traditional cigarettes, the mainstream and secondhand e-cigarette aerosol has been found to contain at least ten chemicals that are on California's list of chemicals known to cause cancer, birth defects, or other reproductive harm'.

[130] And it goes on to list all the things that e-cigarette vapour contains and the harm that it potentially does to others. That's not the basis on which our legislation has been brought forward, but I think there is emerging evidence that we ought to be aware of in that area, too. But, Chair, I think the point I have to make is this: it's not for me to establish whether e-cigarette vapour contains harm to other people. At the moment, where conventional cigarettes are banned, we have created pollution-free air for people in Wales. I want to preserve that status quo. It is for people who would rather that that air was less pure by allowing e-cigarettes to be used in those places to explain why they think that lowering the level of air quality is right for people in Wales; it's not for me to explain why I think those vapours may be harmful.

[131] **Kirsty Williams:** For the record, could I clarify the competency Welsh Government has over traditional tobacco products? Would Welsh Government be in a position to ban cigarette sales in Wales?

[132] **Mark Drakeford:** I'll ask Sue, who will know this much better than me. Could we ban cigarette sales in Wales? Not that we have any intention of doing so.

[133] **Kirsty Williams:** No, I'm not saying that you have. I'm just wondering what the competence issues are.

[134] **Ms Bowker:** I don't think we have ever asked lawyers that question, but we can do.

[135] **Mark Drakeford:** I could ask Dewi.

[136] **David Rees:** Perhaps you could give us a note, Minister—it might be easier—for clarification on that point.

[137] **Mark Drakeford:** Okay, yes. We'll clarify it, certainly, but there is no policy intent in that area.

[138] **David Rees:** No, I appreciate that. Darren.

[139] **Darren Millar:** I just wanted to consider this issue from the angle of a person who might be using e-cigarettes in an attempt to quit their tobacco smoking, or to reduce the number of cigarettes that they might be smoking, because the overwhelming majority of people who are e-cigarette users seem to be people who are trying to reduce the harm that they might be experiencing as a result of addiction to tobacco and nicotine, through tobacco smoking. If this ban or prohibition is brought in in enclosed public spaces, then at the moment, those who want to smoke tobacco generally go to a little smokers' hut outside a premises, and that is where they will continue to participate in that habit that we all want to see reduced. But if somebody is an e-cigarette user, and they are prohibited from being able to inhale the vapour and use that e-cigarette inside, surely they're going to be forced to go to a very similar place to the smokers outside, and therefore will be at increased risk of the harm that we know is very clearly evident from second-hand tobacco smoking, won't they? So, isn't there a greater harm to public health as a result of your proposals when you consider the

net harm that your proposals might bring forward?

[140] **Mark Drakeford:** Chair, I follow what Darren says—there are a certain number of steps along the chain that he attempts to create, and then I don't follow him beyond that point. So, I follow him to this extent. I agree that the evidence suggests that most people who use e-cigarettes use them in an attempt to reduce—there's very little evidence for elimination; almost all e-cigarette users turn out to be dual-use users—but to reduce, and therefore to have an impact on their consumption of tobacco. I agree with that, and nothing in this Bill—

[141] **Darren Millar:** Sorry, can I just ask for your evidence base for suggesting that most people who use e-cigarettes are dual users?

[142] **Mark Drakeford:** It's very clear. We can give you the evidence for it. I think you'll find—

[143] **David Rees:** You could point us to the evidence.

[144] **Mark Drakeford:** Yes. I don't think that evidence is much disputed.

[145] **Darren Millar:** Well, perhaps you could bring some evidence as well in terms of how effective e-cigarettes are as a quitting aid compared with other potential quitting aids as well that might be supported by the Government.

[146] **Mark Drakeford:** I'd be very pleased to do that because I try to be clear about this: I want to preserve the possibility that e-cigarettes are a help to people wanting to give up tobacco, and I don't want the Bill to be an impediment to that, and I don't think the Bill is an impediment to that. I think the evidence for it is weak. But there we are. If it helps some people, then I'd rather it helped those people to come off tobacco, because e-cigarettes are not as harmful as tobacco. Where I depart—where I think the chain that Darren was trying to create breaks down—is in the argument that people who use an e-cigarette are 'forced'—the word he used, and the word that the e-cigarette industry always uses—to then go and mingle with conventional cigarette users, putting them at greater risk. Well, No. 1, nobody is forced. Let's be clear: people are making choices here, and nobody is forced to use an e-cigarette or a conventional cigarette or to stand next to anybody else who is using either. People will be making judgments. When people are in this SWALEC Stadium for a five-day test match, if they can't use an e-cigarette other than where conventional cigarettes are used, they will be making those choices. And they'll be making them next week.

