



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

Y Pwyllgor Plant, Pobl Ifanc ac Addysg **The Children, Young People and Education** **Committee**

Dydd Iau, 5 Mehefin 2014
Thursday, 5 June 2014

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi 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**

Keith Davies

Llafur

Labour

Suzy Davies

Ceidwadwyr Cymreig

Welsh Conservatives

Rebecca Evans	Llafur Labour
Bethan Jenkins	Plaid Cymru The Party of Wales
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
Lynne Neagle	Llafur Labour
David Rees	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

**Eraill yn bresennol
Others in attendance**

Huw Lewis	Aelod Cynulliad (Llafur), y Gweinidog Addysg a Sgiliau Assembly Member (Labour), the Minister for Education and Skills
Simon Moss	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Marcus Richards	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Neil Surman	Pennaeth Addysg Uwch, Llywodraeth Cymru Head of Higher Education, Welsh Government
Adam Turbervill	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government

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

Sarah Bartlett	Dirprwy Glerc Deputy Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Gareth Rogers	Clerc Clerk
Anne Thomas	Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 09:30.
The meeting began at 09:30.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions**

[1] **Ann Jones:** Good morning, everybody. Welcome to the Children, Young People and Education Committee. I will just go through the usual housekeeping rules. May I ask you to check that your mobile phones or your pagers have been switched off rather than being on silent mode, because it affects both the broadcasting and the translation? Translation from Welsh to English is on channel 1 of the headsets, and channel 0 is the amplification of the floor language, should you need it. We are not expecting the fire alarm to operate, so should it

operate, we will take our instruction from the ushers or, as I always say on this occasion, follow me, because I will be one of the first out of the building. You should know that if we are able to go out through the main entrance of the Senedd, the assembly point is the Pierhead building. We have had an apology from Angela Burns. Angela is going to be away for a while, so I am sure that the committee sends its best wishes to Angela, but we have no substitution for her during this meeting.

[2] Do Members wish to declare any interests that they have not already declared before we start our main item, which is on the Higher Education (Wales) Bill? I see that no-one does. Good.

09:31

Y Bil Addysg Uwch (Cymru)—Sesiwn Dystiolaeth 1 Higher Education (Wales) Bill—Evidence Session 1

[3] **Ann Jones:** Our public session this morning is on the Higher Education (Wales) Bill. This is our first evidence session with the Minister. We welcome the Minister, Huw Lewis. Thank you very much—. Well, we think that it is thank you very much for laying this Bill. We are not sure yet—we will find that out as we go through the evidence session. [*Laughter.*]

[4] May I ask you to introduce your officials, Minister, please? We will then go straight into questions, if that is okay. I know that we have quite a long session, but we have quite a few questions as well, so we will have to watch the time.

[5] **The Minister for Education and Skills (Huw Lewis):** Thank you, Chair. I am joined initially by Neil Surman and Simon Moss. I also have with me Adam Turbervill and Marcus Richards.

[6] **Ann Jones:** Okay. I think that, occasionally, your legal team will be swapping over. That is right, is it?

[7] **Huw Lewis:** It is, yes.

[8] **Ann Jones:** Fine, thanks very much. As I say, we are going to be looking at the Higher Education (Wales) Bill, and the Members have got the Bill and the explanatory memorandum. That said, I think that we will go straight into some questions. We have various areas of questioning, and the first set is on the scope of the Bill and a revised regulatory framework. Suzy has got the first set, and then I think that Rebecca, David and others want to come in. We will see how it goes. I call on Suzy.

[9] **Suzy Davies:** Thank you, Chair. Thank you, Minister, for the Bill and the explanatory memorandum. Are you able to tell us why you have chosen to look at legislation as the way of trying to achieve your aims, rather than a non-legislative approach—let us keep it simple?

[10] **Huw Lewis:** I think that primary legislation is an absolute necessity in terms of the reality of the way in which the entire landscape around the funding of higher education in Wales has changed. The previous regime, prior to 2012, was that the Higher Education Funding Council for Wales, through terms and conditions of grant, would look after things like quality control, access issues, fairness, financial good practice, and so on. The means by which funding is channelled have changed utterly. We now have a situation where, essentially, the funding for higher education in its bulk follows the student through the gate of the higher education institution. That entails a situation in which there are other means by which those key issues around quality, financial governance, fairness and access have to be

overseen by HEFCW.

[11] I take your point that perhaps we could have pursued administrative, non-legislative means of doing that. I do not believe that that would have been adequate. I know that that is the situation that prevails in England at the moment, but I think that many impartial commentators would regard the situation in England as unfinished business or as a temporary fix, if you like. There is no reason why we in Wales should be governed by the constraints set upon Government in other parts of the UK, which perhaps have more to do with issues in terms of coalition agreements, rather than what might necessarily be best for higher education and for students. I think that we are in a position to carry on to produce a good piece of legislation that ensures that those fundamental issues that I mentioned are regulated and carried through in a proper and transparent manner.

[12] **Suzy Davies:** I agree with you when you say that we do not necessarily have to follow other parts of the United Kingdom in the way that they approach this. Nevertheless, there will still be some direct grant coming from Welsh Government to higher education institutes in the course of the future. So, there is still an opportunity to attach terms and conditions of grants to those grants. Also, I am not clear from your answer, beyond not being the same as England, what it is about the non-legislative system that you think would fail in the circumstances here in Wales.

[13] **Huw Lewis:** There is no traction, in terms of a non-legislative system. I think that Members need to be aware, and I am sure that they already are, of the difference in quantum that HEFCW now has in terms of a direct grant. We are moving from a situation where 30% plus of HEIs income was coming through grants from HEFCW to a situation in the next academic year where we are talking about 10%. So, essentially, the terms and conditions attached to those grants have less and less traction, in terms of what HEIs actually do with that considerable investment of public money. It remains public money, but it now travels through a different route and is in the back pocket, as I say, of the student, as they enrol.

[14] The situation that will pertain if we stuck with a purely administrative system is that it is a case of it all being very well until something goes wrong. Then, there is no real clarity, I do not think, in terms of an administrative fix. There would be no clarity in terms of what would happen next, for instance in terms of an HEI that suddenly decided that it was not interested in fair access, or an HEI that was going through some kind of financial upheaval or mismanagement. I am not implying that any of these things are necessarily likely scenarios, but it is not clear to me how a purely administrative solution, which relies very much on goodwill, I suppose, would fall out if the situation became one of some kind of breakdown in those systems. This, on the other hand, is primary legislation and gives us clarity on the landscape in terms of who is responsible for what exactly—who has to publish what and who is questioned about whichever aspect of the procedure—and what pertains if something goes wrong with the system.

[15] **Suzy Davies:** I will finish on this point: I take your point that the direct grant is a lot smaller than it has been in the past, but it is still a vehicle to which terms and conditions can be attached, and I think that in reply to a question that I raised during your statement a couple of weeks ago, you said that you thought that it was highly unlikely that any higher education institute would behave in a way that risked them losing the direct grant, and then we went on to talk about what happens with new institutions. So, it seems pretty clear that everyone accepts that higher education institutes really value the direct grant, however small it is, and they are unlikely to do anything to jeopardise it. So, even if it is just 1%, you could still attach all your terms and conditions to it.

[16] **Huw Lewis:** We certainly will still be expecting a return for public investment on the grants that will continue to flow. However, the reality of the situation is that, over time,

money, investment and resources concentrate the mind in terms of where influence lies. I think that if we are to ensure that the Welsh public retains a good return on their considerable investment in Welsh higher education, we need to police that return on that investment in higher education as a public good. We have to measure that and balance it against the autonomy and independence of those institutions, and we will obviously be preserving the arm's-length situation that we have with HEFCW. That will remain unchanged in order to safeguard that. So, there is a balancing act between the safeguarding of the public good on the one hand and the autonomy and the traditional independence of the HEIs on the other. I think that this piece of legislation—you might expect me to say this, obviously—steers a sensible path in that regard.

[17] **Simon Thomas:** A gaf i ddod mewn gyda chwestiwn penodol ar hynny? Wrth ateb Suzy Davies, gwnaethoch ddweud sut bydd y cynllun cyllido yn newid gymaint yn ystod y blynyddoedd i ddod, a sonioch chi mai 10% yn unig a fydd yn dod yn uniongyrchol bellach o Lywodraeth Cymru drwy Gyngor Cyllido Addysg Uwch Cymru i'r prifysgolion. Rydym yn gwybod bod lot o'r arian arall—rydych yn sôn am yr arian ym mhoced y myfyrwyr—yn dod mewn dwy ffordd: ym mhoced y myfyrwyr o Gymru sydd yn cario arian cyhoeddus Cymru a phoced y myfyrwyr mae'r prifysgolion yn eu denu o Loegr, sydd yn dod ag arian cyhoeddus, ond arian cyhoeddus o ffynhonnell arall. Wedyn, mae arian cwbl annibynnol sydd gan y prifysgolion eu hunain drwy ddulliau buddsoddi, neu beth bynnag. A fedrwch chi roi amlinelliad bras i'r pwyllgor o'r ffordd y bydd y pedair prif ffynhonnell honno yn edrych dros y cyfnod nesaf wrth i ni ystyried y Bil hwn? Mae 10% yn dod yn uniongyrchol mewn grantiau; pa ganran sydd yn fyfyrwyr o Gymru, pa ganran sy'n fyfyrwyr o Loegr a pha ganran sydd yn llwyr annibynnol?

Simon Thomas: May I come in with a specific question on that? In responding to Suzy Davies, you said how this funding scheme will change so much over the coming years, and you mentioned that only 10% will be coming directly from the Welsh Government through HEFCW to the universities. We know that a great deal of the additional funding—you mentioned the money in the pockets of the students—gets there in two ways: in the pockets of students from Wales who are carrying public money from Wales and the pockets of students that universities have attracted from England, who are bringing public funding, but from another source. Then there is entirely independent funding that the universities have through whatever investment means that they have. Can you give a general outline to the committee of the way that those four main sources of funding are going to look over the coming period as we consider this Bill? Ten per cent comes directly from grants; what percentage comes from students from Wales, what percentage comes from students from England, and what percentage is independent entirely?

[18] **Huw Lewis:** Gosh; that would be quite a complex breakdown in terms of—

[19] **Simon Thomas:** Roughly.

[20] **Huw Lewis:** Roughly in my mind, about 10% would remain channelled directly through HEFCW in the form of grant. Around a third would be through—. Neil may have these figures more readily to hand.

[21] **Mr Surman:** It is not very precise, but we have done an assessment of how much Welsh Government funding finds its way into Welsh universities in the form of student support for Welsh domiciled students. In addition to the roughly £110 million or so going into Welsh universities from HEFCW—of course, that is not evenly spread; it is not a 10% equal share across every institution because some institutions would have considerably less than 10% of their funding from HEFCW—over 30% of total funding is going into universities directly from Welsh Government in the form of HEFCW grant, tuition fee grant or tuition fee loan support for Welsh domiciled students. That roughly reflects the proportion of support

that was available previously. Previously, the balance—and this is very rough, you will appreciate—was about a third from tuition fees, a third from the HEFCW grant and another third from other income sources. That is being rebalanced, but overall in terms of the direct Welsh Government contribution to universities' costs in Wales, it is still a very sizable proportion—it is over 30% of their income.

[22] **Simon Thomas:** Okay; thank you for that. It does beg the question what on earth the point of tuition fees was, apart from marketisation in the first place, but that is another argument. If we are being very rough, something around half of what Welsh universities get comes from the Welsh purse in some shape or form—a little under perhaps. To go back to Suzy's point, what is the justification for legislation following that, rather than the administrative arrangements? Are you concerned that you will lose control over the administrative arrangements as students are now so portable?

[23] **Huw Lewis:** For many years, it has been the case that part of HEFCW's remit is to ensure that the Welsh public gets some return for its investment in higher education, and that has been, as I have said, enabled through those terms and conditions attached to the grants that HEFCW has historically had. So, in that sense, there is no change in terms of the philosophy of the way that we have done things for some considerable time. There are also imperatives around things like fairness and access, and, of course, safeguarding students when they get into higher education. So, we would within this new regime, for instance, have protection for students against excess fees being charged, and some right of redress if things like that were occurring. I do not think that it is any accident that the National Union of Students Wales has wholeheartedly welcomed the scope and thrust of the Bill, and the philosophy behind it, and has described it as a significant contribution to social justice in terms of its view of what it would deliver for students.

