



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

Y Pwyllgor Amgylchedd a Chynaliadwyedd **The Environment and Sustainability Committee**

Dydd Iau, 25 Medi 2014
Thursday, 25 September 2014

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

These 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

Mick Antoniw	Llafur Labour
Jeff Cuthbert	Llafur Labour
Russell George	Ceidwadwyr Cymreig Welsh Conservatives
Llyr Gruffydd	Plaid Cymru The Party of Wales
Alun Ffred Jones	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Julie Morgan	Llafur Labour
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Jenny Rathbone	Llafur Labour
Antoinette Sandbach	Ceidwadwyr Cymreig Welsh Conservatives
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Yr Athro/Professor Susan Baker	Sefydliad Ymchwil Mannau Cynaliadwy, Prifysgol Caerdydd Sustainable Places Research Institute, Cardiff University
Andrew Charles	Pennaeth Datblygu Cynaliadwy, Llywodraeth Cymru Head of Sustainable Development, Welsh Government
Ceri Davies	Cyfarwyddwr Gweithredol Gwybodaeth, Strategaeth a Chynllunio, Cyfoeth Naturiol Cymru Executive Director Knowledge Strategy and Planning, Natural Resources Wales
Dr Haydn Davies	Cyd Gynullydd, Gweithgor Cymru, Cymdeithas Cyfraith Amgylcheddol y DU Joint Convenor, Wales Working Party, UK Environmental Law Association
Peter Davies	Comisiynydd Dyfodol Cynaliadwy Commissioner for Sustainable Futures
David Fitzpatrick	Prif Weithredwr, Cynnal Cymru—Sustain Wales Chief Executive, Cynnal Cymru—Sustain Wales
Louise Gibson	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Dr Victoria Jenkins	Aelod, Gweithgor Cymru, Cymdeithas Cyfraith Amgylcheddol y DU Member, Wales Working Party, UK Environmental Law Association
Amelia John	Pennaeth, Is-adran Dyfodol Tecach, Llywodraeth Cymru Head, Fairer Futures Division, Welsh Government

Yr Athro/ Professor Calvin Jones	Athro Economeg, Ysgol Fusnes Caerdydd Professor of Economics, Cardiff Business School
Yr Athro/Professor Robert Lee	Cyd Gynullydd, Gweithgor Cymru, Cymdeithas Cyfraith Amgylcheddol y DU Joint Convenor, Wales Working Party, UK Environmental Law Association
Owain Morgan	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Sioned Rees	Diprwy Gyfarwyddwr, Partneriaethau Llywodraeth Leol, Llywodraeth Cymru Deputy Director, Local Government Partnerships, Welsh Government
Carl Sargeant	Aelod Cynulliad, Llafur (Y Gweinidog Cyfoeth Naturiol) Assembly Member, Labour (Minister for Natural Resources)
Clive Thomas	Cyfarwyddwr Llywodraethu, Cyfoeth Naturiol Cymru Director of Governance, Natural Resources Wales

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Peter Hill	Rheolwr Craffu Scrutiny Manager
Catherine Hunt	Ail Glerc Second Clerk
Andrew Minnis	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 09:29.
The meeting began at 09:29.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Alun Ffred Jones:** Galwaf y pwyllgor i drefn. A gaf i eich croesawu chi yma fel Aelodau, a'r Gweinidog a'i dîm? Os bydd larwm tân, a wnewch chi ddilyn y tywyswyr allan? Dylai pawb ddiffodd eu ffonau symudol, am eu bod yn amharu ar yr offer darlledu. Rydym ni'n gweithredu yn ddwyieithog yma, felly gallwch chi siarad yn Gymraeg neu yn Saesneg. Peidiwch â chyffwrdd y botymau ar eich meicroffon. A oes Aelod eisiau datgan buddiant o dan Reol Sefydlog 2.6? Gwelaf nad oes. Nid ydym wedi derbyn ymddiheuriadau ac mae Jeff Cuthbert a Jenny Rathbone wedi eu hethol yn ffurfiol fel aelodau'r pwyllgor. Croeso mawr iddyn nhw.

Alun Ffred Jones: I call the meeting to order. May I welcome you here as Members, and the Minister and his team? Should there be a fire alarm, please follow the ushers. Everyone needs to switch off their mobile phones, because they interfere with the broadcast system. We operate bilingually here, so you are welcome to contribute in either Welsh or English. Please do not touch the buttons on your microphones. Does any Member have a declaration of interest under Standing Order 2.6? I see that no-one does. We have not received any apologies and Jeff Cuthbert and Jenny Rathbone have been formally elected as members of this committee. I warmly welcome them.

09:30

Bil Llesiant Cenedlaethau'r Dyfodol (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 1
The Well-being of Future Generations (Wales) Bill—Stage 1: Evidence Session 1

[2] **Alun Ffred Jones:** Pwrpas y sesiwn gyntaf yw cymryd tystiolaeth gan y Gweinidog ar egwyddorion cyffredinol Bil Llesiant Cenedlaethau'r Dyfodol (Cymru). Croeso iddo fo a'i dîm yma. A gaf i ofyn i chi, Weinidog, i gyflwyno'ch hun a'ch tîm os gwelwch yn dda? Efallai eich bod eisiau dweud gair o gyflwyniad ar y dechrau.

Alun Ffred Jones: The purpose of the first session is to take evidence from the Minister on the general principles of the Well-being of Future Generations (Wales) Bill. I welcome him and his team. May I ask you, Minister, to introduce yourself and your team, please? Perhaps you will want to make a few opening remarks.

[3] **The Minister for Natural Resources (Carl Sargeant):** Good morning, Chair, good morning, committee, and thank you for the opportunity to come to committee this morning, presenting the first stage of the Well-being of Future Generations (Wales) Bill. I will introduce my team in a second, if I may, but, first, I will make some opening remarks. First, may I say a big 'thank you' to my colleague Jeff Cuthbert for the development of the Bill? It is going to be quite interesting to be scrutinised by the person who developed the Bill in the first place. I am very grateful for the work that he has done and look forward to the committee's scrutiny session.

[4] I thought that I would, very briefly, Chair, if I may, frame out what the Bill is and what the Bill is not. The Bill's purpose is around sustainable development around the public services. As you know, it is an ambitious Bill about changing the core ethos of the delivery of public services, building sustainable development right into the heart of policy development. It is something that the Welsh Government is working on and with the public sector at large. So, I am happy to engage with the scrutiny process. It will be an interesting couple of weeks, I expect, listening to the evidence presented by third-party colleagues too. However, if we may, we will start with my team introducing themselves, with Amelia first.

[5] **Ms John:** Hello, I am Amelia John, head of the fairer futures division and the senior responsible officer for the Bill.

[6] **Mr Charles:** I am Andrew Charles, the head of sustainable development branch.

[7] **Ms Rees:** Sioned Rees, **Ms Rees:** Sioned Rees, local government partneriaethau llywodraeth leol. partnerships.

[8] **Ms Gibson:** Louise Gibson, lawyer for Parts 1 to 3 and 5 of the Bill.

[9] **Mr Morgan:** Owain Morgan, lawyer for Part 4 of the Bill, relating to public service boards.

[10] **Alun Ffred Jones:** Diolch yn fawr. Rwyf am ddechrau trwy ofyn cwestiwn cyffredinol i chi, Weinidog. Pa sgysiau rydych chi wedi eu cael gyda Llywodraeth y Deyrnas Unedig am gymhwysedd, os o gwbl?

Alun Ffred Jones: Thank you. I am going to start by asking you a general question, Minister. What conversations have you had with the United Kingdom Government about competence, if any?

[11] **Carl Sargeant:** Personally, I have had none, but my department has assured me that the framework of the Bill is within competence and that we are able to proceed with the Bill as drafted and presented to you today.

[12] **Alun Ffred Jones:** Iawn. Diolch yn fawr iawn. Rwyf am ddechrau drwy ofyn i Mick Antoniw agor y cwestiynau. **Alun Ffred Jones:** Fine. Thank you very much. I will begin by asking Mick Antoniw to open the questions.

[13] **Mick Antoniw:** Welcome, Minister. You have obviously had a sharp learning curve in terms of this particular piece of innovative legislation. Having regard to the fact that this is a future generations Bill to do with environmental and socioeconomic sustainability—a complex balance—the most important part of the Bill for me is the six principles, which are the determinants as to what public bodies and the commissioner will consider. Having had a chance now to look at them, I wonder whether you could reflect on these six principles and perhaps identify your thinking as to what the weaknesses within those are and how they might be strengthened.

[14] **Carl Sargeant:** Thank you, Mick, for your question; it a very interesting question. I do not think that there are any weaknesses in them. I would not, and I present this Bill as drafted, but I will listen carefully to the evidence provided in scrutiny. I think that what we have been able to draft here—. There is an issue around how the goals have been drafted: a prosperous Wales, a resilient Wales, a healthier Wales, a more equal Wales, cohesive communities, and a vibrant culture and Welsh language encompass the better Wales that we want to aspire to and the work that has been done by the commissioner, the previous Minister and the department about consulting with Wales at large about what type of Wales people want. We think that that is relevant to the goals that have been summarised within the drafted legislation, but I am sure that you will have an opinion on that.

[15] **Mick Antoniw:** I think that there are weaknesses, because I think that, in terms of the principles, particularly if the socioeconomic element is to be balanced, focused and understood, there are clear gaps in the drafting. So, we have ‘A prosperous Wales’, for example, which says:

[16] ‘An innovative and productive, low carbon emission, economy that makes more efficient and proportionate use of resources’.

[17] In terms of getting a balance with the desire of Government to ensure the socioeconomic element, might it not be productive and clearer to put in a section that would say something along the lines of ‘and which generates and distributes wealth fairly and provides decent employment opportunities and conditions for a modern, skilled and well-educated workforce’? Is an amendment like that something that you would be prepared to consider, and do you see any advantage to such an amendment?

[18] **Carl Sargeant:** What I am prepared for is a whole raft of amendments in terms of the goals, and the aspirations within the goals, to be suggested from all sectors and walks of life. I am very sympathetic to your approach, and I understand it, but given the principles of the drafting of this Bill and the social justice agenda of this Government, I think that the words that we have used are well rounded. I would be reluctant to depart from that, because we have tested this internally, and we believe that the interpretation that you are trying to create with the wording that you used can already be applied to the wording that is in the Bill. So, I am reluctant to add more, but, of course, as the committee is quite entitled to be, I am sure that you will be lobbied by many organisations to change the wording—to include and add or to remove it. However, I think that we have presented a well-rounded Bill, with well-rounded descriptions underneath the goals, before you this morning.

[19] **Mick Antoniw:** Is the difficulty with the generalisation of the principles as they are not that you can interpret them to be almost anything? Is that not undesirable in the Bill?

[20] **Carl Sargeant:** That is a very broad question. I accept that the interpretation of them

is very wide ranging. They have been drafted purposefully on that basis in order for public bodies to progress in terms of delivering sustainable development through their policy development. We are not saying in the Bill what direction they must take. This is about authorities having the flexibility to make changes to their local needs based on local determination. That is democracy. It is about understanding your local area. So, we believe that the aspirations of the goals are very clear: they are about what we are trying to achieve for a better Wales. However, they are not descriptive, and we do not believe that we should be prescriptive in the way that these are developed.

[21] **Mick Antoniw:** However, is the difficulty with that approach not that that complete flexibility basically means that it will have no impact and will be completely immeasurable?

[22] **Carl Sargeant:** Absolutely not. Actually, I think that this gives us the framework for futureproofing the Bill in terms of improvement. That is why the commissioner, which I am sure you will have a view on during this part of the committee meeting, will be able to look at how the goals are being implemented and interpreted on an individual basis—across the whole of the public sector, including Welsh Government.

[23] **Mick Antoniw:** Where does the issue of social justice then appear within ‘well-being’, because wellbeing can be interpreted with almost any concept we want in mind? If the objective of this is to at least create a framework to move the direction towards social justice and sustainability, where does it appear in the Bill?

[24] **Carl Sargeant:** We have defined the issue around sustainable development and wellbeing. That is well understood in terms of how that is to be determined by public authorities. We have not defined what social justice is, and that means a lot to many people, so, again, it is about interpretation. What I think we have been able to craft into the goals and principles applied to the Bill is continual improvement, ensuring that, from the position where you are now, there is a drive to do something different for the betterment of Wales. I think that that is what the demonstration of the wellbeing goals delivers. The content of that is quite clear in the descriptors underneath the goals. It is just about the interpretation of what that means.

[25] **Mick Antoniw:** So, if a public body, for example, were considering a large procurement issue and wanted to see improvement, how would you measure that improvement? Do you measure improvement in terms of a cheaper deal for the public or a more quality deal for the people who will be employed in that procurement process?

[26] **Carl Sargeant:** That is a determination for the local authority, and the commissioner would have a view on that. As I have said, the framework for ‘A prosperous Wales’, about employment opportunities for a skilled and well-educated population, lends itself to probably the latter position that you suggested.

[27] **Mick Antoniw:** Would that not then lead to the commissioner being in a position where he completely determines the direction one way or the other as to where we go?

[28] **Carl Sargeant:** Sorry, I did not catch the question.

[29] **Mick Antoniw:** Would that not lead then to a position where the commissioner has no clear guidance or direction in the fulfilment of his role, and that it basically becomes a matter that he determines off his own back?

[30] **Carl Sargeant:** No, not at all. Once again, it is about the commissioner being able to measure, with demonstrations given to the commissioner, what improvement has been made or how an authority has met the aspirations of the goals that are determined in the Bill.

- [31] **Mick Antoniw:** If the aspirations are so vague, how does he square the circle?
- [32] **Carl Sargeant:** We certainly have not done that, and we will resist the process about targets and exactly what that public authority should achieve and in what time. This is a journey and is about taking people from the place where they are now—and we are all at very different positions in the public sector—to a better place and a better Wales. That is an aspiration that we should all embrace in terms of developing better circumstances for us all to live in. The goals interpret that really well.
- [33] **Alun Ffred Jones:** We will be returning to this point, I would imagine. Do you have a question on this point, Antoinette?
- [34] **Antoinette Sandbach:** You said that you wanted to give councils and other public bodies flexibility, so can you tell me the purpose of the guidance in sections 15 and 50 of the Bill, given that you want the discretion, as it were, in how that is interpreted locally to remain with the public bodies?
- [35] **Carl Sargeant:** Alongside new legislation there follows guidance so that public bodies fully understand what their duties are and what is expected within the Bill. It is not unusual for us to give guidance about what that means and about interpretation.
- [36] **Antoinette Sandbach:** Should that not be on the face of the Bill?
- [37] **Carl Sargeant:** On balance, I do not believe that it needs to be on the face of the Bill. Guidance is a really useful tool in order to shape changes, and it allows flexibility by issuing guidance outside primary legislation.
- [38] **Antoinette Sandbach:** What that means is that it does not have scrutiny from the National Assembly and it concentrates quite a lot of power in the hands of Welsh Government Ministers. If the Bill is clear enough in what it is seeking to achieve and how it is supposed to be interpreted, then presumably that guidance is not needed.
- [39] **Carl Sargeant:** I do not agree with you. It is really important that we have provisions in the Bill for that to give flexibility to Ministers. This is a long-term Bill. This is not for two or three years; we are talking about an aspiration that, in 2050, we will have a better Wales. We do not know what will happen in the future, but I do know that the goals that we have set out are a very broad, wide-ranging principle of change. The reason why you would change is covered by the goals that are set out in the headlines. Guidance needs to be flexible underneath that so that public authorities of whatever shape or form are able to understand properly what requirements are being placed upon them in relation to the Bill. Guidance is not unusual.
- [40] **Antoinette Sandbach:** So, you are suggesting that guidance would be a matter of interpretation.
- [41] **Carl Sargeant:** I would like to ask Louise to respond just in terms of the scrutiny part of that.
- [42] **Ms Gibson:** The guidance can be issued only under those provisions of the Bill that have already been through the scrutiny process in the Assembly, as part of this. So, it will not go any further than what has already been considered and scrutinised by the National Assembly.
- [43] **Antoinette Sandbach:** So, what you are saying is that it is interpretive guidance

only, and it will not be statutory guidance.

[44] **Ms Gibson:** No, the guidance is statutory guidance, but it is delineated by the provisions of the Bill that have already been through the scrutiny process. So, to have the guidance—

[45] **Antoinette Sandbach:** There are some provisions in the Bill that are so broad as to cover enormous—. They do not have any goals and targets, they are largely unlimited and there are differing interpretations around the provisions. You are going to make additional guidance that may change the meaning of some of the phrases in the Bill, which then will not be scrutinised by the Assembly.

09:45

[46] **Ms Gibson:** We disagree with that. The provisions of the Bill are drafted in an appropriate and proportionate manner. They are not broad and untested, and they clearly set out a clear framework for organisations to work within, setting objectives within the goals as specified on the face of the Bill. The statutory guidance will not change that; it is there to support and assist the implementation of the provisions of the Bill in practice.

[47] **Carl Sargeant:** Can I just add, Chair, that the process of the guidance will be consulted on, so it will not be something that Welsh Government will just dream up? There will be a consultation process with the partners to ensure that we, and they, understand what is important to them in legislation.

[48] **Alun Ffred Jones:** You will not be consulting with the Assembly itself. You say ‘partners’.

[49] **Carl Sargeant:** Yes, the broader public sector, in terms of what the guidance should be.

[50] **Alun Ffred Jones:** But it will not go through a process within the Assembly.

[51] **Carl Sargeant:** No.

[52] **Ms Gibson:** The guidance can be consulted on, and that would engage the relevant stakeholders who would be subject to guidance issued pursuant to the Bill.

[53] **Alun Ffred Jones:** What I am asking is whether the stakeholders include Members of the Assembly.

[54] **Ms Gibson:** The Assembly could have sight of the guidance that is issued for consultation, yes.

[55] **Carl Sargeant:** It is not prohibitive of the Assembly.

[56] **Alun Ffred Jones:** Jeff, did you want to come in very quickly on this point?

[57] **Jeff Cuthbert:** As you rightly say, Minister, this is a Bill for the long-term future: 2050. While I understand that changes can be made to the face of the Bill, you do not want that to happen too often. Indeed, would you agree with me, Minister, that one of the important issues for the goals and their descriptors is that they should not be written so prescriptively as to inadvertently rule out certain other courses of action that this Government and future Governments may want to take, although the direction of travel of course does need to be clear? I think that that is a process adopted and agreed with, so far, by the national

conversation that is still running. Indeed, in the development session that we had last week with Daniel Greenberg, I think that the point was made that, if you do have too much writing in at this high-level aspect of the Bill—the goals and the descriptors—then you are indeed in danger of inadvertently ruling some things out and some things in.

[58] **Carl Sargeant:** I fully agree with you, and it would be surprising for me not to agree with you, as you are the person who developed this Bill. I was trying to explain to Mick the opportunities that the Bill presents. It is a wide-ranging, overarching principle of where we want to see Wales. This, again, has not been drafted by chance. This is a conversation that has been had about the Wales we want to be. We have embedded the international values of sustainable development and wellbeing, and incorporated them in the Bill process, so we are not in isolation. This is a holistic view on change, but it is not prohibitive, as the Member quite rightly said, in terms of whether a Government changes in Wales. The principles of change are of good value, and that is what I would expect any Government to pursue. I cannot see anything in these values, regardless of political allegiance, that would be controversial in driving forward a better Wales. They are very wide ranging.

[59] **Alun Ffred Jones:** Mick, you want to come back briefly.

[60] **Mick Antoniwi:** It is just a short point. Would you not agree, though, that legislation should not be written so generally that, effectively, the direction of the Bill becomes almost meaningless? Every one of these six principles is already covered by legislation. So, if there is not a clearly defined direction in which Welsh Government wants to see the legislation go, then the legislation becomes rather irrelevant.

[61] **Carl Sargeant:** I would agree with you in principle if that were the case, but I do not believe that to be the case with this Bill.

[62] **Llyr Gruffydd:** I just want to take a step back, if I may, and ask whether sustainable development is one of a number of competing priorities for Welsh Government, or whether it is the framework on which all other priorities sit.

[63] **Carl Sargeant:** It is at the heart of Government. While we already have a consideration right the way across our policy development in terms of introducing sustainable development, actually this is taking it a step further. It would be fair to say of many organisations that sustainable development has been a separate policy—you create a policy development on travel, for example, and then consider how sustainable development interacts with it—but what we are saying with this, in terms of the plan-making process, is that sustainable development and wellbeing have to be at the heart of your policy decision and your community plan. That is where I think this is a very different approach to what has happened in the past.

[64] **Llyr Gruffydd:** However, what I see in this Bill is not embedding sustainable development into existing structures and frameworks; it is building a parallel system to consider sustainable development. We are looking at separate assessments and separate reporting, so it is creating a whole new bureaucracy, in a sense, instead of embedding it into what exists already.

[65] **Carl Sargeant:** I think the complete opposite. Policy development by public bodies will have to be the principle of this. The starting point is about wellbeing and sustainable development. That is why they have to understand their community, in order for them to develop policies, and evidence that through a reporting process, demonstrating how they have introduced the purposes of the Bill—the six goals and five principles—in terms of how they interact with policy development. So, no longer will they be able to have that parallel process; it will have to be embedded in their policy development in the first place.

[66] **Llyr Gruffydd:** However, a new requirement to create 22 wellbeing assessments, 22 wellbeing plans and 22 wellbeing reports surely is creating a parallel system.

[67] **Carl Sargeant:** Actually, there are already systems in place. LSBs have been in place for a long time. Some work well and some do not work as well as others—I am being kind. This is about an opportunity for public service boards. If I may, Chair, public service boards lie with Leighton Andrews, the Minister for Public Services; although the Bill is cross-cutting in terms of the fact that I am the lead Minister, public service boards lie with him. This is about ensuring future programming for assessment of community—again, remembering that this is a Bill for the long term about the change in Wales that we want to see—and how they develop the futureproofing policies contained and embedded in this Bill within their decision-making process. So, I do not think that this is another layer of bureaucracy at all; this is what they should be doing in the first place. If they suggest that they are doing it, then this seems to be just a simple move towards demonstrating that it is applied to all of their policy agenda.

[68] **Llyr Gruffydd:** Do you not accept the criticism in a lot of the evidence that we have had as a committee that there is too much of a focus in this Bill on process and governance and not enough on delivery and decision making?

[69] **Carl Sargeant:** No, I do not agree. I think that change is always difficult for people. People have been doing things for a long time and I understand that, in terms of local authorities—this is not just about local authorities—there are probably 22 different ways of doing things. People do not like to change and they do not like to have new legislation that has an effect on what they did in the past. Now I think that this is a good thing. They say that we already apply sustainable development to their policy consideration, so what is the difference, apart from having this in a framework so that they can demonstrate how they are doing it? So, I do not agree that this is another layer of bureaucracy at all. I think that this is a good piece of legislation that will take us to a different place in terms of betterment for Wales and that is something that we should embrace.

[70] **Llyr Gruffydd:** So, do you acknowledge concerns that have been expressed about issues around capacity for public sector organisations to be able to engage effectively with this process?

