

## Agenda – Health and Social Care Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: Wednesday,

11 November 2015

Meeting time: 09.15

For further information contact:

Llinos Madeley

Committee Clerk

0300 200 6565

[SeneddHealth@Assembly.Wales](mailto:SeneddHealth@Assembly.Wales)

### Private

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At its meeting on 21 October 2015 the Committee resolved under Standing Order 17.42(vi) to exclude the public from the entire meeting on 11 November 2015.

#### 1 Introductions, apologies and substitutions

(09.15)

#### 2 Draft Wales Bill: consideration of the Bill's impact on legislative competence in the field of health and social care

(09.15 – 10.00)

(Pages 1 – 29)

#### 3 Public Health (Wales) Bill: consideration of the draft report

(10.00 – 12.30)

Note: The Committee will break at 10.55 – 11.10 to observe a two minute silence to mark Remembrance Day.

#### 4 Papers to note

(12.30)

Minutes of the meeting on 5 November 2015

(Pages 30 – 31)

Public Health (Wales) Bill: additional information from the Minister for Health and Social Services

(Pages 32 – 38)



Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted



David Rees AM  
Chair  
Health & Social Care Committee  
National Assembly for Wales  
Cardiff Bay

30 October 2015

Dear David

**DRAFT WALES BILL**

I am writing in response to your letter of 21 October requesting a paper setting out the Welsh Government's views to assist in your Committee's consideration of the Draft Wales Bill. I also refer to my letter of 23 October on this matter.

I can now confirm that a paper will be provided to your Committee but unfortunately it will not be possible to meet the timescales set out in your letter. I expect the paper to be available on or after 10 November.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

**CARWYN JONES**



David Rees AM  
Chair  
Health & Social Care Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff

23<sup>rd</sup> October 2015

Dear David

**DRAFT WALES BILL**

I am writing in response to your letter of 21 October requesting a paper on the Welsh Government's position on the draft Bill.

We are in discussion with the Presiding Officer about how to take forward arrangements for providing evidence to Committees. Until this has been clarified I am not in a position to provide written evidence ahead of the Committee's meeting on 5 November.

I will write to you again once the position is clearer.

Yours sincerely

**CARWYN JONES**



David Rees AM  
Chair, Health and Social Care Committee  
National Assembly for Wales  
Cardiff  
CF99 1NA

Cambrian Buildings  
Mount Stuart Square  
Cardiff CF10 5FL

Adeiladau Cambrian  
Sqwâr Mount Stuart  
Caerdydd CF10 5FL

27 October 2015

Dear David,

**Re: Draft Wales Bill: Request for Information**

Many thanks for your invitation to provide evidence to the Committee in relation to your inquiry into the draft Wales Bill published last week.

Unfortunately on this occasion, due to the short timescale, I do not have the required capacity to produce a response.

It is an area that my office will be keeping an eye on and I look forward to hearing the thoughts of the Committee on the draft Bill.

Yours sincerely,

Sarah Rochira  
**Older People's Commissioner for Wales**



# Agenda Item 4.1

## Concise Minutes – Health and Social Care Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: Thursday, 5 November 2015

Meeting time: 09.15 – 12.29

**Private**

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### Attendance

Category	Names
Assembly Members:	David Rees AM (Chair) Alun Davies AM John Griffiths AM Altaf Hussain AM Elin Jones AM Darren Millar AM Lynne Neagle AM Gwyn R Price AM Lindsay Whittle AM Kirsty Williams AM
Committee Staff:	Llinos Madeley (Clerk) Catherine Hunt (Second Clerk) Sian Giddins (Deputy Clerk) Gareth Howells (Legal Adviser) Philippa Watkins (Researcher)



## **1 Introductions, apologies and substitutions**

1.1 No apologies were received.

## **2 Public Health (Wales) Bill: consideration of the draft report**

2.1 The Committee considered the draft report. It agreed to give further consideration to the draft report at its meeting on 11 November 2015.

## **3 Draft Wales Bill: consideration of the Bill's impact on legislative competence in the field of health and social care**

3.1 The Committee did not reach this item and will return to it at a future date.

## **4 Papers to note**

### **4.1 Minutes of the meetings on 15 and 21 October 2015**

4.1a The Committee noted the minutes of the meetings on 15 and 21 October 2015.