09:45

[24] So, this is a protection mechanism for students, for the public and also for HEIs because the quality regime that we are talking about here is an essential element in terms of ensuring that Welsh HEIs will always and forever be able to hold their heads up in an international context and display that kitemark, if you like, of quality in terms of their educational provision. It would not be possible to gainsay the quality of Welsh HE in a UK or international context.

[25] **Mr Surman:** Just to add to that, the way that I look at this is that we are seeking to deal with a balance of risks here. We should always bear in mind that we are seeking to legislate for the future in the context of a very much more diverse higher education sector. There are new entrants to the HE market all the time, so we are not specifically talking about the existing publicly funded institutions that have long track records in Wales and with which we have worked for long periods of time—HEFCW knows them, we know them and we would regard them as very responsible organisations. However, in a situation where an institution might be in receipt of less than 5% of its funding from HEFCW, it is not beyond the realms of possibility that that institution could decide that, actually, for that amount of funding, it would rather not be regulated by the funding council and it would rather not be subject to the quality assurance regime. However, that institution would still be able to take Welsh students in receipt of Government support and there is an element of risk there, which this legislation would seek to address.

[26] There is also, I think, a natural justice and proportionality argument about HEFCW having the ability to quality-assure the full range of institutions' provision and their financial management arrangements on the basis of a very small percentage of their funding. That argument becomes less and less tenable the less funding that there is coming from HEFCW directly to an institution's coffers.

[27] **Ann Jones:** Aled, do you want to come in? We are still only on Suzy's first question.

[28] **Aled Roberts:** Yr oeddech yn sôn yn eich tystiolaeth mai rhan o'r bwriad y tu ôl i'r ddeddfwriaeth hon yw creu sefyllfa lle gallwch sicrhau mynediad cymdeithasol i brifysgolion. Ar hyn o bryd, mae mynediad yn rhan o'r cynlluniau ffioedd sy'n cael eu cytuno gan HEFCW. Rwy'n gwybod y byddwn yn mynd ymlaen i ddelio â hyn, ond a oes unrhyw dystiolaeth bod pryderon ynglŷn â mynediad ar draws cymdeithas ar hyn o bryd, neu a yw'r sefyllfa yn gwaethygu rhywfaint o ran sefydliadau unigol yng Nghymru?

Aled Roberts: You mentioned in your evidence that part of the intention behind this legislation is to create a situation where you can ensure social access to universities. At the moment, access is part of the fee schemes that are agreed by HEFCW. I know that we are going to deal with this later on, but is there any evidence that there are concerns around access across all of society at the moment, or is the situation getting worse in terms of individual institutions in Wales?

[29] **Huw Lewis:** I would hope that there is universal concern about fair access to higher education. We are all well aware of the lingering social injustice in terms of different social groups and under-represented groups in higher education. On the HEIs themselves, I would not be able to point to any HEI in Wales that would not also be concerned about those issues. It remains a key social imperative in my mind that we continue to tackle this, and we need to recognise that it is almost certainly a long-term issue that we will need to be tackling on a day-to-day basis. This legislation will, I think, move us forward in this regard because it will more readily enable us to look at developing a national will and purpose behind fair access. At the moment, of course, we have HEFCW working with the individual HEIs on these issues and there is some fantastic good practice in terms of access initiatives being undertaken by individual HEIs. What is missing from this, I think, is a recognition at a national level that this is an agreed national purpose, an aim that Welsh society wishes to go for. Apart from anything else, the renaming of the plans from just 'fee plans' to 'access and fee plans' sends out a signal that it is one of the central concerns. In terms of the return on public investment, what Welsh people want to see from their current contribution to Welsh higher education is an inherent, accepted fairness in terms of who benefits, in an individual sense, and, more widely, in a social sense, from the public good that higher education provides.

[30] **Ann Jones:** Suzy, do you want to come back in?

[31] **Suzy Davies:** Yes, please. I can take shorter answers to these. Can you tell us, Minister, who is likely to come into this regulatory framework who did not before? You may remember from the previous Act that we had questions about further education institutions, which obviously provide part-time courses, as indeed do some higher education institutions. I am quite keen to find out who is going to be applying on a case-by-case basis to be designated, and who would be auto-enrolled who is not currently covered by regulation.

[32] **Huw Lewis:** It is important to remember that entry into the new system would be voluntary. So, an HE provider would have to elect to apply for approval for a fee and access plan. Currently, only those providers that are funded by HEFCW and charge tuition fees of over £4,000 are required to apply for approval of a fee plan. Under the Bill, this situation would change, and any provider of HE courses that operates wholly or mainly in Wales and is a charity may then apply to HEFCW for approval of a fee and access plan. Now, I would expect, as I think we all would, that the vast majority of those institutions that currently have fee plans in force would wish their courses to continue to be subject to that sort of automatic designation.

[33] At present, we have a situation in which all the HE institutions and three directly

funded FE institutions have approved fee plans in force, but that situation, of course, might change in future, and the Bill would allow for new entrants to apply to HEFCW for approval of a fee and access plan.

[34] **Suzy Davies:** What sort of new entrants do you envisage?

[35] **Huw Lewis:** Well, as Neil has mentioned, it is difficult to predict in the very fast-moving world of higher education exactly what new entrants we might be talking about. It is not beyond the realms of possibility that entirely new institutions might want to set themselves up in Wales, and we have to be ready for that in terms of the way the legislation is framed. There could be a situation where offshoots or entire institutions, as they currently exist in Wales, might want to remodel themselves in some way—these things are entirely possible.

[36] **Suzy Davies:** Sorry, Minister, but would that include, for example, further education institutions that offer only part-time higher education courses? I am concerned about this part-time issue.

[37] **Huw Lewis:** Yes, we all need to be very concerned about part-time education. The issue here is slightly different. I think that I will hand over to Neil on the issue, just to get some clarity on that.

[38] **Mr Surman:** The situation with the institutions that offer only part-time education—the Open University being the most obvious case in point—is that part-time fees are not currently regulated, and until such time as we seek to regulate part-time fees, they will not therefore be caught by the provisions of this Bill. The Bill does, however, provide for those institutions that are primarily in the full-time market but happen to have some part-time provision as well. In order for that institution to have a fee and access plan approved by HEFCW, that would cover the full range of provision, both full-time and part-time, within that regulated institution. In the longer term, should part-time fees become regulated, they would fall subject to the same provisions.

[39] **Suzy Davies:** Okay; thank you. May I ask—

[40] **Ann Jones:** Oh, sorry. Is it on this point?

[41] **Simon Thomas:** It is on this point.

[42] **Ann Jones:** Go on, then; on this point.

[43] **Simon Thomas:** Rwyf jest am fod yn glir ynglŷn â pha sefydliadau a all ddod o dan y Bil fel y mae. Gan fod yn rhaid i gorff fod yn elusen, er mwyn gwneud cais hyd yn oed, i ddod yn rhan o'r broses hon, fy nehongliad i o'r Bil ar hyn o bryd yw nad oes modd i ddarparwr preifat nad yw'n elusen gael arian cyhoeddus yng Nghymru ar gyfer addysg uwch mewn unrhyw ffordd, achos nid oes modd iddo wneud cais ar gyfer y cynllun mynediad ac nid oes modd iddo ychwaith gael ei gymeradwyo gan Gyngor Cyllido Addysg Uwch Cymru ar gyfer derbyn arian drwy boced y myfyriwr, fel petai. A yw fy nehongliad yn gywir yn hynny o beth?

Simon Thomas: I just want to be clear about which institutions can come under the Bill as it stands. Given that a body has to be a charity, even in order to make an application, to be part of this process, my interpretation of the Bill at present is that there is no means for a private provider that is not a charity to receive public funding in Wales for higher education in any way, because it cannot make an application for the access scheme and it cannot either be approved by HEFCW to receive funding from the pockets of the students, as it were. Is that interpretation correct? That is, an entirely private provider that is not a charity cannot become part of the

Hynny yw, nid oes modd i ddarparwr cwbl framework in Wales. I just want to be clear
breifat nad yw'n elusen ddod yn rhan o'r about that.
fframwaith yng Nghymru. Rwyf jest am fod
yn glir am hynny.

[44] **Huw Lewis:** Broadly, but—. I will hand over to Neil again.

[45] **Mr Surman:** I think there is no 'but'. That is the proposal as it stands. Having charitable status would be the first qualification, if you like, in order—

[46] **Simon Thomas:** Absolutely essential.

[47] **Mr Surman:** Yes, in order to be able to apply to HEFCW to have a fee and access plan agreed, and therefore to be regulated and have access to the full, automatic student finance designation. The argument for that being, I suppose, that this Government has been very clear throughout—indeed, the previous Minister, in responding to what were then the recommendations from the Browne report in England, made it very clear—that the Welsh Government did not support private, for-profit institutions, and wished to do what we can to minimise the for-profit market within Wales. So, this Bill gives expression to that in a very realistic form. You are absolutely right: for those providers who do not have charitable status, they will fail at the first hurdle.

[48] **Simon Thomas:** Just to be clear, without trespassing too much on other questions that might come later, the case-by-case provisions in the Bill are not a back-door way around that.

[49] **Huw Lewis:** No. However, the 'but' I mentioned is that we do, at present, still have some public-fund contribution to small numbers of students who are attending for-profit institutions. I think that all of them are in England.

[50] **Mr Surman:** Yes, I think so.

[51] **Huw Lewis:** That is an evolving situation.

[52] **Mr Moss:** I would add that there are no case-by-case designation provisions in the Bill. The Bill does not deal with course designation per se. The process of course designation for the purpose of student support is dealt with under different legislation, under the Teaching and Higher Education Act 1998, and the proposal is that that remains the same. That is the route for automatic designation and case-by-case designation as well.

[53] **Ann Jones:** Aled, very briefly. We are still on the very first set of questions.

[54] **Aled Roberts:** Nid wyf yn gallu **Aled Roberts:** I cannot see in the gweld yn y memorandwm esboniadol y explanatory memorandum the definition of diffiniad o weithgareddau sy'n bennaf yng activities that are principally in Wales. Is Nghymru. A oes unrhyw ddiffiniad? Rydych there any definition? You refer to every yn sôn am sefydliad sydd â'i weithgareddau institution that has its activity either entirely naill ai'n llwyr neu 'yn bennaf' yng or 'principally' in Wales. I want a definition Nghymru. Rwyf eisiau diffiniad o 'yn of 'principally'.
bennaf'.

[55] **Mr Moss:** There is no definition in the Bill in terms of an institution with its activities principally, wholly or mainly carried on in Wales. The reason for that, in part, is because it is a definition that is well-known and well-used throughout the sector, and through HEFCW as well. It mirrors the provisions in the current 1992 Act, so it has been around for

about a quarter of a century, and it is the way in which HEFCW provides funding to institutions at the moment. HEFCW only provides funding to institutions with activities principally or entirely carried out in Wales; similarly, in respect of England, HEFCE only funds institutions with activities carried on mainly or principally in England. So, we did not feel that there was a need for a definition. It is well-understood and long-standing terminology.

[56] **Ann Jones:** David, on that point.

[57] **David Rees:** It is on that point. My understanding is that that is an aspect of funding, but in the quality assurance section of the Bill you do try to put some definition on what is provided or what is not provided in Wales. Does that definition, therefore, also stand for the quality assurance aspects?

[58] **Mr Moss:** If we are talking about an institution with activities wholly or mainly carried on in Wales, it can have a fee plan in place and then it will be subject to the full quality assessment regime. I think that the provision that you are referring to restricts HEFCW's quality assessment functions to courses provided in Wales, or wholly or principally carried on in Wales. That is for competence purposes. We have taken a fairly cautious approach in terms of ensuring that the Bill is not outside legislative competence. If an institution in Wales that has a fee plan in place and is subject to the regulatory system happens to provide a course in England—let us say, for example, that Cardiff University has a fee plan in place under the new system and it happens to provide a single course in Bristol—that would not be caught under the Bill as it stands, which is why we are in discussions with the UK Government in respect of an Order under section 150 of the Government of Wales Act in order to allow HEFCW to quality assess the education provided on those courses, where they are provided outside Wales. However, the reason why there is that restriction under the quality assessment part is based on legislative competence.

