



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor Cynaliadwyedd
The Sustainability Committee**

**Dydd Llun, 11 Ionawr 2010
Monday, 11 January 2010**

Cynnwys
Contents

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions
- 4 Craffu ar Ddatganiadau Polisi Cenedlaethol
Scrutiny on National Policy Statements

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mick Bates	Democratiaid Rhyddfrydol Cymru (Cadeirydd y Pwyllgor) Welsh Liberal Democrats (Committee Chair)
Alun Davies	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales
Joyce Watson	Llafur Labour
Brynle Williams	Ceidwadwyr Cymreig Welsh Conservatives
Leanne Wood	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Jane Davidson	Aelod Cynulliad, Llafur (y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai) Assembly Member, Labour (the Minister for Environment, Sustainability and Housing)
Dr Ron Loveland	Pennaeth Ynni Cynaliadwy a Diwydiant Cymru, Llywodraeth Cynulliad Cymru Head of Sustainable Energy and Industry Wales, Welsh Assembly Government

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

Dr Virginia Hawkins	Clerc Clerk
Meriel Singleton	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 5.05 p.m.
The meeting began at 5.05 p.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Mick Bates:** Welcome to this evening's meeting of the Sustainability Committee. As usual, I have the housekeeping announcements to make first. In the event of a fire alarm sounding, you should leave the room by the marked fire exits and follow the instructions of ushers and other staff. No test is forecast for today. Please ensure that all mobile phones, pagers and BlackBerrys are switched off, as they interfere with the broadcasting equipment. The National Assembly for Wales operates through the media of the English and Welsh languages. Headphones are provided, through which the simultaneous translation may be received. Anyone who is hard of hearing may also use the headphones to amplify the sound. The interpretation is available on channel 1 and the verbatim feed is on channel 0. Please do not touch any buttons on the microphones, as that can disable the system, and ensure that the red light is showing before you speak.

[2] I have received apologies for absence today from Angela Burns, Karen Sinclair,

Lesley Griffiths and Lorraine Barrett. I welcome Joyce Watson to the committee, who is substituting.

5.06 p.m.

Craffu ar Ddatganiadau Polisi Cenedlaethol Scrutiny on National Policy Statements

[3] **Mick Bates:** I welcome Jane Davidson, the Minister, to this session in which we will scrutinise the national policy statements. I also put on record that we invited Ed Miliband, the Secretary of State for Energy and Climate Change who has responsibility for these statements, but I am disappointed to report that, as yet, I have not received a reply from him. Our invitation was sent to him on 12 November.

[4] The timescale for this process is pretty tight. The consultation itself on the national policy statements ends on 22 January. The Energy and Climate Change Committee at Westminster will start its scrutiny next week. After today's session, it is my intention to circulate the committee's response among all Members of Parliament and of the House of Lords, where there will be further scrutiny.

[5] I welcome Ron Loveland, head of sustainable energy and industry for Wales, to the committee. I now invite the Minister to make an opening statement on the impact of the national policy statements in Wales.

[6] **The Minister for Environment, Sustainability and Housing (Jane Davidson):** Thank you for the opportunity to come here to discuss the UK Government's national policy statements with you. We are generally supportive of the policy aims of the national policy statements, as they broadly reflect our low-carbon energy agenda, which we will be outlining in the Assembly Government's low-carbon energy statement. That will be published in late February or March because we need to take into account some of the responses to these consultations.

[7] We accept that it is the responsibility of the UK Government to set the national strategy on energy in consultation with stakeholders, including the Welsh Assembly Government. You will all know that all parties have supported bringing those powers to the Assembly, but we have not yet been successful. In the context of energy security, it is particularly important to have a national strategy and that all parts of the UK play their part by looking at what they intend to do.

[8] We will respond on behalf of the Assembly Government to the national policy statements, and the paper that I have presented to you broadly outlines the Cabinet position, albeit that it is prior to the Cabinet's consideration. Some issues are raised in the national policy statements that we would like greater clarification of or that we would like to be strengthened to reflect Welsh policies. One issue is in the context of our technical advice notes, such as TAN 8 and TAN 12 on design and access statements. Although they are mentioned in the national policy statements, they are not given primacy. They are prime documents given the material considerations afforded to planning in Wales, and we will continue to promote that view.

5.10 p.m.

[9] We will continue to press for a greater role for the Assembly Government in energy consenting powers. However, it is important for the committee to note that the Planning Act 2008, which introduced the Infrastructure Planning Commission, was carefully structured to be devolution neutral, and so associated developments such as sub-stations will be a matter

for local authorities or for the Welsh Assembly Government on appeal, rather than a matter for the section 36 process—that is, the process under the Electricity Act 1989.

[10] Another important issue in streamlining the processes is that the avowed policy intention relates to the associated environmental permits from bodies such as the Environment Agency or the Countryside Council for Wales. As a Government, we think that it would be better for those to be considered at the beginning of the Infrastructure Planning Commission process rather than, as proposed, for commissioners to take a view in their deliberations on the likely outcome of these matters. These are difficult issues in that the planning process and the environmental permitting process are discrete and lead to different outcomes. For example, it is perfectly possible to acquire planning permission but not to acquire the appropriate environmental permit. However, if the intention is to streamline our major national infrastructure policy objectives to help us to deliver the kind of carbon reduction that we need, bringing together the environmental permitting approaches with the planning approaches is worthy of further consideration.

[11] **Mick Bates:** Thank you for those opening remarks, Minister. As you are aware, we have raised some of the issues surrounding this with you previously, particularly some of the democratic issues that we were concerned about. I start by inviting Alun Davies to question you in general on the whole process that has taken place so far.

