



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

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

**Dydd Mercher, 5 Tachwedd 2014**  
**Wednesday, 5 November 2014**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynnddi 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
Paul Davies	Ceidwadwyr Cymreig (yn dirprwyo ar ran Angela Burns) Welsh Conservatives (substitute for Angela Burns)
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
John Griffiths	Llafur Labour
Bethan Jenkins	Plaid Cymru The Party of Wales
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
David Rees	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales
Joyce Watson	Llafur (yn dirprwyo ar ran Lynne Neagle) Labour (substitute for Lynne Neagle)

**Eraill yn bresennol**  
**Others in attendance**

Helen Jones	Llywodraeth Cymru Welsh Government
Huw Lewis	Aelod Cynulliad, Llafur (y Gweinidog Addysg a Sgiliau) Assembly Member, Labour (Minister for Education and Skills)
Simon Moss	Llywodraeth Cymru Welsh Government

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

Sarah Bartlett	Dirprwy Glerc Deputy Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Marc Wyn Jones	Clerc Clerk
Gareth Rogers	Clerc Clerk
Siân Thomas	Y 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, everyone, and welcome to the Children, Young People and Education Committee. May I just cover the usual housekeeping rules? If you have your mobile phone on, could you make sure that it is on silent mode so that it does not disrupt everyone else? Those of you who are using your iPads, can you make sure that the ‘ping’ is off? If you should be receiving e-mails, the ‘ping’ drives me—. Well, I am sort of half way to being mad, but it does start to annoy me. Perhaps we could make sure that that is silenced. We are not expecting the fire alarm to operate. If it does, we will take our directions from the usher. Just for you to know, if we can go out through the main doors to my left, the assembly point is at the Pierhead building. We operate bilingually, as you know, so it is channel 0 for amplification of the floor language, and channel 1 for translation from Welsh to English.

[2] We have had apologies this morning from Lynne Neagle. We are delighted that Joyce is substituting. You are welcome to the committee, Joyce. Do Members need to declare any interests that they have not already declared before we move on? I see that no-one has any interests that they need to declare.

09:31

### **Y Bil Addysg Uwch (Cymru)—Cyfnod 2: Trafod y Gwelliannau Higher Education (Wales) Bill—Stage 2: Consideration of Amendments**

[3] **Ann Jones:** The main item of our agenda today is to take Stage 2 consideration of the Higher Education (Wales) Bill. Stage 2, of course, is the amendments. We are delighted to have with us the Minister for Education and Skills, Huw Lewis. Huw, would you like to introduce your team?

[4] **The Minister for Education and Skills (Huw Lewis):** Yes, of course. On my right is Helen Jones, and on my left is Simon Moss.

[5] **Ann Jones:** Okay. Thank you very much. In relation to this item, Members will probably have before them—or they should have—a copy of the Bill, the marshalled list of amendments and the grouping list for debate. So, if you have those—. If you do not have them, we can get you copies. However, we should be fine with that. Just for the record, and just to remind people, including me, only committee members can move amendments. So, Minister, those that are in your name I am happy to move, if that is the case. Are Members

content with the process that we are going to use, or do you want us to have a quick run through? I see that we are all happy with that.

**Grŵp 1: Gofynion Cyffredinol Cynlluniau (Gwelliannau 4, 5, 6, 9, 10, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23 a 24)**

**Group 1: General Requirements of Plans (Amendments 4, 5, 6, 9, 10, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23 and 24)**

[6] **Ann Jones:** We have 10 groups of amendments, but we will see how we go. I think that we have sufficient time to discuss them all. The first group of amendments relates to the general requirements of plans. The lead amendment in this group is amendment 4. Minister, would you like amendment 4 to be moved in your name?

[7] **Huw Lewis:** I would.

[8] **Ann Jones:** I move amendment 4 in the name of Huw Lewis. Minister, would you like to speak to that amendment and the other amendments in the group?

[9] **Huw Lewis:** Thank you, Chair. I have reflected on the committee's Stage 1 report recommendations, and the Government amendment 9 to section 13 addresses those concerns by removing a regulation-making power, placing more detail on the face of the Bill, and providing clarity about the Welsh Government's policy intention with regard to the enforcement of fee and access plan commitments. The effect of the amendment is to enable the Higher Education Funding Council for Wales to direct the governing body of a regulated institution to take steps, or to refrain from taking steps, for the purpose of dealing with or preventing a failure to comply with a general requirement of the institution's approved fee and access plan.

[10] I am aware that stakeholders have expressed concerns about the extent of HEFCW's powers of direction and I believe that this amendment provides clarity about the scope of those powers. For the avoidance of doubt, HEFCW will not be able to direct an institution to undertake expenditure other than that that it has already committed to undertake by virtue of the general requirements of its approved plan.

[11] Amendments to section 6—namely amendments 5 and 6—are necessary in order to define the term 'general requirements' of an approved plan, which is narrower in meaning than 'general provisions' of an approved plan. The effect of the amendment to section 6 is that the general requirements are the provisions that impose specific requirements on the governing body of an institution, whereas the general provisions also include the aspirational objectives that the institution aims to achieve.

[12] HEFCW's power of direction under section 13, as set out in amendment 9, will be limited to failures to comply with a general requirement of an approved plan. I believe that the amendment strikes the right balance between holding institutions to account for the delivery commitments made in their plans and encouraging institutions to set ambitious objectives for the promotion of equality of opportunity of access to higher education. The new section 13(3) ensures that HEFCW will not be able to issue a direction under section 13 if it is satisfied that the governing body has taken all reasonable steps to comply with the requirement in question. This amendment will have the effect of affording protection to regulated institutions that have taken all reasonable steps to comply with the requirements of their approved plans.

[13] An amendment is also required to section 1 of the Bill in order to clarify that Part 2 of the Bill deals with both a failure to comply with a fee limit and a failure to comply with a general requirement of an institution's approved plan. This is dealt with by amendment 4.

[14] Turning to amendment 18, which amends section 40, my intention is to ensure that, where HEFCW proposes to give a direction under section 13, regulated institutions are afforded the procedural protections set out in sections 41 to 43 of the Bill. These protections involve the giving of warning notices by HEFCW and the availability of independent review. I believe that this amendment is necessary to ensure that procedural safeguards are available to regulated institutions.

[15] Amendments 20 and 21, which amend section 48, are necessary to ensure clarity about the matters that fall within the scope of special reports under that section. Welsh Ministers will be able to direct HEFCW to provide a special report on compliance with the general requirements of approved plans generally or the general requirements of a particular approved plan. These amendments will provide consistency with the approach taken in sections 15, 36 and 38 of the Bill.

[16] I now turn to amendment 22, which amends section 49. Section 49 of the Bill requires HEFCW to prepare and publish a statement that sets out how it proposes to exercise certain intervention functions. Amendment 9, which amends section 13, makes it necessary to reconsider the scope of the requirements within section 49. This amendment extends the scope of HEFCW's statement to include directions under section 13. This will in turn ensure that institutions are informed about how HEFCW will exercise all of its intervention functions.

[17] Amendment 10, which amends section 15, and amendments 12, 13 and 14, which amend section 36, are consequential to the amendments to section 6. Amendments 15 and 16, which amend section 38, and amendment 24, which amends section 54, are also consequential to the amendments to section 6. Amendment 23, which amends section 52, is consequential to the amendment to section 13.

[18] **Ann Jones:** Right. Thank you—[*Inaudible.*] Suzy.

[19] **Suzy Davies:** Thank you, Chair. Thank you, Minister, for that. With regard to amendment 9, which deals with section 13, I think that this is an improvement in one particular way as it is clearer that HEFCW now has the power to demand ameliorating action from non-compliant higher education institutions. However, it gives even less of an indication of what might constitute non-compliance with the general requirement and how that might be proven than the existing section 13. Bearing in mind that section 42 requires that HEFCW gives its reasons for any directions being served, we are concerned now that the Bill gives no indication as to what evidence would be needed to show non-compliance or, indeed, what might be appropriate as specified steps. There is no reference to either guidance or regulation as a means to assist HEFCW on either front.

[20] Further, section 38(2)(b) refers to a power for HEFCW to withdraw approval for non-compliance with plans, with criteria for evidence to support the accusation of non-compliance to be introduced via regulation in section 38(3). So, I was just wondering: is it your intention that those regulations under section 38(3) would also perform the same function in your new section 13, and, if so, perhaps the Bill should make that more explicit? We recommend, however, the introduction of the reasonable steps defence in your revision, but believe that the same is equally met in amendment 46.

[21] **Ann Jones:** Are there any other Members who wish to speak?

[22] **Simon Thomas:** Rwyf am **Simon Thomas:** I want to welcome the fact goesawu'r ffaith bod y Gweinidog a'r that the Minister and the Government have Llywodraeth wedi ymateb i argymhellion y responded to the committee's

pwyllgor, ond rwy'n rhannu rhai o'r un pryderon â Suzy. Yn fwy penodol, rwy'n ei ffeindio'n anodd inni drafod effaith y gwelliannau hyn heb inni wybod gweddill y Bil a pha siâp fydd arno. A yw'r Llywodraeth, er enghraifft, yn mynd i dderbyn rhai o welliannau'r gwrthbleidiau ynglŷn â chynnwys y cynlluniau hyn yn ogystal â'r disgwyliadau sydd ar y cyrff i gydymffurfio â'r cynlluniau, sydd yr un mor bwysig yn fy marn i? Felly, ar hyn o bryd, nid yw'r Gweinidog wedi fy mherswadio bod y grŵp hwn o welliannau yn mynd yn ddigon pell i ymateb i argymhellion y pwyllgor, ac, felly, rydw i mewn sefyllfa lle rwy'n teimlo fy mod eisiau gweld y Bil hwn, ar ôl y broses hon, wedi ei wella cyn y rhan nesaf cyn gallu penderfynu a yw'r Llywodraeth wedi ymateb yn ddigonol i'r her yn adroddiad y pwyllgor a hefyd i'r hyn y mae'r prifysgolion a'r rhanddeiliaid eraill wedi bod yn dweud am y Bil.

recommendations, but I share some of the same concerns as Suzy. More specifically, I find it difficult for us to discuss the impact of these amendments without knowing the rest of the Bill and how it will take shape. Is the Government, for example, going to accept some of the opposition amendments on the content of these plans as well as the expectations on the bodies to comply with the plans, which are equally important in my view? At present, therefore, the Minister has not persuaded me that this group of amendments goes far enough to respond to the committee's recommendations, and, therefore, I find myself in a position where I feel that I want to see this Bill, after this process, as amended before the next stage before deciding whether the Government has responded adequately to the challenge posed by the committee's report and also to what the universities and other stakeholders have been telling us about the Bill.

[23] **Ann Jones:** Does anybody else want to say something? Minister, do you want to respond to those points?

[24] **Huw Lewis:** Chair, I believe that these amendments make clear the Government's policy intentions that HEFCW's enforcement of fee and access plans is to be focused on the commitments made by institutions in their approved plans, and that a safeguard should be afforded to institutions that undertake all reasonable steps to comply with those commitments. I take on board the comments that Simon Thomas and Suzy Davies have made. In response to Suzy, on the roles and regulations in section 38(3) in relation to amendments to section 13—I believe that that was the crux of the matter—the new section 13 is more clearly defined and the regulations in section 38 are separate from that.

[25] **Ann Jones:** Minister, do you wish to proceed to a vote on amendment 4?

[26] **Huw Lewis:** I do.

[27] **Ann Jones:** Thank you. The question is that amendment 4 be agreed to. Does any Member object? There is objection. We will go to a vote, then. We will take a vote by show of hands.

*Gwelliant 4: O blaid 7, Ymatal 0, Yn erbyn 3.  
Amendment 4: For 7, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Keith  
Davies, Paul  
Davies, Suzy  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

*Derbyniwyd gwelliant 4.  
Amendment 4 agreed.*

[28] **Ann Jones:** We will return to vote on the remaining amendments in group 1 in accordance with the marshalled list. We will move on to group 2.

**Grŵp 2: Annibyniaeth Sefydliadau a Rhyddid Academaidd (Gwelliannau 1,2 a 3)  
Group 2: Institutional Autonomy and Academic Freedom (Amendments 1, 2 and 3)**

[29] **Ann Jones:** The lead amendment in this group is amendment 1. Minister, would you like amendment 1 in your name to be moved?

[30] **Huw Lewis:** I would, Chair.

[31] **Ann Jones:** I move amendment 1 in the name of the Minister. I call on the Minister to speak to amendment 1 and the other amendments in the group.

[32] **Huw Lewis:** Thank you. I have reflected on the concerns of Members and stakeholders, and these amendments will protect institutional autonomy, academic freedom and the ability of charitable trustees to comply with charity law. The Government respects the autonomy of our institutions, including, of course, their academic freedom. It recognises their right to determine their own missions, design and deliver programmes of education, admit and examine students, develop and undertake programmes of research, engage in commercial activity, deploy income and other resources and determine governance, organisational structures and arrangements for the employment of staff. It is my view that the Bill, as introduced, does not infringe on the academic freedom of institutions. However, to put the matter beyond doubt, HEFCW will be required to take into account the importance of protecting academic freedom when exercising its new functions under the Bill.

[33] The amendments will also restrict the council from requiring an institution to do anything that is incompatible with charity law or its governing documents. My officials have discussed these amendments with the Charity Commission, which has confirmed that it is content with the amendments as drafted.

09:45

[34] I would like to emphasise that governing bodies will remain responsible for determining the strategic direction of their institutions. They will also be accountable to HEFCW for compliance with the requirements of the new regulatory system. In bringing forward this amendment, I have been conscious of the need to balance rights with responsibilities. As the beneficiaries of public funds, regulated institutions will be required to co-operate with, and be accountable to, HEFCW as the body responsible for implementing the new higher education regulatory system. This includes ensuring that fee limits are complied with, that fee and access plan commitments are delivered, that the quality of the education provided to students is adequate and that the institution is financially viable. These are matters that should concern each and every regulated institution in Wales. The new regulatory system will provide HEFCW with the necessary statutory functions to ensure institutions' compliance and thereby protect the reputation of the Welsh higher education sector.

[35] I have taken on board the comments and suggestions relating to institutional autonomy and academic freedom, and I bring forward these amendments in light of recommendation 15 of the Stage 1 report. I therefore ask Committee members to support amendments 2 and 3, which insert new sections into the Bill.

