



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

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

Dydd Iau, 16 Gorffennaf 2015
Thursday, 16 July 2015

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Papers to NoteCynnig 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

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)
Janet Haworth	Ceidwadwyr Cymreig Welsh Conservatives
Julie Morgan	Llafur Labour
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Jenny Rathbone	Llafur Labour
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Gill Bell	Rheolwr Rhaglen Cymru, Cymdeithas Cadwraeth y Môr Wales Programme Manager, Marine Conservation Society
Gareth Cunningham	Swyddog Polisi Morol, RSPB Cymru Marine Policy Officer, RSPB Cymru
Jim Evans	Cymdeithas Pysgotwyr Cymru Wales Fisherman's Association
Scott Fryer	Swyddog Ymgyrch ac Eiriolaeth Morol, Ymddiriedolaethau Natur Cymru Marine Campaign and Advocacy Officer, Wildlife Trusts Wales
Julian Harrison	Cyfarwyddwr Prosiect, Cyfleuster Adfer Ynni Parc Adfer, Wheelabrator Technologies Project Director, Parc Adfer Energy Recovery Facility, Wheelabrator Technologies
David Jones	Cyfarwyddwr Prosiect, Ynni Morol Sir Benfro Project Director, Marine Energy Pembrokeshire

Dr Mark Lang	Ffederasiwn Busnesau Bach Cymru Federation of Small Businesses Wales
Mary Lewis	Rheolwr Tîm Cyngor Morol, Cyfoeth Naturiol Cymru Marine Advice Team Leader, Natural Resources Wales
Mark Russell	Cyfarwyddwr, Agregau Morol, Cymdeithas Cynhyrchwyr Agregau Morol Prydain Director, Marine Aggregates, British Marine Aggregate Producers Association
Phil Short	Rheolwr Prosiect, Cyfleuster Adfer Ynni Parc Adfer, Wheelabrator Technologies Project Manager, Parc Adfer Energy Recovery Facility, Wheelabrator Technologies
Eleanor Smart	Arweinydd Tîm Trwyddedu Morol, Cyfoeth Naturiol Cymru Marine Licensing Team Leader, Natural Resources Wales
John Wheadon	Rheolwr Gwasanaeth Trwyddedu, Cyfoeth Naturiol Cymru Permitting Service Manager, Natural Resources Wales
Sarah Williams	Prif Gynghorydd—Rhaglen Cyfoeth Naturiol ac Ecosystemau, Cyfoeth Naturiol Cymru Principal Advisor—Natural Resources and Ecosystems Programme, Natural Resources Wales
James Wilson	Cynhyrchwyr Cregyn Gleision Bangor Bangor Mussel Producers
Edward Woodall	Pennaeth Polisi a Materion Cyhoeddus, Cymdeithas Siopau Cyfleustra Head of Policy and Public Affairs, Association of Convenience Stores

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

Alun Davidson	Clerc Clerc
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Nia Seaton	Y Gwasanaeth Ymchwil Research Service
Adam Vaughan	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 09:01.

The meeting began at 09:01.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[1] **Alun Ffred Jones:** A gaf alw'r pwyllgor i drefn a chroesawu'r Aelodau yma? Os bydd larwm tân, yna dilynwch y cyfarwyddiadau. Pawb i ddiffodd eu ffonau symudol, os gwelwch i fod yn dda. Rydym yn gweithredu'n ddwyieithog ac fe gewch chi gyfrannu yn Gymraeg neu yn Saesneg. A oes unrhyw un eisiau datgan buddiannau? Na. Nid oes ymddiheuriadau, nag oes?

Alun Ffred Jones: May I call the committee to order and welcome Members here? If there is a fire alarm, then follow the instructions of the ushers. Switch off your mobile phones, please. We operate bilingually and you may contribute in either Welsh or English. Does anyone wish to declare any interests? No. We've received no apologies, have we?

[2] **Mr Davidson:** Nag oes. **Mr Davidson:** No.

Bil yr Amgylchedd (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 16
Environment (Wales) Bill—Stage 1: Evidence Session 16

[3] **Alun Ffred Jones:** Yr ail eitem yw **Alun Ffred Jones:** The second item is an sesiwn dystiolaeth gyda busnesau. evidence session with businesses.

[4] So, we await our first witnesses, and when they get here, we'll kick off with Mick Antoniwi's questions. As I said, we aim to finish before lunch today, if we can get through the work. I want you to have a look at the last item on our inquiry and look at the suggested notes there.

[5] Diolch yn fawr. A gaf eich **Thank you very much. May I welcome you?** croesawu?

[6] Welcome here to the committee and we're very pleased that you're able to attend and help us in our work. Can I ask you to introduce yourselves for the record, and then Mick Antoniwi will kick off with the questioning? So, shall we start at this end?

[7] **Mr Woodall:** Hi, good morning. I'm Ed Woodall. I'm head of public affairs at the Association of Convenience Stores.

[8] **Dr Lang:** I'm Mark Lang. I'm a consultant working with the Federation of Small Businesses Wales.

[9] **Mr Short:** I'm Phil Short. I'm a business development manager with Wheelabrator Technologies. We're developing a facility in north Wales called Parc Adfer, which is an energy recovery facility.

[10] **Mr Harrison:** I'm Julian Harrison, also working for Wheelabrator, and I'm the project director for that Deeside project.

[11] **Alun Ffred Jones:** Thank you. We have quite a few questions to go through and we don't have that much time, obviously, so questions to be brief and answers to be full but brief as well. Mick.

[12] **Mick Antoniwi:** Thank you. Good morning. The impact of the carrier bag levy seems to have been relatively well received within Wales, but I understand that there are concerns within small businesses in particular about the administrative elements around it. I wonder, perhaps, if you could outline what evidence you have around your concerns for that.

[13] **Mr Woodall:** We've used the Welsh system as an exemplary system for reducing the burden on small businesses around carrier bag charging because there's that exemption on reporting. So, we're slightly concerned by the proposals in the Bill to then add an additional minimum price for bags for life as well. But, generally, the experience of retailers in Wales has been good, from what they've reported to us—administrative burdens are very limited and the process of passing it on to good causes within the community as well has been a positive outcome. I think they've embraced it positively and it's worked well for them.

[14] **Dr Lang:** I think that's also true of members of the FSB. There is a concern that the administrative burdens could increase as a result of this Bill. In fact, in our evidence we're suggesting that the reporting exemption should actually be raised to include companies under

250 employees—all small and medium-sized enterprises. The reason for that is that we feel that small businesses are critical to future environmental sustainability, because we're critical to, you know, localising economic functions. Any administrative burdens that can get in the way of that clearly aren't helpful. Nevertheless, I think, as Edward has suggested, for FSB members too, it's a move that members have broadly welcomed and has worked quite well. So, why change something that's already working well?

[15] **Alun Ffred Jones:** Jenny Rathbone, do you want to come in on this?

[16] **Jenny Rathbone:** Yes, just on this. I mean, we're talking, in the main, about food shops and convenience stores. A very large number of the outlets for food and other household materials are from small businesses. You know, the Well-being of Future Generations (Wales) Act 2015 requires all of us to make a contribution, and I cannot understand this regulatory burden in a small shop. What is the problem about allocating a proportion of the money for the cost of making the bags and a proportion to some charity?

[17] **Mr Woodall:** I think they are doing that. They are allocating funds to charities.

[18] **Jenny Rathbone:** Okay. So, what's the problem about doing that for other types of bags that you may issue?

[19] **Mr Woodall:** Because I suppose the original intention was about reducing the amount of single-use bags, and bags for life are to be reused, and therefore are more environmentally positive in that sense.

[20] **Jenny Rathbone:** Okay. But we're now tightening it up in order to ensure that we're not, you know, using more resources than we need to.

[21] **Dr Lang:** I guess our view is that it's not necessarily to tighten it up, because it already works.

[22] **Alun Ffred Jones:** Mick Antoniw.

[23] **Mick Antoniw:** Well, just to come back on that, then—what evidence is there? I mean, why should there be any significant extra burden if, for example, it's extended to, say, bags for life and so on?

[24] **Dr Lang:** It's the reporting burden. You know, it's a process that needs to be gone through. For example, for a small shopkeeper that's one more administrative burden.

[25] **Mick Antoniw:** But it's not an additional burden in the sense that, if you're doing it for the standard bags anyway, it's just extending that to the other bags. I mean, it's difficult to see where there is any additional reporting burden other than what exists already.

[26] **Dr Lang:** But there's an exemption already, and we say that exemption should be raised. But, certainly, that exemption should not be removed for firms with fewer than 10 employees.

[27] **Mr Woodall:** So, the exemption prevents them from obviously having that burden within the business, which is positive. If you think about the proportion of small businesses that are small stores that are independently run—that means they don't have any central administrative function—it is the retailer themselves doing that process, and it's an additional process. We're always trying to communicate that we want to try and get our members working on their business, not in their business, to make them more effective and more efficient. So, there are implications to the administration.

[28] **Mick Antoniw:** Would you say it's still a very minor burden? I mean, there are many other regulatory things that do take time, with the health and safety elements and various other aspects. I mean, it's not a significant burden. Isn't it something that could be actually turned into a sort of positive act in terms of small businesses and consumers?

[29] **Dr Lang:** I guess, in a sense, for me, it assumes that businesses, in some way, want to escape their obligations. I think that's not the point. They're already doing it. It's not necessary to have it. However small you might think the burden is, it's not necessary.

[30] **Mick Antoniw:** Okay. Do you have any particular views, then, on the issue of the specific direction of money—the hypothecation, then, of the receipts from carrier bags?

[31] **Mr Woodall:** Well, I suppose it's a good opportunity for our members to give it to the causes that are important to them locally. Sometimes that is not just a charitable organisation; it might be sports teams or it might be a range of other factors. I think they've done that in good faith as the scheme's been introduced. We've certainly not seen reports of people retaining the cash for their own purposes.

[32] **Mick Antoniw:** And I suppose also it does add to a positive element, that is engagement with the community and engagement with local charities and voluntary organisations. So, there's a side to it that is, again, a positive that potentially comes out of it.

[33] **Mr Woodall:** Yes, most definitely. You know, they really like it as an opportunity to show that they're active within the community and they have embraced that. As I said right at the beginning, we've taken the current Welsh scheme as the exemplary way that it should be introduced across the United Kingdom. It's unfortunate that other Governments haven't picked up on that. But it's not broken, so—

[34] **Alun Ffred Jones:** A number of people want to come in on this one. On this point, I hope.

[35] **Russell George:** I just want to get my mind straight in regard to the burden for small businesses. If I'm right, there's no small shop—. Whether it's one employee running a small shop, or a large superstore, they are expected to charge. It's the law that they charge 5p. The issue is about whether a company is exempt from reporting or not. From speaking to small businesses myself, the issue seems to be around whether somebody is charging 5p and recording that, and whether small shops have the mechanisms that the large shops do. Is that what the issue is? I'm just trying to make sure I'm clear on this.

[36] **Mr Woodall:** So the small stores are exempt from—

[37] **Russell George:** Yes, that's right. What I'm asking about is the issue of why they should be exempt. What small businesses have put to me, and I'm asking you if this is your view as well, is that one of the reasons they are exempt is because they don't have the reporting mechanisms. For example, a big superstore has it set up so it automatically records. A small shop may not have that computer system. Is that your experience? Is that the main reason why a small business should be exempt, or are there other, more key reasons?

[38] **Mr Woodall:** I think, yes, that is the main reason—that they don't have that centralised, administrative function where they can manage the process of the bags going through. Some of them might not have EPOS systems at the till, which would also prevent that from happening as well. So, I think that really is the challenge—how they record it and how they manage that process within the store, because it's not, ultimately, always them that's doing that at the till; it's also their staff as well, so it involves training staff to do that as

well.

[39] **Alun Ffred Jones:** Julie Morgan, did you want to come in on this?

[40] **Julie Morgan:** I just wondered if there was any evidence of small businesses that are exempt from the recording not charging for the carrier bags.

[41] **Dr Lang:** No. We've seen no evidence of that at all.

[42] **Julie Morgan:** You haven't seen any evidence? I've seen minor evidence of it, but I just wondered if you had any overview.

[43] **Mr Woodall:** We haven't seen any areas of non-compliance or areas where they've been raised with us. Certainly, through the primary authority schemes that we have for our members, there haven't been any sort of issues raised around non-compliance.

[44] **Alun Ffred Jones:** Llyr Gruffydd.

[45] **Llyr Gruffydd:** Just for clarity, then, the regulatory impact assessment that comes with the Bill tells us that there wouldn't be any additional cost for administering charges on a wider range of bags. So, you would not agree with that. You'd challenge that, yes?

[46] **Mr Woodall:** Yes, I think there would be additional costs.

[47] **Llyr Gruffydd:** Okay. We've had some interesting evidence from Keep Wales Tidy, who suggest that, actually, you could be creating a situation where people perceive it to be a positive action to support charities through buying single-use carrier bags or bags for life, potentially. Is that a concern that you might share, or do you think that that's not likely to happen?

[48] **Mr Woodall:** No, I don't share that concern. I think it's for the customer coming into the convenience store. They're generally going either on an impulse buy or a top-up shop, and sometimes that requires bags, because, you know, two out of three journeys to convenience stores are not planned. So, they won't have their bag for life with them at that point in time. So, I don't think it's charity driven; it's just pure practicality.

[49] **Llyr Gruffydd:** Okay, that's fine. Also, I hear what you say about extending the ability to contribute that money to a broader range of organisations, but one of the points that's been raised is that the Bill isn't specific enough or explicit enough in saying that the money should go to organisations that are actually operational in Wales. Would you have a view on that?

[50] **Dr Lang:** I certainly would. I think it would be a very good idea to keep that funding in Wales as far as possible, and for it actually to be used to promote local growth. Now, that might be in the charitable sector, it might equally be to—I don't know—promote a chamber of commerce, or whatever. Either way, this is something that could be used to help strengthen local economies in Wales, and, as I say, that could come from any sector.

[51] **Llyr Gruffydd:** Okay. Diolch.

[52] **Alun Ffred Jones:** Okay. Did you want to—? Just on this, the last question on this.

[53] **Jenny Rathbone:** Yes. Given that the non-compliant are unlikely to tell you, what evidence do you have of the numbers of people who are actually donating? Have you done a survey of your members in terms of—? Obviously, people are entitled to keep the money, but

it would be interesting to know what proportion are declaring that they do donate it to a good cause.

[54] **Mr Woodall:** I was just checking—. We have got a polling mechanism, so we can certainly look to test those questions, if the committee feel that would be useful.

[55] **Jenny Rathbone:** Well, it's one question, really, isn't it? Are you levying, I suppose, and are you then donating it on?

09:15

[56] **Mr Woodall:** I don't have the answer now. I can attempt to find the answer.

[57] **Jenny Rathbone:** Fine. If you could tell us—. Thank you.

[58] **Alun Ffred Jones:** Thank you. Right, Jeff Cuthbert. I think we're moving on to another set of questions.

[59] **Jeff Cuthbert:** Yes, Chair. Good morning. I want to talk about the separation of waste. Perhaps you could let us have your view on whether powers to require non-domestic premises to separate waste are necessary, whether you think that could impact upon competitiveness and to what degree. There is a proposal from the Welsh Local Government Association that small businesses could be exempt—any comments on that? And, perhaps, your views on whether street-level recycling would indeed help the process or place an extra barrier for small businesses.

