



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

Y Pwyllgor Plant a Phobl Ifanc **The Children and Young People Committee**

Dydd Mercher, 15 Mai 2013
Wednesday, 15 May 2013

Cynnwys **Contents**

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru): Cyfnod 1—Sesiwn
Dystiolaeth 1
Further and Higher Education (Governance and Information) (Wales) Bill: Stage 1—
Evidence Session 1

Cynnig o dan Reol Sefydlog Rhif 17.42 i Wahardd y Cyhoedd o Weddill y Cyfarfod Motion
under Standing Order No. 17.42 to Exclude the Public for the Remainder of the Meeting

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol **Committee members in attendance**

Angela Burns

Ceidwadwyr Cymreig
Welsh Conservatives

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

**Eraill yn bresennol
Others in attendance**

Leighton Andrews AC/AM	Y Gweinidog Addysg a Sgiliau The Minister for Education and Skills
Andrew Clark	Dirprwy Gyfarwyddwr, Addysg Bellach a Phrentisiaethau, Llywodraeth Cymru Deputy Director Further Education and Apprenticeship Division, Welsh Government
Grace Martins	Uwch-gyfreithiwr, Llywodraeth Cymru Senior Lawyer, Welsh Government

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

Steve Davies	Cynghorydd Cyfreithiol Legal Adviser
Steve George	Clerc Clerk
Olga Lewis	Dirprwy Glerc Deputy Clerk
Anne Thomas	Y Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 9.31 a.m.
The meeting began at 9.31 a.m.*

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

[1] **Ann Jones:** Good morning, everybody, and welcome to the Children and Young People Committee. I will announce the usual housekeeping rules. I ask everybody to check that they have switched off their mobile phones and pagers, as they affect both the broadcasting and the translation. If Members could do that, that would be good. We operate bilingually, so should you require translation from Welsh to English, it is channel 1 on the

headsets and channel 0 is for the amplification of the language being spoken. We are not expecting the fire alarm to operate, so if it does, we will take our instructions from the ushers, or you can follow me, as I am usually one of the first out of the building. Do any Members need to declare any interests that they have not already declared on the Members' register of interests? I see that nobody does.

**Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru): Cyfnod
1—Sesiwn Dystiolaeth 1
Further and Higher Education (Governance and Information) (Wales) Bill:
Stage 1—Evidence Session 1**

[2] **Ann Jones:** We will move on then to the main item on the agenda for today's meeting, which is to scrutinise and look at the Further and Higher Education (Governance and Information) (Wales) Bill. We are delighted to have the Minister for Education and Skills, Leighton Andrews, with us. Minister, would you introduce yourself and your officials for the record?

[3] **The Minister for Education and Skills (Leighton Andrews):** Andrew Clark leads on further education policy and Grace Martins is one of our lawyers.

[4] **Ann Jones:** Thank you very much for that. We have quite a few areas that we want to cover, but do you have any opening comments that you wish to make?

[5] **Leighton Andrews:** I am happy to go straight into questions.

[6] **Ann Jones:** Thanks for that. I will start with a far-ranging question to start it all off, and I suppose it will narrow down afterwards. The model for further education governance proposed in this Bill is very different to that proposed in the Humphreys report. Why is that?

[7] **Leighton Andrews:** Clearly, at the time of developing our response to the Humphreys recommendations, we had in mind a different approach and we have been very explicit about that, I think. It is still open to further education colleges to adopt the Humphreys recommendations on a voluntary basis and we would hope that they would look eagerly at that opportunity. However, for reasons that are well understood, we have had to proceed in a different way, hence this Bill.

[8] **David Rees:** With regard to the declarations of interest, I am not sure whether I indicated on my register that I am a former member of the University and College Union.

[9] **Ann Jones:** That is fine.

[10] **David Rees:** Good morning, Minister. Unfortunately, the Chair has decided to share the questions out, so I cannot ask them all to you. *[Laughter.]*

[11] **Ann Jones:** No, the whole session is not for you. *[Laughter.]*

[12] **David Rees:** I will firstly go on to the models question. There were three options in the explanatory memorandum and option 2 was the funding council option. Reading through that, I could not understand what the strong case was as to why that was not considered. Can you give me some information as to why that was not considered as a viable option, and also what discussions, if any, did you have with the Office for National Statistics as to whether it would be possible?

[13] **Leighton Andrews:** I do not think our view was that we needed a funding council.

To our mind, there has been considerable consolidation within the further education sector over recent years. We have a small number of FE colleges now and our officials have established strong working relationships with those institutions. They know the people and there are direct lines of contact. It seems unnecessary to us to establish a new bureaucratic layer between further education institutions and the department.

[14] **David Rees:** Did you have any views from the ONS? Did you contact it?

[15] **Leighton Andrews:** These options have been discussed with the ONS, but I do not think that we necessarily explored that one in detail.

[16] **Mr Clark:** We did not explore it in detail, but we have observed what has happened in Scotland, where they do have a non-departmental public body between the Government and the colleges, and the ONS result was exactly the same. So, they transferred them out of the not-for-profit sector into the public sector, although there was a funding council in between the Scottish Government and the colleges.

[17] **David Rees:** I suppose, in one sense, it is the way that it works is the question and that is why I wonder whether it was explored further, or not.

[18] **Leighton Andrews:** I just do not think that there is a need for it. In 2004 to 2006, we went down the route of significantly reducing the number of quangos in Wales and it is not my policy objective to bring back more quangos.

[19] **David Rees:** I appreciate that, Minister. I will not pursue it much further, but it does negate it—it is not a policy objective. This current process could mean a change to other policies and original manifesto commitments.

[20] **Leighton Andrews:** David, we did not have a manifesto commitment to create a funding council for further education.

[21] **David Rees:** No, I am talking about the implications that the Bill might have on other issues.

[22] However, I want to move on to the borrowing issue. I raised this with you when you made a statement in the Chamber on 30 April. What controls will you be placing on borrowing to ensure that the borrowing that an organisation does will be focused purely on learner outcomes and not used for other purposes?

[23] **Leighton Andrews:** There are a number of issues here. I will start with our grant funding. Our grant funding is provided to further education institutions, as it is to other institutions, in order to drive learning. Further education institutions can borrow to undertake a number of activities within their missions. I do not see that what is being suggested here leads to any fundamental change in that.