[36] Amendment 1, which amends section 1, is consequential to changes arising from amendments 2 and 3.

[37] **Ann Jones:** Okay, thank you. I call on Aled.

[38] **Aled Roberts:** Mae'n debyg mai dyma un o'n prif bryderon fel pwyllgor, a dyna pam y cafwyd argymhelliad 15. Felly, rwy'n croesawu'n fawr iawn datganiad cynhwysfawr y Gweinidog y bore yma. Rwy'n meddwl ei bod yn eithaf clir erbyn hyn beth yw safbwynt y Llywodraeth: ei bod yn cydnabod pwysigrwydd annibyniaeth a rhyddid academiaidd. Felly, rwy'n ddigon bodlon i gefnogi hyn.

**Aled Roberts:** I believe that that was one of our main concerns as a committee, and that is why we had recommendation 15. Therefore, I greatly welcome the comprehensive statement by the Minister this morning. I believe that it is quite clear by now what the Government's position is: it acknowledges the importance of autonomy and academic freedom. I am, therefore, quite willing to support this.

[39] **Ann Jones:** Okay. I call on Suzy.

[40] **Suzy Davies:** I agree that the recommendations have been met to some degree in this. However, I have one reservation about amendment 3, specifically. I am not entirely satisfied that the equivalent protections of the Further and Higher Education Act 1992 have been consolidated in this Bill, and the lack of consolidation is, perhaps, a missed opportunity there. The way that I look at this is that, perhaps, a combination of amendments 3, 41 and 42 might be sufficient to allay my concerns. I wonder, Minister, whether you might give some consideration to that proposition before we get to Stage 3.

[41] **Ann Jones:** Okay. I call Simon.

[42] **Simon Thomas:** Rwyf i, a Phlaid Cymru, yn croesawu'r gwelliannau gan y Llywodraeth ac am eu cefnogi. Fel y mae Suzy Davies newydd ei ddweud, mae'n nodweddiadol nad yw'r hyn sydd yng ngwelliant 3 cweit yr un peth â'r hyn sydd yn y gyfraith flaenorol, fel y cyfeiriwyd ato yn adroddiad y pwyllgor. Wrth gwrs, mae'n ddigon agored i'r Llywodraeth newid y ffordd y mae am gymryd deddfwriaeth sydd bellach yn 20 oed a'i rhoi mewn deddfwriaeth newydd, ond ni chawsom eglurhad o ran pam nad yw'r geiriad yr un peth, fel petai.

**Simon Thomas:** I welcome the Government's amendments, as does Plaid Cymru, and will support them. As Suzy Davies has just said, it is characteristic that what is in amendment 3 is not quite the same as what was in the previous legislation, as we referred to in the committee report. Of course, the Government has every right to change the way in which it wants to apply legislation that is now 20 years old, but we did not get any explanation as to why the wording was not the same.

[43] Rwy'n derbyn bod y Llywodraeth wastad wedi bod o'r farn nad yw ymreolaeth y sefydliadau wedi cael ei effeithio gan y Bil fel y mae, ond y pwynt yr oedd y pwyllgor yn ei wneud, a'r pwynt yr oeddem yn ei wneud fel Plaid Cymru, yw bod angen i bopeth gael ei weld ar wyneb y Bil fel bod pawb sy'n delio gyda'r Bil a'r rheoliadau sydd yn deillio o'r Bil—gan gynnwys pobl nad ydynt o gwmpas ar hyn o bryd, ond a fydd o gwmpas mewn 20 mlynedd—yn deall yn iawn pam rydym wedi llunio Bil o'r fath. Felly,

I accept that the Government has always been of the view that the autonomy of the institutions will not be impacted by the Bill as it stands, but the point that we, as a committee, made, and that Plaid Cymru made, too, was that everything needed to appear on the face of the Bill so that everyone who deals with the Bill and the regulations emerging from the Bill—including those people who are not around at present, but may be in 20 years' time—will fully understand why we have drawn up this



croesawaf yn fawr iawn y ffaith fod y Llywodraeth wedi symud ar y mater hwn. Er fy mod yn gofyn pam nad yw'r geiriad yn union yr un peth, rwy'n derbyn bod y pwrpas sydd y tu ôl i welliannau 2 a 3 yr un peth â'r hyn sydd gennym yn y Ddeddf flaenorol. Felly, rwy'n eu croesawu a gobeithiaf y bydd y pwyllgor yn cefnogi'r gwelliannau hyn.

Bill in this way. So, I am very pleased that the Government has moved on this issue. Although I would ask why the wording is not exactly the same, I accept that the purpose of amendments 2 and 3 is the same as what we have in the previous legislation. I welcome this and hope that the committee will support these amendments.

[44] **Ann Jones:** Okay, thank you. Minister, do you need to respond?

[45] **Huw Lewis:** Yes, Chair. In response to Suzy Davies's point about the Further and Higher Education Act 1992, several of the restrictions provided for in the 1992 Act are concerned with limitations on the conditions that Welsh Ministers may attach to funding allocated to HEFCW, and the terms and conditions that HEFCW may attach to funding allocated to institutions. This Bill is not concerned with HEFCW's funding arrangements and, consequently, restrictions related to the terms and conditions of funding are not relevant to HEFCW's new functions under the Bill. In simple terms, some of the restrictions in the 1992 Act will not read across to the regulatory framework set out in this Bill. However, I believe that these amendments address the concerns of the committee; they provide clarification that the Bill will not require members of a governing body to do anything that is incompatible with their responsibilities and duties as charitable trustees, as I say, or the rules set out in their governing documents. Additionally, they seek to promote the important principles of academic freedom and institutional autonomy by requiring HEFCW to take into account those principles when exercising its new functions under the Bill.

[46] **Ann Jones:** Minister, do you want to proceed to a vote on amendment 1?

[47] **Huw Lewis:** I do, thank you.

[48] **Ann Jones:** The question is that amendment 1 be agreed to. Does any Member object? There is no objection; therefore, amendment 1 is agreed.

*Derbyniwyd gwelliant 1 yn unol â Rheol Sefydlog 17.34.*

*Amendment 1 agreed in accordance with Standing Order 17.34.*

[49] **Ann Jones:** Again, we will return to vote on the remaining amendments in this group later in the proceedings.

**Grŵp 3: Cynnwys Cynlluniau Ffioedd a Mynediad (Gwelliannau 26, 27, 43, 54, 25 a 45)**  
**Group 3: Content of Fee and Access Plans (Amendments 26, 27, 43, 54, 25 and 45)**

[50] **Ann Jones:** The lead amendment in this group is amendment 26. I call on Suzy to move that amendment and speak to it and the other amendments in the group.

[51] **Suzy Davies:** I move amendment 26 in my name.

[52] Amendment 26 has been tabled to meet a recommendation of the Constitutional and Legislative Affairs Committee brought forward to try to resolve an uncertainty facing HEIs that arises from the Bill as currently drafted. Under section 4(1), an institution's fee and access plan must specify the period over which it is in effect. That period under section 4(2) cannot exceed a maximum period. The section does not say what a maximum period is or offer a process by which a maximum period might be identified and introduced. The explanatory memorandum explains that HEIs already have fee plans in place and that they have a maximum duration of two years by virtue of regulations introduced under the Higher

Education Act 2004. You indicated in evidence to CLAC, Minister, that, while the system embeds itself, you have no intention of changing that duration. So, my question is: why not use this opportunity to consolidate the position via the face of the Bill?

[53] I appreciate your position with draft regulations, which confirms that you are content with the initial maximum period of two years. So, I genuinely cannot see why there is a reason not to have that on the face of the Bill. Amendment 27 preserves all of the freedoms that you need to change that period at some time in the future. The explanatory memorandum predicts the need for plans of longer than two years' duration, but, at this stage, perhaps, you do not know how, and that is okay—we recognise the need to produce evidence that two years is too restrictive. So, we have no problem with you retaining a power to amend that period when you are clear that you know why you want to change it, and that changes will be practicable for HEIs working through an existing plan.

[54] Amendment 27 gives you a power that you do not seem to have at the moment—that is why I have introduced it—namely to set a maximum period through regulation. In my system, that would have to amend the Act, hence the need for the affirmative procedure, but at least the amendment gives you the power to set a maximum period, which section 4, as it is currently drafted, actually does not.

[55] Amendment 54 relates to a different matter and was inspired by the controversy surrounding the reduction of the financial contingencies funding to HEIs. We understand that this Bill seeks to bind HEIs in certain benevolent activities at the same time as reducing direct grant support to enable them to comply with statutory requirements. So, all the more reason for institutions to plan how to meet their obligations.

[56] Amendment 54 does not seek to limit your power to cut direct grant funding. It just asks you to understand that pulling the financial rug out at short notice can fundamentally damage an institution's chances of doing what it wants to do under its fees and access plan. So, HEIs might find themselves in breach of their own approved plans through no failings of their own, but due to a Government decision over which they have no control at all. So, this amendment just recognises the principle that committing to a course of action on the basis of legitimate expectation brings with it some protection and allows for HEIs to make a case in the face of any sudden financial cuts.

[57] **Simon Thomas:** Yn y grŵp hwn, mae gen i a Bethan Jenkins dri gwelliant. Bydd Bethan, mae'n siŵr, eisiau gwneud sylw ar welliant 25, felly gallaf adael hwnnw i Bethan. Mae gwelliannau 43 a 45 yn ymwneud â chynnwys y cynlluniau hyn. Yn benodol, mae gwelliant 43, achos mae gwelliant 45 yn ddilynol, yn gosod yr angen i hyrwyddo addysg drwy gyfrwng y Gymraeg fel rhan o'r cynlluniau ffioedd a mynediad. Pwrpas y gwelliant hwn, i bob pwrpas, yw diogelu dyfodol y Coleg Cymraeg Cenedlaethol. Ar hyn o bryd, mae'r coleg Cymraeg wedi ei ariannu gan Gyngor Cyllido Addysg Uwch Cymru fel mater o bolisi gan y Llywodraeth flaenorol sydd wedi cael ei fabwysiadu gan y Llywodraeth bresennol hefyd. Fodd bynnag, mae'r cyfnod cyllido hwnnw yn dod i ben a bydd cwestiwn yn cael ei ofyn ynglŷn â sut y bydd y coleg Cymraeg

**Simon Thomas:** In this group, Bethan Jenkins and I have three amendments. I am sure that Bethan will want to highlight amendment 25, so I can leave that to her. Amendments 43 and 45 relate to the content of these plans. Specifically, amendment 43, because amendment 45 is consequential, sets out the need to promote Welsh-medium education as part of these fee and access plans. The purpose of this amendment, to all intents and purposes, is to secure the future of the Coleg Cymraeg Cenedlaethol. At present, it is funded by the Higher Education Funding Council for Wales as a matter of policy by the previous Government that has also been adopted by the current Government. However, that funding period is drawing to a close and questions will be raised as to how the *coleg Cymraeg* will continue with its work.

yn parhau â'r gwaith.

[58] Mae modd dadlau—nid dyma'r lle, mae'n siŵr, i ddadlau ynglŷn â'r coleg Cymraeg ei hun—ynglŷn â'r ffordd rydych chi'n sicrhau darpariaeth cyfrwng Cymraeg mewn prifysgolion, ond mae'n ymddangos i mi os yw'r Llywodraeth yn cyflwyno cynlluniau ffioedd a mynediad sy'n cynnwys cydraddoldeb a mynediad i bawb, ac sydd yn ceisio hyrwyddo'r broses fwyaf agored posibl o addysg i bawb, fod rhoi darpariaeth Gymraeg yn y cyd-destun hwnnw yn gwbl briodol i'r Bil ac yn sicrhau bod llwybr i ddiogelu addysg Gymraeg ar gyfer y dyfodol. Nid oes gorfodaeth yma, yn yr ystyr nad oes dim byd yma nad yw prifysgolion i fod i'w wneud eisoes tu fewn i'r gyfundrefn sydd gennym ni. Yr hyn rwyf eisiau sicrhau drwy'r gwelliant hwn yw nad oes llithro yn ôl i'r sefyllfa lle'r oeddem ni yn gynharach, lle'r oedd y ddarpariaeth cyfrwng Cymraeg yn fratiog iawn, lle nad oedd strategaeth a lle nad oedd cynllun clir. Felly, mae gosod y Gymraeg, hyrwyddo'r Gymraeg a denu myfyrwyr i astudio drwy gyfrwng y Gymraeg, sydd i gyd yn rhan o welliant 43, yn gwbl briodol tu fewn i gynlluniau ffioedd a mynediad.

[59] Os caf i droi at ac ymateb i welliannau Suzy Davies a'r Ceidwadwyr hefyd, rwyf am eu cefnogi nhw mewn egwyddor. Rwy'n cydnabod bod, o bosibl, tyndra rhwng yr hyn rydych chi'n trio ei wneud wrth ymateb i bwyllgor arall, sef y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, a pheth o'r dystiolaeth a dderbyniom ni yn y fan hon yn y pwyllgor. Roedd pawb o'r farn nad oedd dwy flynedd yn ddigon i wybod a oedd y cynlluniau hyn yn gweithio ai peidio, ac roedd y cyngor cyllido addysg uwch yn ddigon clir ei farn nad oes modd i chi fesur deilliannau'r fath ddull o weithredu nes bod cyfnod hirach wedi dod i ben. Mae modd i chi fesur pethau penodol yn cael eu gwneud—*tick-boxes*, fel petai—ond nid oes modd i chi wybod a oeddynt wedi cael effaith yn y tymor hir. Ond, fel mae Suzy wedi egluro, mae modd i'r Gweinidog estyn y cynlluniau hyn tu hwnt i ddwy flynedd a rhoi terfyn arnyn nhw, ac rwy'n meddwl bod hynny'n eithaf pwysig hefyd. Gwnaeth Suzy'r pwynt bod y diffyg

One could argue—this probably is not the place to argue about the *coleg Cymraeg* itself—about how you ensure Welsh-medium provision within universities, but it appears to me that if the Government is introducing fee and access plans that include equality and access for all and which endeavour to promote the most open process possible for education for all, putting Welsh-medium provision in that context is entirely appropriate for the Bill, and ensures that there is a route to safeguard Welsh-medium education for the future. There is no requirement here, in the sense that there is nothing here that universities are not supposed to be doing already within the regime that we have. What I want to ensure through this amendment is that there is no slippage back to the position where we were in the past, where the Welsh-medium provision was very patchy, where there was no strategy and where there was no clear plan. So, putting the Welsh language, the promotion of the Welsh language and attracting students to study through the medium of Welsh, which are all part of amendment 43, within the fee and access plans is entirely appropriate.