[60] **Dr Lang:** Shall I begin? One of the key issues for us is, actually: where do small businesses sort the waste? Very often, they're very small premises, particularly shops. So, the space available in order to sort the waste before it's collected is limited. So, I think there are further complications in that.

[61] In terms of local competition, we've also got some concerns. Far be it for me, as someone speaking on behalf of a business organisation, to call for market intervention, but nevertheless, in terms of waste collection, there is, I think, an opportunity for local authorities, particularly, at that local level to consider competition within the market. You might think, of course—

[62] **Jeff Cuthbert:** Sorry—competition for waste collection?

[63] **Dr Lang:** Yes, because there's a value attached to it, of course—as our co-witnesses might suggest in a moment—there's a value attached to waste as well. If small businesses are going through the process of sorting waste, in terms of the market place, there's actually very little financial incentive for them to do so. Therefore, the financial rewards of doing that are accrued further along the waste process. So, we've got concerns about the waste collection market and the waste disposal market and where the financial benefits might be reaped from that process as well.

[64] **Mr Woodall:** Yes, I will reinforce some of those points. It's about the size of the store and it's about, operationally, the challenges of renegotiating contracts, where you put things in the store, and retraining staff. If you think that a convenience store is generally categorised as being below 280 sq m—and then, for independent retailers, 49 per cent of those retailers are below 1,000 sq ft, so they are very small stores. So, separating waste out further is just a challenge merely in space alone.

[65] For some of the larger businesses in our sector as well, I suppose it's also around the

contracts that they've negotiated—the long-term nature of those contracts—and also that they value, because they're trading across authorities and nations, having consistency. So, how they currently work is a longstanding process.

[66] **Jeff Cuthbert:** Presumably, the issue of space, and I can see the logic in what you're saying, would depend on the nature of the business. I can see how somebody dealing with a lot of packaging might need that, but not necessarily all businesses. But, anyway, what would your views be on this?

[67] **Mr Harrison:** I think we would support the idea that, by giving recycled materials a value and giving landfill materials a large cost, you'll find that the market automatically adopts the right behaviour. Given freedom and non-prescriptive legislation within the business, you'll probably find that they will choose the most efficient route to deliver that good behaviour.

[68] **Jeff Cuthbert:** You'd agree with that.

[69] **Mr Short:** Yes, absolutely.

[70] **Jeff Cuthbert:** The final thing from me: do you think there's any merit, FSB, to a weight-based approach for charging for collection—whether that would be fair or not? Finally, what, if any, extra support do you think the Welsh Government might allow for small businesses?

[71] **Dr Lang:** I think it's certainly worth considering a weight-based approach for the larger producers of waste. What you would do with that approach, I'm not entirely sure. On the question of Welsh Government support, in terms of easing some of the burdens—yes, but how would you administer that? Small businesses are extremely diverse, so what form would that take? So, possibly, but it depends on the circumstances of the individual businesses involved.

[72] **Alun Ffred Jones:** Right, I think we need to move on to incineration. Janet, do you—?

[73] **Janet Howarth:** Yes. I've got a question that's really in three parts here. The Welsh Government has a view at the moment that we might be thinking in terms of a power to ban certain types of waste from incineration, and that this is necessary to increase the levels of recycling. And, linked to that is the idea, or the suggestion, that we should perhaps produce a list of those materials. And then I'd like to know your view on whether you think, if we start to bring these sorts of measures in, we might be increasing waste being exported either to England or elsewhere; I believe Germany's quite interested in our spare waste that could go into anaerobic digesters. So it's sort of three parts to the question, if you could respond to that.

[74] **Mr Short:** Yes, absolutely.

[75] Firstly, our question back really is about the clarity on how you're going to separate those materials. So, are we talking about material that's already been source segregated—so, we're talking about loads of plastic, cardboard, paper that would then be banned from going to an energy-from-waste facility—or are we talking about mixed residual waste that's already been sorted by the householder or by the company, and that black bin effectively being pre-treated, sorted again, before coming to an energy-from-waste facility? Because, if we're talking about the former, then those controls are already in place through the environmental permitting regime, so you won't generally find an energy-from-waste plant that has a permit that allows for those materials to be sent there and treated there. And, if we're talking about

the latter, then it's really a case of, again, how you carry out that pre-treatment and that sorting, and at what point in the supply chain that that happens—because, for instance, once it comes to a facility like ours, at that point, it's very difficult to separate materials, because you're effectively providing waste into the reception area of our facility that is then put directly into the treatment area, and, at that point, you've gone past the point where you can separate waste further. So, really, that's the question: is this proposal looking at those separated materials, or is it looking at that mixed load? And that really determines, then, how we answer any other questions on that proposal.

[76] **Mr Harrison:** One of the things we did before coming here was to check with some of our peers and one of the facilities that we run to see what waste had actually been accepted under material-specific codes, and the answer is zero: zero tonnes.

[77] **Janet Haworth:** Right.

[78] **Mr Harrison:** So, for all of the big energy-from-waste plants—and the permit has a clear statement that says that the facility can't treat material that has been separately collected for recycling, but it does have material-specific codes on the permit, presumably to deal with maybe contaminated loads or loads that can't find a natural market elsewhere. But zero tonnes are going to most of the big energy-from-waste plants that we know of.

[79] **Janet Haworth:** So, it would seem you're suggesting there already is a list in operation—it might not be called a list, but there are codes and practices that identify this material, and there wouldn't be a need to create another one.

[80] **Mr Harrison:** For single-stream materials that are collected separately for recycling: yes, there are checks in place and there isn't any material being incinerated. So, that element of the Bill doesn't concern us, because I don't think it'll impact our industry, and, by the same token, isn't necessary. You know, our concern would be more about materials that sit within a residual waste stream that are collected in sealed containers, delivered straight into a bunker—commercial, municipal, English, Welsh waste all mixed in one bunker. To us, it would be impractical to try and put in place any regulatory regime to prevent a particular material appearing in that bunker.

[81] **Janet Haworth:** And are you aware of practices involving exportation to England or elsewhere?

[82] **Mr Harrison:** Yes, absolutely. It's common practice. Material will take the path of least economic resistance. So, if it's cheaper to go over the border or overseas, that's where the waste will go. If the regulatory regime within Wales is unfavourable to somebody dealing with a large amount of waste, then they'll just look to the next most beneficial place to send it.

[83] **Alun Ffred Jones:** Jenny Rathbone on this, and then Joyce.

[84] **Jenny Rathbone:** The explanatory memorandum explicitly says 'specified recyclable waste'. I understand your point about recyclables that have no commercial value at the moment. Surely the Minister, in conjunction with organisations like yourselves, is able to set the bar at the appropriate level—i.e. we will recycle materials where we can get the money back. Then, as technology changes, the Minister would be able to raise the bar. Is that not a way forward? I'm particularly interested in your points about contaminated recyclables, and I wonder if you could just say a little bit more about how you handle those at the moment.

[85] **Mr Harrison:** It goes back to a point made earlier. I guess there are two ways of setting the bar—either through prescriptive legislation, with Government telling business how

it should behave, or letting the market sort itself out. Things like the PRN regulations, which give value to card—

[86] **Jenny Rathbone:** Sorry, remind me what PRN is.

[87] **Mr Harrison:** Packaging recovery notes. So, basically, businesses that recycle plastics and card—the ones that actually process it—can issue notes that businesses like Sainsbury's have to buy in relation to all of the packaging that they are consuming. What it does is it artificially inflates the value of recyclables and encourages material to be reprocessed. That's a sort of economic driver that's set at a very high level, and it's basically Government saying, 'Okay, we're going to give this value to recyclables. Through landfill tax, we're going to create a great big cost to landfilling', and, by the same token, energy from waste is very costly in comparison, and then letting the market choose the most efficient way to deliver those materials up the chain.

[88] **Alun Ffred Jones:** Because of the time, Joyce, I think we'd better come to you.

[89] **Joyce Watson:** It's a similar point, really; it's about the market deciding. At the moment, as I understand it, there are many plastics that can be recycled but aren't recognised by the machines in which they're go in as such. I've had some evidence that one of the big chains is looking into that. We're talking about dark-coloured plastics, so that the machines will recognise it. So, my question is: in terms of markets, would we not foresee, in the very near future, the possibility of material that currently could be recycled, but isn't being recycled because of the technology, being recycled as a consequence of this Bill? That's my question.

[90] **Mr Harrison:** I think you could ban plastics from incineration, but, unless they've got somewhere to go, I guess you've got to ask what's going to happen. Plastics is a many-headed beast; there are all sorts of different types of plastics, and it's very difficult to lump them in one basket. Probably the biggest and best-known plastics recycler in the country, Closed Loop Recycling, is just about to go out of business. That's a fairly well-publicised thing—it was on letsrecycle.com yesterday, in fact. It's very difficult, technically, to create value in that plastics recycling chain.

[91] **Alun Ffred Jones:** So, what happens to the plastic that is collected? Where does it go?

[92] **Mr Harrison:** I think it depends entirely on what it is. There are mixed-plastic loads and there are loads of specific plastic bottles. There are two plants; I think there's one run by Biffa and the Closed Loop Recycling one, and some material, I think, is exported to China. I think it takes various different routes, depending on the nature.

[93] **Alun Ffred Jones:** Joyce, carry on.

[94] **Joyce Watson:** Right. Do you want me to go on to food waste?

[95] **Alun Ffred Jones:** Yes.

[96] **Joyce Watson:** On the ban on food waste to sewers, what are your views on that ban for non-domestic premises and how that might impact on any of your businesses?

[97] **Alun Ffred Jones:** I think it's addressed to you, over there, isn't it?

[98] **Mr Woodall:** Well, it's actually difficult. I can't say about higher up the supply chain; I'm talking more about lots of operational issues within the store. I know that food

waste doesn't make up a high proportion of our members' waste that comes out of their business, and they generally separate that out already in terms of all the feedback I've got back. I think that separating it out is already in that process.

09:30

[99] **Dr Lang:** I don't see any evidence of any mass disposal of food waste into the main sewer anyway. I don't know where it's coming from—

[100] **Alun Ffred Jones:** Well, if you were walking up St Mary Street yesterday, it's all on St Mary Street being eaten by the seagulls, I'm afraid. [*Laughter.*]

[101] **Joyce Watson:** And you've got no comments on food waste, no?

[102] **Mr Short:** It's not really an area of our business.

[103] **Joyce Watson:** Okay. That's fine.

[104] **Alun Ffred Jones:** Any other questions?

[105] **Janet Haworth:** Yes, Chair. I just quickly wanted to check my understanding of a technical term we have here in the papers. It mentions enzyme bio-digesters, which are used in some premises that are dealing with food waste. I wondered if any of you could explain that to me. What is an enzyme digester?

[106] **Alun Ffred Jones:** This is a test for you—[*Laughter.*]

[107] **Jeff Cuthbert:** Where's its main factory? [*Laughter.*]

[108] **Alun Ffred Jones:** I don't think there's an answer coming there.

[109] **Janet Haworth:** In your stomach—[*Laughter.*]

[110] **Alun Ffred Jones:** William Powell.

[111] **William Powell:** Thank you, Chair. If I could return to a topic that relates to the news that Mr Harrison just mentioned about the demise of a plastics recycling concern, which is obviously very recent news, a number of witnesses that we've had in recent weeks have spoken very warmly about the possibility of a return to a form of deposit return system. I wondered, particularly perhaps those of you operating within the small business sector, whether or not you have any views on that that come up from your members or, indeed, whether it is something that you also have a view on.

[112] **Mr Woodall:** We were talking about Zero Waste Scotland's feasibility study into this recently, and it's extremely concerning from our members' point of view for the reasons that we've already outlined in terms of store size and operation—having space in store for reverse vending solutions. The cost around that is huge. Also, I think, in terms of recycling, it sort of undermines the existing kerbside recycling. I'm not sure about consumers walking out of their houses to return bottles when they can put it in a box that's right outside. So, I'd question the overall value in terms of recycling. But the main thing to talk about is the operational burden on stores, and the feasibility study did not look at that whatsoever. It did not speak to retailers.

[113] **William Powell:** So, you see some real logistical problems for some of your members.

[114] **Mr Woodall:** I see some real logistical challenges for retailers with the size of store that we have. On the continent, it's worked because of the slightly different structure of stores.

[115] **Alun Ffred Jones:** Time's run out. I'm just going to give you as witnesses the opportunity to say, if there's one message that you want to leave us with regard to the legislation, what it would be. Can I start with you, Mr Harrison?

[116] **Mr Harrison:** For us, I think the one message we would leave is that, as we're about to invest between £100 million and £200 million in probably the most significant piece of energy-from-waste infrastructure in Wales, discussion about incineration bans at this point in time is disconcerting for us.

[117] **Alun Ffred Jones:** Okay. Is that your view as well?

[118] **Mr Short:** Yes, it is, but it's also worth remembering that Wales is leading Europe in terms of recycling figures at the moment. It's up in the top five recyclers, and an incineration ban doesn't necessarily lead directly to an increase in recycling. A landfill ban will move waste away from landfill and move it up to the incineration level, but moving waste from incineration into recycling doesn't necessarily come about by a ban, because of the value of those materials isn't within the waste stream we hold.

[119] **Mr Harrison:** Can I very quickly add that the output from energy-from-waste plants is IBA—incinerator bottom ash—which contributes to recycling? So, our facility will add between 6 per cent and 7 per cent to the recycling rates in the north Wales municipality. So, it is a contributor to recycling.

[120] **Alun Ffred Jones:** And Mark Lang.

[121] **Dr Lang:** Absolutely critical for us, and for me personally, in order to achieve sustainability in Wales and beyond, is to have a more distributed model of the economy. We need to think more locally in terms of our economy and our economic activity. It's surprising, therefore, that this Bill is very quiet on the economy and, to me, is rather disjointed in its connectedness to wider changes that need to take place.

[122] **Alun Ffred Jones:** And Mr Woodall.

[123] **Mr Woodall:** Just to finish on the carrier bag element, I repeat what I said earlier, which is that the Welsh scheme is exemplary and is working, and retailers have positively embraced it. So, I don't think we necessarily need to change things significantly in that respect.

[124] **Alun Ffred Jones:** Okay. I'm sorry to rush you, but our time has come to an end. So, thank you very much for coming before us and presenting your views. Diolch yn fawr iawn. Thank you. We'll swiftly move on to the third item and the next set of witnesses.

09:35

Bil yr Amgylchedd (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 17
Environment (Wales) Bill—Stage 1: Evidence Session 17

[125] **Alun Ffred Jones:** Bore da. Good morning. Welcome here. We look forward to hearing your views to assist us in our deliberations on the environment Bill. Perhaps you could introduce yourselves and explain who you represent. We will then kick off with Russell

George's questions.

[126] **Ms Bell:** Good morning. I'm Gill Bell from the Marine Conservation Society. We're here representing Wales Environment Link.

[127] **Alun Ffred Jones:** Welcome back.

[128] **Mr Fryer:** I'm Scott Fryer. I'm from Wildlife Trusts Wales, again, representing Wales Environment Link.

[129] **Mr Cunningham:** I'm Gareth Cunningham from the RSPB, again, representing Wales Environment Link.

[130] **Alun Ffred Jones:** Right. There we are. Russell George.