[24] **David Rees:** But, it does not provide any control. From what I can see in the Bill, there is no control on the borrowing of that organisation. We currently have an FE institution that can borrow with your permission; however, it will now be able to borrow without your permission. I just want to know about this. We are seeing a huge expansion of FE with mergers taking place and corporations buying or setting up private companies; that exists now. I want to know what control you will try to put in place to ensure that if they borrow, they do not exceed limits or go beyond what they will be able to pay back, and that the borrowing is focused on learner outcomes.

[25] **Leighton Andrews:** They already have the power to create private companies, and

have done so. In respect of the controls on borrowing, any lender to a further education institution, as with any lender to any other institution, will have clear conditions for the terms on which that capital is borrowed. They will have to operate within that. We have seen the further education sector mature over time and develop, and we have seen the focus that it has given. Clearly, the mission of further education institutions is to provide learning for students. Any move away from that would give rise to concerns that would be expressed to us. I do not think that we anticipate this causing any major problems.

[26] **Ann Jones:** Simon has a supplementary on this and then I will come back to you, David.

[27] **Simon Thomas:** I fod yn benodol, fe wnaethoch gyhoeddi ddoe, Weinidog, y fframwaith cyllido newydd ar gyfer dysgu ôl-16, ac roeddech yn glir iawn eich bod yn mynd i ariannu yn ôl yr hyn rydych yn ei alw'n *'learner outcomes'*. Roedd hynny'n glir iawn. O edrych ar y Bil hwn, mae'n ymddangos y bydd modd, os caiff ei basio yn ei ffurf bresennol, i golegau benthg yn erbyn y llif incwm hwnnw. Ond, yn eich tyb chi a'ch polisi chi, nid yw'r llif incwm hwnnw ond ar gyfer yr hyn mae'r dysgwr yn ei ddysgu ac yn ennill. A yw'n wir nad ydych wedi ystyried unrhyw ffordd o geisio rhoi bach mwy o reolaeth yn y system i sicrhau nad oes perygl o ddefnyddio'r llif incwm yn erbyn benthg ar gyfer pwrpas tra gwahanol?

Simon Thomas: To be specific, you announced yesterday, Minister, the new funding framework for post-16 learning, and you were very clear that you were going to fund according to what you described as *'learner outcomes'*. That was very clear. In looking at this Bill, it appears that if it is passed in its current form, colleges will be able to borrow against that income flow. But, in your view and according to your policy, that income flow is only there for learner outcomes and the benefit of the learner. Is it the case that you have not considered any way of trying to put more control into the system to ensure that there is no risk of using that income flow against borrowing for purposes that could be very different?

[28] **Leighton Andrews:** We already have controls within the system that allow us to monitor that. There are conditions of grant and I do not think that anything has changed.

[29] **Simon Thomas:** To monitor it, yes; but what about controlling it?

[30] **Leighton Andrews:** The issue is whether or not we have safeguards for public finance. Clearly, we have safeguards for public finance, which are built in through the conditions of grant. I think that you need to bear in mind, of course, that there will continue to be financial monitoring of institutions. They will have to satisfy audit requirements, and they will have to publish annual reports and so on. I do not think, frankly, that there is anything here that creates conditions that gives rise to concerns for us.

[31] **David Rees:** Perhaps I could take that a little further. Obviously, therefore, you are indicating that there will be guidance from the Welsh Government, and the Wales Audit Office will be involved in monitoring the financial aspects of it. Will there be any conditions as to how much should be put in reserves, for example? I have some figures that have shown dramatic increases in the reserves of some of the further education institutions. Having previously been in an institution where my vice-chancellor was very proud of promoting how much he had put into reserves, compared with the actual delivery on education, what type of mechanism are you putting in place to ensure that the funding and borrowing going in will not be at the expense of the learner, and that this will go into the reserves, which may therefore be used as a mechanism to, let us just say, guarantee borrowing,?

[32] **Leighton Andrews:** Swansea Metropolitan University has the reputation of being the institution with the best financial management in the UK in the higher education sector.

[33] **David Rees:** Yes. We had very good figures.

[34] **Leighton Andrews:** I do not think that we should necessarily knock that financial practice. In respect of the issue of reserves, colleges will accrue reserves in order to pursue particular objectives, which may be, for example, the development of major capital projects. I do not think that we would want to inhibit them from doing that. We would find it odd if they were building up unnaturally high degrees of reserves, but I think that this is something that would be open and transparent. It would have to be reported clearly in their financial reporting, it would be addressed by auditors, and it would give rise for the opportunity for these issues to be addressed at institutional level.

[35] **David Rees:** To clarify, if someone increases their reserves by 100%, is that something that you would consider disproportionate?

[36] **Leighton Andrews:** It would depend—if they only had £1 million in reserves and increased it to £2 million, that would be a 100% increase and might very well be appropriate.

[37] **David Rees:** I appreciate that, but they might also leap from £6 million to £12 million.

[38] **Leighton Andrews:** That might be appropriate too. It would depend on what those reserves were being used for. It is very difficult to give an answer in the abstract.

[39] **Suzy Davies:** I have a few questions for you, Minister, but I will just come back to this question of borrowing for a minute. As you know, further education colleges will have the opportunity to dissolve themselves and, indeed, the Government will have the opportunity to direct the dissolution. That would certainly be appropriate if a further education college was either insolvent or about to become insolvent. I just want to check the status of the public funding side of that in the event of an institution becoming insolvent. As you know, there is a priority for creditors when it comes to the dissolution of a body due to insolvency. If these institutions are going to be able to borrow, it is bound to be a condition of their private borrowing that this has priority over loans, perhaps, from the public sector. Can you foresee a problem there? How do you intend to protect the taxpayer element of this, because public money is still going into these institutions, notwithstanding their independence?

[40] **Leighton Andrews:** The situation could arise now. Nothing is changed by the Bill in that respect.

[41] **Suzy Davies:** How do they deal with it now?

[42] **Leighton Andrews:** No institution has ever entered administration, so we have not had to address that situation. We have taken steps, quite prudently I think, to work with the sector to ensure that it has effective financial control regimes in place. Clearly, we carry out our own assessments when we are agreeing conditions of grant to different institutions, and we have an expectation that they are properly managed. All of these issues are addressed in the articles of the institutions and in other ways.

[43] **Suzy Davies:** Those will be open to change now, of course. Will you be able to still exert that level of influence over the protection of the public element of money?

[44] **Leighton Andrews:** Clearly, there are obligations on the directors of a college to have regard to their fiduciary responsibilities. They must ensure that they are not trading insolvently. All of those matters would exist currently. I do not see that we are necessarily changing anything in this Bill that causes us any concerns.