[12] **Alun Davies:** Thank you for your introduction, Minister, and for the time that you have taken to discuss these issues with us. On starting points, I think that it was around 18 months ago that we had a session with you, when this legislation was going through Parliament. I think that there was broad agreement between us as an Assembly and you as a Government about the real concerns that we had about democracy in this process, given that it is removing democratic scrutiny from large parts of the planning system. I think that many of us have difficulty with that. As this process begins to work, to what extent do you believe that the democratically agreed policies of the Government in Wales are reflected in the draft national policy statements?

[13] **Jane Davidson:** We have to remember that the national policy statements try to replace the current consents regime, which operates under seven different Acts of Parliament. I fully accord with the policy aims of the national policy statements: there should be a clear, democratically led policy, and that policy should be enacted. In the context of all those areas that are not devolved, the proposal, which has gone through in the planning legislation, is that there will be a single application to the Infrastructure Planning Commission, there will be a streamlined examination process, and decisions will be made, it is expected, within a year of an application's being submitted.

[14] It is important that we retain the issues on which the public can have its say. There is a proposal for the Infrastructure Planning Commission to hold public hearings to replace the current public inquiries. It is important that national policy made by democratically elected Members is given paramount importance.

[15] Although we do not have the responsibility for energy policy, we do have devolved responsibilities in the context of planning policy. Therefore, it was important to us to work closely with the UK Government in this process to ensure that our planning policies are not just of material importance—because all aspects that are legitimately involved in the planning process are of material importance—but that there is some kind of primacy attached to the specific technical advice notes that we have created in Wales. That is why I said in my introduction that we are still working with the UK Government. I can assure you that the Welsh Government's response to the UK Government on this issue will reflect all the issues that I raised with you in my opening remarks today.

[16] **Alun Davies:** Thank you for that, Minister. I do not think that anyone who is a member of this committee or anyone else would object to the consolidation of the process; it is the lack of a democratic oversight of the process that people have concerns about.

[17] I understand the point that you made about the primacy of policy relating to these issues. However, when I read the NPS on nuclear energy, my initial, private reaction was that it had run roughshod over the policies and views of the Welsh Assembly Government. That was my feeling, and I think that it is widely shared. As it happens, I support the development of nuclear power in this country, so I can understand why it is doing it. However, as regards democratic oversight and scrutiny and the role of this Government, do you believe that you, as a Minister, and the Government as a whole have an input into the creation of these policies?

[18] **Jane Davidson:** Yes, I very much believe that we have an input into the creation of the policies, but we also have to accept that policy making in relation to nuclear energy, for example, is a matter for the UK Government. In the paper that we have presented to you, paragraphs 18 to 22 lay out clearly where the Assembly Government has already indicated its policy in relation to nuclear energy.

[19] The committee may share our concern about the fact that the IPC has said that it will not consider issues relating to nuclear waste. If nuclear energy did not have a nuclear waste component, the Government feels that it would be embraced by all members of the public, whatever their views. However, we still have a way to go to justify to the public what must be done to deal with our legacy nuclear waste as well as with any future nuclear waste. That is why we strongly supported a public inquiry on the justification process for dealing with the waste arising from new nuclear build on the grounds of concern about the safety and security of its management. That carries with it the implication that any proposed new nuclear power station must contain credible plans for nuclear waste management. The assumption in the policy statement is that that will happen. In the interests of those who are concerned, that must not just happen but must also be seen to be happening. That is why it is important that another mechanism be brought explicitly into this process if the IPC will not deal with issues relating to nuclear waste.

[20] **Alun Davies:** Thank you for that, Minister. In your opening remarks, you spoke about the primacy of your policies relating to the different technical advice notes. How can you be confident that they will be given sufficient primacy if the IPC does not acknowledge a headline policy of the Welsh Assembly Government's on nuclear energy? Ministers have referred to it as a keystone policy time and again, on the floor of the Chamber and elsewhere. In the energy route-map and the energy statements made over the last decade, it has been a key philosophical point of energy policy. If that is put to one side by the IPC, how can you have confidence that it will pay any attention at all to the different technical advice notes that you have issued?

5.20 p.m.

[21] **Jane Davidson:** In a way, that question mixes two different issues. The first is that the IPC will take decisions on planning rounds according to where the competence lies in creating the national policy. In the case of nuclear, if we are going to use it as an example, the competence for the creation of policy does not lie here in Wales. The Government, individuals and parties can have a view, but the policy responsibility and the competence lies with the UK Government. The important point for me was to ensure that the IPC fully recognised that when the competence does lie in Wales in the context of, for example, our policies on planning, which is devolved, that those policies are fully accorded the recognition that they deserve. I met recently with Sir Michael Pitt, the chairman of the shadow IPC, and I have been given absolute assurances by him and the officers appointed so far that where

Welsh policy has been formed, particularly in relation to planning, it will be a major material consideration in the IPC's decisions. The national policy statements also mention the role of the Assembly Government in the context of our giving advice and that that must be taken into account as a material consideration.

[22] **Mick Bates:** Thank you. Before we move on, I invite Rhodri to come in on an issue that we have discussed previously.

[23] **Rhodri Glyn Thomas:** Diolch, Gadeirydd. Hoffwn ddod i mewn ar nifer o bwyntiau, ond cyfyngaf fy hun i un pwynt yn unig ar ôl clywed rhai o'r pethau mae'r Gweinidog wedi'u dweud. Dof yn ôl yn nes ymlaen i drafod rheolaeth gwastraff niwclear oherwydd credaf bod angen i chi ystyried gwaredu gwastraff niwclear, yn ogystal â'i reoli—un peth yw ei reoli a'i storio, ond peth arall yw ei waredu.

Rhodri Glyn Thomas: Thank you, Chair. I would like to come in on a number of points, but I will limit myself to a single point only after hearing some of the things that the Minister has said. I will return a little later to discuss nuclear waste management because I believe that you must consider the disposal of nuclear waste, as well as managing it—it is one thing to manage and store it, but it is another to dispose of it.

