



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Social Justice and Social Security Committee

Thursday 9 October 2025

Session 6



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**Thursday 9 October 2025**

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**SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE**

**26<sup>th</sup> Meeting 2025, Session 6**

**CONVENER**

Collette Stevenson (East Kilbride) (SNP)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**COMMITTEE MEMBERS**

Jeremy Balfour (Lothian) (Ind)

Michael Marra (North East Scotland) (Lab)

\*Marie McNair (Clydebank and Milngavie) (SNP)

\*Carol Mochan (South Scotland) (Lab)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Sarah Boyack (Lothian) (Lab)

Professor Calvin Jones

Professor Colin Reid (University of Dundee)

Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Social Justice and Social Security Committee

Thursday 9 October 2025

*[The Convener opened the meeting at 09:46]*

#### Decision on Taking Business in Private

**The Deputy Convener (Bob Doris):** Good morning, and welcome to the 26th meeting in 2025 of the Social Justice and Social Security Committee. We have apologies from Collette Stevenson and Michael Marra. We are hoping that our colleague Jeremy Balfour will join us online shortly; he has not made it yet.

Our first item of business is a decision on taking business in private. Do members agree to take items 5 and 6 in private?

**Members** *indicated agreement.*

## Subordinate Legislation

### Carer's Assistance (Miscellaneous and Consequential Amendments, Revocation, Transitional and Saving Provisions) (Scotland) Regulations 2025 [draft]

09:47

**The Deputy Convener:** Our next item of business is consideration of a Scottish statutory instrument. The instrument is subject to the affirmative procedure, which means that Parliament must approve it before it comes into force.

I welcome to the meeting Shirley-Anne Somerville, who is the Cabinet Secretary for Social Justice, and her officials Dawn Kane, who is senior policy officer for carer benefits, Jane Sterry, who is team leader for the carer support payment policy, and Karolina Bodzak, who is a solicitor in the disability and carer benefits branch. Thank you all for joining us this morning.

Following the evidence session, the committee will be invited in an upcoming agenda item to consider a motion to approve the instrument. I remind everyone that the Scottish Government officials can speak under this agenda item but not in the debate that follows. I invite the cabinet secretary to make a short opening statement.

**The Cabinet Secretary for Social Justice (Shirley-Anne Somerville):** Thank you very much and good morning, convener. I am very pleased to be able to come to the committee this morning to speak to these draft regulations, which represent a major milestone for the devolution of social security in Scotland and provide further recognition of the immense contribution of unpaid carers in our society.

I previously attended the committee in September 2023 to discuss the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023, which introduced the carer support payment to replace carers allowance. At that time, we promised that once the carer support payment was rolled out nationally and we had completed the safe and secure transfer of all carers allowance cases, we would begin to make further improvements to the carer support payment.

You know already that the carer support payment was successfully rolled out across Scotland last year and I am pleased to report that we have now completed transferring all carers allowance awards for unpaid carers in Scotland to the carer support payment. Therefore, I am pleased to be speaking to you today about the planned improvements.

The regulations will introduce carer support, which is a single benefit that is made up of three components: the carer support payment, the Scottish carer supplement and the carer additional person payment. We are making further improvements to how the Scottish Government supports carers: we are increasing the amount of time during which a carer can continue to receive support after the death of a cared-for person from eight to 12 weeks, and we are removing the requirement for carers to have cared for someone for a certain period before they can continue to get support when they have a temporary break from caring.

The Scottish carer supplement will replace the carers allowance supplement, which is currently paid twice yearly. Instead, the Scottish carer supplement will be paid alongside the carer support payment, so that carers no longer need to be receiving the carer support payment on specific qualifying dates, and can receive their payments more regularly.

The carer additional person payment is a new extra payment of £10 a week, available to people receiving the carer support payment who care for more than one person for at least 20 hours per week. People who are already receiving the carer support payment do not need to apply for carer support when it is introduced. Their award will be automatically transferred. Only those who wish to receive the carer additional person payment need to get in touch when their award transfers to ensure that we can add that payment to their award.

We are also extending the young carer grant to 19-year-olds in order to ensure that those in full-time, non-advanced education are able to access some form of carers assistance.

The regulations also make further relatively minor amendments to the principal regulations in order to clarify existing provisions—including earnings provisions and those that allow for additional backdated support to be given after an initial award—as well as revoking some provisions that are no longer needed.

The improvements that we are discussing today build on the support that is already available for carers in Scotland, much of which is available only in Scotland. We introduced the carers allowance supplement in 2018 in order to address the fact that carers allowance was the lowest of all the working-age benefits, and the young carer grant in 2019 in order to recognise young carers.

The carer support payment is our most complex benefit to date. I am grateful to everyone who has contributed their views, and to officials from across the United Kingdom for all their hard work on ensuring that these new improvements work as

intended with the benefits that remain reserved to the UK Government.

I am also grateful to the hundreds of carers, and the carer benefits advisory group, who help to ensure that devolved carer benefits meet the needs of those who receive them. I also extend my thanks to the Scottish Commission on Social Security for its formal scrutiny of the draft regulations; its recommendations have assisted us in strengthening the detail of the regulations that are before us.

These changes will put more money into the pockets of our unpaid carers and, alongside our work to help carers to access wider carer support, will provide an improved service for them.

As I have said before, today is an important milestone. I welcome the opportunity to assist the committee in its consideration of the regulations.

**The Deputy Convener:** Thank you. We now move to questions from members. We will, of course, direct those towards you, cabinet secretary, but it is fine if your officials also wish to come in.

**Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP):** Good morning to you, cabinet secretary, and to your officials.

What we are talking about today will be welcomed by our unpaid carers right across the country.

We know that carers are often very time poor and lead very stressful lives. The SCOSS report raised a number of issues where the operation of the regulations could be quite complex. What is the Scottish Government doing to ensure that carers are very clear about how to get the support that they are entitled to? That is particularly important when their circumstances change, so could you talk a little bit about that?

**Shirley-Anne Somerville:** Certainly. As I referred to in my opening remarks, this is the most complex benefit that has been devolved. That is, in many ways, because of the integral links between the devolved system and those benefits that remain reserved to the UK Government. Even more so than in relation to all other benefits, it requires us to ensure that there are no unintended consequences to changes to a carer's benefits here, in that they are detrimental to a carer by then impacting on their reserved benefits.

We are also very conscious of the fact that we still need to make this as simple as we can for the carers. Any difference between our rules and Department for Work and Pensions rules can add to that complexity. We are therefore developing targeted communications to ensure that the right information is there for carers, at the right time.

Carers who are currently in receipt of the carer support payment will receive a notice of determination to let them know that their benefits will be transferring to carer support, with details of their award. That will outline the components of the carer support, and invite them to inform Social Security Scotland of any additional people they care for, should they wish to receive the carer additional person payment. It is important that the agency makes that proactive effort in order to ensure that carers are aware of the additional support that they might be entitled to.

Moving from the carers allowance supplement to the Scottish carer supplement is a change for carers, who have been used to receiving that twice-yearly payment. However, as I said in my original remarks, it is important to recognise that the change means that carers can receive that benefit more regularly, and that it will be more accurate, because there will not be those two weeks in which they have to be eligible. Sometimes, carers missed out because of a change in income, which we know is a key challenge.