If I may turn to and respond to Suzy Davies and the Conservatives' amendments too, I will support them in principle. I acknowledge that there may be some tension between what you are trying to do in responding to another committee, namely the Constitutional and Legislative Affairs Committee, and some of the evidence that we received here in this committee. Everyone was of the opinion that two years was not enough to know whether these plans were working or not, and HEFCW was quite clear in its view that you cannot evaluate the outcomes of this kind of approach until a longer period has elapsed. You can look to measure the specifics that are being done—you can take the boxes, as it were—but you cannot know whether they had a long-term impact. However, as Suzy has explained, there is a way for the Minister to extend these plans beyond two years and to draw them to a close, and I think that that is quite important too. Suzy made the point that the inability to put an end to these may be a means for a Government in the future to undo

modd i bennu terfyn ar y rhain, efallai, yn ffordd i Lywodraeth yn y dyfodol ddadwneud y polisi hwn, drwy, i bob pwrpas, adael i gynlluniau redeg yn rhy hir heb fawr o effaith. Felly, mewn egwyddor, er nad wyf yn siŵr os yw'r geiriad yn berffaith, byddaf yn eu cefnogi heddiw er mwyn i ni gael symud ymlaen i'r rhan nesaf i ddeall y pwynt hwnnw.

[60] Ond, rwy'n gofyn yn benodol i'r pwyllgor heddiw gefnogi gwelliannau 43 a 45 ynglŷn ag addysg cyfrwng Cymraeg, ac, wrth gwrs, i gefnogi gwelliant 25. Mae'n siŵr y bydd Bethan yn sôn am hwnnw.

[61] **Aled Roberts:** Rwy'n meddwl bod Simon wedi gwneud pwynt digon teg ynglŷn â'r tyndra sydd rhwng y dystiolaeth a glywsom ni o ran maint neu ba mor hir y dylai'r cynlluniau hyn fod. Rwy'n gobeithio hwyrach y gwnaiff y Gweinidog ystyried yr hyn mae wedi ei glywed heddiw ac efallai bod modd i'r Llywodraeth ddod yn ôl at hwn yn y rhan nesaf.

[62] Hefyd, rwy'n meddwl bod gwelliannau 43 a 45 yn eithaf pwysig a dylai'r Gweinidog ymateb iddynt, achos yn ystod y ddadl ddoe ar bolisi strategol y Llywodraeth ynglŷn â'r iaith Gymraeg, cododd y gwahaniaeth rhwng strategaeth a darpariaeth ar lawr gwlad. Rwy'n siŵr bod Simon yn yr un sefyllfa a fi lle mae'n meibion ni ar hyn o bryd yn mynd drwy broses o geisio am leoedd mewn prifysgolion. Rwy'n meddwl ei bod hi'n werth sôn am y camau mawr sydd wedi cael eu cymryd o ran darpariaeth yn yr iaith Gymraeg, ond mae wedi bod yn gryn syndod i mi nad oedd y ddarpariaeth cyn sefydlu'r Coleg Cymraeg Cenedlaethol wedi symud pethau ymlaen rhyw lawer ers i Simon a finnau fod yn y brifysgol yn y 1980au—

[63] **Simon Thomas:** [*Anhyglyw.*]

[64] **Aled Roberts:** Y 1970au. [*Chwerthin.*]

[65] Hwyrach y dylwn i wrando ar yr hyn mae'r Gweinidog yn ei ddweud ond, ar hyn o bryd, rwy'n barod iawn i gefnogi gwelliannau 43 a 45, a gwelliant Bethan Jenkins. Nid wyf mor fodlon, ond, ar hyn o

this policy, by, to all intents and purposes, allowing plans to run for too long without them having much impact. So, in principle, although I am not sure if the wording is perfect, I will support them today just so that we can move on to the next stage to understand that point.

However, I ask specifically for the committee today to support amendments 43 and 45 regarding Welsh-medium education and, of course, to support amendment 25. I am sure that Bethan will talk about that.

**Aled Roberts:** I think that Simon has made a fair point about the tension between the evidence that we heard in terms of the magnitude or how long these plans should be. I hope that, perhaps, the Minister will consider what he has heard today and that it might be possible for the Government to come back to this in the next part.

I also think that amendments 43 and 45 are quite important and that the Minister should respond to them, because during yesterday's debate on the strategic policy of the Government on the Welsh language, the difference between strategy and provision on the ground came up. I think that Simon is in the same position as me, where our sons are currently going through the process of applying for places at university. I think that it is worth mentioning the big steps that have been taken in terms of Welsh-medium provision, but it has been quite a surprise to me that the provision before the Coleg Cymraeg Cenedlaethol was established had not moved things forward much since Simon and I were in university in the 1980s—

**Simon Thomas:** [*Inaudible.*]

**Aled Roberts:** The 1970s. [*Laughter.*]

Perhaps I should listen to what the Minister says, but, at present, I am very willing to support amendments 43 and 45, and Bethan Jenkins's amendment. I am not quite so content, but, at present, I will support Suzy

bryd, fe wnaf i gefnogi gwelliannau Suzy Davies's amendments in order to see what Davies er mwyn gweld beth yn union wnaiff exactly the Government brings forward at the y Llywodraeth ddod ymlaen ag ef yn y rhan next stage. nesaf.

10:00

[66] **Bethan Jenkins:** On amendment 25, which I have tabled to complement the Bill that I have going through the Assembly, which you are all well aware of, and particularly section 13, which is 'Advice for students', I believe that it shows that I am trying to focus, across the board, on how, potentially, financial education as a core life skill is important, as is the pastoral element of student experience. While student advice services do exist, they do exist to varying degrees at the moment, due to the financial constraints within institutions, therefore, it is important that, at a time when young people are potentially managing money for the first time in their lives, they do have robust access to financial literacy.

[67] In response to my consultation on the proposal for my Member-proposed Bill, there was strong support from students in HE for this to go forward, but, as everybody will know, my Bill could only go so far, hence my effort to try to fit in amendments to areas where I deem it appropriate to do so.

[68] I would envisage—although, obviously, the amendment does not stipulate this—that institutions would provide one-stop shops, potentially through supporting student union activity, where students would be able to find more information about credit unions, organisations that provide information about debt support and those that provide financial education. The idea for this came from conversations with National Union of Students Wales, having published the 'Pound in Your Pocket' survey, in which it stipulated that it would like to see Welsh Government provide more support for HEI's in relation to the role of credit unions on campuses across Wales.

[69] So, I see it as complementing the outcomes of this particular Bill. I know that the Welsh Government has objected to section 13 of my Bill, not on principle but on the workability of it. So, I would say, if that is an issue for that Bill, then the workability of it, I think, fits neatly into this Bill, considering that we are talking about how we can ensure the widening access agenda that the Minister has talked about previously so strongly, hence why I think it would fit very neatly here, after section 6.

[70] With regard to the other amendments, I would like to echo my support for Simon Thomas's amendments, taking us, perhaps, back to the 2000s, when we campaigned for the *coleg ffederal*, as it was then referred to, to come into existence, because many of us—

[71] Roedd nifer ohonom wedi mynd trwy addysg Gymraeg yn yr ysgol, ond wedyn ddim wedi gallu cael yr addysg honno yn y brifysgol. Felly, mae'n bwysig iawn ein bod yn cael hyn yn gryf mewn deddfwriaeth, fel nad ydym, fel y dywedodd Simon Thomas, yn mynd gam yn ôl. Many of us had gone through Welsh-medium education at school, but then could not get that education at the university level. Therefore, it is very important that we place this robustly in legislation, so that, as Simon Thomas says, we do not take that step backwards.

[72] Byddem yn dangos yr un math o ddiddordeb yn yr hyn y mae Suzy Davies wedi'i roi i mewn ynglŷn â'r tyndra rhwng beth mae'r pwyllgor arall wedi'i benderfynu, dim ond yng nghyd-destun y ffaith bod angen inni fod yn hollol ymwybodol, efallai, nad I would show the same kind of interest in what Suzy Davies has tabled, in terms of the tension with what has been decided by another committee, just in the context of the fact that we have to be entirely aware that, perhaps, two years does not allow us the time

yw dwy flynedd yn caniatáu inni edrych yn benodol iawn ar yr hyn y mae'r cynlluniau ffioedd yn ei wneud a sut maent yn effeithio ar fywydau pob dydd myfyrwyr yn y brifysgol. to look in great detail at what the fee and access plans do and how they impact the everyday lives of students at universities.

[73] **Ann Jones:** Thank you. Does anybody else want to come in? No. I call the Minister.

[74] **Huw Lewis:** Amendments 26 and 27 to section 4, tabled by Suzy Davies, would have the effect of specifying the maximum duration of a fee and access plan on the face of the Bill and would also make provision for the Welsh Ministers to amend that maximum duration by way of regulations. As Suzy has said, currently the maximum duration of a fee plan is two years and is prescribed in regulations made under the Higher Education Act 2004. As Suzy has said, I have no immediate plans to alter this period.

[75] Section 4(2) of the Bill as introduced provides for the Welsh Ministers to prescribe in regulations the maximum period in respect of which a fee and access plan is to have effect. Members will be aware that I have recently brought forward draft regulations that include provision for the maximum duration of an approved plan. I do appreciate that institutions are concerned to have certainty about the duration of their plans during the initial period of operation of the new regulatory system. I am therefore willing to accept the principle underpinning amendments 26 and 27. To ensure that the provisions that form part of the Bill are as clear as possible, I commit to bringing forward an amendment at Stage 3 to address this matter. Specifically, I will bring forward an amendment in order that the maximum duration of a plan is set, on the face of the Bill, at two years. I will also bring forward an amendment that provides for that period to be amended by regulations that are subject to the affirmative procedure, and for the Welsh Ministers to undertake consultation prior to the making of those regulations.

[76] If I may turn now to amendment 43 to section 6, tabled by Simon Thomas, the Bill does not make specific provision relating to Welsh-medium courses. The Bill applies equally to both Welsh-medium and English provision by regulated institutions. There are restrictions on the Welsh Ministers' powers to prescribe provisions for inclusion in fee and access plans. In particular, they may not require institutions to include provision,

[77] 'referring to particular courses or to the manner in which courses are taught, supervised or assessed'.

[78] That is section 6(5). I believe that amendment 43 would likely conflict with these restrictions.

[79] In addition, amendment 43 to section 6 would potentially conflict with the Government amendment to protect academic freedom, which has been tabled to address the concerns of this committee and the HE sector. The Welsh Government recognises that HE institutions in Wales have a key part to play in achieving its goal of creating a confident bilingual Wales. The establishment of the Coleg Cymraeg Cenedlaethol in 2011 was an important step in the continued development of Welsh-medium higher education. Key milestones include the development of an academic plan for Welsh-medium HE provision, the establishment of academic staffing and academic staff development schemes, the development of a Welsh language skills certificate and the establishment of undergraduate and postgraduate scholarship schemes. Through the *coleg*, the Welsh Government will continue to support the development of Welsh-medium higher education. While the *coleg* has achieved so much already, there is always more that can be done. To this end, my officials, HEFCW and the *coleg* will be looking closely at the recommendations of a recent evaluation of the outcomes of the *coleg*'s activities.

[80] I turn next to amendment 54, which also amends section 6, tabled again by Suzy Davies. This amendment, in my opinion, does not work. Section 6(3)(b) describes one of several provisions that may be prescribed by way of regulations for inclusion in a fee and access plan. This particular provision concerns the measures that a regulated institution commits to undertake in order to retain students who are members of underrepresented groups. Amendment 54 suggests that the provision that may be prescribed in regulations could in some way be contingent upon financial provision that the Welsh Ministers make available, such as the statutory student support package. I do not think that the Bill allows for regulations to be drafted in the way that amendment 54 suggests. Members will have seen the draft regulations that I have made available to the committee. The regulations do not provide for any linkage with the Welsh Government's statutory student support package. While that package of support is subject to change, the changes to the student support regulations are routinely subject to consultation in any event.

[81] In respect of amendment 25, which inserts a new section into the Bill, tabled by Bethan Jenkins, I am confident that this amendment is not necessary, as institutions offering HE already provide a broad range of information and guidance relating to financial management to their students and prospective students. There is a broad range of provision of advice about financial management to learners. Advice and guidance to promote financial literacy skills are an integral component of the pastoral and welfare services that institutions offer their students, often in partnership with institutional student unions. This includes online information and support, workshops and one-to-one advice sessions. It is in the institutions' interests to ensure that information and guidance on financial management are provided to students as this will help to reduce the number of students that drop out from their studies due to financial difficulties.

[82] In respect of the HE sector, revised guidance issued by HEFCW in January this year concerning the funding of students unions places an expectation on students unions to promote the interests and welfare of students in partnership with the institution. In addition, ColegauCymru is engaged in a number of high-profile activities to ensure that learners have access to advice on financial management. ColegauCymru is the Wales manager for two UK-funded financial literacy projects aimed at young people.

[83] FE corporations are already participating in these programmes. Therefore, it is my opinion that institutions are already providing sufficient support and advice services to their students, and I do not support amendment 25.

[84] The final amendment in this group is amendment 45, tabled by Simon Thomas, which amends section 7. This amendment is unnecessary. It is implicit that HEFCW may only approve a fee and access plan where it is satisfied that an institution has made provision in its plan for the matters prescribed in regulations under section 6. Section 6 of the Bill states that fee and access plans must include such provisions as are prescribed by regulations. The draft regulations that I have made available to the committee do provide for HEFCW, in determining a proposed fee and access plan, to take into account provisions relating to the promotion of equality of opportunity and the promotion of higher education. However, and in any event, the Bill does not enable HEFCW to approve a proposed plan that does not satisfy the requirements under section 6. In conclusion, Chair, I urge Members not to support amendments 26, 27, 43, 54, 25 and 45.