9.45 a.m.

[45] **Suzy Davies:** Is that why you are retaining the power to intervene and direct a dissolution, if needs be? Could that be an example of why you are retaining it?

[46] **Leighton Andrews:** There are a number of reasons why you would want that power there. I would hope that that power would never have to be used.

[47] **Suzy Davies:** Can you give me further examples of when you might use that power?

[48] **Leighton Andrews:** There could be examples, I suppose, where we might see that an institution was failing in a particular regard. There could be issues where it was failing to provide the requisite programmes of learning for individuals where we had identified that the college's affairs had been explicitly mismanaged by the governing body of the institution, for example.

[49] **Rebecca Evans:** I wonder whether you can give us a picture of how frequently colleges have sought ministerial consent to borrow in the past. If the answer has been 'no' to borrowing, can you tell us why that was the case?

[50] **Mr Clark:** Certainly, over the last decade no requests have been turned down. Between one and two requests per annum are received.

[51] **Rebecca Evans:** What level of finance were they looking to borrow?

[52] **Mr Clark:** They vary immensely.

[53] **Suzy Davies:** I wanted to go back to what you were saying, Minister, about you having the power to intervene to dissolve an institution. That is a powerful lever. With regard to accountability, in your answer to David Rees you said that you were not interested in the funding council model, yet the autonomy of these further education institutions, which I welcome, gives them an awful lot of scope to do pretty much what they please. Without a body that will be responsible for making these institutions accountable, does that mean that all the power stays within the Government for that? Is there not an independent overview of how these FE colleges work?

[54] **Leighton Andrews:** There are legal restraints on them, which we have referred to in respect of audit. There are conditions on the grant funding that we give to them. They would have to satisfy their governing bodies, clearly. The governing bodies will include a broad range of representation. Their accounts will be transparent and audited. So, they operate within a framework of public transparency, I would say.

[55] **Suzy Davies:** Are you losing some control over who might be on the governing bodies? Do you foresee that that might be a problem?

[56] **Leighton Andrews:** We are anticipating, of course, that the governing bodies will include learner and staff representatives. There is nothing in this Bill that causes us concerns with respect to the likely development of governance in the future. Collectively, through ColegauCymru, the further education sector is being positive about the way in which it might approach the governance recommendations set down, for example, in the Humphreys review.

[57] **Suzy Davies:** I am pleased to hear that you have this element of trust in the potential governing bodies. May I ask you, finally, about those areas of policy that are of concern, particularly where there is a connection with schools? I am thinking in particular of the Welsh in education strategic plans and other consultation exercises that take place under the school

standards legislation. Have you any concerns that, with autonomy, further education institutions may decide not to play ball and not take part in consultations to do with the 14-19 pathway or Welsh in education strategic plans?

[58] **Leighton Andrews:** No, I do not have those concerns. If anything, the argument has usually been put to me in the other way, namely that the 14-19 learning networks locally have not necessarily always opened up discussion to further education institutions and have been kept rather more closely for the benefit of schools and local authorities. If you were to move into the area of Welsh in education strategic plans, which are local authority plans, but they will provide opportunities for provision to be secured by local authorities in a variety of ways. We would expect through the grant funding that we make available, a balance of provision through the medium of Welsh, as through the medium of English. In due course, we will move to discussions on what citizens may expect in relation to standards in the Welsh language. The sector may be wise to give consideration to that.

[59] **Suzy Davies:** Obviously, all of these organisations will have different governing bodies and, perhaps, different priorities. Will you be relying currently on Welsh language schemes, to make sure that further education institutions take their duties towards the language seriously?

[60] **Leighton Andrews:** I would not want to prejudge what I might rely on, Chair.

[61] **David Rees:** On the question of dissolution, the dissolution is to the FECs and not the FEIs, and therefore, it is the corporation that is dissolved. If they dissolve, what controls will you have in place to ensure where the assets of that corporation will go? At the moment, it is clear that they can transfer. You have identified certain areas, but will those regulations be quite strict as to where they can transfer assets?

[62] **Leighton Andrews:** Yes. We will make regulations prescribing the process for dissolution, and that will include specifying to whom a college can transfer its property rights and liabilities on dissolution. That will ensure extensive consultation with all stakeholders, including staff and learners. There will be draft regulations that will be subject to consultation, before those regulations are made. So, there will be extensive consultation throughout this process.

[63] **David Rees:** I would like to return to a point that I raised with you on 30 April, and that is the articles and instruments of government. I did not get an answer then. Who will authorise and approve those articles and instruments of government initially? You talk about modifying them. They have the right to modify them, but who will monitor those modifications to ensure that they still abide by the rules that you lay down?

[64] **Leighton Andrews:** It is important to understand that Schedule 1 to this Bill introduces a new Schedule 4 to the Further and Higher Education Act 1992, and that will apply to the instruments and articles of government of particular institutions. We will still make the instruments and articles of government for any new corporation, for example, a corporation created from a type A merger, just as we have had for Gower College Swansea, or Cardiff and Vale College. So, there will be a requirement on any corporation that amends or modifies its instruments and articles to demonstrate that it is compliant with the essential elements set out in Schedule 1 to the Bill.

[65] **David Rees:** So, effectively, they will be accountable to the Welsh Government for those articles and instruments.

[66] **Leighton Andrews:** They will be accountable under law for what they have done.

[67] **David Rees:** Will that process apply to sixth-form colleges. St David's Catholic Sixth Form College has been raised, and the same rules would apply there.

[68] **Leighton Andrews:** That is my understanding, yes.

[69] **David Rees:** Do you have discussions and consultations with the dioceses on that?

[70] **Leighton Andrews:** We have had representations from the Catholic education service, and we are taking those into account in drafting what will be put forward.

[71] **David Rees:** I will highlight another example. I would like to know what the Welsh Government's view is on collaboration with institutions. Coleg Sir Gâr, for example, will be merged with University of Wales Trinity St David. What is the position on articles and instruments of government there, and how does this link into higher education institutions? How will this Bill affect them?

[72] **Leighton Andrews:** There is a separate process for the development of initiatives such as higher education institutions that would require our consent, following consultation.