10:00

[59] **David Rees:** So, there is a possibility that this Bill does not cover all HE courses that are under the auspices of a HE institution in Wales.

[60] **Mr Moss:** At the moment, that is right. However, we have had to be mindful of the National Assembly's legislative competence in this area. The option available to us is for the Secretary of State to make an Order under section 150, which will enable HEFCW to assess the quality of courses that are not provided in Wales, but are wholly provided in England albeit by a Welsh institution.

[61] **Aled Roberts:** You mentioned that it is a 'changing feast', Minister, but if we are reliant on definitions that are 25 years of age, what happens when there is an extension of provision by a Welsh HE institution in London, for example, or further afield? There was a large announcement last week with regard to Bangor in China, for example. What happens then, as far as the legal definition is concerned, where turnover for an institution or the number of students for an institution, which historically might have been considered to be a Welsh institution, actually means that the Welsh element is only a minority, both of turnover and student numbers?

[62] **Huw Lewis:** You are right to point to these issues as areas that need to be worked through. There is a degree of work that still needs to be done in terms of, for instance, the conversation with the Secretary of State about section 150. There is something of a difference here in terms of courses where a student might be physically located in another part of the UK, where there are those relationships between HEFCW and HEFCE, for instance. This sort of stuff is already part and parcel of the way that organisations actually work, and there would

have to be an ongoing conversation about the changing landscape out there. However, you are also talking about franchising, which is an area that we address in the Bill. The intention is not dissimilar from the situation that we find ourselves in at present. The franchisor needs to be quality-assessed in terms of what is on offer. We have to be mindful of the fact that we are legislating for Wales, and that we cannot legislate for territories outside the boundaries of Wales. Did you want to add something, Neil?

[63] **Mr Surman:** I just wanted to add that some of the factors that you have just described, of course, would be among those that would be considered by HEFCW or HEFCE in looking at whether an institution was principally or wholly located within Wales or England, or vice versa. One of the key factors is also where that institution is headquartered. So, irrespective of where the provision may be delivered, it is pretty clear that Bangor University has its headquarters in Bangor, in Wales. That is a fairly short way into considering whether that is a Welsh institution for the purposes of this Bill. So, that is a pretty key feature of the definition. If they are headquartered here, irrespective really of whether they provide some courses in London or have an arm's-length institution elsewhere, they are still Welsh institutions.

[64] **Ann Jones:** Suzy, we are still on your questions.

[65] **Suzy Davies:** There you go. Aside from free access, and aside from section 6 in the Bill, which deals with student needs of varying descriptions, can you give us an indication about how you have ensured that students' needs will be fully represented, not just in this Bill but in the subsequent regulations?

[66] **Huw Lewis:** As I say, we have had very good consultation thus far with NUS Wales, in terms of its importance as a stakeholder. I think that we will, through this legislation, take ourselves to a point where we have even better protection around students, first in terms of the quality of education that they can then expect at that institution, and secondly in terms of the transparency that the various safeguards within the new regime will entail. In terms of the publishing of plans, guidance and so on, there are multiple instances of that within the explanatory memorandum that you can take a look at. We also, of course, have those safeguards in law if things go wrong—as I mentioned before, things like excess fees being charged and so on. That is not actually written down anywhere, or we run the risk of it not being written down anywhere and there not being clarity around that kind of redress.

[67] **Suzy Davies:** That leads me to the next part of my question, which is about secondary legislation, the role of students and how they will be consulted in its preparation. You give a very good example of something that is not absolutely on the face of the Bill, even though it is hinted at, but that will be developed in secondary legislation. How will you be dealing with students at that stage, to find out if they are adequately protected? Or is it covered by current consultation?

[68] **Huw Lewis:** At every stage, of course, as we always do, there would be proper consultation. You are right to point out that there are regulation-making powers in terms of this legislation, but they do remain matters of procedural detail that are there, in large part, to cope with the flexibility that will be required in future. I think that, considering the very technical nature of this Bill, the regulation-making powers have been reduced to a minimum. There is much more on the face of this Bill. I think that we have maximised that, quite rightly, as you might expect. The relatively narrow scope of this Bill means that secondary legislation arising from it, I think, would be very technical in nature.

[69] **Suzy Davies:** May I just finish with this final question? I want to acknowledge in this committee that there is an improvement in the balance between regulation and what is on the face of the Bill, but I still have concerns about one central issue over regulation and

ministerial powers. I still do not think that a distinction has been made between those ministerial powers that come into play when there have been other failures in the Bill, or other failures in the process somewhere—a ministerial intervention for example—and powers that particularly manifest themselves in the first few sections of this Bill that give a Minister the power to introduce pieces of secondary legislation without which the Bill will fail. Examples of that are at sections 2 and 3, where regulations may make provisions for the making of applications for designation. I appreciate that the detail of that can be in regulation, but you need to be able to commit in this Bill to bring in regulations for applications of designation, not just ‘may’ bring them in. It is a distinction that I have raised with previous legislation that we have discussed, and even though I can see that an attempt has been made to nail it, I do not think that it has quite been done. So, rather than take up this committee’s time—I appreciate that it will come to the Constitutional and Legislative Affairs Committee—if I write to you to have a think about this before we get to that committee, would that be okay?

[70] **Huw Lewis:** I am more than happy; I am always willing to work through this process—that is the value of the committee Stages. As you say, perhaps it is more an issue for the Constitutional and Legislative Affairs Committee.

[71] **Suzy Davies:** I just wanted to record, in this committee, that there has been an improvement.

[72] **Ann Jones:** It is very good of her to give you a heads up on how you are going to be scrutinised on this Bill at another committee. [*Laughter.*]

[73] **Suzy Davies:** There will be more questions from others. [*Laughter.*]

[74] **Ann Jones:** Yes, but you are on that committee, so at least you have given the Minister a heads up on what he will be scrutinised on.

[75] Bethan, do you have a point on this before we move off the section?

[76] **Bethan Jenkins:** Mae gennyf bwynt ynglŷn â'r ymateb cynharach, achos nid wyf yn deall. Roeddech yn dweud eich bod am gael y Bil hwn oherwydd bod rhai sefydliadau yn mynd i godi ffioedd uwch ar fyfyrwyr. A oes enghreifftiau o hynny yn digwydd yn awr o fewn y systemau ffioedd presennol sydd wedi arwain at hyn yn dod atom ni fel ag y mae, er mwyn i mi ddeall beth yw'r broblem? Roeddwn yn meddwl ein bod wedi cytuno ar y strwythur ffioedd presennol fel na fyddai rhywbeth fel hyn yn gallu digwydd. Felly, beth sydd yn anghywir yn y system yn awr sy'n golygu bod angen deddfwriaeth arnom yn y maes hwn, er mwyn i mi ddeall yn iawn?

Bethan Jenkins: I have a point in relation to the earlier response, because I do not understand. You said that you wanted this Bill because some institutions will charge higher fees for students. Are there examples of that happening now, in the current fee systems, that have led to this coming to us in this form, so that I can understand what the problem is? I thought that we had agreed on the current fee structure so that this sort of thing could not happen. So, what is wrong with the system as it currently stands that means that we have to legislate in this area, just so that I understand correctly?

[77] **Huw Lewis:** There is nothing wrong with the current situation; in fact, a great swathe of what this Bill is about is ensuring continuity between what is possible now and what will carry on into the future, ensuring that HEFCW has the tools at its disposal to continue to maintain the regime that we are used to in many aspects, given the change in that the levers they have to pull are now different ones. However, specifically on whether this has happened, Neil—

[78] **Mr Surman:** No it has not, but the risk, again, is about the continuing reliance on terms and conditions of funding, which is the mechanism through which HEFCW, effectively, enforces the fee limit. If an institution in Wales were to decide, effectively, to go private, and to no longer be a publicly funded institution, with that would go any control over the fees that it sets. Now, what we are proposing here is that the quid pro quo for continuing to receive Welsh-domiciled students in scenarios such as that would be that you would still need to sign up to the fee planning controls, the access arrangements and all of the other commitments, including financial assurance and quality assessment.

[79] **Bethan Jenkins:** What would be the incentive for them to do that, though, because they would not be getting anything from Welsh Government through the system?

[80] **Huw Lewis:** They would.

[81] **Bethan Jenkins:** They would be.

[82] **Mr Surman:** Yes, under the current arrangements. Even without HEFCW funding, they could still take Welsh-domiciled students.

[83] **Huw Lewis:** Essentially, there could be—. I do not want to paint this as too much of a doom-and-gloom scenario, but there is a conceivable situation where an institution could privatise itself and continue to benefit from large sums of public money and remove itself pretty much entirely from the regime of quality control and so on.

[84] **Mr Surman:** Were they to go private, they would benefit from a lower level of student finance support. Nevertheless, there is a very large number of Welsh-domiciled students attending those institutions.

[85] **Ann Jones:** We will now move off the first section, you will be pleased to know. I think that it was quite important that we got from you the reasons why the Bill and framework would be necessary. Based on the time that it has taken us, we could be here until a week next Tuesday going through the rest of the questions—that is just to warn you. We will now move on to the impact on the Higher Education Funding Council for Wales. Rebecca, you have the first questions.

[86] **Rebecca Evans:** Could you clarify for the committee which of HEFCW's current statutory functions are not included in the revised statutory framework and how, in future, you would expect those functions to be delivered or not?

[87] **Huw Lewis:** I do not know whether there is a specific instance. I will ask my colleagues to fill in on matters of detail here, but, essentially, in terms of the effect on HEFCW, what we are trying to achieve here is primarily continuity. HEFCW has done a good job and I think that pretty much everyone would agree with that. HEFCW is a very important instrument in terms of making sure that we ensure the autonomy of these critical institutions, but, at the same time, have a voice for the Welsh public and the Welsh public investment in higher education. Really, what the spirit of the legislation is trying to achieve is continuity in terms of the way that HEFCW operates. I do not think that there are things that are not—

[88] **Mr Moss:** I think that the Minister has encapsulated it in terms of the fact that what HEFCW does now is what we are trying to ensure that it is able to do in the future. It currently regulates fee limits and assesses fee plans under current legislation. It has a statutory duty to quality assess educational institutions that it funds. It enters into a financial memorandum with institutions that it funds, which has its root in the 1992 legislation as well. All of those features are the key features of this Bill, so—

[89] **Rebecca Evans:** I ask only because, in the oral statement, the Minister said that not all of HEFCW's functions are included in the revised statutory framework, but they are.

[90] **Huw Lewis:** [*Inaudible.*]—something they do not need.

[91] **Mr Moss:** I can say that—

[92] **Ann Jones:** If it is easier for you to write a note on that—

[93] **Huw Lewis:** I think that it might be, yes.

[94] **Ann Jones:** We can have a note.

[95] **Mr Surman:** I think that the Minister might have been referring there simply to the fact that HEFCW's existing functions in relation to funding will continue, so they will still have those powers and, of course, those are not affected by this Bill. Effectively, HEFCW will have two arms of operation available to it: funding streams to which terms and conditions can still be attached, but also this mechanism, which we think is more robust and will better stand the test of time.

10:15

[96] **Huw Lewis:** Yes, grant funding, though much diminished, will still carry on.

[97] **Rebecca Evans:** In Plenary, Minister, you said that HEFCW

[98] 'will be a very different beast in terms of the way that it works and relates to higher education'.

[99] Could you describe what kind of changes you would envisage should the Bill be passed?

[100] **Huw Lewis:** Yes. It will be a very different beast in terms of the platform of legislation—this legislation—upon which it stands and operates its functions. It will also be different in terms of, I think, the sheer level of clarity around what is expected in the tripartite relationship between HEFCW, the HEIs and Welsh Government. There will also be a great deal more clarity around what would happen and what HEFCW would do if things within the relationship started to go awry. The essential difference is that HEFCW's functions and powers within the new regime would be bedded upon this primary legislation. At the moment, it is bedded within the terms and conditions of grant, and so there is a wholly different platform that HEFCW would be operating on.

