



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Iau, 16 Ionawr 2014
Thursday, 16 January 2014**

Cynnwys Contents

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

Memorandwm Cydsyniad Deddfwriaethol: Y Bil Plant a Theuluoedd—Sesiwn Graffu
Gyffredinol gyda'r Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Legislative Consent Memorandum: Children and Families Bill—General Scrutiny Session
with the Minister for Health and Social Services

Papurau i'w Nodi
Papers to Note

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

Leighton Andrews	Llafur Labour
Rebecca Evans	Llafur Labour
Elin Jones	Plaid Cymru The Party of Wales
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

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

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

Llinos Madeley	Clerc Clerk
Sarah Sargent	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 13:00
The meeting began at 13:00

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[1] **David Rees:** Good afternoon, everyone. Welcome back to this afternoon's session, which is in public. For those who are new to us this afternoon, happy new year to everybody; I have not had a chance to say that to others, yet. The meeting is bilingual, and headphones can be used for simultaneous translation from Welsh to English on channel 1, or for amplification on channel 0. Could you please turn off your mobile phones? That includes me, although I am going to leave it on today, as my daughter is in hospital being induced at this point in time. If you have any other electronic equipment, please turn it off. In the event of a fire alarm, as there are no scheduled practice sessions, please follow the directions of the ushers. We have received apologies from William Graham and Darren Millar, and Kirsty has indicated that she might be late.

13:01

**Memorandwm Cydsyniad Deddfwriaethol: Y Bil Plant a Theuluoedd—Sesiwn
Graffu Gyffredinol gyda'r Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Legislative Consent Memorandum: Children and Families Bill—General
Scrutiny Session with the Minister for Health and Social Services**

[2] **David Rees:** To give some background to the purpose of this session, item 6 of our agenda is to discuss the legislative consent memorandum on the Children and Families Bill, which is currently being debated in the UK. The LCM, on this issue, specifically talks about the regulation of retail packaging of tobacco products, the regulation of tobacco products themselves and the creation of associated offences. The Bill is in its latter stages at Westminster. As a consequence, the Welsh Government has tabled a motion to seek the Assembly's legislative consent next Tuesday. This session has therefore been offered and accepted by the committee, and I thank the Minister for being able to attend at short notice. This is an opportunity for Members to have a discussion before that forthcoming Plenary debate.

[3] Minister, welcome to the meeting. I also welcome Dr Ruth Hussey, the chief medical officer for the Welsh Government. I will invite Members to ask questions, but would you like to give a short introduction first, Minister?

[4] **The Minister for Health and Social Services (Mark Drakeford):** I will simply thank you, Chair, for agreeing to the session. The Welsh Government's position has always been in favour of plain packaging of cigarettes. Since it has become an issue for debate and discussion, it was always our position that this was a matter best brought forward on a UK basis. We were disappointed when the UK Government, which had appeared to be in favour of this measure, pulled back from it in May last year. I wrote on behalf of the Welsh Government to express our disappointment at that time.

[5] On 28 November, however, the Parliamentary Under Secretary of State for Public Health announced a change of heart, it appears, on the matter, and asked Sir Cyril Chantler of King's College London to prepare a report for the Department of Health, and wants to take advantage of the Children and Families Bill, which is in its final stages, as you said, in front of Parliament, to take a power that would enable the Secretary of State to introduce regulations on the retail packaging of tobacco products. It is disappointing, from our point of view, that the timing means that normal scrutiny by Assembly committees is not possible. However, I was keen to come today to answer any questions that Members of this committee might have in advance of the LCM being debated on Tuesday.

[6] **Rebecca Evans:** I am also in favour of plain packaging, but I have a few questions. The first is that a key argument from the tobacco industry is that plain packaging would encourage smuggling, or the proliferation of fake cigarettes. What discussions might you have had with the UK Government on that?

[7] **Mark Drakeford:** It is a key reason why we think that it would be good to move forward on a UK basis, because our border, in particular, is very porous with our neighbour. If we were to move alone, that would be a significant question. The UK Government is alert to the general question as to whether or not plain packaging would result in higher levels of smuggling, but its view at the moment—and I share it—is that, if we are doing it on a UK basis, it would be a lot easier to spot these smuggled packs than it would be if there was differential movement in the UK. So, it is alert to it and its view is that it is not a significant impediment.