The changes that we are making are, therefore, very much an attempt to make things as simple as possible. However, we recognise that we are doing so in a complex system. We are particularly concerned to support people when circumstances change, and particularly when those circumstances are the death of a cared-for person. We are ensuring that there is a way in which carers can be provided with additional support from the agency if, for example, they receive the carer additional person payment, but one caring role ends, perhaps through bereavement. There is work within the agency to ensure that carers are supported.

Those are just some examples of what we are trying to put in place within the agency in order to recognise that complexity. We are working with carers and, of course, with carers organisations directly to ensure that we design the system with them and provide that support, where at all possible.

**Elena Whitham:** That is very helpful and reassuring.

**Carol Mochan (South Scotland) (Lab):** Good morning. The young carer grant is being extended to include 19-year-olds. The SCOSS report said that an alternative policy choice could have been to give full access to the carer support payment to 16-year-olds. Some stakeholders said that that was their preferred choice. Does the cabinet secretary have a response to that?

**Shirley-Anne Somerville:** I know that some stakeholders have asked for that in the past.

I note at the outset that the fact that we are extending the young carer grant to 19-year-olds follows feedback from stakeholders, who quite rightly pointed out that some carers who are aged 19 and are in full-time, non-advanced education were falling through a potential gap between the young carer grant and the carer support payment. The change has therefore come in because we are listening to stakeholders and moving forward with improvements. We estimate that the change will provide support to an extra 1,200 carers in the first full year of the grant, in 2026-27. We are therefore listening to stakeholders and adapting.

Ensuring that we provide young carers with support is an area that we have considered carefully over the years. It is about ensuring that we do not make a change in the system whereby a young carer might feel that they should be taking on more caring responsibilities, which might impact on their life choices. We are very conscious of the fact that we need to not only support young carers, but ensure that we are doing that in the correct manner.

Having said all that, and as I hope that we have demonstrated in the changes that we are bringing in today, I am keen to ensure that we continue to review and discuss, with young carers in particular, the impact of these changes and any concerns that they might have in the future. I have said to the committee on a number of occasions that I am exceptionally proud of the devolved social security system. However, it is still very young, so we may need to make changes in relation to feedback, and there may be iterations of the benefits.

As we do with all benefits, and as we have discussed at committee in the past, we will carry out evaluation work around the carer support payment and the young carer grant to ensure that we consider the impact of benefits on a young person's engagement with training, employment opportunities and so on.

I hope that that gives the committee reassurance that we are continuing to improve and to listen, and that we will continue to be willing to listen in the future and to adapt if we need to do so.

**The Deputy Convener:** Cabinet secretary, recommendation 3 in the SCOSS report is in relation to older carers. As you know, many older carers cannot get carer support because they receive the state pension. The Scottish Government announced in 2022 that it would consider a recognition payment for older carers as a longer-term change. Has any preparatory work been done on that? Is the Scottish Government working to any timescales to develop policy on that issue?

10:00

**Shirley-Anne Somerville:** One area that we have been asked to look at, and which we have looked at in the past through our consultation, is carers who currently only have an underlying entitlement to the carer support payment. That is usually because they receive another income replacement benefit instead, which in this example is the state pension.

We recognise that there have been calls to allow people on the state pension to receive the carer support payment but, in essence, that would change what the benefit is for, because it is an income-replacing benefit. However, it is important that we encourage carers to apply for carer support because they can have an underlying entitlement to other reserved and devolved benefits.

The recognition payment to recognise the contribution of long-term carers came up in our past consultation. It would be done in an alternative way, by paying that carer support payment to all carers with underlying entitlement. That option ranked relatively low when we looked at the multicriteria analysis of the options.

The idea of a recognition payment received positive feedback. I refer back to my original remarks—we have said that we were processing the new payments and completing the case transfer, and that we would deliver the changes, which we are doing today. In essence, we have carried out some initial internal work on a recognition payment, but we have not taken it forward because what we said in our consultation response is that we would deliver on the improvements that we are laying in front of the committee today.

**The Deputy Convener:** Thank you, cabinet secretary—that is pretty clear.

**Alexander Stewart (Mid Scotland and Fife) (Con):** The SCOSS report highlighted that not all carers will be able to benefit from the full four-week extension to the run-on, because of the way that carer support interacts with universal credit. Can you update the committee on discussions that have taken place with the DWP to try to resolve that issue?

**Shirley-Anne Somerville:** That is an example of the complexity of the devolved changes and the need to ensure that we understand their consequences for reserved benefits. The extension to the bereavement run-on for carer support will provide additional support. We understand the importance of ensuring that any extra support that we provide for carers through improvements such as the run-on extension does not put at risk support that they receive from elsewhere or mean that they lose support through

reductions in the reserved system. That is one example of the complexity of the situation.

The universal credit rules will apply to the new 12-week run-on in the same way that they apply to the current eight-week run-on, while carers will get all the additional carer support payments, including the carer supplement and any additional person payments, that they are entitled to. As a result of the extension, some may not get a universal credit carer element for that full period. That will depend on where they are in their universal credit assessment cycle when the bereavement occurs.

The Scottish Government has raised concerns about that issue with the DWP, which told us that it considers the current approach to be acceptable. Its view is that there are limited circumstances in which the carer support payment run-on would continue for longer than the carer element run-on, so in most cases, carers will get the full benefit of the change.

Nevertheless, there is a possibility that some carers will not. I have asked the minister responsible and the DWP to consider that as part of the DWP's on-going review of universal credit—I referred to that in a letter that I sent earlier this year. That has been noted, and we will continue to work with the DWP to see whether a solution can be found. However, it lies solely with the DWP to assist us with that, given that the issue is in the universal credit system.

**The Deputy Convener:** As there are no more questions, we will move to agenda item 3, which is formal consideration of motion S6M-18774. I invite the cabinet secretary to move the motion.

*Motion moved,*

That the Social Justice and Social Security Committee recommends that the Carer's Assistance (Miscellaneous and Consequential Amendments, Revocation, Transitional and Saving Provisions) (Scotland) Regulations 2025 [draft] be approved.—[*Shirley-Anne Somerville*]

*Motion agreed to.*

**The Deputy Convener:** I thank the cabinet secretary and her officials for coming. We will suspend briefly before we move to the next agenda—[*Interruption.*]

My apologies. We are tight for time, so I cut bits out of my brief, but I had better just put this on the record.

The committee will report on the outcome on the instrument in due course. Are members content to delegate responsibility to me to publish a short factual report to the Parliament on the affirmative instrument?

**Members indicated agreement.**

**The Deputy Convener:** I will now suspend briefly before the next agenda item.

10:08

*On resuming—*

10:06

*Meeting suspended.*

## **Wellbeing and Sustainable Development (Scotland) Bill: Stage 1**

**The Deputy Convener:** Agenda item 4 is our first evidence session on the Wellbeing and Sustainable Development (Scotland) Bill at stage 1. I welcome Professor Colin Reid, emeritus professor of environmental law at the University of Dundee. Colin is in the room today. We also have Professor Calvin Jones, an economist, who is online. I thank you both for joining us. We have also been joined by Sarah Boyack, who is the member in charge of the bill. I will bring her in, in due course, to ask questions.