[24] Trof yn awr at fy mhwynt sylfaenol. Mae cyfeirio at ynni niwclear yn osgoi'r prif bwnc i raddau. Derbyniwn fod penderfyniadau ar ynni niwclear yn cael eu cymryd ar lefel Brydeinig, ond, eto i gyd, o ran materion a ddylai gael eu trafod a'u craffu yma, fel ynni adnewyddadwy, y gwir amdani bellach yw y bydd unrhyw gais cynllunio sydd uwchlaw 50 MW neu 100 MW yn cael ei gymryd yn syth o'n dwylo ni, ac mi fydd ein gallu ni i graffu wedi'i ddileu. Credaf mai dyna'r bwllch mewn democratiaeth y soniodd Alun yn ei gylch, sy'n eithriadol o bwysig. Mae hefyd yn bwysig i'r bobl yn y cymunedau sy'n wynebu'r cwestiynau hyn ac sy'n teimlo nad yw eu Haelodau etholedig yn gallu eu cynrychioli ar y pynciau hyn mewn unrhyw ffordd. Dywedasoeh eich bod wedi cael sicrwydd y bydd unrhyw faterion sy'n codi yng Nghymru ac unrhyw bolisiâu cynllunio yn cael eu hystyried, ond, yn y datganiadau hyn, dywedir yn gwbl glir os oes gwrthdaro rhwng polisi cynllunio Cymru a phenderfyniadau'r Comisiwn Cynllunio Seilwaith, penderfyniadau'r Comisiwn Cynllunio Seilwaith a weithredir. Y Comisiwn Cynllunio Seilwaith sydd â'r pŵer terfynol. Siawns nad ydych yn poeni am y sefyllfa honno, Weinidog.

I now turn to my fundamental point. To some extent, referring to nuclear energy is avoiding the main issue. We accept that decisions on nuclear energy are taken at a UK level, but, then again, with issues that should be discussed and scrutinised here, such as renewable energy, the truth is that any planning application above 50 MW or 100 MW will be taken immediately out of our hands, and our ability to scrutinise those will have been entirely removed. I believe that that was the democratic deficit that Alun referred to, which is extremely important. It is also important for the people in the communities that are facing these decisions and who feel that their elected Members cannot represent them in any way on these issues. You say that you have been given an assurance that any issues arising in Wales and any planning policies will be considered, but, in these statements, it is clearly stated that if there is any conflict between Wales's planning policies and the decisions of the IPC, it is the IPC's decisions that will be implemented. The IPC has the final say. Surely, Minister, you must be concerned about that situation.

[25] **Jane Davidson:** The critical point goes back to the issue of where the competence lies. We, as a Government, as well as an Assembly, have sought the competence to make energy decisions. However, although that competence has not been granted to us, the areas that are already devolved to us, on which we have competence in Wales, are not subject to the decisions of the IPC. It is important to say that clearly. It is also important to say that, unlike

in England, the IPC will not take decisions on areas that are devolved to Wales and which require associated consents, because those decisions will sit properly with Wales. So, it is a complex area, and we are using the nuclear national policy statements purely as an example in relation to the previous discussion.

[26] We think it is very important to be clear about where we have put our technical advisory notes in place, through our planning legislation in Wales. We see them as more than a material consideration, which is why, as I said to you at the outset and will repeat now in response to the points that you have made, we will be saying as a Government that they should be fully recognised in the context of decisions made by the IPC.

[27] **Mick Bates:** Thank you; that is of great interest to Members. Before we move on, can you clarify who would be responsible for the transport of nuclear waste in Wales?

[28] **Jane Davidson:** There are different elements. We will have to give you a note on that because, if you remember, when we discussed the environmental legislative competence Order, a large number of different arrangements were in operation, depending on the level of the nuclear waste and whether it would be transported within, off or between sites and so on. These are complex issues. What is important for the response that the committee will want to make to the national policy statement is whether the committee believes that it is appropriate for the IPC not to consider those arrangements, as suggested in the consultation.

[29] **Mick Bates:** I will take up the offer of a note on that, Minister. I call on Alun, briefly, and then Leanne.

[30] **Alun Davies:** Before carrying on with my questions, I will just say that it might be useful for us to have a session with someone from the IPC, because many of the questions that we are asking the Minister are probably somewhat unfair as these are decisions for the IPC. We do not understand fully how the IPC intends to operate and what weight will be given to various policy statements made in Wales. That is a question that should be put to the IPC and perhaps to the Minister in charge of it; if we do not get Ed Miliband, perhaps we could get someone else.

[31] **Mick Bates:** We will follow that up.

[32] **Alun Davies:** If we could do that, it would be useful.

[33] **Mick Bates:** I am mindful of the time, Alun.

[34] **Alun Davies:** My final question is about public engagement and the scrutiny of the consultation that is taking place at the moment. Are you comfortable with the extent to which there will be proper public engagement? We know that there is no Welsh representation on the relevant select committee in Westminster. Does that concern you at all? There are issues involved that are fundamental to the policies that are being pursued in Wales. Clearly, the membership of select committees is not a matter for the Welsh Assembly Government, but do you have a view on whether it would be desirable to have someone with a greater knowledge of Wales who was able to scrutinise the work of the IPC? There is to be a Welsh member of the IPC itself. Secondly, are you comfortable with the extent to which the IPC is proactively seeking to engage with the public in Wales to ensure that there is an informed debate around the decisions that it will take?

[35] **Jane Davidson:** There are two issues there. First, this is a standard 15-week Government consultation period—I think that the closing date is 22 February. However, the issue is to do with ensuring that there is sufficient time for the select committee to consider this. There is a call for consultation responses to be received by 15 January because time in

Parliament is curtailed by the timetable leading up to the general election. There has already been a commitment that if the select committee believes that there should be a debate in Parliament on any of the national policy statements, it will be facilitated by the Government within six weeks of the select committee's decision. That offers an important opportunity for there to be a full debate at parliamentary level, not just in the context of the select committee. Ron may wish to comment on this because I asked the officials whether they felt that all the relevant stakeholders in Wales were fully informed and we are aware that there has been a further commitment in relation to this. To use the nuclear statement as an example, again, because it is the only one that is site-specific with its name, a specific consultation meeting was held on Anglesey last week, fulfilling that commitment. Ron, do you want to say anything about engaging with other stakeholders?