[73] **Simon Thomas:** A allwch chi gadarnhau nad oes dim yn y Bil hwn sy'n newid sefyllfa sefydliadau addysg bellach mewn perthynas â Swyddfa Archwilio Cymru a *vice versa*? Hynny yw, a allwch chi gadarnhau, o ran gwaith Swyddfa Archwilio Cymru a'i rôl yn y maes hwn, nad oes dim yn y Bil hwn sy'n newid y berthynas honno a'r sefyllfa gyfreithiol o gwmpas hynny?

Simon Thomas: Can you confirm that there is nothing within this Bill that changes the position of further education institutions in relation to the Wales Audit Office and vice versa? Can you confirm, as far as the work of the Wales Audit Office and its role in this field are concerned, that there is nothing in this Bill that changes that relationship and the legal position surrounding that?

[74] **Leighton Andrews:** I do not think that there is anything that changes the relationship. FE colleges or colleges subject to this Bill may have their own auditors, in any case, at the present time.

[75] **Mr Clark:** The other issue with the Wales Audit Office is around the value-for-money studies. Those studies will continue—this Bill does not affect the WAO's ability to include FE in value-for-money studies.

[76] **Simon Thomas:** Okay. I just wanted confirmation of that.

[77] **Ann Jones:** Okay, thank you. We will now move on to the Welsh Government's powers of intervention direction. Aled has the next questions, followed by Keith.

[78] **Aled Roberts:** Yn gyntaf, hoffwn ddelio â'r ffaith eich bod wedi tynnu rhai pwerau yn ôl, i ryw raddau, yn hytrach na eich pwerau i ymyrryd. Mae'r Bil yn dileu'r gofyniad i sefydliadau addysg bellach gydymffurfio â chyfarwyddiadau gan Lywodraeth Cymru o ran y cwricwla lleol, ac o ran cydweithio i ddarparu'r cwricwla lleol. Pam wnaethoch chi benderfynu mai dyna'r ffordd orau i symud ymlaen wrth symud at sefydliadau sy'n fwy annibynnol?

Aled Roberts: First, I wish to deal with the fact that you have pulled some powers back, to some extent, rather than your powers to intervene. The Bill removes the requirement on higher education institutions to comply with Welsh Government directions on local curricula, and on collaboration to provide the local curricula. Why did you decide that that was the best way to progress in moving towards institutions that are more autonomous?

[79] **Leighton Andrews:** I think that I have explained previously in the Assembly that we

are following a route that we feel that we must follow, in respect of satisfying the requirements of the Office for National Statistics.

[80] **Aled Roberts:** A oes gennych unrhyw bryderon ynglŷn â'r ffaith na fydd cymaint o gydweithio o ran y cwricwla lleol? **Aled Roberts:** Do you have any concerns about the fact that there will not be as much collaboration in terms of the local curricula?

[81] **Leighton Andrews:** No.

[82] **Keith Davies:** Yn dilyn yr hyn y soniodd Suzy amdano yn gynharach, gwn am enghreifftiau ar draws Cymru ble mae ysgolion a cholegau yn paratoi llwybrau dysgu gyda'i gilydd. Os oes plentyn yn dilyn cwrs rhwng 14 ac 16 oed, a fydd y cwrs hwnnw ar gael wedyn rhwng 16 a 18 oed? Mewn ysgol, efallai dim ond un plentyn fyddai eisiau parhau â'r cwrs hwnnw. Felly, a yw'r pwerau gennych i ymyrryd yn y maes hwnnw i sicrhau y gall y plentyn, neu'r plant, barhau â'r cwrs y maent eisiau ei ddilyn? Mae'r pŵer gennych yn awr, ond a fydd y pŵer gennych yn y dyfodol? **Keith Davies:** Following on from what Suzy said earlier, I know of examples from across Wales where schools and colleges prepare learning pathways in collaboration. If a child is following a course between the ages of 14 and 16, will that course then be available between the ages of 16 and 18? In a school, perhaps only one child would want to continue with that course. Therefore, do you have the powers to intervene in that area to ensure that the child, or children, can continue with the course of their choice? You have the power now, but will you have the power in the future?

[83] **Leighton Andrews:** As you can see from the Bill, we are removing a number of the powers that we have. The reality is that there will be a need for collaboration at a local level to ensure that provision exists. That happens regardless of the nature of the current powers. It would be very unusual—and I cannot think of a single instance—for a Minister to intervene to secure the position of a single student on a particular pathway.

[84] **Keith Davies:** Os oes un plentyn mewn un ysgol, a phlant eraill mewn ysgol arall, efallai y gallent ddod at ei gilydd. Dyna sy'n digwydd yn awr. Mae Coleg Sir Gâr wedi sefydlu pwyllgorau gyda'r ysgolion—mae un grŵp yn cyfarfod yn Ninefwr, un arall yng Nghaerfyrddin, ac un arall yn Llanelli—a, chyda'i gilydd, maent yn paratoi i sicrhau y gall plant ddilyn eu dewis gyrsiau. Os nad yw hynny'n digwydd, mae'r pŵer gennych ar hyn o bryd i ymyrryd. Dyna'r hyn rwy'n besco amdano: na fydd y pŵer hwnnw gennych yn y dyfodol, ac, wedyn, y gall sefydliadau wneud unrhyw beth y maent eisiau. **Keith Davies:** If there is one child in one school, and other children in another school, they could perhaps come together. That is what happens at present. Coleg Sir Gâr has established committees with the schools—one group meets in Dinefwr, another in Carmarthen, and another in Llanelli—and, together, they prepare to ensure that children can follow the courses they want. If that does not happen, you have the power now to intervene. That is what I am worried about: you will not have that power in future, and, then, institutions can do whatever they want.

[85] **Leighton Andrews:** I never have intervened, and I am not sure that any Minister for education has ever intervened. I am not sure that that power is required.

[86] **Ann Jones:** David has the next questions, followed by Aled.

[87] **David Rees:** I appreciate that you have not intervened, and it is unlikely that you would ever intervene. However, the explanatory memorandum indicates that there is a duty on FE institutions to meet the needs of learners and local communities. Paragraph 25 of the Bill mentions repealing the duty on FEIs to consult with learners and businesses. If an FEI

does not consult with learners and local businesses, do you believe that that is an appropriate reason to intervene?

[88] **Leighton Andrews:** I do not think that we would seek to intervene in using the powers in this Bill to rectify that situation. Pressure can be applied in a number of different ways. Very often, exhortatory pressure is the most powerful form of pressure: that is, naming and shaming.

10.00 a.m.