The first question is a general opening one and is from me. We have lots of questions to get through this morning, and almost every area of the bill will be covered. It will be tempting for our witnesses to stray into aspects of the bill that we are not mentioning just now. However, if we can try to keep answers focused—I know that that is very difficult sometimes—that will be helpful.

The policy memorandum explores the concept of policy coherence for sustainable development. Do you agree with the analysis, and can you share any examples of where such an approach has resulted from legislation?

**Professor Calvin Jones:** I will speak to the experience in Wales, where there was a definite attempt to encourage positive coherence through the Well-being of Future Generations (Wales) Act 2015. That has been partially successful. There is now an almost *de minimis* approach to ensuring that policies across a range of Welsh Government activities are in line with that act. In some cases, that has tended to be more a tick-box or compliance approach than an active shaping of policy in line with the spirit of the legislation.

I would say that the 2015 act has made modest changes to the direction of bills. Although the act might somewhat have shaped the ways in which subsequent legislation, policy or strategy has been developed and enacted, I would not say that it has changed markedly the objectives of that legislation or those policies or strategies.

**The Deputy Convener:** That is helpful. If you have specific examples of those modest changes, it would be helpful if you could follow up in an email, so that we can see an illustration of that.

**Professor Colin Reid (University of Dundee):** It is absolutely right that sustainable development requires coherence across Government. Right back at the start of devolution, Lord Sewel, in the

publication “Down to Earth: a Scottish perspective on sustainable development”, said:

“sustainable development is not a single policy; it is an approach to all policies”.

That is absolutely right.

The role of legislation is only part of the picture in trying to get coherent policy across things. Legislation comes into being because there is already a movement towards something being recognised, respected and taken into account across Government. It is difficult to isolate what legislation achieves in itself, apart from the wider current of events.

One example of something making a difference is the public sector equality duty, whereby the requirement to have regard to equality has been built into public sector decision making in a way that it was not before.

**Elena Whitham:** Good morning. The Scottish Government previously committed to legislating in the area of wellbeing and sustainable development but then chose not to proceed with its legislation despite having consulted on it. Indeed, the Government has also chosen not to support the bill. Do the policy objectives in the bill and the policy memorandum require legislation in the first place?

**Colin Reid:** I do not think that they absolutely require it. In the committee’s papers, there is a reference to a report by Carnegie UK on different ways in which sustainable development could be built into governance across the country. We have been talking about sustainable development since the 1990s, but, if we look at what is happening across Government and the public sector, we do not necessarily see it as a driving force for policy formulation and so on.

There is an argument that something needs to be done, and legislation might be part of it, but—as, I am sure, the committee well knows—passing a law does not, by itself, mean much. It is all about how the law is implemented and followed through and whether there is the political will or the culture to run with the provisions and make them a real part of how Government runs.

**Elena Whitham:** Professor Jones, from the Welsh perspective, is there a belief that the implementation in the Welsh context will aid sustainability? In the absence of that, were you seeing progress in that space anyway?

**Professor Jones:** The Well-being of Future Generations (Wales) Act 2015 has, in many ways, made modest progress quicker. It has created new structures that, while bringing their own overheads, have enabled public bodies to work better together in areas around, for example, climate resilience and mitigation, nature

protection, equality and so on, through public service boards and other structures that require coherence, such as spatial estates.

The major success of the act is that it gives good people an excuse to do the right thing. Now, if you are trying to do the right thing within an organisation in terms of planning for the future, taking a more long-term view and being more integrated and collaborative in your approach, it is difficult for a line manager to tell you to stop, because you are clearly acting within new and important legislation.

10:15

In a way, a lot of the impacts of the act are quiet and cultural rather than things that involve the big court cases or the big changes in policy that you might see. I think that the act is only one part of a generally more progressive and long-termist approach than we see on the part of our English neighbours, and that has been evident for a long time.

**Elena Whitham:** Do you believe that the legislation in Wales is able to help you to contribute effectively to the delivery of the United Nations sustainable development goals?

**Professor Jones:** Yes, I do. For example, I am on the board of Natural Resources Wales, our environment body, and I am aware that there is a formal requirement for all parts of the public sector to effectively consider things such as how ethical and transparent their procurement is and how they are dealing with nature at their sites, whether those are hospitals or whatever. Even public bodies that are not primarily—or at all—environmentally focused must consider the natural environment or climate in ways that they would not have done before. The legislation has, absolutely, made a difference in that way.

**Elena Whitham:** Professor Reid, do you think that such legislation would help Scotland in our quest to be able to deliver on the UN sustainable development goals?

**Professor Reid:** I think that it would. As Professor Jones has explained, legislation is part of the pressure towards doing what needs to be done, and it gives us a solid basis for doing it. It is a way of opening the conversation with bodies that perhaps are not thinking along those lines.

**Elena Whitham:** Do you have any thoughts on why the Scottish Government decided not to pursue such legislation? Have you thought about how we could strengthen duties around the national performance framework and how public bodies can deliver on those goals through the Community Empowerment (Scotland) Act 2015?

Do you have any sense of why the Scottish Government abandoned the plans?

**Professor Reid:** I do not have any insight into why the Scottish Government made that decision. I can understand worries about costs, adding in extra procedures and duplicating existing statutory duties and procedures. In the national performance framework, there is a mechanism that can be used to give sustainable development in all its dimensions a higher profile and to use that for the long-term, coherent planning that is necessary. However, we have had the national planning framework for some time and it has not taken forward the long-standing commitments to sustainable development.

The other thing that is perhaps an elephant in the room is what is happening about human rights. If there is going to be a new human rights framework and the human rights that it covers extend to the right to a healthy environment and the social, economic and cultural rights that are being talked about, that will add another layer of things that must be done. How that will fit with the existing structures and possible new structures will add uncertainty about what the best way forward is.

**Elena Whitham:** My final question is about the wellbeing aspect of the bill. We have talked a lot about the sustainability aspect, but, in the absence of legislation such as this, how can we ensure that we have due regard to wellbeing in the frameworks that we already have?

**Professor Reid:** Again, there are options to address that in the performance framework and through associated policies and so on, but having the statutory basis would perhaps provide a slightly stronger, higher-level foundation that people can refer to. As Professor Jones said, such legislation can give ammunition to the people who want to do something to get over the opposition and bring on board people who are not particularly thinking about the issues. Having such legislation in statute means that individuals and bodies cannot close their ears to the arguments that are made. It would provide a good reason for doing something, although, of course, it would have to be weighed against other considerations.

**Carol Mochan:** I want to talk about the Well-being of Future Generations (Wales) Act 2015 and the impact that the Future Generations Commissioner for Wales has had. Why did Wales feel the need to legislate for the definitions of sustainable development and wellbeing and then establish a commissioner? Was it the right decision to legislate in that way?

**Professor Jones:** The National Assembly for Wales was inaugurated with a duty to make a plan for sustainable development, which it did in

various forms in its first decade. Over that period, it was felt that the dial had not moved. As my esteemed colleague noted was also the case in Scotland, there was not clear evidence that we were thinking about long-term features coherently across the piece.

There was a move by Jane Davidson—who was the minister with responsibility for the environment in the Welsh Government at the time—to more formally place the natural environment at the heart of decision making in a way that also reflected other elements of wellbeing. It was acknowledged that we needed an understanding of where Wales was going in its new devolved situation. At that time, we had neophyte politicians who were not used to thinking strategically in some ways.