[8] **Rebecca Evans:** Thank you. Is there any evidence either way that plain packaging would discourage smokers from choosing lower tar options?

[9] **Dr Hussey:** I think that the research that has been emerging in terms of the retail packaging covers things like plain packaging helping to decrease the appeal of cigarettes, and smoking in general; that particular types of packaging appeal to certain people—young women, for instance; and that the warnings on packages certainly influence occasional smokers, weekly smokers and so on. In terms of the specific point about impact on low tar, I will need to go back to the research and look into that question in more detail. However, I am certainly happy to try to do that before next week.

[10] **Rebecca Evans:** That is great; thank you. You mentioned the health warnings on packages. Is it envisaged that those will remain?

[11] **Mark Drakeford:** The regulations will allow the Secretary of State to alter the warnings on packages. We will not have seen the regulations, of course, but the discussions in the background of this suggest that it would allow these warnings to be doubled in size. That is also being made possible through European regulation changes.

[12] **Rebecca Evans:** Would it be possible for those messages to be made bilingual for cigarettes sold in Wales? How would that work?

[13] **Mark Drakeford:** I think that we would have to be in discussions with the Department of Health about that. As Members will know, when regulations are being taken forward on our behalf at Westminster, the essential debate is always between whether the Welsh Government has powers to be consulted or to give consent. It often feels as if the default position in Whitehall is that we should be consulted. However, in this case we had secured the agreement of the Department of Health that regulations would require our consent. So, we are in a stronger position to have those sorts of discussions when the time will be right.

[14] **Rebecca Evans:** That is great. Finally, what discussions have you had about the timescale for implementation of plain packaging, should the Bill be passed?

[15] **Mark Drakeford:** The report from Sir Cyril Chantler is expected in March of this year. I am sure that there will then be a further period of debate around it. The UK Government is yet to say anything public about whether it would be able to bring forward regulations this side of a general election or not; but from our point of view, of course, we would urge it to do that.

[16] **David Rees:** Lindsay has a question.

[17] **Lindsay Whittle:** Thank you, Minister, for coming along today. How do we measure the success? I am all in favour of it, but how will we measure the success? Is there any indication, please?

[18] **Mark Drakeford:** I will ask the chief medical officer, but you will know, Lindsay, that Australia has already done this. It has a set of measures that it is using in order to see whether the change in the law has been effective there. One of the things in the report that Cyril Chantler is writing will be the Australian experience, and I know that he is going to Australia to learn directly from people there. I think that there is a good opportunity for us to learn from them already in the sort of success measures that they have used.

[19] **Dr Hussey:** Clearly, the overall goal is to reduce smoking prevalence in Wales. We have an ambitious target. The expectation is that this will contribute significantly to

influencing smoking behaviour. So, clearly, that is what we want to see impacted. Early emerging signs are that when plain packaging was introduced, there was an impact on smoking behaviour. As part of whatever decisions are made going forward, were it to be introduced, an evaluation process would need to be conducted alongside it to look at the impact, obviously.

[20] **David Rees:** Do you have a question, Elin?

[21] **Elin Jones:** Yes. I also support plain packaging for cigarettes. I just wanted to ask you about the consent powers to Welsh Ministers. You referred to the fact that you had had discussions about whether they were consent powers or just consultation. Did you have discussions at all about giving Welsh Ministers regulation-making powers? I understand the point that you made about black-market cigarettes and all of that activity that could arise. However, because there has been no policy decision by the Westminster Government—and there is no doubt that there is a lot of lobbying, even as we speak, of Westminster Government Ministers—there is the real possibility that although this is a power, it has to be enacted by the Westminster Government, and it may not happen in the next two years or in the next seven years, and Wales would then not be any further forward in being able to enact this in Wales only.