[85] **Ann Jones:** Thank you, Minister. Suzy, do you want to reply to the debate?

[86] **Suzy Davies:** May I just thank all Members for their very considered contribution to this part of the debate? I particularly thank the Minister for his observations regarding amendments 26 and 27, but I might have to take advice from the Chair on how we deal with

this, because I have already moved amendment 26.

[87] **Ann Jones:** It is all right. You finish off, and then I will come back to you on that.

[88] **Suzy Davies:** Bearing in mind what you said, Minister, I am minded not to proceed with those two amendments on the basis of the reassurances that you have given, although it would be quite helpful if you could, at some point, let me know whether you had any particular problem with the drafting of these amendments and accepting those rather than deciding to proceed with those of your own.

[89] With regard to amendment 25, we have some sympathy with this, but, Bethan, in your response to this debate, you said that you could—I am trying to pick out your words, here. You said that you could only go so far in your own Bill. However, what I am not clear about is why you think that you are able to use this Bill to overcome the problems that you are facing in your own Bill. I appreciate that your intention is entirely benevolent here, but because I am not clear why this Bill can do something that your other Bill cannot, I do not think that we can support amendment 25 today.

[90] We support amendment 43. We are very happy to do that, and we are persuaded by Simon Thomas's arguments on that. I do not find the Minister's response on amendment 45, which is related to amendment 43, to be completely compelling. However, we do have a concern of our own on amendment 45, Simon, which is that, even though we completely support what you are trying to do with it, it is not clear to me what is actually already prescribed in section 6. So, we would be committing to something that we are not entirely sure what it is. If you are able to bring back a slightly different version of this at Stage 3, we would be very happy to support it.

[91] Regarding amendment 54, I hear what you say, Minister. I am quite happy to take your arguments on that, but in that case I would like to know what you are bringing forward at Stage 3 to overcome the difficulties of sudden withdrawal of fundings on which organisations have already taken steps, and upon which they are already relying. Legitimate expectation is a principle that needs some thought. Thank you.

[92] **Ann Jones:** You have moved amendment 26, which was the lead amendment in the group. However, I can ask whether you wish to proceed to a vote on amendment 26 or to withdraw the amendment.

[93] **Suzy Davies:** I would seek your help in not moving forward with this amendment.

[94] **Ann Jones:** You want to withdraw it.

[95] **Suzy Davies:** I want to withdraw it, if you do not mind.

[96] **Ann Jones:** Okay. Is the committee agreeable to amendment 26 being withdrawn? Okay. Thank you very much.

*Tynnwyd gwelliant 26 yn ôl gyda chaniatâd y pwyllgor.  
Amendment 26 withdrawn by leave of the committee.*

[97] **Simon Thomas:** If that is what Suzy wants.

[98] **Ann Jones:** Well, there we go.

[99] **Suzy Davies:** It may come back.



[100] **Ann Jones:** There was a very long sort of process that I could have relayed under Standing Orders, but I do not think that we need to do that. Would you like to move amendment 27?

[101] **Suzy Davies:** No, I will not be moving amendment 27.

[102] **Ann Jones:** Okay. So, amendment 27 has not been moved.

*Ni chynigiwyd gwelliant 27.  
Amendment 27 not moved.*

[103] **Ann Jones:** Simon, would you like to move amendment 43?

[104] **Simon Thomas:** Cynigiau welliant **Simon Thomas:** I move amendment 43 in my name.

[105] **Ann Jones:** So, amendment 43 is going to a vote. Does any Member object to amendment 43? There is objection. We will therefore take a vote by show of hands.

*Gwelliant 43: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 43: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul  
Davies, Suzy  
Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 43.  
Amendment 43 not agreed.*

10:15

[106] **Ann Jones:** Suzy, you would like to move amendment 54.

[107] **Suzy Davies:** I move amendment 54 in my name.

[108] **Ann Jones:** Okay. Amendment 54 has been moved. Does any Member object to amendment 54? There is objection, so we will move to a vote by show of hands.

*Gwelliant 54: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 54: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Paul Davies  
Suzy Davies

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Keith Davies  
John Griffiths

Bethan Jenkins  
Simon Thomas  
Aled Roberts

Ann Jones  
David Rees  
Joyce Watson

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 54.*

*Amendment 54 not agreed.*

**Grŵp 4: Mesurau i Ddiogelu Sefydliadau (Gwelliannau 44, 46, 55, 56, 17, 41, 42 a 53)**  
**Group 4: Institutional Safeguards (Amendments 44, 46, 55, 56, 17, 41, 42 and 53)**

[109] **Ann Jones:** The lead amendment in this group is amendment 44. I therefore call on Simon to move amendment 44 and speak to it and any other amendments in the group.

[110] **Simon Thomas:** Rwyf yn cynnig gwelliant 44 yn fy enw i.

**Simon Thomas:** I move amendment 44 in my name.

[111] Mae hefyd gennyf ddau welliant arall yn y grŵp hwn, sef 46 a 53. Maen nhw'n wahanol iawn, felly byddaf yn mynd trwyddynt fesul un.

I also have two other amendments in this group, namely 46 and 53. They are all very different, so I will take them one by one.

[112] Rwy'n siŵr y bydd y Llywodraeth yn ymosod ar welliant 44, ond pwrpas cynnig y gwelliant ar hyn o bryd yw gweld pa mor bell y mae'r Llywodraeth am fynd gyda rheolaeth ariannol dros y rhan honno o gyllideb prifysgolion nad yw'n deillio o ffynonellau cyhoeddus. Mae gwelliant 44, fel y mae, yn cyfyngu'r gofynion ariannol a'r sancsiynau y gellir eu rhoi ar sefydliadau sy'n dod o dan y Bil hwn i'r incwm sy'n deillio o fyfyrwyr sydd ar gyrsiau sydd wedi'u cymhwyso. I bob pwrpas, mae'n cyfyngu ar y ffordd y mae'r Llywodraeth, drwy HEFCW, yn gallu dylanwadu ar neu reoli cynlluniau ffioedd a mynediad a gwariant prifysgolion i'r rhan honno o'u hincwm sy'n dod gyda myfyrwyr a ffioedd myfyrwyr. Rwy'n gwybod nad yw hynny'n cynnwys pob rhan o arian cyhoeddus, ac rwy'n gwybod felly, ac yn derbyn, nad yw'r gwelliant ar ei ffurf bresennol yn berffaith, o bosibl, ond rwyf yn meddwl ei fod yn codi cwestiwn o egwyddor bwysig—cwestiwn oedd yn fwy pwysig, rhaid imi gydnabod, cyn imi gael y gwelliannau am reolaeth prifysgolion gan y Llywodraeth y gwnaethom eu cefnogi yn gynharach, sef grŵp 2. Mae hynny wedi helpu yn y broses hon. Beth bynnag am hynny, mae'r gwelliant i lawr, felly mae'n

I am sure that the Government will reject amendment 44, but the purpose of proposing it at this juncture is to see how far the Government will go in terms of financial management over that part of university budget that does not stem from public sources. Amendment 44, as it stands, limits the financial requirements and the sanctions that can be placed on institutions caught within the remit of this Bill to the income that stems from students studying on qualifying courses. To all intents and purposes, it limits the extent to which the Government, through HEFCW, can actually control fee and access plans and university expenditure to that part of their income that comes through students and student fees. I know that that does not include all aspects of public funding, and therefore I accept that the amendment in its current form is not perfect, perhaps, but I do think that it raises an important question of principle—a question that was more important, I have to admit, before we saw the Government amendments on university autonomy, which were supported in group 2. That has assisted in this process, without doubt. However, I have tabled the amendment, so we have to consider it. However, that is its purpose: to ensure that it

rhaid ei ystyried. Fodd bynnag, dyna beth yw ei bwrpas: gwneud yn siŵr nad oes modd ymhél â'r rhan o incwm prifysgol nad yw'n deillio o arian cyhoeddus. Felly, os oes gan brifysgol arian preifat, neu arian sy'n deillio o fenthyciad banc neu beth bynnag, nid yw hwnnw i fod i ddod o dan y gofynion ariannol o dan y Bil hwn. Dyna beth yw pwrpas gwelliant 44.

[113] 'Nawr, mae gwelliant 46 yn rhywbeth gwahanol, ond rhywbeth, rwy'n gobeithio, y bydd y Llywodraeth yn fwy agored i'w dderbyn. Mae'n estyn rhesymoldeb ar draws y Bil. Rydym eisoes wedi trafod rhan o'r egwyddor hon yng ngrŵp 1, lle'r oedd y Gweinidog wedi cynnig nifer o welliannau. Mae eisoes ar wyneb y Bil. Mae adran 36 o'r Bil yn sicrhau nad oes modd ystyried sefydliad o'i fod wedi methu â chwrdd â gofynion cynllun ffioedd a mynediad os ydyn nhw wedi cymryd camau ymarferol. Felly, mae hynny eisoes ar wyneb y Bil. Yr hyn y mae gwelliant 46 yn ei wneud yw estyn yr un egwyddor o adran 36, sy'n ymwneud â chymeradwyo cynllun, i'r cynlluniau yn fwy cyffredinol. Felly, ar hyn o bryd, mae adran 36 yn y Bil, yn sicrhau bod camau ymarferol yn amddiffyniad rhag cyhuddiad, os liciwch chi, nad yw prifysgol wedi cynllunio ei chynllun yn briodol. Mae gwelliant 46 yn estyn hynny i amodau mwy cyffredinol y cynllun ffioedd a mynediad.

[114] Mae'n wir dweud bod rhywbeth tebyg yn y ddarpariaeth bresennol yn Lloegr, sy'n berthnasol i'r peth, ond nid oes rhaid inni ddilyn yr hyn sy'n digwydd yn Lloegr. Fodd bynnag, gwir yw dweud ei bod yno, ac mae'n deg nodi hynny.

[115] Nid wyf yn siŵr iawn pam yr ydym ond yn caniatáu i gamau ymarferol ddigwydd mewn un cyd-destun, sef o'i sancsiynau, i bob pwrpas, yn dilyn, ond nid camau ymarferol yn y cyd-destun arall. 'Nawr, hefyd, mae gwelliannau grŵp 2, yn enwedig yr un ynglŷn â statws elusennol prifysgolion, o bosibl 'nawr yn effeithio ar welliant 46, rwy'n meddwl, achos mae rhywfaint o sicrhau wedi cael ei roi ar wyneb y Bil ynglŷn â'r ffordd y mae prifysgolion yn ymddwyn fel elusennau bellach. Fodd bynnag, byddaf eisieu clywed yr hyn sydd gan y Gweinidog i'w ddweud fel ymateb i

is not possible to deal with that part of a university's income that does not stem from public funds. If they have private income or a bank loan or whatever else it may be, that should not be caught within the remit of the financial requirements under this Bill. That is the purpose of amendment 44.

Now, amendment 46 is something very different, but something, I hope, the Government will be more open to considering. This extends rationality, if you like, or reasonableness, across the Bill. We already discussed part of this principle in group 1, where the Minister proposed a number of amendments. It is already on the face of the Bill. Section 36 ensures that it is not possible to consider an institution to have failed to meet the requirements of a fee and access plan if they have taken reasonable steps. So, that is already on the face of the Bill. What amendment 46 does is to extend the same principle from section 36, which relates to approval of plans, to the plans more generally. So, at present, section 36 in the Bill ensures that practical steps have a defence against any accusation that a university has not planned its plan appropriately. Amendment 46 extends that to the more general conditions of the fee and access plans.

It is true to say that there is something similar in the current provision in England, which is relevant, but we do not actually have to follow what happens in England. However, it is in place, and it is fair to actually note that point.

I am not exactly sure why we are only allowing practical steps to apply in one context, in certain sanctions, but not in others. Also, amendments in group 2, particularly the amendment on the charitable status of universities, will perhaps have an impact on amendment 46, because I think that there is some assurance provided on the face of the Bill in terms of how universities behave as charities now. However, I would want to hear what the Minister has to say in response to that.

hynny.

[116] Fy ngwelliant olaf yn y grŵp hwn yw gwelliant 43. Mae'n ymwneud, yn gwbl ymarferol, â camau'r broses, os liciwch, o sut mae'r holl beth yn cael ei wneud. Felly, os ydym yn mynd i ymwneud â chynlluniau ffioedd a mynediad, ac os ydym yn mynd i roi gofynion ar ben prifysgolion, mae'r cwestiwn yn codi o sut y gallwn wneud yn siŵr bod hyn yn cael ei wneud yn y ffordd mwyaf priodol. Felly, os edrychwch chi fel pwyllgor ar 43, ac rwy'n mawr obeithio y byddwch yn cefnogi hwn, mae'n syml iawn—

My final amendment in this group is amendment 43. It relates, on a completely practical basis, to the process steps of how all of this is done. So, if we are to deal with fee and access plans, and if we are to place requirements on universities, the question arises as to how we can ensure that this is done in the most appropriate way possible. So, if you as a committee look at 43, and I very much hope that you will support this, it is very simple—

[117] **Ann Jones:** It is 53 not 43.

[118] **Simon Thomas:** Sori, 53. Mae'n ddrwg gyda fi. Rwyf yn y 40au, ond dyna fe.

**Simon Thomas:** Sorry, 53. I apologise. I am in the 40s, but there we are.

[119] **Ann Jones:** We all wish we were. [*Laughter.*]

[120] **Simon Thomas:** Rwy'n sôn am yr un gwelliant, ond 53, mae'n ddrwg gyda fi, nid 43, yw e. Mae gwelliant 53 yn gosod allan ar wyneb y Bil y camau sydd yn rhaid eu cymryd gan unrhyw un—yn benodol, y Gweinidog—wrth wneud rheoliadau er mwyn sicrhau bod pethau yn cael ei wneud mewn ffordd gymen, os liciwch chi. Felly, mae'n rhaid i'r peth fod wedi cael ei ysgrifennu ac mae'n rhaid i'r peth fod wedi ei ymgynghori arno ymlaen llaw. Mae'n rhaid gwneud yn siŵr bod y corff rheoli—eto, mae hyn yn mynd yn ôl at statws elusenol corff—yn meddwl ei bod yn briodol i gydymffurfio â'r wybodaeth, cyfarwyddyd, neu'r cyngor ym mhob cyd-destun. Felly, mae, yn syml iawn, yn gwneud yn siŵr bod proses sy'n ymwneud â'r prifysgolion wrth weithredu'r Bil. Felly, gyda hynny o ymddiheuriad, mae gwelliant 43—53 rwy'n sôn amdano, sori. Well i mi dewi cyn i mi— [*Chwerthin.*]

**Simon Thomas:** I am talking about the same amendment, but it is 53, sorry, not 43. Amendment 53 sets out on the face of the Bill the steps that must be taken by anybody—specifically, the Minister—in making regulations to ensure that things are done properly, if you like. So, it has to be in written form and it has to have been consulted upon beforehand. It must be ensured that the governing bodies—again, this goes back to charitable status—feel that it is appropriate to comply with the information, advice or guidance in all circumstances. So, quite simply, it ensures that there is a process in place in relation to universities in implementing the Bill. So, with that apology, amendment 43, sorry, it is 53 that I am talking about. Perhaps I should actually stop talking before I— [*Laughter.*]

[121] Mae angen Bil Bethan arnaf i wella fy nghyfri. Rwy'n gofyn i'r pwyllgor gefnogi'r gwelliannau hyn, a gwnaf ymateb i welliannau eraill.

