



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

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

Dydd Mercher, 12 Chwefror 2014
Wednesday, 12 February 2014

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Motion under Standing Order 17.42 to Resolve to Exclude the Public from the Meeting

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

Yr Arglwydd/Lord Elis-Thomas	Plaid Cymru (Cadeirydd y Pwyllgor) Plaid Cymru (Committee Chair)
Russell George	Ceidwadwyr Cymreig Welsh Conservatives
Llyr Gruffydd	Plaid Cymru Plaid Cymru
Julie James	Llafur Labour
Julie Morgan	Llafur Labour
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Cathrin Daniel	Cymorth Cristnogol Christian Aid
Robin Crag Farrar	Cymdeithas yr Iaith Gymraeg
Anne Meikle	WWF Cymru WWF Wales
Julian Rosser	Oxfam Cymru

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

Alun Davidson	Clerc Clerk
Catherine Hunt	Dirprwy Glerc Deputy Clerk
Chloe Corbyn	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 09:34.
The meeting began at 09:34.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[1] **Yr Arglwydd Elis-Thomas:** Croeso. **Lord Elis-Thomas:** Welcome. We have no Nid oes gennym ymddiheuriadau o blith apologies from committee members. aelodau'r pwyllgor.

Bil Cenedlaethau'r Dyfodol—Tystiolaeth gan Gynghrair y Trydydd Sector
Future Generations Bill—Evidence from the Third Sector Alliance

[2] **Yr Arglwydd Elis-Thomas:** Bydd **Lord Elis-Thomas:** Many of you will be nifer ohonoch yn gyfarwydd â siarad â ni. familiar with talking to us. The purpose of Diben y cyfarfod hwn yw trafod cynnig today's meeting is to discuss an alternative amgen, os caf ei alw felly, cynghrair y proposal, if I may call it that, by the third trydydd sector mewn perthynas â sector alliance in relation to the future

deddfwriaeth datblygu cynaliadwy ar gyfer Cymru. Rydym wedi ceisio dilyn, fel pwyllgor, ac wedi cael trafodaeth gyda nifer ohonoch o'r blaen am y broses ddeddfu hon, sydd wedi bod yn broses estynedig a dweud y lleiaf. Efallai y caf agor y dystiolaeth y bore yma drwy ofyn i bob un ohonoch ba argraff yr ydych wedi'i chael o'r broses hyd yma a ble ydych yn meddwl yr ydym arni, fel byddwn i'n gofyn mewn tafodiaith.

generations Bill. We have tried, as a committee, to follow this and have had discussions with many of you previously on this legislative process, which has been an extended process to say the least. Perhaps I can open the evidence session this morning by asking each of you what has been your impression of the process so far and where you believe we are.

[3] Anne, I think that you might like to kick off.

[4] **Ms Meikle:** If you would not mind, we have a couple of remarks related to that, which we have split up between us. For the majority of that, I will hand over to Robin to explain where we have come from and where we think we are.

[5] **Mr Farrar:** I roi rhywfaint o gefndir, rydym yn gynghrair o fudiadau, nid yn unig o'r sector amgylcheddol, ond mudiadau ffydd a mudiadau datblygu rhyngwladol hefyd. Rydym wedi dod at ein gilydd oherwydd ein bod yn rhannu ymrwymiad, nid yn unig i ddatblygu cynaliadwy, ond i lunio dyfodol mwy cynaliadwy drwy weithio efo'n gilydd, ac rydym wedi dod â'r cynigon hyn at ei gilydd.

Mr Farrar: To give you a little bit of background, we are an alliance of organisations, not only from the environmental sector, but faith organisations and international development organisations too. We have come together because we share a commitment, not only to sustainable development, but to shaping a more sustainable future by working together, and we have brought these proposals together.

[6] Efallai bod rhai ohonoch yn tybio pam bod mudiad iaith fel Cymdeithas yr Iaith Gymraeg yn rhan o gynghrair o'r fath, ond i mi mae hynny'n gwbl syml. Yr un egwyddor sydd y tu ôl i geisio cynnal iaith ac sydd i drio cynnal asedau amgylcheddol, sef ein bod yn cynnal ein treftadaeth ar gyfer cenedlaethau'r dyfodol. Mae hynny nid yn unig yn hanfodol bwysig ond yn rhan o'r frwydr ryngwladol dros ryddid a chyfiawnder.

Some of you may wonder why a language movement such as the Welsh Language Society is part of such an alliance, but for me it is quite simple. The same principle underlies maintaining a language as trying to maintain environmental assets, that is, that we sustain our heritage for future generations. That is not only vital, but part of the international battle for freedom and justice.

[7] I wneud y peth yn fwy ymarferol, mae'r iaith Gymraeg yn wynebu argyfwng ar hyn o bryd, yn enwedig o ran y cymunedau hynny sydd yn hanfodol i gynnal yr iaith—cymunedau lle mae'r iaith yn iaith bob dydd. Mae nifer y cymunedau hynny wedi gostwng a haneru dros yr 20 mlynedd diwethaf. Mae hynny'n dangos nid yn unig bod yn rhaid i ni newid pethau penodol er mwyn mynd i'r afael â'r broblem ond hefyd bod yn rhaid i ni newid y ffordd y mae penderfyniadau'n cael eu gwneud a'r systemau y tu ôl iddynt.

To make all of this a bit more practical, the Welsh language is facing a crisis at present, particularly from the point of view of those communities that are vital to sustaining the language—communities where Welsh is the everyday language. The number of those communities has halved over the past 20 years. That demonstrates that not only must we change specific things in order to grapple with the problem, but we must also change the way in which decisions are taken and the systems behind them.

[8] I roi enghreifftiau penodol, mae gennym bryder am ddatblygiadau tai mawr

To give specific examples, we have concerns about major housing developments in a

mewn sawl rhan o Gymru sy'n anghynaliadwy nid yn unig yn ieithyddol, ond yn amgylcheddol mewn sawl achos. Yn ail, o ran ein pobl ifanc, mae diffyg pontio rhwng y sector addysg, lle mae mwy a mwy o bobl ifanc yn dysgu'r iaith, a recriwtio o fewn y sector cyhoeddus mewn sawl rhan o Gymru. Nid oes swyddi drwy gyfrwng y Gymraeg ar gael iddynt gael aros yn eu cymunedau a defnyddio'r iaith.

number of areas in Wales that are unsustainable not only linguistically, but environmentally in a number of cases. Secondly, from the point of view of our young people, there is a lack of bridging between the education sector, where more and more young people are learning the language, and recruitment in the public sector in a number of parts of Wales. There are no Welsh-medium jobs available for them to remain in their communities and use the language.

[9] Mae'r ddwy enghraifft honno yn rhai lle byddai Bil datblygu cynaliadwy cryf yn help i wneud y penderfyniadau iawn yn yr achosion hynny. Mae cynsail clir ers comisiwn Brundtland bod diwylliant cynhenid yn rhan o ddatblygu cynaliadwy. Hefyd, mae Llywodraeth Cymru, yn y gorffennol, wedi cydnabod y berthynas. Mae 'Cymru'n Un: Cenedl Un Blaned' yn cyfeirio at yr iaith ac at gymunedau.

Those two examples are ones where a strong sustainable development Bill would help to make the right decisions in those cases. There is a clear precedent since the Brundtland commission that native culture is part of sustainable development. Also, the Welsh Government, in the past, has acknowledged that relationship. 'One Wales: One Planet' refers to language and communities.

[10] Mae'n bwysig i ni—ac mae hyn yn wir am sawl peth arall rydym yn galw amdano, yn ogystal â'r iaith—nad jyst crybwyll mae'r Bil yn gwneud, ond bod cynnal cymunedau Cymraeg eu hiaith yn rhan annatod o ddatblygu cynaliadwy. Os na wnawn ni hynny wrth ddatblygu yng Nghymru, nid datblygu cynaliadwy fyddwn yn ei wneud.

It is important to us—and this is true of a number of other things that we are calling for, in addition to the language—that the Bill should not just nod to this, but that maintaining Welsh language communities should be an integral part of sustainable development. If we do not do that in developing in Wales, it will not be sustainable development.

[11] Felly, mae ein cyfeillion yn y fan hon yn mynd i sôn am rai agweddau penodol o'n cynigion ni. Maen nhw'n seiliedig ar gyngor cyfreithiol a'r syniad ydy dechrau'r drafodaeth ynglŷn â'r cyfle hanesyddol hwn i newid y ffordd y mae penderfyniadau yn cael eu gwneud er mwyn gwneud hynny mewn ffordd mwy cynaliadwy. Mae tair prif elfen i'n cynnig: mae diffiniad o ddatblygu cynaliadwy, mae dyletswydd i ymarfer ac i weithio tuag at y diffiniad hwnnw, ac rydym yn galw hefyd am sefydlu comisiynydd annibynnol i graffu ar hynny. Mae'r berthynas rhwng y tair elfen honno'n rhan bwysig o'r hyn yr ydym yn galw amdano.