[147] Does it have to be that way? Well, it doesn't, because we know that employers who are already implementing the proposal that we are making in the Bill can make other arrangements. They can, if they so wish, find alternative places for e-cigarette users to congregate, or we know that what they do is stagger the use of the facility they already have. So, they make it available at some parts for an hour for conventional cigarette users, and then another period for e-cigarette users, and that is the way that the employment world is going.

[148] Maybe, Chair, I can offer you one last quotation. I have tried to be sparing with them this morning, but here is Croner, which is a leading human resources organisation that provides HR for Tesco, Carlsberg, Pizza Express, Jury's Inn and many other organisations. Here is their managing director:

[149] 'The fact that Ministers in Wales are looking to ban e-cigarettes in enclosed spaces, will massively help employers with this increasingly difficult area'.

[150] If I had one single strand in the reaction to the Bill—and people talk to me about e-cigarettes a lot—it is employers saying to me how keen they are on this legislation, because it

will clarify the position for them, it will make enforcement easier, and they will make arrangements to deal with the sort of consequences that Darren suggested.

11:00

[151] **David Rees:** I'm sure you've had many talking to you; we've had many talking to us as well.

[152] **Darren Millar:** I think we all accept that the evidence is out in terms of the long-term impact of e-cigarettes on people's health. What is not clear at the moment, in my opinion, is that the evidence is sufficiently weighted in favour of introducing the sort of prohibitions that you're suggesting. However, I will ask this one final question: your Bill makes no provision whatsoever for the banning of e-cigarettes on hospital grounds; why not?

[153] **Mark Drakeford:** For this reason, Chair—and it's a very good point: because the Bill allows Ministers to bring forward regulations to ban conventional cigarettes and e-cigarettes in a wider range of places than the Bill currently identifies. I will publish draft regulations during Stage 1, so the committee will be able to see them, to extend the ban on conventional cigarettes and e-cigarettes to hospital premises and hospital grounds and school playgrounds as well. You have to design the regulations to fit the particular context that you are extending the ban to, and that's why it's important to do it through regulations, rather than on the face of the Bill, because you've got to design them to meet a specific set of circumstances.

[154] **Darren Millar:** But you do intend to bring them forward.

[155] **Mark Drakeford:** I absolutely intend to do it. I intend to do it in those two instances in the first place. In consultation, there were a series of other places where it was suggested such a ban might reach, but I definitely intend to move on those two instances. We'll publish the draft regulations for the committee to see before the end of Stage 1 proceedings.

[156] **Darren Millar:** But pharmacy consultation rooms you want to keep open to the use of e-cigarettes.

[157] **David Rees:** The Minister indicated that is something he would—

[158] **Mark Drakeford:** That's in our notes already, and following the line of argument that Elin was making, if committee believe that there were others we should consider, then I'm happy to do that as well.

[159] **David Rees:** Minister, we've come to the end of the time allocated, but I have one specific question I wish to ask before you go, if it's okay. It's an important question. Obviously you might be aware of the human rights aspects that have been brought to our attention as a committee, and I just wanted to raise the point as to what consideration you took of the Human Rights Act 1998 and the European convention on human rights, in particular in relation to the right in respect of the home, when you talk about using the dwelling home as a workplace. Could you clarify what consideration you took of those points for us, please?

[160] **Mark Drakeford:** Well, thank you for raising that question, as it's an important question and I know, Chair, that you've received a letter from the Presiding Officer asking the committee to pay particular attention to that aspect during consideration, so I'm very pleased to clarify. If there are more detailed questions, Dewi will certainly pick those up. We take the human rights aspect of the legislation very seriously, because if we're not Human Rights Act compliant, then the Bill is not within the competence of the National Assembly. That is an

area that I have received specific advice on, which allowed me to certify my belief that the Bill is within competence.