[131] **Russell George:** Good morning, all. I wonder if you could perhaps, just to start with, look at your views on some definitions. You outline that you believe it's important to broaden the definition of 'harm' contained in section 76. I wonder if you could make a comment on that.

[132] **Mr Cunningham:** Yes. I think I'll probably lead with that one. So, what we felt was there's a definition of 'harm' already within the Conservation of Habitats and Species Regulations 2010. As we understood, this amendment was brought forward to help the shellfisheries Orders to be more compliant with that legislation. So, we felt that the wording that already exists is probably more consistent with what the approach wants to achieve. So, the wording within that quite simply states that—. Well, it's not simple, but it comes down to:

[133] 'an adverse effect or risk of an adverse effect on the integrity of the site alone or in combination with other plans or projects'.

[134] So, the definition covers projects on their own, or in combination with other effects from other projects. We thought that the best option would be to use that to avoid any future conflicts with other legislation, just so that it's consistent. Anyone else?

[135] **Alun Ffred Jones:** Is that the view of everybody else?

[136] **Russell George:** If you share the view, that's fine.

[137] **Ms Bell:** Certainly. We think anything that would simplify the legislation and make sure that it applies in European legislation is of benefit to the Bill.

[138] **Russell George:** There's a view of Menai Strait Fishery Order Management Association that greater clarity is needed on the sorts of provisions that could be included within the Order to protect the wider marine environment. Do you have a view on that?

[139] **Mr Cunningham:** You've obviously read our evidence. We felt that the protection Orders are fairly useful for existing sites. Most of the activities in there have already been assessed through the habitats regulations assessments. Where we felt there was a gap was more along the lines of the proposed new sites. Within the existing legislation, there's a mechanism there that's been tried and tested. Basically, it assesses existing activities to see if they're compliant with the habitats regulations. It doesn't mean they're going to revoke them all. It simply means that they're going to be reviewed to see if they're actually compliant with the objectives of that site. Within there, there's specific legislation saying that it can't be too onerous on the person affected, if they are going to be affected. Of course, this applies to all activities, not just shellfisheries—it's anything coming forward, but, obviously, we're talking

about shellfisheries now. The wording in there obviously says:

[140] ‘must seek to secure that the action taken is the least onerous to those affected’.

[141] So, we’re not saying that we need to ban activities. What we’re simply saying is: there is existing legislation that provides for new sites and has a clear mechanism for how people can appeal and how the process will be undertaken; it’s already been trialled through case law on how this will be applied. So, we simply think that where—in sections 63 and 64 in the current habitats and species regulations—effects would occur, you should refer to that. The ministerial powers that are suggested in this are perfectly sensible for existing sites where there may be an issue arising that was unforeseen, but that’s not any different to what we’ve already got with some fisheries legislation where we can use stop notices. So, if there’s an issue with the cockle industry, for whatever reason, a stop notice can be placed for a certain period of time until that issue is resolved. So, in those ways, I think it’s a fairly useful power, and it just needs to be tied up with the existing legislation to ensure the new sites are managing in exactly the same way as existing sites.

[142] **Alun Ffred Jones:** Okay? Joyce Watson.

[143] **Joyce Watson:** I want to ask around site protection notices and whether you believe that Welsh Ministers should be under a duty to issue site protection notices rather than being provided with discretionary powers.

[144] **Mr Cunningham:** That’s a good question. I think, in terms of whether it’s a duty or not, it depends on whether the activity is going to be massively damaging. The main concern we had with the actual protection notice wasn’t so much whether it was a duty or not, but the possible implications for delays in bringing it into effect. Obviously, it’s down to a Minister. So, if NRW or Welsh Government sees a problem, they then need to go through a process of getting that raised with the Minister in order to bring it into effect. In the meantime, as it’s there to stop damage to a site, that damage may continue to occur.

[145] Also, it wasn’t clear whether the activity that is potentially causing damage would have to cease while that order was in place, or not. Further to that, we were also slightly concerned that there wasn’t a clear time period for appeal. It needs to have a standard time for appeals; otherwise, it’s not a fair and transparent process.

[146] **Joyce Watson:** Also, do you want to explain if it’s appropriate for Welsh Ministers to issue a site protection notice where harm ‘may’ occur, rather than ‘is likely to’ occur?

[147] **Mr Cunningham:** I think, in terms of ‘may’ occur, obviously, all this is going to have to be based on advice from the statutory nature conservation bodies, and can’t just be about phoning someone to complain about a possible effect. It needs to be evidence based. Unfortunately for the marine environment, we don’t have quite as good evidence as we do on land, so, sometimes, we need to be more precautionary. As we’ve said, if there’s a clear appeals process, where it may occur, it may happen, and if you’ve got 28 days for someone to appeal that and prove the opposite, then I think that’s a fair way of addressing the issues.

[148] **Joyce Watson:** You talked about evidence clarifying the state of nature. What sort of evidence would you expect to see in terms of proof?

[149] **Ms Bell:** I’ll just mention a little bit. It kind of comes on to the marine licensing area, but there is a portal, obviously, for marine planning. We think that all of the data should be held in one main data storage, so that all of the evidence is available in one place to be able to make decisions about in-combination effects, for example. We also feel that that information should be more widely available, preferably where there are no confidentiality issues, to be

available to the wider public, particularly to developers and anybody who is applying for a licence. There's a paucity of data around marine, and we feel that there's a lot of potential developers and things who collect data, but those data are then stored by themselves and not given to people like NRW for them to be able to make an informed decision, because they don't have all the evidence to hand. So, we think this is very important to ensure that.

[150] Collecting marine data is very expensive. There are data out there, but they are not all stored in one place, so, to ensure that we have the evidence all in one place and to ensure that even from a developer's point of view, if they already know that somebody has carried out some evidence collection on a specific thing, they will know the implications that has had and they may then look at another area and think, 'Well, actually, those site conditions are similar to this other one and the data are already there to prove that this isn't a viable option, and so there's no point in us spending the money investing in it'. It will just be more cost effective and more streamlined, and make more effective decision making with regard to licensing and planning.

[151] **Joyce Watson:** Who should hold those data? Who should be responsible, if we moved towards putting all the data in one place, for making them easily available? Whose role do you think that should be?

[152] **Mr Cunningham:** It's interesting. There's already a project being developed by the joint nature conservation committee, the JNCC, to look at how data are stored in terms of informing the area statements and the national resource management plan. So, the data would be held by either one of the statutory bodies—either Welsh Government or NRW—who would use them to inform the area statements.

09:45

[153] So, there are mechanisms already in place to hold these data, and in terms of their being held by one of those bodies, they're also assessing the data in terms of confidence of how valuable they are at different spatial scales, so they will help inform the different plans and projects coming through the environment Bill, whether they're going to be national, regional or finite areas. Also, giving levels of confidence in those data—so, if they're old data, how confident are they that they're relevant to the existing problems? How are they being collected? Do they meet the certain monitoring standards that are required for different assessments, and those sorts of things? So, they're able to categorise and characterise the data so they actually help to inform decisions, but also, if someone wants to scrutinise that, they can see where that rationale's come from. So, I think those bodies are probably best set up to carry the data.

[154] **Alun Ffred Jones:** Llyr.

[155] **Llyr Gruffydd:** Yes, just coming back to the 'may' and 'likely to' occur, if you come to a conclusion that harm is likely to occur, then presumably you have the data to back that up, but coming to a conclusion that harm may occur doesn't require the same burden of proof, in a sense. So, I presume you're coming at this from a sort of precautionary principle approach, really. Is that it in essence?

[156] **Mr Fryer:** Yes, obviously with marine, with the ecosystem-based approach, you really have to take a precautionary principle. Because there is a paucity of data with the marine, there is so much uncertainty, so it's very key that with any decision throughout any policy with the marine, the precautionary principle is taken, to avoid any harm to the environment.

[157] **Mr Cunningham:** I was going to say it's a tried and tested method through the

habitat regulations already, and what's interesting about the Bill is that it's talking about early engagement with stakeholders. So, if something's flagged up as 'may cause an issue', then it gives the opportunity for people to go out and collaboratively either prove or disprove it. So, you're fully aware that this work's been going on with Bangor University to inform the scallop dredging and how that's going to be managed in the future. That's an early way of showing how we can address whether something may cause damage or may not, but obviously that's going to provide evidence, one way or another, to help us inform things. But if we don't have that issue in the first place, saying 'may', it's not going to encourage anyone to go out and find or prove the negative or the positive.

[158] **Llyr Gruffydd:** But there's a huge ambiguity about what kind of evidence, or not, that you require in relation to harm 'may be happening' as opposed to 'likely to happen', isn't there?

[159] **Mr Cunningham:** I think, in terms of the sites themselves, which is what we're talking about, obviously, it's 'may occur' to the site feature, so it's not just 'may occur' damage anywhere in the site. It's fairly clear what the site's features are for. They're across Europe. We know the likely effects that may happen to that. We've been through habitat regulation assessments on many things, so I think there is plenty of case law there where you could probably apply expert opinion. That's probably the best way of applying it, and then, from there, you can have a discussion. On the actual process, there's a test of likely significant effect first, which basically says, 'Is there a likely effect?'—that's well before we get into full-on appropriate assessments. So, it's an opportunity then for discussion.

[160] **Alun Ffred Jones:** William.

[161] **William Powell:** Diolch, Gadeirydd. I'd like to ask you to explain a little further why you believe that the powers for Welsh Ministers to revoke an Order are not currently sufficient to prevent certainty of non-compliance with a particular site protection notice. Why do you feel that needs to be more robust?

[162] **Mr Cunningham:** Okay. I touched on this earlier. The problem we have is that it doesn't clearly say whether the activity will cease at the point of the Order coming in, and also there is a risk of a delay while NRW or Welsh Government identify a risk, and then that having to come through to the ministerial office and then be passed.

[163] **William Powell:** So, it's that issue around delay, and potential ongoing damage, that you mentioned earlier.

[164] **Mr Cunningham:** Yes.

[165] **William Powell:** And, allied to that, why do you believe that making a failure to comply with such a site notice a criminal offence would actually be less financially risky for Welsh Government? That would seem to be the point underlying your evidence.

[166] **Mr Cunningham:** On that, I would have to come back with a written answer. I would have to check with our lawyers about that.

[167] **William Powell:** That would be helpful. Also, the point about varying and revoking Orders, Chair, if I might continue, because that point seemed to me to—. There was an uncertainty in my own mind as to whether there would then be sufficient protection for the property and the rights of grantees under the European convention on human rights, and whether or not there would potentially be an exposure to the risk of legal challenge in that going forward without Welsh Ministers being required to issue a site protection notice first.

[168] **Mr Cunningham:** Okay, so in terms of amending or reviewing the activity, this is a process that's already gone through on all of the existing special areas of conservation and special protection areas across Wales. We did the review consents back—I think it rounded up in about 2010. That, basically, assessed all applications and consented activities that were in place prior to the designation of sites in 2000. That looked at all the sites and activities and identified any that may be at risk. There is, in that, as we've pointed out, already there within the legislation,

[169] 'must seek to secure that the action taken is the least onerous to those affected.'

[170] That's the wording within the legislation. On top of that, there is nothing in there that doesn't say that if someone does lose their licence, they are not entitled to compensation; that's an entirely feasible option. If you're going to revoke a licence, you're affecting someone's business and they may be entitled to compensation. That's a decision for Welsh Government. Modification of the licence doesn't mean that the licence would stop being profitable; it might be simply that the activity needs to change in a certain way: it might be a different mesh size; it might be a different activity or a different way of collecting that harvested product.

[171] **William Powell:** Okay. Gill mentioned earlier a paucity of data. How frequently would the assessment that you mentioned earlier—I think you said it was done in 2010—need to be refreshed and reassessed for it to remain valid?

[172] **Mr Cunningham:** So, as we've said, the problem we had was that it didn't apply to the new sites that may come forward, so that assessment would take place once new sites had decided to be designated. That would just be done the once, because it's only for existing activities. Any future activity would have to go through the existing process and be licensed through the standard mechanisms, which everyone's au fait with.

[173] **Ms Bell:** Can I just add to that? There is quite often with licences, monitoring as part of the licence, and so, those, obviously, are more current data. So, we would advocate that those data are also made publicly available: any ongoing monitoring or management or mitigation that has been undertaken, because then that all adds to making sure that we have an effective evidence base.

[174] **William Powell:** Okay; thank you.

[175] **Alun Ffred Jones:** Does anyone want to pick up on licensing and fees?

[176] **Ms Bell:** May I just add something very briefly on that with regard to licensing and fees?

[177] **Alun Ffred Jones:** Yes, that's fine.

[178] **Ms Bell:** We fully support the introduction of the charge, as you've seen within the paper. One of the things that we are a little bit concerned about is that the full-cost recovery tends to just cover the permitting teams' costs, when, in actual fact, there's a lot of other regional staff involved with collecting those data. So, we just want to make sure that there is full-cost recovery covering the NRW regional staff who are also collecting the data involved in these licenses and to make sure that appropriate costs are covered.

[179] **Alun Ffred Jones:** And, these fees would be levied on commercial activity.

[180] **Ms Bell:** They do have to have fees anyway; we just need to make sure that they are full-cost recoveries rather than just the permitting team cost recoveries.

[181] **Alun Ffred Jones:** Llyr.

[182] **Llyr Gruffydd:** There has been a suggestion that marine licensing regimes should include statutory time frames for delivering or determining applications. Would you support that?

[183] **Mr Cunningham:** I can't see why it wouldn't be a sensible option. It gives a clear mechanism for people to apply. Obviously, there are existing processes in England, which we can look at, and depending on the scale of the project, will depend on the timescale. If you look at the large projects—I think it's the Planning Inspectorate that they now go through—there is a mechanism within there to stop the application if sufficient evidence isn't put in. So, if an applicant doesn't provide the evidence that is required for that to be progressed, they stop the clock, so you can progress there. With the smaller applications, it should be fairly straightforward. When you're only dealing with one person, in a small area, the timescale should be much shorter. I think that would benefit everyone: it helps development happen; it helps us achieve more sustainable fisheries; and it helps existing fisheries that are waiting for licenses to be written to actually progress, so it helps with investment for them as well.

[184] **Llyr Gruffydd:** The British Marine Aggregate Producers Association have suggested that there should be governance frameworks in place to ensure greater transparency over fee charges and accountability for performance by statutory regulators and advisers. Presumably, you're conformable with that, based on the same principle, really.

[185] **Ms Bell:** They're a statutory body; they should be, therefore, accountable.

[186] **Alun Ffred Jones:** Since we have a few minutes before we conclude this session, in terms of the Bill itself, what would be your final message to us in terms of any amendments, improvements or concerns?

[187] **Mr Fryer:** Our colleagues in a previous evidence session spoke about biodiversity targets. As we've said before, there is a paucity of data in the marine, but we do know that the large majority of our protected sites have non-favourable conservation status. Therefore, we would very much echo what our colleagues said in that we do need these biodiversity targets in the Bill and they can very much work in tandem with current targets, both nationally and internationally.

[188] Also, I would say that, within Part 1 of the Bill, clarity is needed on things like sections 8, 9 and 10 of how marine will be fully integrated because, at the moment, it is not clear how natural national resource policy will integrate with current marine policy. An example of this is the Wales national marine plan, due to be completed either at the end of this year or the beginning of next, which will have to take into account the NNRP, but it's unclear how that will be taken into account, since the NNRP is meant to be the overarching policy for the whole of the Welsh environment.