5.30 p.m.

[36] **Dr Loveland:** The consultation is very extensive. There was a session on Anglesey this weekend specifically to do with the proposal for a new nuclear station at Wylfa, and a more general session will be held in Cardiff on 20 January, which I am sure some of you will attend.

[37] **Jane Davidson:** The IPC has not formally started its business, yet. I have asked the IPC to hold a session in Wales, and I have agreed to speak with the commission at such a session, so that we can ensure that people in Wales are fully brought up to speed with the way in which these decisions will operate.

[38] There will be some areas for which a national policy statement will not be in place when the IPC starts work. The proposition is that, where that is the case, the IPC can go back to the Secretary of State to ensure that there is still that democratic input to the process.

[39] **Mick Bates:** Thank you, Minister. Leanne is next, and then Brynle on that area about coverage.

[40] **Leanne Wood:** I want to come back to the point that you made in your opening remarks and in your paper, that the Assembly Government wishes to ensure that relevant Wales policy guidance, including planning guidance such as TAN 8 and TAN 12, is reflected in the final NPS. I am glad that those representations are being made on behalf of the Welsh Assembly Government, but what guarantees and assurances can you give us that your representations will be taken on board and listened to?

[41] **Jane Davidson:** It would be fair to say that there can be no guarantee that the application of TAN 8 will hold sway in every case handled by the IPC. The IPC is fully aware of the importance of TAN 8 to Welsh policy, however. TAN 8 will be vigorously defended by the Welsh Assembly Government in the consultation process on each wind power project. It should also be remembered that control over the associated consents remains within Wales.

[42] **Mick Bates:** Brynle is next, on the coverage, and then Joyce, on the appraisals.

[43] **Brynle Williams:** As you are well aware, Minister, Britain is well placed to use wave and tidal power, but what is your understanding of the reason for excluding tidal power and wave power from the draft national statement on energy? What are the implications of this for decision making on any proposals that may come forward?

[44] **Jane Davidson:** My understanding is that national policy statements on marine energy, on both wave and tidal energy, will follow in due course. Work is under way at the moment on a marine energy action plan, and the intention is for that to lead to a proper national policy statement. In fact, we do expect national policy statements to be extended to

all major infrastructure projects. For example, what comes out of the Severn tidal power proposals will need a national policy statement as well. It will need that democratic input to be agreed by Government to ensure that it operates to national policy.

[45] **Mick Bates:** Coming back to the transport issue again, you mentioned windfarm development, Minister, and the consents that would be necessary, let us say, to transport the various parts to construct a windfarm. The consents will therefore still be in the hands of a local authority where such transportation issues are concerned. The IPC would have no power, despite its having a policy to develop wind power, as we do here through TAN 8, to override a local planning authority.

[46] **Jane Davidson:** No. That is the critical point of difference between England and Wales. Because, by political intention, the Planning Act was devolution neutral—and I do not think that that is a technical term, by the way—those consents that had already been devolved to Wales under the Transport and Works Act 1992 remain in Wales. The IPC will therefore have no role in that regard. That is not to say that there cannot be arrangements whereby people could choose to exercise those functions in a different way. It is not that the IPC will have control over them, but you can imagine a situation whereby, if there was broad support from a local authority and others, they may allow the IPC to do it all as one. However, that would be a different way around it.

[47] **Mick Bates:** To ensure that I have understood your last comment, are you saying that a local planning authority in Wales could hand over the consenting process for an energy development to the IPC?

[48] **Jane Davidson:** My understanding is that the local planning authority could work alongside the IPC to make sure that there is a streamlined outcome with regard to the development. There are complicated issues in the context of devolution. For example, in respect of offshore wind, there are areas where the Marine Management Organisation could delegate responsibility to the Assembly Government, and areas where the Assembly Government could delegate responsibility to the Marine Management Organisation, but that relates to energy of between 1 MW and 100 MW. It is further complicated by the fact that developers will still have the option of going to the IPC or to the Welsh Assembly Government for consent under the Transport and Works Act 1992, irrespective of the wattage.

[49] **Mick Bates:** I think that we will be returning to that issue. Before I invite Joyce to talk about the sustainability of prices, Leanne has a question.

[50] **Leanne Wood:** I wanted to ask you about the last example that you gave, namely that a local planning authority could work with the IPC to streamline a development where there is local support. That is fine if everyone is in favour of something, but what happens when the IPC wants to introduce something that local people and the local planning authority are against?

[51] **Jane Davidson:** The critical point is that the IPC cannot override the consenting processes that are the responsibility of either the Welsh Assembly Government or local authorities in Wales. The IPC cannot override them; those responsibilities are devolved to Wales. I was putting forward the idea—and I would need clarification from planning officials as to whether it was a proposition—that there might be opportunities, if there was agreement between the local authority, the Assembly Government and the IPC over a planning application, for the whole process to be streamlined and brought together, rather than having a situation—about which developers are already concerned—where the IPC would be doing its bit and the associated consents would then come back to the Assembly Government, which would result in the process taking a lot longer.

[52] **Leanne Wood:** Conversely, though, there is no reference to TAN 8 or the strategic search areas in the renewable energy national policy statement. So if, for example, the IPC wanted to put a windfarm development outside the strategic search areas, that would override TAN 8, but the local authority could, presumably, frustrate that process by refusing to give the ancillary consents. Is that right?

[53] **Jane Davidson:** Technically, anyone can put in an application, but the critical issue for us has been the IPC's relationship with TAN 8.