It is important to remember that the legislation followed a number of years of consultation, collaboration and national conversation about those seven goal areas, which were then formalised and turned into legislation, albeit in fits and starts.

It was considered that existing UK legislation did not allow us to shape public bodies' thinking, strategy and policy development or approaches to implementation in a way that appropriately valued the wellbeing of future generations, quite apart from the environmental considerations and the social wellbeing perspective. It was not felt that the existing legislation was fit for purpose with regard to the need to give equal weight to the wellbeing of future generations. Given our legal duty regarding sustainable development, it was considered that, on balance, new legislation was required.

The cost of the legislation is an issue. It required new organisations and new ways of working, which had an impact on overheads. However, on balance, most people who have seen the culture grow over the past decade will say that it is maturing in a way that shows that the long-term benefits of those new ways of working probably outweigh the costs.

**Carol Mochan:** Are there any lessons that we should learn from the way in which you legislated at the time?

**Professor Jones:** A couple of things stand out. The first is that the act has minimal provisions regarding big sticks to hit people who are doing the wrong thing—there is a sort of “name and shame” element, which is shared between Audit Wales and the Future Generations Commissioner. There is the possibility of bringing judicial proceedings under the act, but that has never happened, to my knowledge—I might be wrong, but I do not think that it has. I always say that, if public bodies were as scared of the Future Generations Commissioner as they are of the head of Audit Wales, the act would be succeeding,

but that is not the case. That tells you that the requirements of the act are still some way behind fiduciary responsibilities and co-delivery in terms of things that people care about. Certainly, I would have given the commissioner more teeth.

The other thing is that, as I have argued extensively, the act should be amended to provide statutory funding at a higher level. The office is funded to the tune of around £4 million a year, which, given that we have a devolved budget of £30 billion, is absolutely ludicrous. It is not surprising that we have not seen big changes, because the commissioner's 20 or 30 staff have no way to cover all the things that they need to be across.

**Professor Reid:** I was very impressed with the report that Audit Wales produced in April this year. It does a very thorough job of talking about the successes and failures of the 2015 act and raising issues around the need for culture change. It says that the 2015 act has made a difference in some areas but has not seeped in strongly enough across all areas. It is a very useful report that gives concrete examples, which I will not talk about now.

**The Deputy Convener:** I have to say that that is one of the issues with time constraints—there would be value in talking about that, but we need to move on.

The definitions of sustainable development and wellbeing will be considered later, but, for this overarching duty, the definition of a public body is set out in section 17. Is it appropriate to understand that simply as a Scottish public authority? Is that appropriately clear? Is there any dubiety about that?

**Professor Reid:** The boundary of what is a public authority is muddy in all sorts of areas, because there are separate definitions for separate purposes. However, the phrase “a Scottish public authority” is used in the Interpretation and Legislative Reform (Scotland) Act 2010, which refers back to the Scotland Act 1998. It is a phrase that is used in lots of other legislation. It is as good as we are going to get, because, around the margins, with partnerships, partly owned companies, cross-border bodies and so on, there will be complexities that cannot be resolved exactly in any piece of legislation.

**The Deputy Convener:** If you are suggesting that the definition is as good as we are going to get but that there are issues with it, could you give one or two examples—briefly, because of the time constraints, or perhaps by following up in writing—of where the lack of clarity around the definition has caused an issue?

**Professor Reid:** The general definition of a Scottish public authority has not been such a

problem, but there has been a difficulty in freedom of information legislation, which uses a slightly different definition of what bodies are covered, including social housing bodies before they were brought in recently. The environmental information regulations use a different definition, which has caused trouble in relation to privatised water and utility companies. I will provide something in writing to cover that.

**The Deputy Convener:** That would be helpful.

Professor Jones, do you have any reflections on the definition before I move on to my next question?

**Professor Jones:** In Wales, the legislation originally referred to 44 public bodies, including the Welsh ministers. There are now 50, partly because more public bodies have been created since then but also because we have a wholly publicly owned limited company that delivers rail transport for Wales, which is now, in effect, bringing itself under the auspices of the 2015 act. There are bodies that seek to embed the 2015 act in how they behave even if they are not legislatively required to, which is quite interesting.

**The Deputy Convener:** Can I just check something? I again refer to our time constraints, for which I apologise. Are the public bodies listed in Wales? Who decides what the public bodies are?

**Professor Jones:** That is a very good question, but I do not know the answer.

**The Deputy Convener:** Could you follow that up in writing? That is a wee bittie concerning.

**Professor Reid:** In Scotland, different approaches are taken. Sometimes there is a list that says which bodies are covered as a minimum, although it is left open ended, and sometimes it is just left open ended.

**The Deputy Convener:** Absolutely. For as long as I have been in the Parliament—I have been here since 2007—there has always been a bit of a stooshie about what should and should not be on the list in legislation, which is why we need to drill down on the issue a bit more.

Section 1 talks about having “due regard”, rather than “regard”, for sustainable development and wellbeing. Professor Reid, is that appropriate terminology?

**Professor Reid:** That terminology has been used more than once recently. The concern is that just saying “regard” is too weak but that saying that people have to follow something is seen as too strong, so using the phrase “due regard” is an attempt to boost the significance of something without making it mandatory. That phrase has appeared in other legislation recently.

**The Deputy Convener:** We might return to that. I should give the context that “due regard” relates to

“the need to promote wellbeing and sustainable development.”

That is not a duty to deliver wellbeing and sustainable development. Is promotion the right bar to set, as opposed to delivery, Professor Reid?

10:30

**Professor Reid:** In a sense, the level of obligation that you want to place in that regard is a policy choice. If you make it a duty to deliver, the question is whether every public authority will be in a position to guarantee delivery of all the things that need to be done. Achieving sustainable development and wellbeing will involve lots of contributions from lots of different bodies coming together. If you are saying that you have to deliver something, you must have a clear way of measuring whether it has been delivered, which means that the whole structure has to become much more formal, precise and detailed. If you simply promote wellbeing and so on, you will ensure that sustainable development and wellbeing are important issues that will carry weight when the conflicting pressures on a public authority are weighed; however, they will not always be the decisive ones that override all the other things that the Parliament has said are important.

**The Deputy Convener:** Those comments are very helpful, and they will certainly be helpful when we talk about the powers of the commissioner and their role later.

Before we move on to our next line of questioning, Professor Jones, do you have any reflections on Professor Reid’s comments, or do you have any views on the matter yourself?

**Professor Jones:** I agree with Colin Reid that it is clearly inappropriate for bodies to be asked to deliver wellbeing if, as is the case in Wales, responsibility for social services, welfare payments and so on is not devolved. There are elements of wellbeing that are wholly outwith the regional competencies, so having “due regard” to such things is a good level to be at.

**The Deputy Convener:** Thank you.

**Elena Whitham:** I have a few more questions in that area. The bill says that public bodies “must ... have regard”—or, as it might be, “due regard”—to guidance produced by a future generations commissioner. Do you have any thoughts on how that duty might be exercised and how we ensure consistency in application?

I also have questions about the interaction with local strategy setting. I am thinking of, for

example, community planning partnerships, which, although they are not legal entities, set a lot of the strategy locally. How would we ensure that they had due regard to wellbeing and sustainability even though, technically, they lack that legal status?