I need Bethan's Bill to improve my counting. I ask the committee to support the amendments, and I will respond to other amendments.

[122] **Ann Jones:** Okay. Thank you. It got very confusing, because I was looking at—. Anyway, there we go, we have cleared that one up. Suzy, do you want to speak?

[123] **Suzy Davies:** Yes, please. I am definitely in the 50s, Minister. I hope that you will

look favourably, anyway, on amendment 55, which simply seeks to remove an ambiguity in section 36(7)(b). Section 36(3) sets out four very particular instances of failure to comply with existing fee and access plans that trigger HEFCW's power to serve notice on an institution that it will not approve a future plan within a given period. Now, considering the possible effects of such a power, everybody needs to be completely clear about the grounds that trigger that power. At the moment, it is possible to read subsection 7(b) as allowing for the creation of additional grounds, but your adviser, in evidence to the Constitutional and Legislative Affairs Committee, made it plain that there was no intention to create additional grounds, which is very welcome, of course. So, the intention of subsection 7(b) is for regulations to describe what criteria would be needed to be evidenced before a claim of failure to comply under subsection 2 would be sufficiently supported to serve the notice in the first place. I hope that my amendment just makes that distinction a lot clearer. It certainly does not affect your policy intention or the purpose of the section at all. I think that amendment 56 makes that distinction apparent and brings clarity to the face of the Bill without interfering with the intention of section 36. I do not think that you can argue that it is not ambiguous at the moment because, if I found it ambiguous, some other people are likely to as well.

[124] Amendment 55 deals with the service of a notice, but that amendment to the text of subsection 7(b), if it is agreed today, requires the reintroduction of the concept of withdrawing a notice, which is what I have done with amendment 56. Amendment 55 concentrates everything on the grounds to give a notice in the first place, but, of course, we need to deal with what happens in a situation where that notice needs to be withdrawn. Whereas the Bill sets out the grounds for serving a notice at subsection 3, it does not set out the grounds for the withdrawal of a notice. I think that the Bill would be better balanced if it did, but, in the absence of evidence on what those grounds might be, I think that we are left with a regulatory route. However, because the regulations regarding withdrawal were actually introducing grounds, they are different in character from regulations that give details about the evidence required to prove grounds. This is also why subsection 7(b) would be necessary if my previous amendment goes through—well, I think it is necessary anyway, actually, because it conflates two types of regulation: one introductory, in the case of withdrawing notices, and one evidential, in the case of serving notices. I think that it is inappropriate that they are dealt with with the same regulatory power, if you like.

[125] **Aled Roberts:** O ran gwelliannau 41 a 42, sydd o fewn y grŵp hwn, byddwn yn pleidleisio, rwy'n meddwl, yn ddiweddarach arnynt, felly nid wyf yn siŵr iawn a wyf yn delio â nhw yn awr neu yn nes ymlaen.

**Aled Roberts:** Dealing with amendments 41 and 42, which are within this group, we will be voting later on them, I think, so, I am not sure whether I deal with them now or later.

[126] **Ann Jones:** You have to speak now, because they are in the grouping. We will just go straight to a vote, then.

[127] **Aled Roberts:** Iawn. I ddweud y gwir, mae llawer iawn o'r pwyntiau yn union yr un fath â'r rhai a wnaethpwyd gan Simon Thomas. Mae Simon wedi dweud ei fod yn ceisio cyfyngu ar ba rannau ariannol sydd gan HEFCW a Gweinidogion Cymru i reoli ar y sefyllfa. Rwy'n ceisio gwneud yn union yr un peth gyda gwelliannau 41 a 42, ond o fewn y meysydd y mae HEFCW a Gweinidogion Cymru yn gallu ymyrryd ynddynt, a chyda'r rheolaeth sydd ganddyn nhw dros annibyniaeth y sefydliadau. Fel mae Simon eisoes wedi'i ddweud, hwyrach

**Aled Roberts:** Okay. To be honest, many of the points are identical to those that were made by Simon Thomas. Simon has said that he is trying to limit which financial parts HEFCW and the Welsh Ministers have, to manage the situation. I am trying to do exactly the same thing with amendments 41 and 42, but within the areas that HEFCW and the Welsh Ministers do have powers to intervene, and with the control that they have over the independence of institutions. As Simon has already said, perhaps some of the things that the Minister has already said in

bod rhai o'r pethau y mae'r Gweinidog eisoes wedi'u dweud ynglŷn ag annibyniaeth a chyfyngu ar bwerau HEFCW wedi ein cymryd ni y tu hwnt i'r hyn yr oeddwn i yn ei ragweld pan gyflwynais y gwelliannau hyn. Rwy'n meddwl y byddaf yn ceisio gweld yn union beth y mae'r Gweinidog yn mynd i'w ddweud yn ei ymateb o ran y rhain cyn imi benderfynu a ydwyf am bwysu ar y pwynt hwn o flaen y pwyllgor.

terms of autonomy and limiting HEFCW's powers have taken us beyond what I had foreseen when I tabled these amendments. I think that I will be trying to see exactly what the Minister is going to say about those in his response before I decide whether I want to press this point to the committee.

[128] **Ann Jones:** Okay. Thanks. Do any other Members wish to speak? I see that there are none. I therefore call the Minister.

[129] **Huw Lewis:** I will start with amendment 44, which amends section 6 and was tabled by Simon Thomas. This concerns the provision that may be prescribed for inclusion in an institution's fee and access plan relating to equality of opportunity and the promotion of higher education. This amendment would prevent the Welsh Ministers from prescribing provision relating to expenditure that is derived from sources other than an institution's fee income. I have discussed this issue with officials, and it is my view that the regulation-making power in section 6(1) would not enable the Welsh Ministers to specify the source of income from which expenditure by an institution must be derived. For example, I do not think that the regulations could specify that expenditure should derive from non-fee income. For this reason, this amendment is not necessary and I would urge Members not to support it.

[130] I have brought forward amendment 17, which amends section 38, in order to provide additional protection to institutions in relation to HEFCW's power to withdraw approval of a fee and access plan under section 38 of the Bill. This is in response to concerns raised by committee members and stakeholders during Stage 1 scrutiny. This amendment will ensure that HEFCW is unable to withdraw approval of a fee and access plan where it is satisfied that an institution has taken all reasonable steps to comply with a general requirement of its approved plan. This additional safeguard will require HEFCW to look behind the persistent failure, at the actions taken by the institution, rather than simply focusing on the failure itself. This follows on from an equivalent protection provided to institutions by the amendments to section 13 of the Bill.

[131] I believe that amendment 17 provides the clarity and protection sought by committee members and stakeholders about the circumstances under which HEFCW may withdraw its approval of a fee and access plan, and I ask committee members to support the amendment.

[132] Turning now to amendment 41, tabled by Aled Roberts, which amends section 45, I recognise that stakeholders have expressed concerns about HEFCW's powers to issue directions. That is understandable as we move from regulation based on the application of terms and conditions of funding to a new regulatory system based on statutory powers of intervention.

[133] The Government's intention is to provide HEFCW with a suite of intervention powers and for HEFCW to be afforded discretion as to which intervention to apply according to the circumstances of each case. I do not wish to prescribe each and every circumstance in which HEFCW may issue a direction. Such an approach would indeed be micromanagement of both HEFCW and the HE sector by Government, and that is something that I have been keen to avoid. Issuing a direction will not usually be HEFCW's first line of action in the event of a regulated institution failing to comply with some element of the new system. The usual course of events would be for HEFCW to offer advice and support to the institution before seeking enforcement action. However, there may well be rare occasions when a direction is

necessary and, at these times, it is important that HEFCW has the flexibility to act swiftly yet proportionately according to the facts of a particular case. This amendment would unduly restrict HEFCW's ability to act in this way.

10:30

[134] In addition, I would also like to emphasise that the Bill already provides numerous safeguards and protections to institutions in relation to HEFCW's powers to issue directions. To be clear, each power of direction may be used only under certain narrow circumstances, which are set out on the face of the Bill. For example, directions relating to quality may be issued only where quality is deemed to be inadequate, and directions relating to fee limits may be given only where those fee limits have been breached. For this reason, I do not think that the reference to 'serious' in amendment 41 is necessary.

[135] Turning now to the element of amendment 41 that proposes a restriction in relation to the ability of HEFCW to require a regulated institution to incur expenditure, it is important to note that the Bill does not make general provision for HEFCW to require the governing body of a regulated institution to apply sums of money. The only exception to this is where a regulated institution has voluntarily committed to incur a level of expenditure as part of its approved plan commitments.

[136] Committee members will be aware that I have tabled amendment 9 to section 13 of the Bill in order to make clear the Government's intentions with regard to the enforcement of fee and access plans. That amendment provides clarity about HEFCW's powers of direction. For the avoidance of doubt, HEFCW will not be able to direct an institution to undertake expenditure unless that institution has already committed to incur it voluntarily as part of its approved plan commitments. For this reason, I do not think the second element of amendment 41 is necessary, nor does it work in the context of this Bill, and I urge Members not to support it.

[137] Turning next to amendment 42, tabled also by Aled Roberts, which inserts a new section into the Bill, I recognise the strength of concerns of committee members and stakeholders about the academic freedom and institutional autonomy of our institutions. Indeed, when I introduced this Bill in May, I stated that the Bill would preserve and protect the institutional autonomy and academic freedom of our universities. I take that commitment seriously and, in light of the concerns expressed in evidence to the committee during Stage 1, I have tabled amendments to put the Welsh Government's intentions beyond doubt. The Government's amendments 2 and 3 make clear that the institutions' academic freedom and their autonomy is not in any way under threat from this Bill.

[138] Amendment 42 to a certain extent overlaps with the Welsh Government's amendments, but seeks to introduce additional restrictions, which I consider to be either unworkable or unnecessary in the context of the new regulatory system. For example, I note that elements of amendment 42 seek to insert restrictions derived from Part II of the Further and Higher Education Act 1992 into this Bill. Those restrictions are designed for a funding-based system, in which funding passes from the Welsh Ministers to HEFCW and from HEFCW to institutions. For this reason, they cannot be simply transposed and applied to the functions of the Welsh Ministers and HEFCW under this Bill, as this Bill is not concerned with the provision of funding either to HEFCW or to institutions. By way of a practical example, in what way would the requirement that an institution adhere to the relevant fee limits discourage an institution from maintaining or developing its funding from 'other sources'? It is important to note that the relevant sections of the 1992 Act will remain in force, and the existing restrictions will continue to apply to the Welsh Ministers' funding to HEFCW and HEFCW's allocations to institutions. So, the existing protections will still apply.

[139] Furthermore, the Bill's provisions establish a new regulatory system, which is to apply to all regulated institutions. The requirements do not distinguish between institutions on the basis of their denominational character, as there is no need to do so. To be clear, 'denominational character' or 'distinctive characteristics' are not relevant in the context of how this Bill will operate.

[140] Turning now to amendment 46, which amends section 13, Members will be aware that this is closely connected to my own amendment 9, which we have already considered. While I support the principle behind this amendment, it is not required as the effect is achieved by amendment 9.

[141] Amendment 53 inserts a new section into the Bill, which deals with information, advice and guidance that HEFCW may issue. With regard to consultation, the Bill, as introduced, already makes provision for HEFCW to be required to consult on guidance issued under sections 12 and 23. HEFCW is also required to consult on the development of its draft financial management code. Guidance can also be issued by HEFCW under section 24. This was not subject to consultation requirements when the Bill was introduced as the principal target audience for guidance under section 24 is not regulated institutions, although, of course, they will have an interest. However, I have reflected on that situation, and I support amendment 48, which would make the necessary provision for such consultation under section 24. For these reasons, the consultation requirements built into amendment 53 are not necessary.

[142] In considering amendment 53 further, it is important to note that there is nothing in the Bill that provides for guidance, advice or information to be complied with. As such, the amendment is unnecessary. Guidance, advice and information are not mandatory. The Bill just provides for guidance and advice to be taken into account by regulated institutions. Similarly, the notion that the Bill will require regulations to comply with information is misplaced. That is why the Bill provides for information to be taken into account.

[143] If, having taken guidance, advice or information into account, an institution considers that there are good, rational reasons for diverging from that guidance or diverging from that advice or information, it can do so. In the ordinary application of administrative law, the courts will routinely expect public bodies to have regard to or take into account guidance, information and advice issued to them. However, express provision for HEFCW's guidance functions is necessary because of the potential range of new providers entering the system. Some of these providers may not be subject to the principles of administrative law and, as such, the extent to which regulated institutions are to take into account guidance, advice and information has been set out on the face of the Bill—this is an element of future-proofing. I expect that HEFCW will in future, as is currently the case, continue to issue its advice, guidance and information in the form of circulars published on its website. The Welsh Ministers can include this expectation in guidance issued to HEFCW. I therefore urge Members not to support amendment 53.