[89] **Aled Roberts:** Hoffwn ddatblygu'r syniad hwn. Rwyf yn derbyn nad yw'n realistig i Weinidog ymyrryd o ran y cwricwlwm. Serch hynny, mae'r sefydliadau hyn yn deall bod disgwyl iddynt gydweithio. Y broblem sydd gan rhai ohonom yw bod y darparwyr hyn o fewn y sector addysg bellach yn llawer cryfach mewn rhai ardaloedd na'r ysgolion. Mae'n bosibl y byddant yn fwy parod i ddefnyddio'r grym hwnnw i beidio â chyfaddawdu a darparu gwasanaethau lle mae niferoedd bach o fyfyrwyr chweched dosbarth mewn ysgolion. Felly, nid yw hon yn broblem o ran ymyrraeth gan y Gweinidog: y broblem yw nad oes yna ddisgwyliaid ar lefel genedlaethol, ac mae hynny'n achos pryder inni.

Aled Roberts: I would like to develop this idea. I accept that it is not realistic for a Minister to intervene in respect of the curriculum. However, these institutions understand that they are expected to collaborate. The problem that some of us have is that these providers in the further education sector are far stronger in some areas than the schools. Perhaps they would be more willing to use that power in order not to compromise and provide services where there are small numbers of sixth-form students in schools. Therefore, this is not a problem of ministerial intervention: the problem is that there is no expectation at a national level, and that is a cause of concern for us.

[90] **Leighton Andrews:** We would tend to use funding arrangements to ensure cooperation. That is the whole point of the new national planning and funding regime, which I announced yesterday. One of my concerns with the previous regime was that it encouraged competition rather than collaboration. We are moving to a different approach, and that is the right way to address these issues. There is an issue—a policy issue rather than a legislative issue in respect of this Bill—where we may have, in some parts of Wales, some courses that are not viable, that are pursued by a very small number of people and that do not necessarily add up to an effective programme of learning for a learner in any case. The system needs to be more sensitive to that, and that is another reason why we are changing to the national planning and funding system.

[91] **Aled Roberts:** Fy nghwestiwn olaf yw: yn eich barn chi, beth yw'r rheswm dros fodolaeth ColegauCymru, wrth symud ymlaen?

Aled Roberts: My final question is: in your opinion, what is the reason for the existence of CollegesWales, going forward?

[92] **Leighton Andrews:** ColegauCymru is the representative body for further education colleges in Wales, just as Higher Education Wales is the representative body for universities in Wales. There are clearly ways in which it will want to make collective representations to the Government or to other stakeholders.

[93] **Keith Davies:** Mae gennych yr hawl i ddiddymu colegau addysg uwch, ond nid oes gennych yr hawl i ddiddymu colegau addysg bellach. Pam?

Keith Davies: You have the right to abolish higher education colleges, but you do not have the right to abolish further education colleges. Why?

[94] **Leighton Andrews:** It is because, way back in the day, Parliament decided that it wanted safeguards around academic freedom. Therefore, there have always been different approaches to further education institutions and higher education institutions. That is set out in the Further and Higher Education Act 1992. There are explicit conditions within that. For example, we are not able to fund higher education institutions directly. That is one of the issues that we have debated in recent years, when we had the review of higher education governance. When we have consulted, the evidence is that the higher education sector and other stakeholders would prefer those arm's-length relationships to persist, but there has always been a different approach to further education.

[95] **Ann Jones:** I will bring in David Rees, but this should be very brief, as we need to move on.

[96] **David Rees:** Minister, you mentioned the viability of courses. Following yesterday's announcement on the NPFS, decisions on the viability of courses are surely going to be for colleges, as they always have been. However, what is the Government's position on looking at a course or programme in particular areas where there is slight demand but where it might not be viable? How do you serve the needs of the learner in that situation?

[97] **Leighton Andrews:** It seems to me that that is a matter that we should discuss in the context of the new planning and funding regime. It is not affected by this Bill. Clearly, there will be areas where provision has to be negotiated by a number of institutions, or that provision is simply not going to be available. However, there may also be approaches that can be developed in the future through distance learning, which we should be looking at as well.

[98] **David Rees:** The only reason that I mention this in relation to the Bill is the loss of control of FE institutions that will be a consequence of the Bill.

[99] **Leighton Andrews:** It seems to me that these are matters for discussion in the appropriate 14-19 fora. Through the funding regime, we can recognise the provision of certain kinds of courses and programmes for study. I do not think that the Bill changes anything significantly in that regard.

[100] **Ann Jones:** Okay, we will move on to the ONS decision to reclassify colleges.

[101] **Bethan Jenkins:** Rwyf am ofyn **Bethan Jenkins:** I want to ask about the ynglŷn â phenderfyniad Swyddfa Ystadegau Gwladol i ailddosbarthu colegau addysg bellach. Pa mor hyderus ydych chi, Weinidog, y bydd yr ONS yn cyd-fynd â'r hyn sydd yn y ddeddfwriaeth? Dywedwch yn y memorandwm esboniadol: ONS's decision to reclassify further education colleges. How confident are you, Minister, that the ONS will agree with what is in the legislation? You stated in the explanatory memorandum:

[102] 'The legislation could result in the reversal of public sector categorisation',

[103] ond nid ydych yn dweud y bydd. Hefyd, dywedwch, o ran risgiau, o dan bwynt 97: but you do not state that it will do so. Also, you state under point 97 with regard to risks:

[104] 'The legislation does not give the ONS Classification Committee the assurances needed'.

[105] Mae llawer o *what ifs* yn hyn o beth. A allwch esbonio a fydd y ddeddfwriaeth hon—beth yw'r gair yn Gymraeg—yn just explain whether this legislation will—what is the word—satisfy the ONS that what

gwneud yr ONS yn hapus bod yr hyn sy'n is happening in the legislation is right?
digwydd yn iawn yn y ddeddfwriaeth?

[106] **Leighton Andrews:** Yes, I am confident that it will. We have explored these issues in detail with the ONS. I cannot say it with 100% certainty, but the conversations that our officials have had with ONS make us believe that we will be successful, and, of course, the proposals that we are bringing forward are, in terms of the legal elements, based on legislation that has been developed in England that has been accepted by the ONS.

[107] **Bethan Jenkins:** Diolch am hynny. Mae nifer o bobl wedi gofyn pam y mae angen y ddeddfwriaeth hon. Pam na fyddwch fel Gweinidog yn gallu siarad â'r ONS i fynd yn ôl i'r sefyllfa cyn 2010 yn hytrach na chael deddfwriaeth? A ydych wedi edrych ar yr opsiwn hwnnw, am mai gan San Steffan y mae'r pwerau hyn, gyda'r ONS ar hyd braich o San Steffan? A ydych wedi ystyried yr opsiwn hwnnw neu a oes angen deddfwriaeth?