Professor Reid, do you want to start?

**Professor Reid:** You have highlighted the complexity that is involved here, the interaction between particular statutory duties in various areas, the different responsibilities of different bodies and how all of those things fit together. The idea behind having such legislation is, as it is in Wales, to provide some coherence and an overall plan, sketch map or sense of direction that can be a point of reference as all of these things move forward.

I do not think that anybody has ever tried to list all the different things that local authorities have to do, all their statutory duties to “have regard” to things and all the different policies from the Scottish or central Government as well as the policies that they have agreed with various partners. It is a very complicated landscape, and that is why making progress will, in a sense, come down to political will and culture as much as it will to any formal mechanism. However, formal mechanisms can be useful in moving the ratchet and providing a point of reference when people think that things are being ignored or want to emphasise particular issues.

I know that that answer is not particularly helpful, but it is the messy reality of Government when you put together policies from lots of different areas and involving lots of bodies at lots of different levels.

**Elena Whitham:** Professor Jones, how are such things measured with public bodies in Wales? I assume that there must be guidance in Wales. Both of you have talked about an audit report on the matter, and I have concerns about Audit Scotland’s role in assessing whether public bodies have been paying “due regard” to the legislation as set out. Can you give us a wee bit of insight into the Welsh context?

**Professor Jones:** Yes, certainly. As, I think, I said a while ago, the Welsh legislation has very little in the way of teeth to ensure that bodies act within its spirit or, indeed, to force them to do so. Bodies are required to fulfil their duties by having wellbeing plans. They set wellbeing objectives, and they are required to build plans to deliver those objectives. They self-set the objectives, so there is an interesting question about whether they might set not very stretching objectives for themselves and then deliver those.

So far, Audit Wales and the commissioner have interpreted their role as being more about

providing guidance, encouragement and help, and the act lets them do that. The approach is about celebrating successes and spreading best practice rather than chastening the laggards. It is fair to say that, in the first decade, the approach has been more about helping people to deliver sustainable development through the act than about forcing people to fulfil, as Colin Reid said, a complex set of potentially formal quantitative metrics, for example.

You mentioned local planning partnerships or something similar. We have lots of similar complexities in Wales. In Wales, we have consensus politics, and it is a consensus of 19 rabbits and a polar bear. If the polar bear says that it really likes the Well-being of Future Generations (Wales) Act 2015 and it really wants the rabbits to structure their delivery and funding bids, for example, around the precepts of the act, everyone will do that. In Wales, we are quite heavily centrally funded, with the funding then dispersed from Cardiff Bay. Therefore, the extent to which Welsh Government ministers are seen to be fully supportive of the act and the extent to which their civil servants carry that through in how they procure, engage in partnerships and create new bodies, as we have done in Wales—we have a long history of creating new bodies, and we continue to do so—is important.

The cultural stuff that Professor Reid talked about is really important. If the legislation is not to become an expensive tick-box exercise, successive Governments have to own it. Obviously, ministers themselves are under the auspices of the 2015 act, so they have to be seen to be following it and walking the walk, as well as talking the talk. Without that, it just becomes a hollow shell.

**Elena Whitham:** Thank you for putting that colourful and helpful analogy on the public record. Having been a member of a community planning partnership for years, I will not say what animals I thought were accompanying me round that table.

**The Deputy Convener:** We will find out once we go into private session.

**Marie McNair (Clydebank and Milngavie) (SNP):** Good morning. I thank the witnesses for their time this morning.

Section 2 gives a definition of sustainable development as

“development that improves wellbeing in the present without compromising the wellbeing of future generations.”

Is there a need for a definition of sustainable development in law? Do you have any thoughts on the definition that is given?

**Professor Reid:** Yes, there definitely is a need for a definition. The consultation before the bill

was produced identified, I think, 35 times when the term “sustainable development” is used in Scottish legislation without a definition. The danger is that different people have very different ideas about it. In some legislation, the phrase “sustainable economic growth” is used rather than “sustainable development”, which means something very different.

The issue of definition has been around for a long time. If we go back to the 1990s, the paper that I referred to earlier states:

“It is a pity that the issue which everyone on the planet will have to tackle at some point has acquired this impenetrable title. It is even more problematic that no definition exists which can be understood by everyone and built into their lives.”

That is still the case.

On the definition in the bill and experience of running with it, the fact that it is based on the well-accepted Brundtland definition is a strength. However, particularly given the way in which that has been interpreted in some contexts, what is lacking is something that emphasises the importance of ecological sustainability and of living within the boundaries of the planet, because, without that, nothing else can happen. The Brundtland text goes on to talk about that, but it also talks about the overriding need of the world’s poor, and that element tends to be forgotten, in the same way as the element of living within ecological limits tends to be forgotten. Embedding that paramount issue in the definition would be a good change.

**Marie McNair:** Professor Jones, do you have anything to add?

**Professor Jones:** Yes. I agree with Colin Reid that the Brundtland definition, which is also used in Wales, is largely the best place to start. I also echo the idea that one needs to be expansive in the interpretation of that. It is interesting that, until quite late in the progress of the bill in Wales, there was not an element in the bones of the bill about considering global responsibility.

That bill went through what was then the Assembly and is now the Senedd in a way that was quite focused on within-Wales issues. Only towards the end did we realise that there had to be consideration of climate change, modern slavery and all those issues that might occur somewhere else. The seventh global responsibility goal has become very important in ensuring that what we do to protect the wellbeing of current and future generations in Wales does not compromise the wellbeing of people in other parts of the world. I absolutely agree with Colin Reid that it is really important to recognise those elements, which were part and parcel of the debate back in the 1990s but which sometimes can be forgotten.

I also echo Colin Reid's point about sustainable economic growth. In the absence of a strong definition of sustainable development, you can end up in places that are very difficult to defend. You might argue that there is no such thing as sustainable economic growth, for example. You want something that is clear that you are looking at the ultimate objective of sustainable development and not some kind of mechanism for getting there, which might be economic growth or something else.

**Marie McNair:** Thank you. That is helpful.

**Alexander Stewart:** Do the witnesses have any observations on the definition of wellbeing and the differences with the definition that is used in other legislation?

**Professor Reid:** Defining wellbeing is inherently difficult, because there are so many elements that contribute in different ways. However, to an extent, as you do not have to measure whether somebody has wellbeing or not and you are talking about promoting it and moving towards it, you can get away with a certain amount of fuzziness in the definition.

One consideration that I hear goes back to the issue of what is happening in relation to economic and social human rights. If they are going to come in, how far will what is covered in the bill be covered in the new human rights framework? How far will that already provide for wellbeing? How far are the two coextensive? How will they fit together?

I do not think that anybody will produce a clear, precise and sharp definition of wellbeing. However, it depends on what purpose you are using it for. As long as you are talking about direction, you can live with a certain amount of uncertainty.

**Professor Jones:** It is a fool's errand to try to come to a definition of wellbeing that is universally useful. For example, under the auspices of the 2015 act, the south-east part of Wales—formerly Gwent—is attacking its responsibilities by developing itself as a Marmot county that uses Professor Marmot's approach to health inequality and so on, whereas in Natural Resources Wales, we are approaching our wellbeing duty by seeking to ensure that ecological equality, biodiversity and climate stability are sufficiently robust and present to ensure that people can live well within the confines of various limits. Therefore, having wellbeing as a slightly fuzzy thing off to one side is not a bad thing, because it enables individual bodies to approach their duty in the way that they see fit.