[144] Finally, I turn to amendments 55 and 56, which amend section 36 and relate to HEFCW's power under that section to give notice of its intention to refuse to approve a future fee and access plan. Section 36(7) of the Bill as introduced enables the Welsh Ministers to make regulations about the matters to be taken into account by HEFCW in deciding whether to give or withdraw such a notice. This power may be used to specify any mitigating action taken by the institution, the seriousness of any breach or failure to comply with a regulatory requirement and, potentially, the level of harm or disruption caused to students. In other words, the regulations will go beyond the conditions listed in section 36(3), which are the basic requirements necessary for HEFCW to issue a notice of non-approval. The effect of this amendment would be to narrow the scope of the regulation-making power so that it could not include these wider mitigating factors in relation to the giving of a notice only. Provision on



these wider factors could still be made in relation to the withdrawal of a notice by HEFCW. This does not seem to be an advantageous position for HEFCW, students or indeed institutions. For this reason, I would ask Members not to support this amendment.

[145] In summary, Chair, I would ask Members to support amendment 17 and not to support amendments 42, 41, 44, 53, 55 and 56.

[146] **Ann Jones:** Okay. Thank you, Minister. I call Simon to respond to the debate.

[147] **Simon Thomas:** Thank you, Chair. I will try to see whether my numbering in English is any better than it was in Welsh. [*Laughter.*] I thank the Minister for his response. I think that he has indicated, of course, as indeed was the case with Aled Roberts's amendments, that there is some cross-over here with the Government's own amendments. However, I think that it has been valuable to explore some of these issues, which I think we will need to return to because the Minister seems to be relying on his amendment 17 to say that this is sufficient safeguarding. However, amendment 17 really only allows HEFCW itself to decide whether the governing body has taken all reasonable steps. So, HEFCW is policing its own decision making, in effect, in amendment 17. I am not sure that that is strong enough to respond to the concerns that I have in my amendments, certainly, particularly amendments 44 and 46, around reasonable steps that may be taken regarding the decision making of these institutions.

[148] With regard to amendment 46, the Government said that its previous amendment 9 deals with this, but I would say that amendment 46 goes further, because it extends the reasonableness test not only to that which is around the refusal of HEFCW not to approve a plan, but the more general principles about decision making around the plan. I think that that is a reasonable proposal to be made. At this stage, at least, I feel that amendment 44 is probably a little superfluous, because the Government has moved its own amendments. So, if the committee is in agreement, I may not push that to a vote, but I would like the committee still to consider amendments 46 and 53.

[149] Amendment 53 is very interesting, I think, because the Minister quite rightly gave a very clear explanation of the legal position around guidance, advice and all the rest of it, and we understand that, but we also understand, do we not, that this is the way in which Governments really work, this is the way that Ministers really tell bodies out there what they want to do, and how difficult it is for any institution to reject Government advice given in that context. That is where you come up against the principle of autonomy within the sector. Amendment 53 does not in any way curtail the ability of a Government to give that advice. What it says is that, if you are going to give advice, there are certain steps that you must follow. It must be in writing, it must be consulted upon, and you must acknowledge that it is advice; in other words, an institution can reject it. You must acknowledge that as part of the process. So, I think that amendment 53 strengthens the academic autonomy that the Government has already accepted, and I think that it is a reasonable brake on the use of informal advice, if I may put it that way, although that may not be the strict legal term for the way in which advice is given. It does not have to go through regulations, it does not have to come to this place and it does not have to be tested; the Government is all the time issuing advice, in effect, influencing policy and changing policy, indeed. Amendment 53 does not in any way curtail the Minister's ability to do that, but it does say that, if you are going to do that, there are certain steps that you have to follow. I think that that is a reasonable thing to test at this stage in the Bill's progress.

[150] So, I will be supporting amendment 17, because it is a step in the right direction, but I still think that there are some issues here around the safeguarding of autonomy. The Government has accepted the principle, and it is good to have that on the face of the Bill, but now there are some practical steps that we need to take to ensure that there is no confusion

between what is mandatory on the institutions and what is advice—good practice, strong advice, but which the institutions themselves can have regard to in a position of independence. That is what we are trying to test in these amendments.

[151] **Ann Jones:** Okay, thank you. Simon, you have moved amendment 44, because it was the lead amendment. Do you wish to move to a vote, or do you wish to withdraw it?

[152] **Simon Thomas:** I wish to withdraw amendment 44.

[153] **Ann Jones:** Okay. Are Members happy for amendment 44 to be withdrawn? You are. Thank you.

*Tynnwyd gwelliant 44 yn ôl gyda chaniatâd y pwyllgor.  
Amendment 44 withdrawn by leave of the committee.*

[154] **Ann Jones:** We now return to the marshalled list, and, in accordance with the list, we will dispose of amendments that have already been debated in earlier groups. Minister, would you like amendment 5 in your name to be moved?

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

[156] **Ann Jones:** I move amendment 5 in the name of the Minister. The question is that amendment 5 be agreed to. Does any Member object? There is objection; we will move to a vote then.

*Gwelliant 5: O blaid 5, Ymatal 2, Yn erbyn 3.  
Amendment 5: For 5, Abstain 2, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Ymataliodd yr Aelodau canlynol:  
The following Members abstained:

Davies, Paul  
Davies, Suzy

*Derbyniwyd gwelliant 5.  
Amendment 5 agreed.*

[157] **Ann Jones:** Minister, do you want amendment 6 in your name to be moved?

[158] **Huw Lewis:** I do.

[159] **Ann Jones:** I move amendment 6 in the name of the Minister. The question is that amendment 6 be agreed to. Does any Member object? There is objection. We will move to a vote by show of hands.

10:45

[160] May I ask Members to keep their hands up? We have to record these votes physically

for the Record. While I will take a flick of the pen, we have to record it, too.

[161] **Simon Thomas:** It is not an auction.

[162] **Ann Jones:** No, it is not, although we could do it that way, if you like. [*Laughter.*] So, that is five all, and therefore—. [*Interruption.*] Sorry, you voted for, Suzy. I am confused now. Can we do it again?

*Gwelliant 6: O blaid 7, Ymatal 0, Yn erbyn 3.  
Amendment 6: For 7, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul  
Davies, Keith  
Davies, Suzy  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

*Derbyniwyd gwelliant 6.  
Amendment 6 agreed.*

[163] **Ann Jones:** I was confused because people were flicking pens. Sorry about that. Bethan, would you like to move amendment 25?

[164] **Bethan Jenkins:** Yes, I move amendment 25 in my name.

[165] **Ann Jones:** The question is that amendment 25 be agreed to. Does any Member object? There is objection. We will go to a vote by show of hands.

*Gwelliant 25: O blaid 3, Ymatal 0, Yn erbyn 7.  
Amendment 25: For 3, Abstain 0, Against 7.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Davies, Paul  
Davies, Suzy  
Griffiths John  
Jones, Ann  
Rees, David  
Watson, Joyce

*Gwrthodwyd gwelliant 25.  
Amendment 25 not agreed.*

[166] **Ann Jones:** Simon, would you like to move amendment 45 in your name?

[167] **Simon Thomas:** Yes, please—it is in a different order. I move amendment 45 in my name.

[168] **Ann Jones:** The question is that amendment 45 be agreed to. Does any Member object? There is objection. We will go to a vote by show of hands.

*Gwelliant 45: O blaid 3, Ymatal 2, Yn erbyn 5.  
Amendment 45: For 3, Abstain 2, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

Ymataliodd yr Aelodau canlynol:  
The following Members abstained:

Davies, Paul  
Davies, Suzy

*Gwrthodwyd gwelliant 45.  
Amendment 45 not agreed.*

**Grŵp 5: Amrywio Cynlluniau a Gymeradwywyd (Gwelliannau 7 ac 8)  
Group 5: Variations to Approved Plans (Amendments 7 and 8)**

[169] **Ann Jones:** There are two amendments in this group. Minister, would you like amendment 7 in your name to be moved?

[170] **Huw Lewis:** I would.

[171] **Ann Jones:** I move amendment 7 in the name of the Minister. I call on the Minister to speak to amendment 7 and the other amendment in the group.

[172] **Huw Lewis:** Thank you, Chair. I have taken account of the Constitutional and Legislative Affairs Committee's recommendations that greater clarity is required about the proposed operation of section 9 of the Bill. My intention has always been that there should be continuity with the operation of fee plans under existing legislation. Currently, institutions may submit a request to HEFCW to seek a variation of their approved plans and my intention is that that will remain the case under the new regulatory system. To put the matter beyond doubt, section 9(1) has been amended to make it clear that neither HEFCW nor a third party may request the variation of an approved plan; only a regulated institution may make such a request. Additionally, a new subsection 9(3) has been added to clarify that regulations can make a provision about the making and determination of applications for approval of a variation to a fee and access plan. I believe that amendments 7 and 8 to section 9 provide the clarification requested by the Constitutional and Legislative Affairs Committee and I ask Members to support the amendments.

[173] **Ann Jones:** Thank you. Does any Member wish to speak? No. There is no debate, so you cannot reply to it, Minister.

[174] The question is that amendment 7 be agreed to. Does any Member object? There is no objection. Amendment 7 is agreed.

*Derbyniwyd gwelliant 7 yn unol â Rheol Sefydlog 17.34.  
Amendment 7 agreed in accordance with Standing Order 17.34.*

[175] **Ann Jones:** Minister, would you like amendment 8 in your name to be moved?

[176] **Huw Lewis:** I would.

[177] **Ann Jones:** I move amendment 8 in the name of the Minister. The question is that amendment 8 be agreed to. Does any Member object? There is no objection. Amendment 8 is agreed.

*Derbyniwyd gwelliant 8 yn unol â Rheol Sefydlog 17.34.  
Amendment 8 agreed in accordance with Standing Order 17.34.*

[178] **Ann Jones:** We return to the marshalled list to dispose of more amendments. Minister, would you like amendment 9 in your name to be moved?

[179] **Huw Lewis:** I would.

[180] **Ann Jones:** I move amendment 9 in the name of the Minister. The question is that amendment 9 be agreed to. Does any Member object? There is objection. We will go to a vote by show of hands, then.

*Gwelliant 9: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 9: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Paul  
Davies, Suzy  
Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).  
As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 9.  
Amendment 9 not agreed.*

[181] **Ann Jones:** As amendment 9 is not agreed to, amendments 16, 18 and 22 in the name of the Minister have fallen.

[182] Simon, would you like to move amendment 46 in your name?

[183] **Simon Thomas:** Yes, I move amendment 46 in my name.

[184] **Ann Jones:** The question is that amendment 46 be agreed to. Does any Member object? There is objection. We will go to a vote by show of hands.

*Gwelliant 46: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 46: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul  
Davies, Suzy  
Jenkins, Bethan

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Griffiths, John  
Jones, Ann

Roberts, Aled  
Thomas, Simon

Rees, David  
Watson, Joyce

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 46.  
Amendment 46 not agreed.*

[185] **Ann Jones:** Minister, would you like amendment 10 in your name to be moved?

[186] **Huw Lewis:** I would.

[187] **Ann Jones:** I move amendment 10 in the name of the Minister. The question is that amendment 10 be agreed to. Does any Member object? There is objection. We will move to a vote.

*Gwelliant 10: O blaid 7, Ymatal 0, Yn erbyn 3.  
Amendment 10: For 7, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Keith  
Davies, Paul  
Davies, Suzy  
Griffiths John  
Jones, Ann  
Rees, David  
Watson, Joyce

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

*Derbyniwyd gwelliant 10.  
Amendment 10 agreed.*

[188] **Ann Jones:** With the committee's agreement, I propose to break until 11.00 a.m. Thank you.

*Gohiriwyd y cyfarfod rhwng 10:50 ac 11:00.  
The meeting adjourned between 10:50 and 11:00.*

[189] **Ann Jones:** If you switched your mobile phone on in that short break, will you put it back on silent, so that it does not disrupt the proceedings? We are going to carry on now.

**Grŵp 6: Asesu Ansawdd (Gwelliannau 39, 40, 47, 48, 49 a 50)**  
**Group 6: Quality Assessment (Amendments 39, 40, 47, 48, 49 and 50)**

[190] **Ann Jones:** The lead amendment in this group is amendment 39, so I call on Aled Roberts to move amendment 39 and speak to it and any other amendments in the group.

[191] **Aled Roberts:** Cynigiaf welliant 39 yn fy enw i. **Aled Roberts:** I move amendment 39 in my name.

[192] Yn ystod ein trafodaethau blaenorol, rwy'n meddwl ein bod ni, fel pwyllgor, wedi cytuno bod rheoli ansawdd yr un mor bwysig. During our previous discussions, I think that we, as a committee, agreed that quality control is just as important as the autonomy

ag annibyniaeth sefydliadau. Rydym yn awyddus iawn fod ansawdd sefydliadau addysg bellach Cymru yn cael ei sicrhau. Felly, rwy'n meddwl bod ein hadroddiad fel pwyllgor yn dangos bod gyda ni nifer o bryderon ynglŷn â materion, gan gynnwys y tyfiant sydd wedi bod o ran darpariaeth drawsffiniol, lle mae nifer o sefydliadau erbyn hyn efo colegau a safleoedd yn Lloegr. Nid wyf eisiau sôn am broblemau un o'r prifysgolion sydd yn ddigon agos imi yn Wrecsam, ond rwy'n meddwl bod hynny yn adlewyrchu'r ffaith bod cwestiynau eithaf sylfaenol ynglŷn â natur yr arolygiadau sydd wedi cael eu cyflwyno yn y gorffennol o ran rhai o'r safleoedd hyn yn Lloegr. Hefyd, rydym i gyd yn ymwybodol erbyn hyn bod gan rhai o'r sefydliadau gampws dramor hefyd. Hefyd, mae'r holl drefniadau ynglŷn â *franchising* a materion felly. Rwy'n gwybod bod gan rhai Aelodau bryderon hefyd ynglŷn â darpariaeth ran-amser.