[71] **Carl Sargeant:** No, I do not. I do not recognise that there is a capacity issue, but I do recognise that it is a different way of doing business. Of course, that is difficult for many organisations to adopt. People do not like change all of the time.

[72] **Julie Morgan:** I accept that the goals are general goals, but do you anticipate any conflict between these goals?

[73] **Carl Sargeant:** I think, again, that the determination of the public body and what it is trying to achieve will be an interesting dynamic. There will be, at some point, a conflict between possibly a prosperous environment or—

[74] **Julie Morgan:** That is what I am thinking of.

[75] **Carl Sargeant:** Yes, so you have an economic value versus an environmental or social value, of course. The public body will have to be able to demonstrate how it measures the importance of that and what the wellbeing factor is beyond that. I think that it is fair to say that, in all walks of life, for every action, there is an equal and an opposite, and they are not always as positive. You just have to be able to measure that, and demonstrate that through your wellbeing process and measuring process, and that is something that the commissioner will have to fully understand, and the public body will have to demonstrate why it made that

choice too.

[76] **Julie Morgan:** A lot of those sorts of decisions are made on interpretation, are they not, about what is ‘prosperity’ and what is ‘sustainability’? I think that it will be helpful, with these very general aims, for their specific effect to be linked to the decisions made. I think that you have hinted at the obvious one—economic development things against environmental aspects. How much of an impact do you think these goals will have on that sort of decision?

[77] **Carl Sargeant:** I think that the goal, as recognised by the Member, is the aspiration of Wales—what we are trying to seek for a better Wales. Underneath that, there will be the indicators for measuring performance, of where we are in Wales. There will be some specific things in there, and there will be consultation around what those indicators will be. That will be about the overarching view, which the local area will have to consider. So, if one was air quality, for instance, it will be whether air quality is better or worse for the determinations that they have made, and if they were to make a determination on an aspect of economic development, whether it would make the air quality worse or better. They are the things that they would have to demonstrate through that whole process.

[78] What we are seeking to do within the Bill, again—remembering that it is a democracy, and that is why we have not been specific about what we should be saying to public bodies—is that people should have choice locally and democratically in order to be able—. That is the world we live in. I think that that is a really good way of creating local need assessments and delivery on that. That is why it is non-specific in terms of what they have to do, but what they have to comply with is having compliance with the goals and ensuring that they are able to demonstrate on the indicators how they are making a wellbeing intervention to their community.

[79] **Alun Ffred Jones:** So, there will be indicators, but there will be different ones in different areas.

[80] **Carl Sargeant:** No, there will be general indicators, but they will have to—. They will be consulted on. Am I right in saying that they are consistent indicators across Wales?

[81] **Ms John:** There will be national indicators across Wales, but part of the criteria is that they can be disaggregated at a local level, so that there is a golden thread leading from a local level to seeing progress up to the national indicators.

[82] **Alun Ffred Jones:** Are we likely to see these indicators before the Bill is passed?

[83] **Ms John:** That is not likely to happen. They will be fully consulted on, and we are working hard on them and what they might be, but they are unlikely to be published before the Bill is passed.

[84] **Alun Ffred Jones:** Will we see a draft?

[85] **Ms John:** They will very much build on the sustainable development indicators, with which I know the committee will be very familiar. Some of those, I am sure, will find their way into the national indicators, and they give a firm foundation for the sort of indicators that will be developed.

[86] **Mick Antoniwi:** Chair, may I say that I found those last answers absolutely meaningless? If we do not know what the indicators are, and you set a series of principles that are so general, the only way that you can give any meaning to the potential impact of the six principles outlined is to at least have some idea of the indicators, which enable us to evaluate

them. Otherwise, everything that we have is, effectively, totally meaningless.

[87] **Carl Sargeant:** Well, we will do our best to ensure that the committee is sighted as soon as possible of the indicators that we are seeking to develop. As my team has just indicated, the indicators are not new, Chair; they are indicators that you are already familiar with, that I am sure you have assessed. What we are going to try to do is to streamline some of those indicators so that they are more compact within the Bill structure. So, rather than have 40-odd, we are going to have fewer.

10:00

[88] **Alun Ffred Jones:** However, they are not in the Bill, are they?

[89] **Carl Sargeant:** Sorry, I did not hear your last question.

[90] **Alun Ffred Jones:** Antoinette, are you on this point?

[91] **Antoinette Sandbach:** I want to go back to the public service board point.

[92] **Alun Ffred Jones:** Russell, are you on this point?

[93] **Russell George:** I want to follow up Julie's question on the six principles. I appreciate your answer with regard to there being a balance between the six principles, but how would you react to the suggestion that there should be a prioritisation of those six principles?

[94] **Carl Sargeant:** I do not think there should be a priority. It is about local interpretation of the wellbeing of your community.

[95] **Russell George:** Is that not a reason for having prioritisation, because otherwise it is just up to interpretation?

[96] **Carl Sargeant:** No, I do not think that that is the right position to be in, in terms of prioritisation, because your priorities would be different to mine, I expect.

[97] **Russell George:** Yes; but if we want to agree on what the priorities are, surely there needs to be some guidance on that?

[98] **Carl Sargeant:** The principle of the goals is around the wellbeing of Wales. I do not think that any of them are anything you would disagree with, in principle. Interpreting them into a wellbeing and sustainable development programme for your local area is something that will be derived by the public sector at large, whether that be a local authority or a public service.

[99] **Russell George:** You could have one area, with the six principles, putting more weight on one particular goal and another area putting weight on another goal. Your answer is that that is what you believe is correct.

[100] **Carl Sargeant:** They would have to demonstrate why they have made that choice and the ability at the end. Remember that the end goal is about making improvement to the wellbeing of the community. *[Interruption.]* Sighing, I think, is rather rude, but I will continue, Chair, with my answer, if I may.

[101] **Alun Ffred Jones:** Pardon?

[102] **Carl Sargeant:** My response to Russell George was interrupted by Antoinette Sandbach sighing, unfortunately. The fact of the matter is that we are trying to create wellbeing for the whole of Wales. The goals, we believe, will appropriately deliver that, but not determine exactly who should make them. We should not have to make them. That is why we have democracy and local people making determinations at a local level.

[103] **Alun Ffred Jones:** Jenny, are you on this point?

[104] **Jenny Rathbone:** Yes. I struggle to understand how this Bill will have any impact on the way in which public bodies operate. We already have 'One Wales: One Planet', which was voted on back in 2009, and we already have the sustainable development indicators you mentioned earlier. I do not see how this is going to influence how public bodies operate in any shape or form. One of the responses to the consultation asked that specific point. How will this Bill influence a proposal to build a motorway relief road, pollution control regulations to reduce nitrate levels in water or pay differentials in the public sector? It does not actually produce any obligations on public bodies, does it?

[105] **Carl Sargeant:** There will now be a statutory provision for most public bodies to consider sustainable development as their core policy of delivery in the way they operate. It is not a separate policy; it is about how they operate as an organisation—the governance element of that business.

[106] **Jenny Rathbone:** What is the stick to make them actually do something?

[107] **Carl Sargeant:** The stick is ensuring that they have to demonstrate to the commissioner and the public at large their consideration and determinations. They will have to evidence how sustainable development is being considered and applied to their policy development. The outcomes will be considered by the commissioner. The commissioner will file a report and see how that public body is performing in terms of what it said it would do in the first place. I do not believe that it is an empty Bill in terms of the ability to make changes. Remember that, for some of the questions you raised on the specific details of relief roads and others, there are other elements of legislation that apply. The environment Bill will be introducing—. There are planning terms and planning applications regarding many of those activities, but this Bill is about the core activity of the business—the ethos of how a business should perform. It is not product specific but about the principle of an organisation. That is what we are trying to achieve here, where public bodies will have the powers to set the wellbeing objectives, in terms of what it is that communities need and make an assessment around that and provide that through the sustainable development Bill, applied to their policy development.

[108] So, it is actually a very strong message, in terms of shaping the way the public sector will operate in the future. Currently, there is no legislation around a public body having to consider making a better Wales. Indeed, the very point that Mick Antoniw raises derives from the fact that people can make the choices for the very wrong reasons, including a race to the bottom instead of a push to the top.

[109] **Jenny Rathbone:** So, you think that this will prevent people from going for a race to the bottom.

[110] **Carl Sargeant:** Well, they will have to demonstrate why they are doing that, and I think that that is a powerful tool in terms of public perception of that public body.

[111] **Alun Ffred Jones:** I am being inundated by requests from Members who are desperate to ask questions. So, you will have to bear with me; I am trying to get around most of you. Joyce Watson has been very patient so far, so she will contribute now, and then I will

come to the rest of you.

[112] **Joyce Watson:** You have already started talking about other legislation that is coming through, and you are lucky: you have three Bills to take through. My question to you is: how do you see this Bill interacting, not only with the other two that you are bringing through, but right across Government, because that is what you have been saying it is all about?

[113] **Carl Sargeant:** I am very lucky to take three Bills through, as is this committee too.

[114] **Alun Ffred Jones:** We are all very lucky.

[115] **Carl Sargeant:** It is a joy. Legislating is an interesting procedure, and I have certainly learnt a lot.

[116] It is useful to have me dealing with two new pieces of legislation coming through at the same time as sustainable development. I am challenging my team and Government colleagues to make sure that we talk about sustainable development being the principle on which we currently develop policy, but this is a whole new ball game: this is about legislation that ensures that we demonstrate to an independent person how we do that. Again, I believe that we are successful in considering sustainable development as an aspect of policy development, but have we and the public sector always got this right? I do not think that we have, and the fact is that we should ensure that the core governance of any organisation is built on that principle and consideration of how we track those six goals. Are we thinking about people and community in every aspect of what we do? If we are, we should be able to demonstrate that. How do we apply that across the Bills? The answer is: in exactly the same way. Are the planning Bill and the environment Bill subject to the principles of sustainable development? Absolutely.

[117] **Joyce Watson:** I will ask one final question, because I know that I probably will not get back in. I have had meetings with several international bodies, and they have raised the question about how the Government, within this Bill, is considering the impacts more widely of Wales as part of the world.

[118] **Carl Sargeant:** That is an important question. There are competency levels about what we can legislate for, and we can only legislate for what we do in Wales. However, I think that the indirect consequence of having a better Wales has a direct impact beyond our boundaries, whether that will be in the UK or globally. The issue around quality and other aspects of that certainly has an impact on the broader sector. There are procurement issues around local authorities and public sector procuring. It may be a consideration that it also has an impact on international trading too. So, while the Bill is Wales focused, the indirect consequences of success should be able to be measured globally too. I know that you are interested in how this impacts on third-world countries particularly, and there are certainly linkages in the whole procurement process that other public bodies may have to interpret and demonstrate to the commissioner, as the process of the Bill goes forward.

[119] **Alun Ffred Jones:** William Powell is next.

[120] **William Powell:** Good morning, Minister. Building on the concerns expressed by Jenny Rathbone, Joyce Watson and others, do you have any sympathy with the views expressed by many stakeholders that this Bill is either light in content or entirely silent on issues around environmental impacts, on the overall international dimension and particularly on issues around climate change? After all, this is the Assembly that produced 'One Wales: One Planet' and was cutting edge in terms of its approach. Is this not a retrograde step?

[121] **Carl Sargeant:** Absolutely not. I do not agree with that at all. This is not an environmental Bill. We will have an environmental Bill. This is a sustainable development and wellbeing Bill and I do not accept that the environment is not considered in this Bill at all. This relates to other aspects of policy too. Health is related to the goals; you can apply the goals and principles of the Bill to any aspect of development within the policy agenda of this Government. Of course there are no climate change targets in the Bill and nor should there be. This is about a principle of change for our community—a better Wales to live in. So, we will address issues around climate change et cetera, through the framework element of the environment Bill, as we move forward, but this is not an environment Bill.

[122] I understand that it has been heavily considered by the environmental lobby and I accept that, but it is important that I place on the record that this is not an environmental Bill; it encompasses the environment and other aspects of Government policy right across Welsh Government.

[123] **William Powell:** Minister, if I could develop my point for a moment, surely one of the key elements to the credibility of any piece of legislation is around enforcement. I think that many people would accept that the natural environment and rural communities Bill, much though it had a wide range of positive aspirations, eventually fell down on the fact that no credible, measurable provision was made, particularly around enforcement. So, if, for example, at some future time, a particular local authority area or a whole region of Wales were to fall under the control of some group of climate change deniers, or flat-earthers or whatever, pursuing policies that were entirely detrimental to the wider wellbeing of Wales, would the commissioner not be toothless to intervene and ensure that those policies were not pursued without some kind of consequences being felt?

[124] **Carl Sargeant:** I thank the Member for his really important question about the ‘what if’ scenario. I think that we have to consider that the Bill is not in isolation; it complements a whole plethora of legislation around development and opportunity in Wales, including the planning Bill and the environment Bill, as it comes forward as well. There are guidelines and legislation that are prohibitive of or supportive of change in communities, whether that is through development of the ones to which the Member refers. The issue we have to go back to is about how we develop this Bill into something that is meaningful in terms of policy development. So, we have all of these pieces of legislation around this, but actually, fundamental to all of it is applying the goals and principles of this Bill to that.

[125] There will be things that are legal and welcomed and legal and unwelcomed by communities and I think that we have all experienced that, as elected Members, in terms of development. But, what the Bill will have to produce and will have to be scrutinised on by the commissioner is about what their performance is in terms of meeting the goals and aspirations that are set out in this Bill. So, I do not think that we should look at this Bill in isolation. I think that it gives us opportunities and is a core principle of change, and can be applied with other parts of legislation with which we are familiar in this Assembly.

[126] **William Powell:** I am grateful for that. Thank you.

[127] **Alun Ffred Jones:** Llyr is next and then Antoinette.

[128] **Llyr Gruffydd:** You are right that this is not just about the environment, but of course the environment underpins a lot of the goals in terms of some of the prosperity that we enjoy, being a resilient Wales, and health as well is obviously very heavily affected by the environment. I want to come back to ‘One Wales: One Planet’, because that did include an unequivocal commitment or aspiration to be living within our environmental limits here in Wales within a generation. Could you tell us where that is reflected in this Bill?

10:15

[129] **Carl Sargeant:** In detail, it is not reflected in the Bill, but as I said, the principle of the goals relies heavily, as acknowledged by the Member, on environmental impacts that will have to be considered by that public body.

[130] **Llyr Gruffydd:** So, do you not think that it should be better reflected, because there is reference here to making more efficient use of resources—and more proportionate, although it does not say proportionate to what? Surely the Bill should be a bit more specific.

[131] **Carl Sargeant:** I do not think that—. I am happy for a view from the committee, and I am sure that you will give me that view. The fact of the matter is that I probably do not at this point of time. I think that the drafting of the goals are well-drafted and rounded enough for people to interpret that well with guidance. As acknowledged by the Member, you can apply the environmental credentials to all of the goals, as indicated by the Member. So, I am not convinced about the argument that we need to be more prescriptive in the detail. As identified by the Member, he picked them out quite easily.

[132] **Llyr Gruffydd:** Okay. As you rightly say, we will give you our view. I just want to pick up on what you said earlier as well about the obligation being to consider sustainable development. Is that not another criticism of this Bill, really, that it is peppered with statements such as ‘an expectation to consider this’, ‘to seek to that’, ‘to take into account the other’? Surely it should be more robust and prescriptive.

[133] **Carl Sargeant:** Maybe I will bow down to my legal colleagues on terminology in terms of what that actually means. Maybe Louise might have a view on that.

[134] **Ms Gibson:** I think that the Bill, as drafted, is sufficiently prescriptive, but also flexible, which is what it needs to be. It is prescriptive in setting out the wellbeing goals on the face of the Bill. It is prescriptive in requiring organisations to contribute to achieving those goals by setting their own wellbeing objectives, and it is prescriptive in requiring them to report on that and take into account the national indicators.

[135] **Llyr Gruffydd:** That brings me back to my earlier point: it is very prescriptive in terms of process, but I just get the feeling that it is much too woolly in terms of the outcomes and delivery that you are hoping to achieve. Again, that, no doubt, will come through in our evidence.

[136] **Alun Ffred Jones:** You do not have to answer that comment. I now call Antoinette.

[137] **Antoinette Sandbach:** Minister, you have emphasised the importance of that flexibility and that local democracy element, particularly in the public service boards. In what circumstances would you envisage that Ministers would use their powers to prescribe the public service board roles, processes and outcomes, because you are giving Welsh Ministers quite a lot of powers to be able to intervene in those processes and outcomes, which would effectively negate that local democracy that you think is so important? So, can you tell me how you see the balance between the two?

[138] **Carl Sargeant:** Far be it for me to tread on the toes of the new Minister for Public Services, Chair.

[139] **Alun Ffred Jones:** I would not if I were you.

[140] **Carl Sargeant:** There are things that you may wish to ask him also. I think that there is a process issue around what public service boards will be expected to do. It will be

prescribed in terms of what public service boards are expected to do in their activity about the collaboration of working together—the people that should be within that group of organisations to deliver on the aspect of wellbeing. Then, what they do will be determined by the commissioner. So, the public service element of this about ministerial involvement is about ensuring that the public service board works, and what it comes up with is a matter for it.

[141] **Antoinette Sandbach:** Right. So, it is around the practical, getting them together, getting them to make the decision and, as you have described it, to develop a policy. If they develop a policy and then do not carry it out, what do you anticipate the commissioner would be able to do in those circumstances? So, they develop a policy that takes a very good account of a wellbeing goal, but they do not carry that wellbeing goal out because they say that another wellbeing goal is more important. What teeth do you envisage that the commissioner would have in those circumstances?

[142] **Carl Sargeant:** It is a reporting issue, is it not? The commissioner's role will just not solely be about measurements of delivery; it will be about an advisory role too, very similar to what Peter Davies is involved in now, in bringing people to the table to deliver. I also do not see that a public service board will pick one against another, saying, 'We'll deliver this, but we won't deliver that'. It is a principle of what their involvement is in understanding their community and how they will deliver a series of things, as happens now. However, it is about bringing organisations together on who will deliver them and how they will do that. So, there is a plan developed in order for them to be able to do that. In terms of what happens if they do not achieve this, an important point is the commissioner's ability to understand the reasoning behind that and report on that too. I suppose that it goes back to that democracy issue, actually, because if a public service board is related to a local authority, there are consequences of not delivering on something. It is not very good for a local authority to have a report from any commissioner saying, 'You're not doing well' or 'You're not delivering to your aspirations'.

[143] **Antoinette Sandbach:** So, in those circumstances—because, of course, these wellbeing obligations do not apply just to public service boards but to the Welsh Ministers too—

[144] **Carl Sargeant:** Indeed.

[145] **Antoinette Sandbach:** So, how can you demonstrate, for example, how these principles, given that sustainable development is already a legal duty at the heart of Welsh Government—. Can you tell me how you see this delivering in terms of the M4 decision?

[146] **Carl Sargeant:** I am not able to comment on specific applications or potential applications in future, Chair.

[147] **Alun Ffred Jones:** I think that that is a fair point, although the general question of how it applies to the Government is perhaps more valid. Mick Antoniw is next.

[148] **Mick Antoniw:** Having regard to what you said about the generalised interpretation—that is, that you do not want to bind and that it will be a matter of how they interpret it and so on—what would be the difference if we just substituted this Bill for a Bill that said, 'There should be a general duty upon public bodies to have consideration to wellbeing in the carrying out of their functions'? What difference would there be between this Bill and such a Bill?

[149] **Carl Sargeant:** I would have to give that consideration, Chair. Provide me with a Bill that says that and I will give you a response to that. What we believe we have in this Bill

is the opportunity to make significant changes to the way the public sector operates in terms of sustainable development and wellbeing. This is a progressive journey, taking people at different paces, because they are currently at different stages in development. We are doing it on a broad principle of change, and I think that that is a long-term aspiration for a better Wales, which, as I say, is not just being dreamt up by this Government—it has been a conversation nationally that continues with people agreeing with us that we need to legislate to make that journey complete, to get to the end goal that the goals are inspired to do.

[150] **Alun Ffred Jones:** I am a bit confused. You have talked a lot about the local service boards setting their own objectives. You have also talked about national indicators. I am not quite sure how those fit together.

[151] **Ms Rees:** With regard to the public service boards, they have to produce local wellbeing assessments that will then support the work they do and have regard to the priority they place in the local wellbeing plans. They will be asked within that process to link that into the national goals and indicators from a national level. Within the Bill, if that is not working, there are regulations that the Ministers can introduce with regard to performance management frameworks for the public service boards on local wellbeing plans. However, that is something we would look at if the performance management framework we are currently looking at is not working for those PSBs.

[152] **Alun Ffred Jones:** Mick has a question again.

[153] **Mick Antoniw:** What you have just said, basically—it is a bit like listening to an episode of *Yes Minister*—does not tie down things any more or give any clearer indication of what the actual product of this Bill will be. I think all of us have bought into the idea and the concept. The point I am making is that, if we are going to have framework legislation, there has to be a framework. What you are actually saying is, ‘We want a framework Bill, but, actually, we don’t really want any framework’.

[154] **Carl Sargeant:** I do not agree with the Member. Unfortunately, I—. If the Member can indicate the parts of the goals that he does not agree with in terms of driving a better Wales—. He may have a view on interpretation or adding some content to those, but I cannot see anything in there that is prohibitive to making a better Wales in future.

[155] **Mick Antoniw:** There is no mechanism and there is no clarity on how you actually measure anything. It is a Bill that basically says, ‘Public bodies should have regard to wellbeing and it is up to you how you interpret “wellbeing”’. How is that any different from what we have at the moment?

[156] **Carl Sargeant:** There will be the goals and aspirations, the national indicators and there will be a commissioner ensuring that there is openness and transparency in the measurement of wellbeing and sustainable development in public services. That is not the case at the moment. Is that not an improvement?

[157] **Mick Antoniw:** It is an improvement to have a commissioner, but it would be an improvement to have a commissioner who actually knows what the direction and the framework is of what he is to commission on.

[158] **Carl Sargeant:** The commissioner, whoever he or she may be, will have an understanding of the progress of how a public body will be delivering against these. There will be a reporting procedure for the public body to ensure that it has complied and can demonstrate how it is seeking to improve and achieve the goals and aspirations set down in the Bill.

[159] **Mick Antoniw:** I think the key point, Minister, is that you are prepared to take on board the quite unified concerns that there are around the clarity and direction of the Bill—that these are not set in stone and there will be an opportunity to examine them.

[160] **Carl Sargeant:** The scrutiny process gives great opportunity for the involvement of Members and outside organisations to make amendments to the Bill. What I will say is that I believe that we have a well-structured Bill in place that gives us a national conversation—so, not a Welsh Government proposal—about what we see a better Wales being in the future. That is demonstrated by the way that the Bill is drafted and we believe that that is a fair starting point.

[161] **Alun Ffred Jones:** We are coming to the end of our deliberations this morning. Minister, there are some questions that have not been asked so we will ask you for brief comments on some of those in writing.

[162] **Carl Sargeant:** Okay.