[101] **Rebecca Evans:** How has HEFCW responded to the Bill? During the technical consultation, which of the proposals, if any, has it expressed concern about, and what sort of discussions have you had with it to overcome those issues?

[102] **Huw Lewis:** Of course, there have been constant and in-depth conversations with HEFCW. I think there was a submission received from it just yesterday. Personally, I have not had a chance to take a look at that yet. Perhaps I could turn to Neil.

[103] **Mr Surman:** There was. I cannot speak for HEFCW; I know that it is giving evidence separately, so I will not attempt to be the voice of HEFCW. However, my take on its position would be that it is broadly happy with the legislation. I think that it would probably wish it to go further in some respects. On the opposite side of the fence, our HEIs might not want it to go quite as far. So, we are seeking to strike an appropriate balance, in terms of the

legislation and its impact. I will not speak to the detail of HEFCW's position; it will have a chance to express itself. However, that would be my broad take on its position.

[104] **Rebecca Evans:** Are you content that HEFCW has the capacity, expertise and resources to carry out new functions should the Bill be passed, or would it require additional investment?

[105] **Huw Lewis:** Some small degree of extra investment may be necessary. I think that it probably would be. In the financial rubric that we have alongside the papers that you have, I think there is a recognition of that. Essentially, however, a great deal of what would be required of HEFCW under the new regime would be a continuation of what is already a function of the organisation, with the Welsh Government then having some degree of strategic influence over the direction of travel at HEFCW. It is absolutely clear to my mind that there is no other port of call, in terms of who you might turn to. It is obvious, really, that an evolution of HEFCW is the best and most cost-effective way of carrying through these functions.

[106] **Ann Jones:** Okay. I will bring Simon in on this point.

[107] **Simon Thomas:** I ddatblygu'r pwynt hwnnw ychydig yn fwy, mae Cyngor Cyllido Addysg Uwch Cymru, wrth gwrs, yn seiliedig ar y Ddeddf yr ydym wedi sôn amdani eisoes sawl gwaith—Deddf 1992. Felly, mae hen ddarn o ddeddfwriaeth sydd yn sail i'r corff hwnnw. Bydd ei ddyletswyddau'n cael eu newid gan y Bil hwn. Yn ogystal, bydd y Bil newydd yn cyfansoddi rhai o'r dyletswyddau hynny; rwy'n derbyn hynny. Fodd bynnag, a ydych wedi ystyried o gwbl bod angen edrych ar natur y corff, sef y cyngor cyllido, yn benodol, a'i berthynas gyda'r Llywodraeth? Fel sydd wedi cael ei gydnabod gan y Gweinidog blaenorol, nid yw Cyngor Cyllido Addysg Uwch Cymru yn llwyr annibynnol ar y Llywodraeth. Mae'n gorff hyd penelin, fel yr wyf wedi'i alw; mae o gwmpas y Llywodraeth. A ydych chi wedi manteisio ar y cyfle i edrych ar hwn eto?

Simon Thomas: To develop that point a little further, the Higher Education Funding Council for Wales, of course, is based on the Act that we have already referred to—the 1992 Act. So, it is an old piece of legislation that forms the basis of that body. The functions will be changed by this Bill. In addition, this new Bill will consolidate some of those functions; I accept that. However, have you considered at all that we need to look at the nature of the body, that is, the funding council, specifically, and its relationship with the Government? As has been noted by the previous Minister, HEFCW is not completely independent from Government. It is at elbow's length, as I have described it; it is around the Government. Have you taken the opportunity to look at this yet?

[108] **Huw Lewis:** I do not think that it is necessary that we should consider changing HEFCW's status. It remains the case, even though the way that finance flows has changed considerably, that we still need a way of exercising a degree of strategic influence on the part of the elected representatives of the Welsh people, and the arm's-length nature of HEFCW—or the elbow length; I wish I had thought of that—remains a sensible model. There is nothing in the legislation that seeks to alter that. I think most observers would agree that, essentially, this system has worked well for Wales over some years now.

[109] **Simon Thomas:** I am not really disagreeing with the principles of what you are setting out. It just strikes me that there is a wider reach for HEFCW in this Bill, and an opportunity to look at whether there is a way of strengthening the independence of HEFCW, which is not necessarily about the way that the body works, but about how people get appointed to the body, for example. It is all Government appointments, as I understand. I know that it is Nolan and so forth, but it is very much a Government body in that sense. That

is why I use that term. I just wondered whether you had had any opportunity to look at how it might be made to look more independent, which would assuage some of the doubts that Mr Surman referred to within the HEIs around the possible reach of this body now over a period of time into their internal dealings and, perhaps, their own planning.

[110] **Huw Lewis:** The situation at the moment gives HEFCW considerable scope in that regard. I think you are probably being quite fair in terms of some of the descriptions that are in front of us about the scope of HEFCW's role under the new regime—not so much in terms of powers, but in terms of expectations, perhaps. One of the things that I would be very keen to pursue in terms of the new regime is a sense of common purpose and minimum standards of activity and quality of activity around access, for instance, which I think, at the moment, is inconsistent. I think there is definitely a role for HEFCW there, but it is arguable as to whether that could or could not have been achieved under the old relationship. Neil, do you want to expand on that?

[111] **Mr Surman:** Just to remind the Minister that, within this, we are not seeking to do away with the restrictions that currently exist on Welsh Ministers and HEFCW's ability to dictate what is taught within universities, or the means by which academic appointments are made. All of that remains protected by the provisions of the 1992 Act. We are certainly not seeking to remove those protections, so that degree of distance from Government for HEIs will remain, and it will remain protected by law.

[112] The broader question about the possibility of HEFCW's future and how it might evolve beyond this Bill is something that is likely to be looked at by the Diamond review. It is actually captured within Professor Sir Ian Diamond's terms of reference that, in thinking about the strategic future of higher education funding and student support in Wales, of course that panel would have to consider the role of HEFCW within that context. So, it is likely to feature there as a piece of thinking and analysis, more so than in relation to this Bill.

[113] **Ann Jones:** We will move on to the effects on the providers of higher education. Aled, that is you, yes?

[114] **Aled Roberts:** Yes. I have been scribbling notes.

[115] Roeddwn i'n jest cysidro: pa fath o I was just wondering what kind of providers ddarparwyr sy'n gallu dewis peidio bod yn could choose not to be regulated institutions sefydliad a rheoleiddir gan y fframwaith under this new framework. newydd hwn.

[116] **Huw Lewis:** Any provider could choose not to be part of the new framework. Essentially, joining in the framework is a voluntary business, although I contend that there are enormous benefits for institutions that did opt to apply for a fee and access plan. There are obvious advantages and I would anticipate that—. I cannot think of any current Welsh HEI partner that would not want to be a part of this. However, anyone could opt out.

[117] **Aled Roberts:** O fewn yr ymatebion **Aled Roberts:** Among the responses to the i'r ymgynghoriad roedd nifer o sefydliadau consultation were a number of institutions yn codi cwestiynau ynglŷn â'r baich sy'n cael that raised questions regarding the workload ei greu—gwaith papur ychwanegol roedd un that was being created—additional paper yn cyfeirio ato. A oes gennych unrhyw work, as one referred to. Do you have any ymateb i'r sylwadau hynny? response to those comments?

[118] **Huw Lewis:** In the financial breakdown that we have provided, there is recognition that there would be a bit of extra heavy lifting that HEIs would have to undertake, to a degree. However, it is proportionate. I think that the figure was around £0.5 million spread across all

of our existing bodies, which is minimal really.

[119] **Aled Roberts:** Mae amcangyfrif yn y memorandwm esboniadol sy'n sôn am gostau ychwanegol o ran rheoleiddio—rhyw £9 miliwn yn ystod y pum mlynedd gyntaf—a bod mwyafrif y baich hwnnw'n syrthio ar sefydliadau unigol, sef £7.5 miliwn, tua 85% o'r gost. Os byddwn yn mynd ar ôl opsiwn 3 o ran y gyfundrefn reoleiddio, mae costau ychwanegol, a dyna'r opsiwn rydych chi'n cyfeirio ato, o £2.6 miliwn, ac eto, bydd y gost honno, ryw £700,000, fel rydych chi'n dweud, yn syrthio ar sefydliadau. Wrth ystyried sefyllfa ariannol rhai o'r sefydliadau yma ar hyn o bryd, ydych chi'n meddwl bod costau ychwanegol o ryw £2 filiwn y flwyddyn yn deg?

Aled Roberts: There is an estimate within the explanatory memorandum that talks about additional costs in terms of regulation—some £9 million over the first five years—and that the majority of that burden will fall on individual institutions, and that is about £7.5 million, or 85% of the cost. If we pursue option 3 in terms of the regulatory framework, there are additional costs, and that is the option that you refer to, and that cost is £2.6 million, and yet, the cost of about £700,000 will fall on institutions. Considering the financial situation of some of these institutions at present, do you think that an additional cost of around £2 million is fair?

[120] **Huw Lewis:** It is important to recognise—. I do not accept your figure of £2 million; the figure that I recall was closer to £0.5 million, comparing the regime as it is now with the regime as it will look in future. It is important to remember that the way the money flows is changing. So, essentially, now, that money is not there to be gifted by HEFCW in order to pay for a system that guarantees everyone's quality assurance, for instance, across the board. The money is in the institution, because it travelled through the student, through the front door into the institution, but it is still public money, and it is still money invested by the Welsh public. I am happy to provide a note on the differences between what this is going to cost now and what it will cost in the future. I readily recognise that there is a little more work for HEIs to do in this regard, but I do not think that it is of the degree that you mention there.

[121] **Aled Roberts:** Nid ydych yn credu'r farn a fynegwyd gan rai wrth ymateb i'r ymgynghoriad fod perygl ein bod yn creu ryw fath o system o arolygu o ran HEFCW ar ei newydd wedd.

Aled Roberts: You do not believe the opinion expressed by some in response to the consultation that there is a danger that we will create some sort of inspection system in terms of HEFCW in its new form.

[122] **Huw Lewis:** No. I am not sure who introduced this 'inspection regime' phrase into the dialogue, but it is not helpful and it is a little silly, really. There is, essentially, not a great deal of difference in terms of quality assurance, for instance; the tripartite relationship that currently exists between HEFCW, the QAA and, to some extent, Estyn will continue. The legislation does not alter that. The legislation makes it a great deal clearer, for instance, what might happen if things started to go wrong within the system and what might happen next, but we would see continuity in the regime as it currently operates.

[123] **Aled Roberts:** Hoffwn ddelio â dau bwynt arall. Mae nifer ohonom wedi cyfeirio at y pryderon yn y sector ynghylch effaith y ddeddfwriaeth hon ar y statws elusennol. Ydych chi wedi cael unrhyw fath o drafodaethau gyda'r Comisiwn Elusennau yn y lle cyntaf, ac a ydych chi'n fodlon nad oes unrhyw broblemau o ran y statws elusennol, wrth feddwl eich bod wedi dweud bod statws elusennol yn un o'r gofynion o ran yr holl gyfundrefn? Hefyd, wrth symud ymlaen, pan

Aled Roberts: I will deal with two other points. A number of us have referred to concerns within the sector with regard to the effect of this legislation on charitable status. Have you had any discussions with the Charity Commission, in the first place, and are you content that there were no problems in terms of charitable status, as you said that charitable status is one of the requirements in terms of this whole arrangement? Also, in moving forward, when we discussed the

oeddem yn trafod y ddeddfwriaeth ar gyfer addysg bellach, prif yrrwr y ddeddfwriaeth honno oedd safbwynt y Swyddfa Ystadegau Gwladol a'r ffaith ei bod yn awyddus i weld sefyllfa lle nad oes cymaint o ddylanwad o ran Llywodraeth. Mae tueddiad i edrych ar hwn fel ein bod yn mynd i'r cyfeiriad arall a'n bod yn awyddus i'r Llywodraeth i gadw gafael ar y sefyllfa. A ydych wedi cael unrhyw drafodaethau gyda'r Swyddfa Ystadegau Gwladol ac a yw, yn anffurfiol, wedi mynegi unrhyw farn ynglŷn â'r ffaith ei bod yn fodlon â'r safbwynt rydych chi wedi ei gymryd yn y ddeddfwriaeth hon?

legislation for further education, one of the main drivers of that legislation was the point of view of the Office for National Statistics and the fact that it was eager to see a situation where there was not as much of an influence in terms of Government. There is a tendency to look at this as us going in the other direction in that we are eager to see the Government keeping hold of the situation. May I ask whether you have had any discussions with the ONS and whether it has informally expressed an opinion that it is content with the point of view that you have taken in this legislation?