[189] Also, on area statements, in a recent written question, the Minister said that area statements will cover both land and marine. We would be very interested to seek clarity as to how the interface between land and marine will be integrated so that policies are all integrated together.

[190] **Alun Ffred Jones:** Those are very relevant points. Thank you. Anybody else?

[191] **Ms Bell:** Can we just finish on the point—and I think it has been made in most of the evidence sessions—that, overall, most of WEL are quite pleased with the recommendations within the Bill and with the Bill itself? All of the things that we are raising are just

amendments that need to happen. So, I think the take-home message to the committee is that we are supportive of the Bill overall. As with the wellbeing of future generations Bill, there's just some improvements that we think could be made, if we just amend some parts to it, but, overall, we're very supportive of it. So, I think that's just our take-home message.

[192] **Alun Ffred Jones:** Jeff Cuthbert.

[193] **Jeff Cuthbert:** Just on that very point, it's the Well-being of Future Generations (Wales) Act 2015 now—it's there.

[194] **Ms Bell:** Sorry, yes.

[195] **Jeff Cuthbert:** Do you think that, in terms of the Bill that we're scrutinising now—the environment Bill—in your sphere of interest, it coincides well with the future generations Act or are there contradictions that you think might be there?

[196] **Ms Bell:** I think that the future generations Act—sorry; I got so used to calling it a Bill—does have fixed targets, as we've mentioned earlier, which aren't apparent—. From what I understand, the intention is that these two Bills should work together. Therefore, there was a thought that there wasn't a need to have targets within this because they were covered in the future generations Act. However, we feel that it would be beneficial to have those. A lot of our colleagues have been working to try and ensure that there is a cohesion between the two Bills. If we get the changes that we suggested in our WEL paper and that we've given in evidence, I think that that will certainly support, so that the two Bills work together.

[197] **Jeff Cuthbert:** So, you really want to suggest modifications to the current Bill, the environment Bill, so that it coincides better with the Act.

[198] **Mr Bell:** Yes. I think that's it, in summary, yes.

[199] **Alun Ffred Jones:** Diolch yn fawr. I thank the witnesses for your attendance and for contributing to our deliberations.

10:00

Bil yr Amgylchedd (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 18 Environment (Wales) Bill—Stage 1: Evidence Session 18

[200] **Alun Ffred Jones:** Bore da. Welcome to our committee. We'll hear from you in a minute, but a video has been compiled, which includes one of you, I think, so—

[201] **Mr Evans:** Not the good-looking one. [*Laughter.*]

[202] **Alun Ffred Jones:** So, the video will be played on the screens, so you can watch it that way or that way. So, we'll listen—. This has been compiled by our—

[203] **Mr Davidson:** Outreach team, yes.

[204] **Alun Ffred Jones:** Outreach team—and it includes evidence from various stakeholders.

[205] Iawn. Diolch yn fawr iawn, Celyn. Right. Thank you very much, Celyn.

Dangoswyd DVD. Mae'r trawsgrifiad mewn llythrennau italig isod yn drawsgrifiad o'r

cyfraniadau llafar ar y DVD. Mae'r cyflwyniad ar gael drwy ddilyn y linc hon: [cyflwyniad DVD](#).

A DVD was shown. The transcription in italics below is a transcription of the oral contributions on the DVD. The presentation can be accessed by following this link: [DVD presentation](#).

[206] **Shaun Krijnen:** *The Welsh Government are proposing to put in legislation to prevent harm, within a several Order, to the marine environment. Obviously, from my point of view, it would depend on what they would class as a definition of harm. Obviously, there are potential issues such as climate change, which is going to have a profound effect on the entire coastline, but it could have more profound effects on, say, some of the species I grow. Therefore, you could say, 'Well, is that as the result of—. Is this, now, going to cause harm as a result of the shellfish growing, or has it caused harm as a result of climate change actually facilitating this to happen?'*

[207] **David Lea-Wilson:** *How do we define 'avoiding damage'? We're running and have run a sustainable seafood business—we don't want to damage it, but how do you measure that damage and quantify it?*

[208] **Sarah Horsfall:** *There's also the question that I'm not entirely clear about—that Welsh Government would have the power to take measures when a shellfishery was damaging the environment. But, of course, if you're talking, particularly, about several Orders, they don't own the area as such; they own the shellfish in the area. Therefore, they wouldn't be totally responsible for what happens in that area; there are all sorts of other influences. People can go in and do whatever. As long as those people aren't interfering with the shellfish themselves, then other people can do whatever in that particular area. So, it would be a difficult one to see how the damage would be apportioned to whom. Would it be completely the responsibility of the shellfishery—yet, they may not be the ones that cause the damage because there are other people doing whatever into that area?*

[209] **David Lea-Wilson:** *I don't think this proposed power is appropriate without a very, very clear definition of what damage is, because it doesn't want to be the subjective opinion of one visit from an officer at Natural Resources Wales who happens to notice a form hasn't been filled in correctly and defines that as 'potential damage'. So, it really needs to be more clearly thought out.*

[210] **Shaun Krijnen:** *Should I be included in what would be constituted harm? I think I should. At the end of the day, I'm down on the beds; I would notice differences from one year to the next.*

[211] **Kim Mould:** *Recently, we've engaged strongly with the university in the School of Ocean Sciences and other academic bodies to prove our environmental credentials, if you like: to show that what we're doing is not harmful to the environment.*

[212] **Shaun Krijnen:** *As it's written at the moment, all powers are regarded to what we do to the environment in a negative aspect. There's no, 'What do we do in terms of positive effect on the environment?' At the end of the day, I cultivate mussels intertidally. That is a European-recognised, ecologically important ecosystem. It provides food not only for terrestrial animals, but also marine animals, and so that should also carry some weight: the fact that we are carbon fixers.*

[213] **Sarah Horsfall:** *If you have a several or regulating Order, you have a management plan that's approved anyway—so, there shouldn't be shellfisheries that are causing damage to European marine sites, because that should be taken into account by the management plan. They should be working to the management plan, and so, really, the situation shouldn't arise.*

If it does—if somebody's causing damage to a marine site—then, obviously, there needs to be some way to take action against that. So, yes, we would support it from that point of view, but, again, it would have to be proportionate, it would have to be reasonable and it would have to be fair across the board to everybody.

[214] **Kim Mould:** *If administered fairly, they are what is required, but, of course, we would argue that we wouldn't cause damage to a marine site because we make our living out of it, and we have to make sure it's healthy and viable.*

[215] **Sarah Horsfall:** *The industry is concerned that some of these provisions will only apply to the aquaculture industry. So, for example, are the same provisions going to be made to apply to all other developers or all other marine users? Are they going to be held to account in the same way? If it's an equitable process, and it's applied in a fair and equitable way, then it should be a step forward and we would fully support that, but it depends how it's applied.*

[216] **Jim Evans:** *Providing there's a clear process for this and a procedure to possibly appeal, or some kind of notice to comply when you're—. Presumably, if this was enacted, there would be an issue raised and a period to deal with it. As long as there's a process that's established within that, then I think that seems to be fair and reasonable.*

[217] **Sarah Horsfall:** *Instances of, say—. Especially when we're talking about protecting European marine sites, we've had instances of north Wales being treated completely differently from south Wales. So, it has to be applied in a fair and reasonable manner.*

[218] **David Lea-Wilson:** *I think this is a major issue for shellfish operators, because we have to borrow money to invest in stock and infrastructure, and where we are with Halen Môn is that we've had to borrow hundreds of thousands of pounds to develop and meet the Welsh Government's objectives and create the jobs and sustainable enterprise. If we then say that the thing that the business depends on can be revoked at any time, that is a major, major issue for us and our banks that are lending money.*

[219] **Shaun Krijnen:** *It has to be something that has to be given serious consideration, and it would have to be truly defined as problematic before, I think, something like that would have to be enforced. It has to be looked at as a serious thing and on a basis that it will cause long-term harm, not just a short-term blip that would, ultimately, be settled out by nature.*

[220] **David Lea-Wilson:** *I think it's really, really difficult to see how we can move ahead if, at any moment, if we inadvertently do something that NRW disagree with, it can be deemed as damage and we would lose the business.*

[221] **Sarah Horsfall:** *We have instances where it doesn't seem particularly fair and we have instances where there is a fair balance struck, so I think it depends on probably not the legislation itself but the guidance and how that is interpreted by the various agencies. I think there's a tendency, sometimes, for agencies to take guidance and be over-precautionary with it, and it needs to be very clear what the precautionary principle is and how far it needs to be taken. If that is there, then, yes, I don't think it'll be a problem.*

[222] **Shaun Krijnen:** *You don't want a knee-jerk reaction to something happening and suddenly go, 'Oh, that's happened. Right, we're taking everything off you.' I think you would have to have a right of appeal. It would have to be judged through scientific means.*

[223] **David Lea-Wilson:** *If there is a major dispute, where we've borrowed a lot of money to put shellfish there and we believe we've done everything right, there needs to be some kind of arbitration fallback to protect you, because the banks will not lend money to buy shellfish if*

it can be terminated at any time. There's nowhere to go if you lose your several Order. We've got no security—you can't take the mussels anywhere else. You are totally—. Your business just ends.

[224] **Sarah Horsfall:** *There's some question about whether everybody who has rights under a several Order would then have right of appeal. I don't think that's clear, because of the way that it's been written. I think under a regulating Order it's much more clear that they would have a right to appeal, whereas for the people in a several Order, I'm not sure whether they would have the right of appeal. So, that probably does need to be clarified.*

[225] **Jim Evans:** *If the Government wishes to achieve its ambition for doubling aquaculture production that's stated within its marine and fisheries strategic action plan, then, clearly, we need to make sure that the process assists that development rather than becomes an obstacle to development.*

[226] **Sarah Horsfall:** *As I'm sure you're aware, we've had a period when it's been very, very difficult to get any kind of new several or regulating Orders or get through changes to them. So, the changes that you suggest are a part, as I understand it, of the streamlining process. And so they would generally be welcomed. The industry, broadly, is welcoming it and thinking that it will give them more security of tenure, and that can only be a good thing, because that can only lead to expansion and more shellfish production in the long term.*

[227] **David Lea-Wilson:** *The key point from us, as business operators, is we've been trying to get a several Order in place since 2008, when the last one lapsed. So, despite all the representations, all the applications, all the—we've spent in excess of £10,000 on putting together the management plan and the legal advice that enable us to do that—we haven't actually managed to get to the stage where the Welsh Government have issued the several Order.*

[228] **Kim Mould:** *If this new environment Bill helps those Orders go through more quickly, then that's good, but, if they find new excuses not to grant Orders, it's going to kill aquaculture in Wales.*

[229] **Brian Jones:** *If any more legislation and laws will be passed on this, I think that will be it. I won't be putting any more licences in. Some of them—I think there are at least four people who've not renewed their licence this year, and there's no legislation come in yet. We want protection in all ways, but we need a strategy where we can work with the legislation that's put on us. Sometimes, we feel it's very, very one-sided; there is no way for us to make a living.*

[230] **Jim Evans:** *Not only have we got an environment Bill, but there is the future generations and wellbeing Act and there's also the planning Act. There's a relationship between them all. Bills and legislation have been changed in a way that people at the sharp end don't necessarily understand, and they might not necessarily capture everyone's views.*

[231] **Brian Jones:** *There used to be 100 licences going out there back at the turn of the century. Now, we're only, I think, 27 active people out there. So, if they can cut that any further—it cannot be done.*

[232] **Shaun Krijnen:** *Knowing what I know now and the processes involved in applying and renewing, I would have to think long and hard if I was starting out afresh. The financial implications of a fresh application, with the environmental impact assessments, the management plans, the need to set up management organisations—they are quite substantial and, obviously, if you end up getting it slightly wrong and you go to a public inquiry, you're talking tens if not hundreds of thousands of pounds. So, if I were to apply for a several or*

regulating Order based on that—no. I like to consider myself to be environmentally responsible. As previously mentioned, if I have a healthy sea, I produce healthy shellfish—healthy shellfish that I can sell. That brings in the economics that are required. It also means that I can sell and people want the product that you sell. If you are doing things that aren't right or you're producing poor quality shellfish because there's a degradation in the environment, you don't sell. I think, in some respects, we are fairly self-regulating from that point of view, in that it's not in our interests to go out and destroy the very thing that we depend on for our living.

[233] **David Lea-Wilson:** *Although this is an environment Bill, it's also a key remit of the Welsh Government to support sustainable businesses. So, how about recognising that these businesses have every right to operate in an area of outstanding natural beauty, in a special area of conservation—whatever—provided they are doing things sustainably? If the protection of the environment is so great that we've got a disincentive to do anything, nothing's going to happen here. So, that area 7 has been dormant for the last seven years because we can't get a several Order. So, the environment's being protected, but there's been no sustainable shellfish activity.*

10:15

[234] **Alun Ffred Jones:** *Diddorol.* Interesting. Can I thank you for attending this meeting? Perhaps I could ask you to introduce yourselves and the organisations that you represent.

[235] **Mr Wilson:** I'm James Wilson. I'm a mussel farmer. I'm here today on behalf of the sort of loose association that we have operating in the Menai straits called the Bangor Mussel Producers Association.

[236] **Alun Ffred Jones:** Diolch.

[237] **Mr Evans:** My name's Jim Evans and I represent the Wales Fisherman's Association. I'm here mainly not for my expertise, as is probably obvious by now, but mainly to support our aquaculture colleagues. There are one or two developments that have taken place since we made that video that I think would be—. Well, I'd like to emphasise or put a health check on some of those concerns that have developed since then, if there's time to do that.

[238] **Alun Ffred Jones:** We'll give you an opportunity to do that.

[239] **Mr Evans:** Okay. Thank you.

[240] **Alun Ffred Jones:** Obviously, business is doing well. You were interviewed in the south of France or the Bay of Naples, weren't you? [*Laughter.*]

[241] **Mr Evans:** I have to say, by the way, that's not my office. [*Laughter.*]

[242] **Alun Ffred Jones:** Okay. Diolch yn fawr iawn. Julie Morgan, I think you are going to start.

[243] **Julie Morgan:** Yes. Good morning. We heard some very interesting points made on that film. If I start off with picking up some of those issues, obviously security of tenure is very important to the industry. How do you think the proposals in this Bill will provide or possibly increase security of tenure?

[244] **Mr Wilson:** Yes, well, can I just say at the beginning that I think most of the things that I was going to say in answer to things today have already been said by my colleagues?

On the necessity of the changes that have been proposed, we've questioned the Welsh Government throughout this whole process of the Environment (Wales) Bill as to that necessity because we believed that the protections that the Welsh Government obviously require—responsibly require—were already provided for within the existing legislation, the Sea Fisheries (Shellfish) Act 1967. That Act also describes, within it, the maximum length of time that an order may be provided for—60 years. Over the past four or five years, we've had considerable dialogue with Welsh Government and we've been confronted with a situation where the Welsh Government have, for reasons that we don't necessarily agree with, said that, without these amendments, the only tenure length they would be able to provide would be a sort of nominal seven to 10-year period. Clearly, if these amendments give the Welsh Government more comfort to be able to provide for longer Orders, that's great. So, in line with what my colleagues had said on the film, broadly we're okay with the amendments, providing that they're applied proportionately, and also that there's a degree of equitability in respect of not just how we're managed and controlled by the Welsh Government but in respect of how all marine activities that operate inside European marine states are considered. Because I think, in respect of the site protection notice principle, that's fine, that's great, but, as far as I understand, from conversations I've had with statutory conservation advisers, aquaculture will be the only industry that's subject to site protection notices in this format.