[54] 'Where the IPC considers that any refinement of boundaries of strategic search areas for onshore wind development that has been undertaken by LPAs in Wales is both important and relevant to its decision, the IPC should be satisfied that such an exercise has been undertaken in accordance with the relevant guidance published by the Welsh Assembly Government.'

[55] That is in the consultation document on the national policy statement.

[56] **Leanne Wood:** If it can change the boundaries for the strategic search areas, how does that fit in with your review of TAN 8?

[57] **Jane Davidson:** No, that is not what it says. I have just read out the relevant bit, namely:

[58] 'where the IPC considers that any refinement of boundaries of strategic search areas for onshore wind development that has been undertaken by LPAs in Wales is both important and relevant to its decision, the IPC should be satisfied that such an exercise has been undertaken in accordance with the relevant guidance published by the Welsh Assembly Government.'

[59] Our relevant guidance would be TAN 8.

5.40 p.m.

[60] **Rhodri Glyn Thomas:** So, ultimately, the decision would be made by the IPC.

[61] **Jane Davidson:** Ultimately, the decision on any area of the competence in relation to energy projects over 50 MW will be made by the IPC.

[62] **Rhodri Glyn Thomas:** So, you are dependent on the goodwill of the IPC.

[63] **Jane Davidson:** No, we are dependent on a lot more than goodwill. If that statement stays in the same form and is transferred into the national policy statement, or, as I hope, is beefed-up as a result of our and your representations, we can then make sure that the IPC's decisions in relation to TAN 8, for example, are taken in accordance with the Assembly Government's delivery on TAN 8.

[64] **Rhodri Glyn Thomas:** I listened to that statement, and it had a lot of 'shoulds' in it—it did not have any 'musts' in it.

[65] **Jane Davidson:** 'Should' is a lot stronger than 'may'; I think that that is the point. The statement says that the IPC 'should be satisfied that the exercise has been undertaken in accordance with the relevant guidance' and needs to reassure itself of that. Like you, I am concerned to ensure that these statements are as strong as possible, and we want to see a requirement that that is taken into account. That is the type of language that we will be using in the response from the Assembly Government.

[66] **Mick Bates:** Thank you, Minister—we accept that assurance. I wish to move on and invite Joyce to talk about appraisals.

[67] **Joyce Watson:** RSPB Cymru and WWF Cymru consider that the strategic environmental assessments and habitats regulations assessments carried out for the draft NPS are deficient and have not been carried out in accordance with the European legislative requirements. They say that separate carbon assessments are not required for individual projects submitted to the IPC, and they feel that that makes the IPC ‘carbon blind’ in its decision making. Do you have any comments to make about that?

[68] **Jane Davidson:** Those critical elements are ones for the organisations to raise in response to these national policy statements. The political intention of the UK Government and the Assembly Government is to make sure that the energy infrastructure for the future is low carbon, and to try to facilitate a process by which that is achieved as quickly as possible. We must also be careful that the environmental obligations are not compromised, but it is for the organisations to take up those matters with the appropriate UK Government departments.

[69] **Mick Bates:** Joyce, do you want to come back on that?

[70] **Joyce Watson:** I accept that it is for those organisations to make those representations, and I am sure that they will do so. However, can we be assured that you as Minister will also make those representations?

[71] **Jane Davidson:** The important element is that these are complex statements, and we would always say—as we have done throughout the discussions on Severn tidal power, for example—that we expect any major proposals to comply with European environmental obligations. That will sometimes be tested in the courts, and not just tested by views. However, it is important that we keep our environmental obligations in mind.

[72] **Mick Bates:** Minister, will you clarify that? We talk a lot about a low carbon economy but if we are to pursue that through any of these developments, would a carbon appraisal not be an essential part of any assessment? However, there is no carbon assessment requirements whatsoever in this, as far as I can see.

[73] **Dr Loveland:** There will be a local carbon assessment. A classic example would be if you wanted to put an onshore windfarm on a peat bog. An environmental impact assessment would pick that up, and it would have to be considered carefully by the Infrastructure Planning Commission.

[74] **Mick Bates:** That is a specific case, but in general terms under the headline issue of sustainability and the need to reduce carbon emissions as the headline issues, I can see nothing mandatory to say that there must be a carbon assessment of any of these developments.

[75] **Dr Loveland:** The whole suite of documents is part of that process to lead us to a low-carbon environment.

[76] **Mick Bates:** Is there an assessment in order to prove that that will be the outcome?

[77] **Dr Loveland:** What do you mean by an assessment?

[78] **Mick Bates:** Something to look at particular developments. You say that this suite of policies is taking us in that direction, but what evidence do you have from the policy statement that they will, in fact, reduce carbon emissions?

[79] **Dr Loveland:** That has been considered under the appraisal of sustainability. The other suite of documents has clearly identified that these policies will be part of the process of taking us towards a low-carbon, low-energy economy.

[80] **Mick Bates:** We accept that, but this legislation does not say that you have to undertake a carbon appraisal for each particular development.

[81] **Dr Loveland:** You do at the local level.

[82] **Mick Bates:** You have only mentioned a peat bog.

[83] **Dr Loveland:** I mentioned that as a classic example of a local development with a potentially strong negative carbon impact.

[84] **Mick Bates:** Are you saying that a carbon assessment would be necessary to get consent from a local authority?

[85] **Dr Loveland:** I am saying that, where it is relevant, it will be part of the environmental impact assessment.

[86] **Mick Bates:** We will look at the assessment process. Leanne has the next question.

[87] **Leanne Wood:** Are you concerned that there is no reference to TAN 8 and the strategic search areas in this renewable energy national policy statement?