[163] **Alun Ffred Jones:** You will have noted that the auditor general and a number of people have raised questions about the potential costs involved in the Bill. Indeed, I think that one of the auditor general's figures—. I think that the indicative figure is £130,000 as the potential cost, but he says that it could be as high as £870,000. Those are just the costs for the auditor general. Other people have also raised concerns about the potential costs. Do you have any comments on that?

[164] **Carl Sargeant:** We think that there are some internal transitional issues for organisations, but, actually, this is what they should be doing. This is about sustainable development, and it should be the core principle of their policy decision making. If they are suggesting that, all of a sudden, they do not have sustainable development in their policy agenda, then that surprises me. They should have that. Therefore, we do not think that the additional costs as indicated by some external organisations are true.

[165] **Alun Ffred Jones:** If they are doing it already, why do you need a Bill?

[166] **Carl Sargeant:** It is because there is variation in the system. We do not believe that—. It is the ability to demonstrate that they are actually doing this. Now, if they are doing this, I cannot see how demonstrating that is going to be much more difficult in terms of that process. I do not agree with the fact that they are saying that there is going to be a significant cost to doing this. I do not see how that additional cost applies.

[167] **Alun Ffred Jones:** Antoinette, you may have one very brief question.

[168] **Antoinette Sandbach:** [*Inaudible.*]—communicating with the outcome of those public service delivery board deliberations. There are the costs of communicating that throughout your organisation and asking people to report on indicators that we do not know yet what they are. However, they are apparently going to have to report on indicators. So, they are going to have to collect and assimilate the data. That is then going to have to be fed back. Those mechanisms are complex, as people have described them, and quite onerous.

[169] **Alun Ffred Jones:** Right. Well, we have made the point.

[170] **Carl Sargeant:** I do not agree. Local service boards are already in existence. They report and measure indicators already. I do not see that this is a new duty, but it is a consistent duty that I expect people to deliver on.

[171] **Alun Ffred Jones:** Diolch yn fawr **Alun Ffred Jones:** Thank you very much,

iawn, Weinidog, am ddod i mewn y bore yma. Diolch hefyd i'r swyddogion am gyfrannu. Fe'ch gwelwn eto ymhen mis, fe gredaf, Weinidog, i ystyried y Bil eto. Diolch yn fawr iawn. Cawn egwyl.

Minister, for coming in this morning. I also thank the officials for contributing. We will see you again in a month's time, I think, Minister, to consider the Bill again. Thank you very much. We will have a break.

[172] We will have a break now for 10 minutes. Thank you. Diolch yn fawr.

*Gohiriwyd y cyfarfod rhwng 10:30 ac 10:40.
The meeting adjourned between 10:30 and 10:40.*

Bil Llesiant Cenedlaethau'r Dyfodol (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 2 The Well-being of Future Generations (Wales) Bill—Stage 1: Evidence Session 2

[173] **Alun Ffred Jones:** Croesawaf gynrychiolwyr Cyfoeth Naturiol Cymru. Gofynnaf ichi gyflwyno'ch hunain er mwyn y Cofnod, os gwelwch yn dda.

Alun Ffred Jones: I welcome representatives of Natural Resources Wales. I ask you to introduce yourselves for the Record, please.

[174] **Mr Thomas:** Bore da. I am Clive Thomas, the director of governance at Natural Resources Wales.

[175] **Ms Davies:** Good morning. I am Ceri Davies, the executive director for knowledge, strategy and planning.

[176] **Alun Ffred Jones:** Galwaf ar Llyr Gruffydd i ddechrau.

Alun Ffred Jones: I call on Llyr Gruffydd to start.

[177] **Llyr Gruffydd:** Bore da. Un feirniadaeth amlwg sydd o'r Bil fel y mae'n sefyll yw ei fod yn or-gymhleth a bod gormod o bwyslais o greu haenau y mae rhai yn eu disgrifio fel haenau biwrocraidd. A ydych yn cytuno bod gormod o ffocws ar brosesau a llywodraethiant, yn hytrach nag ar gyflawni nodau a *delivery*?

Llyr Gruffydd: Good morning. One obvious criticism of the Bill as it stands is that it is overly complex and that there is too much emphasis on creating layers, which some describe as layers of bureaucracy. Do you agree that there is too much focus on processes and governance, rather than on achieving goals and delivery?

[178] **Ms Davies:** Our perspective is that, as an organisation, we are well set-up already to be aligned with the Bill. The process that we have gone through in the set-up of Natural Resources Wales, with a purpose that is very similar and which encompasses sustainable development, means that we are well set-up in that way. We have gone through a process in the first year of the existence of the organisation of developing a corporate plan. I guess that what we see as the mechanism going forward is a very similar process, where we will be looking at the goals set out in the Bill and will then establish what we do and what we deliver and contribute to the delivery of those goals, and do so in a way similar to the way that we developed our corporate plan. We had goals that were agreed with the Welsh Government and then we narrowed those down into our more specific delivery arrangements. So, I guess that we would see ourselves going through a similar process here.

[179] **Llyr Gruffydd:** Nid ydych yn teimlo bod elfen o greu system baralel drwy greu adroddiadau, asesiadau a strategaethau drwy'r byrddau gwasanaethau cyhoeddus hefyd.

Llyr Gruffydd: You do not feel that there is an element of creating a parallel system here through the requirements to report and provide assessments and strategies through the local services boards as well.

[180] **Ms Davies:** Well, we already take part in discussions with the local service boards, as they currently are, and they help us to deliver our requirements. I think that what this does is to bring this into a legislative duty and requirement, which brings a sharper focus, if you like, to all of us working together more.

[181] **Llyr Gruffydd:** Rydych yn dweud yn eich tystiolaeth bod gennych gonsŷrn ynglŷn â'r adnoddau ychwanegol i ymwneud â'r byrddau hyn, ond rydych newydd ddweud eich bod yn gwneud hynny'n barod.

Llyr Gruffydd: You state in your evidence that you have some concern about the additional resources to deal with the boards, but you have just said that you are already doing that in any case.

[182] **Mr Thomas:** For us, assuming that this is not running in parallel but, in effect, it is the landscape that we are operating in, collaborating in and are integrating in, I think that is our position and that is what we have set out in the evidence.

[183] In terms of our corporate processes, as Ceri has already outlined, as a new organisation we have already had the opportunity to have visibility on some aspects of the Bill and think through how we deliver our purpose—again, as I said, if we do not have parallel corporate planning processes or parallel reporting processes, we are required to do that anyway.

[184] **Ms Davies:** The opportunity will be for us to bring together those things and report them through the routes that are proposed to be set out here. We are involved also in the development of the environment Bill, and a lot of the work that will be delivered through the environment Bill will be relevant to the delivery here. Things such as the state of natural resources report will be a key part and component of this. So, it is about making sure that we use the work we are doing to inform the relevant legislation that is in process.

[185] **Llyr Gruffydd:** Felly, jest i fod yn glir, nid ydych yn gweld y bydd oblygiadau o safbwynt adnoddau i chi sydd o gonsŷrn i chi.

Llyr Gruffydd: Therefore, just to be clear, you do not see that there will be implications in terms of resources for you that would cause you some concern.

10:45

[186] **Ms Davies:** As we set out in our evidence, there is an initial hump of work when the Bill comes into force, if it does, and we would then be working in new ways with the public service boards, so I think that we are thinking that that is going to take more resource at the outset, but will then level off as those policies and working arrangements get established and put in place. However, I think as Clive has said, we are not seeing that as running in parallel with what we currently do. What we will need to do is very quickly move so that we are working in that way, and not running parallel processes but ensuring that we are doing things through the new way of working. The comment that we made was, looking further forward, whether we could look at more collaboration among local authorities at the outset, rather than starting off with potentially 22 and perhaps ending up at some future date with a smaller number.

[187] **Antoinette Sandbach:** You were involved in the Bill reference and advisory group and, as you have said, you are a new organisation, so you have set up your parameters from, effectively, having been involved in that group. Could you tell us how much resource and time and how many staff were involved in taking that forward, so that public bodies that were not involved in the Bill advisory group can have an idea of how much it will cost them?

[188] **Mr Thomas:** I do not think that we would want to give the impression that there is

not some work to be taken forward under this Bill. I think that the point that we are trying to make is that we have a team that is already helping us with the corporate planning process and the annual reporting process, and it is the same team that has been thinking about how we actually—. I think that the starting point for us, as I have said, is actually our purpose, because that requires us to take into account our actions and our activities and to allocate our resources in a different way, perhaps, to the predecessor organisations. We still have a big challenge in how we are going to report in a more integrated way. However, so far, we have managed to achieve that with the resources that we inherited from the three predecessor organisations, in terms of those corporate roles.

[189] **Antoinette Sandbach:** Could you just answer the question: how many are on that team?

[190] **Mr Thomas:** There are about 10 in our corporate planning team.

[191] **Antoinette Sandbach:** Ten full-time members of staff.

[192] **Mr Thomas:** Yes, but that operates the performance management for the whole organisation. We deliver the reporting through that, and we deliver a number of other governance areas as well.

[193] **Antoinette Sandbach:** In your evidence, you talk about the availability of ecosystems data, evidence and information. Where do you see the scientific basis, the actual proper evidence base, for the wellbeing in these goals coming from? There seems to be no requirement on the face of the Bill for best scientific evidence.

[194] **Ms Davies:** I think that this links back to the comment that I made earlier about the other legislation that is going through at the moment. So, there will potentially be a requirement to produce the state of natural resources report, which will provide a level of evidence—and not just the evidence that we have within Natural Resources Wales, but bringing together and collating the evidence on the environment and the state of the environment from a range of different operators and information. Also, through that process, there is the prospect of the area-based planning approach, which again, on a geographic basis, either on a catchment or some other geographic basis, will bring together the information about what is going on in the environment, what the risks and issues are and the opportunities there. So, I guess that what we see as the role for us is bringing that into the discussions at the service board level, so that we can make the decisions and sign up to objectives, if you like, as a collective, on the basis of the evidence that we have got—

[195] **Antoinette Sandbach:** But I am talking about best evidence and scientific evidence. Do you think that there should be a requirement then to consider best evidence and scientific evidence on the face of this Bill?

[196] **Ms Davies:** My understanding is that there will be a linkage clearly sent out with the environment Bill, so—

[197] **Antoinette Sandbach:** We have not seen that Bill.

[198] **Ms Davies:** There needs to be that linkage, but our role anyway on the public service boards, as is set out in the Bill, is to bring that evidence and information. So, even if that does not occur, we already do report on things like the sustainability indicators, and we already report on the environment, so—

[199] **Alun Ffred Jones:** Yes, but we are talking about the Bill as it stands, so we are trying to tease out whether it should be changed or improved, in your view.

[200] **Mr Thomas:** There is a proposal, obviously, for the so-called ‘future generations report’, as it is described in the Bill. We should always, through best endeavours, bring the best information and the best evidence to any sort of reporting mechanism. So, I think that our assumption has been that, in terms of our role as an organisation, it would be to feed in to the state of natural resources report, but, in effect, that would be a component of the future generations report in terms of the natural resource issues.

[201] **Russell George:** With regard to the role of the commissioner, it has been suggested by some that the commissioner might not be entirely independent because he is appointed by the Minister and, effectively, governed by the Minister. So, how clear are you on the role of the commissioner, and how sufficiently independent do you think the commissioner can be?

[202] **Mr Thomas:** Just because the appointment is made by the Welsh Ministers, I do not think that that necessarily means that, *quid pro quo*, there is no independence. Obviously, there is a process to be gone through. In terms of the substantive point there, which is about the role of the commissioner, one of the points that we have put into our evidence is how some of the roles of the commissioner in the White Paper have not necessarily come through fully in the Bill, particularly around the championing and convening role for civil society. There is a risk that it potentially becomes too positioned at the compliance end of all this. The role of the auditor general is also well described in the White Paper, and we have read the evidence from the auditor general in terms of the legal interpretation that is going on in terms of whether or not the powers are there currently. I do not want to comment on that, but in terms of the triangulation of how this works between the commissioner, local democracy in terms of scrutiny, and the auditor general, there is some further clarification that could come through in the guidance and the explanatory memorandum to support the overall Bill and how it works in operation.

[203] **Russell George:** Okay, thank you. With regard to the advisory panel, as I understand it, the Minister would appoint the panel members, and one member of that panel would be from Natural Resources Wales, so is there any potential conflict of interest there, do you think?

[204] **Mr Thomas:** I think that that explains why I was talking about the commissioner’s role not necessarily being positioned at the compliance end, because, obviously, we have a role, in that the duty falls on us as an organisation to meet the requirements of the Bill. I think that there is a strong role there for the advisory body in terms of bringing knowledge and expertise to support the commissioner in their role as convener and champion, and challenging at a strategic level. However, I think that the auditor general’s role is already in place in terms of auditing public bodies, and that is the place for that.

[205] **Russell George:** In terms of your advice and suggestions, would you suggest that the panel needs further representations, other than those from whom the Minister might appoint to the panel?

[206] **Mr Thomas:** I think that it would be useful if the commissioner had full flexibility in terms of co-opting. I have seen some of the comments in terms of private sector and voluntary sector representatives. If it went down the advisory, expert-knowledge route in terms of that advisory body role, then clearly those individuals and contributions would be very effective.

[207] **Jenny Rathbone:** You mentioned that you already sit on local service boards. What clout do you have in ensuring that local service boards meet their existing obligations to enhance the natural environment and use only our fair share of the Earth’s resources? How much attention do they pay to your advice?

[208] **Ms Davies:** At the moment, we sit on them, we share our evidence and information, and we use that evidence and information to influence the discussion and debate at the local service boards. I think that that is why, for the future, we see these public service boards as being really key in this process and us having good senior-level representation at them, so that we can take and demonstrate the best environmental evidence that we have got. We would also have senior representations there so that we can make decisions in conjunction with others. I think that the fact that this is moving into a duty will give a greater sign-up and buy-in to what is, largely, a voluntary arrangement at the moment—although it has worked well. Where those bodies and groups are in place and where we are taking part in them, the relationships are good and have worked well, but what we are saying in our evidence is that we welcome the fact that this will now be a duty for us to work with others so that we take those decisions in collaboration.

[209] **Jenny Rathbone:** Local service boards come in all shapes and sizes, and some are more effective than others, but how will this change the conversation in the public service boards? I am sure that you will put your best case forward—there is no doubt about that—but the issue is whether or not sufficient regard is given to your advice as the experts, and how this Bill, as currently described, will change your ability to ensure that they are paying attention to that.

[210] **Mr Thomas:** Just going back to the scrutiny process and the reporting process, I think that a lot of the judgments about the effectiveness of the PSBs or the public bodies themselves will have to be played out in public through the reporting and through the scrutiny process, because, to be able to trace any single decision through the system, in terms of the specific requirements of the Bill, will be quite challenging. I think that we are going to have to look at it in the round. So, it is not just the goals that are in the Bill, but also the sustainable development principles in the Bill. Certainly from our perspective, we are going to have to think quite hard about how we demonstrate that we are taking into account the longer term in terms of our decisions, how we take into account the opportunities to collaborate, and obviously the integration between the goals themselves in terms of the point that I was making earlier about reporting in an integrated way to demonstrate how our decisions and activities support the principles of sustainable development as well as contribute to the goals. A lot of that is going to have to play out, as I say, through the scrutiny process at PSB level as well.

[211] **Jenny Rathbone:** But I am unclear as to how it is going to actually give more teeth to the sustainability objectives that your organisation is championing. The auditor general says clearly that it is not going to be possible to rely on indicators to assess the performance of any particular public body. So, it is about whether or not this Bill, in any sense, enhances your powers or influence in getting public bodies to take a greater regard of natural resources.

[212] **Ms Davies:** I think that I would look at that from the point of view that this will be a requirement. We will be there and we are required to be there as part of the group. As you mentioned in the example that you gave, currently, there is a mixed arrangement, so they are not all in place and we are not present at all of them, but there will be a requirement there and so it will be up to us in that role to be able to demonstrate through the evidence, the advice and the experience that we bring to the table how that meets up with the goals and the principles within the Bill. However, I think also, as has been said, it is not all about the environment; it is about all of the elements of sustainable development. So, we recognise that that means that there is sometimes a difficult discussion to be had, but the fact that it is placing a duty on us all to be there, and to have that, and to then be able to pin that back to the goals and the principles, and report on it and be able to provide that traceability, is much more welcomed in our view than the current arrangement.

[213] **Jenny Rathbone:** So, although the current arrangements have very strong principles,

you do not think that they have any teeth. Do you think that this Bill is going to give it teeth?

[214] **Ms Davies:** We think that this gives it more teeth, yes.

[215] **Julie Morgan:** You referred in your evidence to climate change on a number of occasions and expressed the fact that there may be some confusion about the commissioner for climate change and about where climate change fits into the goals. Could you expand on that?

[216] **Ms Davies:** The point that we were making is that we felt that it was set out in terms of both a prosperous Wales and a resilient Wales, but because it is not explicit, we would look to the guidance to make it more explicit. The guidance that will perhaps sit below the Bill should make it more explicit that that will obviously have a huge impact in terms of the future resilience and ability of future generations to cope with the decisions that we are making now.

11:00

[217] **Mr Thomas:** One of the things that we were reflecting in that is that we participated in the national conversation that led up to the Bill's being laid. One of the key things that came through that was climate change. We welcome the reflection of the resilient goal into the Bill itself, which is an improvement, from our perspective.

[218] The other thing that needs to be thought about—and this is the point that Ceri has just made—is involving organisations such as ours in the national indicators and the supporting guidance, because quite a lot of the international impact of decisions in Wales will have to be judged at that level. It will have to be judged at the national and international level, rather than judged at a PSB or individual organisational level. I recognise the challenge in terms of legislating for that, but it is about getting some sense into the guidance and the national indicators that this is about one share of the world's resources for individuals in Wales and about trying to reflect that back in so that the decisions support that and we do not, in effect, export our unsustainability.

[219] **Julie Morgan:** These are very important points and they are not really on the face of the Bill. Would you maintain that they should be there and not left to indicators and guidance, which obviously we have not seen?

[220] **Mr Thomas:** Our position is that the broad framework, and the commitments within it for guidance and indicators and a future generations report, is probably the right approach. We are trying to recognise a number of things in this Bill, in terms of the local democratic process as well as a national-level aspiration, and it gives that flexibility. There are commitments in here about the five-year report, national indicators, supporting guidance and the role of organisations such as ours on the advisory body and on the PSBs, and so we think that that is probably about the right balance, because it can go too far the other way.

[221] **Mick Antoniw:** I do not know whether you heard any of the earlier session where it was suggested that it is a matter of how they are interpreted to give maximum flexibility to the public bodies. However, if you do not have measurable objectives, what impact can it have?

[222] **Ms Davies:** I guess that we are familiar with a system where you will have a framework approach to the legislation, then statutory guidance, and then maybe even statutory instruments below that, which give the increased level of specificity, if you like. The point that we are making is that we think that it is an important issue that needs to be addressed, but the place for that is probably in the statutory guidance that sits below it. The difficulty, if you make the goals very specific, is that you will then rule things out as well as

including things in.

[223] **Mick Antoniw:** Is that not the purpose of legislation?

[224] **Ms Davies:** It is looking at it in the whole. I guess that we are looking at it in the whole, as the legislation providing the framework, and in the framework the goals have now improved, to give an indication of the elements that we were particularly concerned about—environmental limits and future sustainability and future resilience, if you like—and then to see that further defined and clarified in terms of how you take that into account in the guidance that will sit below that.

[225] **Mick Antoniw:** What do you see in the Bill that enables anybody, yourselves included, to measure progress?

[226] **Ms Davies:** Well, again, there will be reporting requirements around the indicators. As was discussed earlier, there are already a series of sustainability indicators that will help to provide information for the reporting process. Again, it is seeing all the elements of the Bill in its entirety, with the framework setting out the direction of travel and ensuring that there is enough scope within that, then, for the guidance and the reporting to demonstrate compliance with the direction of travel.

[227] **Joyce Watson:** I want to return to and continue the discussion on international commitments. You are right to say that we can only influence from Wales, but there are huge effects from what we do, or do not do, elsewhere. I am particularly concerned about the level of procurement, because while you are the NRW, you are responsible for woodlands as well as for the environment. I say that for you to get an idea of where I am coming from. How do you see that you can influence, say, local government and some of its procurement practices, when it thinks about buying—with your expertise, that is? I would just use wood as an example of that. How do you guide them according to this Bill?

[228] **Mr Thomas:** For the example that you are picking on, which is wood, there are a number of international standards of sustainability, whereby you can demonstrate that you are procuring from a sustainable source, with the FSC system being the premier mark, I guess, in terms of sustainable procurement.

[229] I do not think that this Bill is about ensuring that we are sustainable at a Wales level for all the resources that we require as a society, because we export and import. It is about making sure that those overall macro-decisions that are made by public bodies and that fall under the requirements of the Bill take into account those potential impacts, because there are positive impacts of importing as well as potential negative impacts of exporting, in terms of waste and costs et cetera. So, there has been a lot of progress in the procurement field, given your specific example in relation to timber. However, I think that it is about public authorities like ours building all those requirements into their processes—and not adding them alongside something that we have already got, but replacing what we have got with these different ways of working.

[230] **Ms Davies:** As an operator, as well as a regulator and policy maker, I think that it gives us the opportunity to demonstrate that these sustainable practices can be done and that you can still continue to operate and compete in that arena. So, I think that it gives us that exemplar role to demonstrate through our procurement policies and also through the way we operate in our role.

[231] **Alun Ffred Jones:** Yes, but this legislation does not affect that.

[232] **Ms Davies:** No, but as a public sector organisation signing up to deliver against this,

those are the sorts of things that we would be looking to build in, as we have done with our current corporate plan. We have made clear statements in there about operating as an exemplar.

[233] **Alun Ffred Jones:** I am sure that you have, but I want to keep focused on the legislation and how it will operate in the future.

[234] **Joyce Watson:** Yes. The obvious question is—I gave an example just to make it real—will this Bill help to empower you as the overseeing body with expertise in the environment? Will it help you to deliver the practicalities? That is what I am trying to get to. Has it got enough in it to allow you to bring that forward?

[235] **Mr Thomas:** Our position is that it is a significant contribution. We recognise the challenge that we were given in terms of the purpose for our organisation, in that we do not have control over many of the things that influence the management of natural resources or the environment to deliver for the people and the economy of Wales. This Bill will mean that another group of public sector organisations will have, essentially, a similar sort of duty in terms of taking into account the balancing issues. There are a set of goals there and the sustainable development principles that are pretty internationally recognised—although they do not come out clearly as principles; they are in section 7 and 8 as the ways of working, and it is in that area that public bodies will be most easily able to demonstrate whether they are taking into account the duty within the Bill.

[236] **William Powell:** Notwithstanding the points that you made about the importance of goals and objectives, I think that the view is widely held that the credibility of any piece of legislation stands or falls on the capacity for it to be enforced. That is a theme that I raised with the Minister in the previous session. What enhancements would you like to see on the face of this Bill that would give the future generations commissioner greater powers and greater credibility in that area? What, in particular, would make it more meaningful and possible for successful judicial review to be brought in the event of proposals coming forward that are detrimental to the principles underlying the Bill?