[22] **Mark Drakeford:** In my letter to the Minister at the Department of Health, I made it clear that I reserve the right for us to go ahead in Wales on our own—provided that we have the legal authority to do that—if the Department of Health does not move ahead on this matter, having declared its hand in this way. The letter from the Scottish Minister raised more directly the point that Elin has raised. Scotland is also taking the LCM through the Scottish Parliament, and the Northern Ireland Assembly is acting in the same way. So, at the moment, we are all acting in good faith that the Department of Health's change of heart is genuine and will be followed by action. The Scottish Minister's letter raises more directly the giving of regulation-making powers to the Scottish Parliament in this area, if the Department of Health does not act on the report. If we were in that position ourselves, I would be happy to explore that for Wales as well. However, I have reserved our position on it very clearly, saying that if it does not move, that does not mean that we are not going to see what we can do for ourselves.

[23] **Elin Jones:** So, does that mean that your public health powers allow you to create Wales-only legislation if this does not happen at a Westminster level?

[24] **Mark Drakeford:** I do not think that I am saying anything that I should not say here if I say that, in preparing for the public health White Paper, which I hope to bring forward early this year, some very detailed legal work was done on the issue of whether the Assembly has legislative competence to bring forward plain packaging. It is not a straightforward matter and there is more than one legal opinion on it. I have put that work, for the time being, on the back burner, because this was our preferred option all along—to do it on a UK basis. I think that we have to assume that the Department of Health is acting in good faith; that has to be our starting point, and that is the basis on which I am going forward. If it turned out that there was not movement on a UK-wide basis, we would certainly go back to a full exploration of the powers that we have to move alone.

[25] **Lindsay Whittle:** You have been consistent on that, to be fair, Minister, have you not?

[26] **Mark Drakeford:** That has always been our position. There are big advantages to doing it on a UK basis, as we have said: consistency of message; cross-border issues; and the burden on business. I do not think that we can not take into account the fact that, if we were to do something different to other parts of the United Kingdom, the burden on business would

be different as well. So, if we can all move together, it seems the sensible thing to do.

[27] **David Rees:** Elin, I think that you had another question.

[28] **Elin Jones:** Yes, I did. It was only a really small one, but I cannot remember what it was—it was so small. Oh yes, it was about the letter you wrote to the Department of Health—to the Secretary of State. Could that be made public? Perhaps it is caught in this inter-ministerial—

[29] **Mark Drakeford:** It may be caught in this inter-ministerial correspondence.

[30] **Elin Jones:** Okay, but if it is possible that it could be made public—

[31] **Mark Drakeford:** If it is possible, of course—

[32] **Elin Jones:** —it would be good if it could be circulated to us before next Tuesday.

[33] **Mark Drakeford:** Sure.

[34] **David Rees:** Thank you for that. Are there any other questions? There are not. Thank you, Minister, for coming along. We very much appreciate your attending today to give us that information.

[35] **Mark Drakeford:** Thank you very much.

13:13

Papurau i'w Nodi Papers to Note

[36] **David Rees:** We have a letter from the Chair of the Communities, Equality and Local Government Committee, which is directed to the Minister for Local Government and Government Business relating to the Public Services Ombudsman for Wales. There is a letter from the Chair of the Petitions Committee in relation to a petition regarding the cancellation of orthopaedic surgery during winter months in Hywel Dda Local Health Board. I have prepared a response to that one, indicating that we discussed this last term and noting our decision.

[37] **Rebecca Evans:** Chair, it is not factually correct any more because, at the time that the petition was submitted, there had been the cancellation of all planned or elective surgery. However, a couple of weeks later, the health board changed its mind and decided that it would undertake an amount of elective surgery on each of its sites, reviewing it weekly to see what it could cope with in the light of winter pressures. I just thought that it would be helpful to have that information.

[38] **David Rees:** Okay. I think that the response will still say that we have noted his letter and that we have discussed this and will keep an eye on it. The third paper is a letter from the Minister for Health and Social Services regarding the review of the continuing NHS healthcare framework.

13:15

[39] Paper 4 is the letter from the Chair of the Public Accounts Committee regarding maternity services in Wales, with the associated reports. Are you happy to note all of those? I see that you are. Thank you.

[40] Before drawing proceedings to a close, may I thank you all for your contributions and remind you that the next meeting will be on Wednesday, 22 January, during which we will undertake the first of the oral evidence sessions on the medical technologies inquiry? Thank you very much.

Daeth y cyfarfod i ben am 13:15.
The meeting ended at 13:15.