[88] **Jane Davidson:** If you made a reference to TAN 8 in particular, and TAN 8 then changed, and a new policy was put in place, this could become redundant because it would name a policy that no longer existed, and you would not want that. In section 2.2, which I read from earlier, the draft national policy statement for renewable energy infrastructure is clear about the relationship between English regional and Welsh renewable policies. It specifically says that

[89] ‘the IPC should be satisfied that such an exercise has been undertaken in accordance with the relevant guidance published by the Welsh Assembly Government’,

[90] without being specific about what such guidance would be.

[91] **Leanne Wood:** Would it make more sense if it read, ‘for Wales, see Welsh planning policy’?

[92] **Jane Davidson:** If it just referred to ‘Welsh planning policy’, that would be less than the specific guidance that operates through the TANs, for example. You have to choose the element with the strongest legislative base for delivery, rather than refer to the wider agenda. However, the point that I am making, again, is that the Assembly Government is already looking for the final national policy statement to have the strongest possible representation of Welsh authority, which I think is the question that you are asking. I leave it to others to determine how that is best described, but we want the strongest representation.

[93] **Leanne Wood:** I appreciate what you are saying, Minister, but my concern is if that does not happen. What would be the process for incorporating into the national policy statement the outcomes of the future review of TAN 8, or any other changes to national planning policy in Wales?

[94] **Jane Davidson:** This goes back to my previous answer because TAN 8 will not be

referred to specifically in this context at the moment, although in this context it may be useful to include TAN 8 as the current planning policy, or the revised TAN 8, in an annex. Therefore we would expect that any future policy drafted by the Assembly Government at any time would be a material consideration in the context of decisions made by the Infrastructure Planning Commission. We are looking to ensure that the decision becomes more material as a result of it being a designated policy of the Assembly Government.

5.50 p.m.

[95] **Leanne Wood:** Why will the national policy statement be a material consideration in decisions on planning applications made by local authorities in Wales or the Welsh Ministers under the Town and Country Planning Act 1990?

[96] **Jane Davidson:** Sorry, could you repeat the question please?

[97] **Leanne Wood:** Why will NPSs be a material consideration in decisions made by local planning authorities or by Welsh Ministers?

[98] **Jane Davidson:** From my understanding, they will only become a material consideration on matters that are related to those national policy statements.

[99] **Dr Loveland:** It applies equally to local authorities in England as it does to local authorities in Wales.

[100] **Leanne Wood:** It is the case in England that cabling and other ancillary developments for substations, for example, would be included in the application to the IPC. Is that going to be the case in Wales?

[101] **Jane Davidson:** I think that now is a good time for Ron to explain the difference between ancillary and associated consent.

[102] **Dr Loveland:** I would like to refer you to a document that was published by the Department for Communities and Local Government, which is entitled 'Guidance on associated development: Applications to the Infrastructure Planning Commission'. This guidance refers to two categories of development. The first is ancillary development, which are things such as compulsory land acquisitions that are integral to the project, and will normally be a matter for the IPC, unless they have previously been devolved to the local authority. If that is the case, the local authority, in conjunction with the Welsh Assembly Government, can discuss with the IPC whether or not to allow the IPC to have sway in those areas. Then there are issues relating to associated developments, which are also listed in this document, such as substations, networks, underground cables and so on. In Wales, these will not be matters for the IPC but rather for local authorities.

[103] **Mick Bates:** I think that we will need that document from the DCLG so that Members can familiarise themselves with associated developments.

[104] Did I understand correctly that if it is new land on which a development is to be built, the IPC would deal with it?

[105] **Dr Loveland:** One of the first items that is listed in the annex describing ancillary matters is that the acquisition of land is compulsory or by agreement.

[106] **Mick Bates:** If there were to be disagreements about the consent with local authorities, one could simply purchase a new site to build a substation for example?

[107] **Dr Loveland:** I think that this reflects the fact that if you are to build a new power station, you need to own the land that is associated with it.

[108] **Mick Bates:** There is also the associated infrastructure that is necessary, of course.

[109] **Dr Loveland:** Yes, but then we move into a different consent regime.

[110] **Mick Bates:** I think that there is an important point here about the consent necessary for the infrastructure associated with any development. If I understood the difference between associated and ancillary developments correctly, it seems to be that if the IPC wanted to control the process in relation to all the infrastructure—the cables, power stations and so on, and even those that are underground in some places—it could instruct, through compulsory purchase, the purchase of that land and therefore be in control of the infrastructure as well?

[111] **Dr Loveland:** Ultimately, this will be a matter of legal interpretation. I will use the example of an onshore substation for an offshore windfarm, where it is very clear that the associated development is outside of the main project in normal terms. As we understand it, the substation, associated with the new gridline that is proposed for mid Wales, will be considered an associated development and a matter for the local authority. If you then have a power station, exactly where some of the substation and switching equipment is, I suspect that that will be a matter of legal interpretation.

[112] **Mick Bates:** This is a critical issue regarding development. Brynle, I think that you wanted to come in, and then perhaps Leanne can come in.

[113] **Brynle Williams:** Very simply, having sat here and listened to this, it seems that the IPC is in control. The council can stop the ancillary work if it does not like it. However, the IPC, if it does not like that, can then go as far as obtaining a compulsory purchase order to get the whole thing pushed through. I am putting it in very simple terms, because this is what it sounds like: it is stitched up.

[114] **Jane Davidson:** No. The critical element in whether a council chooses not to operate its role regarding the associated consents, there is still the appellate function conducted through the Minister in the Assembly Government in the normal way, and through the planning inspectorate. However, these are complex issues because we have retained the powers that were previously devolved to us; they are complex issues in making the structure work.

[115] **Alun Davies:** Nevertheless, it does give you certain powers, Minister. If we go back to the nuclear issue, IPC is responsible for everything on the nuclear licensed site: it takes a decision, bang bang, and it is done. As a Minister, your views are well known and you have made them very clear. You could say, 'Fine, but I am not giving consent'. You could take the view that we do not want this here, so we are not going to give the consents for the associated developments that would be needed to sustain such a development, if it were on a new site.