So, my colleagues here are going to talk about some specific aspects of our proposals. They are based on legal advice and the idea is to initiate the discussion about this historic opportunity to change the way in which decisions are taken in order to do that in a more sustainable manner. There are three main elements to our proposal: there is a definition of sustainable development, there is a duty to exercise and to work towards that definition, and we are also calling for the establishment of an independent commissioner to scrutinise that. The relationship between those three elements is an important part of what we are calling for.

[12] **Yr Arglwydd Elis-Thomas:** A gaf i ofyn felly beth ydy'ch agwedd chi i'r newid yn enw'r Bil ac, o bosibl—yn yr ystyr nad ydym wedi gweld Bil drafft eto, er ein bod wedi gofyn am hynny sawl tro—y newid yn y

Lord Elis-Thomas: May I therefore ask what your attitude is towards the change in the name of the Bill and, perhaps—in the sense that we have not seen the draft Bill yet, although we have asked for that many

cynnwys? Carwn gael eich sylwadau chi ar hynny. times—a change in the content? I would like to have your comments on that.

[13] **Ms Meikle:** Perhaps I could ask Cathrin to answer.

[14] **Lord Elis-Thomas:** Cathrin, diolch, and then Julian.

[15] **Ms Daniel:** Diolch yn fawr iawn. A gaf i gychwyn drwy roi cyflwyniad bach o safbwynt Cymorth Cristnogol? Byddaf yn rhoi fy nhystiolaeth yn Saesneg ac wedyn gwnaf i ateb y cwestiwn ynglŷn â theitl y Bil, os yw hynny'n iawn. **Ms Daniel:** Thank you very much. May I just begin by giving a brief presentation from the point of view of Christian Aid? I am going to give my evidence in English and then I will answer the question about the title of the Bill, if that is okay.

[16] So, Christian Aid is a development agency of over 40 sponsoring churches in Britain and Ireland and is mandated to work on relief, development and advocacy for poverty eradication. Christian Aid's work is founded on the Christian faith, inspired by hope and acts to change an unjust world through practical action and enabling a global movement for justice. Christian Aid works through partners in over 40 countries and works with people and communities of all faiths and none. We have been a member of the third sector alliance on sustainable development since last year, and this is because we know that decisions that are made in Wales are of critical importance to our core purpose. Decisions made in Wales have consequences, not only for our own population now and in the future, but also for the populations of other countries around the world, many of whom are already suffering as a consequence of unsustainable patterns of consumption and development that we in the industrialised nations have previously benefited from.

[17] So, just to remind everybody of the problem that we are facing, we are living in an increasingly inequitable world where the demands of economic growth at all costs are depleting the world's natural resources and causing climate change, which disproportionately affects the world's poorest and most marginalised people, many of whom rely directly on the environment around them for their food and livelihoods, who have the least capital to cope with shocks and disasters, and who live in the areas most affected and vulnerable to the effects of climate change. A quarter of the world's population, 1.4 billion people, are living in absolute poverty. One in eight people will go to bed hungry and one in seven have no access to fresh water. Currently, 20% of the world's population consume over 80% of the world's resources, while the poorest 20% are responsible for just 1.3% of consumption.

[18] Almost 15 years ago, the United Nations member states agreed to work together towards achieving eight development goals for the new millennium, which included eradicating extreme poverty and hunger, ensuring universal primary education, improving maternal and child health, tackling HIV and empowering women. As we stand on the cusp of 2015 and the deadline for achieving the millennium development goals, we recognise that global events, climatic changes and our understanding of poverty have overtaken us. The world as we understand it in 2014 is a significantly more complex, globalised and inequitable place than it was in 2000, and we need a new framework of goals to respond to that complexity and to ensure that we have thriving and resilient communities as we face the future. As the UN works towards a new set of goals to replace the MDG framework, there is a recognition from the international community that we need a new paradigm for development and one that addresses the three pillars of sustainable development, which are economic, social and environmental, and not just pursuing economic growth at all costs. There is a recognition that this framework needs to enable more just societies where the human potential of each individual is respected and fulfilled, while respecting also the environmental limits of our planetary boundaries. To succeed in this aim, this holistic framework for sustainable development, as outlined in the UN's resolution 'The Future We Want', is one that must be

applied to both developed and developing countries alike, enabling all nations to live within the planetary and social boundaries and to work together to combat the common threat of climate change.

09:45

[19] So, what is relevant to us in Wales? Welsh people have a long and proud history of supporting the causes of international justice—from the anti-apartheid movement, the Jubilee Campaign and, today, the hundreds of initiatives that fall under the Wales for Africa programme. So, with the future generations Bill, Wales can lead the way in developing national policies that ensure that we are considering our impact on the wider environment and pursuing economic development that does not place future generations of Welsh citizens, as well as the world's poorest communities, at further risk.

[20] Wales is in the unique position of having sustainable development as a central organising principle of our Assembly. Therefore, we have an opportunity to lead the way in finding just and sustainable means to promote developments within our own nation and to ensure that, in pursuing our own development course, we are not increasing the vulnerability of the poorest 20% of the world's population and the vulnerability of future generations. That is why Christian Aid is part of this alliance that is promoting the alternative Bill.

[21] **Yr Arglwydd Elis-Thomas:** Diolch yn fawr. A wnewch chi ffocysu ar y cwestiwn, os gwelwch yn dda, sef lle yr ydym arni rŵan? Rydych chi wedi cyfeirio at y ffaith bod datblygu cynaliadwy yn rhan o'n cyfansoddiad ni o dan ddwy Ddeddf Llywodraeth Cymru. A ydych chi'n teimlo bod y trafodaethau yr ydych yn gwybod amdanynt, neu'r hyn y mae'r Llywodraeth wedi bod yn ei ddweud ynglŷn â'r datblygiad hwn ers dyddiau cyhoeddi'r Papur Gwyn ar gyfer y Bil datblygu cynaliadwy yn ôl ym mis Mai 2012, yn mynd i'r cyfeiriad iawn ac a oes perygl y bydd ein hymrwymiad cyfansoddiadol ni yn cael ei lastwreiddio?

Lord Elis-Thomas: Thank you. Would you focus on the question, please, namely where we are at present? You have referred to the fact that sustainable development is part of our constitution under the two Government of Wales Acts. Do you feel that the discussions that you know about, or what the Government has been saying about this development since it published the White Paper for the sustainable development Bill back in May 2012, are going in the right direction and is there a danger that our constitutional commitment will be undermined?

[22] **Ms Daniel:** Rwyf am basio'r cwestiwn ymlaen at y panel.

Ms Daniel: I will pass that question on to the panel.

[23] **Ms Meikle:** What I was coming to say is that, as a result of this alliance, I have been sitting on the Government's reference group. There has certainly been a lot of development in its thinking since the consideration of the responses to the White Paper consultation. We are of the view that the direction of travel is where we would like to see it go. What it is proposing could meet the key requirements that we have laid out. It does not look as though they will be in the same format as what we have laid out, but we have some key elements that it now seems to be considering.

[24] You may remember that the White Paper very much focused on 'behaviours', which, in our parlance, would be 'processes'. Most of the responses, including ours, said that that is not enough; you have to focus on the objectives and the outcomes. In our proposal, both the objectives and what it calls 'behaviours' and we call 'principles' are within our definition. Now, it is possible that you can change a framework, deal with those in a different legal framework and still come up with the same strength of intent as we have produced in our proposal. So, overall, we are happy with that direction. The devil, of course, will be in the

detail of the wording of the duty and the definition and how strong those are. It is about the interaction between those elements. As some of you will know, the legal framework is not just in any one piece of that—you actually need to see it as a whole to see how strong it is going to be. We constructed ours in a particular way that we know has a good legal basis and would work as a strong framework. We need to see what the detail is of any proposal. However, certainly, the discussions have been going in the right direction. I do not know whether you have more that you want to say on that, Julian.

[25] **Mr Rosser:** I suppose what I could do is to just reiterate the three things that we see as being key. We have produced some draft text for legislation, effectively. We did that because the Government and Assembly Members have often said that they like us to come up with proposals as a sector, and that it is very helpful when we work together to make specific suggestions for what could be in legislation. So, we have done that. This is probably not the exact format in which you would want to pass the Act, but, broadly, what we have come together to say is that we want a strong duty on the entire public sector in Wales to fulfil all of its functions so as to achieve sustainable development. We think that that will be a groundbreaking thing to do, which would put the public sector in a new light in Wales. We would like to see a strong definition of sustainable development that is rooted within the Welsh context. We very much looked at ‘One Wales: One Planet’ as being the basis for that, but we also looked to other international examples. We have come up with what we think is an exciting new Welsh definition of sustainable development, which could be very powerful. Finally, we want to see an independent commissioner. The Welsh Government has said that it wants a commissioner. It wants the commissioner to be appointed on a statutory footing. However, the debate is then around the powers of the commissioner, and to whom the commissioner is accountable. We said that we want to see a commissioner who has the power to investigate and to speak out. We feel that that probably does not lead us down the path of having a commissioner with essentially quasi-judicial functions, because that would dampen their ability to speak out on matters of concern. We have also said that we would like to see the commissioner appointed by and accountable to the Assembly as a whole, rather than a commissioner who can be appointed and dismissed by Welsh Government Ministers. As Anne says, we are seeing some signs of progress on that, but until we see some draft legislation, and until we see some clear commitments from the Minister and the Welsh Government, we do not know exactly where we are.