**Alexander Stewart:** Could aligning the definition to include

“individuals, families and other groups within society”

place constraints on the definition?

10:45

**Professor Jones:** If that question is for me, I would say that the Welsh legislation neatly steps around some of those issues by, for example, defining one of our goal areas as

“A Wales of cohesive communities”

and talking about the cultural life of Wales as another such goal area. Those are clear thematic areas that bodies have to act within, but the legislation does not go down the path of defining whom they have to act on in order to deliver that element of wellbeing. I guess that it would then be up to individual bodies to decide how far they would wish to go, either spatially or in terms of individual households, when it comes to taking action. I think that that is a useful fuzziness.

**Alexander Stewart:** My final question is for you both. Given that the bill seeks to align the definition of sustainable development with the definition of wellbeing, and given that the definition of wellbeing relates to the wellbeing of

“individuals, families and other groups within society”,

is there a danger that, taken together, the definitions could go on to the statute books without explicit reference to environmental limits or constraints, which are described as “planetary boundaries” within the policy memorandum?

**Professor Reid:** As I have said, that needs to be in the bill to emphasise that aspect of sustainable development.

**Alexander Stewart:** Do you agree with that, Professor Jones?

**Professor Jones:** Yes, 100 per cent.

**Alexander Stewart:** Thank you.

**The Deputy Convener:** Before we move to Marie McNair, I want to check something. The definition of wellbeing in this bill includes

“(b) freedom from fear, oppression, abuse and neglect”.

A lot of Scottish public authorities will be asking, “Where do we fit into that when it comes to planetary boundaries?” What burden or obligation would it be reasonable to put on them? I am not being glib—I just want you to make it real to me. I see wellbeing as an overarching suite of things that we would all like to have in our lives as individuals, families and communities, but are we expecting public authorities to be making contributions to every aspect of it, Professor Reid?

**Professor Reid:** It depends on what they are doing. With, say,

“freedom from ... abuse and neglect”,

social services would be an obvious route through which we would hope to do that. If there were criticism of an authority for not doing enough, or for doing something in particular, the wellbeing argument could be made to ensure that that was being emphasised in its funding decisions and in the way in which it was doing things.

Inherent in sustainable development and wellbeing is the fact that, at times, there are going to be tensions between different elements that have to be resolved. It is just a question of ensuring that the things that are important are at least in the scales to be weighed, instead of being ignored completely.

**The Deputy Convener:** Some will be relevant on some occasions, but not all will be relevant on all occasions, so to speak.

**Professor Reid:** Yes.

**Marie McNair:** Do you have any views on whether there is a need for a commissioner for future generations in Scotland? I will pop that to you, Professor Reid, as you are in the room.

**Professor Reid:** As has been said, there are different routes to achieving sustainable development and wellbeing and ensuring that they are at the centre of policy making and governance. You do not need a commissioner, but it can be useful in providing a focus—that is, somebody who will stay at the door and keep things in check, who can be a source of guidance and advice and so on.

Of course, those things can be provided in other ways but, as the Parliament has decided in other areas, it has been thought useful to have a focal point or a target—somebody—particularly because these issues are so cross-cutting that everybody thinks that somebody else is dealing with them. Having a commissioner with just the one idea and with a focus on the matter is good, but it is not the only way of achieving that.

**Marie McNair:** Thank you. Professor Jones, do you have any thoughts?

**Professor Jones:** Yes. I think that a commissioner is a good idea, partly because of the inherent fuzziness of a lot of these concepts and, in turn, the potential fuzziness of implementation and the priorities that are set. The two commissioners that we have had have certainly had that focus, but they have also been able, in a sense, to mediate and make a link between the legislation and what is actually needed in Wales now.

For example, our current commissioner is very interested in the food system, in health and in various cultural elements, and in effect he tries to

set priorities in those areas and to focus different parts of the Welsh public estate as well as private and other bodies on how we can address some of the wellbeing-affecting systems. That is a very useful thing to have, quite apart from the snazzy media opportunities that arise and people saying, “Oh, look, the commissioner is really cool, and he’s off to do this conference in Brazil.” Perhaps the most successful part of the legislation in Wales over the past 10 years is that everyone knows about us now, which they did not before. That is no bad thing, either.

On the earlier point that I think the chair made about our bodies being responsible for wellbeing, even though they might not see themselves as so, it is important to remember that the 2015 act has a lot of what is in effect complementary legislation that came around and about it, and, indeed, came after it, too. For example, we have the Environment (Wales) Act 2016, which tells us how we should deal with our natural resources; we have the Social Partnership and Public Procurement (Wales) Act 2023, which is all about how the Government interacts with not just its supply chain but partnerships; a new environmental law and governance structure has been set up; and I am involved in a body that is trying to set biodiversity targets.

My point is that the Well-being of Future Generations (Wales) Act 2015 is not trying to do all this stuff to an uncaring state just on its own; it is part of a range of progressive, environment-aware policies and legislative structures that are trying to pull Wales in a certain direction. When you look at this one bill, especially as the Government itself is not sponsoring it, you might forget that you will need a lot of other things to ensure that it works.

**Marie McNair:** Do you have any thoughts on what a description of future generations might entail, Professor Reid?

**Professor Reid:** I am not convinced that trying to go into more detail on future generations will be helpful. The concept is fairly well understood; given the context, it can mean 20 years, or 200 years.

**Marie McNair:** Professor Jones, do you have any thoughts on that before I hand back to the deputy convener?

**Professor Jones:** I would agree with that, but I think that the legislation could be used to make important technical arguments. For example, I wrote something either last year or earlier this year on HM Treasury’s discount rate, which values cost and benefits in a diminishing way into the future at about 3.5 per cent. It means that future benefits are worth less than current benefits, and I argued in my piece that that was possibly illegal under the

2015 act, because what we were explicitly saying was that, for those born in 2080, a flood defence that was being built now, for example, was going to be worth less. In effect, we are valuing their protection less than we are for somebody who will be around when the flood defence is built in the next five years. Therefore, I think that you could make technical arguments that would bring in some of those definitional issues around the term “future generations” when you needed to, while making it clear in the principles of the legislation that nobody in the future should be disadvantaged compared to the people of today.

**Marie McNair:** Thank you.

**The Deputy Convener:** I just want to give everyone a time check, mainly to reassure Sarah Boyack that we will make time at the end of the session for her questions, too. We will run until about 11.10 or so, to give us a wee bitty more time on this.

Professor Reid, before I move to the next line of questioning, I want to ask a specific question that takes us back to the issue of the overlapping responsibilities of various public bodies. You could have the Scottish Environment Protection Agency, for example, investigating other public bodies and Environmental Standards Scotland investigating SEPA, and they will be taking into account sustainable development and a whole variety of environmental aspects therein. I know that there are no specific definitions for any of that, but they do have to comply with licensing conditions and other things. On top of that, you will have the future generations commissioner monitoring, reporting or ruling on things that might cut across the responsibilities of other public bodies. Could any tensions or confusion arise there?