Bethan Jenkins: Thank you for that. A number of people have asked why there is a need for this legislation. Why could you, as the Minister, not speak to the ONS in order to return to the position prior to 2010 rather than introducing legislation? Have you looked at that option, given that these powers are retained at Westminster, and the ONS is at arm's length from Westminster? Have you considered that option or is legislation necessary?

[108] **Leighton Andrews:** Legislation is absolutely required; these matters are devolved to us. What ONS is doing is operating within the context of EU law in the definitions that it is applying. The only route through for us to ensure that we can return FE institutions to the category rather inelegantly known as NPISH—non-profit institutions serving households—is through legislation.

[109] **Bethan Jenkins:** Rydych yn sôn am Loegr. A ydych chi wedi edrych ar yr hyn sy'n digwydd yn yr Alban a Gogledd Iwerddon? O'r hyn rwyf wedi ei ddarllen, ar hyn o bryd, nid ydynt wedi rhoi'r un *emphasis* ar edrych ar hyn ag y rydych wedi'r roi fel Gweinidog. Dywedwch fod angen deddfwriaeth i wneud hyn. Pam yr ydych yn credu nad ydynt wedi rhoi'r un fath o *emphasis* ar y peth ag yr ydych chi wedi'i roi fel Gweinidog?

Bethan Jenkins: You mentioned England. Have you looked at what is happening in Scotland and Northern Ireland? From what I have read, currently, they have not placed the same emphasis on looking at this as you have as a Minister. You say that legislation is required to do this. Why do you think that they have not placed the same emphasis on this as you have as Minister?

[110] **Leighton Andrews:** First, let me say that we have looked at the situation in both Scotland and Northern Ireland. We anticipate that there will be statements in the future from Northern Ireland on this. However, as far as we can see, the Scottish Government has not yet made a public announcement on its way forward. We believe that the same issues will be faced by those Governments.

[111] **Bethan Jenkins:** Rydych yn dweud yn eich memorandwm bod hyn y broses gam wrth gam. A allwch esbonio i ni'r camau nesaf, os mai hwn yw'r cam cyntaf?

Bethan Jenkins: You state in your memorandum that this is a staged process. Can you explain to us the next stages, if this is the first stage?

[112] **Leighton Andrews:** Yes, indeed. The first stage, obviously, is that we pass the legislation. There will then need to be secondary legislation, which we will bring forward, including regulations, of course.

[113] **Bethan Jenkins:** Mae cwestiwn arall **Bethan Jenkins:** There is another question I

yr wyf eisiau ei ofyn. Beth yw'r risgiau ariannol i'r sefydliadau addysg bellach a Llywodraeth Cymru os na fydd Swyddfa Ystadegau Gwladol yn newid y dosbarthiad yn ôl fel bod y sefydliadau yn rhai dielw? A ydych yn gwybod?

want to ask. What are the financial risks for the further education establishments and the Welsh Government if the ONS does not change the classification of FEIs back to NPISH? Do you know?

[114] **Leighton Andrews:** Well, they are quite significant. Essentially, they would affect the capital elements in particular: borrowing by FT institutions would be regarded as our borrowing; any balances that they have would be regarded as our balances; they would only be able to carry over a tiny percentage of money, year on year—about 3%—whereas under the arrangements envisaged under this Bill, they will be able to carry over more.

[115] **Bethan Jenkins:** Ym mhwynt 65 o'ch memorandwm, rydych yn dweud mai'r gost o wneud dim byd yw ychydig dros £77,000 y flwyddyn. Nid yw hynny'n edrych fel swm mawr i mi; ai pwrpas y newid yw nad yw'n opsiwn i gadw'r *status quo*, neu, fel yr ydych wedi ei ddweud, a oes angen creu deddfwriaeth i wneud y newid hwn? Hoffwn ddeall y pwynt hwnnw.

Bethan Jenkins: In point 65 of your memorandum, you state that the cost of doing nothing is a little over £77,000 per year. That does not look like a particularly big sum to me; is the reason for the change that it is not an option to retain the status quo, or, as you said, is it necessary to create legislation to make this change? I would like to understand that point.

[116] **Leighton Andrews:** I think that we are confusing figures here. That is a figure for the internal administration costs. The actual cost to the sector could run into several millions. We have looked at figures that have been as much as £20 million in terms of capital.

[117] **Bethan Jenkins:** I orffen, hoffwn ofyn pam fod ONS yn diffinio prifysgolion fel sefydliadau dielw o hyd ac nid colegau addysg bellach.

Bethan Jenkins: To conclude, I would like to ask why the ONS still defines universities as non-profit organisations but not further education colleges.

[118] **Leighton Andrews:** I think that it is fair to say that this is an issue that the ONS is still giving consideration to.

[119] **Bethan Jenkins:** So, that is something on which you think an announcement would be forthcoming soon.

[120] **Leighton Andrews:** There are different levels of control in respect of higher education institutions. There is a different level of autonomy and there are arm's-length relationships. There are different relationships set down in law. However, we do not know whether the ONS will wish to look at that sector as well in the future.

[121] **Ann Jones:** Simon would like to come in on this point.

[122] **Simon Thomas:** Er mwyn i'r Bil fel y mae ar hyn o bryd gael ei gymeradwyo gan y Cynulliad, mae'n rhaid i Aelodau Cynulliad fod yn weddol sicr y bydd y Bil yn darparu'r canlyniad polisi yr ydych am ei weld. Rydych newydd esbonio bod y gost yn gost cyfalaf yn y sector hwn ac y gall fod gymaint ag £20 miliwn. Fodd bynnag, gallai'r Cynulliad basio Bil ond os nad yw'r ONS yn newid ei ddiffiniad, byddwn mewn sefyllfa waeth

Simon Thomas: In order for the Bill as it currently stands to be approved by the Assembly, Assembly Members must be reasonably certain that the Bill will provide the policy outcome that you want to see. You have just explained that the cost is a capital cost in this sector and could be as much as £20 million. However, the Assembly could pass the Bill but if the ONS does not change its definition, we will be in an even worse

byth—byddwn wedi rhoi'r holl ryddid hwn i'r sector ac wedi tynnu yn ôl y cyfeiriad cyhoeddus dros y sector, ond eto ni fyddwn wedi cyrraedd y nod o ddatrys y sefyllfa o ran y sefyllfa gyfalaf. Mae'n rhaid i'r Cynulliad dderbyn mwy o sicrwydd na'r hyn y gallwch ei roi i ni ar hyn o bryd, Weinidog, y bydd yr ONS yn ymateb yn ffafriol i'r Bil hwn. A ydych yn dal i drafod gyda'r ONS ac a ydych yn ffyddiog y gallech ddweud mwy cyn i'r Bil hwn gael ei gymeradwyo?

situation—we will have given freedom to the sector and we will have pulled back the public direction over the sector, but we will not have reached the goal of resolving the situation relating to the capital position. The Assembly must have greater certainty than you can give us at this time, Minister, that the ONS will respond favourably to this Bill. Are you still in discussions with the ONS and are you confident that you will be able to say more before the Bill is approved?