[237] **Mr Thomas:** I touched on the issue earlier, in terms of the auditor general vis-à-vis the role of the commissioner. From our perspective, we would like to see that issue sorted out in terms of where the competency is and whether there is a clearer role that needs to be written into this Bill for the auditor general, rather than its already being in the auditor general's powers, however that office was set up. In the evidence from the auditor general, that is clearly a point of discussion. That would not only be helpful in terms of your point about where the sanctions are, but it would also help with the wider communication of who is doing what between the commissioner and the auditor general and as I said earlier, the local scrutiny process.

[238] On the future generations commissioner role, I think that the Commissioner for Sustainable Futures put in similar evidence himself: that will operate most effectively at a more strategic level, challenging Wales as a whole, challenging the Government of the day and the public bodies of the day as a whole on how we are doing against the future generations report, and convening civil society, getting a group of experts around that advisory body table to help with that. However, if that office gets bogged down with compliance, as against all the public bodies that fall under this Bill, there will potentially be duplication with the Wales Audit Office, but also, it will not necessarily be a clearly distinct role.

[239] **Ms Davies:** I think that that sort of model also helps in terms of the earlier question around the perceived potential conflict of interest where we are members of the advisory panel. If that is much more about the strategic direction setting, then the auditor general is

more on the compliance and enforcement side.

[240] **William Powell:** Would you also like to see more detail in this Bill about the ways in which public service boards go about their business? I think that if you went out onto the streets of Wales and asked people about their awareness levels, you would find that they operate in a fairly Byzantine way at the moment. It is absolutely critical, surely. You raised the point, Mr Thomas, about communications; should we not see greater emphasis in that area?

[241] **Ms Davies:** What I think we did in our evidence was focus in on those elements being included within the guidance that sits below it, so that there is that real clarity around ways of working to ensure that we are able to deliver the benefits of us all looking together at meeting the goals and the principles. So, we focused on the guidance delivering that element of the clarity.

[242] **Mr Thomas:** There is an opportunity here for the public service board mechanism, with its broader statutory membership, with some of the other Bills that are coming through—I recognise that you have not had a chance yet to scrutinise those—for there to be integration and efficiency here in terms of how that operates. As Ceri referred to earlier, we will probably have the challenge, assuming that the environment Bill is passed, in terms of the area statements and the area-based approach. PSBs will be crucial in that in terms of how it operates in practice.

[243] **William Powell:** Finally, a number of organisations have expressed concern around the resourcing that will be necessary to have adequate mechanisms for monitoring and enforcement. Just yesterday, I raised with the Minister a particular matter where your own organisation is struggling, to some extent, to monitor a particular ongoing pollution issue. Is there not a danger, if you are over-corseted with reporting and feeding back on these issues that you might actually be losing precious resource that needs to be there at the front end of the process, so that people can take enforcement matters seriously and that the credibility is crucially there?

11:15

[244] **Ms Davies:** Absolutely. It is always a very fine balance around the emphasis on reporting and the emphasis on the proactive resource to input to prevent things from happening, which is one of the principles that we will be trying to adhere to here. It is about putting in place proportionate reporting arrangements that give people confidence that they can see the line of sight and the golden thread, as I think was mentioned earlier, so that it is clear and visible. However, as we said earlier, for us, it is about ensuring that we are not putting in parallel processes but looking at some of the plans and the requirements and the reports that are currently required through specific legislation that are actually brought together under this. So, this is a good opportunity along with, potentially, the environment Bill, through the area-based approach, if that is passed. It is an opportunity for us to rationalise down some of the individual and specific reporting requirements and to bring them together under these umbrellas. So, it would not then be additional resource; it would be realigning what we do. Again, we are always looking to ensure that we are not taking away from the front-line activity of preventing the ills happening because we are focusing so much on reporting.

[245] **Alun Ffred Jones:** Jeff Cuthbert is next, then Antoinette and then Llyr.

[246] **Jeff Cuthbert:** You are in a difficult position if you are asked to comment on how the commissioner should be appointed or even on how the advisory panel should be composed. I appreciate that. If I may, though, I will ask you a bit about the national

indicators. Although it would be very difficult to put indicators as such on the face of the Bill, because they would vary from emissions levels through to educational attainment, all of which are part of sustainable development, nevertheless, there is very clear reference to the duty for the Welsh Government to prepare national indicators and to publish them. They will be what organisations in the public sector then have to achieve or work towards. What exactly will the role of Natural Resources Wales be in helping to identify relevant and coherent, up-to-date indicators across the range that you have responsibility for? I know that there is a current set of SD indicators, of course. They are currently in force but they are being reviewed to make sure that they are indeed up to date. So, what role would you have in making sure that they are there?

[247] **Ms Davies:** We would see that we would have an important role in that. Again, there is the linkage with potential other Bills and requirements around the state of natural resources report where that piece of work will be done. The interim report will set out what sorts of measures and indicators are needed to be able to demonstrate that we are on track for some of the statutory requirements that are currently in place or that may be in place in future. There is the current set of sustainable indicators, to which we currently contribute. However, the state of natural resources report is about working out where the gaps are, what is missing currently and where and how we fill that. It will not be all about information that we have, but we do need to be in that discussion influencing what needs to be put in place and who is best placed to put in place those indicators and measures.

[248] **Jeff Cuthbert:** May I briefly follow that up? It is critical, of course, whatever the indicators within your remit may be, that they are always as up to date as possible and that they take account of international standards. Of course, the definition of SD in here is the Brundtland definition. So, what is the methodology that you would adopt? Is your current methodology adequate, do you think, or will you have to improve your current methodology to regularly review just how relevant the current indicators are within your remit, in light of changes in technology and other changes out there?

[249] **Alun Ffred Jones:** Be very brief, because I am not sure whether that—

[250] **Ms Davies:** Yes, sorry. We feel that we would need to review and keep under review the indicators. We went through a similar process when we were developing our corporate plan to look at what were good and relevant indicators of the direction of travel as well as our performance specifically.

[251] **Antoinette Sandbach:** With the greatest of respect, the recent sustainable development report did not indicate why Wales's emissions grew by 5% and why it was the largest part of the UK national family to have that growth. That is of concern when people are looking at the implications of climate change and sustainability.

[252] I wanted to ask you about the regulatory impact assessment. Your statement is that you are

[253] 'unclear on some of the source data for the NRW figures at this stage and there is the potential that these costs are an under estimate'.

[254] Can you indicate to us the scale of the underestimate and why it is that the impact assessment does not have up-to-date figures from NRW?

[255] **Ms Davies:** We did provide information into the regulatory impact assessment. I think that the point that we were trying to make was that we need to understand better what is being included and what is not being included. There was not a huge difference in terms of what we felt, if we worked on the basis that we would be streamlining what we currently do

to move to the new approach; nevertheless, the regulatory impact assessment figure was lower than the figures that we had submitted. The important point that we were also trying to make is that there needs to be this sort of steady state that will come later, as well as the setting up impact assessment that needs to be done. We feel that it is worth the investment upfront, but it will take a bit more effort to get these things established. Then, when we move to the steady state, we will obviously have aligned what we currently do, and changed some of the things that we do, so the costs will probably be broadly neutral at that point. So, I was just trying to make that distinction.

[256] **Antoinette Sandbach:** Well, Ms Davies, you have told us that you submitted figures that are different to the ones that have appeared in the report, so I would be really grateful if you could provide the committee with the figures that you actually did submit, so that we can understand what those were.

[257] You have talked about an assumption, effectively, that you will be able to gather together your other reporting requirements, some of which will be legal reporting requirements. If that assumption is, in fact, wrong, have you made an estimate of the costs if this is—. The assumption is that this will subsume your need to report on other matters. If that is wrong, and there is side-by-side reporting, have you worked out a scenario as to what the cost will be for you then?

[258] **Ms Davies:** We are going through the process of working that out now, because it is linked into the work on the environment Bill. We are looking to see what we can streamline and where there are specific legal requirements that we have to meet, for example in terms of river basin plans with a statutory reporting cycle. That is work that is under way at the moment.

[259] **Alun Ffred Jones:** Given that we are running out of time, could you supply us with the indicative figures that you gave to the Government?

[260] **Ms Davies:** The figures for the RIA? Yes, we can.

[261] **Llyr Gruffydd:** Very briefly, I just want to come back to ‘One Wales: One Planet’ and the commitment for living within our environmental limits. That is not reflected in the Bill. There is an ambiguous reference to living more efficiently and making a more proportionate use of resources. Do you believe that that is sufficient or do you think that the ‘One Wales: One Planet’ commitment should be incorporated into the goals?

[262] **Mr Thomas:** Our understanding is that that will be developed in the guidance—

[263] **Llyr Gruffydd:** However, making proportionate use of resources is nowhere near—

[264] **Mr Thomas:** Yes, and we gone on to say that, in terms of the goals—. You have just read out from the supporting narrative and, certainly, the concept of environment limits—that there is a frame to all of this, which means that, if you go beyond it, you are not operating sustainably—yes, could be further developed.

[265] **Jenny Rathbone:** Would you not argue that the indicators need to be on the face of the Bill, so that we can measure the outcomes in five, 10 or 25 years’ time as to whether or not we have made progress?

[266] **Mr Thomas:** I think that our position is that there is going to be huge visibility on these indicators if they are in the future generations report and if the commissioner centres a lot of his or her role around them in terms of what those indicators are telling us as a nation and as a group of public bodies. That is probably the appropriate place to have that discussion

and scrutiny, rather than—. There is the law of unintended consequences, is there not? If we get it wrong in the Bill, we need to have that flexibility in terms of, first, having a longer conversation about it in terms of developing it, and, secondly, also being able to recognise that there might be better ways of measuring sustainability that are developed in time.

[267] **Ms Davies:** I think that it links into the point earlier about being able to regularly review as well. If it proves that an indicator is not a particularly good measure, and that another one would be better, if that is on the face of the Bill it is a much more complex process than just moving to an indicator that might be a better indicator of performance, either negatively or positively.

[268] **Jenny Rathbone:** I cannot envisage a time when air quality, water quality and attainment of young people at 16 are not going to be indicators that we are always going to need.

[269] **Ms Davies:** The water quality indicator is a good one in point. We moved with the water framework directive from reporting on chemical water quality to reporting on ecological water quality. While the chemical water quality was very much improved and at very high levels, the ecological impacts were not so good. It is having that element of flexibility: when you realise that your one indicator is showing a really good performance but that your ecology is not improving, it is the ability to switch to an indicator that demonstrates that this is the one that now needs to be reported on. So, that is the example that I would use as to why we feel that those elements are better suited in the statutory guidance so that you can then refine and review them in the light of experience.

[270] **Mick Antoniw:** In the light of what you have just said, does that not mean that it is absolutely essential that the key principles outlined in the Bill are clear, reasonably specific and measurable?

[271] **Ms Davies:** The principles need to be clear, specific and measurable.

[272] **Mick Antoniw:** Are you satisfied that, in their current form, they are clear?

[273] **Mr Thomas:** I think that the principles are clear. I think that, with a lot of them, the measurability will be in the indicators set. So, we will get a clear idea of progress as a nation and collection of public bodies through that.

[274] **Mick Antoniw:** If the indicators are extraneous to the Bill, it means that the Bill can be almost anything that the Government actually wants it to be at any stage.

[275] **Mr Thomas:** I do not think that they are extraneous, because there is a commitment that there will be a future generations report on national indicators.

[276] **Mick Antoniw:** They are extraneous in that we will not know what they are until the Government actually determines what they are and for how long.

[277] **Mr Thomas:** Yes. I think that our position is that you get a better outcome by having more flexibility in terms of how you assess what you are trying to achieve.

[278] **Mick Antoniw:** So, what is the point of the Bill?

[279] **Alun Ffred Jones:** I am not sure whether that is—. [*Inaudible.*] Fair play; I have a heart.

[280] Diolch yn fawr i chi, Mr Thomas a Thank you very much, Mr Thomas and Ms

Ms Davies, am ddod i mewn, am roi'ch tystiolaeth i ni ac am ateb y cwestiynau. Davies, for coming in, for giving us your evidence and for answering our questions.

[281] We now move swiftly on, without a break, unless some of you wish to escape.

11:28

**Bil Llesiant Cenedlaethau'r Dyfodol (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 3
The Well-being of Future Generations (Wales) Bill—Stage 1: Evidence Session 3**

[282] **Alun Ffred Jones:** Peter Davies, y Comisiynydd Dyfodol Cynaliadwy, a Cynnal Cymru yw'r tystion. Pwy sydd am ddechrau? **Alun Ffred Jones:** We will be joined by Peter Davies, the Commissioner for Sustainable Futures, and Cynnal Cymru. Who wants to start?

[283] Who is going to kick off with this? William, you have been side-lined; and Russell as well. So, we will start with you.

[284] Bore da. Hoffwn groesawu'r ddau ohonoch i'r pwyllgor. A wnewch chi gyflwyno'ch hunain, er mwyn y Cofnod? Diolch yn fawr ichi am ddod i roi tystiolaeth. Felly, os gwnewch chi gyflwyno'ch hunain, gofynnaf i William Powell ofyn y cwestiwn cyntaf. **Good morning. I welcome you both to the committee. Will you introduce yourselves, for the Record? Thank you for coming to provide evidence. If you introduce yourselves, I will then ask William Powell to ask the first question.**

11:30

[285] **Mr Davies:** Diolch yn fawr. I am Peter Davies, Commissioner for Sustainable Futures and chair of the Climate Change Commission for Wales.

[286] **Mr Fitzpatrick:** I am David Fitzpatrick and I run Cynnal Cymru.

[287] **Alun Ffred Jones:** Diolch yn fawr iawn. William Powell, do you wish to kick off?

[288] **William Powell:** Diolch, Gadeirydd, and good morning, both. Central to our deliberations this morning so far have been issues around the role of the future generations commissioner, naturally enough, and I think that you are uniquely well-placed as a pair of witnesses this morning to comment on those, and you have done so to a good extent already in your written evidence. In what ways do you feel that the powers and functions of that crucial role of the FG commissioner could be further enhanced and what specific amendments do you feel should be considered in the light of your experience?

[289] **Mr Davies:** Perhaps, David, I will kick off on that one. Obviously, I am reflecting on the experience that I have had in a role that has no statutory powers and no direct budget responsibilities and thinking about what this new role would look like. As you know, I have made it clear that I will not be putting myself forward for the new role, but, obviously, I am particularly concerned about its nature. The points that I have made in written evidence highlight the importance of the advisory panel function, which I do not think is quite right in the Bill as it stands. I think that all the evidence that we have internationally shows the importance of a strong multistakeholder, call-it-what-you-will panel, commission or whatever which would be a guide and a support for the commissioner, because the power of the commissioner will partly come from the ability of that body to back the commissioner. The commissioner's function is much more credible if he or she has that capacity to draw on for support.

[290] I think that we need to recognise that, in terms of the powers of the commissioner, the commissioner is a non-elected individual, and so we have to recognise the democratic process and democratic accountability, as I have been told by certain members of local authorities, who have said, 'I am slightly fed up of being told by commissioners who are non-elected what I can and cannot do'. There is a point that we need to accept in terms of the democratic accountability, which we need to ensure is the prime accountability.

[291] However, the Bill, I do not think, is clear enough in respect of the power of the commissioner to initiate inquiries on issues that the commissioner is concerned about or have been raised through public engagement with the commissioner. So, it must be much clearer in respect of that ability to initiate and to make recommendations.

[292] The relationship with the Wales Audit Office is an absolutely central relationship, on which I do not think that the Bill goes far enough on. If we are talking about mainstreaming sustainable development, the role of the Wales Audit Office in this process of how the public sector operates is absolutely critical. I think that the power of the commissioner will come partly from the stakeholder body of its panel and partly from the relationship with the auditor general, as well as through, obviously, the power of the recommendations that the commissioner makes.

[293] While I absolutely feel that we need a strong commissioner, I would also make the point that we should compare with the other commissioners that we have in Wales, where they are responsible to specific interest groups and have accountability, to a large degree, to those groups, whereas this commissioner is responsible to and the voice of future generations. So, in that sense, you need a check and a balance in respect of that individual function, because he or she is going to be lobbied heavily by different interest groups, and so, the power given to an individual to function needs to have a check and a balance to it, which is the role of the panel or the broader multistakeholder group. So, on the power of the commissioner, those would be the key areas where I would want to see stronger amendments put forward.

[294] **Alun Ffred Jones:** Our time is limited, so I would appreciate brief questions and answers. David, do you want to add to that?

[295] **Mr Fitzpatrick:** I would like to, if you do not mind, sir. The issue for us is that this is a huge role and, therefore, the grouping around the commissioner becomes very important, and I think that that perhaps needs to be laid out better and to be more representative and supportive than is seen in this and, possibly, there needs to be even more in there. The other issue is governance. You will have seen that we have suggested—and this is perhaps heresy—that he or she should be answerable to the Senedd and not the Government. We feel strongly about this, only because it means that the likelihood of him or her being interfered with by the Government is much less if the post comes through the Senedd.

[296] The other issue, which is linked to that, is money. The investigative role will be a big part of what he or she will do and, frankly, on the money that has been allocated at the moment, I am not sure that that is enough. So, the issues are the money, the support that he or she gets and the fact that he or she should be answerable to the Senedd, and there is precedent for that.

[297] **William Powell:** I am grateful for those full and helpful answers. One other area that is of considerable concern to many of us within the way that the functions of the commissioner can be drafted is the very nature of the language. We have verbs such as 'advise', 'encourage' and 'promote'; do you feel that that is sufficiently strong? You mentioned the term 'heresy'; could we not use what I will term 'Old Testament clarity' about

what actually will be the clout of this Bill and, when it is enacted, the power of the commissioner to ensure and safeguard future generations?

[298] **Mr Davies:** As the chair of the reference group for the Bill, I can say that we were pleased that, in that process, the role of the commissioner was strengthened from the original White Paper. However, if I can speak on behalf of the reference group, we were slightly disappointed by the wording of the Bill as it was translated into the powers in the way that you described. So, I would stress that as being important. I would also support David's point about the governance issue and stress that this commissioner has a key role in convening and providing solutions to difficult problems through convening multistakeholder groups. I would be concerned if he or she was submerged in bureaucratic process, because in my experience, if I have added value, I have been able to add value through convening multistakeholder groups to look at a difficult issue with different viewpoints to agree solutions that can then be taken forward.

[299] **Mr Fitzpatrick:** May I add one small point? The issue of language becomes vital. We welcome the fact that the Bill is here and we are not trying to be critical of the whole process. I refer you to page 2 and the first paragraph of my notes, regarding the reference to seeking to ensure sustainable development. 'Seek' is not strong enough. We do not seek, we insist and we do. It is that that needs to be strengthened in the Bill from where it is.

[300] **Russell George:** I will ask a question and then pick up on William Powell's question, if I may. As I understand it, the commissioner will provide advice only to Ministers. How does that differ from your role now, Peter?

[301] **Mr Davies:** I would see the commissioner as being the focal point for delivery across the public sector of what this Bill represents. So, absolutely, providing advice to Ministers is part of the function that I have attempted to fulfil, but this role is much more significant than that, because it is about ensuring that the framework that this Bill provides for the way in which the public sector does business in Wales is applied. That is where the strength and the difference comes in, compared to the role that I have now. The Bill needs to provide that commissioner with enough strength in terms of the duties it sets out for the commissioner to enact the requirements.

[302] **Russell George:** I will come back in later, thanks.

[303] **Alun Ffred Jones:** I would just like to come in on that point. What will the new commissioner be able to achieve? What powers does he or she have to make a difference?

[304] **Mr Davies:** That goes back to the first question. One of the key areas of intervention for the commissioner that is set out in the Bill and which is critical is the role with public service boards and the production of those wellbeing plans in respect of how the objectives, goals and the measures of the Bill are delivered at a local level. So, the ability of the commissioner to work directly in supporting and ensuring compliance at that level is one of the critical aspects, and it is different to where my role sits currently.

[305] **Russell George:** I will move on to a different point if that is okay. Does David want to speak on the last point first?

[306] **Mr Fitzpatrick:** I would just like to make a quick point. The issue of the Bill and the powers of the commissioner are about changing behaviour. You cannot force people to do stuff, and the Bill is about the idea of collectively ensuring that people do not do what they used to do. Although this, admittedly, is a public-sector-focused Bill, of course, under the sustainable development charter, we have cross-sector stuff where we have tried to help people to change behaviours. That is going to be the biggest thing that is going to be most

effective under this—if we stop people doing what they have done before, for the better.

[307] **Alun Ffred Jones:** How does the Bill stop you from doing—*[Interruption.]*

[308] **Mr Fitzpatrick:** I beg your pardon.

[309] **Alun Ffred Jones:** How does the Bill stop you from doing anything that you were doing before?

[310] **Mr Fitzpatrick:** It depends on the powers of the intervention that we talked about. The commissioner will have powers to investigate, and he or she needs to be funded and supported, with sufficient staff and so on. However, there is also the issue of whether the commissioner, as one hopes, can correctly work with the audit office. The audit office, which is the regulator in this process, can then ensure, if a local authority has not done what it said it was going to do, that it raises that issue and says that it has to be done and that that is a requirement. That needs further work.

[311] **Russell George:** May I ask a question on your views on the six wellbeing goals? Do you think that there should be priority in those goals or not? The potential, I suppose, is that there could be a conflict where one goal is pulling against the other. How do you overcome those obstacles and the difference of interpretation between how somebody might interpret it in one part of Wales and how they might do so in other parts of Wales?

[312] **Mr Davies:** I think that that is the nature of sustainable development, in terms of identifying what the priorities are going forward and how you deliver against the long-term development path. However, I think that those goals need to be seen as an integrated whole. One problem that we have had is the silo approach in the delivery of our duties. We need to see these as an interconnected framework. They need to be understood and owned more widely beyond the Government; they need to be our national goals in a true sense. The bit that is not in place at the moment, which the Bill sets a duty on the Government to produce, is the importance of the measures that underpin those Bills. That is where the rubber will hit the road, in terms of clarity of what delivery against those goals would represent in terms of the measures that underpin them.

[313] **Russell George:** In Wales, we have massive amounts of areas of outstanding natural beauty—more so than any other part of Europe. I want to know how you think that is addressed in the Bill and about the goals to protect the wellbeing of that environment, if you like.

[314] **Mr Davies:** I would agree with a lot of the submissions that you have received, in the sense that I think that the environmental limits dimension of the content needs to be strengthened, to answer your point on that. In that sense, I think that there is a weakness there. The Bill, in my mind, is about providing a structure that we do not have at the moment that connects—I have said this throughout my time as commissioner—the sustainable development indicators, which we produce every August and are not connected to anything, but should be our national scorecard of how we are doing. The Bill will put those indicators at the centre of how the Government is performing, because the measures of progress against the goals will be established in the Bill, and public sector bodies, including the Government, will have to demonstrate their contribution towards achieving those measures of progress. For me, that is one of the key elements of this piece of legislation, because there are a series of weaknesses in the structure that we have now, with that being one of them.