### **4.2 Public Health (Wales) Bill: additional information from the Minister for Health and Social Services**

4.2a The Committee noted the additional information.

### **4.3 The Care and Support (Eligibility) (Wales) Regulations 2015: correspondence from the Minister for Health and Social Services**

4.3a The Committee noted the correspondence.

### **4.4 Welsh Government Budget 2016–17: correspondence from the Finance Committee**

4.4a The Committee noted the correspondence.

# Agenda Item 4.2

Mark Drakeford AC / AM  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-L-MD-0127-15

David Rees AM  
Chair of the Health and Social Care Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

31 October 2015

Dear David,

## **Public Health (Wales) Bill**

I would like to thank you and the Committee for the opportunity to discuss the Public Health (Wales) Bill on 21 October 2015.

I am pleased to provide the Committee with further information on the following issues, which were raised during the session and in your subsequent letter, dated 27 October:

- a) clarification on whether tattooing, as defined within the Bill, would encompass similar procedures such as 'tashing';
- b) details of how the Welsh Government intends to amend Part 4 of the Bill (Intimate Piercing) to include tongue piercing;
- c) discussions the Welsh Government has had with professional bodies representing electrolysis in developing the Bill, and the Welsh Government's response to the British Institute and Association of Electrolysis' suggestion that its members should be exempt from the licensing requirements under the Bill;
- d) the Welsh Government's interpretation of how a number of scenarios would be dealt with under Part 2 of the Bill (Tobacco and Nicotine Products); and
- e) an update on the Secretary of State consents required for the Bill, in relation to Sections 4(7), 5(6) and 11(7), and paragraphs 6 and 9 of Schedule 1.

This information is presented below.

### Definition of 'tattooing'

It is the Welsh Government's view that the current definition of tattooing is broad enough to cover similar procedures such as 'tashing'. 'Tashing' is the use of cremated remains in the act of tattooing. We believe that the ash would be classed as a "colouring material" designed to leave a semi-permanent or permanent mark, and so captured by the current definition. Further, if the ash was to be mixed with other pigments (normal tattoo dye), then both the ash and the pigment would be considered colouring materials and captured by the definition of tattooing.

### Tongue piercing

Committee Members will be aware that a tongue piercing is a body piercing usually done directly through the centre of the tongue to allow jewellery, typically of the barbell type, to be placed. It is a procedure that has gained in popularity in recent years, and is no longer considered an "extreme" piercing.

I have closely followed the evidence provided to the Committee during Stage 1 by a number of stakeholders who put forward a view that the list of intimate body parts in Part 4 of the Bill should be extended to cover tongue piercings. I have given careful consideration to this issue and, on the basis that tongue piercing can cause particular health complications and damage to teeth, I can confirm that I intend to bring forward a Government amendment at Stage 2 to add the tongue as an intimate body part within Part 4 of the Bill. This would have the effect of prohibiting the performance of, or making arrangements to perform, a tongue piercing on a child under the age of sixteen years in Wales.

During the Committee session on 21 October, I also offered to clarify my current policy position in relation to tongue splitting. Tongue splitting is a type of extreme body modification in which the tongue is cut centrally from its tip to as far back as the underside base, forking the end.

Whilst body modification procedures such as tongue splitting are not currently captured by the Bill, the legislation would enable the Welsh Ministers to amend, via regulations, the list of special procedures in the future. This provision is intended to enable the list to remain flexible and respond to changing practices and societal trends. As I indicated at the session on 21 October, my current position is that it is most appropriate to initially regulate the four procedures currently covered by the Bill (body piercing, tattooing, acupuncture and electrolysis). This will capture a high proportion of the procedures being performed in Wales, and enable local authorities to embed enforcement activity in these areas in the first instance. The list could then be reviewed and amended if necessary over time, in order to respond to new evidence and trends in this rapidly evolving area.

### Electrolysis

My officials engaged with professional bodies representing electrolysis practitioners, such as the British Institute and Association of Electrolysis (BIAE), during the development of

the Bill. These bodies were notified of the public consultation events, and invited to comment on the proposals in the White Paper.