10:30

[124] **Huw Lewis:** These are important questions and I am very glad, Chair, that Aled has asked them, because it is an opportunity for us all to be clear on this. To take the questions on the Charity Commission first, it did respond to the technical consultation and it has not identified any concerns. My officials have met with the Charity Commission, but, of course, we will continue to engage with it and it will continue to engage closely with HEFCW in terms of the implementation of the regulatory framework and the financial management code that will need to be developed. However, there are no alarm bells going off at all, as far as the Charity Commission is concerned.

[125] In terms of the ONS, the short answer to your question is 'no'. There has not been that contact, because I cannot see the necessity for it. It would not be normal practice to consult the ONS on a Bill such as this one. We are not in the business of changing, through legislation, the situation as regards the indicators of strategic control that the ONS would be interested in. We are not changing the strategic control mechanisms around Welsh higher education. We respect entirely the autonomy of Welsh HEIs and the Bill respects that position, so there should not be any need to ask the Office for National Statistics to comment on these proposals. I simply cannot see the reason for that situation to arise.

[126] **Ann Jones:** Are you happy with that, Aled?

[127] **Aled Roberts:** Yes.

[128] **Ann Jones:** Simon is next.

[129] **Simon Thomas:** Hoffwn i ddilyn y pwynt hwnnw, os caf. Rwy'n derbyn, i raddau, y pwynt rydych chi'n ei wneud, Weinidog, ond yr hyn sy'n ddiddorol yw cymharu'r sefyllfa sydd gennym gyda cholegau addysg bellach. Roeddech chi wedi bod mewn pwyllgor yn trafod Bil arall ac wedi dweud, 'Wel, rydym yn ymddiried yn y sector hwn. Mae'n sector aeddfed, rydym yn gallu cydweithio ag ef ac mae'n rhaid inni symud ar hyd y llwybr hwn yng nghydestun addysg bellach er mwyn cyflawni gofynion yr ONS.' Rwy'n gweld y gwahaniaeth ar un lefel, achos yr hyn rydym

Simon Thomas: I would like to follow that point, if I may. I accept, to an extent, the point that you make, Minister, but what is interesting is comparing the situation with further education colleges. You were in a committee discussing a different Bill saying, 'Well, we trust this sector. It is a mature sector, we can collaborate with it and we have to follow this route in the context of further education in order to fulfil the requirements of the ONS.' I see the difference on one level, because what we are talking about here is public money following a student or a direct investment by the

yn sôn amdano yw arian cyhoeddus yn dilyn myfyriwr neu'n dilyn buddsoddiad uniongyrchol gan y Llywodraeth, ond nid ydym yn sôn am yr hyn sy'n digwydd o ran rheolaeth y tu mewn i hynny—byddwn yn trafod y cod ariannol yn nes ymlaen, gan fod hynny efallai'n fwy perthnasol fan hyn. Felly, a ydych yn teimlo eich bod wedi ymdrin â'r ddau sector mewn dwy ffordd wahanol mewn unrhyw ffordd? A ydych chi'n teimlo'n gwbl gysurus, felly, eich bod wedi dilyn yr un egwyddorion?

Government, but we are not talking about what is happening in terms of the management of that—we will discuss the financial code later on, which is perhaps more relevant here. So, do you not have any feeling that you have dealt with the two sectors in two different ways? Do you not feel completely confident that you have used the same principles?

[130] **Huw Lewis:** We need to treat the two sectors in two different ways. That is why this Bill is different compared with what we experience with FE institutions, where we would need legislation to seek a reversal of the classification. That is because HE institutions are autonomous bodies, they are in different leagues, or they are different entities, so they are not equivalent to FE institutions in that regard.

[131] **Mr Surman:** I would say that there are several defining differences between the two sectors. We have a funding council in the higher education sector—

[132] **Simon Thomas:** We used to have one for the FE sector, did we not?

[133] **Mr Surman:** We did. The position in relation to FEIs, which drove the previous piece of legislation to which you are referring, was that the ONS had already taken a view on the way in which Government related to those institutions and had decided that the definition that it had been applying historically was the wrong one. That brought with it all manner of consequences that Government did not feel that it could live with.

[134] We are not in that position at all in relation to HEIs. The ONS has not taken that view of the current set of relationships between Government and the sector and we cannot see anything in this Bill that would fundamentally alter the ONS's view of the world in that respect. It is still the case that universities will be entirely separate from Government, with the protection of the buffer body in the form of HEFCW and between the two. We do not have and do not propose to take substantial powers over institutional level governance, which was an issue in relation to further education. Of course, FE institutions are pretty much fully funded by Government, and we cannot say that about universities. So, those characteristics of the two sectors are dramatically different. Therefore, different underpinning legislation is needed to deal with the two sectors. I do not think that this brings with it the same risks in relation to the ONS classification question.

[135] **Ann Jones:** David, do you have a point on this?

[136] **David Rees:** I just want to clarify something. I have asked the Minister about the statement on the part-time aspect. You have already mentioned this morning that the part-time funding is not regulated at this point, and that that would come under the fees and access plans once they become—. However, we do have a single HE institution in Wales that is part-time only, which is the Open University, which is centred in Milton Keynes, but we also have a lot of FE institutions that offer part-time only courses. Some are directly funded and some are franchised. Why are we excluding those in terms of some of the controls that you want to place upon a HE provision and, in particular, why are we excluding them from quality provision? As a consequence of the quality element, you have actually taken those institutions out of quality assurance. I just want to know why that is happening. At the end of the day, if I were a student in Wales, I would want to know that whichever course I am on is quality

assured. I want to explore the thinking behind that argument.

[137] **Huw Lewis:** That is a fair enough question, Chair. First of all, with regard to the Open University, it would just continue to be assessed by the QAA, and there are arrangements with the Higher Education Funding Council for England. As you say, it is based in Milton Keynes.

[138] In response to the second part of your question, I am content with the legislation as it is at the moment because, essentially, we would have a situation where there would be no gaps in the quality assessment of courses provided by part-time providers because the current situation would prevail. Would you like to add something, Simon?

[139] **Mr Moss:** Yes. HEFCW will continue to provide funding to institutions for part-time courses, and terms and conditions can be applied to that part-time funding. Those terms and conditions could extend to quality assessment in the same way that they do now.

[140] **David Rees:** If the regime changes and part-time comes under the fees and access, the Bill still states that it is part-time only. It is not to be included for quality assessment.

[141] **Mr Moss:** In terms of part-time courses, most institutions are providing full-time and part-time courses. The Bill provides for those courses, whether they are part-time or full-time, to be covered by quality assessment.

[142] **David Rees:** However, I can tell you now that there are institutions that are directly funded, and they only offer part-time HE courses.

[143] **Mr Moss:** If they only offer part-time courses, then, at the moment, they would not be applying for approval. Once part-time courses become regulated, they can come into the system. That does not mean that there is a gap now because those FE institutions that are only providing FE courses will be receiving the funding from HEFCW, with the terms and conditions attached.

[144] **David Rees:** Would there be a gap—[*Inaudible.*]—in this Bill. That is what I want to check. I am not sure that there will be a gap in the future, if it comes under this Bill. There is an element in the Bill that says that if an institution is only offering part-time provision, it will not come under the quality provision. That is what the explanatory memorandum says.

[145] **Mr Moss:** That is not my understanding of the Bill.

[146] **Ann Jones:** It might not be your understanding of the Bill, but if the explanatory memorandum actually states that, it has to be addressed, does it not? We cannot legislate on a particular lawyer's understanding of a Bill at a particular time.

[147] **Mr Moss:** No; I will need to go back to the explanatory memorandum—

[148] **Huw Lewis:** Okay; I am more than happy to—. Neil, did you want to add anything?

[149] **Mr Surman:** No.

[150] **Ann Jones:** I think that we need a note on this, for clarification of that point.

[151] **Huw Lewis:** We will drop you a note on it.

[152] **Ann Jones:** I am sorry, Simon. Simon has a point on this.

[153] **Simon Thomas:** Just to follow on from David's point there, and to bring two things together—what David just said, and what you said earlier in our evidence session. Further clarification may be needed on this, but if I understand it correctly, what will happen in effect, if the Bill is passed as it is now, is that any part-time courses in Wales will be regulated differently to full-time courses because you have put off the regulation of part-time courses for the Diamond review. Therefore, my understanding is that it is all outwith not only the fee plans and so forth, but, as David has just pointed out, the quality assurance bit.

[154] **Huw Lewis:** Yes.

[155] **Simon Thomas:** I see some confusion there.

[156] **Huw Lewis:** It is not confusing. I will readily come to the committee and say, 'Look, there are aspects of this legislation that need to be worked through and developed'. One of them is the crossover and integration with Diamond. There is a very clear necessity to make sure that the Diamond review and this legislation are developed side-by-side and that everyone informs each other of what is going on, and so on. You are quite right to point out that I have specifically asked Ian Diamond to take a look at part-time provision—

[157] **Simon Thomas:** It is one of the issues that we have not addressed for several years in Wales, to be fair.

[158] **Huw Lewis:** Yes, but we are addressing it, and that is a clear commitment. In complete contrast to what is going on across the border in England, we will remain committed to part-time provision in Wales. This stuff is collapsing across the border. We do not want that to happen. However, I would be more than happy, Chair, to provide a note so that we can explore this thoroughly.

[159] **Ann Jones:** I think that we need a note on that. There is some confusion. I thought that I had got it pretty well sorted out, but I do not now. That does not mean that, because I cannot sort it out, it is wrong. So, if we could have a note, Minister, on that, that might help us as well with further scrutiny. Have we finished that section now? I see that we have. Does the committee wish to have a comfort break until 10.50 a.m.? I see that you would. Can we all be back in, ready to start at 10.50 a.m., because we have still got quite a few areas to go through?

*Gohiriwyd y cyfarfod rhwng 10:41 a 10:50.
The meeting adjourned between 10:41 and 10:50.*

[160] **Ann Jones:** As we reconvene, I would just ask, if you have put your phones on, that you make sure that you have switched them back off, just so that the broadcast and translation equipment is not affected. We are carrying on, obviously, and the next set of questions is on futureproofing the Bill and cross-border issues. That is you again, Aled.

[161] **Aled Roberts:** Mae'r memorandwm esboniadol yn cyfeirio at adran 150 y *Government of Wales Act*. A allwch esbonio yn union, pan ddywedwch eich bod yn mynd i geisio Gorchymyn o dan y Ddeddf honno, beth yw'r broses, ac a ydych wedi cael unrhyw drafodaethau â Llywodraeth y Deyrnas Gyfunol ynglŷn â'i safbwynt hi ar wneud Gorchymyn?

Aled Roberts: The explanatory memorandum refers to section 150 of the Government of Wales Act. Could you explain, when you say that you are going to make Orders under that Act, what exactly is the process, and have you had any discussions with the UK Government about its stance on creating an Order?

[162] **Huw Lewis:** Those discussions are live at the moment, so I am not really in a position, I am afraid, to fill the committee in on exactly what the fallout from those

discussions is, but it is, obviously, not for the Welsh Government or HEFCW to regulate the activities of institutions in England; we have to rely on the English regulatory systems to operate, and vice versa. So, we need clarity between the two systems, and this is part and parcel of the way things operate at the moment. I do not know whether you are able to expand on that, Neil.

[163] **Mr Surman:** I can say that the discussions at a superficial level between lawyers in the relevant departments have been very positive. The work is progressing well. It is very much in the interests of English Ministers, of course, to make sure that relevant bits of Welsh provision operating in England are properly regulated, because they could equally be sending English domiciled students to those institutions to attend those courses. So, where there is that crossover, it is very much in our mutual interests to make sure that there are no gaps in the system, and that is the basis on which we are approaching the section 150 Order.