[315] **Russell George:** Last of all, we had our debate on Tuesday—I am sure that you were listening to it.

[316] **Mr Davies:** I was.

[317] **Russell George:** The Minister seemed to be resistant to the point that the First Minister should be responsible for sustainable development, given that it is the Government's priority as a central organising principle right across the Government. Do you have views on that at all?

[318] **Mr Davies:** I would agree with the principle of that, because sustainable development is our long-term development path. The Government's role is contributing, through government, to that development path, so that is what the programme of government is about. I would suggest that the First Minister is, therefore, responsible for delivery of the programme of government and its contribution to sustainable development.

11:45

[319] **Mr Fitzpatrick:** I will add to that, if I may. There is the issue of champions of SD, in the sense that while it is important that the boss is responsible and says, 'This is what we are going to do', and therefore people will jump when it is said, the need is to ensure—and this Bill, I hope, does try to push that—that there is a thread running through every person, every organisation, that says that SD is a central organising principle.

[320] **Alun Ffred Jones:** I am not sure whether we need Bills to push anything. Bills do something, presumably—. I will take a question from Mick Antoniwi very briefly on this point, before Joyce Watson.

[321] **Mick Antoniwi:** Regarding the indicators, because some of us are not particularly familiar with those, and, of course, the Bill has moved into the whole socioeconomic area in terms of a totally different concept of sustainability, you may have heard in the other debate that there was concern, first that there is no real control or any real knowledge as to precisely what those indicators would now be, but, equally so, there is the very general but flexible nature—it is really two of the six principles, and it is far too general, particularly if they are going to be left to be interpreted, et cetera. So, the indicators, it seems to me, have to somehow tie into the legislation. I can see you nodding; if you are in agreement with that, how do you think that that might happen within this legislation?

[322] **Mr Davies:** Well, the legislation clearly sets out the requirement on Government to set those measures, and to set those indicators. We are embarking on a process as part of the national conversation to identify what are the measures that matter to the people of Wales, because, again, these measures have to be relevant to the people of Wales—they have to understand them, because they are our national scorecard of how we are doing as a country. The sustainable development indicators, the 44 of them that currently exist, are by no means perfect, but they are a fair representation of what we might be looking for in terms of the sort of measures that would be formed within the Bill. I think we have to do quite a bit of work, in terms of advising and recommending to Government, and one of my roles as a commissioner is to produce a future generations report next March, which will include a series of recommendations about the measures that the Government should introduce. I know that the Government also has a process of looking at how those measures are set. I think it is right that, if you like, the elected Government has that role of setting those measures, and that they should not be set within the legislation itself now.

[323] **Alun Ffred Jones:** You have mentioned measures and you have mentioned indicators. What are they? Different—

[324] **Mr Davies:** It is my fault for mixing the two up.

[325] **Mick Antoniw:** Does not that mean, however, that you really have to be far more specific in the Bill about the principles and the focus of those, because they are quite woolly at the moment? Do you have a view on that?

[326] **Mr Fitzpatrick:** Certainly, the big criticism among people we consulted as part of this process is that, first, we have two different types of goals. One is comparative, ‘We will have a healthier Wales, or more prosperous’—than what? It is not clear as to what it is going to be, and I think that has to change. It has to come out of this Bill, and the goals must be more specific. The other issue is that the goals miss things at the moment, and I have listed—I will not repeat it; we do not have a lot of time—those in the paper; as do others, they talk about the things that must be in this. Although we strongly, strongly support this as a framework Bill—we think that the work has been superb—whereby all decisions must be made within the framework of sustainable development towards sustainability, what we must not do is miss out really important things, and we fear that that is the case, and we have listed some in our evidence before you today.

[327] **Joyce Watson:** You talk about a framework and influence in Wales, but it goes beyond that; there is an international influence in the part that we play. Do you think that the Bill is sufficiently strong in recognising, as it is proposed, the international element?

[328] **Mr Davies:** No, I think that that is one of the areas where you would want to see some tightening up and a recognition of international impacts. I have just left the Climate Change Commission for Wales’s annual two-day programme, and obviously in terms of international impacts, climate change is specifically important in terms of those systems. I think if you look at what we are facing for future generations, the role of climate change is probably the most significant factor affecting future generations that we have some capacity to influence now. We have argued strongly in this process that the climate change dimension is one of the specifics that need to be highlighted more within the legislation. The international dimension is one that certainly needs to be fully recognised, more so than it is currently.

[329] **Joyce Watson:** Would you accept that it is more than international? The effects of what we do here in Wales are greater than just climate change.

[330] **Mr Davies:** Absolutely. We have an impact through procurement and all sorts of other activities, but I would certainly stress, and we should not forget that the climate change challenge that we face—and this week has been highlighting it specifically—is so significant that, if we are introducing a future generations Bill, future generations would look back askance if we were not addressing climate change significantly through this legislation.

[331] **Joyce Watson:** Moving on from that, and very quickly, because time is short, you briefly mentioned your concern, David, about public sector involvement but maybe not the wider community. Do you think that this Bill is strong enough to allow the involvement of all the key players, whether they are public sector, voluntary or whatever else?

[332] **Mr Fitzpatrick:** You will know how difficult it is to ensure that. For example, when a Government sets out to regulate the private sector, it turns around and says, ‘Go fish’ most of the time. So, what we would do is work on these collaborative issues, like the SD charter, to ensure that people have the right to mirror the superb principles of this Bill. That is the way we would have to do it for the minute. Personally, I would like to say, ‘You cannot do stuff’, but then again I quite like benign dictatorship and that does not often work in a Bill. [*Laughter.*] The other issue, as a quick aside, in terms of international—I was very rude, I did not introduce our chair, Derek Osborn, who is an international expert on sustainability. The way Cynnal Cymru has been helping the way this all works within Wales, is to ensure that we learn from what is happening elsewhere and pass that learning on. For things like the UN

global compact and other activities, we try to bring them in and ensure that everybody gets to know what is going on—that is very important.

[333] **Jenny Rathbone:** Government cannot dictate what private bodies do always, but obviously they have to comply with the law, and it is legislation we are talking about here. The way the Bill is currently drafted, it names specific public bodies rather than those carrying out publicly funded activities. It seems to me that it is a coach and horses for outsourcing and why does it not mention all the regulators, other than NRW? Why does it not mention Estyn, WAO, Healthcare Inspectorate Wales, the Care and Social Services Inspectorate Wales, et cetera? They, surely, are also public bodies with a duty to comply with sustainable objectives. My second point is that, even if you get the commissioner's ability to initiate inquiries, she still is going to be very, very weak because the legislation says a public body must take 'all reasonable steps' to follow the course of action set out by the commissioner, unless it decides on an alternative course of action. That does not seem to me a very powerful tool for this new commissioner. I wonder whether you can take up those two points.

[334] **Mr Davies:** In terms of the list of public bodies that have devolved responsibilities, I know that officials have, with the Minister, identified those under our devolved responsibilities.

[335] **Jeff Cuthbert:** At great length.

[336] **Mr Davies:** At great length. I would certainly say that the outsourcing element can absolutely be covered under this. The element of procurement and outsourcing through that process would be absolutely covered, so the public body would be absolutely accountable for that under the terms of this Bill.

[337] **Jenny Rathbone:** Well, we need to redraft this.

[338] **Mr Davies:** That needs to be clear—absolutely. There is a reason, I know. I do not know the reason, but I have also asked the question as to why the other regulators like Estyn are not covered. I think there may be a reason. I do not know it personally but I, like you, found it strange that they were not listed within the Bill. On the power of the commissioner, going back to that, I would again stress the relationship with the Wales Audit Office as being absolutely central in terms of the fulfilling of recommendations from the commissioner, but I would also recognise the democratic accountability of local authorities, which are accountable to and elected by their local constituencies and so would need to consider the recommendations and would need to either comply or explain why. That is, again, where the Wales Audit Office would need to have a key role, but I agree that the wording is not helpful in that respect.

[339] **Mr Fitzpatrick:** On the point you made about the wording 'all reasonable efforts'—that is madness, forgive me. It really needs to be much stronger to say that the move has to be towards sustainable development. It could be, 'Oh, I agree with it, but it costs us a bit more money, we can't do that'. Actually, that is not a good enough reason. That is why, for example, we were concerned that procurement and budget setting were not actually part of this Bill. The idea that there should be a procurement Bill is great, but it needs to be stated more strongly in here, which I think is the point that you are making. However, it is also about budget setting, because how any organisation sets its budget will influence what it does, and, if that is not in here, it really must be, so that the strength must be there, I suggest.

[340] **Llyr Gruffydd:** Are you not concerned at all that requiring or creating a new framework of assessing planning and reporting is missing the point and that we should be looking to embed sustainable development into existing frameworks?

[341] **Mr Davies:** My key point is that the existing framework that we have under the Government of Wales Act 2006 has played an important role but is not fit for purpose. That is why we are putting this legislation forward in this way. This legislation now extends to the whole of the public sector and will provide a consistent framework that is focused on outcomes, in terms of goals, and, critically, the measures, and a set of principles, which we have not covered, but which are critically important, of decision making, long-term thinking—the integration of those principles are set out in 8(2). So, you have a strong framework that provides a common purpose and language and a common means as to how the public sector does business in Wales. That was one of the strong recommendations of the Williams commission, and I think that the Bill begins to address that.

[342] I would also say—and this is a point that I have not made, but it is an important point—that the international dimension is clearly linked to the sustainable development goals and the process that the UN is undertaking. As many of you know, I was invited out to the UN in June to explain the work in Wales because it thought that it was a good model of how a national Government was aligning to the principle of the global goals, and I think that is really an important dimension in terms of the framework that we are putting in place. We are not making it up ourselves; we are aligning it to a global framework.

[343] **Mr Fitzpatrick:** The only concern that I would have on that one is that the timeframes are out, in that the SD goals are coming at a later point than this is, but it is vital.

[344] On the other issue of whether we should embed sustainable development, the answer is ‘yes’, I believe. One of the things that I am a little bit bothered about in the Bill is this ‘make your best effort’ comment, which was raised earlier. We have to ensure that everybody understands what this is about. The cleaner must understand what he or she is doing, including the chemicals that are being used. That is vital to this; we must have a golden or a green thread through every organisation that says, ‘We now have this legislation, and we should work within that framework of sustainable development.’ I think that you are right and that it does need embedding, but that may take time.

[345] **Llyr Gruffydd:** Picking up on the principles, given that the commissioner has mentioned those, I noted in your evidence that you are particularly keen on a stronger focus on co-production, citizen engagement and community involvement. Where do you see that coming from in relation to this Bill, or is it just not there at all?

[346] **Mr Davies:** I have been saying to my third sector colleagues that this should be seen to be the co-production Bill from their point of view, and that we need to make sure that the Bill is strong in respect of the duty on public bodies in respect of engagement and co-production. The wording is not, perhaps, as I would like it; as I understand it, there are issues around some of the lawyers’ views about wording as it is represented in the Bill, but I know, from working with officials and Ministers, that that principle is fully understood and seen to be a key piece of what the legislation is about, which is enabling that co-production to be delivered under the framework.

[347] **Jeff Cuthbert:** I want to talk about the role of the national conversation, its future direction, how you see that as a key contributor to the future achievement of the goals, and its almost unique nature. If it is helpful, to my recollection, organisations such as Estyn were not included on the face of the Bill because the Welsh Government procures services from the regulatory bodies, if my memory is correct, and, in any remit letter, it would state what was being required. The same issue applies to education, in that HE and FE institutions are independent bodies, and not technically part of the public service. They may have public money, to a degree, but they are not technically a part of the service. Maybe that is helpful or maybe I stand to be corrected. However, could you expand a little bit further on the future

direction of the Bill and how the national conversation is still working—it will carry on until January, I think—and the useful information that has been fed back in?

12:00

[348] **Mr Davies:** Yes—I was going to say, ‘Minister’. As you know, you asked me back in February to initiate this conversation and one of the roles of the conversation has been to feed back into the process. So, up to now, we have been feeding back from the conversation in terms of the shape of the Bill and with reference to the goals. The next stage of the conversation will focus on the measures that matter—what measures matter to the people of Wales; what sort of things should we be using as our national scorecard; what sort of things can people relate to, understand and make sense when you have the conversation in the pub, so that we know that we are making progress. It is very important that the goals and the measures that underpin them are owned, as I have said before, and are widely understood and not seen to be a Government process, but something that sets out what it is that we are doing for the nation in terms of its long-term development path.

[349] Importantly, the Bill sets out a framework that links into the election process and into the democratic process. So, the production of the future generations report by the new commissioner would be produced the year before the election with the direct purpose of influencing and informing the election debate about the direction in which we are going and the speed at which we are achieving the goals and the measures that underpin them. That is why the national conversation is a pilot at this time, but has a long-term role in respect of the delivery of the commissioner’s function going forward.

[350] **Mr Fitzpatrick:** If I may come in, we have been lucky enough to run this, to put the launch in place and get interesting people also interested in this type of activity. You will know, I think, that Michael Sheen was part of the launch and it is because this matters. They do not come because they think, ‘Okay, we’ve been invited, so we might as well come’; they believe that this really does matter. It is modelled on some good examples elsewhere—‘The Finland we want’, for example, and others. So, it is good practice, but the difficulty is that it is quite demanding. I have three members of staff who are devoted to making sure that this works and for that to continue it must be funded. Somebody has to let it go on. Obviously, I will say that we are biased, because we do it and we like it, but the issue is that it must happen.

[351] The other thing that came from the conversation is, ‘Oh, we’re being asked, but I wonder if we’ll be listened to’. The issue is not whether people will accept a comment that Freda or Fred makes because it is a comment, but the idea of the holistic nature of this conversation. Themes are coming from it and people say, ‘This is great, we are really pleased to have been asked’. That proves the point.

[352] **Alun Ffred Jones:** I agree that this is an interesting background, but I want to focus on the Bill itself, as it is before us. Mick, do you want to come in?

[353] **Mick Antoniw:** Yes, there is one part of the Bill there—I think it is section 20 of the Bill—that places the obligation on authorities to have regard to, but then gives them a power to completely disregard. Do you have any comments on that aspect in terms of tightening up that legislation? It seems that there are too many get-out clauses. I understand that this is complex legislation, because it is also aspirational, but there are many bits in there that give with one hand and take with the other. Have you considered the impact of some of those parts of the Bill?

[354] **Mr Davies:** Yes. I think we touched on the fact that I think the wording could be stronger in that area. I have always taken a view that this is about a comply or explain process

and if the explanation is not strong enough in the eyes of those including the commissioner and the Wales Audit Office, coming back to that, that is where the accountability and the democratic accountability lies. However, we do have to recognise that there is a democratic accountability that runs alongside the function of a commissioner.

[355] **Mick Antoniw:** One suggestion, also on enforcement—there are two really important aspects in legislation: one is that you know what it says and you can measure it and the other is that you can enforce it—was whether there should be any power to intervene at any stage. You spoke earlier, and I think that your submission also contains reference to it, about the importance of being able to investigate and produce a report and so on. How do you think that might be strengthened? Would you envisage that it would be helpful to have a power to actually delay a process to enable an investigation to take place? That would then raise the issue as to the guidelines that would apply as to how and when you do that. What thought have you given to those sorts of powers?

[356] **Mr Davies:** All that I know, from experience, is that there are two ways that the commissioner can work effectively: the first is through a Minister—whichever Minister—having a difficult issue and asking the commissioner to look at that issue and to report back to the Minister. I have had the opportunity to do that, and I think that it has worked quite effectively. The second, although, critically, to be honest with you, under my current status I have not really had the powers or the budget to do it, is that it is initiated on an evidence base of people representing issues to the commissioner, providing a strong enough reason for that commissioner to initiate a report. So, that is the first accountability of the commissioner: it is to ensure that there is a strong enough evidence base for him or her to initiate an inquiry. Secondly, there is the impact of that inquiry, which is the second point. That is about the impact of the inquiry based back into the structures that already exist. This has to be about mainstreaming the embedding point of sustainable development. We do not want to create, which is the problem that we have now, a whole set of externalised structures. This is about embedding these principles within the role of the Wales Audit Office, within all of those scrutiny bodies and within the regulators' functions. That is where I think that the role of the commissioner can be strong. It is through those routes.

[357] **Mick Antoniw:** May I just raise one final point, therefore? All past indicators and so on have tended to be more on the environmental sustainability element. Tying in the socioeconomic obviously creates a whole series of conflicts and a different way of thinking. Do you think that there is a need for it to be more specific about the socioeconomic or social justice element of sustainability?

[358] **Mr Davies:** I sort of disagree, actually, in the sense that I think that if you look at the sustainable development indicators as they are—the 44 that I have mentioned—you will see that they are pretty broad in terms of socioeconomic and environmental indicators. There is also a lot of international practice on beyond-GDP measures to ensure that we have clear, better quality of life, wellbeing indicators. There is a lot of work going on internationally on that basis that we can learn from. So, I think that it is very important that environmental limits are established more clearly in the legislation, but it is also very important to recognise that this is about our long-term development path of which the environment is part. It is not an environment Bill. I think that that, perhaps, is one of the mental steps that some people will have to take in recognising the function of this Bill.

[359] **Mick Antoniw:** It comes back to an understanding and an agreement, I suppose, reading over those indicators as being at the core, and we sort of come back to that round circle, that the difficulty is that we are sort of looking at a Bill without really knowing what the clockwork mechanism is to—

[360] **Mr Fitzpatrick:** I think that, in our case, one of the strong pressures that we have

been asked to bring to the table is that there is a proper definition on the front of the Bill, if you like, of what sustainable development is. It is not just the fairly standard stuff because what we have been talking about is the issue of everyone talking about the balance between the environment, society and the economy. What we are saying is that the balance is between society, the economy and culture, which is language, history, heritage, surrounded by the environmental limits. So, that is a different model, but it is a more powerful model because it does take account of the issue that we are talking about: that people are familiar with the environment; but that is the limit.

[361] **Mick Antoniw:** The danger is—because we have had this debate, and I have attended other meetings—that you can go around in circles forever when trying to set a definition, but the way around it, quite cleverly in terms of a framework, is what the Bill does: it sets out that these are the six main areas. I suppose that the view that I take on this is that those need to be a little bit more precise because those are setting, really, what the framework is. Do you have a view on that?

[362] **Mr Davies:** I agree entirely. I personally cannot get excited about definitions of sustainable development. I know that some people do, but I personally cannot get excited about it, having being around this too long and in too many of those meetings. What the Bill does very clearly is set out the framework of the goals, which articulates it more clearly and which, if they are underpinned by proper measures, will give us a proper framework that will mean something. I was very much in favour of the change of the title of the Bill because ‘sustainable development’ does not mean much out there. What we have got to do is make sure that this Bill is relevant, meaningful and understood. That is where we have got to be clear about the language that we use, and the definitions that we use do not always translate very clearly into natural conversation. We have got to make sure that this Bill does that.

[363] **Mick Antoniw:** On the existing six principles outlined, do you think that there is scope for them to be tightened?

[364] **Mr Davies:** I think so. We have touched on some of the areas where they could be tightened in this discussion.

[365] **Mr Fitzpatrick:** And expanded, I would add. I confess that I had a slight disagreement over the change of title, and not least of it is the issue that it is about now, as well as future generations. However this comes into an Act, people must understand that we have to do things now. That is vital.

[366] **Alun Ffred Jones:** Antoinette is next.

[367] **Antoinette Sandbach:** I think that, on that basis, there has been a credibility gap of ‘Do as I say and not as I do’. I think that things like the circuit of Wales and the M4 have widened that credibility gap in the public domain and mean, Peter, that people do not understand, when they are looking at sustainable development and it is described as being the central organising principle of Welsh Government, why that is not actually applying to decision-making now.

[368] **Alun Ffred Jones:** Let us stick to the Bill.

[369] **Antoinette Sandbach:** My concern is around section 39 and the local wellbeing plans and in particular the role of community councils because, with the £200,000 limit, it looks very much as if what is happening in the smaller rural areas and in that local democracy element is that where there are small—. Some 85% of Wales is rural communities. They are the people living and working in the environmental landscape, and my concern is that those people are going to be told ‘by a load of townies’ what should be happening in their areas. So,

how do you think this Bill should address that weakness?

[370] **Mr Davies:** I would agree absolutely entirely with you in the sense that I have said for a while that our commitment to sustainable development in Wales has been too top-down and not bottom-up. Where I see most progress, actually, is with the bottom-up and it is with communities that are planning their futures and the communities they want. The Bill highlights the number of— We reckon that there are probably about 49 of the larger councils that will come under the duty of the Bill. I think that it is recognised that a lot of the smaller community councils are weaker and are possibly felt not be in a position to take this on. I think that it is a key commitment though that, in order to create an area wellbeing plan, you build that up from a community level, up to the area wellbeing plan. We have some good examples and good models of communities shaping their future that need to be connected back up, and this Bill should support that process. I understand entirely why it is focused at this point on the larger town councils, but I know that the intent is to ensure that it expands to ensure that a community-led process feeds into the area plan.

[371] **Antoinette Sandbach:** The difficulty is that, by that very nature, it becomes top-down and you are getting the bigger populations effectively dictating to the people living and working in—

[372] **Mr Davies:** I would sort of disagree with that, I think, because I think that what we will have will be where the bigger areas—. We have been doing work, for instance, with ‘The Llanelli We Want’, which has been part of the national conversation. The people of Llanelli have been looking at shaping the vision for their future. I think that you can learn lessons from that that are applicable to smaller communities and, in fact, we have been working with smaller communities that already have models that will help to shape things. However, the principle is to have community-led planning processes. One of the points that has not come up that is important is the interconnections across Bills. One of the things I am interested in is the planning Bill, which refers to place plans. I am interested to think about how that concept links into this wellbeing plan process at a local level.

[373] **Antoinette Sandbach:** I know that we are scrutinising it now, but the difficulty is that every organisation that is coming in front of us is talking about this interconnectivity. So, Natural Resources Wales is talking about the environment Bill and you are talking about the planning Bill. We are not seeing those Bills yet in that structure. So, how are we going to know whether this Bill is a suitable framework for the ones that are coming afterwards?

12:15

[374] **Mr Davies:** I think that it is fortunate, to be honest, that it is coming first, because it is providing the framework that you can then scrutinise other Bills against. The interconnectivity is important, and that is why we will have a legislative framework that will hold other links across new legislation. I have always been reticent to include too much in this particular piece of legislation, because if we are concerned about procurement, going back to David’s point, I would argue that it would be better to have a procurement Bill specifically on the procurement aspect, rather than trying to put too much into the structure that we are creating under the future generations Bill. This provides the accountability for you to scrutinise other legislation as it comes forward.

[375] **Mr Fitzpatrick:** I have some sympathy with that too, not least because we were having discussions with the health sector around involvement with the SD charter, coincidentally. It was looking to this Bill to provide an oversight that had not been coming through and had been promised to be coming through. So, the idea of this being an umbrella Bill, something under which everything else comes, is a very strong part of the information that I presented to you, but that is the way it should be. If you are going to have an SD Bill,

you cannot have stuff that then comes that is not sustainable.