I note the suggestion made by BIAE that its members should be exempt from the licensing requirements. The Bill provides the Welsh Ministers in section 49(3) with a regulation-making power to exempt individuals who are (a) members of a profession; and (b) are registered in the capacity of a member of that profession in a qualifying register. A qualifying register is defined in section 49(4) as a register maintained by the Health and Care Professions Council that is specified in regulations, or a voluntary register accredited by the Professional Standards Authority for Health and Social Care and specified in regulations. The regulation-making powers in section 49(3) and (4) are designed to allow flexibility to exempt those professions who are already subject to a robust regulatory regime which meets or goes further than that required by the special procedure licensing provisions.

In order for members of any body to be exempt from the licensing requirements under the Bill, the relevant regulatory regime would have to meet these criteria. This process applies to electrolysis in the same way as the other special procedures such as acupuncture. I am not aware that the BIAE voluntary register currently meets the criteria set out above.

#### Scenarios under Part 2 of the Bill (Tobacco and Nicotine Products)

In your letter you asked for my view on how a number of specific scenarios would be dealt with under Part 2 of the Bill. My interpretation of these is set out below.

As a general point, the Statement of Policy Intent document makes clear the intention that the Welsh Ministers will make regulations under section 10(1) of the Bill to provide for exemptions from the smoke-free requirements. These regulations will be subject to consultation and debate. In making the regulations, we will consider whether any exemptions are required for private dwellings used as workplaces. Guidance will accompany the regulations to assist enforcement authorities.

Scenario 1 – A member of the clergy working from home, working ‘indefinable’ hours given the nature of the work.

Section 6 of the Bill provides that, if no relevant exemptions are made under section 10, a part of a dwelling that is a workplace is smoke-free, but only during the time it is being used as a place of work.

The relevant parts of a clergy member’s dwelling would therefore only be smoke-free when actually being used as a place of work. This would be determined by applying the ordinary, day to day, meaning of ‘being used as a place of work’. Even if a person’s working hours were generally considered to be ‘indefinable’, a Court could still determine whether, on an ordinary interpretation, the premises were in fact being used as a place of work at a specific time.

Scenario 2 – A person who works from home during the hours of 9am to 5pm, but takes a work call in his / her lounge at 8pm, and checks work emails on his / her laptop or phone every 15 minutes during the night. The home is a workplace.

Similarly to Scenario 1, the question of whether taking a work-related telephone call or checking work emails every 15 minutes throughout the night constitutes using the relevant parts of the premises 'as a place of work' would be determined by reference to its ordinary, day to day, meaning. In this scenario, the Court would consider whether receiving one work-related telephone call would be sufficient to make the lounge a place of work, or whether checking work emails throughout the night would be sufficient to make, for example, a bedroom, a place of work.

If, on an ordinary interpretation, the lounge and/or bedroom were considered to be being used as a place of work, only those parts of the premises would be required to be smoke-free, and only when the relevant work activity (taking the telephone call, checking work emails) takes place.

Scenario 3 – How does the Bill address Scenario 2 where the home is a studio flat.

The premises would only be smoke-free when actually being used as a place of work. Again, the question would be determined through the application of the ordinary day to day meaning of 'being used as a place of work'.

If the premises are being used as a place of work and there are no distinct parts to the studio flat, the whole of the premises would be smoke-free, but only during the time that they are used as a place of work. If the studio flat has more than one part, only the part that is used as a place of work would be smoke-free.

Scenario 4 – A person works from home, but the kitchen is not used as a workplace. The person smokes in the kitchen during working hours (which is allowed) but smoke drifts from the kitchen into the working area of the home (e.g. the kitchen is separated from the working area by nothing more than an open archway). The home is a workplace.

Section 4 of the Bill provides that it is an offence to smoke in smoke-free premises. Section 6(3) provides that, in relation to workplaces, if only part of the premises is being used as a place of work, the premises are only smoke-free to that extent.

Therefore, in this scenario, if the kitchen is considered on an ordinary day to day interpretation to be a different 'part' of the premises to the adjoining room, the smoke-free requirements will not apply to the kitchen. However, if the kitchen is considered on an ordinary day to day interpretation to not be a different 'part' of the premises to the adjoining room, the smoke-free requirements will apply to the kitchen.