[245] **Julie Morgan:** Right. But you're broadly satisfied now.

[246] **Mr Wilson:** I'm broadly okay with the amendments if they do two things: if they unblock the blockage that has existed for a number of years in providing for new Orders to be made, and if they allow for those Orders to be made over a more substantial period of time than this nominal seven to 10-year period that's been on the table.

[247] **Julie Morgan:** So, do you think the provisions in the Bill will encourage more businesses to apply for shellfisheries Orders?

[248] **Mr Wilson:** There are a number of businesses that have been trying to develop fisheries in Wales for 10 to 15 years, and have been sort of caught up in this spider's web of inertia. So, one would hope that these amendments will encourage those businesses to try again. So, I hope so, but I think Welsh Government needs to be mindful of the fact that, if the legal framework is an easier one to go through or a more legible and rational process to go through, that's great, but we have to find the sites to cultivate the shellfish in, and not all sites are suitable for cultivating shellfish for a number of reasons—ecologically, biologically and logistically. So, I would imagine that more sites will be applied for. Whether they all work, we'll find out in the fullness of time. But, as I said, if these amendments help the process to be applied more effectively and give Welsh Government comfort, then that's okay, providing that the caveats are taken into account.

[249] **Julie Morgan:** Thank you.

[250] **Alun Ffred Jones:** Jeff Cuthbert.

[251] **Jeff Cuthbert:** On this point, first of all, I found the video very interesting. Can you just clarify, they used the term 'licences', is that equal to Orders? Are we talking about the same thing?

[252] **Mr Wilson:** No. I think—and I might be wrong here—Brian from Penclawdd was talking about the licences that the cockle gatherers have in the Burry inlet. So, the 1967 Act provides for three types of Orders to be made—a regulating Order, which is an Order where wild-capture fisheries are managed in a more controlled way, so that's the Burry inlet and the Dee—cockle fishery, essentially. And then the authority that controls those Orders provides for licences to be applied. In several Orders, they're generally provided for people to cultivate

shellfish. So, it's a bit of a different thing. Cultivation is a much more controlled process—a process that includes much more intervention than the cockle gathering in the Burry inlet, which relies on wild settlement to provide for the fishery to be successful, as the situation in the Dee, at the moment, is articulating.

[253] **Jeff Cuthbert:** Okay. And, finally, in there, it was mentioned—it was in terms of licences, I have to say, and I'm grateful for that clarification—that, at the turn of the century, and I assume that means 2000 not 1900, there were over 100 applications and now it's greatly reduced. Is that necessarily a bad thing in that we're not dealing with a huge geographic area and, presumably, you'd want—

[254] **Mr Wilson:** No. Not necessarily. I mean, in the context of the Burry inlet, specifically, which I think is the situation Brian was mostly talking about, there's been an issue of really high levels of mortality being exhibited on the cockle stocks for the past 10 years, nearly, now. Prior to that, that was a very productive fishery. So, I think the number of licences were allocated on the basis of the fishing opportunities that were available. Regulating Orders are pretty good ways of managing fishing activity—they're restrictive. So, I think the number of licences that Brian talked about are just reflective of the few people who can still see that there might be a future if the issue of this ongoing mortality in the cockle stock is somehow fixed in the future, but there's still a great deal of uncertainty about that. Nobody really understands the cause of that mortality and, without understanding fully the cause, it's very difficult to try and fix it.

[255] **Jeff Cuthbert:** Right. Thank you.

[256] **Russell George:** The video was quite—. One particular theme in the evidence was about balance and, particularly, I think Sarah Horsfall said that it is perhaps not so much, 'Oh, it's the regulation?'; she's not just talking about the proposed regulation in the Bill, I think she's talking in a more wider sense, that it's very often about the interpretation of regulation. I think what she was suggesting and what others were suggesting is that perhaps sometimes it's how that regulation is interpreted by Natural Resources Wales and others. Can you comment on that? Is that something that is fair? Is that a view of yours?

[257] **Mr Wilson:** First of all, from my own personal perspective, I operate in north Wales, and our relationship with NRW, and previously the Countryside Council for Wales, has always been very positive. So, that manifested itself in the way that we operated inside the special area of conservation. There's always been a very good dialogue. Kim Mould, my colleague, mentioned the degree of investments that we've made in research to provide site-specific scientific evidence to inform that dialogue. So, that's good. I think, in terms of interpretation, the problem's not been with NRW; the problem, for us, in terms of applying for new Orders, has been with Welsh Government. NRW have largely, I think, also queried why it is now that Welsh Government don't see that the protections that they require under the Natura 2000 directives aren't catered for under the pre-existing process.

[258] **Russell George:** So, going back to my original question, is what you're saying to me that the Welsh Government is interpreting its own legislation?

[259] **Alun Ffred Jones:** Can I emphasise that we are looking at the Bill and its interpretation?

[260] **Russell George:** My question was perhaps coming on to what we've got to do is to make sure, if there is any regulation that could be interpreted in an inappropriate way, or a way that was not intended, that that doesn't happen. So, it's asking your advice in that regard, I suppose.

[261] **Mr Wilson:** In respect of how the legislation's written now, how these amendments are being brought forward now as to how they were originally described at the beginning of this process, I'm a lot happier; there's a lot more description. I think the issues associated with Shaun and David's points about interpreting what constitutes harm, and what constitutes damage, are very pertinent and valid. I think they need to be qualified. They are qualified to a degree already, but I think that perhaps needs some more fine tuning. There are a couple of phrases that are evident in the proposed amendments that, I think, could do with some more work.

[262] In terms of the existing situation, I just think it's important to emphasise that these applications for several and regulating Orders have always been considered to be plans or projects inside the context of the habitats regulations. So, before an activity has taken place, it goes through a full process of assessment to consider whether it's going to have a significant adverse impact on the conservation features of the site. It will not proceed unless that assessment is considered to be acceptable. So, Sarah made the point about how dynamic the environment can be, and I think it's important that, when people talk about harm, that the external factors are taken into account if any severe modifications suddenly become evident. Because, ultimately, if the environment is going to change, and climate change is perhaps the biggest external threat that we can do very little about, then that's going to impact us as much as it's going to impact the environment, because we're growing our animals in the natural environment. Those changes will probably manifest themselves more rapidly on us. Oceanic acidification, I think, is the big worrying part of that whole process. The impacts of oceanic acidification are already becoming manifest on the Pacific coast, for example, in terms of how bivalve shellfish are recruiting back into the fisheries. So, I think that's a big worry for the future. That wouldn't be our fault; that would be something else, but as David said, if somebody chooses to interpret harm in a very wide sense, then they could say, 'You're causing this mortality to occur; your business is gone'.

[263] **Alun Ffred Jones:** Llyr, wyt ti eisiau dod i mewn? **Alun Ffred Jones:** Llyr, do you want to come in?

[264] **Llyr Gruffydd:** Wales Marine Link suggested that Welsh Ministers should be issuing site protection notices where harm may occur, as opposed to where harm is likely to occur: a shift to a more precautionary approach, really. I was just interested in your response to that.

[265] **Mr Wilson:** I'd benefit from seeing a copy of their evidence. I think that would be a very difficult thing to demonstrate. As I said, prior to the activity commencing, we go through a full process of assessment. First, in the north end of the Menai straits, that process is an ongoing process, because we have such a strong dialogue with Natural Resources Wales. We have a separate management body that we've formulated by ourselves. NRW sits on that, and is able to intervene at any time if there are any concerns. As mentioned before, we value the degree of scientific input to that process hugely.

10:30

[266] If we're going to go down the route of an extreme precautionary approach, for example, Shaun is Wales's only commercial oyster farmer at the moment, and he grows a species of oyster called *crassostrea gigas*—that's a Pacific oyster—and there was a concern raised in the mid-2000s that that oyster was now becoming feral in certain parts of the European Union, and so it shouldn't be grown; we've had lots of dialogue, lots of research in the intervening 10 years, and NRW now accept that it can be grown, but somebody from outside could say, 'No, that's a potential harm and you shouldn't be doing that.' So, I think it needs to be very much qualified, not broad, and again it goes back to the equitability: if you're going to apply that to the shellfish sector, you need to apply it to all consented marine

activities, and I just do not see that happening at all.

[267] **Alun Ffred Jones:** Jim, did you want to come in?

[268] **Mr Evans:** That was the point that I was going to make, which was to turn that question around. That's an impossible position because, to turn that around, how would you then be able to consent to any renewable developments—sub-tidal, wave, tidal stream—because there is very limited knowledge as to the effects of those developments or deployments? So, if you take that to its extreme, and this process and the Bill applies to other developments, we're creating an awful lot of difficulties.

[269] **Alun Ffred Jones:** Interesting. Jenny.

[270] **Jenny Rathbone:** Those points are well made that we need to proceed with caution, but in the context that the Welsh Government wants to substantially increase the shellfish and fish industries, I was particularly interested in the point by the man in the stripy shirt that people obviously have to get loans from the bank, and I just wanted you to talk about the desire in the Bill to protect the fisheries industry, both for yourselves and future generations. How are banks going to see these regulations in terms of expected income streams?

[271] **Mr Wilson:** It's a high-risk activity. Even taking away the externality of the legislation and the application of it, the environment can change. You can have an extremely warm year that might stress the animals too much; you can have an extremely cold year on the other end of the spectrum and mortality could occur at any time. There's a high degree of risk associated with it.

[272] **Jenny Rathbone:** So, do you think the banks get comfort from this regulation, because it's clear what the objectives are?

[273] **Mr Wilson:** Sure. Look, there was a great degree of uncertainty associated with the interpretation of the 1967 Act during the mid-2000s, in respect of rights of landowners and rights of grantees of fisheries Orders. Amendments were made in the Marine and Coastal Access Act 2009 to qualify that further. I think banks took comfort from that. There is a process described in the Act already that provides for the Minister to remove either sections of an Order, or to fully revoke an Order. The banks were happy with that. I think, providing there's a rational process described within it, and that issues such as damage and harm are fully qualified, then it's up to the businesses to persuade the banks. It's not an easy business to get money in anyway—fisheries and aquaculture generally aren't—but with the additional focus and scope of definition that could be applied, then I can't see it being a hurdle.

[274] The big issue that David was referring to—the man in the stripy shirt—relates to this ability that the Minister has to revoke an Order because that's clearly a very severe step to take. So, I think the amendments do provide for a process to be undertaken, and then the responsibility for complying with the Minister's requirements are passed on to the several Order holder; I think that's probably appropriate. It gives the person enough time to try and change things if he's being proven to be doing things irresponsibly.

[275] **Jenny Rathbone:** Okay.

[276] **Alun Ffred Jones:** Janet Haworth.

[277] **Janet Haworth:** I'd like to take you back to David Lea-Wilson's comment. Are you able to offer us any more clarification as to why a well-established, successful business like that on Anglesey has experienced this problem over a period of seven years? It sounds Dickensian.

[278] **Mr Wilson:** As I said, it's not the longest by any means in Wales. There's an applicant in Milford Haven who's been waiting for 15 years to have a very small area provided for a shellfish farm. It's completely ridiculous.

[279] In respect of David's specific case, David, Shaun and two other growers, their areas exist in an area that's called 'the Menai west' and so, due to these difficulties or different interpretations of the scope of the existing legislation—. I'm director of this management association in the Menai straits, and we've tried for four years, with legal advice, to get through this hurdle with Welsh Government and up until May this year, we were faced with a stone wall. I think there is some progress on that now, but still that's seven years of lost time.

[280] **Alun Ffred Jones:** I appreciate that, but we are trying to discuss the Bill.

[281] **Janet Haworth:** Perhaps, Chairman—

[282] **Mr Wilson:** Pardon me.

[283] **Alun Ffred Jones:** No, that's perfectly in order that you answered the question. I'm trying to get the questioner back onto the Bill.

[284] **Janet Haworth:** Yes, and it does flag up, does it not, Chairman, that perhaps these cases need investigating?

[285] **Alun Ffred Jones:** That's another issue.

[286] **Janet Haworth:** On another point, there's a lot in the Bill that refers to a deposit perhaps being paid as you begin the process of applying for licences. As we've talked about the seven years, there is also a discussion around whether we ought to be setting statutory timescales to this process so that, once somebody embarks on this process—and has or has not paid a deposit, depending on what eventually gets decided—the progress of that licence should operate to a fairly tight timescale. Would that give these business operators more comfort, and their investors?

[287] **Mr Wilson:** The European Union have recognised the problem across Europe in terms of consenting licences for aquaculture developments. It's a big strategic issue because the European Union see growth in aquaculture as an important part of their blue growth strategy. So, it's not unique to Wales. Would defined timelines help? Yes. They're there for other marine developments, so, again, on the basis of equitability, it would be good to have them. I think that the first consultation on the Bill talked about time limits, but it had this really perverse interpretation of it: it talked about minimum time limits without a maximum time limit. So, a minimum time limit for a new activity outside of a European marine site was going to be 12 months. Why? The minimum time for an activity inside a European marine site was probably going to be—I can't remember off hand, but I think it was two years or three years. Why? Thankfully, that part, which was potentially going to be included in the Bill, has gone. But, I think that, if we could have a process that described a maximum time limit, that would be really helpful.

[288] **Janet Haworth:** Finally, Chairman—you're being extremely patient—if I can take you back to this concept of harm and looking at a situation as to who may be responsible for any harm because it's a dynamic environment and it may not be the operators themselves. As you pointed out, they have a vested interest in ensuring that these cockle beds, et cetera, remain healthy. Another thing we have been looking at in the environment Bill is the problem of drainage and run-off from land and whether that is causing any pollution problems within this industry. Finally, I'd like to ask you about exports, as to how involved this industry is in

exporting—

[289] **Alun Ffred Jones:** No, I'm not going to allow that question. [*Laughter.*] It's very interesting, but—.

[290] **Mr Wilson:** Can I have the pollution one?

[291] **Alun Ffred Jones:** Yes.

[292] **Mr Wilson:** Pollution is a massive concern to us. As Shaun said, we rely on being able to provide the market with a good-quality product. They're filter-feeding bivalves; if the water that we're growing them in is not in a good state, then those animals won't be in a good state either and the market won't want them. So, absolutely, the issue of marine pollution is a huge concern for us. What we can do about it, I'm not sure. The water framework directive does describe processes, and we are nominally given protection through that directive, through the—there was another directive called the shellfish waters directive, but that's been assimilated inside the water framework directive itself.

[293] **Alun Ffred Jones:** William Powell, were you on this point?

[294] **William Powell:** Yes, Chair. It relates, really, to some of the comments you made earlier about the issues at the Burry inlet, and that would have reminded the three of the four Members of the Petitions Committee who also sit on this committee that we have handled that matter over many, many months. It was obviously of huge concern then and is an ongoing concern. One of the issues that came to us that time was concern around the capacity of the marine licensing unit within NRW/Welsh Government. Do you feel that the provisions of the Bill, as they are currently set out, will aggravate that or require a greater resource to be put in place? Because, at the moment, I understand it's a very limited unit, in terms of personnel, and very liable to—individual departures can cause major turbulence, which can only aggravate the problems you've talked about in terms of time drift.