[193] Felly, mae argymhellion 7 ac 8 yn ein hadroddiad ni fel pwyllgor yn tanlinellu'r ffaith ein bod ni'n credu bod yna ofyn ar y Llywodraeth i sicrhau bod rheolaeth o ran ansawdd. Mae gwelliannau 39 a 40 yn ceisio sicrhau bod HEFCW hefyd yn ymwybodol o'i gyfrifoldebau y tu fas i Gymru. Mae gan HEFCW gyfrifoldeb ar hyn o bryd o dan adran 70 o Ddeddf Addysg Bellach ac Uwch 1992, ac fe gofiwch hefyd, yn ystod y dystiolaeth, fod HEFCW a Phrifysgolion Cymru wedi dweud bod ganddynt bryderon ynglŷn â pa un ai oedd y trefniadau, a'r Ddeddf hon, yn eu galluogi i sicrhau ansawdd y tu draw i'r ffin. Rwy'n meddwl, i fod yn deg, fod y Gweinidog wedi cyfeirio at bwerau HEFCW o dan adran 65 o'r Ddeddf a'r ffaith ei fod yn gallu rhoi amodau ar gyllido i wneud yn siŵr bod rhyw fath o reolaeth dros ddarpariaeth drawsffiniol, ond rwy'n meddwl bod angen inni fynd ymhellach na hynny. Hwyrach bod cwestiynau ynglŷn â pheth o'r drafftio o ran y gwelliannau hyn, ond, ar hyn o bryd, rwy'n eu rhoi nhw gerbron er mwyn ysgogi trafodaeth a gweld yn union beth mae'r Gweinidog yn ei wneud wrth ymateb i'r heriau rwy'n credu sydd yn ein hwynebu ni o ran—. Os yw enw da prifysgolion Cymru yn dioddef achos problemau o ran rheoli ansawdd, a dweud y gwir, bydd y ddeddfwriaeth hon yn ddibwys yn y pen

of institutions. We are very eager to ensure that the quality of higher education institutions in Wales is ensured. I think that our committee report shows, therefore, that we have a number of concerns about issues, including the growth that there has been in terms of cross-border provision, where a number of institutions now have colleges or sites in England. I do not want to talk about the problems of one university that is quite close to me in Wrexham, but I think that that reflects the fact that there are quite fundamental questions about the nature of the inspections that have been undertaken in the past in terms of some of these sites in England. Also, we are all aware by now that some institutions have overseas campuses as well. There are also all of the franchising arrangements and such issues. I know that some Members also have concerns about part-time provision.

Therefore, recommendations 7 and 8 in our report as a committee underline the fact that we believe that there is a requirement on the Government to ensure that quality control exists. Amendments 39 and 40 try to ensure that HEFCW is also aware of its responsibilities outwith Wales. HEFCW has responsibility at present under section 70 of the Further and Higher Education Act 1992, and you will also remember that, during the evidence, HEFCW and Universities Wales said that they had concerns about whether the arrangements, and this Act, allowed them to ensure quality beyond the border. I think, to be fair, that the Minister has referred to HEFCW's powers under section 65 of the Act, and the fact that it can impose conditions on funding to ensure that there is some kind of control over cross-border provision, but I think that we need to go further than that. Perhaps there are questions about some of the drafting in terms of these amendments, but, at present, I am placing them before the committee to stimulate debate and to see exactly what the Minister says in response to the challenges that I believe face us in terms of—. If the reputation of Welsh universities suffers because of problems with quality control, to tell you the truth, this legislation will be ultimately pointless.

draw.

[194] **Ann Jones:** I call Simon.

[195] **Simon Thomas:** Diolch, Gadeirydd. Mae gen i bedwar gwelliant yn y grŵp hwn, sef gwelliannau 47, 48, 49 a 50. Rwyf hefyd yn cefnogi egwyddor a phwrpas gwelliannau Aled Roberts yn fawr iawn. Rwy'n meddwl bod hwn yn fater sydd angen ei egluro a bod yn siŵr yn ei gylch wrth drafod y Bil hwn. Felly, rwy'n gobeithio y bydd y pwyllgor yn cefnogi'r gwelliannau hynny.

**Simon Thomas:** Thank you, Chair. I have four amendments in this group, namely amendments 47, 48, 49 and 50. I also very much support the principle and purpose of Aled Roberts's amendments. I believe that this is an issue where we need clarity and assurance in discussing this Bill. Therefore, I hope that the committee will support those amendments.

[196] Ond hoffwn droi yn benodol at fy ngwelliannau i. Mae gwelliannau 47, 48, 49 a 50 yn delio gyda mater sydd wedi codi ers i ni orffen ein gwaith fel pwyllgor a gorffen ein hadroddiad ar ran gyntaf y Bil. Byddwch siŵr o fod yn cofio ein bod wedi trafod rheoli ansawdd yn ystod y broses honno a chafwyd sicrhad y byddai hwn yn parhau gyda pherthynas Cyngor Cyllido Addysg Uwch Cymru a'r Asiantaeth Rheoli Ansawdd yn Lloegr. Ers i ni gwblhau'r gwaith hwnnw, daeth cyhoeddiad—a oedd braidd yn annisgwyl i mi, yn sicr; ni wn am y Llywodraeth—bod HEFCE, sef y corff rheoli addysg uwch yn Lloegr, am adolygu'r berthynas gytundebol gyda'r QAA ac, yn lle parhau â'r gwaith hwnnw, o bosibl, ei roi ar *franchise* i un corff neu i nifer o gyrff posibl eraill. Os yw hynny'n digwydd, bydd rhaid i Gymru a Chyngor Cyllido Addysg Uwch Cymru naill ai barhau gyda'r gyfundrefn drwy hefyd gytundebu gydag un o'r gyrff hynny neu drwy sefydlu eu cyfundrefn rheoli ansawdd eu hunain.

However, I would like to turn specifically to my amendments. Amendments 47, 48, 49 and 50 deal with an issue that has arisen since we completed our work as a committee and completed our report on the first stage of the Bill. I am sure that you will recall that we discussed quality control during that process and we were given assurances that this would continue through the relationship with HEFCW and the Quality Assurance Agency in England. Since we completed that work, there was an announcement—it was quite unexpected, to me at least; I am not sure about the Government—that HEFCE, namely the higher education funding council in England, was to review its contractual arrangements with the QAA and, rather than continue with that work, consider franchising that work to either one body or a number of other bodies. If that happens, Wales and the Higher Education Funding Council for Wales will have to either continue with that system by also forming an agreement with one of those bodies or by establishing a separate quality-assurance system.

[197] Nid yw fy ngwelliannau i yn cau allan y naill opsiwn na'r llall, ond maent yn diogelu ym mha ffordd y gall hwnnw ddigwydd. Y diogelwch cyntaf, yng ngwelliant 47, yw nad oes modd i'r cytundebu hynny ddigwydd oni bai ei fod gyda mudiad neu sefydliad sydd yn elusennol neu'n ddielw. A gaf i esbonio pam rwyf wedi dewis y geiriau hynny? Yn gyntaf, mae'n rhaid i chi gofio fod y Bil ei hunan yn ymwneud ag elusennau—mae'n ymwneud â phrifysgolion yng Nghymru sydd yn elusennau. Nid yw'n ymwneud â phrifysgolion sydd yn breifat neu fath gwahanol o brifysgol. Rwy'n meddwl y

My amendments do not preclude either of those options, but they do safeguard how that can happen. The first safeguard, in amendment 47, is that it would not be possible for those contractual arrangements to be made without it being with an organisation that is either charitable or not-for-profit. May I just explain why I have chosen those particular words? First, you must bear in mind that the Bill itself deals with charities. It is not about private universities or a different kind of university. I think it would be appropriate, therefore, to follow the same principle when dealing with quality assessment. Simply put, I do not want



byddai'n briodol i ddilyn yr un egwyddor felly wrth ddelio â rheoli ansawdd. Mewn geiriau syml, nid wyf eisiau i Securicor fod yn gyfrifol am reoli ansawdd prifysgolion yng Nghymru—mae mor syml â hynny. Mae'n rhaid sicrhau bod y corff sy'n gyfrifol am hyn yn un sydd yn adlewyrchu'r sector ei hunan—sector sydd yn elusennol ac yn ddielw. Dyna pam y mae'r geiriau hynny yno. Rwy'n derbyn efallai bod hwnnw braidd yn benagored, yn enwedig y gair 'dielw' ac efallai bod rhai pryderon yno, ond rwy'n meddwl ei fod yn bwysig ein bod yn dilyn yr un egwyddor ag hwnnw sydd ar wyneb y Bil yn gyffredinol.

[198] Mae modd, wrth gwrs, yn ôl gwelliant 47, i'r prifysgolion eu hunain ymffurfio fel corff rheoli ansawdd ac i hynny gael ei wneud gan hunan-arfarnu ac ati—ddim yn uniongyrchol, ond mae'r broses yno. Felly, mae'n caniatáu i hynny ddigwydd ac rwy'n meddwl fod hynny'n bwysig.

[199] Mae gwelliant 48 yn gwneud yn siŵr fod y gyfundrefn yn ei lle o ran cymeradwyo canllawiau o dan reoli ansawdd. Rwy'n credu bod hynny'n briodol i wneud yn siŵr fod hynny'n gymen ac yn ei le.

[200] Mae gwelliant 49 tipyn pwysicach, oherwydd ar ôl i'r newyddion hwn ddod, ailedrychais ar y Bil a sylweddoli bod gennym, yng nghymal 25, bwyllgor wedi ei sefydlu o dan y cyngor cyllido addysg uwch sydd yn ymwneud â ffwythiannau rheoli ansawdd. Fel y mae'r Bil wedi ei eirio ar hyn o bryd, ni chredaf ei bod yn amhosibl i'r pwyllgor hwnnw droi'n gorff rheoli ansawdd yng Nghymru. Rwy'n meddwl ei bod yn amhriodol i'r cyngor cyllido addysg uwch, sydd yn gyfrifol am gynlluniau ffioedd dysgu a mynediad ac am ddyrannu arian hefyd trwy bwyllgor, ddod yn gorff rheoli ansawdd. Byddai'n well o lawer gennyf gario ymlaen gyda'r system bresennol, lle mae'r cyngor cyllido addysg uwch yn contractio allan gyda chorff annibynnol sydd wedyn yn rheoli ansawdd. Yn y cyd-destun hwnnw, hoffwn atgoffa'r pwyllgor hefyd bod y QAA, fel ag y mae ar hyn o bryd, yn gorff elusennol. Felly, rwy'n mynd yn ôl at welliant 47 ac yn cadw'r un math o egwyddor yn y fan honno.

Securicor to be responsible for controlling the quality of universities in Wales—it is as simple as that. We must ensure that the body responsible for this is one that reflects the sector itself—a sector that is charitable and not-for-profit. That is why those words are there. I accept that that is relatively open-ended, especially the words 'non-for-profit' and there may be some concerns there, but I think it is important that we follow the same principle as that on the face of the Bill as a whole.

It is possible, of course, according to amendment 47, for the universities themselves to become a quality control body and for that to be done through self-evaluation and so on—not directly, but in another such process. Therefore, it allows for that to happen and I think that that is important.

Amendment 48 ensures that the regime is in place in terms of approving guidance under quality control. I think that that is appropriate to make sure that it is neat and in place.

Amendment 49 is much more important, because once we received this news, I revisited the Bill and realised that we have, in clause 25, a committee established under the higher education funding council that deals with quality-control functions. As the Bill is currently worded, I do not think that it is impossible for that committee to become a quality assurance agency in Wales. I think that it is inappropriate for HEFCW, which is responsible for fee and access plans and also for allocating funding through its committee, to become a quality-assurance body. I would much prefer to continue with the present system, where HEFCW contracts out with an independent body, which then deals with quality control. In that context, I would also like to remind the committee that the QAA is itself currently a charitable body. So I refer back to amendment 47 and retain the same sort of principle there.

[201] Felly, mae gwelliant 49 yn sicrhau nad yw'r pwyllgor o dan y cyngor cyllido addysg uwch yn gallu troi mewn i gorff rheoli ansawdd—mae'n rhaid cael corff rheoli ansawdd sydd yn annibynnol ar y cyngor cyllido addysg uwch. Rwy'n meddwl bod hynny'n bwysig.

Therefore, amendment 49 ensures that the committee under HEFCW cannot become a quality-assurance body. You must have an independent quality-assurance body, which is independent of HEFCW. I think that that is important.

[202] Mae'r gwelliant olaf, gwelliant 50, ychydig yn wahanol ac mae'n adlewyrchu rhai o'r gwelliannau eraill sydd wedi'u cyflwyno gan y Gweinidog yn ymwneud ag ymreolaeth y sector. Mae gwelliant 50 yn sicrhau, beth bynnag sy'n digwydd i'r pwyllgor ymgynghorol hwn ar ansawdd, bod mwyafrif aelodau'r pwyllgor yn dod o gefndiroedd academaidd neu ymchwil. Credaf ei bod yn bwysig, o ran ymreolaeth y sector, ac o ran annibyniaeth academaidd ac ati, bod y pwyllgor a sefydlir i gynghori ar y materion hyn â mwyafrif o bobl o'r sector ei hun. Credaf fod hynny'n cadw ysbryd gwelliannau blaenorol y Llywodraeth.

The final amendment, amendment 50, is slightly different and reflects some of the other amendments that have been put forward by the Minister in relation to the autonomy of the sector. Amendment 50 ensures that, whatever happens to this consultative committee on quality, the majority of the committee members should come from academic or research backgrounds. I think that it is important, in terms of the autonomy of the sector, and in terms of academic independence and so forth, that the committee established to advise on these issues should have a majority of members from the sector itself. I think that that retains the spirit of earlier amendments from the Government.

[203] Felly, nid oedd modd i ni, fel pwyllgor, drafod y mater hwn wrth inni edrych ar y Bil yn y lle cyntaf, Gadeirydd, achos nid oedd y newyddion hwn gennym. Roedd pob un ohonom wedi cymryd yn ganiataol bod y QAA yn parhau, a bod y gwaith contractio gyda'r QAA yn parhau. Nid dyna'r sefyllfa bellach. Os nad yw'r gwelliannau hyn yn gwneud y tro, hoffwn weld rhywbeth gwell gan y Llywodraeth.

Therefore, we as a committee could not discuss this issue as we looked at the Bill initially, Chair, because this news had not yet broken. Each and every one of us had assumed that the QAA would remain in place and that the contracting work with QAA would continue. That is no longer the situation. If these amendments are not appropriate, I would like to see something better put forward by the Government.

[204] **David Rees:** In relation to Aled Roberts's amendments 39 and 40, I fully agree with the principle that we discussed in terms of the delivery of programmes beyond Wales, and overseas in particular. I think that that is something that we need to address. However, I need to ensure that the wording allows us to cover the overseas aspects as well as—. I know that it takes Wales up, but where does it deal with cross-border and with competencies across border? I have some concerns about that on the drafting.