[26] **Lord Elis-Thomas:** So, you think that the present Government may take a more constitutionally appropriate view of the role of a commissioner in relation to the environment than a previous Government did in relation to language policy. That is a leading question.

[27] **Mr Rosser:** The constitutional legitimacy of it is not something that I would seek to give an opinion on. Perhaps somebody else would.

[28] **Ms Meikle:** There are various ways that it can do it. What we have tried to set out—. Interestingly, in the reference group, we have had quite a lot of recent discussions about the right mechanism. You are talking about a radical culture change for the whole of the public sector, and it needs support and guidance to make that change. That is one role. Initially, that was kind of the only role that was being seen for the commissioner. What we have been arguing is that, at the end of the day, you also need someone who can do scrutiny and a role that has some teeth, so that if, at the end of however long you think that transition needs to take—is it five years, or 10? I do not know—there is some method of sanction. What can the commissioner do if a public authority does not fulfil that duty? Under other legislation and other commissioners there are powers. The Government has powers—it can put education authorities in special measures, for example. There are all sorts of things that could be done, but there was no mention of that in the original White Paper proposals. So, we are saying that there needs to be some ability to hold to account and to offer sanctions.

[29] **Yr Arglwydd Elis-Thomas:** Llyr Gruffydd sydd nesaf, yna Mick a Julie Morgan.
Lord Elis-Thomas: Llyr Gruffydd is next, then Mick and Julie Morgan.

[30] **Llyr Gruffydd:** Rwy'n meddwl fy mod yn gwybod ateb y cwestiwn hwn, ond rwy'n mynd i'w ofyn beth bynnag. Beth ydych yn meddwl y bydd y Bil yn ei gyflawni na ellid ei gyflawni heb deddfwriaeth yn y maes hwn? Mae'n amlwg bod gennych *issues* o gwmpas y ddyletswydd, y diffiniad, y comisiynydd a'i rôl. A oes angen deddfwriaeth inni gyrraedd nod y llywodraeth? Yn amlwg, byddech yn licio gweld pethau yn mynd ymhellach, ond rwyf jyst eisiau gofyn y cwestiwn hwnnw i chi.
Llyr Gruffydd: I think that I know the answer to this question, but I will ask it anyway. What do you think the Bill will achieve that could not be achieved without legislation in this field? It is clear that you have issues around the duty, the definition, and the commissioner and their role. Is legislation needed for us to achieve the Government's aim? Obviously, you would like to see things going further, but I would just like to ask you that question.

[31] **Mr Rosser:** One clear example of that relates to the commissioner. The independence of the commissioner requires their role to be on a statutory footing, or it is possible—. There are examples of commissioners around the world—. Our current commissioner, Peter Davies, whose role is not on a statutory basis, has been doing a lot of research around this, and he has come back saying that he feels that it is very important that you have a commissioner who cannot be sidelined and who is able to be quite independent. There have been examples of commissioners who have been told, 'Well, we don't really like what you're saying, so we're going to cut your budget and move you over there.' That is one example of where legislation can be really helpful in this regard.

[32] **Llyr Gruffydd:** Rwy'n falch eich bod wedi dweud hynny. Rwyf eisiau eich holi hefyd ynglŷn â'r ddyletswydd i sicrhau datblygu cynaliadwy fel yr ydych yn ei ddisgrifio. A allech chi ymhelaethu ychydig ar hynny? Bu i chi gyffwrdd ar hynny gynau, Julian. Pam ydych chi'n teimlo bod angen cryfhau hynny'n benodol? Mae gennych awgrym, ond byddem yn licio gwybod ble'r ydych chi'n meddwl y mae'r Llywodraeth arni o safbwynt y ddyletswydd y bydd yn edrych i'w hyrwyddo.
Llyr Gruffydd: I am glad that you said that. I would also like to ask you about the duty to achieve sustainable development as you describe it. Could you expand a bit on that? You touched on this earlier, Julian. Why do you feel that that needs to be strengthened in particular? You have a suggestion, but I would like to know where you think the Government stands in terms of the duty that it will be looking to promote.

[33] **Ms Meikle:** We have spent a lot of time trying to work out with lawyers the right format for this and what would be groundbreaking—that is the other thing, remembering that, right from the beginning, we have wanted to be at the forefront of developments on SD. I suppose that there are several things that encompass the duty. The first is the scope of what it applies to. We have said that it should apply in the exercise of all their functions; that is certainly different to the proposals that were in the White Paper, which were limited to strategic plans or long-term planning—strategic level decisions, but not all decisions. So, there is a difference there in terms of how strong we think you could make it. Then there is the wording of the duty itself and the level of commitment you are going to.

[34] When I say 'the wording', I mean that there is lots of UK legislation already that asks public bodies to 'have regard to' sustainable development—the energy Acts for Ofgem, for example—or to 'contribute to' the achievement of sustainable development, which is already in the Planning etc. (Scotland) Act 2006. Would you say that Scotland in 2014 is a sustainable

nation? Has that driven sufficient change? I have certainly not done an analysis of that. It may be on the right path, but has that formulation really driven change in the Scottish public sector? We would argue that it is not a strong enough wording, because 'contribute to' does not give priority to the thing that you are talking about. It does not give any sense of priority over other duties or things that you have. There is no sense of SD being the overarching objective. That is why we thought that 'contribute to' was not a strong enough piece of wording. So, we have gone for 'to achieve SD', which is a much stronger formulation. There are lots of arguments about whether that is achievable and whether it is quite the right phrasing, but what we were trying to get at is that you need to get beyond this 'contribute to' language that is in a lot of existing legislation if you want to be groundbreaking and drive real change. You could try 'give effect to'; that is in some other legislation in different places. Probably the strongest one that we have seen is 'must ensure' something. So, there are other formulations that might work, apart from exactly the one that we have there, but what we were trying to lay out was the strongest conjunction of those sorts of words that we could make. We have not seen the latest proposals on duty and I do not quite know what that wording is likely to be. There was not really one in the White Paper. There have been lots of suggestions. I strongly suspect that it will not be 'ensure' or 'achieve', but we will have to see where it is in relation to what we are suggesting. I think that what we were trying to lay out is that there are degrees of this and you have to assess the wording and the Bill against how strongly you want this to drive change.

[35] **Llyr Gruffydd:** Pan gyhoeddodd y Llywodraeth ei rhaglen ddeddfwriaethol, cyhoeddodd y Prif Weinidog y bwriad i gyflwyno Bil yn y maes hwn. Roedd y rhethreg a oedd yn dod oddi wrth y Llywodraeth a'r Gweinidog ar y pryd, John Griffiths, yn eithaf cyffrous. Roeddent yn sôn bod Cymru yn mynd i fod yn wlad arweiniol yn y maes hwn, a'n bod ni'n mynd i dorri tir newydd a dangos y ffordd i wledydd eraill. Ers hynny, wrth gwrs, rydym wedi gweld newidiadau gweinidogol ac mae'r teitl wedi newid. Mae yna dipyn o deimlad, yn fy marn i, bod y Bil hwn wedi colli ei ffordd ychydig. Yn sicr, disgrifiodd y Gweinidog presennol y Bil fel rhywbeth fyddai'n enghraifft ddefnyddiol i bobl eraill, sy'n wahanol iawn i'r hyn a oedd yn cael ei ddweud ar y cychwyn. Ydych chi'n cael yr argraff bod y Bil wedi colli ei ffordd neu wedi colli momentwm rywfaint?

Llyr Gruffydd: When the Government published its legislative programme, the First Minister announced the intention to introduce a Bill in this area. The rhetoric coming from the Government and the Minister at the time, John Griffiths, was quite exciting. They were saying that Wales was going to be a leading country in this area and that we would be breaking new ground and showing the way for other countries. Since then, we have had ministerial changes and the title of the Bill has changed. There is some feeling, in my opinion, that this Bill has lost its way a little. Certainly, the current Minister described it as something that would be a useful example for other people, which is very different to what was said at the beginning. Do you get the impression that this Bill has lost its way or its momentum to an extent?

[36] **Ms Meikle:** Do you want me to answer that, or do you want to answer it, Julian?

[37] **Lord Elis-Thomas:** You can both answer it, but not together. [*Laughter.*] Julian, will you start?

[38] **Mr Rosser:** Only time will tell, possibly. I think that it is perfectly possible at this stage for it to make a dynamic comeback as an exciting piece of legislation that we could all get behind and that would make a big difference.