**Professor Reid:** They could, because there is also the Scottish Public Services Ombudsman, Audit Scotland and lots of other bodies that can have a look at things. Generally, though, those bodies seem to manage to sort things out themselves. Environmental Standards Scotland, for example, has memorandums of understanding with various other bodies that set out their remits and sort out what they are all doing. It is probably better to rely on the common sense and good working of those bodies in trying to make a success of that together instead of putting in formal structures or rigid boundaries that are never going to fit all the circumstances.

**The Deputy Convener:** That was helpful.

Moving to the work of the commissioner themselves, do our witnesses have any thoughts on the requirement for the commissioner to produce guidance and to keep the guidance under review? Professor Jones, can I bring you in first?

**Professor Jones:** That is a big problem in Wales, because, in effect, the commissioner’s office is too small to provide detailed guidance to bodies on the range of things that they might be undertaking and how they should relate to the 2015 act.

What tended to happen in the early years is that there were lots of demands on the commissioner to provide guidance. The commissioner found it impossible because he or she is one person and they have an office of a couple of dozen people. Over time, bodies under the auspices of the 2015 act have matured and are more confident in interpreting the act within themselves or in public service board partnerships.

For example, if you are undertaking a piece of work that requires some sort of behaviour change intervention, you will know through those new formal structures that Public Health Wales knows a lot about behaviour change, so you can ask it what it thinks about how to engage in the area, and it will give you some advice in that kind of PSB or other format. The system is maturing towards not needing outside guidance from the commissioner or anybody else on a regular basis, so that has worked okay.

On the other question, our commission does not intervene in technical issues around things such as planning permissions. It provides a much higher level of commentary. In very big areas, the commissioner may make a comment, but it would be quite unusual for the commissioner to interfere in formal regulatory or other matters.

**The Deputy Convener:** That is helpful. I will go to Professor Reid, but I will sneak in the next question at the same time, because of time constraints. Do you have any reflections on what you have heard?

Also, the commissioner would be required to keep under review the law, policy and practice relating to wellbeing and sustainable development. That seems a significant function. What are the challenges and opportunities around that?

**Professor Reid:** As we have discussed, because this is such a broad and multifaceted area, there will clearly be a need for guidance, which everyone will find helpful. The whole idea of a commissioner, to an extent, is to have someone who takes one step back from day-to-day activity and can review what is happening. That would involve looking at the effectiveness of what is going on, as you have described.

If you are trying to look at effectiveness, that involves the law or the policy and its implementation—you cannot separate one from the other. You can have perfect laws that are implemented appallingly, or great policy that is not carried through into practice. So, although the bill

gives the body a broad remit, and there might be uncertainties about what it should be doing, the body will be able to do only so much. It will have to settle its priorities, and it is probably better to leave the provision broad rather than try to set up artificial boundaries that the body will hit up against and find frustrating at some stage.

**The Deputy Convener:** Do you have any views on the powers relating to investigations that the commissioner could run with? In particular, do you have any suggestions or thoughts on the kinds of reasonable grounds under which a general investigation could be initiated?

I will stick with Professor Reid, but I will bring in Professor Jones.

**Professor Reid:** The power to carry out investigations is very useful, because it provides a way of calling bodies to account and a way of providing case studies and good practice that will be useful for other authorities. The requirement that there are reasonable grounds for carrying out an investigation is more of a defensive point. When somebody is at the ear of the commissioner, they can say, "Well, before we are going to invest our time, effort and resources in looking at something, you have to provide reasonable grounds that something undesirable or not up to standard is going on."

I think that the courts would interpret that provision as giving a very wide discretion for the body to decide, but it is a fallback. It gives the body a reason for not following up everything. It forces the body to think about its priorities and, if necessary, allows it to explain why it is doing one thing and not another.

**Professor Jones:** In Wales, the investigations approach has been more thematic. For example, the previous commissioner looked at procurement. Rather than looking at an individual body, the commissioner would look at the way in which things were done and provide some best practice examples. Examples of poor practice might then come out without bodies necessarily being named and shamed. Again, the idea is of guidance and encouragement rather than a big stick.

11:00

Similarly, the commissioner and Audit Wales can come along and see how things are going in an organisation. They have come to my organisation, Natural Resources Wales, where I sit on the board. They can encourage, guide and help organisations to become more compliant—in fact, I would not say "compliant"; it is more about acting in the spirit of the act. It is not like having your accounts qualified—that is not where we are in Wales. You do not get the commissioner coming out and identifying a public body as failing under

the 2015 act. That has never happened, although the commissioner could do that. I do not think that there would be many legal implications, although obviously there would be reputational implications, but both commissioners have very much chosen not to do that.

**The Deputy Convener:** I have one final question for both our witnesses. There are a couple of questions that we have not asked, which we will maybe send to you in writing—any reflections on those would be welcome—and the member in charge of the bill still has to ask some questions.

Professor Jones, at the start of our evidence session, you used the expression "big stick", and you used it again just now. I think that you are making the point that there is not a big stick.

**Professor Jones:** Correct.

**The Deputy Convener:** There is soft power and influence, and the backstop would be a judicial review, although that has never happened and it is unclear what it would look like. I am not trying to be glib about this, but, theoretically, if bodies did a tick-box exercise—to use your expression—in relation to showing compliance, which you suggested had happened to a degree in Wales, there appear to be no enforcement powers to deal with that, only soft power or the ability to influence. Do you have any thoughts about that?

**Professor Jones:** That is a very good summary—that is how it has worked. In various roles, I was involved in auditing the initial round of wellbeing plans, back in 2016-17, and the more recent ones. You can see the ways in which organisations have matured and moved away from a tick-box exercise. Generally speaking, they have recognised that the act is a way of organising their thoughts and strategies more holistically and that it offers the opportunity to engage with other bodies that have complementary skills, capacities and interests within a spatial area—there are about 13 PSB areas in Wales now—or thematically.

It is maybe a problem that there is not a big stick, but it is becoming less of a problem, because, in conjunction with a lot of other legislation that has more directiveness around, for example, public procurement approaches, there is a genuine move towards what you might argue are more progressive and longer-term approaches, and the 2015 act is only one part of that picture.

**The Deputy Convener:** Professor Reid, I suppose that we are asking whether the proposed powers of the commissioner are sufficient or whether they need to be extended. If so, would that have to be consulted on more widely because it is not contained in the current provisions of the bill?

**Professor Reid:** There are two things to say. The first is that, if you are going to have more formal powers, you need to have much clearer and more precise definitions, formal procedures, due process and so on, which will complicate the whole thing and get in the way of what you hope might be a constructive dialogue that moves people forward.

On whether the power is enough, that goes back to where we started: it is about political will and culture. The ombudsman does not have direct or mandatory powers, but the ombudsman is well respected and, generally, their recommendations are followed through. If the commissioner is seen as a significant body that should be listened to and that has the support of Government and other public bodies, their talking to an organisation and pointing out that it could be doing better will be enough. If the commissioner is seen as a sideline and somebody whom you do not have to worry about, organisations will fall back on the tick-box approach and ignore the commissioner.

**The Deputy Convener:** Thank you.

Sarah Boyack has been very patient. We have a bit of time left for you to explore any themes that you want to ask questions on, Sarah.

**Sarah Boyack (Lothian) (Lab):** That is very much appreciated. It has been good to listen to committee colleagues' questions.