[295] **Mr Wilson:** I think resourcing's an issue for every public authority at the moment. I think, you know, Government and its family have lots of statutory obligations, and I think Government, as it's constituted at the moment, is really going to struggle to comply with a lot of these statutory requirements in the future. In terms of marine pollution, I think more staff probably would help, but I think we need to find out what's happening first of all. There are a number of potential causative drivers for that ongoing mortality in the Burry inlet, and until we can determine which is the most important or whether we can do something about it to mitigate the impact of the mortality, then I don't see, from the shellfish industry's perspective, the need for more marine licensing staff. I'm personally all for cost recovery. I think cost recovery does give industry—not just the shellfish industry, but all industries—a degree of responsibility, but also a degree of ownership over the whole process, which isn't there at the moment.

[296] **William Powell:** That's helpful. Thank you.

[297] **Alun Ffred Jones:** Lastly, Joyce Watson.

[298] **Joyce Watson:** It has been suggested that there isn't sufficient join up, in this Bill, between the land and the sea, and I was trying to pursue that with the issue of pollution that you answered, the question of, you know, you can't be responsible for run-off from the land into the sea. Do you agree that there could be better joining up between the land and the sea?

[299] **Mr Evans:** I hope your hearing's better than mine—I couldn't hear a word of that, sorry.

[300] **Mr Wilson:** Yes, it's the join up between the terrestrial and the marine, in terms of—Joyce mentioned the example of pollution. I'll leave it to Jim to answer, because he loves to talk. [*Laughter.*]

[301] **Mr Evans:** In terms of pollution?

[302] **Joyce Watson:** In terms of what we're trying to do with this environment Bill, and we're talking here, now, about your specific interests.

[303] **Mr Evans:** I don't think you can criticise the intent, because, if the intent is to solve those problems, that can only be of benefit.

[304] **Joyce Watson:** But do you think there's enough join up between the activities on the land impacting perhaps on the sea in this legislation?

[305] **Mr Evans:** It think it's clearly stated within the state of Wales's natural resources document where the sources are, and they're flagged up, I think, within the reporting mechanism for the habitats directive as well. So, clearly, there is a connection, but the trouble is, in terms of the marine environment, you're at the end of that problem, rather than the source of it, and that's very difficult—that's out of our area of control.

[306] **Joyce Watson:** And if I can ask the very last question: if you have a response to Wales Marine Link's recommendation that there should be a separate power for Welsh Ministers to vary or revoke an existing fisheries Order if a new European marine site is designated.

[307] **Mr Wilson:** Okay, can I answer this?

[308] **Mr Evans:** Yes.

10:45

[309] **Mr Wilson:** No, I absolutely disagree. I mean, why? On what basis? There was a seminal piece of case law in the European Court of Justice in 2005—it's now called the Wadden sea ruling—that, basically, defined that any activity in a European marine site, whether it was pre-consented or consented prior to the case ruling or consented after, should be considered under the requirements of an article 6 reassessment. Providing an activity can get through that process, there's no need to go through the process of revocation, I think. That's just a completely unrealistic and arrogant, I think, stance for a non-governmental organisation to take. What we're doing, as shellfish farmers, is, I think, demonstrably producing food—food that we sell for export or food that we consume domestically—in probably the most environmentally benign way of any form of animal-based food protein that you can find. That's not just unique to Wales, but I think extensive cultivation of shellfish is, probably, the most benign form of producing animal-based protein. For an NGO to turn around and say, 'Oh no, no, because of the process—a new marine site's created—you have to go through the whole protracted process again', with all those costs, with all that uncertainty, despite the fact that no damage is being proposed and no harm is being demonstrated, is just totally bonkers, if I can be equivocal.

[310] **Alun Ffred Jones:** Well, that's a definite 'no' then, isn't it? [*Laughter.*]

[311] **Mr Wilson:** Yes, sorry.

[312] **Alun Ffred Jones:** Diolch yn fawr Thank you very much for coming before us.

iawn am ddod atom ni.

[313] Thank you very much for coming before us. Jim, you wanted to leave us with a parting shot.

[314] **Mr Evans:** I will be very brief, if you will bear with me. I know that we've been talking mainly, and very importantly, in relation to Part 5. I have a concern, and, as I say, this is only something I've learnt since we did the video, but, rather than go into any detail, I'm concerned about the 'A Snapshot of the State of Wales' Natural Resources' report, particularly given that this is a document that's been prepared to inform the passage of the environment Bill through the National Assembly. My colleagues agree that there are a lot of unsubstantiated statements in there, certainly in relation to the marine environment. I would put a big health warning over that. I won't go into the detail now, because, obviously, there's not enough time, but, if it's of any benefit or help to the committee, I'd be more than happy to make other arrangements to explain that in more detail.

[315] **Alun Ffred Jones:** Either that, or send a note, but we'll find a way to get the information from you.

[316] **Mr Evans:** Okay. Thank you. It was just important, because, obviously, this will be a document that will help inform your decision making, and I thought it was important to understand that. The other thing—again, it's more of an awareness thing—is in relation to Part 6, and that's in relation to marine licence applications. Welsh fishing associations—and I believe my aquaculture colleagues, obviously, have a fairly defined spatial interest—aren't consulted in that process at all, and yet our English colleagues are. This a function, obviously on behalf of Welsh Government, that NRW carry out. Again, that means that we're largely unsighted on any proposed developments within an inshore area, where there is an awful lot of competition for all sorts of different reasons. That was, again, just something that I wanted to briefly mention for your consideration.

[317] **Alun Ffred Jones:** Thank you for that, and we'll certainly make arrangements to get further information and details from you.

[318] **Mr Evans:** Thank you very much.

[319] **Alun Ffred Jones:** Diolch yn fawr iawn. Thank you very much, both of you. Now, we'll have a short break and we'll reconvene at 11 o'clock.

[320] Diolch yn fawr iawn i chi. Thank you very much.

*Gohiriwyd y cyfarfod rhwng 10:49 a 11:03.
The meeting adjourned between 10:49 and 11:03.*

**Bil yr Amgylchedd (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 19
Environment (Wales) Bill—Stage 1: Evidence Session 19**

[321] **Alun Ffred Jones:** Rwy'n eich **Alun Ffred Jones:** I welcome you back. croesawu yn ôl.

[322] We welcome our witnesses, two witnesses—one a late addition. Thank you for coming in and we're very interested to hear your views. Perhaps you could introduce yourselves and state the organisations that you represent, please. Diolch yn fawr.

[323] **Mr Jones:** My name is David Jones. I'm the project director for Marine Energy

Pembrokeshire. We represent, basically, a collaboration between wave and tidal technology developers, academia and the public sector, and it's all about developing marine energy in Wales, really. We represent a whole host of people and it's quite an exhaustive list. So, there's probably about 25 wave and technology developers at the moment.

[324] **Alun Ffred Jones:** Diolch yn fawr iawn. Thank you.

[325] **Mr Russell:** Good morning everybody. My name is Mark Russell. I'm director of the British Marine Aggregate Producers Association, which is part of the wider Mineral Products Association and my organisation represents the UK marine aggregate industry, of which three of my members produce about 80 per cent to 90 per cent of the marine sand and gravel that's dredged in Welsh waters.

[326] **Alun Ffred Jones:** Diolch yn fawr iawn. Jeff Cuthbert will kick off.

[327] **Jeff Cuthbert:** Thank you very much, Chair. Good morning—yes, it's still 'good morning'. If I may address my opening questions to Mr Russell, in terms of the fee charging regime that's being proposed within this Bill, do you think that the principles behind it are suitably transparent or does there need to be greater clarity? Would you like more certainty from Welsh Ministers that any fees charged for marine licences are to be reinvested in the service? Finally, what's your view on any move towards hourly rates for marine licensing fees in Wales?

[328] **Mr Russell:** Okay. Thank you. There were a number of questions in there, so if I miss one of them, please pick me up and I'll come back to them.

[329] **Jeff Cuthbert:** I'll do my best. [*Laughter.*]

[330] **Mr Russell:** In terms of the concept of charging fees, it's something that the marine aggregate sector has been wholly supportive of. Prior to 2007, the industry operated under a regulatory regime that had no fees associated with it, which, on the one hand, you might think business would think was a good thing. Actually, business didn't. The companies went through a process—it was probably in the mid-1990s—of actively calling on Government to introduce a regulatory regime that included fees on the basis that it enabled sufficient resources to be put in place within the regulatory authorities to deliver a timely service. Prior to the fees, the licensing decision periods were incredibly long. There was very little certainty around them. Partly, that was because there were insufficient resources within the regulation and among the advisers who supported them. So, in that respect, I think the fees offer an opportunity to give operators more certainty, so long as the funds are used appropriately and are invested appropriately.

[331] **Jeff Cuthbert:** Would you like to clarify what you mean by 'appropriately'?

[332] **Mr Russell:** Yes. Okay. Fundamentally, I think that, once you start charging fees, whether it's a lump-sum fee or whether it's an hourly rate, you fundamentally change the nature of the transaction between the developer and the regulator, principally because you're paying a not inconsiderable amount of money so you expect a certain level of service and performance associated with that, whether it's in terms of the timeliness of the response or whether it's in terms of the quality of the response. And that requires you to have the right people, and to have the right people, clearly, there are some costs associated with that. We've been through the regulatory process in England, and the way it was sold to the wider marine development sector was that, by charging fees, the level of resourcing and capacity within the regulators becomes effectively budget-neutral, because the costs are covered by the developer. So, if the amount of time and effort that's required across all of the case work increases, because that increase is also demonstrating an increase in income, there should be

the flexibility to increase the amount of capacity that the regulatory organisation has in order to deliver that particular functionality.

[333] There is a little gap there, which relates to the statutory advisers. So, clearly, the fees at this moment in time only relate to the regulator, but, clearly, there are a number of other Government agencies that are an integral part of the licensing process, and one thing we encountered in the English system previously was that the whole process was only able to progress and move as fast as the slowest member of the convoy, as it were. So, if there aren't sufficient resources within some of the other statutory advisers, irrespective of the fact that you're paying fees to the regulator, there is a risk that the process as a whole actually doesn't slow up. And that's something that I think it's worth being aware of. Forgive me, I forgot the questions.

[334] **Jeff Cuthbert:** Well, you've done most of it. Do you think that the requirements within this Bill are sufficiently transparent, then, in terms of the fee charging regime?

[335] **Mr Russell:** I think it's unrealistic to expect the Bill to set out how it's going to work and the transparency processes. But I think it would be helpful if there was some mechanism that formally required the regulator to monitor and review, and potentially also have the opportunity for some kind of independent review going forward, should the need arise.

[336] **Jeff Cuthbert:** Okay. So, supporting documentation should set that out?

[337] **Mr Russell:** I think the governance process is key.

[338] **Jeff Cuthbert:** Do you think, then, that there should be a reference in the Bill to a document, regulation or whatever it may be that does require that clarity?

[339] **Mr Russell:** I think that would be useful.

[340] **Jeff Cuthbert:** Okay. Thank you, Chair.

[341] **Alun Ffred Jones:** Do you have any comments, Mr Jones, on this?

[342] **Mr Jones:** Yes. We're involved in the stakeholder group that's talking about marine licensing fees with NRW, and there are a number of tiered approaches, or potential approaches, to the marine licensing fees. The one that's been suggested is tier 2. For marine energy that is probably going to be an hourly rate, but there's no fixed ceiling. So, that's a little bit of a concern as far as project risk goes, really. So, I think that's the thing. You know, I think people would be happy with an hourly rate in the system—that we have defined timescales. I think that would be of benefit to the sector, and it would give a bit more clarity for project developers.

[343] **Alun Ffred Jones:** Okay. Russell George, do you have any questions?

[344] **Russell George:** Thank you, Chair. Wales Environment Link provided us with some evidence earlier, and they proposed that statutory advisers and regulators should be able to charge for any evidence that they gather and have to undertake to consider an application. I'd be just grateful for your views on that.

[345] **Mr Jones:** In terms of gathering data and environmental data for the licence submission, is that what they're suggesting?

[346] **Russell George:** That was what they were suggesting to us.

[347] **Mr Jones:** I think the sector is already, I think, suffering somewhat due to the uncertainties for marine energy a little bit. So, in Wales, for example, you need to collect a minimum of two years of environmental data before you can submit your application. With that comes a cost of sometimes millions. So, I think developers would probably say that they're already contributing to that, but they would be, you know, as I say, open to fees as long as the process is transparent, as mentioned before.

[348] **Russell George:** Okay.

[349] **Alun Ffred Jones:** Llyr.

[350] **Llyr Gruffydd:** Are those data then made publicly available?

[351] **Mr Jones:** If they're for the developer themselves and not publicly funded, then I don't think at the moment that the developer has a liability to share those data. If they come from publicly funded research, for example, in Wales, then, yes, they should be open to the sector and the wider public. I think the industry over the UK, overall, needs to be a bit more forthcoming in sharing those data, where they're not commercially sensitive, if we want the sector to move forward.

[352] **Llyr Gruffydd:** Okay. Thank you.

[353] **Jenny Rathbone:** Could I just follow that up? Obviously, you wouldn't want to share commercially sensitive information with your competitors, but would there be a possibility of sharing it with the Government in terms of needing to be able to map, you know, existing topography?

[354] **Mr Jones:** Yes, I think that would be something on which you'd probably need to speak to project developers specifically, but I think that's something that could be written into—

[355] **Jenny Rathbone:** Given that the Government is not, obviously, a competitor.

[356] **Mr Jones:** No.

[357] **Jenny Rathbone:** But, you know, it's obviously very time-consuming to understand the complexities of the coastal areas.

[358] **Mr Jones:** It is. Yes. It's quite costly and time-consuming. As I say, that's something on which the industry across the UK as a whole, I think, needs to share those data where possible.

[359] **Jenny Rathbone:** Okay. So, is that something that we'd need to consider putting into the legislation, or is it something that you think happens anyway?

[360] **Mr Jones:** I think you could probably drive that a bit more in the legislation if possible. I think the sharing of data is crucial.

[361] **Jenny Rathbone:** Okay. Thank you.

[362] **Alun Ffred Jones:** Should statutory time frames for responses, similar to those for terrestrial planning, be included in the Bill, which goes back, perhaps, to the point that Jeff Cuthbert raised? Do you think that's necessary?

[363] **Mr Russell:** To a degree, they are already, when it comes to the formal application

stage of the marine licensing process. I think the real uncertainty around both timescales and costs is that the licensing process encourages a pre-application stage for the majority of developments—and I suspect it's similar for tidal power—whereby the developer can take time to engage with the regulator and their statutory advisers to work through what they're proposing, and understand the issues and then work to address those issues and concerns, so that by the time they submit the formal application, the formal application has already gone through a significant amount of consultation. It's very difficult, or it would be very difficult, to put time frames on that pre-application stage, principally because it's a voluntary stage; there's no obligation on developers to do that. If you so choose, you could put an application straight into the formal decision-making process and ask the regulator and their advisers to provide their views within the 12-week period, but the likely outcome from that would be a negative decision. I think it's very unlikely that that would happen, but I think that pre-application process is such an integral part of the success of the formal process, it would be helpful, certainly in the fees process, which is clearly going to cover that work now, to have some kind of memorandum of understanding around service delivery levels.

11:15

[364] **Alun Ffred Jones:** Okay. William Powell.