10:00

[39] **Ms Meikle:** I suppose that what I am saying is that there has been, certainly through

the reference group, a change in tone and approach under the latest Minister. What I am saying is that I hope that we are on the right direction of travel to get back to, as Julian says, the right sort of ambition in the Bill. We will have to see.

[40] **Lord Elis-Thomas:** You are now giving me the answer that I have been trying to get over the last 20 minutes, in that we are now in a better place than when we last spoke in this public forum on these matters.

[41] **Ms Meikle:** Yes.

[42] **Lord Elis-Thomas:** Good. Thank you. We will go next to Julie, Mick and then Russell.

[43] **Julie Morgan:** I want to ask a bit more about the commissioner. How does your vision of the commissioner compare with the existing models of commissioners that we already have in the Assembly? Obviously, we have a few examples.

[44] **Ms Meikle:** Do you want to have a crack at that, Robin? We will let you discuss commissioners.

[45] **Mr Farrar:** Nid wyf am wneud sylw am fanylion cyfreithiol o ran comisiynwyr; gall fy nghyfeillion wneud hynny efallai. O ran Comisiynydd y Gymraeg a'n profiad ni o'r maes hwnnw, buaswn i'n dweud bod hynny'n dangos yn glir yr angen i unrhyw gomisiynydd fod yn wirioneddol annibynnol, gyda'r pwerau i graffu'n annibynnol ar yr hyn y mae'r Llywodraeth yn ei wneud. Dylai hynny gynnwys unrhyw fodel ariannu hefyd, a bod sicrwydd yno, fel nad yw'r problemau y cyfeiriwyd atynt yn gynharach yn codi. Ond, ar yr ochr gadarnhaol, rwy'n meddwl bod y model hwn yn dangos bod rôl i gomisiynydd fel rhan o Fil o'r math hwn.

Mr Farrar: I do not want to comment on the legal details as regards commissioners; my colleagues may wish to do that. As regards the Welsh Language Commissioner and our experience of that field, I would say that that clearly demonstrates the need for any commissioner to be truly independent, with the powers to scrutinise independently the work of the Government. That should include any funding model as well, and that there is an assurance there, so that the problems that were referred to earlier do not arise. However, on the positive side, I believe that this model shows that there is a role for a commissioner in a Bill of this kind.

[46] **Julie Morgan:** What about the children's commissioner for example? How does what you envisage compare with the children's commissioner?

[47] **Ms Meikle:** It is quite hard for us to say, because they are all set up in very different ways. Clearly, there are different advantages to those. I think that we chose not to get into the detail of which is exactly the right formulation, but tried to look at the key things that seem to be effective overall. For instance, one of the things that we have in here that we do not think is likely to be in the Government's proposals, and which is common to most of the other commissioners and the children's commissioner, is the ability to hear complaints and make inquiries. One of the other things about sustainable development is people's participation and their ability to make their views known. So, one of the questions that I am still not very clear about is this: if you are an ordinary citizen in Neath, or somewhere else, and you feel that there is no progress or that there are things happening that are not in accord with this legislation, where do you go? If the commissioner cannot hear complaints or cases from the public, does it go to the public services ombudsman? Is that possible? There is nothing that I have seen that suggests that they are going to put that role in there. So, it is back to that coherence in terms of what is elsewhere. How would you know where to go if you are not satisfied? That absolutely needs to be clarified.

[48] Our view is that it would be much simpler if you brought that together into the role of the commissioner and made it clear that this is the way forward and that there is a place that you can go to ask for redress. It would be a bit like the other commissioners; they do not investigate every complaint necessarily, but if they see a pattern, trend or seriousness, they initiate an inquiry or something of that kind. We think that this commissioner needs to have the same sort of powers as that.

[49] **Julie Morgan:** You said that you think that it is unlikely that the Government is going to put that in.

[50] **Ms Meikle:** There just has not been very much detail at all about its proposals for the commissioner. In the White Paper, the commissioner was very much an advisory and support function for the public service. There has been quite a lot of discussion in the reference group about what other powers or, indeed, duties, the commissioner should have. For instance, the commissioner is not subject to the duty in most of the lists, which is interesting, and neither are any of the other commissioners for that matter. That may be a legal technicality, I am not sure, but there seem to be some oddities where you think, 'I don't really understand what is being proposed here'. Again, I think that that is one of the ones about which we will have to see what is actually proposed.

[51] **Julie Morgan:** Do you think that the commissioner should be responsible to the Assembly as a whole?

[52] **Ms Meikle:** Yes, we do. In fact, we were talking about this in the last reference group meeting in December. There has been a lot of focus on the public sector, for whom this is new, but we could say, 'Actually, it also applies to the Government after all, and where do you go if it is the Government that appears not to be complying?'. The answer is that someone has to be able to go, presumably, to the Assembly. So, you obviously have scrutiny over Government, but if it is the commissioner or the auditor general who is showing concern or something of that kind, can the commissioner ask the auditor general to do an inquiry? Can he come to make recommendations to you? In other countries' SD legislation, the commissioner has the ability to propose new legislation, make recommendations and make reports independently to their parliaments. That is the kind of thing that you want to ensure is in there so that there is that independence of the commissioner. I think that that is what we are saying.

[53] **Lord Elis-Thomas:** I will now turn to Russell George, and then to Mick Antoniw and Julie James.

[54] **Russell George:** Just on that point regarding the commissioner being appointed by the Assembly, do you believe that Peter Davies, for example, is restrained from being totally independent? Is that something that you are—

[55] **Lord Elis-Thomas:** I do not think that we should discuss Mr Davies, although we all love him dearly.

[56] **Russell George:** It was not a disingenuous question. It was a genuine question; you could take Peter Davies out of it. Is it your fear that the commissioner is not totally independent of Government? That is what you are suggesting, is it not?

[57] **Ms Meikle:** I would suggest that he has limited power in comparison to those other things, although you can call him and ask him questions et cetera. As he was set up as an advisory function to the Government, I am not aware that he, the other way around, could—. His job is what I will call more of a critical friend to Government rather than a part of the scrutiny process. They may be fortunate in the relationship that they have now but, as we

have seen with auditors general and other people over time, if that relationship is different, how can you ensure that it works effectively? It may work with this person, but perhaps not others. Julian probably has more thoughts on that.

[58] **Mr Rosser:** The role, as Peter is doing it now, is part time, has very few powers and is there to be very friendly and advisory. There is nothing wrong with that role. I think that he has been doing it very well, but our concern is that, actually, we would like to see an independent champion that anyone in Wales can go to. Indeed, from an international development point of view—and I know that this has also frightened some Assembly Members—anyone around the world could write in, but it does not mean that the commissioner has the duty to investigate anything from anywhere. What we want is someone who is independent, who can be a champion for people in poverty in Wales, people around the world, and also for future generations. We think that having that post independent of Government, accountable to the Assembly, and appointed by the Assembly is the best way of doing that.

[59] **Russell George:** I understand the point. Anne mentioned other countries that operate differently in terms of examples that you would like to see. Can you give us some examples—which countries are they and how are they dealing with it? Perhaps you could expand on that.

[60] **Ms Meikle:** Do you mean in relation to the commissioner?

[61] **Russell George:** Yes.

[62] **Ms Meikle:** They are quite different. Most of them are sub-regional Governments, and I know, because we had examples in the reference group, that the Welsh Government has been looking at the formulations that exist elsewhere. So, for instance, one that is very different is in Québec, where the commissioner audits, makes comments and makes recommendations to government, but he reports to the auditor general. That is not something that we are proposing, but it is very clearly tied into the audit process, as opposed to having an independent champion sort of role. That will have some strengths, I am sure, because it is in that independent sector.

[63] Perhaps one of the stronger ones is in Oregon, where they actually talk about the whole body, not just the commissioner—they do not have a commissioner function. They can propose incentives and the removal of barriers, make recommendations and propose legislation and regulatory changes to Government and to the state legislature, with a view to enabling sustainable development to happen. Their model is very much formulated around what the incentives and disincentives are to sustainable development happening. The commissioner cannot remove those barriers himself, but he can suggest that this is what you need to do. Those are slightly different formulations, I think. If you go the other way, probably the strongest one—which is no more, because it was too strong—was the Hungarian commissioner, who was very independent of the Government. He was pretty focused on environmental stuff. Some of them were set up almost as environmental sustainability commissioners as opposed to these, which are a bit more general and a bit more like what we are proposing here, I think.

[64] **Russell George:** Are there any countries in western Europe that operate a very similar model?

[65] **Ms Meikle:** In western Europe, I am not sure. Estonia has some kind of body—they are all in eastern Europe. We had a big conference in north Wales last year for the international versions of the body, and there are quite a few examples from eastern Europe—Montenegro, Estonia, Hungary; they seem to have developed a system, which encompasses this kind of role, but I am not aware of any in western Europe.

[66] **Russell George:** No. That is fine.

[67] **Lord Elis-Thomas:** Some of these have sustainable development councils as well, thinking of that model.