[116] **Jane Davidson:** As a Minister, I have never allowed my personal, political views to affect the proper planning decision-making process. It would be absolutely wrong for any Minister so to do. However, if, for example, you ended up in a situation whereby the IPC agreed something that—at both the local authority level and at the Welsh Government level—was seen to be inappropriate or wrong for Wales, or against Welsh policy in areas over which Wales was exercising its competence, clearly Wales could exercise its competence in the way you described. However, it would have to exercise it properly, because any decision would be subject to judicial review.

[117] It is important to remember that this is not about political decisions. The point about

the national policy statements is that they mean that the political decisions are taken at the level of competence. Then, what we are largely discussing is how to make sure that we have a process that works effectively to safeguard Welsh interests.

[118] **Mick Bates:** Fine. Let us look at the process on the Marine and Coastal Access Bill, for example. Rhodri, would you like to come in?

[119] **Rhodri Glyn Thomas:** I welcome those words very much. I think you will agree, Minister, that the thrust of our questioning this evening has been towards what we see as a democratic deficit here in accountability to the Welsh Assembly Government, local authorities in Wales and ultimately to the people of Wales. I will refer you to the situation regarding marine plans for Wales. The national policy statement for energy says:

[120] ‘In the event of a conflict between any of these marine planning documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure.’

[121] That comes from paragraph 4.1.3 of the ‘Draft Overarching National Policy Statement for Energy (EN-1)’. It clearly states that, ultimately, if the IPC feels that there is a conflict, it will override any marine plans in Wales.

[122] **Jane Davidson:** That is not how I interpret that statement. What it says is that the national policy statement will prevail, and that the national policy statement will be a statement that is supported by the Government, democratically.

6.00 p.m.

[123] There are complex issues for us to resolve over the next few years, following the Marine and Coastal Access Bill becoming legislation. The UK marine policy statement will be an amalgam of statements of the four constituent parts of the UK, and that will be a general statement that we have to produce by around October or November 2011. So, we are already working together across the UK to consider what such a statement will look like. However, that will be a general statement on marine policy. That is why I said earlier that there will still be a separate statement—the national policy statement on wave and tidal energy. That will be the specific national policy statement.

[124] **Rhodri Glyn Thomas:** So, if there is a national policy statement on tidal and wave energy, then that could also be the IPC’s decision, ultimately.

[125] **Jane Davidson:** Yes, on anything above 100 MW, and it was always going to be, because anything above 100 MW will go to the IPC. Everything between 1 MW and 100 MW goes to the Marine Management Organisation.

[126] **Rhodri Glyn Thomas:** Going back to that statement, do you accept that if the IPC is so minded, it could totally ignore any marine plans that you or your successor in Wales develops?

[127] **Jane Davidson:** The IPC can only operate according to the national policy statement and that will be a statement of Government. For every single proposal that goes in front of the IPC, where there is a national policy statement, that statement becomes of paramount importance to the IPC in making its decision. In essence, we already have that relationship in the context of Welsh Assembly Government policy and the Planning Inspectorate. Welsh Assembly Government policy, at the time a decision is turned down and appealed against, is of paramount importance to the Planning Inspectorate giving its views. So, in a sense, I do not see the difference there. The potential complexity is in relation to the fact that there will be a

national policy statement on marine energy in due course, which we think is likely to include wave and tidal energy. Those statements may be separate for wave, for tidal and for the Severn tidal power approach. However, those will broadly need to fit into the context of the marine policy statement, which will be an overarching, generic statement from all four parts of the UK.

[128] In fact, we have a big advantage in Wales because all of these areas sit within my portfolio of responsibility. I described, at the beginning, the seven separate consenting streams that the IPC is meant to bring down into one. There are three major departments in the UK, including the Department of Energy and Climate Change, the Department for Environment, Food and Rural Affairs and the Department for Communities and Local Government, which are currently involved in making decisions on these areas. At least in Wales, we can tackle this through one department and are answerable to one committee, as it were. So, there are ways in which we have already streamlined our approaches by bringing together these responsibilities.

[129] **Mick Bates:** I am mindful of the time, Rhodri, but I will allow you to ask a brief question.

[130] **Rhodri Glyn Thomas:** I have more of a comment than a question. We may be coming at this from different angles, but you said that you want to see the strongest possible wording in the ultimate document to safeguard the democratic process in Wales. Year on year, these applications increasingly apply to larger quantities of energy in that they are all moving towards the 100 MW mark. The small applications are becoming things of the past. There is a real danger that decisions on all of these applications will ultimately be made by the IPC. Surely there must be some concern that we cannot ensure that there is a democratic process to address any concerns that exist in Wales.

[131] **Jane Davidson:** We will be a statutory consultee on all things that go to the IPC. The IPC will also have Welsh commissioners—

[132] **Rhodri Glyn Thomas:** Will it be Welsh commissioners or a Welsh commissioner?

[133] **Jane Davidson:** The intention is to have Welsh commissioners. We are very keen to ensure that a Welsh commissioner is involved in the process in any case determined in relation to Wales. The specific consultation at the moment is not a consultation on the IPC. We have already had discussions on the introduction of the Infrastructure Planning Commission, through this committee. In a sense, we are where we are, because legislation has now gone through to put that in place. The critical element for now is to make sure that what comes through under these national policy statements in relation to energy, which is the largest area outwith the Assembly Government's delivery, means that we do not lose any opportunity to create appropriate policy for Wales.

[134] **Mick Bates:** We will now move to the issue of the commissioners, as I think that Brynle has a question.

[135] **Brynle Williams:** Given that the IPC has already had seven applications for energy infrastructure projects in Wales, when will the Welsh commissioners be appointed?

[136] **Jane Davidson:** My understanding is that it is currently under active recruitment, as it were, because you must remember that the IPC does not formally start its work until the beginning of April. So, I am informed that that is what it is doing.