[365] **William Powell:** I actually wanted to ask for clarity as to whether the pre-application advice process is a charged-for service, or whether that is built into it overall, subject to a subsequent application.

[366] **Mr Russell:** At this moment in time for aggregates, they are covered by a single lump sum fee of £26,500. I think that is expected to build in an element of that pre-application work based on what the marine consents unit of NRW are proposing to move towards, which is effectively mirroring what the English system does; the hourly rate fee would apply to the pre-application advice, as well as the statutory advice. The slight difference is that the statutory advisers, the likes of NRW with their nature conservation remit, have a statutory requirement to provide advice at the formal stage of the application process. That's covered through their existing grant-in-aid arrangements, but the pre-application advice isn't covered. So, that goes back to the point I raised previously around ensuring that those agencies have got sufficient resources and capacity to support the wider process.

[367] **William Powell:** Absolutely. Because I understand that that has been a critical issue in the recent past and maybe has started to be addressed, but there's still room for improvement.

[368] **Mr Russell:** Correct—and it's worth noting that NRW's counterpart in England—Natural England—has recently, in the last couple of years, moved towards a fee-charging process on an hourly rate for developments to cover that pre-application function, as distinct from the statutory function.

[369] **William Powell:** Do you feel that that should be built in on the face of the Bill, or should that be dealt with more at the level of regulation?

[370] **Mr Russell:** It's an interesting question. I guess it depends on whether the agencies in question feel that it's an issue or not. Certainly, over the past four or five years when we've been talking to them around that sort of issue, their view, at the time, has been that they haven't felt that it's necessary. That, though, was before the changes that took place in terms of the creation of NRW, and, clearly, the additional financial constraints that are likely to result would suggest that it's something that's certainly worth thinking about. If you're going to do something, now is perhaps the time to think about doing it.

[371] **William Powell:** Thanks. That's helpful. Diolch.

[372] **Alun Ffred Jones:** So, you agree with fees, obviously, but, just to clarify this, should the Bill include further criteria on the basis upon which fees should be set?

[373] **Mr Russell:** My understanding from the consultation document that the consents unit are developing is that the pre-application side of effort, if you like, is factored in from the regulatory point of view, and that's clearly what the Bill does at this moment in time. Perhaps some further consideration needs to be given around whether that is sufficient to deliver the necessary levels of service performance.

[374] **Alun Ffred Jones:** Well, if you have further thoughts on this, you can share them with us subsequently.

[375] **Mr Russell:** Certainly.

[376] **Alun Ffred Jones:** It would be useful for us if you have. Are there any other questions for our witnesses?

[377] **Mr Jones:** Sorry, can I just—? I know, in England, the Marine Management Organisation do charge for pre-app and it's a really important part of the consenting process. But they do do a free two-hour slot, if you like.

[378] **William Powell:** An initial slot.

[379] **Mr Jones:** Yes, and I think feedback from wave developers, certainly, in England has been really helpful and useful and it gives you enough time as a developer to get some good, clear messages.

[380] **Alun Ffred Jones:** So, if you want to leave us with any single message, or messages, what would you say regarding the Bill now, and how it could be improved, or whether you have any deep concerns?

[381] **Mr Jones:** I think probably a general one from the marine energy sector is that, I think what the Bill could do is provide NRW with a bit more room to take more of a risk-based approach, similar to what they do in Scotland. Now, NRW do take a risk-based approach, but I know in Scotland the feeling from the sector is that they really, really want it to happen in Scotland, so they create policies to do that, and the deploy-and-monitor approach was one of those. So, yes, I think that's something the Bill could achieve from a marine energy perspective; that would be the one thing: to give NRW the opportunity to take, perhaps, a bit more risk, if you really want this sector to move forward.

[382] **Alun Ffred Jones:** Mr Russell.

[383] **Mr Russell:** From my point of view around the licensing side of things, I think it's ensuring that the necessary governance structures are in place to ensure the accountability and the transparency of the fee-charging arrangements. We have to avoid a situation where significant sums of money are being paid, but there's little change in the level of service delivery that's resulting.

[384] **Alun Ffred Jones:** Jeff Cuthbert.

[385] **Jeff Cuthbert:** Could I just ask you a general question? We also have in place now the Well-being of Future Generations (Wales) Act 2015. This Environment (Wales) Bill, obviously we trust will complement and not contradict that Act. Do you think there are any

areas in which there might be a lack of compatibility between the Bill and the existing Act? If you don't, that's marvellous.

[386] **Mr Jones:** No, I don't, actually.

[387] **Mr Russell:** I can't think of anything immediately off the top of my head, if I'm honest.

[388] **Alun Ffred Jones:** Thank you. Janet Haworth.

[389] **Janet Haworth:** Thank you, Chairman. The charging of fees: there is a discussion around, once these fees are paid into a regulatory body, that they could then be available to reinvest in the industry in some way. I just wondered if you had any suggestions around what additional services could be funded from such a fund that would be of value to promoting your businesses.

[390] **Mr Russell:** I guess I'd always viewed the fees as a means of delivering a service, not necessarily a means to generate funding to enable other activities to take place.

[391] **Janet Haworth:** So it should be cost neutral.

[392] **Mr Russell:** Correct.

[393] **Janet Haworth:** You pay the fee, which pays for the delivery of the service.

[394] **Mr Russell:** Yes, and I think the key thing about the hourly rate is that you're paying specifically and explicitly for your service as opposed to cross-subsidising other activities. That, I think, goes back to the transparency and accountability.

[395] **Janet Haworth:** Well, that would be like a legal practice where the file is opened and the tab is opened, and every time you touch that file, the hourly rate is written in, and would be available to the operator.

[396] **Mr Russell:** That's right, and that's exactly how it works in the English system. You get a breakdown of every 15 minutes of time and effort that an individual has spent on a particular case.

[397] **Alun Ffred Jones:** Thank you for that explanation. That might be useful for us as Assembly Members, perhaps, to justify our—. Anyway. *[Laughter.]*

[398] Any further questions? Can I thank both of you very much for coming in, and for sharing your thoughts with us?

[399] **Mr Jones:** Thank you very much for the opportunity.

[400] **Alun Ffred Jones:** We will use your evidence, obviously, in our deliberations. Diolch yn fawr iawn.

11:24

**Bil yr Amgylchedd (Cymru)—Cyfnod 1: Sesiwn Dystiolaeth 20
Environment (Wales) Bill—Stage 1: Evidence Session 20**

[401] **Alun Ffred Jones:** Now we move on to the last set of witnesses, NRW, Cyfoeth

Naturiol Cymru. I will ask the first question. This will give you an opportunity then to line up your own questions. Joyce, I know you want to ask one, on self-protection.

[402] **Joyce Watson:** Yes.

[403] **Alun Ffred Jones:** Julie?

[404] **Julie Morgan:** Can I ask about harm?

[405] **Alun Ffred Jones:** Harm, yes.

[406] **Jeff Cuthbert:** Marine licensing—can I ask on that?

[407] **Alun Ffred Jones:** Sorry, Jeff.

[408] **Jeff Cuthbert:** Has that gone, has it?

[409] **Alun Ffred Jones:** What?

[410] **Jeff Cuthbert:** Marine licensing. The charging regime. The same questions, basically, that I was dealing with there.

[411] **Jenny Rathbone:** Can I ask about collating data in the public domain? Somebody else has already taken charging, have they?

[412] **Jeff Cuthbert:** Yes, well, that'd be me.

[413] **Jenny Rathbone:** Okay.

[414] **Alun Ffred Jones:** That's fine, Jenny.

<p>[415] Bore da. A gaf eich croesawu chi i gyd yma y bore yma? Rwy'n falch iawn o gael eich cwmni chi. A gaf ofyn i chi yn gyntaf ddweud eich enwau a'ch safle chi o fewn Cyfoeth Naturiol Cymru, cyn ein bod ni'n mynd at y cwestiynau? Felly, gwnawn ddechrau gyda Mary Lewis ar y pen.</p>	<p>Good morning. May I welcome you all here this morning? I am very pleased to have your company. May I ask you first of all to state your names and your roles within Natural Resources Wales, before we turn to questions? So, we will start with Mary Lewis at the end.</p>
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[416] **Ms Lewis:** Mary Lewis from the marine advice team in NRW.

[417] **Ms Smart:** Eleanor Smart; I'm a marine licensing team leader in NRW.

[418] **Ms Williams:** Sarah Williams, NRM programme manager, NRW.

[419] **Mr Wheadon:** John Wheadon, permitting service manager, NRW.

<p>[420] Alun Ffred Jones: Diolch yn fawr. A'r cwestiwn cyntaf yw: pam ydych yn credu y bydd y cynigion yn y Bil yn helpu i wella'r dull o reoli a gwarchod yr amgylchedd morol? Cwestiwn cyffredinol. Pwy sy'n mynd i ddechrau?</p>	<p>Alun Ffred Jones: Thank you very much. And the first question is: why do you believe that the proposals in the Bill will help to enhance the management and protection of the marine environment? A general question for you there. Who's going to start?</p>
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[421] **Ms Lewis:** The provisions across the Bill, as opposed to the specific licensing and

shellfishery provisions, is it? Okay. I think, broadly, these provisions in the Bill are complementary with existing provisions that we've more recently had in terms of the Marine and Coastal Access Act 2009, which obviously generates the powers to create marine plans for Wales, which is work that's under way, and various other new provisions as well as marine licences, marine conservation zones, et cetera. So, we've had some recent new legislation in the marine environment, but the environment Bill is a more wide-reaching, integrating piece of legislation across terrestrial and marine, that then gives the opportunity to integrate the newer approach we have with marine planning, et cetera, in the marine environment more widely, across the whole of Wales.

[422] There's some work to do, I think, in terms of understanding the overarching role of the Wales national marine plan as the strategic document that's providing direction for how we manage the marine environment, and how that sits alongside, and integrates with, natural resource policies and area action plans et cetera. But that work is under way, so I think, really, what's happening is that it's complementary legislation that gives us a stronger, integrated set of powers to manage the marine environment.

[423] **Alun Ffred Jones:** We'll come back to 'complementary', I think, later on. Julie Morgan.

[424] **Julie Morgan:** Thank you very much. The Wales Marine Link's proposal is that the definition of 'harm' in the Bill is too narrow, and that it should include consideration of the impact of a fisheries Order on its own, or in conjunction with other plans and proposals. Could you give us your views on that?

[425] **Ms Lewis:** We're happy with the definition of 'harm' in the proposals at the moment. The issue around 'in combination with other activities', et cetera, is really repeating provisions already in legislation in the habitats and species regulations. So, we don't feel there's a need to repeat those provisions in the environment Bill as well. And, in terms of the definition being too narrow in terms of whether or not harm 'may occur' or 'be likely to occur', which is another issue they've raised, again, we're happy with the provisions in the Bill, because for harm to be occurring, or be likely to occur, suggests that there's a risk assessment around that and that you need a degree of evidence to back that up, and we would support the idea that you'd need evidence to bring forward one of these site protection notices in the first place.

[426] **Julie Morgan:** What do you feel about the view that the definition of 'harm' should include the risk of an adverse effect?

[427] **Ms Lewis:** That sort of picks up what I was just saying really. They're asking again, I think, for that to be inserted into the actual definition of 'harm' in that specific part of the Bill. In the earlier measures, where it sets out what the site protection notices can be used for, it says that they can be used where harm has occurred, or is likely to occur. Our interpretation of that is that if it's likely to occur, there is an assessment of risk there; you are assessing if there's a risk that harm will happen to that site. So, we feel that that risk is built in upfront in what you can use site protection measures for, so that it's in there, just in a slightly different place to where they're asking about it.

[428] **Joyce Watson:** Chair—

[429] **Alun Ffred Jones:** Yes, Joyce.

[430] **Joyce Watson:** You mentioned, quite rightly, that everything has to be evidence based, and they did say this morning that evidence needs to be collected, collated and held in one place. Do you agree with that, and would that, perhaps, help in this situation?

11:30

[431] **Ms Lewis:** Certainly, we would agree with that, and in NRW, we have a part of our organisation that deals with our monitoring and data, and we'd be collating all our evidence in that part of the organisation. As you've heard from previous witnesses, James Wilson talked about the fact that we've got a very collaborative relationship with the sector—and the aquaculture sector as well in terms of any research that they carry out or data that they hold—so, yes, definitely, we would need to collate all of that into one place, which is what we're working on, and work with others to do, and use all the available best evidence to provide our advice to Government as and when they were to consider using this particular new power.

[432] **Joyce Watson:** Can I just ask you, do you also ask the marine environment link for their evidence, so that you've got a comprehensive—because, this is the issue, isn't it, about having a comprehensive set of data in one place?

[433] **Ms Lewis:** We've got, again, a good collaborative working relationship with Wales Environment Link and we have a sharing relationship with them, and we've provided them with grant in aid in the past to carry out particular work. So, we basically would seek to collaborate with all partners and all stakeholders in the marine environment, and, certainly—one of my colleagues might be able to say more about this—in terms of the work we need to do to produce a full report on the state of natural resources in Wales, under the broad provisions in the environment Bill, we would be seeking to do that very collaboratively across the whole of Wales, not just in the marine bit and the terrestrial environment, as well.

[434] **Joyce Watson:** Okay.

[435] **Alun Ffred Jones:** Julie, have you completed your—?

[436] **Julie Morgan:** Yes.

[437] **Alun Ffred Jones:** Joyce, you're going on—

[438] **Joyce Watson:** On site protection notices. I'm going to ask you some questions on site protection notices and see if you believe that Welsh Ministers should be under a duty to issue site protection notices rather than being provided with discretionary powers.

[439] **Ms Lewis:** I think we're happy with discretionary powers. I think you have to think carefully about when to impose a duty as opposed to a broad power—I think we're happy with the idea that it's a power, and in the end, I guess, it is an issue for Welsh Government and their lawyers, in terms of which way to go. But, we're happy with it being discretionary in that we would provide advice as to how and when that power might be used.

[440] **Joyce Watson:** Okay, and whether you agree with Wales Marine Link that the definition of a site protection notice in the Bill needs to specifically refer to the ability for a notice to require grantees to cease activities.

[441] **Ms Lewis:** Again, we feel that's covered, really, in the provisions already, because you can bring in a site protection notice to prohibit the activity in the first place, or to change the specifics of the way it's operated. So, actually, we feel that that power to do that is already there in the provisions without needing to have an extra specific measure in terms of ceasing.

[442] **Joyce Watson:** And following on the same theme, again from Wales Marine Link, they propose that failure to comply with a site protection notice should be a criminal offence.

[443] **Ms Lewis:** Again, we feel that we're happy with the provisions in the Bill. The specific sanction, again, I think we feel that that is a decision for Welsh Government, but that we would feel that the sanction should be proportionate to the action that's been taken. In the Bill, there is a sanction that if the action that's required under the site protection notice isn't carried out, Welsh Ministers can carry that out themselves and recover the cost. That is actually quite a substantial sanction in its own right, so we're supportive of that as the proposal rather than going down the route of criminalising people unnecessarily.

[444] **Joyce Watson:** Right, thank you.

[445] **Alun Ffred Jones:** Jenny Rathbone.

[446] **Jenny Rathbone:** I just wanted to pursue this issue of discretionary powers as opposed to duties, because the problem with discretionary powers is that the Minister might be distracted and fail to take action at the appropriate moment, whereas if there's a duty, the department will need to ensure that they do act.