[376] **Antoinette Sandbach:** So, taking that further, and given your reservations about appointments being made for the commissioner by Welsh Government and looking at that oversight by the National Assembly, which is something that I have a great deal of sympathy for, do you think that the provisions to, for example, abolish the indicators, or indeed bring in the indicators, should be National Assembly provisions, in that they have a buy-in by the majority of the parties, if you like, so that there is a mechanism for general buy-in, if I can put it that way, and for goals and indicators that are accepted? It seems to me that there are powers—for example, for Welsh Ministers to abolish a goal or an indicator without legislation—that can be done by statutory instrument.

[377] **Mr Davies:** I think that the goals are deliberately and rightly high level, although I think they probably need tightening up a little bit. They should be things that we can all buy into in respect of the long term and I would not anticipate those goals being changed. I think that there is quite a process that a Government would have to go through in order to change those goals. The affirmative process is something that I am not fully up to speed on, but I realise that it is a process that cannot simply be changed.

[378] The point that you make about the measures is an interesting one, because it reinforces the point that I was making about the importance of the measures being seen as our national scorecard. There may be differences of view about how we achieve those measures and those goals, which is where the politics comes into it, but saying, ‘This is what we want to achieve as a nation’ is really important. Obviously, the democratic process elects the Government that has the responsibility for doing that, but I would hope to ensure that the cross-party consensus, which I think has been an important part of our history on sustainable development, is seen to be important in creating the indicators in the way that you describe.

[379] **Mr Fitzpatrick:** The challenge must be that it is not motherhood and apple pie stuff. These are challenges and stretch targets, and that is the sort of thing that we have to recognise. We have a long way to go to achieve a sustainable Wales.

[380] **Julie Morgan:** Does this Bill reflect what has been said in the national conversation?

[381] **Mr Davies:** Yes, it does, in the sense that I know that the feedback from the conversation has been taken into account in the reshaping of the goals. The conversation is continuing, so there is further feedback, some of which we have touched on already—things like the environmental and international dimensions need to be stronger within it—

[382] **Julie Morgan:** What about climate change?

[383] **Mr Davies:** Absolutely, because, again, the national conversation highlighted people’s understanding of climate change being the most significant factor—

[384] **Julie Morgan:** That is why I wanted to know how much account has been taken of what was said in the national conversation.

[385] **Mr Davies:** I do see where it has been taken into account. If you look at the timing of our interim report, you will see that we produced the interim report more or less when the Bill was produced, so there was, if you like, a timing mismatch there in the sense that our report, which highlighted the climate change issue, coincided with the production of the Bill. However, we did flag that to Ministers in advance and I wrote to Ministers highlighting the issue of climate change within the legislation.

[386] **Julie Morgan:** I just have one very quick question. In terms of the commissioner

being responsible to the Assembly, there are other examples of this, are there not? Which commissioners are responsible to the Assembly now?

[387] **Mr Davies:** The current commissioner framework that we have is that they are responsible to the Welsh Government. I believe that a review of the children's commissioner's role is currently under way. I know that there are views about the commissioners' responsibility to the Assembly. There may be a point to look at in respect of whether the Assembly should have a role in appointing the commissioner, but I would endorse David's point earlier in that I think that, in terms of an ideal model, the commissioner should be responsible to the Assembly. However, there may be a way to create a midway point on that.

[388] **Alun Ffred Jones:** I have a couple of questions. The Minister was very persuasive in saying that the public service boards, the local goals and the freedom for them to have their own priorities were very important, so how does that fit in with national indicators?

[389] **Mr Fitzpatrick:** If I may make one point, those local freedoms must be within the framework. So, the outside rules are that it has got to be within a structure of sustainable development and, within that, you can then see—

[390] **Alun Ffred Jones:** However, if you have national indicators, you have indicators; they are absolute.

[391] **Mr Davies:** I would suggest that, in terms of the requirement for a public body to demonstrate that it has maximised its contribution towards the achievement of the goals, the process would need to be aligned to the process of the local determination of priorities. There needs to be an interconnection between the two. So, I would certainly argue the importance of the connectivity between the national goals and the local wellbeing objectives.

[392] **Alun Ffred Jones:** The Auditor General for Wales has made a number of points. First, he says that there has been an underestimate of the cost for the auditor general—quite a substantial underestimation. He then makes specific reference to his role in auditing and says that there needs to be a change. He has also suggested that there should be a principles-based approach, rather than one based on goals, saying that that would be preferable. Can you comment on the three points, please?

[393] **Mr Davies:** I have been commenting in respect of the importance of the Wales Audit Office function in the Bill, and I think that that is an area where there is some concern and potential for strengthening. On the process that the auditor general sets out, the principles point is one that I have stressed as well, namely that it needs to be linked to principles set out in the Bill. That needs to be a strong element of the Bill. However, I also agree that we need to be focused on outcomes, and the outcomes represented through the goals and the measures. In terms of the cost point—

[394] **Alun Ffred Jones:** Are the outcomes based on the goals?

[395] **Mr Davies:** The outcomes would be based absolutely around the measures that we are looking to achieve or that represent achievement of the goals—

[396] **Alun Ffred Jones:** When you talk about measures, you are talking about indicators, are you?

[397] **Mr Davies:** Yes. If we are looking at, to use the jargon—this is awful—population measures, which are the measures of progress for the whole country—. We have to be careful about the mix of language here, absolutely, because I have been mixing 'measures' and

‘indicators’, meaning the same thing, essentially. The Bill will require the Government to set—I think that the wording is ‘indicators’ as opposed to measures. That is the key point of the outcome point, where you are trying to focus on the outcomes, which the Bill does in its focus on the indicators.

[398] The point that I would just make on the cost is that the cost associated with the introduction of this Bill is more about the costs of the culture change that is required in organisations. That is a necessary cost if we are really going to achieve what we want to achieve. Otherwise, we will get what we have always had. There may be initiating costs, as in the case of the Wales Audit Office, in terms of ensuring that it is able to fulfil the requirements of the Bill, but you should not see this as being a bolt-on process. Any costs are around enabling a culture change within organisations in order to embed sustainable development. So, I would be clear that this is not about putting additional costs on organisations. Those costs would be inherent in a management process anyway. What we are creating is a common framework against which the public sector operates. So, the costs of developing that are necessarily costs of management development within organisations.

[399] **Mr Fitzpatrick:** With regard to implementation, people quite often realise that, by implementing activities around sustainable development and the framework towards sustainability, it is cheaper in the longer term; it saves you money. That is the argument that we have been pushing towards the private sector—unconnected to the Bill—and it works. It is an open door, and people say ‘We want to do this because it saves us money, let alone that it is a good thing’. That is a very powerful point that this Bill can put across to the public sector.

[400] **Mr Davies:** That is very important.

[401] **Alun Ffred Jones:** I do not believe that I have seen any indication that people think that it will be cheaper, but I understand what you are saying.

<p>[402] Diolch yn fawr iawn, Peter Davies a David Fitzpatrick, am ymddangos o’n blaenau ni y bore yma. Diolch yn fawr am eich tystiolaeth. Cawn egwyl yn awr.</p>	<p>Thank you very much, Peter Davies and David Fitzpatrick, for giving evidence to us this morning. Thank you for your evidence. We will now take a break.</p>
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*Gohiriwyd y cyfarfod rhwng 12:26 a 13:27.
The meeting adjourned between 12:26 and 13:27.*

Bil Llesiant Cenedlaethau’r Dyfodol (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 4 Well-being of Future Generations (Wales) Bill)—Stage 1: Evidence Session 4

<p>[403] Alun Ffred Jones: Gwnawn ailymgynnull fel pwyllgor. Byddwn yn derbyn tystiolaeth y prynhawn yma gan Gymdeithas Cyfraith Amgylcheddol y Deyrnas Unedig, a bydd tri thyst o’n blaenau. Maent wedi cyrraedd yr adeilad, felly yn syth pan fyddant i mewn yn yr ystafell byddaf yn gofyn iddynt gyflwyno eu hunain, ac wedyn byddaf yn gofyn i un ohonoch chi agor. Pwy sydd eisiau dechrau? A oes rhywun eisiau cynnig ei hun?</p>	<p>Alun Ffred Jones: Let us reconvene as a committee. We will be receiving evidence this afternoon from the UK Environmental Law Association, and we will be joined by three witnesses. They are in the building, so as soon as they enter the room I will ask them to introduce themselves, and then I will ask one of you to open. Who would like to kick off? Does anyone want to put themselves forward?</p>
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[404] **Jeff Cuthbert:** I do not mind kicking off. I have a question on the definition of sustainable development.

[405] **Alun Ffred Jones:** I will probably start with that one myself.

[406] Good afternoon and welcome. I hope you have had a chance to catch your breath. I welcome you to the committee, and we look forward to hearing your views. Perhaps I could ask you, to begin with, to introduce yourselves and your positions, and then we will kick into questions straight away.

[407] **Professor Lee:** Thank you. I am Robert Lee and I am a professor from the University of Birmingham, although I live within a mile of this building.

[408] **Dr Jenkins:** I am Dr Victoria Jenkins. I am a senior lecturer in Swansea University.

[409] **Dr Davies:** I am Haydn Davies, and I am acting director of research at Birmingham City University.

[410] **Alun Ffred Jones:** There you are. Thank you. In your submission, you suggested that the Bill as it is presently formed is too narrowly focused and misses out on the international impact that Wales could and should have, and that this should be incorporated in the Bill. Could you expand on that and explain your thinking? What changes should be made to the Bill?

[411] **Professor Lee:** Thank you, Chair. First of all, it would be wrong not to begin by commending the Assembly on the introduction of the Bill, and commending the Welsh Government for the work so far.

13:30

[412] It is great to see a Bill that promotes sustainable development. Of course, it is very innovative, and not just in the UK, but around the world. There is an irony attached to this Bill in the sense that, of course, the Government of Wales Act 1998 as originally conceived had that commitment to sustainable development. It was not a commitment that was facing Northern Ireland or Scotland, because of the greater primary legislative powers available to those devolved administrations. However, it has allowed Wales to make an early start on this agenda, and it is great to see that early start lead to primary legislation.

[413] However, you are correct, that we do say that we worry about the Bill in certain respects, particularly in relation to, I suppose, environmental outcomes, which we see as being the key to the wider wellbeing goals that are enshrined in this legislation. The United Nations high-level political forum has been working on sustainable development goals in an international context. It makes the point, which I think has been made by others in the consultation, that measurable outcomes are fairly important if we are to further the cause of sustainable development. So, the absence of specified outcomes would be one issue of concern for us.

[414] We think that the Bill would be more credible and more noteworthy, and would position Wales much more strongly in the international sphere if there were more targeted outcomes in that manner. There are a number of issues, with climate change an obvious example, as other consultees have said, but also the protection of biodiversity, and general issues of food, water and energy security, which are worldwide issues. I think that the whole notion of sustainable development is that it does things on a local level that are globally important. It is that global dimension, I think, that we worry is slightly silent here.

[415] The Stockholm declaration, which, as a matter of international environmental law, is probably a foundational document, suggests that it is the duty of every nation state to further

sustainable development. That, of course, is not in the interests of the nation state itself, but it is in the interests of the planet as a whole. So, the United Kingdom Environmental Law Association would be pleased to see stronger reference to those rather bigger global issues, which we can play our part in addressing. In particular, perhaps, the commitment that appeared to be in 'One Wales: One Planet' of consuming no more than Wales's fair share of resources could appear much more prominently than it does in the legislation as we have it. I will stop there, Chair.

[416] **Alun Ffred Jones:** Diolch yn fawr. **Alun Ffred Jones:** Thank you very much.

[417] **Jeff Cuthbert:** I thank our witnesses for the paper. I noticed that, in terms of the definition of 'sustainable development' at the beginning of your paper, you say that you are suggesting a form of words, but that is the form of words that is in the 'One Wales: One Planet' agreement. Currently, what is in the Bill, of course, is the Brundtland declaration. You might want to develop, time allowing, why you feel that Brundtland, in this case, is not adequate. I agree with you that we need to have positive, measurable outcomes. There is quite a bit in the draft Bill, as it is now, that states that Ministers 'must set' indicators for a whole range of issues. There are currently sustainable development indicators that are in force, but they need to be revised to ensure that they are up to date and current.

[418] However, the proposal is not to publish the indicators themselves, which could be covering a wide range of activities, on the face of the Bill, but to make clear references to the fact that the indicators must be developed and published, and then it is up to the various public organisations to set out their plans to meet those objectives. You do not think that that is strong enough. Am I understanding you correctly?

[419] **Professor Lee:** I will just respond very quickly and then I might ask my colleagues to give their views as well. If one imagines a piece of legislation that is going to deal with sustainable development, it might stretch, on one hand, from process—that if we have a certain process in place then things may get done—to substantive goals. Again, if I go back to the precursors of this Bill, we did talk, and the explanatory memorandum of the Bill still does talk, of putting sustainable development at the heart of Welsh Government. I noticed that, in her response, Professor Ross talked about the symbolism of legislation. I do not think that symbolism is unimportant as a statement of what we are about in Wales, and I think that it might be better to have those stronger symbols and stronger commitments enshrined in the primary legislation than somewhat contingent on what will follow. I also think, on that continuum between process and substance, we are very much at the process end. We are very much at the process of, you know, writing reports and consulting on things. Speaking personally, I might prefer that there was rather more substantive content. I will ask Tori to deal with the definition question.

[420] **Dr Jenkins:** I will just answer the point about the question of the Brundtland definition and our support for the definition in 'One Wales: One Planet'. You have the common aim, which states that we want to improve wellbeing, and then the Bill says that we will achieve that by adhering to the principle of sustainable development. Then, that reference is to the Brundtland definition, which states purely that it is about ensuring that we can meet the needs of future generations. There is nothing wrong with that, in a sense, except that we are not linking that to the need to ensure that there are natural resources available for the development of future generations, and it is that that we wanted to emphasise: the fact that, today, we need to ensure that development is within our environmental limits, so that, in future, there are natural resources for future generations. We did not feel that the definition that is in the Bill at present is sufficiently clear on that. That is why we preferred the definition in 'One Wales: One Planet', because it does actually refer to environmental limits as well as, as Bob said, to wider issues. So, that is why we preferred that definition.

[421] **Llyr Gruffydd:** I just wanted to pick up on some of the comments that you made in the paper about some of the ‘loose language’ in the Bill, as I think you described it, such as ‘seek to’ do. Could you elaborate on that? You would obviously change the language, I presume. Would you strengthen it substantially?

[422] **Dr Davies:** Yes. We fear that, at the moment, the vast majority of the phrases in the Bill that give rise to a duty relate to procedural duties: ‘You will set objectives’, ‘You will set this, that and the other’. There are only five sections of the Bill, I think, that set what you might call substantive duties, and even then, they are couched in aspirational terms rather than exhortatory terms. So, you have ‘will seek to’, for example. Well, you can seek to do something without having any serious intention of actually achieving it, and the difficulty, I think, will be that that burden may be too easy to discharge. Of course, that then puts a huge amount of importance on the personality of whoever the commissioner is. Ultimately, if public bodies are going to be held accountable under this, I think that they need to be held to something rather stronger than merely ‘seeking to’. We have made suggestions for something slightly stronger, such as ‘fostering the achievement’ of these goals, rather than simply ‘seeking’ to bring them about. This is a semantic argument, obviously, but, in our view, from looking at other similar measures elsewhere in the world, that kind of language is associated with having slightly more teeth than what is currently in the Bill.

[423] **Llyr Gruffydd:** Okay, and ‘to consider to’ and ‘take account of’, so it is all that kind of language that permeates throughout the Bill.

[424] **Dr Davies:** Indeed.

[425] **Llyr Gruffydd:** You also suggest that there are difficulties presented by the use of the word ‘reasonable’, and I think that there are three particular instances that are of concern to you. Could you elaborate?

[426] **Dr Davies:** I think that the bit you are referring to is where ‘reasonable steps’ must be taken. This is one of these perhaps more substantive duties. Having read the Bill at some length, I am not quite clear as to who it is who is doing the assessment of what is reasonable. The problem with using the word ‘reasonable’ in this context is that, to most lawyers, it suggests issues of administrative law: Wednesbury reasonableness and so on. So, are we talking about it in those general terms, or is there a specific person or entity that will decide whether these steps are reasonable, or do the public bodies themselves decide whether they are reasonable? We expressed our particular view on which of those it should be, but at least it should be made clear exactly what is meant by ‘reasonable’ and who, crucially, is assessing what is reasonable and what is not.

[427] **Llyr Gruffydd:** Forgive me as a layman in terms of these legal issues, but is there not a danger that you try to over define every single word that appears in legislation?

[428] **Dr Davies:** Indeed there is, but in this particular case the use of that word brings with it the opposite danger in that it means things already to certain members of the professional society, and, if you mean something else, it needs to be made clear exactly what is meant by it.

[429] **William Powell:** Another aspect where your association is critical of the Bill as it stands is around the status of the commissioner. Particularly, you advance the view that the commissioner would be stronger if he or she were to be appointed by the Assembly rather than by Welsh Ministers, as is currently the case with the other commissioner positions. Can you elaborate on the thinking behind that and the danger of the commissioner potentially being something of a prisoner of Welsh Government?

[430] **Professor Lee:** I am sure that we would all agree that what will matter is that the commissioner is independent, impartial and free from political interference. We simply thought that that might be better achieved—both for the commissioner and possibly for the advisory panel—if decisions, for example, in extremis, to dismiss the commissioner, were to be taken by the Assembly rather than by the Ministers. Therefore, we thought that the appointments, in line with sections 16 and 22 of the Bill, were perhaps better made by the National Assembly for Wales. Coming back to symbolism, it sends out something of a symbol of an all-party commitment to sustainable development and wellbeing for future generations.

[431] **William Powell:** Do you also believe that the power to nominate members of the advisory panel should be in the gift of the commissioner, to ensure that it is not too much of a panel of usual suspects, who might be rather compliant with Government thinking?

[432] **Professor Lee:** I would say two things about that. As anybody who has served on a body like a commission may realise, there are times when you do feel that a particular body of expertise is missing. Already, as we go into this, we would say, and we did say in our paper, that perhaps there is an absence of representation in relation to certain areas—local government, the voluntary sector, and, indeed, I would say perhaps even the economy.

[433] **William Powell:** Finally, do you have any further comments on the relationship between the FG commissioner and the auditor general, given the absolutely central role of that position within wider Welsh society?

[434] **Professor Lee:** Yes. Some of this, again, is linguistic. The language used in relation to the commissioner is to ‘seek’ to safeguard. We would favour a strengthening of that language, and a word such as ‘fostering’. As lawyers, we have big issues about accountabilities, as you might well guess, and we tend to think of accountability as legal accountability. We, on the whole, would favour a stronger framework of accountability within the Bill as a whole, and a clarification, in a sense, of the boundaries between what it is for the commissioner to do and what it is for the auditor general to do would not be unwelcome.

13:45

[435] **Julie Morgan:** You say in your evidence that a particular weakness is a failure to state where ultimate power for ensuring implementations of local wellbeing plans are effectively carried out lies. What would you suggest should be put in the legislation to strengthen the direction of where these plans should be carried out?

[436] **Dr Jenkins:** In relation to the plans, what we felt was that this process is about putting on a statutory footing what local service boards are already doing, and some of them very well. So, it was important that that process should be a local process and that it should be something that was within the control of local government and for which, ultimately, local government was accountable in leading. So, we felt that there is a provision there; that local government scrutiny committees should be able to scrutinise the work of the public service boards. However, we really felt that there should be a specific duty that local government scrutiny committees should have overall control or scrutiny in ensuring that the plan would comply with the principle of sustainable development. That is our view.

[437] **Julie Morgan:** Has that view been tested with local government at all, in terms of how it would feel about that? Have you discussed it with local government at all?

[438] **Dr Jenkins:** We have not, no. As an organisation, we have not.

[439] **Mick Antoniw:** I would like to take you back to the construction of the Bill. We have

the definition, we have the goals and the elements with regard to enforcement. You have made some quite clear comments about what your thinking is on the definition, in terms of sustainability, and, of course, this Bill is a slightly newer concept insofar as we have talked about sustainability in a broader environmental but socioeconomic context, which is a difficult balance.

[440] I would like you to look at the goals, because, in your paper, although you refer to them, it is a little light on those because those, effectively, arise out of the definition—I think that it is section 6(2)—of the wellbeing goals. We discussed these in earlier sessions, as to their adequacy and how specific they are, and you make a point with regard to ‘One Wales: One Planet’, in terms of the socioeconomic elements of those, which do not appear within the goals in any clarity. Do you have a view on the role of these goals and their current adequacy, particularly in terms of measurement?

[441] **Professor Lee:** I will go first and then I will hand over to Dr Davies.

[442] The first thing to say is that, from a lawyer’s point of view, this is quite an interesting piece of legislation. It is not necessarily usual to see a piece of legislation that starts with its purpose up front. There is a lot to be admired about the way that the Welsh Government has gone about putting it together.

[443] In relation to the goals, I have a number of comments. The first is that I am not sure, necessarily, whether it is always that meaningful to people. What I mean is I am not sure that if we went out on to the street now and asked, ‘Would you like a more resilient Wales?’ that people would know what we were talking about. So, that is one issue.

[444] The other thing is that, if I were a public body, I might worry that some of these goals will not be achievable all at once, or that some might even compete with each other. So, what happens when having a more resilient Wales begins to impinge on having a more prosperous Wales and how might we determine that?

[445] Also, there is an issue of the contingency of language, such as ‘having a more equal Wales’. I would suggest that we really want to strive for equality, do we not? It could be much more straightforward in its language, but I will hand over to Haydn.

[446] **Dr Davies:** Yes. With regard to that particular example of ‘a more equal Wales’, ‘a Wales of equal opportunities’ is perhaps more achievable, but, unless there is some serious social engineering under prospect here, making everyone more equal may be a bit ambitious, I suspect. However, more widely than that, there are some issues with the use of the term ‘well-being’ as, in this case, almost a proxy for sustainable development. Elsewhere—elsewhere in the UK for that matter—the term ‘well-being’ tends to be a much narrower concept. So, if you look at the Office for National Statistics, it publishes wellbeing indicators on a regular basis and there is this wheel of wellbeing that you can print off every four months, and there are a set of things that are measured, some of which relate to the environment, but most of them relate to socioeconomic matters. In my view, wellbeing is a subset of the things required to achieve sustainable development. It is not a proxy for it. If you look at the Department for Environment, Food and Rural Affairs report on sustainable development indicators published in July last year, you will find all of the wellbeing indicators in there, but, in addition, there are a load of additional sustainable development measures, particularly environmental ones, which suggest that sustainable development is a bigger idea than simply wellbeing.

[447] So, my concern is that unless the secondary legislation, associated guidance or whatever it is is very explicit that Wales is embarking on a slightly wider use of the term ‘well-being’ here, there is a danger that it will be interpreted solely on socioeconomic lines at

the expense of the environmental. I do not think that future generations will thank us for leaving them with good social and economic instruments and vehicles if the environment within which they are supposed to operate is inadequate for the purpose. So, I think, to some extent, the term ‘well-being’ is a bit of a loaded term and there is a real danger that it will be interpreted in a way other than that intended by the drafters of the Bill.