[137] **Mick Bates:** That was quite a terse answer. Are you involved in this process at all?

[138] **Jane Davidson:** We will be involved in the recruitment process, although the appointments will not be made by the Assembly Government.

[139] **Alun Davies:** Minister—

[140] **Brynle Williams:** Will there be—

[141] **Mick Bates:** I call Brynle first, and I will then call on you, Alun.

[142] **Brynle Williams:** Sorry to interrupt. Will there be at least one Welsh commissioner on each of the seven projects, Minister?

[143] **Jane Davidson:** My intention has always been to ensure, in discussion with the IPC, that there is a Welsh commissioner looking at the delivery of any project related to Wales that goes to the IPC.

[144] **Mick Bates:** I now call on Alun.

[145] **Alun Davies:** I was just expressing some surprise, Minister. I am certainly very glad that you have won this. Following your intervention, I think that a concession was made in the legislation, and it is certainly to be welcomed. It moves away from the policy of the past few years when creating these sorts of bodies. However, I was quite sure that the Planning Act stipulated that this Welsh ‘member’ would be nominated by the Welsh Ministers, and therefore by the Welsh Assembly Government.

[146] **Jane Davidson:** If my memory serves me, it was agreed in the Planning Act that, where ‘reasonably practicable’, at least one member of the IPC decision-making panel must be nominated by the Welsh Ministers. That does not necessarily mean that that person has to be Welsh in that context. Therefore, we are fully involved with the IPC in looking at what I would like to see, which is a pool of Welsh commissioners. In that way, we would have nominated commissioners whom we would be happy to have deal with Welsh projects, rather than nominating one for each individual circumstance.

[147] **Alun Davies:** I am not at all worried about whether they are Welsh. My concern, Minister, is that you seemed to be quite ambivalent in your earlier response. You seemed to be involved in it almost tangentially, as you assumed that an appointment would be made within some weeks or months. If you were not to be a part of the process, that would be a reasonable response, but the legislation, as you have read out—and we seem to have the same briefing before us—is quite clear on that: a commissioner would be nominated by the Welsh Ministers. If you are not involved in that process, as Minister for the environment and sustainability, who is?

[148] **Jane Davidson:** I can assure you that the Welsh Assembly Government is involved in that process. The normal practice for making appointments—to make sure that we, as Assembly Ministers, do not exercise undue political influence over who is appointed—is to have a proper panel undertake the recruitment and the Minister subsequently sign off the recommendations, according to a transparent process. I expect that to happen in this case.

6.10 p.m.

[149] **Alun Davies:** I would just like to ask for some clarity, if I may—and I am sorry to take up the committee’s time on this. This process is under the control of the Welsh Assembly Government. It is a process that you, as a Minister, started and that you, as a Minister, will complete. Is my understanding correct?

[150] **Jane Davidson:** In relation to the Act, we were successful in making sure that the Welsh Ministers nominated a commissioner for the purposes of the discussion of Welsh infrastructure projects. I would be happy to write to you on the mechanism by which we are exercising that function. We clearly will be exercising that function, as is required by legislation, but I cannot give you more details today on the mechanism by which we are exercising that function.

[151] **Alun Davies:** I think that a note would be very useful.

[152] **Mick Bates:** I think so, too. I was initially concerned by the wording of the Act, which said that, 'wherever reasonably practicable', at least one person should be consulted. Minister, what is your interpretation of 'reasonably practicable'?

[153] **Jane Davidson:** My interpretation of 'reasonably practicable' is that I would expect there to be a commissioner nominated by the Welsh Ministers, certainly on every early case heard by the IPC. My assessment for the future is that we would expect that to prevail wherever a case was operating in Wales, unless there were specific circumstances to the contrary.

[154] **Mick Bates:** Thank you very much. Are there any further questions from Members?

[155] **Leanne Wood:** On that point, it will be one member on a panel of how many? Is it three?

[156] **Jane Davidson:** My memory is that it is a panel of three.

[157] **Leanne Wood:** It says 'at least one' member, so it is feasible that two out of the three could be nominated by the Welsh Ministers.

[158] **Jane Davidson:** Yes, but there are complex details surrounding the Infrastructure Planning Commission. We can give you that information.

[159] **Leanne Wood:** Okay, thank you.

[160] **Mick Bates:** It is flexible on the numbers, is it not?

[161] **Alun Davies:** I reiterate that I think that it would be useful for the committee to interview the IPC and to investigate further the role of the policies adopted by the Welsh Assembly Government in its decision-making processes.

[162] **Mick Bates:** Absolutely.

[163] **Alun Davies:** Sometimes, we seem to be hanging the wrong person.

[164] **Mick Bates:** There is to be no haranguing in this committee.

[165] **Alun Davies:** I said 'hanging'.

[166] **Mick Bates:** Oh, sorry.

[167] I thank the Minister and Ron for their attendance at this committee and their replies today. It has been an extremely interesting session. There are points on which they have offered to give clarity, particularly the associated and ancillary developments, which are critical to the process of consent in the relationship with the IPC. I look forward to seeing the Government's response to the consultation. Minister, do you have any plans to table a motion

for debate in the Chamber on the IPC, or to provide a statement about the Government's role in the IPC—its development and the appointment of its commissioners—so that the matter could be discussed in the Chamber?

[168] **Jane Davidson:** I am perfectly happy to offer a written statement when all the arrangements are fully in place. It would then be up to other Members to call a debate in their own time if they wanted to do so.

[169] **Mick Bates:** Thank you very much, Minister. We look forward to the outcomes and the resolution of these issues and to the attendance of a member of the IPC at committee to answer our questions. I also thank Members for their attendance, as I know that it has been a long day. Our next meeting is this Thursday, 14 January 2010.

Daeth y cyfarfod i ben am 6.14 p.m.
The meeting ended at 6.14 p.m.