[447] **Ms Lewis:** I think that the issue with a discretionary power is, actually, it gives you broader scope, in a way, than a duty, because you can decide how and when to use it, whereas with a duty you then have to be quite prescriptive as to how and when that duty would be used. So, you might, actually, therefore, narrow the options for when you start to use it. Also, we would understand that these measures would need some quite clear guidance to interpret them and how they'd be used, and we would, obviously, want to advise on the development of that guidance. That should, therefore, provide a lot of clarity about when it is appropriate to use that discretionary power. We, as the nature conservation advisers to Government, would give quite clear advice when we felt that power should be used.

[448] **Jenny Rathbone:** That seems to be quite woolly. We're talking about maintaining and enhancing biodiversity and resilience of ecosystems. The general public would, I think, expect that that would be a duty, rather than just an optional extra.

[449] **Ms Lewis:** Welsh Government anyway are under a duty, broadly, in terms of all European marine sites, to ensure that all their activities enhance the features of the site and don't have any adverse impact on the features of those sites. So, there is a duty there. In a sense, I think we see this as a supplementary power to help them deliver that duty to make sure things that they are granting, like several or regulating Orders, are actually carried out in a way that's not detrimental to those sites. So, it is sort of supplementary to a broader duty they are under anyway that encompasses everything they do, or everything that they permit others to do, that may have an effect on European marine sites.

[450] **Jenny Rathbone:** Okay, and just going back to the point about whether or not a failure to comply should be a criminal offence, do you have examples you could give us of where you've insisted that, if somebody doesn't comply, you will be charging them for rectifying the matter?

[451] **Ms Lewis:** I don't have any specific examples with me now. If you'd like us to go away and find that out, we can do that and come back to you.

[452] **Jenny Rathbone:** Well, I think it's about testing whether or not it works, because, if somebody continues to do the offensive activity, the costs could escalate hugely.

[453] **Ms Lewis:** Absolutely, and, in a sense, that's why we thought that that sanction is, potentially, quite a significant one, actually. I see what you mean in terms of examples of cost recovery, but we can take that away and see whether we can find some to bring back to you. But, as a principle, we were happy that that sanction is proportionate.

[454] **Jenny Rathbone:** Okay, but, obviously, if the company goes out of business, then the public sector has to pick up the bill in any case, so we don't achieve what the Bill is trying to achieve.

[455] **Alun Ffred Jones:** Jeff Cuthbert, moving on to marine licensing.

[456] **Jeff Cuthbert:** Okay, the current charging regime—is it in need of revision? Is it fit for purpose currently? We've had evidence to suggest it's not and that they're quite happy with the moves to change it. They are concerned about what additional services could be provided as a result of paying those fees. Do you feel that the Bill will enable you to provide a fairer charging regime?

[457] **Mr Wheadon:** I think in terms of what the Bill is seeking to achieve in terms of new charging powers, that's certainly important. It's probably useful, just for the committee's information, to say that NRW has been engaged with Welsh Government for 18 months in terms of a working group actually looking at the powers, so that may probably give you some context for our thoughts on what's being proposed. So, yes, it is important, certainly in the review of the current charging schemes since we've inherited the duties with the formation of NRW. They don't cover permitting all marine-related activities. They don't, therefore, provide cost-neutral funding for delivery of the service. Equally, I think it's fair to say, probably, at this moment in time, some applicants are paying too much or too little for the service that's being provided. So, there's certainly a need for the review and for the powers that are being sought via the Bill. Ellie, you may want to talk about new services.

[458] **Ms Smart:** Yes, so, in terms of new services, we'll continue with the service that we've got. In addition, we'll provide an advance, pre-application service. We heard from Dave Jones earlier, talking about the two hours free in England; we're looking to introduce something similar, whereby it would be two hours free for our customers, and we hope that this would help expedite the application process and give developers greater clarity over the legislation and technical requirements prior to their submission of a formal application.

[459] **Jeff Cuthbert:** We did hear that there isn't an objection to paying fees at the right level, but it is not unreasonable to say that, for that, something needs to come back. You just mentioned improving perhaps the application process, which I think would be welcomed. So, are you fairly sure that you would be able to do that—that you're suitably resourced in order to do that—and have you, in your discussions with the Welsh Government, had any clarification about whether you will be able to retain the fees as a result of this new development?

[460] **Mr Wheadon:** In terms of retention of fees, yes, we're able to do that. Sorry, can you just remind me of your first question?

[461] **Jeff Cuthbert:** It was about being suitably resourced to provide what we might call an improved service.

[462] **Mr Wheadon:** Yes. I think, in terms of the new charging powers, that's what it will achieve. That's what it will supplement. I think, by having those powers covering a wider range of activities, it'll give us more confidence that the service that we need to provide and resource—by having those powers in place that can then be achieved. So, I think looking forward at future applications that are potentially out there, in terms of our resource planning, it gives us far greater confidence in terms of what we can put in place.

[463] **Jeff Cuthbert:** Okay. All right. Thank you.

[464] **Alun Ffred Jones:** Llyr.

[465] **Llyr Gruffydd:** Yes. We've had evidence to suggest, from industry bodies, that they'd like to see a statutory time frame in the legislation around marine licensing. I'm just wondering whether you had a view on that.

[466] **Mr Wheadon:** I think they've got their place. So, it could be for perhaps some non-complex applications that they may be of use. But I think it's fair to say that, particularly in Wales, the dynamics in marine licensing is changing, particularly around marine renewables. There are some very complex, novel, new technologies out there. I think putting statutory timescales around those applications could be a bit of a challenge. The legislation at the moment doesn't provide for any statutory timescales. Probably the preference at the moment would be for that status quo to remain, and for us, in negotiation with Welsh Government, to approach it more from a policy perspective, and, again, through dialogue with stakeholders, to agree on timescales we think are achievable. There are service levels in place currently that we publish. So, they're already well-established, and, again, via that dialogue with marine stakeholders, we'd certainly welcome their feedback where they feel that doesn't particularly support their interests. But then, obviously, that's having regard to the process we'd be negotiating on.

[467] **Llyr Gruffydd:** The British Marine Aggregate Producers Association—there we are; get it right—suggested that a new charging regime would require greater levels of accountability and a new governance framework. I mean, you've suggested that there are protocols in place, but do you accept that maybe that would have to be amended or changed quite considerably to meet the new requirements?

[468] **Mr Wheadon:** I recognise the point that they've made. I think it's a fair point, but, again, I'd like to think that that could be achieved via dialogue. There is a well-established marine stakeholder group in place. They're the type of discussions we should be having with that group in terms of what needs to be actually created in terms of documentation and governance and policies around how this is applied. I wouldn't see that as being the level of detail that needs to be in the Bill. I've every confidence that's something we should be able to achieve through our normal dialogue with the stakeholder group.

[469] **Alun Ffred Jones:** Jenny Rathbone.

[470] **Jenny Rathbone:** Yes. You say there's service level agreements in place. Could you just tell us what the timescales are in those service level agreements?

[471] **Ms Smart:** It depends on the type of application. So, for simple applications you'd be looking at a six-week turnaround. For more straightforward applications, you know, the road-type applications, you're looking at a backstop of four months. So, we'll obviously try and issue or determine as soon as possible, but with a backstop of four months. Then, for the much more complex applications, there is no statutory timescale because of the breadth and the complexity of the applications, some of which can still be determined within four months, but, when you have large developments coming through, particularly with the NSIP-type projects as well, it's very difficult to put a backstop on that.

[472] **Jenny Rathbone:** Well, I understand that, with complex applications, it's difficult to put a timescale on it. However, the aggregate industry association are saying that there are unnecessary delays at the moment, and, because it's a commercial transaction, they're paying for something and therefore they expect a prompt service in return. I wondered if moving to an hourly rate might actually concentrate minds.

11:45

[473] **Ms Smart:** Applications for the aggregate industry can be very complex as well—they are often very complex. I would think, particularly with the sensitive areas that we have around Wales, it's being mindful that—. I think that—. Sorry, I've lost my train of thought. Sorry, can you repeat the question?

[474] **Jenny Rathbone:** It's really about having a slightly more commercial relationship and a more business-like approach to this rather than the appearance, from their end, that the whole thing drifts on and is not a priority.

[475] **Mr Wheadon:** Certainly, with BMAPA or any stakeholder, we want to give them the comfort that that sort of culture is not what we'd want in place within our approach to permitting. Equally, there's a vested interest then ourselves to ensure we bring the decision making to a conclusion and expedite that robustly as soon as we can. There is a continual throughput from a range of sectors across Wales, so I can understand the point they're making, that, if we move to an hourly rate, the urgency or the incentive may not be there to bring it to a conclusion. That is recognised, but, culturally, I'd think we still want to be in a place where the funding mechanism is there to be able to resource the team, and that should go hand in hand in supporting what they want to achieve, which is expediting the decision making.

[476] **Jenny Rathbone:** So, do you think the hourly rate will make you more commercially expeditious?

[477] **Mr Wheadon:** I'd like to think we were already in that mindset. As I say, we've got very little interest in delaying applications. There may be bottlenecks at particular stages in the process, but, as a culture, no, I think that's where we should be already.

[478] **Jenny Rathbone:** Okay. Just recognising the complexity of some of the research that you need to do, what is your view on the position put by Wales Marine Link that, once an application has been approved, the information that's been gathered in this research should be put into the public domain?

[479] **Ms Smart:** The marine licensing or the licensing authority does have an obligation to hold a public register, and the requirements that go on the public register are set out in a statutory instrument, so we adhere to that. NRW, whilst we feel that reports to support an application are indeed public register, the raw data that can sit behind that aren't, so, for that reason, NRW do not currently put that on our public register, because we recognise that it can be commercially confidential as well. However, as a landowner, the Crown estate can and do ask their landowners, through their own licensing process, to submit their data for the marine data exchange programme.

[480] **Jenny Rathbone:** Okay, but you can see that one of the concerns is that something done in one place might have an impact on another part. For example, the Severn barrage was deemed to have an impact on north Wales. Therefore, were such large-scale things to go ahead, there ought to be some entitlement for everybody to be able to see what the analysis and risk assessment has been.

[481] **Ms Smart:** I think it needs to be assessed on a case-by-case basis. Applicants pay a lot of money for the research that they do, which they're then able to sell on commercially, and we recognise that. And, by law, if it's not deemed as public register, then we don't have the right to share that.

[482] **Jenny Rathbone:** Okay. So, what makes the decision as to what's commercially sensitive and what ought be put in the public domain, when a licence is granted?

[483] **Ms Smart:** That would be a decision that we'd make in conjunction with our lawyers.

[484] **Jenny Rathbone:** NRW makes that decision.

[485] **Ms Smart:** Yes.

[486] **Jenny Rathbone:** Okay. Thank you.

[487] **Alun Ffred Jones:** Any further questions?

[488] **Janet Haworth:** Yes, I just wanted to go back to the hourly charging as a system that we're perhaps adopting from legal practice, and how they would do that. Also, where a problem occurs, and you're in a position where you might be going to issue a notice of some kind, would it be helpful to have the tool of arbitration? It's common practice in commercial activities, particularly large-scale ones—these wave developments aside—involving a great deal of money, to resort to arbitration before resorting to stronger legal measures like notices that might stop activity, or have a direct impact on the finances of that organisation because their bankers start to get very worried. So, it's a kind of first position—a bit like marriage guidance.

[489] **Alun Ffred Jones:** We're not going to marriage guidance. [*Laughter.*]

[490] **Janet Haworth:** A tool of arbitration—to find a place within the Bill somewhere. Would that be helpful?

[491] **Ms Lewis:** Is that particularly in relation to site protection notices for the shellfish industry?

[492] **Janet Haworth:** Yes.

[493] **Ms Lewis:** Okay. I think in relation to that, I suppose it goes back to the fact that we in NRW as advisers would always be seeking to work alongside the actual operators, constantly giving them advice if they're seeking it and in dialogue with them about what they do and what impact it might be having. I think this particular tool—the site protection notice—is a backstop so that it's there if it gets to the point where there is harm happening or likely to happen where all of these other processes of ongoing work and dialogue have not managed to resolve the issue. But, normally, absolutely, we would always want to work in partnership and in open dialogue with, obviously, Welsh Government and also with the operators to resolve any issues before they become a problem in terms of harming the environment.

[494] **Janet Haworth:** And, just finally, we've had the shellfish people in this morning—this is something that you people will well understand—and the shellfish are a kind of barometer at the end of the ecological process because they're filter feeders. Things could be going wrong and the cause of the harm could be elsewhere, and now you see a problem with the filter feeders. So, what difficulties do you envisage in apportioning blame?

[495] **Ms Lewis:** That particular example I don't think is one where you'd be using site protection notices to intervene in the shellfishery. If it's a water quality issue, it's to do with the permitting and consenting of the actual discharges, and other regulatory regimes would be used. And if there's an issue with a discharge having an effect on the condition of a European marine site, that's an issue for the review of the consents of those discharges, rather than the actual activity of the shellfishery. I think where the site protection notices may be used would

be either because of direct harm as a likely result of the shellfishery, or where there is another issue—for example, invasive non-native species is an example we gave in our evidence—in the area that could be directly exacerbated by the operation of a shellfishery. But, you wouldn't be looking to use these site protection notices to solve a problem that should be dealt with through other regulatory means.

[496] **Janet Haworth:** Thank you.

[497] **Alun Ffred Jones:** Thank you. Before you leave, is there anything that you think could be done to improve this Bill?

[498] **Ms Williams:** In total or particular aspects of it?

[499] **Alun Ffred Jones:** Any aspect of it at all.

[500] **Ms Williams:** Well, I've been here three times now, so you're probably fed up looking at me. [*Laughter.*] We're broadly very supportive of the proposals in the environment Bill—on the aspects on natural resource management, on the waste aspects and on the aspects that we've discussed with you today. We've had ongoing discussion with Welsh Government and our stakeholders about the provisions that have been brought forward in the Bill. We are broadly content. There are obviously specific—. As you go through and consider amendments and as we've set out in our evidence, we do believe that there are some aspects around natural resource management that can be tightened up, so that the environment Bill, the Well-being of Future Generations (Wales) Act 2015 and the Planning (Wales) Act 2015 do work in harmony together and that there is a clear interchange between the provisions in the Bill for state of natural resources reports and area statement that feeds into those other provisions in the other two Acts as well. I think that's where we'd like to see some of the things tightened up. But we're broadly content.

[501] **Alun Ffred Jones:** Thank you very much. No further questions.

[502] Diolch yn fawr iawn am ddod i Thank you very much for coming in today.
mewn heddiw.

[503] Thank you very much for coming in today and helping us with our deliberations.
Diolch yn fawr iawn. And that concludes the final session with the witnesses.

11:54

Papurau i'w Nodi Papers to Note

[504] **Alun Ffred Jones:** Item 7—papers to note. A letter or further information from Undeb Amaethwyr Cymru. Are you happy to note?

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

Cynnig:

Motion:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol *that the committee resolves to exclude the public from the remainder of the meeting in*

Sefydlog 17.42(vi).

accordance with Standing Order 17.42(vi).

*Cynigiwyd y cynnig.
Motion moved.*

[505] **Alun Ffred Jones:** Now we go to private session, with your consent.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:54.
The public part of the meeting ended at 11:54.*