[68] **Ms Meikle:** Yes, that is right. Some of those have a head or a chair or a commissioner who then takes that role. It is a bit like some of these. Some of them are set up as a body corporate and some of them seem to be set up as individual commissioners. They are slightly different models.

[69] **Russell George:** That is interesting, because I think that it would be useful for the committee to see a model like the one you are proposing that is operating somewhere else so that we could look at it in more detail.

[70] **Ms Meikle:** I suppose that, from our perspective, that is quite difficult because, of course, other countries' legal systems are very difficult and we are not legal experts with regard to what would work here. We have come from the other end of asking what the key things are that you might want to take from those and how you could formulate them in Wales under Welsh law. That is the approach that we have taken.

[71] **Russell George:** That is fine. The second part to my question is about looking for an example of a sustainable development approach that has been taken in the public sector with regard to a decision-making process, where this Bill would deal with that differently, if you like.

[72] **Ms Meikle:** Well, who wants to answer some of that?

[73] **Russell George:** To be clear, thinking about this Bill and how it can work effectively in the way that you would like to see, can you give me an example of where that is not happening now in the public sector?

[74] **Ms Meikle:** Is that yours?

[75] **Mr Rosser:** I can give you one fairly recent example of a Government decision where we feel it would have been great to have had some intervention. That was the decision that the Welsh Government took recently to reduce its level of ambition for energy efficiency standards in building regulations for homes in future. We felt that there were clear, immediate, short-term economic benefits that could come from that. However, we feel that, in the longer term, what you are left with is people in Wales paying far more to heat their homes, increasing the use of fuel and increasing fuel poverty and all of the bad things associated with that. So, we feel that that is the kind of decision that we have problems with. We also feel that, actually, in bringing a proper sustainable development approach to the whole of Government decision making, first of all, there should have been ways in which that decision would have been considered differently so that the longer term would have been taken into account more and so that a proper analysis would have been conducted and published so that we could look at it and see the impacts of making that decision. Secondly, if the decision was taken, there would be a commissioner in place and people in place to look at the ramifications of that and to speak out about it, which we hope would have impact on future decision making. That is one example of something that has happened fairly recently that we feel was unfortunate and that we hope this kind of legislation would help to prevent in future.

10:15

[76] **Lord Elis-Thomas:** Diolch. Mick Antoniw, Julie James and then William Powell.

[77] **Mick Antoniw:** It is clear that the Government's direction is increasing the emphasis on social justice. What, in practical terms, do you think that this legislation should contain in order to promote social justice?

[78] **Mr Rosser:** First of all, the place to look at is what we said in the preamble; this is around defining sustainable development within Wales. What we have tried to do is to build on the Welsh tradition around sustainable development, which is fairly new, but is very much there, bringing in international examples. What we tried to do is to really root social justice within sustainable development. We start with recognising that sustainable development means achieving social justice and eliminating poverty in a way that is capable of being continued indefinitely by all of earth's people by respecting environmental limits. What we tried to do through this is to define sustainable development in a way that is clear, lasts for a good long time and makes social justice and overcoming poverty absolutely central to the concept of sustainable development in Wales. From that point of view, we see that the commissioner and the duty would have just as much impact in the social justice sphere as they would in environmental decision making, for example.

[79] **Mick Antoniw:** So, in practical terms, social justice and capitalist society are not comfortable bed fellows. What, in practical terms, do you think the legislation should do? Should it, for example, look at issues to do with the living wage? Should it look at issues to do with working environment conditions and areas like that, and things that are to do with the quality of life? How might the legislation do that within our competence?

[80] **Mr Rosser:** We think that, absolutely, it should be doing those things. We have not listed them. We are in quite a large alliance now with a number of organisations with different interests and different points of view. Often, during discussions, people will say, 'Shouldn't we mention something very specific in here? Shouldn't we mention fair trade in here? Shouldn't we mention the living wage?' We have deliberately not done that in terms of giving a shopping list of all the good things that we would like to see. The intention of this is very much that it does affect the whole of the public sector, and decisions that are taken should be taken with a view to achieving sustainable development, which means achieving social justice and eradicating poverty. We hope that the impact of that would come through, changing the way in which public authorities make decisions, having those decisions more open to scrutiny and challenge by a commissioner, for example, and also that this would have some legal effect and that it would be possible for people and organisations to challenge decisions taken by public bodies on the basis of this legislation.

[81] **Ms Meikle:** I would add a little to that. In a way, that is why our formulation was in the exercise of all its functions. Rather than trying to list all the sorts of things that you might want to be changed, our purpose in saying that was that this is not just about strategic decisions trickling down—which is the Government's proposal—into everything else that you do, which I am sure is true over a period of time; we were trying to be much more specific that all those things that you do, whether that is procurement, the way in which you treat your workforce or the priority you give to tackling poverty, are part of delivering on SD and being really clear about that. The White Paper proposals were much more unclear to us as to what would fall within the remit of the legislation and what would not. Our intent was to try to do that. There has been a lot of debate about how big this Bill is going to be and how detailed, and whether it will be more of a framework Bill that sets the overarching objectives, and that all other legislation and policies will have to come into line with it, so, if you are doing things that are related to poverty alleviation or any of those other things, they would have to align with this, but you cannot do everything in this particular Bill. I think that there has been a tension about how big and all-encompassing the Bill needs to be or whether it is more of a framework.

[82] **Mick Antoniw:** Do you think that it should apply equally to the private sector?

[83] **Ms Meikle:** I think that that is very difficult. I do not know how you would do that, legally. Obviously, you want it to have that knock-on effect. You are going to be sitting on the reference group. There is support for this Bill from all the employers' organisations: the CBI and the Federation of Small Businesses sit there and support the Bill. They see it as a positive thing, even though it is not going to directly apply to them, but it will apply through the way that the public sector spends its money. If it makes you change the way that you spend money into something that is more sustainable, going forward, obviously, it will have a big impact on the private sector, but it has to apply to procurement and, in the first proposals, it did not apply to procurement.

[84] **Mick Antoniw:** I have just one final question. The nub of this is that we can have a wonderful talking shop, or we can have something that will practically impact on the way that the public and private sectors operate within the limits of globalism and everything else. What extent of powers do you think that the sustainability commissioner, the future generations commissioner or whatever we call him, should have?

[85] **Ms Meikle:** We set out by saying that the commissioner should have a lot of powers over scrutiny, requesting information and having inquiries. More recently, we have discussed whether the commissioner should be able to request the call-in of decisions, for example. Those are all possibilities. The reality is that the proposals at the moment are for a very strong role for the Wales Audit Office, which is fine. That is a very strong way of looking retrospectively at how our public sector bodies are performing, but what the commissioner needs to do is to be able to intervene, rather than being behind.

[86] **Mick Antoniw:** May I be specific then, so that we are clear? Do you think that whatever body is set up should have a clear statutory basis and that the commissioner should have the power to take the Welsh Government to court over its failings under this legislation?

[87] **Mr Rosser:** We have not proposed that the commissioner has the power to take the Welsh Government to court. No.

[88] **Mick Antoniw:** Why not?

[89] **Mr Rosser:** I think that there is a question there as to where the money will come from to do that. I think that we felt that that was just going a little bit too far in terms of having a sustainable role there for a commissioner who also is able to run investigations, to make recommendations and to speak out independently. There certainly is a valid role here for us to have a debate about the exact powers of the commissioner, but where we have gone is broadly to have a commissioner who is independent and who has the power to research, to investigate and to speak out. We have not taken it any further than that, but we are perfectly happy, I think, to have discussions about what is the best role for and the extent of the powers of the commissioner altogether.

[90] **Lord Elis-Thomas:** Thank you. Julie James, William Powell and then Joyce Watson.

[91] **Julie James:** May I just follow that last point through? I take your point entirely about the commissioner, and we could have another 14 hours of debate about what should be included in terms of the principles and so on. However, in practical terms and the way that you just described that commissioner—. We have not seen a draft Bill yet, but, in previous proposals, there was some talk about local service boards, for example, having a role and so on. If you take a big, controversial decision, such as that on the M4 relief road, which we all know will be one of the biggest and most controversial decisions, what could the

commissioner actually do? If they cannot say to the Government, ‘You are just about to drive a road through five SSSIs and across one of the most important floodplains in Wales; so, don’t’, what is the point?

[92] **Ms Meikle:** I think that that is true. That is what we have been debating in the reference group when we talk about there being a need for some ability to intervene when decisions appear to be going to be very unsustainable. That was not just in relation to Government. I do not think that we have got as far as thinking, ‘What exactly is that? How would you frame that power? What is it that you can give to the commissioner?’.

[93] **Julie James:** Can I turn it the other way around, because I deliberately did that in a controversial way? All of a sudden, I am the individual who has the invidious task of making this decision. What will this suite of legislation add to my ability to make that decision in an open and transparent fashion that makes everyone at least understand how I got there, even if they do not like the outcome? Someone will not like that outcome.