I will kick off, Professor Jones, by asking you about a couple of your earlier answers on the extent to which public bodies have improved their actions in relation to these issues since the Future Generations Commissioner for Wales was established. You referenced modest change and the maturity of public bodies over the past decade. Will you give us some practical examples to evidence what you meant by that? Is it preventative spending? Is it policy direction? Will you give us some examples, just to bring it to life?

**Professor Jones:** It is well worth looking at the wellbeing plans of the public service boards, which are publicly available. On a spatial basis, you have health boards, the police and the other emergency services, local authorities, Natural Resources Wales and a few other public bodies coming together to talk about the future of public service delivery in an area. Challenges to wellbeing will arise, and all those bodies will work together to push back against those challenges. The plans are much better in the second round than they were in the first round.

That is one example of a more collegiate approach, more collaboration and more unity of understanding around concepts. Natural Resources Wales helps those bodies in areas such as climate change and ecological function, and the questions that we are being asked have

improved over the past 10 years in terms of their maturity.

However, it is important to recognise that the 2015 act is emblematic of how we do policy in Wales and does not directly shape policy in Wales. The most obvious example of policy divergence from the UK Government over the past few years was the 20mph speed limit. That was not introduced under the 2015 act; it was just a Government policy directive. We decided that 20mph should be the starting position in urban areas, with some variation. That was certainly in the spirit of the 2015 act, but the act was not called upon to justify that policy.

Similarly, the policies of not building a new motorway around Newport, in the south-east of the country, and protecting communities, particularly Cymru communities, from overtourism through various measures around property taxes did not require the 2015 act. In fact, they required new legislation in some cases. We also have a tourist tax coming in, which I think you have voted to have here as well.

It is important to recognise that, although the act is a drawing together of many progressive strands that have found a home with the commissioner and that find a narrative in how the commissioner speaks and how he engages with public bodies at the moment, it does not force public bodies to be good, because they can easily tick-box their way around it if they really want to. As I said, it is difficult to build in those teeth and that big stick.

It is also important to recognise the maturity that is genuinely emerging from public bodies realising that the act is a mechanism for delivering better policy, as well as a way to talk to each other and establish common languages. We have seven goal areas in the act, but the five ways of working that require collaboration, integration, long-termism and so on are also really important, because that is where public bodies can look at how they behave, consult, collaborate and think, "Are we actually compliant?" If they are compliant, they will have better policy and their policy will be better received when it emerges, because there will be more stakeholders and ground sources, if you like. Many soft little things have changed the landscape, not one big thing.

**Sarah Boyack:** That is really useful. The 2015 act has changed the landscape.

I have a question about the fact that all public sector bodies are under pressure but do not have unlimited funding, which makes that collaborative approach important. Have you seen a difference in the decisions made by public sector bodies because of preventative spending or longer-term thinking? Has the act legitimised that kind of approach?

**Professor Jones:** Yes, it has. The most obvious example of that is how Public Health Wales has become a very important part of our public service landscape in a way that it was not prior to the legislation. It is now recognised as an important resource for helping to deliver not only public health but a wider range of services. That is an indication of how, because of the 2015 act, bodies are now looking to do things in a more long-term way.

The other area that springs to mind is climate change preparation and emissions mitigation. Increasingly, public sector bodies are developing climate change risk studies relevant to their areas, and one or two leaders—Pembrokeshire County Council in particular—are thinking about ways to invest to alleviate those risks. That is being done within the structures of the act.

**Sarah Boyack:** It is useful to hear how things have actually changed, where the strengths are and where things are still challenging for public sector bodies.

Professor Reid, I want to ask about the guidance for public sector bodies in Scotland, in terms of both the pressures that they are under and the possibility that the bill's requirement to take action according to the wellbeing and sustainable development principles could legitimise action in organisations where the issues might not otherwise be seen as taking centre stage, as Professor Jones said. Can you talk about that?

**Professor Reid:** In theory, that approach should work. The problem is possibly that, as you can see if you look across the statutory landscape, there are quite a lot of duties to have regard to things, and they do not all seem to make much difference. For example, there is not much sign that the duty to have regard to biodiversity is doing much. Every three years, bodies have to report on that, but the stage 1 report on the Natural Environment (Scotland) Bill contains evidence from Crown Estate Scotland that suggests that that does not seem to do much, because there is no scrutiny of, or feedback on, the report. If there is no political will to genuinely have regard to something and no culture wherein that will happen, a statutory obligation might not cut it, I am afraid.

**Sarah Boyack:** So, just having it as a requirement on paper is not enough. That is why I asked about the experience in Wales of having the commissioner follow up such reports and ask questions, which means that there is not just guidance but, importantly, a potential investigation, which could affect a body's reputation. To what extent do you think that public bodies would take proactive action to avoid reputational damage and engage in the sort of collaboration that we have

seen in Wales if we had similar provisions in place here?

**Professor Reid:** I think that it comes back to how the commissioner is viewed. As Professor Jones said, Welsh public bodies are not shaking in their shoes when the commissioner is around to the extent that they might be when the auditing body visits. However, if the commissioner is seen as being respected and their role is recognised and valued within Government as a whole, their just coming along and having a quiet word—or a public word—can make a big difference. We can see that in relation to Environmental Standards Scotland, which is a fairly new body and is still finding its feet. I think that everybody is still trying to work out how worried an authority should be when ESS starts knocking at the door.

**Sarah Boyack:** I want to ask—

**The Deputy Convener:** Sarah, my apologies, but this will have to be your last question. After this, we will have to move on.

**Sarah Boyack:** Apologies, convener. This was going to be my last question anyway. I will try to keep it sharp.

Earlier, there was a reference to the Carnegie UK report about alternative ways of doing things in relation to future generations, parliamentary committees and so on. Do you have any thoughts about what could be done in that regard if we did not have a body with potential investigatory powers and the ability to provide guidance? We have the national performance framework, but, without that focus, how would a future generations commissioner be able to apply pressure and support public sector bodies? How could the elements of the bill involving the definition and the requirement to have regard to wellbeing and sustainable development be implemented?

**Professor Reid:** Having a commissioner who can call people to account, even though they do not have a big stick, is an important way of making sure that those concerns are a priority. You could envisage a world where that is done differently, and how the new human rights framework will fit with all of this is obviously going to be a significant issue.

**Sarah Boyack:** I was thinking about the guidance and the fact that there could be an investigation. It seems that, in Wales, that approach has raised the bar for public authorities. If we did that here, would that help to address the sustainable development principles—which, as you said, have been identified 35 times in legislation over the past 20-odd years—and raise the wellbeing issue up the agenda?

**Professor Reid:** Knowing that somebody is looking over your shoulder and that, when they

find something wrong, they are not just going to tut but will make something happen that has a wider impact is important.

**Sarah Boyack:** I appreciate that you are short of time, convener, so I will stop at that point.

**The Deputy Convener:** Thank you, Sarah. We could have asked lots more questions, but we are under time constraints.

Thank you, Professor Reid and Professor Jones, for supporting us in our scrutiny this morning. If you have any further reflections, please follow up in correspondence. We have a couple of questions that we did not get around to asking, so we will make you aware of those, and we would welcome any reflections on them.

That concludes the public part of the meeting.

11:15

*Meeting continued in private until 11:22.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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