[164] **Aled Roberts:** O dan adran 3, mae'n bosibl i ddarparwr o Loegr wneud cais i ddynodi cyrsiau yng Nghymru. Beth sy'n rhwystro sefydliadau yng Nghymru sy'n darparu cyrsiau yn Lloegr rhag gwneud cais i ddynodi cyrsiau o dan y gyfundrefn Seisnig? **Aled Roberts:** Under section 3, it is possible for a provider from England to make an application to designate courses in Wales. What is stopping HEIs in Wales that run courses in England from designating courses under the English regime?

[165] **Huw Lewis:** We come back here, again, to the definition of 'wholly or largely based in Wales'. So, we start with that definition, I think I am right in saying.

[166] **Mr Moss:** I think that there is some misconception about section 3, in as much as the purpose of section 3 is simply to designate a provider as an institution for the purposes of the Bill. We could be looking at new providers coming in to be regulated. We could be talking about companies limited by guarantee that provide HNCs or HNDs that would not regard themselves, and which no-one else would regard, as an institution. The designation in section 3 would simply allow those providers to avoid any doubt, to be treated as an institution for the purposes of the new system. In order to become regulated, they would still have to show under section 2 that they are an institution in Wales. So, there is no question of English institutions coming within the Welsh regulated system. Likewise, in England, HEFCE at the moment is not able to regulate Welsh institutions. HEFCE's focus is on institutions that are wholly or principally carrying out their activities in England. Our Bill relates to Welsh institutions and, therefore, section 3 is separate from section 2 in that respect, if that explains the situation at all.

[167] **Aled Roberts:** Okay. Er mwyn cloi ar y materion trawsffiniol, a oes unrhyw broblemau eraill wedi codi yn ystod y trafodaethau â swyddogion yr Adran Busnes, Arloesi a Sgiliau yn Lloegr? A ydych yn fodlon bod yr holl faterion trawsffiniol hynny, os oes unrhyw broblem ynglŷn â diffinio neu unrhyw fesurau newydd o dan y Bil hwn, wedi cael eu datrys erbyn hyn? **Aled Roberts:** Okay. Just to close on the cross-border issues, are there any other problems that have arisen in your discussions with officials from the Department for Business, Innovation and Skills in England? Are you content, if there are any problems around definitions or any new measures under this Bill, that all the cross-border issues have now been solved?

[168] **Huw Lewis:** I am certainly not aware of any.

[169] **Mr Surman:** No, they have not raised any issues with us. Of course, we have shared the Bill with colleagues in England. Equally, they are at pains to keep us informed of developing policy thinking in England, and we have a pretty good working relationship. I do not get the sense that there are any concerns, at either a principle or an operational level, about what we are proposing here. In fact, some senior colleagues in England were very

interested in the approach that we had adopted here, and this may be something that colleagues elsewhere in the UK seek to learn from in terms of potential future regulation there.

[170] **Ann Jones:** I said before that I was confused—and that is nothing new for me—but currently there is a lot of work going on in north Wales, particularly in relation to the training of medical students and medical practitioners. There is a move there to look at a rotation that would include the north-west of England, rather than just relying heavily on the Cardiff medical school for rotation for junior doctors and nurse practitioners with regard to the way in which we are taking the health service. How will that work, if we were successful in getting a rotation with the medical school in the north-west, as the students would be operating out of Welsh institutions? I understand what Mr Surman said about the location of the headquarters of the institution being designate, but I am still wondering what effect that would have and whether that would make it more difficult to operate that rotation across the north-west of England and north Wales.

[171] **Huw Lewis:** I do not envisage that the Bill would make any difference to what would or would not necessarily have to happen if that was to be enabled. Essentially, that would be a part of the day-to-day conversations between institutions that would need to take place in any case.

[172] **Ann Jones:** Would you see officials from either sets of health boards or educational institutions seeing that as something that they would not really want to get involved with and so they would just leave it and not want to go down the route of looking at securing the rotation, even?

[173] **Huw Lewis:** I see what your worry is.

[174] **Mr Surman:** I hesitate to speak about medical training—

[175] **Ann Jones:** I am happy to have a note on that. I have just thrown it at you because it was something that cropped up when we did the questioning.

[176] **Mr Surman:** I am conscious of it because I am responsible, among other things, for undergraduate medical education.

[177] **Ann Jones:** Oh, good.

[178] **Mr Surman:** Therefore, I am aware how very complicated medical workforce and training issues are, which is why I hesitate to come in on that specific point. Effectively, I think that what you are talking about is franchise provision, where a university based in Wales does something outside the Welsh borders.

[179] **Ann Jones:** No, the other way around; that is what I am more concerned about. So, you have the medical school in the north-west of England—Manchester or Liverpool, I think; I believe that the dental school is in Liverpool—and you have the rotation—

[180] **Mr Surman:** In relation to quality assurance, financial assessment and all the rest, the reciprocal arrangements that currently operate across the UK—in this case, between England and Wales—would remain in place. It works well at the moment. There is nothing in this Bill that would impact negatively on that set of arrangements. We are seeking to make sure that, where there are potential gaps, through the section 150 Order, that those are addressed appropriately. So, I would hope not, but perhaps we ought to come back to you with a note just on the medical question, because I know how fiendishly complicated that can be.

[181] **Ann Jones:** That would be helpful. Sorry, that was something that occurred to me while I was having a cup of tea. Perhaps we should not break for tea in future as I end up looking for those awkward questions. However, that would be helpful, particularly for me—and Aled probably has the same sort of concerns as well.

[182] Bethan, you have a question on futureproofing.

[183] **Bethan Jenkins:** Mae gennyf gwestiwn ynglŷn â'r hyn y mae Syr Ian Diamond yn ei wneud. Gwnaethoch ddweud yn gynharach eich bod yn siarad ag ef am ei waith, ond yn amlwg, gyda'r agenda ariannu addysg uwch a ffioedd myfyrwyr, mae pethau yn newid yn aml ac mae'r agenda'n newid yn aml. Hoffwn ddeall, os ydych yn rhoi'r ddeddfwriaeth hon gerbron nawr, a yw'n rhy gynnar er mwyn gwybod yn iawn beth fydd yr adolygiad hwn yn ei wneud. Hynny yw, a fyddai modd iddo newid y system yn llwyr o ran cynlluniau ffioedd, ac yn y blaen—ai peidio—ac yna byddai'r ddeddfwriaeth hwn yn amherthnasol? Efallai fy mod yn hollol anghywir ac nid dyna'r agenda. Fodd bynnag, roeddwn am i'r cwestiwn gael ei ofyn er mwyn inni ddeall yn iawn eich perthynas ag ef a'r adolygiad sy'n digwydd ar hyn o bryd.

Bethan Jenkins: I have a question about what Sir Ian Diamond is doing at present. You said earlier that you are speaking with him about his work, but obviously with the agenda for funding higher education and student fees, things change rapidly and the agenda changes very often. I would like to understand, if you are putting this legislation forward now, whether it is too early to know what exactly this review will achieve. That is, is it possible for it to change the system in its entirety in terms of fee schemes, and so on—or not—and then this legislation would become irrelevant? Perhaps I am completely wrong and that is not the agenda. However, I wanted the question to be asked so that we understand exactly what your relationship is with him and with the review that is currently being undertaken.

11:00

[184] **Huw Lewis:** No; I do not envisage any fundamental issue here at all. First, Ian Diamond is well aware of the development of this legislation, and needs to take that into account. However, the nature of this legislation is essentially about ensuring that there is continuity around things such as fee and access plans, quality control, and so on, within a new legislative framework. The bulk of it is about ensuring that what has gone on in the past in terms of HEFCW's ability to work with the sector is enabled into the future, because we are essentially taking away the lever of terms and conditions around grants. What we need now is legislative teeth for HEFCW to be able to carry on doing the job it has always done in large part.

[185] So, with regard to what Ian Diamond might come up with in terms of funding mechanisms and the kind of emphasis we might want to put upon part-time courses to ensure financial stability, that is something of a different issue. Although there would inevitably be cross-over, I cannot see that the fundamental purpose of the legislation could trip up what Ian Diamond is about.

[186] **Mr Surman:** I would just add, Chair, that whatever the Diamond review panel comes up with in terms of recommendations, probably the least likely of those would be a scenario in which it recommends that no Welsh student should attend Welsh universities with student support from the Welsh Government. So, in that sense, this Bill is pretty futureproof. Whatever Ian Diamond recommends in the long term, this particular set of provisions should enable us to carry on in terms of quality assessment and financial regulation of the sector, and so on, without major change. This should be capable of dealing with any potential scenario, other than the complete stripping away of all student support for Welsh domiciled students,

which does not seem to be very likely.

[187] **Ann Jones:** Okay, thanks. If we can move on, because we have three other sections and about half an hour. That is just to tell people that it is about—I cannot do the maths. On fee controls and access plans, Simon, that is your question.

[188] **Simon Thomas:** Rydym wedi cyffwrdd ar ran o hwn eisoes, ond mae cwpwl o gwestiynau o hyd, rwy'n meddwl. Yn gyntaf oll, a fedrwch chi gadarnhau beth yw'r sefyllfa bresennol gyda ni, Weinidog? Yn ôl beth rwy'n ei ddeall, Cyngor Cyllido Addysg Uwch Cymru sy'n gyfrifol am gymeradwyo, ai peidio, y cynlluniau ffioedd presennol. Fodd bynnag, mae'n gwneud hynny achos eich bod wedi dynodi'r cyngor i wneud hynny. A yw'r dynodiad hwnnw yn rhywbeth y medrwch chi ei dynnu yn ôl? Rwy'n trio cofio beth a wnaed tua tair blynedd yn ôl, a sut yn union mae hynny wedi ei wneud mewn statud, fel y cyfryw.

Simon Thomas: We have touched on part of this already, but there are a few questions remaining, I believe. First of all, could you confirm the current situation that we have, Minister? From what I understand, the Higher Education Funding Council for Wales is responsible for approving, or not approving, the current fee plans. However, the council does that because you have designated it to do so. Is that designation something that you can take back? I am trying to remember what happened three years ago, and how exactly that was done in statute, as it were.

[189] **Huw Lewis:** Sorry, but I am not sure that I follow the thrust of the question, Chair. Do you mean in terms of fair access?

[190] **Simon Thomas:** I am looking at the current fee plan arrangements. HEFCW is designated by Welsh Ministers to approve or not. I am trying to remember what that designation was. Was that a derogation of your powers that you had under the 2004 Act, or was it something that you are able to take away from HEFCW? I am trying to work out where it is in the statute.

[191] **Mr Moss:** It was regulations made under the 2004 Act that designated HEFCW as the relevant authority for the purposes of the current framework.

[192] **Simon Thomas:** Diolch. Felly, mae rheoliadau ar waith sy'n gwneud hyn. Diolch am gadarnhau hynny. I edrych ymlaen yn y Bil hwn, gan fod *regulations* yn eu lle, ym mha ffordd yr ydych chi'n bwriadu i'r cyngor cyllido fod yn fwy rhagweithiol o dan y drefn newydd, achos mae'n ymddangos i mi fod y Bil hwn yn creu proses llawer mwy rhagweithiol a rhyngweithiol, fel petai, rhwng y cyngor a phrifysgolion yng Nghymru? Rwy'n dweud 'prifysgolion', ond rwy'n golygu pob math o sefydliad o ran hynny.

Simon Thomas: Thank you. So, there are regulations in place that do this. Thank you for confirming that. Looking forward in this Bill, as there are regulations in place, in what way do you intend for HEFCW to be more proactive under the new regime, because it seems to me that this Bill creates a much more proactive and interactive process, as it were, between the council and the universities in Wales? I say 'universities', but I mean all types of institutions.