[94] **Ms Meikle:** We have ended up in a lot of nitty-gritty in the reference group about this. With everything from regulatory impact assessments to the way that you do cost-benefit analyses, and all of the nitty-gritty that underpins those decisions, how do you do the impact assessments on all aspects of SD, not just environmental? When do you do them, and is the current system fit for purpose? So, for example, there is a system of strategic environmental assessment. They tend to be done after the project is developed because of the way that they are set up, and they have to be done. In consequence, they are a bit too late, normally, to influence the actual decision because the mindset is already there, and the preferred option has already been taken. There is no environmental assessment of two or three options before you plump for one, for example. When you start looking at the whole system of what you can change about the way— What are the assessments that you require? What is it that you are now asking them to do on behalf of future generations? At the moment, we discount future generations in all of the cost-benefit analyses, but actually—

[95] **Julie James:** I understand that.

[96] **Ms Meikle:** Do you? So, how do you—

[97] **Julie James:** It is still driven by money, though, is it not? It is done like that because the developer does the environmental impact assessment and because we have a developer-led approach to all developments. That is where the private sector will get caught into this system. We come back to the system in which we live, which they clearly do too, we are driven by developers wanting to do things. We are not driven in any way by any sort of master plan of what we are going to do, unfortunately—would that we were. You can take any decision. You can take a decision to put a large warehouse anywhere in Wales that will employ people on a minimum wage and require them to travel ages to get to it, but will produce the only jobs in that entire area for the last five years. How would this system help with that? That is what I am struggling with; I am struggling with the practicality of how this Bill or the suite of Bills that we are talking about would assist in making that decision.

[98] **Mr Rosser:** I think that what we would be looking at is that there would be addition to the text that we have proposed here, which is really about the duty on the whole public sector, and that would be about how that duty is then manifested and applied. That duty—what we think would be involved—would be around coming up with a plan and a vision for how Wales should be in the future, establishing indicators and objectives that relate to that, which would be around how the whole of the public sector in Wales was working towards those, and then actually re-framing some of the actions of the Welsh Government and other public sector organisations to make sure that they were making decisions in a way that is considered to be the long term: that they are busting apart those silos—some of the good

suggestions that we have had from the Welsh Government already. So, there is a certain element of this that is about behaviour changes and culture change within the public sector. There is a certain amount about having an independent commissioner who is able to have an overview to criticise. Clearly, there is also a potential for court action by individuals and organisations to change things.

[99] We think that there are a number of ways in which what we are proposing and what the Government seems to be proposing can make a difference. What we are not proposing, I suppose, is a sustainable development superhero who has ultimate powers to overrule governments all over the place. We admit that there is clearly a tension in relation to allowing democratically elected bodies to get on with what they are doing within the law. We felt that this was probably far enough to go in getting a new model of a quite feisty commissioner but not somebody who was really going to just lay down the law whenever they did not like what was happening.

10:30

[100] **Julie James:** I have one final, brief question. We are also looking, simultaneously, at the planning Bill; we are about to have a session this morning in this committee. Would you expect to see the planning Bill directly reference this Bill, or the other way around?

[101] **Ms Meikle:** I am going to hand to Robin to answer this, because we think that it is an issue.

[102] **Mr Farrar:** Mae gennym ein pryderon ynglŷn â chydlynid rhwng y Biliau hynny. **Mr Farrar:** We have our concerns regarding the coherence of those Bills.

[103] **Yr Arglwydd Elis-Thomas:** Nid dydynt mor fawr â'n pryderon ni, rwy'n siŵr. **Lord Elis-Thomas:** They are not as big as our concerns, I am sure.

[104] **Mr Farrar:** Mae perygl yn benodol o ran y trefn y Biliau hyn. O ran Cymdeithas yr Iaith Gymraeg, felly, byddem yn sicr yn hoffi gweld diben statudol i'r system gynllunio. Dyna yw un o'n pryderon mawr ni ynghylch y Bil drafft rydym wedi ei weld. Byddem yn hoffi gweld y diben statudol hwn yn cyfeirio'n benodol at gymunedau cynaliadwy fel un elfen o'r peth. Felly, o ran y diffiniad o 'ddatblygu cynaliadwy' ac yn y blaen yn y Bil hwn, dylai fod perthynas gref iawn. **Mr Farrar:** There is a specific danger in terms of the order of these Bills. In terms of Cymdeithas yr Iaith Gymraeg, therefore, we would certainly like to see a statutory purpose to the planning system. That is one of our major concerns with the draft Bill that we have seen. We would like to see this statutory purpose refer specifically to sustainable communities as one element of it. So, in terms of the definition of 'sustainable development' and so on in this Bill, there should be a very strong relationship.

[105] Pryder arall yw'r honiad mai dim ond fframwaith neu strwythur y mae'r Bil cynllunio yn ei gynnig, oherwydd mae'n gwbl glir i ni ar hyn o bryd bod fframwaith y system gynllunio yn niweidio nid yn unig yr iaith Gymraeg yn y datblygiadau y mae'n eu caniatáu, neu'n peidio â'u caniatáu, ond hefyd agweddau ar yr amgylchedd, ac mae hefyd yn cael effaith ar dlodi. Felly, wrth lunio'r systemau a'r strwythurau hynny, mae angen sicrhau llais yn wir i genedlaethau'r **Another concern is the claim that the planning Bill only provides a framework or structure, because it is quite clear to us at present that the framework of the planning system damages not only the Welsh language in the developments that it permits or does not permit, but also aspects of the environment, and it has an impact on poverty. Therefore, in drawing up those systems and structures, there is a need to ensure a voice for future generations, for the language and**

dyfodol, i'r iaith a mudiadau'r trydydd sector hefyd a dweud y gwir, oherwydd mae perygl mai dim ond llais cynllunwyr, pobl dechnegol felly, a chwmnïau mawr sy'n cael eu clywed yn y broses. Byddwn yn annog y pwyllgor hwn i ystyried hynny wrth drafod y Bil cynllunio hefyd.

third sector organisations also, because there is a danger that it is only the voices of planners, technical people like that, and large companies that are heard in the process. I would urge this committee to consider that in discussing the planning Bill as well.

[106] **Yr Arglwydd Elis-Thomas:** Nid wyf am fynd ar ôl hynny, ond mae'n fater y byddwn yn ei drafod yn nes ymlaen. Er hyn, un o'r problemau sydd gennyf yw: pa fath o lais? Mae'r pwyllgor a oedd, dan arweiniad John Davies, yn edrych ar hyn wedi edrych ar i ba raddau mae modd rhoi statws i rywun arall heblaw'r datblygwr yn y broses gynllunio, yr hawl i apelio ac yn y blaen, ac wedi dod yn erbyn anawsterau o ran sut y byddai rhywun yn penderfynu pa fath o lais fyddai'n briodol yn y broses gynllunio i sectorau eraill. Byddwn yn hoffi, os oes gennyf unrhyw syniadau pellach ynglŷn â hynny'n fwy manwl, pe baet yn gallu eu hanfon atom, fel y gallwn eu defnyddio yn ein trafodaeth ar y Bil cynllunio.

Lord Elis-Thomas: I am not going to pursue that, but it is a matter that we will be discussing later. My only question would be: what kind of a voice? The committee that looked at that, led by John Davies, looked at the question of the extent to which you could give status to someone else apart from the developer in the planning process and the right to appeal and so on, and it came across problems regarding how one would decide what sort of voice is appropriate in the planning process for other sectors. I would be grateful, if you have more detailed ideas on that issue, if you could send them to us so that we can use them in our discussions on the planning Bill.

[107] Mae gennyf gwestiynau oddi wrth William Powell ac yna Joyce Watson i gloi.

I have questions from William Powell and then Joyce Watson to close.

[108] **William Powell:** Most areas of questioning that I wanted to pursue have already been covered. However, a couple of issues remain. Anne, you have referred on a number of occasions to the reference group and how important its role has been in turning things around and, maybe, reigniting some of the inspiration that was around earlier. Could you give us a little bit more of an idea of how that reference group works and how it is constituted, because you are the representative of what is a very broad alliance? I am keen to have a better understanding of how that is going to go forward in the time to come.

[109] **Ms Meikle:** The reference group was set up under the chairmanship of the commissioner, but set up by Government. Its intent was that all of the bodies captured by the scope of the Bill would be represented on the reference group. So, it is primarily a public sector body. It has a few other members. There is me and somebody from the international development hub. There used to be somebody from the Wales Council for Voluntary Action but it has not currently got anybody in post. So, there are usually three third sector representatives on it. Also, as I said, representatives from the Confederation of British Industry, the Country Land and Business Association Ltd and the Federation of Small Businesses from the economic sector all sit on it. So, the majority are public sector bodies and there is a small number from the other sectors, if you like, who sit on it. The aim was that we would discuss and give recommendations to the Welsh Government.