[205] In amendment 40, you actually remove subsection (2). At the moment that is our safety net and I do not want, at this stage, to remove our safety net, which is provided there. Again, we did discuss whether it was actually the wording at the end of subsection (2) that was the issue, and that was where we discussed the provider, principally, where part of the course was provided principally in Wales, and there could be existence of courses provided outside of Wales that are not even provided in Wales, full stop. So, there is a question as to the wording and drafting of that. I agree with the principle, but to me the wording is not quite right in the draft. At this point, I cannot support those two on those points.

[206] The same applies to Simon's amendment 50. Again, I agree that the majority of people should actually have experience. The wording does not do what you just said, which is

that the majority of people should come from the sector. Technically that could come from the sector now. I also think that the question in that one subsection are the words ‘appear to HEFCW’. I will ask the Minister perhaps if he could define what he means by ‘appear to HEFCW’. Should it be shown that HEFCW can demonstrate that these people have the experience and understanding of research? Again, it is the drafting aspect. I agree with the principle. The drafting, at the moment, does not even allow people actually involved with the teaching—it is anyone who is involved in the ‘provision’ of higher education, which is not quite the same thing. I could set up an institution; I would be involved in the ‘provision’ of it, but I would not necessarily have experience. So, there is a question on the wording, and the drafting, to me, is still not quite there. I agree with the principles of what we discussed, but I just want to see the draft changed a little bit at this point in time. On those grounds, I am going to vote against, because I do not think that the drafting gets it right yet. On those points, I just want to make that clear.

[207] **Suzy Davies:** Just briefly, going back to the points that Simon made earlier about amendment 47, we support the principle embodied in the amendment, and we will be supporting it today. I just wanted to express a little bit of concern about the words ‘not-for-profit organisation’. This Assembly has had some bad experiences with not-for-profit organisations in the past and we do not want the AWEMA of quality assessment to emerge as a result of this amendment. If there is any way, perhaps, of looking at those particular words at Stage 3, we would be happier to support that at that Stage of the Bill. We support what you are doing today anyway.

[208] **Ann Jones:** Does any other Member wish to speak in this debate? No. I now call the Minister.

[209] **Huw Lewis:** Beginning with amendment 39, Members will be aware that the Bill currently restricts HEFCW’s quality assessment duty to education provided in Wales by, or on behalf of, regulated institutions. As discussed at Stage 1, this flowed from the decision to reserve our position on legislative competence in this area and instead seek an Order from the Secretary of State for Wales under section 150 of the Government of Wales Act 2006. This Order will look to extend HEFCW’s quality assessment duty to cover education provided in England by regulated Welsh institutions and will ensure that no gaps in regulatory coverage arise as a result of this Bill. As a result of these issues, there is a risk that this amendment will bring section 17 of the Bill outside the legislative competence of the Assembly.

11:15

[210] The words ‘in Wales’ were inserted into section 17 specifically to deal with this competence issue. I note that the Presiding Officer was satisfied that the Bill was within competence at the time of introduction, and I see no reason to risk altering this view at this stage. This is particularly so given the steps we are taking alongside the UK Government to deal with the coverage of education provided in England by regulated Welsh institutions.

[211] Turning to amendment 48, I am happy to support this amendment. In relation to amendment 47, which amends section 17, and amendments 49 and 50 amending section 25, I must emphasise that it is essential that HEFCW has the flexibility to discharge its quality assessment duty and related functions in the most effective manner possible. This will also allow the council to respond to changes in the higher education sector and any changes to the quality assessment arrangements in England and the rest of the UK.

[212] On 7 October 2014, HEFCE announced a review of quality assurance in the UK. The higher education funding bodies in England, Wales and Northern Ireland are to seek views on future approaches to the assessment of quality in HE. Based on the feedback received, they may invite tenders under a joint procurement exercise to ensure transparency and demonstrate

value for money. The review of quality assurance arrangements recognises that UK higher education is undergoing rapid change and that further quality assessment arrangements must continue to be internationally respected, to have the confidence of students, and to support a world-class HE sector. A consistent approach to quality assessment across England and Wales is extremely beneficial, and this will be reflected in statutory guidance issued by the Welsh Ministers to HEFCW under the Bill. However, placing a restriction, like the one in amendment 47, on the type of assessor that HEFCW may use could potentially prevent the current UK-wide approach to quality being maintained. If, for example, the outcome of the recently announced HEFCE review and subsequent tender were to result in any significant change in quality assurance arrangements, HEFCW would need to respond flexibly and appropriately for Wales.

[213] Moving on to the role of HEFCW's quality assessment committee, this will be pivotal to the council's work as the quality of HE delivered in Wales and the reputation of the Welsh HE sector remain Welsh Government priorities. The purpose of the committee is to advise the council on the discharge of quality assessment functions. Amendment 49 will restrict HEFCW from conferring quality assessment functions on the committee that may prevent the committee from being able to fulfil its role effectively. HEFCW must have the flexibility to adapt the committee both to changes in the HE sector and funding council priorities. That said, I do not anticipate that HEFCW would look to its quality assessment committee to undertake assessment work at regulated institutions. While it will have a role in advising on assessment activity, it is unlikely to have the resources and capacity to undertake assessments itself. I hope this helps to allay the concerns of some Members on this issue.

[214] The Bill also ensures that the majority of members of the committee will remain independent of the council and have experience of the provision of HE either within the UK or internationally, as the council considers appropriate. Specifically, the Bill provides that the majority of membership must be persons who appear to have experience of, or have shown capacity in, the provision of HE. Amendment 50 would restrict the majority membership of the committee to persons with experience of teaching or undertaking research as part of the provision of HE. This would narrow the pool of potential committee members that HEFCW could draw upon and consequently reduce the breadth of experience, context and advice that could be provided. It is also worth Members noting that I have sought transitional provisions in the Bill to allow the existing committee to continue rather than being disbanded and reconstituted as a new committee. Therefore, this amendment has the potential to cause unnecessary disruption to the operation of the committee.

[215] Just briefly, in terms of provision provided outside the UK by regulated Welsh institutions, although we cannot regulate provision overseas beyond our legislative competence, higher education institutions are responsible for the academic standards of their awards, whether they are delivered inside or outside the UK. The QAA reviews the partnership arrangements that UK higher education institutions have made with organisations in other countries to deliver UK programmes and also reviews programmes delivered on the overseas campuses of UK institutions.

[216] In summary, Chair, for all of these reasons, I urge Members not to support amendments 39, 40, 47, 49 and 50 and to support amendment 48.

[217] **Ann Jones:** Thank you very much. Aled, do you want to respond to the debate?

[218] **Aled Roberts:** Yn fyr iawn, rwyf wedi gwrando'n astud ar yr hyn y mae'r Gweinidog wedi'i ddweud. Rwy'n barod i dderbyn rhai o'r pwyntiau y mae David Rees wedi eu gwneud hefyd, a hwyrach y bydd yn **Aled Roberts:** Just briefly, I have listened intently to what the Minister has said. I am willing to accept some of the points that David Rees has made as well, and maybe we will have to look at some of the wording

rhaid inni edrych ar beth o'r geiriad y tu mewn i'r cymalau hyn. Fodd bynnag, rwy'n meddwl bod egwyddor eithaf pwysig yma ynglŷn â rheoli ansawdd.

within these clauses. However, I think that there is a very important principle here in terms of quality control.

[219] Nid wyf wedi cael fy modloni, i ryw raddau, gan yr hyn y mae'r Gweinidog wedi'i ddweud. Nid wyf yn glir ai cytundeb ar draws gwledydd Prydain oedd hwn ynglŷn â newid y ffordd y mae ansawdd yn cael ei reoli mewn prifysgolion, ynteu penderfyniad gan Lywodraeth Prydain yn ymwneud â Lloegr. Mae cwestiynau mawr ynglŷn â rheoli ansawdd o fewn ein prifysgolion ni. Mae hynny wedi bod yn glir o ran rhai o'r problemau a ddaeth yn sgîl Prifysgol Cymru yn gweithredu dramor. Yn amlwg, nid oedd y trefniadau'n ddigonol yn y maes hwnnw. Hefyd, i fod yn hollol glir, mae problemau y dylai'r QAA fod wedi'u darganfod yn Llundain. Yn amlwg, os edrychwch ar yr adroddiadau ynglŷn â rhai o'r problemau y mae Prifysgol Glyndŵr a rhai eraill yn eu gweld ar hyn o bryd, fe welwch nad jest mater yn ymwneud â *visas* ydyw. Mae cwestiynau mawr ynglŷn â faint o reolaeth a oedd gan y QAA. Nid wyf yn fodlon jest dweud, 'Fe wnawn ni jest mynd i mewn i unrhyw gyfundrefn arall lle, hwyrach, bydd y Brawd Mawr drws nesaf wedi penderfynu bod—'. Ein cyfrifoldeb ni yng Nghymru yw rheoli ansawdd ein prifysgolion. Rwy'n derbyn yr hyn y mae David Rees wedi'i ddweud. Hwyrach bod angen gwella'r geiriad, ond, ar sail hynny, rwy'n meddwl ei fod yn bwysig ein bod yn mynd i bleidlais ar y gwelliannau hyn a, hwyrach, y dylem ailystyried hyn wrth inni fynd ymlaen i Gyfnod 3.

I am not content, to some extent, with what the Minister has said. I am not clear whether this was an agreement across the UK nations in terms of changing the way that quality is controlled within universities, or whether it was a decision by the UK Government to do with England. There are big questions about quality control within our universities. That has been clear in terms of the problems that came in the wake of the University of Wales operating overseas. Evidently, the arrangements were not sufficient in that area. Also, to be clear, there are problems that the QAA should have found in London. Evidently, if you look at the reports on some of the problems that Glyndŵr University and others are seeing at the moment, you will see that it is not just an issue of visas. There are major questions about how much control the QAA had. I am not happy just to say, 'We'll just have some new regime where, maybe, the Big Brother next door has decided—'. Our responsibility in Wales is to ensure the quality of our universities. I accept what David Rees has said. Perhaps we need to improve the wording, but, on that basis, I think that it is important that we have a vote on these amendments and, perhaps, reconsider as we move forward to Stage 3.

[220] **Ann Jones:** Okay. Thank you. I take it that you want to proceed to a vote on amendment 39.

[221] **Aled Roberts:** Yes, please.

[222] **Ann Jones:** Amendment 39 has been moved. The question is that amendment 39 be agreed to. Does any Member object? Yes. Okay. We will move to a vote by show of hands.

*Gwelliant 39: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 39: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith

Davies, Suzy  
Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 39.  
Amendment 39 not agreed.*

[223] **Ann Jones:** Aled, do you want to move amendment 40?

[224] **Aled Roberts:** I move amendment 40 in my name.

[225] **Ann Jones:** The question is that amendment 40 be agreed to. Does any Member object? Yes. I call for a vote.

*Gwelliant 40: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 40: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul  
Davies, Suzy  
Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 40.  
Amendment 40 not agreed.*

[226] **Ann Jones:** Simon, do you want to move amendment 47?

[227] **Simon Thomas:** I move amendment 47 in my name.

[228] **Ann Jones:** The question is that amendment 47 be agreed to. Does any Member object? Yes. I call for a vote.

*Gwelliant 47: O blaid 5, Ymatal 0, Yn erbyn 5.  
Amendment 47: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul  
Davies, Suzy  
Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 47.*

*Amendment 47 not agreed.*

[229] **Ann Jones:** Simon, do you want to move amendment 48?

[230] **Simon Thomas:** I move amendment 48 in my name.

[231] **Ann Jones:** Amendment 48 has been moved. The question is that amendment 48 be agreed to. Does any Member object? There are no objections, therefore amendment 48 is agreed.

*Derbyniwyd gwelliant 48 yn unol â Rheol Sefydlog 17.34.*

*Amendment 48 agreed in accordance with Standing Order 17.34.*

[232] **Ann Jones:** Simon, do you want to move amendment 49?

[233] **Simon Thomas:** I move amendment 49 in my name.

[234] **Ann Jones:** Amendment 49 has been moved. The question is that amendment 49 be agreed to. Does any Member object? Yes. I call for a vote.

*Gwelliant 49: O blaid 5, Ymatal 0, Yn erbyn 5.*

*Amendment 49: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul  
Davies, Suzy  
Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 49.*

*Amendment 49 not agreed.*

[235] **Ann Jones:** Simon, do you want to move amendment 50?

[236] **Simon Thomas:** I move amendment 50 in my name.

[237] **Ann Jones:** Amendment 50 has been moved. The question is that amendment 50 be agreed to. Does any Member object? Yes. I call for a vote.

*Gwelliant 50: O blaid 5, Ymatal 0, Yn erbyn 5.*

*Amendment 50: For 5, Abstain 0, Against 5.*

Pleidleisiodd yr Aelodau canlynol o blaid:  
The following Members voted for:

Davies, Paul  
Davies, Suzy  
Jenkins, Bethan  
Roberts, Aled  
Thomas, Simon

Pleidleisiodd yr Aelodau canlynol yn erbyn:  
The following Members voted against:

Davies, Keith  
Griffiths, John  
Jones, Ann  
Rees, David  
Watson, Joyce

*Gan fod nifer y pleidleisiau yn gyfartal, defnyddiodd y Cadeirydd ei phleidlais fwrw yn unol â Rheol Sefydlog 6.20(ii).*

*As there was an equality of votes, the Chair used her casting vote in accordance with Standing Order 6.20(ii).*

*Gwrthodwyd gwelliant 50.  
Amendment 50 not agreed.*

[238] **Ann Jones:** We will now take a short break, just for a few moments.

*Gohiriwyd y cyfarfod rhwng 11:23 ac 11:28.  
The meeting adjourned between 11:23 and 11:28.*

[239] **Ann Jones:** There are some unfortunate circumstances that mean that that we cannot continue with item 2 of our agenda this morning, so we will return to the remaining business under item 2 at our next meeting, which will be next Thursday.

11:28

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

[240] **Ann Jones:** If Members return to the agenda, there is a series of papers to note. Do Members agree those papers to note? I see that everybody is happy with those.

11:29

### **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**

[241] **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).*

[242] I see that everybody is okay with that. Thank you very much.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:29.  
The public part of the meeting ended at 11:29.*