[193] **Huw Lewis:** Yes, you are right; your description is bang on. For instance, in terms of fair access, I would expect at least three things to be happening in terms of how the situation is improved. First of all, what we are about here is enhancing HEFCW's role in terms of monitoring the delivery of fee and access plan commitments, as well as evaluating the outcomes of them. So, that is unequivocally set out in terms of what HEFCW's role is there. There is also written into this a stronger focus on retention. That is the second thing that has long been recognised as an important issue in this regard, but, again, it has not been laid

down. This will be laid down in statute, if you like. I did say that there was a third issue, but I am trying to remember what the third issue was actually about. *[Laughter.]*

[194] **Simon Thomas:** We need something to do with the numeracy framework here. *[Laughter.]*

[195] **Huw Lewis:** I will get my coat. *[Laughter.]* I suppose, in between the lines of the legislation, what will transpire is that, instead of a situation where we have outbreaks of good practice that are recognised and then perhaps circulated, we will have a new regime that demands a consistent and coherent national effort in this regard, which will be monitored by HEFCW—part of its remit is to monitor it—and evaluated by it. So, instead of relying upon a fantastic individual in Bangor University who does something wonderful in terms of a summer school for two or three years and then that fizzles out, there will be an expectation that there will be a sustained institutionally backed effort everywhere, all the time.

[196] **Simon Thomas:** Mae'n rhaid felly eich bod chi'n teimlo bod y drefn bresennol yn ddiffygiol yn y ffordd y mae'n gyson ar draws Cymru, ac yn ddiffygiol yn y ffordd y mae'n cyrraedd beth rydych chi yn dymuno ei weld fel Llywodraeth. A yw hwnnw yn gasgliad teg?

Simon Thomas: You must feel therefore that the current system is flawed in the way that it is consistent across Wales, and deficient in the way that it reaches what you want to see as a Government. Is that a fair comment?

[197] **Huw Lewis:** It is a fair comment. It is flawed in that it is inconsistent. It is flawed in that, for instance, headteachers do not necessarily always understand what is on offer for their pupils, or FE principles might not understand exactly what is on offer. It is not reliable in terms of its longevity. Projects, as I say, flare up and die away. What we need is a situation whereby every youngster in Wales can rely upon their school or college being connected to an HEI, or a family of HEIs, and having telegraphed to them in advance just what kind of support there might be in terms of raising their aspirations towards an HE option, and that that is systematised across the country as part of the normal way in which we do business.

[198] **Simon Thomas:** Gyda'r drefn newydd, felly, yn ôl beth rwy'n gallu gweld yn y Bil, bydd gan HEFCW lawer mwy o bwerau i ymyrryd, nid jest i gytuno â chynllun ac wedyn dros gyfnod gweld y cynllun yn cael ei weithredu ac wedyn barnu a oedd y cynllun yn llwyddiannus ai peidio. Bydd gan HEFCW yr hawl i ymyrryd yn eithaf cyson os nad yw'n teimlo bod y cynllun yn gweithio. Bydd sawl haen o ymyrraeth, neu ysgol o ymyrraeth fel petai, gan y cyngor cyllido, ac wedyn bydd rhychwant o sancsiynau neu gosbau y bydd y cyngor yn gallu eu gweithredu. At ei gilydd, ac o edrych ar yr ymateb i'r papur ymgynghorol cyn y Bil, mae beirmiadaeth wedi bod bod hynny yn rhy fusneslyd ac yn rhy fanwl. Felly, ym mha ffordd yr ydych chi wedi ceisio cael cydbwysedd rhwng yr ymyrraeth sy'n angenrheidiol yn eich tyb chi, a'r angen i'r prifysgolion beidio ymwneud â gormod o fiwrocratiaeth, neu'r angen i'r ysgolion ddatblygu eu harfer da eu hunain?

Simon Thomas: With the new system, therefore, from what I can see in the Bill, HEFCW will have a lot more powers to intervene, not only to agree on a plan and then, over a period, to see that plan being implemented and then to decide whether the plan was successful or not. HEFCW will have the ability to intervene quite regularly if it sees that it is not working. There will be many layers of intervention, or a ladder of intervention, as it were, that HEFCW could undertake, and then a range of sanctions or penalties that the council could implement. Generally, and looking at the responses to the consultation paper before the Bill, there has been criticism that that is too intrusive and too detailed. Therefore, how have you tried to strike a balance between the intervention that is needed in your opinion, and the need for universities to not be too involved with bureaucracy, or the need for schools to develop their own good practice?

[199] **Huw Lewis:** Again, you are right. On what is described here, I think that the phrase that has been used is ‘gradations of intervention’. The current system is, to my mind, a little crude. What it means is that, officially speaking, what HEFCW has at its disposal is a big red button; you push the big red button and the money is just taken away. Obviously, that has some use, and you do need a big red button. That will not be taken away, but—

[200] **Simon Thomas:** It has been close to pushing that red button on a couple of occasions.

[201] **Huw Lewis:** Yes. However, I think that it is only sensible that we have a system that gives alternative means by which they can have that tripartite dialogue, if you like, so that HEFCW, the HEI and Welsh Government or the Welsh public can negotiate their way through to having a fair and proper fee and access plan. As you will know, safeguards are built in at every stage to make sure that the HEI is being treated fairly. There are avenues for appeal and publishing of various judgments and so on. However, I think that it would take us to a better place in that there could well be scenarios where action would definitely be required by HEFCW, but it would not necessarily involve pushing the big red button as a proportionate response to that.

[202] **Simon Thomas:** You do feel that we need primary legislation to achieve what is mostly quite administrative in terms of going back and forth.

[203] **Huw Lewis:** Yes, I mean I cannot see any other vehicle for that. This is a technical Bill and I think that the value of doing this through primary legislation, among other things, is that we are all absolutely clear about how organisations should conduct themselves in situations that, at present, might be seen as something of a messy, grey area. This would clear that up.

[204] **Simon Thomas:** Y cwestiwn olaf sydd gennyf ar y cynlluniau newydd hyn yw: sut y mae'r Bil yn mynd i ymdrin â chysiau sy'n syrthio, neu a allai syrthio, y tu allan i'r cynlluniau? Er enghraifft, dywedwch fod coleg yng Nghymru yn paratoi cyrsiau ar gyfer myfyrwyr rhyngwladol yn unig, felly nid oes neb o Gymru yn mynd ar y cyrsiau hynny achos maen nhw wedi eu hanelu'n benodol at fyfyrwyr rhyngwladol, neu dywedwch fod prifysgol yn mynd law yn llaw â chwmmi mawr i baratoi cyrsiau lefel prifysgol sy'n benodol ar gyfer myfyrwyr o Airbus neu Tata, er enghraifft, sut y byddwch yn ymdrin â chysiau o'r fath, oherwydd nid yw'n glir i fi sut y byddant yn ffitio i mewn â'r cynlluniau mynediad a ffioedd hyn?

Simon Thomas: The final question that I have on these new plans is: how is the Bill going to tackle the courses that fall, or may fall, outside these plans? For example, say that a college in Wales is preparing courses for international students only, so no-one from Wales will go on those courses because they are specifically aimed at international students, or say that a university works together with a large company to prepare university level courses specifically for students from Airbus or Tata, for example, how will you handle such courses, because it is not clear to me how they will fit in with these access and fee plans?

[205] **Huw Lewis:** The situation as it is at the moment continues, basically. This Bill does not deal with course designation as such. The situation at the moment is that there is scope for regulations to provide certain types of courses that are not designated courses for the purposes of student support. So, there is scope for bespoke courses that are paid for, for instance, by employers. They can be excluded from the fee limits and the current regime continues.

[206] **Simon Thomas:** But, those are regulations made by Government, as I understand it. Is that correct? You will be looking to—. It is always difficult to write down in regulations

individual courses and so on, is it not? I mean—

[207] **Huw Lewis:** Well, yes.

[208] **Simon Thomas:** How do you envisage doing that?

[209] **Mr Moss:** There are some exceptions set out in the regulations that are in force now. For example, the student support regulations provide for which courses attract student support and which do not. So, there is already an element of identifying individual courses and that would be the method taking this forward in the future in terms of those student support regulations and regulations that describe the courses that attract the fee cap as well.

[210] **Ann Jones:** We will now move on to quality assessment. Lynne, you have a question on that.

[211] **Lynne Neagle:** Thank you, Chair. Following the technical consultation responses, can you expand on your reasons for including quality assessment rather than quality enhancement?

[212] **Huw Lewis:** Quality enhancement is already part of the deal. It is essential and it needs to be embedded throughout higher education in Wales. The responses to the White Paper on that from stakeholders underscored all of that—everyone is in agreement on that issue. However, there is no evidence to suggest that any new statutory enhancement provision is required, that I can see, or that existing activities and arrangements that are going on out there at the moment are in any way deficient. Hence, the reasons for sticking with quality assessment in terms of what is happening in this Bill. It does not say that quality enhancement is ignored because HEFCW's activity will provide them and their quality partners, notably the Quality Assurance Agency for Higher Education, with the insight into those issues. However, I cannot see that anything written into this piece of legislation would improve matters.

11:15

[213] **Lynne Neagle:** How confident are you that the current service-level agreement between HEFCW and the Quality Assurance Agency has been effective?

[214] **Huw Lewis:** I am very confident. I am not aware of any serious commentator—. I think that the current arrangements have been running since 2006. There seems to be universal agreement, across the board, that they work well. I cannot see any reason that has been brought to my attention for altering that.

[215] **Lynne Neagle:** Could you expand on the reasons why you do not anticipate that there will be much change in terms of QAA and HEFCW working together?

[216] **Huw Lewis:** That is because, as I say, it is a tried and tested regime. I cannot envisage any reason why HEFCW would want to discontinue using, or working alongside, QAA. It is a UK-wide independent body that is well respected and was established by the funding councils. I do not think that it is within the remit of this legislation to start disturbing what seems to be a very good system as it is.

[217] **Ann Jones:** Are you happy? Okay.

[218] **Simon Thomas:** I want to address that point. I think that it is essential for HE in Wales, and how it can promote itself internationally, that you have a respected body looking after quality assurance. I accept that there is not necessarily any implication in the Bill for what is, in effect, an agreement between QAA and HEFCW. The question, however, is

around HEFCW's ability to change and interact with HEIs on their fee and access plans, and whether that, in itself, is something that QAA may be interested in, as potentially affecting the delivery of HE in Wales. Is that something that you have discussed with the agency, or has HEFCW discussed it?

[219] **Huw Lewis:** I do not know if we have had input from HEFCW on that.

[220] **Mr Surman:** I am not sure whether we have had input on that point. Certainly, there have been discussions with QAA as we have developed the thinking around these proposals. I speak to HEFCW almost daily, as you can imagine. HEIs themselves, and Higher Education Wales in particular, have impressed upon us the importance of the relationship with QAA and that UK-wide perspective of what good quality looks like. So, we are seeking to retain that. As the Minister has said, there is no reason why HEFCW would ever want to depart from that relationship; it serves us and the sector very well.

[221] In terms of the question that you raised, I might have to think about it some more, because I am not quite sure that I understand. However, it is an interesting perspective. If you do not mind, I will think about it, and if there is an angle here on which we need to come back, perhaps we could write to you.

[222] **Simon Thomas:** To be clear, it was about the delivery, not the content. As there will be a role for affecting delivery in some way, I wondered if that might have a potential knock-on in terms of how QAA might view some of that.

[223] **Mr Surman:** It has not come up in our discussions with it.

[224] **Simon Thomas:** I would be grateful if you could look at that and if we could have a note on it.

[225] **Ann Jones:** We will have another note; that is fine. Thank you. I hasten to add that we are on the last set of questions, but I am sure that people will find more questions. This is on the financial assessment of HEIs, and I bring in Keith.

[226] **Keith Davies:** Byddaf yn gofyn fy nghwestiynau yn y Gymraeg hefyd. Gyda'r cod rheolaeth ariannol, faint o ymgynghori yr ydych am i HEFCW ei gynnal, a chyda phwy?
Keith Davies: I will be asking my questions in Welsh as well. With the financial management code, how much consultation do you want HEFCW to undertake, and with whom?

[227] **Huw Lewis:** The Bill requires that consultation takes place as part of preparing the code, as you will be aware. HEFCW would be under a duty to consult with the governing bodies of all of the regulated institutions and, indeed, any other persons or bodies that it would consider appropriate in the circumstances.