[110] We have had a couple of sub-groups. One that I chaired was trying to provide advice, first of all, on the principles that should go in the Bill, which we did back in June. Latterly, the Minister asked us to look at how you would make the principle of living within environmental limits practicable for the public sector. That advice has just gone. We had a meeting this week and the advice will just have gone to the Minister now from the reference group, with the recommendations around that. There is another sub-group that is looking at

transparency and reporting, whether the current performance management system in the various bits of the public sector is fit for purpose and how it could be changed in order to ensure that sustainable development is appropriately being delivered going forward. That is a major piece of work, which is still ongoing. It is being led by the Wales Audit Office and the Association of Chartered Certified Accountants and involves a lot of the public sector bodies.

[111] **William Powell:** That is useful. Lots of the services that are procured and lots of the ways in which our communities work relate to cross-border issues, particularly with the porous England-Wales border and environmental impacts. Many of the organisations that are in the alliance clearly have a presence across the border in England. Are there particular cross-border areas of work—I am thinking particularly of the priorities around Cymdeithas yr Iaith Gymraeg and issues relating to the proportion of housing development on one side of the border as opposed to meeting a need on the other—that you think are important to take account of in the way that this Bill is constructed?

[112] **Ms Meikle:** From the beginning, as an alliance, as you can see, we have been very keen to make sure that impacts beyond Wales—looking from what we are doing out into England; for instance, our rivers run into England—are captured by this Bill, no matter where those are. Obviously, it also happens the other way, and I genuinely do not think that that has been discussed. It has certainly not been discussed very much in the reference group in terms of the best way to deal with those issues of cross-border services and all the rest of it, because the Bill cannot apply to bodies elsewhere. There has been a lot of debate around some of those, but I must admit that I do not think that there is a resolution. I do not know if any of the other panel members have any other thoughts.

[113] **Mr Farrar:** O ran datblygiadau, fy nghred i yw mai mesur angen lleol ar gyfer y datblygiadau yw'r elfen sydd yn glir ar goll yn y system ar hyn o bryd. Fel mae'n digwydd bod, mae hynny'n mynd yn y cyfeiriad arall, o ran cymunedau sydd o fewn pellter teithio i'r ffin. Byddwn i'n dadlau, o safbwynt cynaliadwyedd, y dylem fod yn ceisio cael sefyllfa lle mae pobl yn teithio llai ac yn gweithio o fewn cymunedau, a bod datblygiadau yn ateb gofynion lleol, yn hytrach na gofynion dinasoedd a threfi mwy, boed hynny dros y ffin neu yng Nghymru.

Mr Farrar: From the point of view of developments, I believe that what is clearly missing in the system is a local needs measure in developments. As it happens, that goes in the contrary direction, as regards communities that are within travelling distance to the border. I would argue that, from the point of view of sustainability, we should be endeavouring to come to a position where people travel less and work within communities, and that the developments meet local need, rather than the needs of the larger towns and cities, whether that is over the border or in Wales.

[114] **Joyce Watson:** My question is short and we are running out of time. We are talking about a Bill to change things, so, in terms of looking back to look forward, can you give an example of where you think a decision has been made that would be done differently or would have been enhanced by this future generations Bill?

[115] **Ms Meikle:** I think that we have given two. We had one in the beginning about some of the housing development issues for language futures and we have talked about the housing regulations. There are quite a few, and we have looked at some elsewhere. One of the other ones that we talked about was when we were discussing environmental limits. Again, it is quite difficult to know whether the decision would change in the end, but the process by which you make the decision would be different.

[116] Take the example of Neath Port Talbot, which regularly breaches air quality limits. The air quality directive sets limits on air quality for the benefit of human health; although they are an environmental limit, it is not about the environment, but about human health.

Decisions are made on planning issues in that area for economic benefit, which will obviously increase traffic and increase the problem of breaching the air quality limits. So, one of the things that I would suggest that we would want differently here, and we asked ourselves these questions: ‘When you were considering whether to go ahead with that economic development, did anybody ask the health authority what the increased cost was likely to be of continuing to have more health problems going on into the future and how was that considered?’ and ‘How was the future impact on the health of local people given weight compared with the current benefit of jobs in that area?’ That is one of those examples of what everybody calls really wicked decisions in sustainable development and there is not necessarily, from where we sit, a right or a wrong answer, but we do not think, at the moment, that that decision is given proper consideration. Probably, nobody talked to the health authority or asked it to give a costed view. I am probably completely wrong here, but nobody could find an example of what the costs were to future human health and how that was weighted against current benefits. You would expect to see that in an impact assessment in future as part of that decision and for that to be obvious to the people in that area, so that they know on what basis that decision was made, and at a future point, if they do not think that is right, they have a vote, do they not?

[117] For us, it is about how you make the decision, how transparent it is, what you take into account and which things you prioritised. If you make that really clear, then somebody gets a choice at a later date as to whether they agree with you or not. That is what we would like to see change.

[118] **Yr Arglwydd Elis-Thomas:** Lord Elis-Thomas: Cathrin, do you have Cathrin, oes rhywbeth gyda chi i’w something to add? ychwanegu?

[119] **Ms Daniel:** O ran teitl y Bil, roeddech wedi gofyn i mi ar y cychwyn am fy marn ar newid enw’r *future generations Bill*. Nid ydym yn credu mai label y Bil sy’n bwysig, ond beth fydd ynddo. Mae Julian ac Anne wedi mynd drwy’r elfennau pwysig i ni o ran y dyletswydd a sut rydym yn diffinio datblygu cynaliadwy. I rai pobl, mae meddwl ynglŷn â chenedlaethau’r dyfodol yn rhywbeth positif, felly os mai pwrpas newid enw’r Bil yw i’r cyhoedd allu deall y pwrpas yn well a chefnogi’r Bil yn fwy, rydym yn cefnogi hynny. Mae’r rhai sy’n edrych ar dreftadaeth yng Nghymru yn meddwl am pa fath o dreftadaeth rydym yn ei gadael i’n plant, felly mae rhywbeth calonogol efallai ynglŷn â’r enw newydd. Os yw enw’r Bil yn cael ei newid, mae’n bwysig bod datblygu cynaliadwy yn aros yn glir o fewn y Bil yn y diffiniad ac yn y dyletswydd, a hefyd bod rhyw fath o gysylltiad o fewn y Bil gydag amcanion datblygu cynaliadwy y Cenedloedd Unedig.

Ms Daniel: In terms of the title of the Bill, you asked me at the outset what I thought of changing the name of the future generations Bill. We do not believe that it is the label of the Bill that is important, but its contents. Julian and Anne have outlined the important elements for us in terms of the duty and how we define sustainable development. For some people, thinking about future generations is a positive thing, so if the purpose of changing the title of the Bill is for the public to better understand the purpose of the Bill and to support it, then we support that. Those looking at heritage in Wales think about what kind of heritage we are leaving for our children, so there is perhaps something encouraging about the new name. I would say that if the name of the Bill is changed, it is important that sustainable development remains clearly within the Bill in the definition and in the duty, and that some kind of link is made within the Bill with the sustainable development aims of the United Nations.

[120] Awgrym arall yw ‘cenedlaethau’r presennol a’r dyfodol’, achos nid siarad am beth sy’n dda i genedlaethau i ddod yn unig a Another suggestion might be ‘present and future generations’, because we are talking not just about the future, but also about what

wnawn, ond hefyd beth sy'n dda i Gymru heddiw. Ni allwch wahanu'r ddau; dyna sydd yng nghanol y Bil yma.

is best for Wales today. You cannot really make a distinction between the two; that is what is at the centre of this Bill.

[121] **Yr Arglwydd Elis-Thomas:** Diolch yn fawr i chi am grynhoi mor dwt. Rwy'n credu y gallwn orffen yn y fan honno. Diolch yn fawr am y dystiolaeth.

Lord Elis-Thomas: Thank you very much for summarising so tidily. I believe that we can finish there. Thank you very much for the evidence.

10:44

Papurau i'w Nodi **Papers to Note**

[122] **Yr Arglwydd Elis-Thomas:** Mae gennym nifer o bapurau i'w nodi. Dylwn ddweud cyn hynny ein bod wedi derbyn ymddiheuriad yn ystod eisteddiad y pwyllgor gan Antoinette Sandbach am resymau teuluol a phersonol. Dymunwn adferiad buan i aelod o'i theulu nad yw'n dda.

Lord Elis-Thomas: We have a number of papers to note. I should say before that that we received an apology during the sitting of the committee from Antoinette Sandbach for family and personal reasons. We wish the member of her family who is unwell a speedy recovery.

[123] Rydym wedi derbyn llythyr gan y Llywydd ar effeithiolrwydd pwyllgorau wrth wneud gwaith craffu ar y gyllideb. Os ydych yn dymuno trafod y rhain, efallai y byddai'n well i ni wneud hynny ar ôl egwyl fer mewn sesiwn breifat, ond rwy'n eu nodi gan eu bod yn ddogfennau cyhoeddus. Rydym wedi derbyn llythyr gan y Gweinidog Cyfoeth Naturiol a Bwyd ynglŷn â llythyr cylch gwaith Cyfoeth Naturiol Cymru, a hefyd rydym wedi derbyn ymateb Cyfoeth Naturiol Cymru i ymgynghoriad Llywodraeth Cymru ar gynllun drafft coridor yr M4. Mick?