[161] The Presiding Officer raises one particular instance with you, and it is an area in which I agree the human rights aspect is carefully and closely balanced. The Presiding Officer herself took specialist legal advice in coming to her determination, and that specialist advice suggested to her that the Bill was within competence. But, the issue is this: at the moment, if someone is using part of their own dwelling for business, then conventional cigarettes are not able to be used only in those parts of the dwelling that are solely used for business. They can be used in any other part of the dwelling at any other part of the day. What our Bill does is to extend that, so that e-cigarettes and conventional cigarettes cannot be used in any part of a dwelling, whether they are used solely for business or partially for business, but it will allow conventional cigarettes and e-cigarettes to be used in any other part of the house, and it will allow conventional cigarettes and e-cigarettes to be used in rooms that are used for business purposes outside business hours.

[162] Now, what we're doing here is balancing two sets of rights. They are the rights of the householder to use their private space in the way that they would choose to do so when it is being used for private purposes—and that's why we will allow even rooms that are used for business purposes to be smoked in out of business hours—but you also have to protect the rights of people using the premises, to be protected from second-hand smoke. That's why we will not allow smoking to take place in rooms used for business purposes, whether they're being used exclusively or partly for business purposes. That's the balance that the Bill currently strikes: it aims to protect the rights of users while also protecting the rights of individuals to the use of their private space, too.

[163] I've seen legal points of view that suggest that the balance could be struck differently, but my best advice is that this is the way we have to strike it in order to bring the Bill within human rights compliance. That was the advice that the Presiding Officer received when she went for independent expert advice in this area. I think it's a very useful area for the committee to explore. The main point for me to make is that we've reached that belief as a result of a very full consideration of the Human Rights Act dimension. We haven't struck it without having thought those things through, and that's the conclusion we've come to.

[164] **David Rees:** And that's applicable to both cigarettes and e-cigarettes.

[165] **Mark Drakeford:** Yes.

[166] **David Rees:** Thank you, Minister, for the clarification on that point, and can I thank you for your evidence this morning? You obviously will receive a copy of the transcript as usual for any factual inaccuracies. Please let us know if there are any. We look forward to meeting you towards the end of the process when you'll come back to committee after we've taken our evidence. Thank you very much.

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

11:07

Papurau i'w Nodi
Papers to Note

[168] **David Rees:** For Members, if we move on to item 3 as the Minister and his team leave—papers to note, can all Members note the following papers, please? The minutes of the meeting held on 11 June. The correspondence from the Presiding Officer regarding the Public

Health (Wales) Bill, which we've just itemised in relation to the human rights issue. Obviously, we will be ensuring that the context of the issues raised in that letter will be in our questions during the Stage 1 process.

[169] We've also received correspondence regarding Stage 2 proceedings of the Safe Nurse Staffing Levels (Wales) Bill from both the Minister for Health and Social Services and from the Member in charge of the Bill, Kirsty Williams. I appreciate that Kirsty is here at this point in time, but it's just a paper to note. Any issues we may wish to discuss on that will be discussed as we discuss our forward work programme in the coming weeks before the summer recess.

[170] We've had additional information on the Care and Support (Eligibility) (Wales) Regulations 2015 from RNIB Cymru, the Association of Directors for Social Services Cymru, the National Autistic Society Cymru, Age Alliance Wales and Wales Carers Alliance.

[171] Finally, the last paper to note: we've received correspondence from the chief medical officer regarding a petition we discussed on helping babies born at 22 weeks to survive. Are Members prepared to note those papers? Thank you for that.

11:09

Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y Cyhoedd o Weddill y Cyfarfod ac o Eitem 1 y Cyfarfod ar 9 Gorffennaf
Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public from the Remainder of the Meeting and from Item 1 of the Meeting on 9 July

Cynnig:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod ac o eitem 1 y cyfarfod ar 9 Gorffennaf, yn unol â Rheol Sefydlog 17.42(vi).

Motion:

that the committee resolves to exclude the public from the remainder of the meeting and for item 1 of the meeting on 9 July, in accordance with Standing Order 17.42(vi).

Cynigiwyd y cynnig.
Motion moved.

[172] **David Rees:** In accordance with Standing Order 17.42, the committee resolves to meet in private for the remainder of this meeting and for item 1 of the meeting on 9 July 2015. Are you all content? Then we'll move into private session.

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 11:09.
The public part of the meeting ended at 11:09.