Secretary of State consent

The Secretary of State for Wales wrote to the First Minister on 28 October 2015 in response to our formal request for Secretary of State consent for provisions in the Bill. The letter provides the required consent for sections 4(7), 5(6) and 11(7) of the Bill and paragraphs 6 and 9 of Schedule 1. I am including a copy of this letter for your information. You will note that the section numbers listed in the letter are for the corresponding provisions in the Health Act 2006 where Minister of the Crown functions are being removed (sections 6(8), 7(6) and 8(7), and paragraphs 5 and 8 of Schedule 1).

The First Minister will shortly be responding to the Secretary of State's letter on the matters of clarification requested.

I hope that the information provided in this letter is helpful, and I look forward to the Committee's report on the general principles of the Bill.

Best wishes

Mark Drakeford

**Mark Drakeford AC / AM**

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services



Wales Office  
Swyddfa Cymru

**Rt Hon Stephen Crabb MP**  
Secretary of State for Wales

Gwydyr House  
London, SW1A 2NP

Tŷ Gwydyr  
Llundain, SW1A 2NP

1 Caspian Point  
Cardiff Bay, CF10 4DQ

1 Pwynt Caspian  
Bae Caerdydd, CF10 4DQ

[www.walesoffice.gov.uk](http://www.walesoffice.gov.uk)

Rt Hon Carwyn Jones AM  
First Minister  
Welsh Government  
Cardiff Bay  
Cardiff  
CF99 1NA

Ref: 453SUB 15

28 October 2015

Dear Carwyn,

### **Public Health (Wales) Bill**

You wrote to me on 30 September 2015 seeking formal Secretary of State consent to remove Minister of the Crown functions in relation to sections 6(8), 7(6) and 8(7) of the Health Act 2006 and paragraphs 5 and 8 in Schedule 1 to the Act. Having sought the views of the affected departments I am content to provide consent for these provisions.

Since the Bill's introduction, our officials have engaged regularly to determine the impact of your legislation and to understand your wider policy intentions in greater detail. Whilst these discussions have been constructive I understand there remains some concern around your proposals to restrict the use of nicotine inhaling devices, particularly with regards to the Secure Estate and Ministry of Defence (MOD) premises.

The National Offender Management Service (NOMS) considers the availability of electronic cigarettes in prisons to be part of the operational running of safe, decent and secure prisons, not a health care measure. It would therefore expect that electronic cigarettes continue to be available in prison cells as part of its planned move to a smoke free custodial estate. Whilst the statement of policy intent for the Bill makes it clear that prisons will be classed as "exempt premises" in regulations made under section 10 of the Bill, I would welcome your assurance and commitment in this regard. Whilst there is no intention to offer electronic cigarettes to under 18s, I would expect that this exemption would also apply to Youth Offender Institutions (YOI) in Wales. This is to avoid any confusion now and in the future around prisons with a dual designation, such as HMP Parc, for offenders who are over 18 but sentenced to detention in a YOI.

NOMS will be implementing a phased approach to a smoke-free environment in all prisons in Wales (HMPs Cardiff, Swansea, Usk/Prescoed and Parc) from January 2016, with full implementation expected by May 2016. Officials in NOMS have been considering how to approach this difficult issue without risking the operational safety and security of prisons, which is the priority.

I would also welcome your assurance that MOD accommodation (messes and Service Single Living and Families Accommodation), and naval vessels in Welsh waters whilst they are in service, will be also classed as "exempt premises" in regulations made under section 10 of the Bill.

I know our respective officials, and those across Whitehall, have worked hard to resolve issues with the Bill and I am encouraged by the joint working that has taken place. Through further negotiation I am confident that our officials can reach a resolution to the remaining issues in the Bill which will allow you to meet your policy objectives.

I am copying this letter to the Lord Chancellor and Secretary of State for Justice.

A handwritten signature in black ink, reading "Stephen Crabb". The signature is written in a cursive, flowing style.

**Rt Hon Stephen Crabb MP**  
**Secretary of State for Wales**