We have received a letter from the Presiding Officer on the effectiveness of committees in scrutinising the budget. If you wish to discuss these, perhaps we had better do so after a short break, in private session, but I have noted them because they are public documents. We have received a letter from the Minister for Natural Resources and Food as regards the remit letter of Natural Resources Wales and we have also received NRW's response to the Welsh Government's consultation on the draft proposals for the M4 corridor. Mick?

10:45

[124] **Mick Antoniw:** Thank you, Chair. I just wanted to comment on the letter.

[125] **Lord Elis-Thomas:** Yes, of course.

[126] **Mick Antoniw:** It raises quite a number of quite important issues. It also raises a real concern over the status of the consultation, as well as a number of things that it says are potentially a deficit within that consultation. There are number of areas of quite serious concern that Natural Resources Wales has raised, and I think this is an example of Natural Resources Wales taking part in highlighting this. We had a paper sent over, which I think was a paper presented to the Enterprise and Business Committee, which indicates that, in fact, the consultation has now been changed to include the blue option, or whatever it is called—the Professor Cole option. What I do not understand is whether that means that the whole consultation process has to start again. How can you validate certain contributions to a consultation on a paper or document that you say is now incomplete and does not include all the options? I think that we need clarity from the Minister about what the actual status of that consultation process is. There are also quite a number of points—I am sorry, I do not want to take up all our time on it—

[127] **Lord Elis-Thomas:** No, no, it is important.

[128] **Mick Antoniw:** There were quite a number of points, particularly from Natural Resources Wales, raising a whole series of issues that need to be raised with the Minister. Also, on page 21 of our public reports pack, I think, it says:

[129] ‘It therefore appears that there is a gap in statutory processes and no clear policy rationale for pursuing a new M4 road scheme option.’

[130] Comments like that really raise very, very serious questions or warning lights of real dangers ahead, particularly for anyone who would be considering a judicial review of any decisions and so on. It also raises quite serious concerns about how confident we are in the consultation process. It seems to me that those are issues. I know the difficulty with the Minister—because I tried it in another committee—is that, when you ask a question, you get told, ‘Sorry, I can’t discuss this’. However, we do need to have some clear answers to the points that it raises and also on the status of the consultation.

[131] **Lord Elis-Thomas:** Thank you.

[132] **Mick Antoniw:** Sorry for—

[133] **Lord Elis-Thomas:** No, no, do not apologise at all. I have read the response in detail and I share your concerns. If you think it is appropriate—well, I certainly think that it is appropriate—we will write formally to the Minister pointing out these matters and asking for a written response, but also keeping open the option of inviting the Minister to respond further. Clearly, there are issues of compliance here with UK legislation and European law that are well beyond what seems to have been considered so far in the consultation. I will not go any further. Are you happy if we do that?

[134] **Mick Antoniw:** Yes. Could we emphasise that we want clarification from the Minister on the status of the consultation in light of the change—

[135] **Lord Elis-Thomas:** Yes—

[136] **Mick Antoniw:** —because I do not understand what is going on?

[137] **Lord Elis-Thomas:** I will ask for a draft letter and we will share it with each other.

[138] **Julie James:** Just to add to that, I do not think that there is any point going through each of the issues in the NRW letter, interesting though they are and much as I would like to see the answers, because I think that we will just get a blanket response that it is part of the consultation. However, I think that Mick’s point really needs to be emphasised. So, rather than bury it in a pile of other stuff, really, that is the point that we should write on: what is the status of the consultation at this moment? We should reserve the right to ask other questions when we know what the response to that is, if you see what I mean. Otherwise, you will just get a ‘What’s it got to do with you?’ reply, I am afraid.

[139] **Lord Elis-Thomas:** Nobody gives that sort of reply to this committee. [*Laughter.*]

[140] **Julie James:** To be fair to the Minister, what you will get is the response that ‘This is subject to’—

[141] **Lord Elis-Thomas:** I know.

[142] **Julie James:** Rightly so, you will get the response, ‘This is subject to consultation and therefore cannot be discussed in public. Sorry’.

[143] **Lord Elis-Thomas:** However, as Mick has pointed out, the range and status of the consultation is surely a matter of public interest, which the Minister should respond to. We are not asking, ‘Which decision are you going to take?’—

[144] **Julie James:** No, exactly.

[145] **Lord Elis-Thomas:** We are asking, ‘How is the process being undertaken?’ So, we can do that.

[146] Then we will respond to the letter from the Presiding Officer about the effectiveness of scrutiny of the budget by committees. I think that the main concern that we had with the budget was that we did not get the figures soon enough. I would propose to respond in those terms and to concentrate on that issue, which is obtaining data or getting information on time—*cael y wybodaeth mewn pryd*. I think that that covers those matters.

[147] **Llyr Gruffudd:** O ran cylch gorchwyl Cyfoeth Naturiol Cymru a’r llythyr hwnnw, a ydym am drafod hynny yn awr?
Llyr Gruffudd: In terms of the remit of Natural Resources Wales and that letter, do we want to discuss that now?

[148] **Yr Arglwydd Elis-Thomas:** Iawn. **Lord Elis-Thomas:** Okay.

[149] **Llyr Gruffudd:** Rwyf eisiau nodi dau beth. Roeddwn i’n teimlo, yn ôl y trafodaethau yr ydym wedi eu cael o’r blaen ar y pwnc hwn gyda rhai o’r rhanddeiliaid, dylai fod blaenoriaeth o ran dod â safleoedd wedi eu gwarchod yn ôl i gyflwr ffafriol. Dylai hynny fod yn flaenoriaeth amlwg yn y llythyr, rwyf yn meddwl. Hefyd, rydym wedi cael y drafodaeth ynglŷn ag arweinyddiaeth amgylcheddol yn dod o gyfeiriad Cyfoeth Naturiol Cymru, yn fwy penodol efallai nag arwain ar rhai o’r materion eraill, ond rwyf yn meddwl y dylai fod cyfeiriad at daclo colli bioamrywiaeth hefyd o fewn y cylch gwaith. Dyna ddau sylw sydd angen cael eu gwneud, credaf.
Llyr Gruffudd: I just want to note two things. I felt, based on the discussions that we had previously on this subject with some of the stakeholders, that there should be a priority in terms of bringing protected sites back into a favourable state. That should be a clear priority in the letter, I think. We have also had this discussion regarding environmental leadership coming from NRW, more specifically perhaps than leading on some of the other issues, but I do think that there should also be reference to tackling biodiversity loss in the remit. I think that those are two comments that need to be made.

[150] **Yr Arglwydd Elis-Thomas:** Diolch. Gallwn gynnwys y rheini, ond hefyd rwyf yn credu bod gennym argymhellion penodol sydd yn enwi Cyfoeth Naturiol Cymru yn ein hadroddiadau eraill yn ystod y flwyddyn. Efallai y byddai’n dda o beth, os ydych chi’n fodlon, i gynnwys argymhellion yr ydym wedi eu dod iddynt yn barod. Mae un cwestiwn arall yn y fan hon hefyd, sef efallai y dylem ni ofyn i’r Gweinidog am gadarnhad y bydd ef yn fodlon i ni fynegi barn ar ei lythyr drafft ynghylch y cylch gorchwyl yn flynyddol cyn iddo ei anfon. Efallai, gydag ychydig mwy o ragrybudd, cawn gyfle i roi
Lord Elis-Thomas: Thank you. We can include those things, but also I believe that we have specific recommendations that name Natural Resources Wales in our other reports during the year. Perhaps it would be a good thing, if you are willing, to include recommendations that we have already made. There is one other question here too, which is that perhaps we should ask the Minister for confirmation that he will be willing for us to express a view on his draft remit letter annually before he issues it. With a little more prior warning, perhaps, we could include it in our forward work

hynny yn ein rhaglen waith, ac y gall hyn fod yn rhywbeth yr ydym yn ei wneud yn gyson, os yw hynny'n dderbyniol.

programme, and then this could be something that we did regularly, if you are happy with that.

[151] Rwyf yn cynnig ein bod yn cael egwyl fer am ryw bum munud ac yna fe ddown yn ôl i sesiwn breifat. Cyn hynny, mae eisiau i ni gynnig ein bod yn gwahardd y cyhoedd.

I propose that we break for about five minutes and then we will return for a private session. Before we do that, we need to propose to exclude the public.

10:51

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

[152] **Yr Arglwydd Elis-Thomas:** Lord Elis-Thomas: I move that
Cynigiad fod

y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog 17.42(vi).

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

[153] Gwelaf fod y pwyllgor yn gytûn.

I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10:52.
The public part of the meeting ended at 10:52.*