[228] **Keith Davies:** Gofynnodd Aled, pan fyddwch chi wedi cytuno ar y cod, yn hytrach na'i osod gerbron y Cynulliad yn unig, oni ddylai ddod gerbron y Cynulliad i ni gael ei dderbyn? Eich ateb oedd 'na'. Beth yw'r rheswm am hynny?
Keith Davies: Aled asked, when you have agreed on the code, rather than just being laid before the Assembly, should it not come before the Assembly for us to agree? You said 'no'. What is the reason for choosing the other procedure?

[229] **Huw Lewis:** In my mind, it is about practicality. The code would be very technical in nature. It would also be subject to change from time to time. Also, there would be pressure of time, in terms of the demands of an individual HEI getting things sorted out in time for the turn of the financial year or whatever it is. So, there would be a considerable risk if we were

to shift to a situation where the code would be placed before the Assembly. The Assembly, Lord bless it, would be too much of a blunt instrument to give good governmental oversight of a document like that. It would simply take too long, it would be too complicated, it would happen too often and it could deliver all kinds of difficulties for the HEIs themselves, in terms of making sure that their financial plans are robust and formulated in time.

[230] **Keith Davies:** Mae'r prifysgolion yn credu y bydd y cod yn rhoi gormod o bŵer i HEFCW. Wedyn, efallai y bydd arnynt eisiau trafodaeth. A ydych yn cytuno â'r hyn y mae'r prifysgolion yn ei ddweud, sef y byddai HEFCW yn cael gormod o bŵer?

Keith Davies: The universities believe that the code will give HEFCW too much power. So, perhaps they would like to have a discussion. Do you agree with what the universities are saying about this, which is that HEFCW will have too much power?

[231] **Huw Lewis:** They would say that, would they not? [*Laughter.*] I am always willing to keep the lines of communication open. However, I would point out that there are huge benefits for the HEIs in terms of them embracing this sort of regime. It is, essentially, a kitemark of confidence, of quality. It is an assurance for students, for those who might wish to invest in universities and it is an assurance for the public. It gives Welsh HEIs a badge of quality. There is much to recommend it to HEIs in my mind.

[232] **Keith Davies:** Un peth arall y mae'r prifysgolion yn sôn amdano yw efallai y bydd y cod yn rhoi'r pŵer i HEFCW ymgymryd â phethau mwy na phethau ariannol. A ydych yn meddwl bod hynny'n wir?

Keith Davies: One other thing that the universities are talking about is that this code will, perhaps, give HEFCW the power to deal with issues beyond financial matters. Do you think that that is true?

[233] **Huw Lewis:** That is something of a cryptic comment; I know that it is not yours. I am not quite sure what they mean by that. [*Laughter.*]

[234] **Keith Davies:** I am not sure either, but it has come from the HEIs.

[235] **Huw Lewis:** If they were to specify exactly what they mean, I might be able to better formulate a response.

[236] **Ann Jones:** We will ask them when they come in to give us evidence. We will ask them to spell it out.

[237] **Mr Surman:** It is worth bearing in mind that HEFCW already has a financial memorandum in place that governs its financial relationship with HEIs, reporting arrangements and everything else around that, including the levels of approval that they need to seek from HEFCW in order to undertake certain levels of borrowing and so on. That already exists; the code of practice is essentially that same thing, in a slightly different guise, predicated on a different set of assumptions. However, the code of practice replaces the financial memorandum, as opposed to being something completely new. I do not believe that the financial memorandum is currently subject to approval by the Assembly. It seems to us that this Bill, if anything, gives an additional level of scrutiny and assurance, because it will come before Ministers. HEIs will have been consulted on the terms in which the code is drafted, and Ministers will need to have a report from HEFCW as to how HEIs have been consulted and engaged in the development of the code in order to persuade Ministers then to approve it. So, there is additional protection here, which does not exist, perhaps, within the existing arrangements.

[238] **Keith Davies:** A'r cwestiwn olaf ar y cod yw: bydd prifysgolion yn Lloegr yn

Keith Davies: The final question on the code is: English universities will offer courses in

cynnig cyrsiau yng Nghymru, felly pam nad ydynt yn gorfod dilyn y cod hefyd? Wales, so why do not they have to follow the code as well?

[239] **Huw Lewis:** We come back to the remit of the Welsh Government in terms of what we can legislate for. We rely on other constituent parts of the UK running a tight ship.

[240] **Mr Surman:** Those English institutions would be subject to HEFCEs financial memorandum and financial controls.

[241] **Ann Jones:** I have Aled and Simon; Aled first.

[242] **Aled Roberts:** Mae'n debyg mai'r hyn roedd Keith yn cyfeirio ato oedd a ydych chi'n ymwybodol bod y Bil hwn yn rhoi'r hawl i HEFCW ymyrryd mewn unrhyw sefyllfa y tu allan i reolaeth ariannol lle nad oes ganddo'r pŵer i ymyrryd yn y fath fodd ar hyn o bryd? **Aled Roberts:** I suppose that what Keith was referring to is are you aware that this Bill gives HEFCW the right to intervene in any situation outside of financial management where it does not have the power to intervene in that way at the moment?

[243] **Mr Surman:** That is certainly not the intention.

[244] **Huw Lewis:** No.

[245] **Aled Roberts:** Y rheswm gofynnais y cwestiwn ynglŷn â'r cod ariannol yw: rwy'n derbyn yr hyn rydych yn ei ddweud ynglŷn â'r ffaith bod y cod yn dechnegol ac felly bod llawer iawn o fanyldeb ynddo, ond, tra ydym yn derbyn bod llawer mwy ar wyneb y Bil hwn nag sydd wedi bod ar wyneb Biliau eraill, mae cryn nerfusrwydd bod y Llywodraeth yn defnyddio grymoedd negyddol yn y Cynulliad. Rwy'n meddwl mai dim ond mewn un adran yn y Bil hwn y defnyddir y gyfundrefn bositif. Mae hynny'n creu sefyllfa lle mae llawer o rym yn cael ei roi yn nwylo un Gweinidog, mewn sefyllfa lle mae cydbwysedd gwleidyddol yn y Cynulliad ei hun. **Aled Roberts:** I asked the question about the financial code because I accept what you say about the fact that it is very technical, and so that there is a lot of detail in it, but while we accept that there is a lot more on the face of this Bill than has been on the face of other Bills, there is a lot of nervousness that the Government is using negative powers within the Assembly. I think that there is only one section within this Bill where the affirmative procedure is used. That creates a situation where a lot of power is put in the hands of one Minister, in a situation where there is political balance in the Assembly itself.

[246] **Huw Lewis:** There are those powers with the negative arrangement attached to them. Each and every case—I think that this is spelled out in the explanatory memorandum—is reliant upon the guidance of the Counsel General here in that regard. All bar one, as you say, tick those boxes around the technicality of the issues and the other criteria that the Counsel General would be looking for. I remain, as always, very keen to talk through, if committee requires it, each and every instance of the necessity, to my mind, for this operating in that particular way.

[247] **Simon Thomas:** Rwy'n derbyn bod y cod hwn yn deillio o'r memorandwm sydd yno'n awr, ond mae ffordd arall o edrych ar hwn. Rhoddodd Mr Surman yr ochr bositif o edrych ar hynny—mae mwy o graffu gan ei fod ar wyneb y Bil ond, o safbwynt rhai sefydliadau, byddent yn dweud bod mwy o **Simon Thomas:** I accept that this code stems from the memorandum that we have now, but there is another way of looking at it. Mr Surman put forward the positive way of looking at this—there will be greater scrutiny, because it is on the face of the Bill but some institutions would say that there is

bwysau yn awr hefyd gan fod hwn yn llawer mwy statudol a llym. Mae'n ddigon posibl bod hwn yn hollol gyfiawnadwy a phriodol, felly. Fodd bynnag, rwy'n gweld y cod hwn fel rhywbeth eithaf newydd a phwysig sy'n rhoi rhywbeth ehangach ar brifysgolion nag sydd wedi bodoli o dan y memorandwm.

also greater pressure now, because this is much more statutory in nature and much stricter. It is possible that that is justifiable and appropriate. However, I see this code as something that is rather new and important, placing wider demands on universities than what has existed under the memorandum.

[248] Felly, mae gennyf ddau gwestiwn. Wrth drafod y cod hwn gyda phrifysgolion, pa mor gyhoeddus fydd y trafodaethau hynny? Mae hynny'n cysylltu â'r ail gwestiwn: pa rôl fydd gan y Cynulliad? Rwy'n dod yn ôl at y cwestiwn hwn. Rwy'n derbyn nad yw'n briodol nac yn ymarferol iawn i'r Cynulliad drafod y cod yn fanwl, ond rydym wedi cael enghreifftiau yn y gorffennol o bethau sy'n dod gerbron y Cynulliad y tro cyntaf, fel bod y Cynulliad yn gallu gweld nad yw'r cod yn ehangach nag a ragwelwyd wrth inni drafod y Bil. Wedyn, byddai'r pethau sy'n deillio o hynny pan fo'r cod yn cael ei adolygu a'i ddiwygio yn dod trwy'r ochr negyddol. Felly, rwy'n meddwl bod cyfle yn y lle cyntaf i'r cyhoedd yn gyffredinol weld bod y cod yn briodol a'i fod yn ffitio i mewn i beth roeddem yn ei feddwl oedd yn y Bil, fel Cynulliad. Byddai hynny'n rhoi rhyw linyn o gysur i rai pobl sy'n poeni am gynnwys y cod. Rwy'n cynnig hynny fel un ffordd bosibl ymlaen.

Therefore, I have two questions. When you discuss this code with universities, how public will those discussions be? That links to my second question: what role will the Assembly play? I come back to this question. I accept that it is not appropriate or practical for the Assembly to discuss the code in detail, but we have had examples in the past of things that come before the Assembly in the first instance, so that the Assembly can see that the code is not wider in scope than was foreseen as we discussed the Bill. Then, the things that stem from that, as the code is reviewed and amended, would come through the negative procedure. So, I think that there is an initial opportunity for the public at large to see that the code is appropriate and that it fits in with what we envisaged in the Bill, as an Assembly. That would give some comfort to those people who are concerned about the content of the code. I am proposing that as one possible way forward.

[249] **Huw Lewis:** I understand your point. There has to be an appropriate level of scrutiny and accountability in respect of the preparation of the code and the operation of the code as it develops, but there are a number of ways built into the system as we are describing it here in which that would happen. First, the Bill allows Welsh Ministers to issue guidance to HEFCW in respect of the code. The draft code must then be approved by Welsh Ministers before it can be published and come into force. That is an additional form of scrutiny and part of the memorandum that just does not exist. Alongside the code, HEFCW has to publish a statement of its intervention policy, setting out how it will exercise its powers of intervention across the entire system, and the Bill also makes provision for Welsh Minister to prescribe, by regulations, how HEFCW should prepare, consult and publish the statement. On top of that, Welsh Ministers would also use their guidance power to set out when it might or might not be appropriate for HEFCW to use its sanctions. Then on top of that, you have the necessity for HEFCW to submit an annual report. So, there are multiple layers of transparency—if you can have multiple layers of transparency. [*Laughter.*]

11:30

[250] **Simon Thomas:** I think that you will find that that leads to a lack of transparency. [*Laughter.*] Depending on the glass that you use. [*Laughter.*]

[251] **Huw Lewis:** Yes, okay. There are lock-safes—

[252] **Simon Thomas:** Safeguards.

[253] **Huw Lewis:** There are safeguards every step of the way.

[254] **Ann Jones:** Okay. Well, we are bang on time. Thank you very much. I do not think that there are any more questions. May I thank you and your officials, Minister, for that? There are a number of points we have asked for information on, which the clerks will contact your office about. I know that you are very busy but if we could have those it will help us to formulate the rest of the scrutiny of this Bill at Stage 1. As you know, you will get a copy of the transcript to check for accuracy. I thank you and your officials very much for coming.

[255] **Huw Lewis:** Thank you, Chair.

[256] **Ann Jones:** We will see where we go from here. Thanks very much.

11:31

**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**

[257] **Ann Jones:** I move that

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

[258] I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:31.
The public part of the meeting ended at 11:31.*