[448] **Mick Antoniw:** I do not know whether you heard any of the earlier debate, but we led on to the issue of indicators and we were told about the 44, with which I am not particularly familiar. However, those indicators obviously flow from the goals that arise out of the definition, yet there is nothing in the Bill that does anything to tie down the indicators or the process for ensuring that they are capable of delivering it. Effectively, it hands everything over, I suppose, to Government, in terms of saying, ‘We have a Bill that says we are going to be really good on the environment and socioeconomic matters and we will set our indicators, et cetera’. Do you see any difficulty in the legislation with the fact that there seems to be a sort of lacuna in the three things coming together?

[449] **Dr Jenkins:** *[Inaudible.]*

[450] **Professor Lee:** As Victoria was just saying to me, I think that that is where outcomes come in. So, if there are stated outcomes or outcomes to drive towards, that is how we can tie goals to indicators and we begin to get something that is measurable. That, I think, is the link that is needed. At the moment, it is not to say that it would be impossible to create that link, but, as I think you are indicating, that link is not there on the face of the Bill, as we read it.

[451] **Alun Ffred Jones:** Could I ask you to explain the relationship between an outcome and an indicator?

[452] **Professor Lee:** An indicator is something that we use as a proxy; it is something that is a measurement and so it is something that is usually quite concrete and tangible. For example, in socioeconomic terms, it might be the average wage in mid Wales. It is something that we can pin down and we can see whether that is getting better as time goes by. That indicator is telling us lots of things about these goals and whether they are actually being fulfilled.

[453] **Alun Ffred Jones:** Are the outcomes the same as the goals? I am getting very confused here.

[454] **Professor Lee:** No. I do not think that the outcomes are quite the same as the goals, because I think that the outcomes take us further on than the goals. So, again, the outcomes are more concrete than just, for example, ‘A healthier Wales’. ‘A healthier Wales’ is a terribly difficult thing to know or to measure, but we could have outcomes that might be expressed in other public health terms that are much more concrete.

[455] **Mick Antoniw:** If I can take you back again—I know that we are coming full circle, but there is almost like one of those charts, is there not, which links them back together? I want to go back to the goals again. So, when we have ‘A prosperous Wales’, it seemed to me that it would be logical to say a ‘prosperous and socially just Wales’, and these are objectives and, of course, their own balances. It then talks about the carbon emission economy et cetera, but then makes no mention in terms of, I suppose, providing decent employment opportunities and conditions for a modern skilled workforce et cetera. I am looking at some sort of suggested drafts that I have been putting together. The point that I am making is that there is a gap in terms of what it actually means. It is a bit like the ‘We love the NHS’ sort of thing, and everyone agrees and we are going to work towards that et cetera, but how would you actually evaluate it? In terms of measurement, do you see a problem with the generality of the goals? Are they too general, and would there be benefit from trying to make them a bit more positive

or more specific in terms of what you are trying to achieve?

[456] **Professor Lee:** I will hand over to Haydn, but I will just say something very quickly, if I may, before I do so. I am not sure that, when the description of the goals was put there, attention was given to the very fact that you are now raising. So, in other words, I do not think that we put those descriptors there thinking, ‘These are good descriptors because they are capable of being turned into outcomes with clear indicators that will tell us how well we are doing’. I do not think, actually, that that is what has been happening. Some of them might work. We could try to look at how we are doing with carbon, for example, but I do not think that those descriptors are done in that way.

[457] **Dr Davies:** I think that, to some extent, the descriptors and the goals themselves—at least some of them—already map quite well to what is already being measured. In terms of sustainable development, I think that the Welsh Government is already using the indicators published by the Office for National Statistics. In the report here, from August this year, those data, which are collated by the ONS, have been used against things that are very similar to these goals. I do not think that there is a particular problem with measurement. Some of the things that you need to measure are already being measured. The difficulty is setting some sort of threshold to decide whether you are actually improving. Even more difficult is making sure that you are improving on all three pillars of sustainable development simultaneously.

[458] The other question, then, of course, is that the duty as it stands, as I understand it, applies mostly to the setting of those objectives and seeking to achieve them. What if you do not? Well, the commissioner can make some recommendations. Those recommendations can be ignored by a public body if they can give good reasons for doing so. What happens then? So, if you like, I think that the setting of goals and the measuring of things related to those goals is not so much the issue as to deciding what threshold for those measurements you should set.

[459] **Mick Antoniw:** That comes onto the third point, which is the enforcement issue, and that is that we are creating a commissioner with a role. The problem that I see is this: what does the commissioner do? He is not there to do things off his own back. He is there to—

[460] **Joyce Watson:** Or she.

[461] **Mick Antoniw:** He or she, I beg your pardon. The person is not there to carry out functions off their own back and what their whims are, but to follow the objectives of the legislation and what it wants to achieve. Do you think that that clarity is strong enough between the commissioner—? That is, if we had a commissioner now, would you be able to look at the Bill as it is and say, ‘Right, this is what I have to do, et cetera?’, or will he basically start pulling his hair out and say, ‘What on earth do I—’.

[462] **Alun Ffred Jones:** He or she.

[463] **Mick Antoniw:** All right.

[464] **Antoinette Sandbach:** Just use the word ‘she’ and you will keep everyone happy.

[465] **Professor Lee:** I think that there may be a danger of two things. The first is that the commissioner becomes reactive, so the commissioner just takes annual reports and works on the basis of that, which is not a terribly forward-looking and perspective way of proceeding, but it is safe. I think that the other danger is that that then limits the role of the commissioner. What can the commissioner do at the end of the day? The commissioner can merely say, again through annual reports, ‘Well, it’s all rather disappointing’, and then what?

[466] **Mick Antoniw:** So, should she have further and clearer guidance?

14:00

[467] **Dr Davies:** It would be nice to see some form of sanction. I am not talking about legal or political sanctions, or whatever. As it stands, section 20 of the current Bill says that there is a duty to follow recommendations. Now, as a lawyer, reading through what follows, I cannot see anything that is a particularly enforceable duty, either politically or legally. They can make recommendations, they can decide to follow an alternative course of action and they may well do so. Well, what is the commissioner for in that context? If their recommendations can be effectively ignored—I am not saying that it is going to happen routinely, but, if it does happen—it seems to me that that is the end of the process. The commissioner's role has been effectively undermined.

[468] **Alun Ffred Jones:** Is your question on this point, Antoinette?

[469] **Antoinette Sandbach:** No.

[470] **Alun Ffred Jones:** Okay.

[471] **Mick Antoniw:** Thank you very much, that is helpful.

[472] **Alun Ffred Jones:** Antoinette is next.

[473] **Antoinette Sandbach:** Well, I might actually take up that point. If you are not talking about a legal sanction, what sort of sanction would you like to see in there?

[474] **Dr Davies:** Well, I suppose that it would have to be what, in this day and age, we would have to call some sort of 'governance sanction'. They may be powers that would ultimately have some sort of fiscal penalty, within the operation of government, rather than going through the courts. I am not envisaging for a second court action here because that is likely to be highly counter-productive. However, it seems to me at the moment that, if a public body decides that it does not wish to engage with the commissioner, it can give a few reasons and it will be business as usual.

[475] **Antoinette Sandbach:** Do you think that the commissioner should have the power to request documents and require a public authority to produce—

[476] **Dr Davies:** Yes.

[477] **Professor Lee:** We do say, actually, in our submission that those substantive duties—those investigative and disclosure powers given to the commissioner—seem particularly weak.

[478] **Antoinette Sandbach:** Right. So, how would you amend them?

[479] **Professor Lee:** I would simply clarify them. I would clarify them, actually, I think, in the body of the legislation. I think that it is a task for primary legislation.

[480] **Antoinette Sandbach:** So, that needs to be an amendment to the Bill.

[481] **Professor Lee:** I would have had a section to that effect.

[482] **Antoinette Sandbach:** So, you would effectively outline the investigatory powers of the commissioner and the requirement on a public body to produce information if requested to

do so by the commissioner—the requirement to produce notes and minutes of meetings.

[483] **Professor Lee:** And to hear from people.

[484] **Antoinette Sandbach:** So, a requirement to give evidence if requested. A power to compel witnesses—

[485] **Professor Lee:** Well, we may not want to formalise it that strongly, but, yes, the commissioner should have a right to call people before him or her.

[486] **Alun Ffred Jones:** Would that include Ministers?

[487] **Professor Lee:** Yes, including Ministers.

[488] **Alun Ffred Jones:** Do you want to go on, Antoinette?

[489] **Antoinette Sandbach:** Yes, please. You have expressed concerns about the way in which ‘public body’ has been defined.

[490] **Dr Davies:** Only in the sense that the criteria that are laid out in the explanatory memorandum for selecting the current list, which is essentially a closed list—. I mean, that list is clearly far smaller than it could potentially have been if those criteria were applied right across the board. There do seem to be one or two quite surprising omissions from the list as it stands. In particular, higher education institutions are omitted. As far as I can see, they appear to fit into the criteria anyway. Some higher education institutions are in a much better position to embed sustainable development in their decision making at this moment in time than a lot of the other public bodies on that list. Just across the Bristol channel, the University of the West of England, for instance, has already embedded sustainable development into its strategic decision making. It does seem slightly odd that institutions with that degree of expertise in this area, which could act as exemplars for the rest, are omitted from the list. I could see that they could be added to the list. The powers are there for them to be added. It just seems rather odd that they are not there to begin with.

[491] **Professor Lee:** If I may, Chair, I will ask Victoria to say something, but I would worry about a two-speed process in that, if you select only certain of your public bodies to be subject to this legislation, are you not going to get quite simply a two-speed public sector in the way that it addresses these issues?

[492] **Alun Ffred Jones:** May I just say that we have five minutes left? If you wish to say something profound, you have five minutes to do so. [*Laughter.*]

[493] **Dr Jenkins:** I was just going to say that I think the point we are making is that the definition of a public body is absolutely fundamental to the success of the legislation, and if you have a narrow definition, that is really going to have an impact on the success of this legislation. Obviously, the wider the definition we can have the better.

[494] Knowing that we have five minutes, may I just say something on the wellbeing goals, which is in our paper but which I do not think we have emphasised here? In relation to the environmental goal, we really dislike the term ‘resilience’ because it suggests that the environment is resilient or should somehow be resilient to the destructive forces of development. We really feel that what we should be doing is maintaining and enhancing our natural resource for future generations and that that really should be on the face of the Bill, because these goals do have a symbolic function. We talked about other issues in relation to them, but there is a symbolic function here and we really think that it is important that this says ‘maintain and enhance’. That would also fit with the environment Bill, which will soon

be coming forward.

[495] **Alun Ffred Jones:** Are there any further questions from Members? This is your last chance, Professor Lee.

[496] **Professor Lee:** Thank you. We are, of course, the UK Environmental Law Association, so it is unsurprising that we stress the environment a little. I do think that the environment of Wales and the ecosystem goods and services that it produces, and, indeed, the environment in its own right—our inherent, beautiful environment in Wales—are very important. I think it gets slightly downplayed in the Bill as the basis for the social and economic achievements that we would like to see coming through. I think that the Bill, quite rightly, I think, on the social side, thinks about issues like wellbeing in terms of people's prosperity and wealth, but that tends to merge the social with the economic and there is a danger that we will end with a two-legged stool and for the environment to somehow disappear from the picture. That would be a pity, given the ambitions of this Assembly, looking forward to things like the environment Bill, the planning Bill and further legislation coming forward. It would be good to see those join together, so as to have a bigger emphasis, from our point of view, on global environmental issues and how they play out in Wales. Also, a bigger emphasis on the importance of ecosystem goods and services for everything that we do would be very welcome from our point of view.

[497] **Alun Ffred Jones:** Diolch yn fawr iawn. Thank you very much

[498] Diolch yn fawr iawn, Dr Jenkins, yr Athro Lee a Dr Davies. Thank you very much, Dr Jenkins, Professor Lee and Dr Davies.

[499] Members, there is time pressure on us, in that a number of you wish to leave at 3 p.m., so the discussion at the end will not take place today. We will have to make space for it perhaps at the beginning of the next session or something.

[500] **Julie Morgan:** I have to leave at 2.50 p.m.

[501] **Alun Ffred Jones:** There you are. That is why I am—.

[502] Right, we will get the next two witnesses in for our final session.

14:09

Bil Llesiant Cenedlaethau'r Dyfodol (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 5 The Well-being of Future Generations (Wales) Bill—Stage 1: Evidence Session 5

[503] **Alun Ffred Jones:** Croeso. A warm welcome to both of you. Thank you for coming in. If you could introduce yourselves, we will then kick off with the questions.

[504] **Professor Baker:** I can go first. I am Susan Baker, and I am professor of environmental policy at the School of Social Sciences at Cardiff University. I am co-director of Cardiff University's Sustainable Places Research Institute, and I also have a royal appointment as professor to the King of Sweden.

[505] **Alun Ffred Jones:** That is interesting.

[506] **Professor Jones:** I am Professor Calvin Jones, of Cardiff Business School—a professor of economics. I am also a member of the Sustainable Places Research Institute at Cardiff University and nothing to do with Sweden at the current time. [*Laughter.*]

[507] **Alun Ffred Jones:** Okay, William Powell will start with the first question.

[508] **William Powell:** One consistent theme running through our sessions today has been a number of concerns regarding the post of future generations commissioner. They start from the very method of appointing that individual, male or female, and also the powers and duties vested in that office. I can see from what you have submitted that you also have some of these concerns. I wonder if you could tease out what you think are the most serious issues that need addressing in that respect.

[509] **Professor Baker:** To me, it would be really important for the commissioner to be seen to rise above any form of party politics. Therefore, the lines of accountability should be more generally construed in such a way that the commissioner does not become embroiled in any form of short-term cycles, where we have issue salience, which rises because that is what is on the agenda for the next election, and then the fall of issue salience, so that the agenda work of the commissioner becomes dictated to or shaped by that cycle of politics. For me, it is really important that a commissioner operates at a temporal scale that is appropriate to what you are trying to do here. If we are trying to promote sustainable development, if we are thinking about future generations and if we go back to the original Brundtland formulation, which is mentioned here, although not by name, that sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs, you have got to have a timeline of perspective, assessment and evaluation of what you are doing that passes over and above all of that. So, to me, a temporal scale of accountability that goes past and beyond electoral cycles is really important.

[510] It is also really important that the commissioner has some form of ability to operate some form of sanctions on those that are held to account under the Bill. They can be what we might call hard sanctions or they can be soft sanctions. Soft sanctions would be something like naming and shaming, hard sanctions would be something more of a regulatory or punishment matter, and, in between the two, we might find sanctions that would fall somewhere between the hard and the soft, which would be medium sanctions like some sort of application of market tools and instruments—for example, some form of financial consequences for behaviour. Without that capacity to have consequences of action—. That consequential role and the application of consequence are really important for the commissioner.

[511] **Alun Ffred Jones:** Julie, was it this on this point that you wanted to come in? I see that it was not.

[512] **Professor Baker:** So, for me, those would be the two critical things. Only then would we be in a position where some form of leadership—. At the moment, there is a danger that the commissioner will become merely a clearing house for accountability, very narrowly understood, and for monitoring what is already given. What really is needed here, because what you are asking is quite ambitious, is a commissioner who can drive forward a leadership agenda.

[513] **William Powell:** So, the appointment of the commissioner by the Assembly, rather than the Welsh Government, is a priority for you and for your colleague also.

[514] **Professor Jones:** I would not disagree with any of that, although this is a wider problem with the Bill in that the Bill is envisaged within electoral timescales, which seems to be, as I said in my evidence, a nonsense, namely that you can, effectively, tear things up at the start of every new ministerial shuffle, career or election. So, I would not disagree with anything that Susan said. The other thing that I am particularly worried about, and I think that this has been hinted at in the earlier evidence, is that, at the moment, there is no capacity for

the commissioner to know what to ask. I do not see or hear the secretariat, the evidence base, the capacity for the commissioner to know—

[515] **William Powell:** The resource issue.

[516] **Professor Jones:** We heard talk this morning about it costing hundreds and thousands of pounds. If this is to be done properly, it should really cost millions and millions of pounds, otherwise it will not be done properly, because we do not have the evidence base currently to know what would impact the wellbeing of future generations in the different spheres that are being addressed.

14:15

[517] **William Powell:** Finally, do you have any specific comments on what the best relationship would be between the commissioner role and the Wales Audit Office and the auditor general, which play such a central role in the wider governance issues?

[518] **Alun Ffred Jones:** If you do not have a view on this, we will skip this question.

[519] **Professor Baker:** We can skip the question.

[520] **Russell George:** With regard to the duties of the commissioner, what specific amendments do you think should be included in the Bill?

[521] **Professor Jones:** I would reinforce all of the evidence that you have had, as far as I can judge, today by saying that I think that the commissioner should have specific duties to call to account public bodies under the jurisdiction of the Bill, to request evidence—verbal evidence as well as written documentation—and to be able to impose sanctions of various natures on laggards, if you like.

[522] **Professor Baker:** It comes back to the issue of the leadership role. There needs to be power to investigate. I know that the issue came up earlier about the need to steer in terms of what future generations and sustainable development is understood to be, but there is a real danger here that anything goes and everything counts. In which case, it is going to be very difficult for a more critical assessment as to what output is being achieved, or, perhaps, to put it another way, what value added is being achieved over and above what is being achieved through other means and methods. So, from that point of view, it is important that the commissioner plays a very clear role in steering the way in which the various levels of government and governance engage with this Bill and understand what it is that the duties actually involve, lest we get to a situation where what we are already doing is now repackaged in a matrix that says that we are now doing something different.

[523] **Russell George:** What about the appointment of the advisory group? Should those appointments be made, in your view, by the Welsh Minister, should they be made by the commissioner, or should there be a mixture of the two? What views do you have on the advisory role?

[524] **Professor Baker:** It is very important that the commissioner is seen to be independent of any party politics. So, from that point of view, the appointment of an advisory board should be construed in such a way that what it does is provide the range and depth of expertise that is needed—

[525] **Russell George:** Who decides who takes on those roles?

[526] **Professor Baker:** From my perspective, it would be ill-advised to give this to any

Minister in power at any one time.

[527] **Russell George:** Would it then rest with the National Assembly for Wales or with the commissioner?

[528] **Professor Baker:** I do not think that it should rest with the commissioner, although the commissioner should clearly be appointed first and then have some say in what it is that constitutes an appropriate level and range of expertise. I think that it should rest with the Assembly and not with the Minister.

[529] **Professor Jones:** I also think that there is value in having voices from outside Wales in this process. Quite often, there is a thin pool sometimes in Wales of talent and decision makers, and perhaps the process of incorporating an advisory board should be something for which we look more widely.

[530] **Russell George:** I have one final question on resource implications. You touched on that point briefly, but perhaps you could expand on that a bit more, because you both expressed concerns in your evidence about that.

[531] **Professor Jones:** I guess that there are two separate elements here. The first is obviously the secretariat. Having engaged quite a lot with the climate change commissioner—the Sustainable Development Commissioner—in the past, that commission struggles with a lack of basic secretarial support, and has to scrape stuff up from other places: it is high-quality stuff, but it is not ideal. More widely, the concern I have is that we are frankly disinterested in Wales in scenario planning, horizon scanning and building an understanding of where we are going economically, environmentally and socially. We have left that to other agencies, such as Westminster, in the past, which have not done it either. We are not currently in a position to give bodies under the frame of this legislation the tools to allow them to juggle sometimes conflicting objectives, across different time frames, to come to an appropriate decision about the policies and interventions. Until we can build that understanding of how the Welsh economy, Welsh society and the environment are responding to outside changes and are responding internally, we cannot expect the people on whom we lay this duty to do anything other than the bare minimum, as has already been suggested, and just do what they are doing now but slightly differently.

[532] **Alun Ffred Jones:** Is your question on this point, Antoinette?

[533] **Antoinette Sandbach:** It is; it is about horizon scanning.

[534] **Alun Ffred Jones:** Okay, and I will then come to Julie.

[535] **Antoinette Sandbach:** I am quite concerned that there is no requirement on the face of the Bill to consider the best scientific evidence that is available, or, in fact, to consider any scientific evidence at all. Is that an amendment that you think should go in, or is there another formula that you would like to see in the Bill that requires public service boards to pay due regard to the best evidence?

[536] **Professor Baker:** I would be hesitant to go down a track that would restrict you to evidence-based policy, because we know that there are also some limitations associated with this. I think that we should certainly go down a track that suggests that account should be taken of exemplars of best practice elsewhere. There is no need to reinvent the wheel; lots of other countries have long-standing commitments to sustainable development. There are lots of very good practices out there that can be drawn down. In that context, I agree that the Welsh situation needs to be seen in a broader European and United Nations perspective. Yes, there should be an obligation to take account of best practice. There should be an obligation to

be familiar with and to review or to provide evidence about scientific knowledge, but, again, we need to be careful because there are other forms of knowledge that are equally important. There is traditional knowledge, experiential knowledge, and there is the knowledge of communities that might not be construed narrowly as scientific, but which increasingly, particularly under the Convention on Biological Diversity or other UN initiatives, is being obliged to be taken into account. So, it will be important for Wales not to be seen as being out of sync with those kinds of international developments and the obligations that other forms of scientific knowledge be taken into account.

[537] At the same time, I think that there are also other examples of very good practice out there, with respect in particular to reflexive forms of governance. At the moment, the way in which we are looking at how it is we understand the output of the Bill is very narrowly construed to being related to pre-existing objectives or aims. If we look, for example, at the Dutch case and the way in which the Dutch are managing energy transitions, we can see that they have put in place an array of very interesting new practices about reflexive governance. They take us way past the idea that what we do is evaluate whether we have met our aims and objectives to actually asking for an ongoing reflection about the appropriateness of those aims and objectives in the first place. I think that we are increasingly aware that an awful lot of public money is being spent undoing the unintended consequences of prior policy decisions, and that this is an inordinate waste of public funds. You are nodding away there in—

[538] **Antoinette Sandbach:** Well, I am half-Dutch, so I appreciate that reference. I do not know whether Professor Jones had a view.

[539] **Professor Jones:** I would generally agree with that. The problem is that we have to undo quite a lot of target-oriented, rigid—. The first thing that happens when you move away from targets is that people say, ‘You have moved away from targets because you can’t hit the target’ and you end up in a position where you cannot have the space to be reflexive and reflective and say, ‘Actually, do you know what? The situation has changed, yes, but within a more grown-up environment’. I come back to my point as well that it is a circus show and we do not even know what the Welsh economy is doing, and that is the easiest bit. We do not even know how the Welsh economy works, let alone the rest of it. There is also a requirement just for some better numbers to underlie some of this, in addition to what Susan said.

[540] **Antoinette Sandbach:** We have heard a lot of criticism about there not being targets and indicators on the face of the Bill, but your evidence would be that actually, that is fine, because it creates the space for this more reflective approach.