[123] **Leighton Andrews:** It is not just capital, it is borrowing and surpluses as well, and the way in which they are treated. We are as confident now as we can be in respect of the ONS, following recent discussions with it. It is, of course, open to this committee, if it wishes to do so, to bring the ONS before it.

[124] **David Rees:** I would like to make a quick point. With regard to the question about universities and the ONS, the original White Paper related to FE and HE governance. You have taken out the HE element, but you did state that you would look at that in the future. Has it been taken out because the ONS is not quite clear on it yet?

[125] **Leighton Andrews:** No, but that is a fair question. There are a number of reasons why we have not pursued the HE governance elements in this Bill. They are not all to do with the ONS, but it is wise for us to be clear about where the ONS is on this issue. It would have been quite a compendious Bill if we had gone along that route, and there were still some unresolved issues on a policy and legal basis that we wanted to work through ourselves in more general terms.

[126] **Keith Davies:** Mae fy nghwestiwn yn dilyn ymlaen o'r hyn yr oedd Simon yn ei ofyn. O dan Ddeddf Addysg 2011, yn Lloegr, a yw pob coleg addysg bellach yn Lloegr y tu fas i'r sector gyhoeddus? Ai dyna sydd wedi digwydd o dan y Ddeddf honno? Os felly, pam nad yw hynny wedi digwydd yng Nghymru?

Keith Davies: My question follows on from Simon's question. Under the Education Act 2011 in England, are all further education colleges in England outside the public sector? Is that what has happened under that Act? If so, why has that not happened in Wales?

10.15 a.m.

[127] **Leighton Andrews:** I am afraid that I am not an expert on further education in England. I do not know whether Andrew has a better idea.

[128] **Ann Jones:** We can have a note if you want to go away to consider that.

[129] **Mr Clark:** The Education Act 2011 resulted in the Office for National Statistics reversing its classification of, I think, 2010, which reverted FE colleges in England to non-profit institutions serving households.

[130] **Ann Jones:** Just for the committee to know, we have contacted the ONS to invite it to come before the committee. We are awaiting its response, but I am sure that if it is monitoring this issue, it would like to come to put its case to us.

[131] We have about a quarter of an hour left and we have two big themes that we need to cover, namely the implications of the Bill for learners, local communities and FE staff, and

the provisions relating to the higher education sector. We will take questions on the implications for learners and local communities first from Lynne and then from Rebecca.

[132] **Lynne Neagle:** Minister, why did you decide to remove the duty to consult with learners and employers as part of the Bill?

[133] **Leighton Andrews:** This goes back to the core reason for the Bill, which is the need to produce an outcome that satisfies the ONS. That does not mean that we do not regard consulting with learners and other stakeholders as being good practice; we would encourage that.

[134] **Lynne Neagle:** Thank you. Schedule 1 to the Bill specifies that a college's instrument of governance must include staff and students as members of the governing body. Can you elaborate on the role of students in the governance processes?

[135] **Leighton Andrews:** It has always been our view that learner voice is essential in shaping effective student experiences and student outcomes. We would therefore anticipate that there would be a serious role for learners within an institution's framework. We have placed considerable emphasis throughout our policies to supporting learner voice in the FE sector, as we have placed an emphasis on the role of student unions, for example, within the higher education sector. Indeed, we have been working over a number of years on a project with the National Union of Students to support learner voice in FE.

[136] **Lynne Neagle:** How will you encourage further education institutions to work collaboratively with sixth forms and HE institutions?

[137] **Leighton Andrews:** As I said in answer to one of the earlier questions, we would see the opportunities that we have through the national funding and planning system to enable us to drive collaboration as being the route that we would want to take.

[138] **Angela Burns:** It is a philosophical question, because I think that we are all in agreement that collaboration is the way forward. Do you have any concerns or views on how we might ensure that the word 'collaboration' does not eradicate academic freedom for any institution to pursue a particular goal? This is particularly in relation to HE institutions, rather than sixth form colleges, but it can also apply to further education institutions.

[139] **Leighton Andrews:** I am not in the habit of answering philosophically at committees. [*Laughter.*] We are here to discuss a specific piece of legislation that relates to the further education sector—

[140] **Angela Burns:** Yes, but the collaboration agenda is important.

[141] **Leighton Andrews:** In respect of the higher education sector, we have pursued policy issues with which you are very familiar, and I will have more to say about collaboration within higher education institutions in the course of the next month.

[142] **Rebecca Evans:** Minister, do you see any consequences for FE staff as a result of greater autonomy for colleges? In particular, what difference will the Bill's provisions make to colleges' ability to alter pay and conditions for staff? Would it have an impact on the move towards a common contract for staff?

[143] **Leighton Andrews:** No, we do not anticipate that this will have an impact on the move towards a common contract. We have not been directly involved in the negotiations, although we have discussed the common contract in meetings with the trade unions and Colegau Cymru. We do not have statutory power to impose staff terms and conditions on FE

institutions; that is a matter for negotiation by both sides.

[144] **Rebecca Evans:** You mentioned the trade unions, and I noticed in the response to your White Paper that the majority of the trade unions were opposed to the proposals. What other discussions have you and your officials been having with the trade unions beyond the common contract?

[145] **Leighton Andrews:** We have discussed the proposals in this Bill explicitly with the University and College Union. I spoke about this matter at the UCU conference recently, in March. We understand the position of the UCU and other unions, and I think that they understand why we are bringing this Bill forward. I have been very explicit; I would rather not be bringing this Bill forward in its current format.