[541] **Professor Baker:** It is a double-edged sword. If you have targets and timetables, you can please a lot of policy makers, and you can please the public because it is seen that you have concreteness in what it is that you are doing. It can also give the illusion of precision where you actually have none at all. You then have the danger, as happened with the CBD, of not reaching those targets and timetables and then scrambling around to try to justify and explain what it is that you are doing. So, that is a question to which there is no ready-made answer. I cannot give you an answer to whether targets and timetables are good or bad; they have been shown to be both. So, it is a mature decision that has to be made about what will work in this case.

[542] **Professor Jones:** The other thing is that there are already a number of targets—the 3% per annum climate change reduction—that we are signed up to. To have those in here would seem not beyond the wit of man, really. Whether it is poverty reduction or climate change, there are things that are not going to change and are going to be relevant across a wide variety of institutions.

[543] **Julie Morgan:** Some of the things that I wanted to raise have been covered now, but

you are very gloomy about the Welsh context in which this Bill is being put forward, particularly in your evidence, Professor Jones. I wondered whether there was anything that could be put in this Bill that would help galvanise and address some of the issues that you have raised already and that you have also put very clearly in your evidence.

[544] **Professor Jones:** Some of the supporting work around the Bill, such as ‘The Wales We Want’, is one example of a start towards building a civic society that is truly an audit mechanism and something that constrains and challenges the status quo, if you like.

[545] It is very difficult to say this without being prejudicial in terms of what the current Government does. My impression is that, certainly over the last four or five years, there has not been an openness to take evidence to develop policy, leaving aside Susan’s point about whether we take too narrow a range of evidence. From my perspective and that of some of my peers, to whom I have talked, there has not been a willingness to take evidence and to change policy based on that evidence from the current Government. That is the gloomy situation that I am talking about, quite apart from the kind of siloing of Government, which is very widespread—it is not just in Wales, it is everywhere.

[546] This Bill could be a mechanism for encouraging and, indeed, enforcing that kind of approach, but for that to happen, it has to be a very different Bill. So, one can imagine a Bill that said that every policy implemented by a public body in Wales has to pass a climate target and if the policy increases the emissions of climate gasses in a devolved area, it will not happen. If that was in this Bill, it would change behaviours, because then Ministers would not go down paths that would increase the level of climate emissions in devolved areas. However, that is a very different Bill to this one, which is a very procedural—

[547] **Julie Morgan:** Is that the sort of Bill that you would be looking for?

[548] **Professor Jones:** Absolutely. Obviously, the Minister in charge does not see this as an environmental Bill, but equally, as previous evidence and witnesses have said, the environment underpins everything else that we have in Wales. So, I think that this should be an environmental Bill, because without that quality environment, we cannot have a quality economy or society.

[549] **Julie Morgan:** What about Professor Baker?

[550] **Professor Baker:** I think that it would be too simple to just say that we could have a discussion here of doom and gloom about the Welsh economy, because that is just too easy to do. We can all be doom and gloom about everything. What is more important is that we retain the ability to act.

[551] What you have in front of you is potentially a very challenging, very exciting and, indeed, innovative Bill. So, from one perspective, we need to be aware of the fact that that Bill brings us up against very serious challenges about how it is, in an economy that has all kinds of problems with respect to capacity of the system, public administration and all kinds of conflicting demands on the public purse, that we can actually move forward. One way that we can move forward is to situate ourselves more clearly in relation to what others are doing elsewhere and draw down from that—for example, the United Nations, which has a whole package of indicators and a whole series of briefing documents about what wellbeing is and how it is that we might go about implementing and evaluating it and how it is that we might go about stirring civil society to act.

14:30

[552] We can look at the European Union and we can find similar evidence, although we

can be critical of the European Union as well. However, we can find similar evidence about good practice, about how it is, for example, that we have a long history of 25 or 30 years of sustainable development planning in many of the leader environmental states of the European Union. We have a history here, for example, of LA21 and LA21 engagement. So, in one sense, it is a fantastic opportunity to put in place some system in which institutional memory can be maintained, because there is a constant clearing of the deck and beginning anew without learning from the fact that, actually, that has been done before. We all suffer from it; we get a new commission in place, we put that in and then we break that up, we set up another one and then we break that up and set up another one. We fail to remember that, in fact, we did that before, and it had these advantages and those advantages. So, from a governance perspective there is a very clear need here to put in place mechanisms whereby institutional memory can be maintained and retained and brought to bear on the system.

[553] We can also draw in a wider understanding of what stakeholders are. For example, I come from the university, and we are very aware of the fact that there seems to be no clear-cut engagement here with the higher educational institutions. In these institutions we have bodies of research, bodies of evidence and bodies of knowledge about an array of different things that we are more than willing to share if the right platform is put forward whereby we can share it. We also have an array of very committed people acting from the bottom up that we can bring to bear on these solutions as well. It is a more open and participatory process that brings in different stakeholders with a bigger understanding of what the role of stakeholders is.

[554] **Alun Ffred Jones:** So, how would what you have been talking about now affect the Bill, potentially? What are you suggesting about—

[555] **Professor Baker:** I am suggesting that the Bill would need to have, running parallel with it—in fact, it should be recognised in the Bill as well—some administrative, institutional engagements and upgradings or reform that help to bring this Bill to fruition.

[556] **Professor Jones:** Specifically on that point, we have just inaugurated, based in Cardiff University, the Public Policy Institute for Wales, which is an example of trying to build capacity in the higher education system for specifically Welsh issues, because, sometimes, we do not focus on Wales as much as we should. It seems to me, given the lack of capacity in both science and engagement, in Susan's terms, in the policy process in Wales, that leveraging our existing resources—. I am thinking of a very long-term structure, because PPIW is not so long term—we have C3W, the Climate Change Consortium for Wales and we have WISERD, which is the Wales Institute of Social and Economic Research, Data and Methods. All of these are cross-university institutions and structures, which have a wide range of buy-in in from higher education in Wales, specifically in our sector, but none of them has been a part of the process of understanding the horizon scanning, which is one example that I have given, but building the evidence base and understanding the ways in which we engage with people. There are lots of people in SOCSI in my university who understand how to build engagement. It seems that none of that has been asked for in this process, although, of course we have responded to the consultation on the environment Bill and other Bills. However, it seems to me that a longer-term and higher-value relationship could be developed between institutions. We have been in Wales for a lot longer than the Assembly has, and I suspect that we may be here after you have gone. I do not know.

[557] **Professor Baker:** Be careful.

[558] **Professor Jones:** It seems to me that—

[559] **Alun Ffred Jones:** May I stop you there, in full flight? I know that there are three Members wishing to come in. First off, I will call Joyce Watson.

[560] **Joyce Watson:** Professor Jones, I was a bit surprised when you said—and perhaps you could elucidate—that this ought to be an environmental Bill. The fact that this is the Bill that it is means that it will influence the other Bills, and that one of them will be the environmental Bill. So, I would like a comment on that. What I am particularly excited about with this Bill is the impact—the innovation that Professor Baker spoke about with regard to us leading the way. So, my question is this: how do you think this Bill, either in the way it is presented or the way it could be presented, can influence Wales’s place in the world? I am thinking particularly of the socioeconomic aspects of that and the effects on people.

[561] **Professor Jones:** Why should it be an environmental Bill? Because the current environmental Bill, the single environment duty for the Assembly, is not doing its job. We have been left behind in a number of on-the-ground areas—

[562] **Joyce Watson:** This is not an environment Bill.

[563] **Professor Jones:** No, but what I am saying is that, because the sustainable development duty for the Assembly is not actually doing its job in limiting us to growth with environmental limits, for example, we need something else to do that job, and this is a way of doing that, if this could have the teeth to force public bodies in Wales to behave in a way that protected the welfare of future generations, because the welfare of future generations will depend wholly on ecosystems services that we can generate from within Wales, I suspect. So, my concern is that the Bill as currently posited and structured is part of a narrowing of the concern of the Welsh Government that actually says that what matters is the welfare of people—which, obviously, is ultimately what matters—but does not seem to accept that the welfare of people in Wales and outside Wales, because we have the Brundtland requirements as well, is wholly dependent on the quality of the environment; it is not wholly dependent on the economy. If the economy blew up tomorrow in Wales, we would still get transferred payments from Westminster; we would not all starve. If the environment disappeared tomorrow, we would be in trouble in a whole different order of magnitude. The way that the future generations Bill is currently written, as Bob said earlier, does not fully reflect that centrality of the environment at the heart of Welsh wealth. That is my concern about the way it is structured at the moment.

[564] I think that the future generations Bill, if it became a tool for changing behaviour, could, once again, make Wales an exemplar in terms of pushing sustainable development both legally and practically. However, to do that requires you, as I say in my evidence, not to say what you will do but to say what you will not do. Nowhere in this Bill does it say ‘We won’t do x, y or z’. It says, ‘We will have a healthy, resilient economy, a prosperous economy, motherhood and apple pie’—you know, there is nothing to disagree with in there. However, if I asked you, ‘Do you want a prosperous economy or a resilient economy or a healthy economy?’ and you had to make a choice, this Bill does not help me or any on-the-ground institution make that choice. So, if the future generations Bill were redrafted to say, ‘This is the one thing’ or ‘These are the two or three things that Wales will do and they are consistent with each other and everything else is subservient to that’—frankly, you know, if you want to build a new road, for example, off the top of my head, and it does not fit with these overriding principles, you will not build a new road. That is the only way you can actually walk the walk after you have talked the talk. So far, as my evidence says, we have not walked that walk. If we are prepared to give things up as well as push things along, then I think we can make a difference.

[565] **Professor Baker:** I think that the eyes of the world are already on Wales with regard to this Bill. I know just from my personal perspective that I have been asked by several people whether I can talk to them about this or explain to them what is going on in Wales because there are a lot of people who are really interested in the idea that a country would

bring forward a wellbeing of future generations Bill. However, I think that there is a big elephant in the room, which is that there are trade-offs. There are really, really hard trade-offs between the different pillars of sustainable development, and this is primarily focusing on what we might call the social pillar of sustainable development. However, there are trade-offs. There are trade-offs between this generation and future generations. So, for example, if you use up this particular resource, it is not there for the future or the choice that you make right now can close down rather than open up options for future generations. There are trade-offs in terms of priorities.

[566] What do you want? Do you want ecosystem service delivery or do you want biodiversity? You can have the most wonderful ecosystem services delivered by the most constrained forest that has no biodiversity value but can provide you with water. We know that the real problem that we have is how we marry ecosystem service delivery and biodiversity delivery, because they are not necessarily in all cases compatible. In fact, in the really hard cases they are not compatible at all. We know that economic development, especially as has been construed in the past, has had a very major impact and operated in trade-off with environmental quality. So, there are lots of trade-offs here and the Bill is silent on how it is going to provide some form of steer to those who are charged under the Bill, from the subnational level to the local authorities and to the appropriate agencies and actors. How are they going to deal with the trade-offs? If the silence continues, then what will happen is that the real critical question about what is it we actually have here as a priority will be ignored and then we will get ourselves back into the situation where any metrics that will do for the purposes of reporting will do.

[567] **Alun Ffred Jones:** You have certainly inspired questions here. There are a number of people lining up to come back to you or to ask for further information. Jenny Rathbone is first.

[568] **Jenny Rathbone:** It is very interesting. I will come back on some things. Certainly, the Minister for health places a lot of importance on having an evidence base, and being the Minister for health, you would like to hope that was the case.

[569] **Professor Jones:** Our university—[*Inaudible.*]

[570] **Jenny Rathbone:** I think you take your argument too far there. I suppose one of my concerns is that we already have these indicators that were set up around the sustainable development duties. We have the 44 indicators. One or two of them are obviously useless because we do not have the data, but where we have established the baseline already, it seems to be dangerous to dump that because we do not like the outcomes any longer. I understand why you are saying that the duty has not delivered the goods and therefore we need legislation, but we have to have some measure of outcomes so that we know whether we are going in the right direction. It is not sufficient—. I am not buying into this idea that the Dutch way of doing things, the philosophical approach, would work in our current circumstances.

[571] **Professor Baker:** I do not think that the Dutch way of doing things is in any way not also driven by hard indicators.

[572] **Jenny Rathbone:** Okay, good.

[573] **Professor Baker:** The combining of the two is the issue.

[574] **Professor Jones:** The other thing is that it is really important to say that the problem with the 44 sustainable development indicators is that if you have the one that says—. The economy one is employment. If employment goes up in Wales, climate emissions go up in Wales. That is a fact.

[575] **Jenny Rathbone:** Not always. That is not necessarily—

[576] **Professor Jones:** Yes, always, because the people who earn money will use that money to buy goods and services or fly to the Bahamas for a holiday they could not afford before. There has been no decoupling. You can change the relationship so that it becomes less carbon intense, but if you have more people in work, you have higher climate emissions. Those conflicts between the indicators—. That is the problem with indicator sets and the fact that they quite often do not sit within a value framework that says, ‘This is target A, and there are our subsidiary targets. Where we can’t hit a subsidiary target because of target A, we won’t hit the subsidiary target and we’ll discount it’. So, at the moment our indicator sets are useful in a number of ways—I use them myself quite a lot—but they are all the same level. So, without the framework that says, ‘This is the hierarchy’, you cannot judge the priority.

[577] **Professor Baker:** Also there is a danger—. I worked for many years on the Eurostat monitoring report as the sustainable development expert on the sustainable development set of those monitoring reports. We have to be mindful of the fact that if we are using indicators, they are proxies and therefore we have to look for some form of proxy value. We know that if we look at the SD indicator sets for the Eurostat monitoring report, for example, we will see that the indicator of openness of government and good governance practice is whether there is an e-portal for the payment of your road tax for your car. That, by no measure, could be construed as a robust indicator of good governance, because we end up in a situation where we measure what is measurable, and the more difficult matters like, for example, the normative values, the future generation or these things that are more difficult to grasp, we ignore, because we become, almost, a hostage to our own measurable indicators.

14:45

[578] That is where reflexive governance plays a role, because while you are doing that at one level, so you have accountability, you have feedback mechanisms, you are understanding what is and is not happening from a narrow perspective, but you also have in place governance perspectives that enable you to say, ‘Actually, that is not sufficient’.

[579] **Alun Ffred Jones:** I am going to stop you there. I just want to remind people that time is running out. I think that you have taken us beyond the Bill, around it and through it again, but I am minded to tell everybody that we are trying to look at the Bill, whether it is fit for purpose and how we can improve it. I call on Jenny Rathbone again and then Mick.

[580] **Jenny Rathbone:** Sometimes, we can use fiscal incentives, for example, landfill taxes, where we can identify that it is reasonable to impose a tax on a body for failing to do something, whereas, in other respects, such as a child failing to get the appropriate qualifications, there are multiple influences there, so it is hard to see how you could use fiscal measures to penalise whoever. You penalise the child, obviously, but—

[581] **Professor Baker:** We have three big tools in our toolbox when it comes to implementation: we have markets, we have networks and we have hierarchies. Hierarchies are rules and laws, command and control. We have networks, so we bring in stakeholders and they become part of the implementation process or the decision-making process, or they buy into the system. We also have markets, so we can use market tools. There is no one best use of any of these. They are all situational and contextual, and it depends on what you are trying to achieve at what scale, at what level and over what time, as to which part of that toolbox that you prioritise. We generally use all three, but it is a question of tweaking which one is appropriate in which case.

[582] It does come to the heart of the matter of the Bill in terms of how the governance of

the Bill is to take place. It looks at the moment as though the governance is risk-averse; it is very cautious to set up a commissioner and to give the commissioner a role that is primarily oversight. In fact, there is a much more innovative set of practices out there that would say, ‘Aside from a commissioner and the normal round of things that we would expect like an advisory panel, why don’t we think about the system of public administration in which the Bill has to be rolled out, so that, for example, we start a learning process about reflexive governance or what tools are in our toolbox and how we can talk to the local authorities about why and under what conditions those tools are appropriate to use?’ What I am driving at here is that the way that the Bill is being governed is too conservative, and it is lacking in the innovation that the Bill could provide by virtue of its title. There is a mismatch between the two.

[583] **Alun Ffred Jones:** I call on Mick Antoniw, very briefly, and then Jeff.

[584] **Mick Antoniw:** This is a framework piece of legislation, so you have the initial definition, and you have given comments on that, and then there are the issues of goals and, subsequently, enforcement. In terms of the goals—I think that this is Part 2 of the Bill—do you have any specific views on the goals as they are set?

[585] **Professor Baker:** They are aspirational, so, from that point of view, it is quite nice to see them there, but they are vague to the point of disappointment. They talk about ‘proportionate use of resources’ to generate wealth. Wealth is not wellbeing, and with wealth, immediately, one thinks about distribution and impact of the generation or creation of wealth. So, the first goal begs questions about how is it you are talking about wellbeing if, in the fourth line, you are using the word ‘wealth’ and what is the relationship between the two. It is not direct and it is not necessarily in all cases positive.

[586] The next one talks about a biodiverse environment that has functioning ecosystems, but functioning ecosystems can be at the cost of biodiversity. So, that can bring you immediately into conflict with the obligations that you have under the CBD, the European Union biodiversity 2020 targets and the other biodiversity legislation with respect to the birds and habitats directive. The next one talks about,

[587] ‘A society in which people’s physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.’

[588] However, it does not deal with or confront the fact that behavioural matters can be institutionally constrained. They can be constrained by all kinds of inability to act that have nothing to do with one’s individual will, but with one’s lack of what we might call ‘capabilities’. There is a capabilities approach out there that has looked at how we narrow the gap between people’s values—what they wish to do—and what they can actually do, which is called the ‘capabilities approach’ and it is one that the United Nations, for example, is driving forward. I could go on with all of the goals and say that they are all disappointing.

[589] **Alun Ffred Jones:** I am not going to allow you to go through the whole lot. You have made your point; we have got the message.

[590] **Professor Baker:** You have got the message; they are all disappointing.

[591] **Mick Antoniw:** The final point is the indicators. You keep referring to these 44 indicators, and so on; I do not know what they are and what is in them, their appropriateness, and so on. Do you have comments about that? It seems to me that that is the mechanism for measuring achievement in terms of the objectives of the legislation.

[592] **Professor Jones:** The thing that I like most about the Bill is that it seems to hint at a

quality-assured approach. The way in which we get monitored at the university is that you set your own targets, and we make sure that those targets are appropriate, stretching and fit within the wider framework, and then you tell us how you have met the targets, and if you have not, why. So, I think this idea that the 44 targets should somehow move seamlessly into the future is just not appropriate. I think that the problem with self-set targets, as I say in my evidence, particularly when you have several national targets and you have targets across different parts of the public sector, is how you get them to be coherent; I have no idea. You might have a target for prosperity that says 'We will have—'. If somebody turned up tomorrow and said, 'We want a new anthracite works in Aberdare and there will be 2,000 jobs there', you would probably say, 'Yes, thank you very much', but you bloody well know that the health impacts of that would likely not be positive.

[593] **Mick Antoniw:** It is the weighting between—

[594] **Professor Jones:** It is about understanding the conflicts. When you give organisations the power to set their own targets, how you constrain those targets to make sure that they are coherent and that they are pulling in the same direction is something that I do not see in the Bill at the moment.

[595] **Professor Baker:** That co-ordination is the other elephant in the room. It comes back to the question of trade-offs. What are your priorities here and what do you prefer to trade off, because you cannot have them all? We have already mentioned the fact that you only measure in your indicators what is capable of quantifiable measurement, and that can often be a proxy that has a very thin relationship to what you want to do. So, you can have a performance review that has a feelgood factor, but actually makes no substantive contribution.

[596] **Alun Ffred Jones:** We are coming to the end of our allotted time. Jeff, I am sure that you have 101 things to say, but try to formulate them into a sharp question.

[597] **Jeff Cuthbert:** In fairness to you, Chair, other committee members and our witnesses, I want to talk very much not about the architecture of the Bill but about some of the things that you have said in terms of the purpose of the Bill and the importance of striking a balance. It is not just a Bill about the environment; that was resolved in early stages. It has to be more embracing in terms of the economy and communities. Quite frankly, there is no time to go into all that, so I will not ask a question on that. Maybe there will be another opportunity or perhaps we can correspond in writing to clarify certain matters.

[598] It is about trade-offs. It is about balance. Of course, that is the real world—I accept that—and the best way to achieve it. I am sure that higher education will have a role to play in that sort of future work.

[599] **Professor Baker:** Well, you know where we are and we are open to discussion.

[600] **Jeff Cuthbert:** So, I will leave it there, Chair.

[601] **Alun Ffred Jones:** Llyr, do you want to come in?

[602] **Llyr Gruffydd:** You touched on this earlier, and a lot of the evidence that we have had is that there is too much of a focus on process, that focusing on creating a requirement on 22 public service boards to create 22 local assessments of wellbeing, 22 wellbeing plans and 22 annual reports of wellbeing is, frankly, missing the point, and that there needs to be a huge shift, as articulated by you, on to delivery and change of culture in the way that people operate. You suggested making a clear statement that any development that increases emissions, for example, does not happen. Is this Bill as it stands amendable to achieve that, or is it a case of asking the Government to go away and start again?

[603] **Professor Jones:** What a horrible question. [*Laughter.*]

[604] **Professor Baker:** I think that it is amendable. I think that the procedures are robust enough, although we would like changes, and we have mentioned them. I think that it is the whole first part of it that needs additional work so that you can grasp the nettle of what you mean by future generations, what you mean by wellbeing and what you mean by sustainable development, without necessarily tying yourself. I see the advantages and disadvantages of definition, but there needs to be some sort of governance steer here that gives you some indication—not an indicator, but an indication—of what it is that you are actually trying to achieve. The goals do not really perform that, because they are vague, contradictory and unhelpful, as I have explained. I went through only half of them and I could already tell you what I saw was wrong with them. Yes, I do think that it is amendable. I think that there are some very good things in there. We are just pointing out what we see as the weaknesses, because there is no point sitting here telling you how great it is. It is the first half.

[605] **Professor Jones:** The biggest barrier to the amendment of this Bill is the electoral cycle issue. We are not very good at moving beyond the electoral cycle, but if you have a year's worth of setting stuff up at the start of an electoral term and then a year's worth of reporting at the end, the bit in between, I think, is—[*Inaudible.*—]time. Cutting the link between the Minister appointing the commissioner is one way to start, but there needs to be some way of depoliticising this so that it becomes something a bit like the Richard commission or a bit like Silk, where it is just off to one side, and where everybody agrees that it is something that is a bit like the SD duty: enshrined in what the Assembly does and what successive Welsh Governments do. If it can be amended so that that is the framework, then I think that a lot of other things would flow from that.

[606] **Alun Ffred Jones:** I do not think that we are going to squeeze much out of this particular lemon today—not that I am comparing you to lemons, I should add quickly. [*Laughter.*] May I thank you both for coming in and for being so forthright in your views? No doubt, we will continue this dialogue again.

[607] **Professor Baker:** Thank you for affording us the opportunity to voice our opinions.

[608] **Alun Ffred Jones:** Well, you have kept us awake during a heavy day. [*Laughter.*] Diolch yn fawr iawn. Thank you very much.

[609] That concludes our deliberations today. We will catch up again and have a think about what we have heard today.

*Daeth y cyfarfod i ben am 14:57.
The meeting ended at 14:57.*