[146] **Bethan Jenkins:** I have a question with regard to the risks. I want to refer particularly to the bullet point under point 98, which, as Rebecca mentioned, relates to the concern in relation to the bodies removing themselves from nationally agreed pay scales and current negotiations to establish national terms and conditions. It is not clear in the explanatory memorandum what you would do, potentially, to mitigate this problem. You say that it is a risk, but you do not say how you would deal with the risk; I am not sure whether you intended to use the explanatory memorandum to do that. The concern that trade unions have brought to me is that they are not satisfied that their concerns have been fully heard at the moment by you as Minister.

[147] **Leighton Andrews:** I am not sure that that is how I see it. I think that they understand that we have heard their representations, but I think that they understand why we feel that we have to bring this legislation forward. We are not always able to respond to every request that is put forward to us, whether it is by the trade unions or by any of the other organisations that make representations to us. The Bill itself, as far as we can see, does not affect the issue of national pay agreements, but we are certainly looking at what else we can do in terms of conditions of funding requirements to ensure that national pay agreements are honoured.

[148] **Bethan Jenkins:** You say that, but you also say that it could be a risk. I am merely trying to understand whether this would be a question for the ONS and for us as a committee to ask them about these potential risks that you have outlined in the explanatory memorandum. They are there. You would not have put them there if you did not think that they were possible risks. That is what I am trying to get an understanding of here. So, there must be a way—did you raise this with the ONS as a concern?

[149] **Leighton Andrews:** We have, I think, talked through most of the issues outlined in this Bill with the ONS. I am certainly happy to go back to look at that section of the explanatory memorandum with officials to see whether there are any changes that we should make to it before the next stage of the Bill proceedings. That, I think, is the best way of responding to your question.

[150] **Bethan Jenkins:** Thank you.

[151] **Ann Jones:** I have David and Aled wishing to speak, but please be brief because we have quite a big section to cover and we only have around 10 minutes.

[152] **David Rees:** Thank you for that, Minister, because I am also concerned about the impact of the possibility of a national contract. I agree totally that the employers are the FEIs or the FECs, and trade unions and employers have to negotiate. However, at the moment you have some control, and this Bill takes away that control. Therefore, the UCU legal advice seems to—

[153] **Leighton Andrews:** We do not have—[*Inaudible.*]

[154] **David Rees:** Are you saying that there is no control of the national contract?

[155] **Leighton Andrews:** No, we do not have any control of the national contract, other than through funding. Clearly, given that we put in funding that makes certain assumptions about the overall cost to further education institutions, and if the national contract was not honoured, and if those costs no longer apply, it will be open to us to reduce the level of funding being offered.

[156] **David Rees:** Will that be the same, therefore, after this Bill?

[157] **Leighton Andrews:** Yes. Did you want to add something, Andrew?

[158] **Mr Clark:** Perhaps I could clarify that. There are two things in play here. The first is the national contract, which is currently under negotiation between the joint trade unions and the employer bodies. This Bill has no impact on those negotiations. The second thing, which is already in play, is the national pay agreement, as part of which the Welsh Government puts quite significant amounts of money into further education institutions to enable them to match lecturers' pay to teachers' pay. That is governed by a condition of funding in the annual conditions of funding that we issue, which states that if you do not agree or adhere to that national pay agreement, a fiscal penalty will be applied to the college. Again, that is not impacted upon at all by this Bill.

[159] **David Rees:** Thank you for that clarification.

[160] **Ann Jones:** I take it that you have finished now, David.

[161] **David Rees:** I have just one more question.

[162] **Ann Jones:** Well—

[163] **David Rees:** It is a very quick question. I did raise it; it is the question of staff representation and governance.

[164] **Ann Jones:** Go on then. Hurry up, because we are running out of time.

[165] **David Rees:** Will you be able to put into the regulations clarity that staff representation will be from an elected approach rather than an appointed approach?

[166] **Leighton Andrews:** I do not think that we can put that into regulations. Again, this is an area where we would see that the best practice might reflect that, and that would certainly be what we would expect to discuss to with ColegauCymru and it would be what we would expect to see.

[167] **Ann Jones:** Aled, do you wish to come in very briefly?

[168] **Aled Roberts:** I was going to ask a question—I think that Mr Clark has answered the second point—on the funding that was put in to provide parity between lecturers and teachers, and that there is nothing in this Bill that restricts the Welsh Government's powers as far as ensuring that what was achieved as a result of the extra funding will be maintained.

[169] **Leighton Andrews:** As I have said, it would be open to us, if we thought that costs in FE institutions were being reduced because of changes being made, to reduce the funding.

That is a pretty clear lever.

[170] **Ann Jones:** We are desperately out of time, but Simon and Angela have some very important points on the provisions relating to higher education. Simon, are you going to go first?

[171] **Simon Thomas:** Yn gyntaf, os caf fod yn glir a chau pen y mwdwl ar hyn, sut mae'n dderbyniol i gael ar wyneb y Bil—yn yr Atodlen—dyletswydd i benodi myfyrwyr a staff i'r corff llywodraethu, ond nid yw'n dderbyniol i gael ar wyneb y Bil dyletswydd i ymgynghori? Byddem yn meddwl bod y ddyletswydd i ymgynghori yn dipyn llai o bŵer o safbwynt yr ONS na'r ddyletswydd i benodi. A allwch esbonio'r anghysondeb hwnnw?

Simon Thomas: First of all, for the sake of clarification and to conclude this point, how is it acceptable to have on the face of the Bill—in the Schedule—a duty to appoint students and staff to the governing body, but it is not acceptable to have on the face of the Bill a duty to consult? I would have thought that a duty to consult would be a less important power from ONS's point of view than the power to appoint. Can you explain that inconsistency?

[172] **Leighton Andrews:** Andrew?

[173] **Mr Clark:** I think that it is a power that has never been used. There is a requirement under the quality effectiveness framework to consult with learners and it would be very difficult for us to inform FEIs how to consult with employers. These are quite large, well-known businesses in their localities that already have very good links with their employer base. If we were to suggest that there was only one way to consult with employers and that was the way they had to do it, that would be to the detriment of Wales.

[174] **Simon Thomas:** Thank you for that. I do not think it quite addresses the balance here, but that might be something we need to pursue with ONS as a committee, Chair, and maybe pursue in correspondence with the Minister as well because I think that there is something here.

[175] Symudaf ymlaen felly i'r sector addysg uwch. Mae rhan o'r Bil yn delio â'r sector hwn, ond mae'n rhan tipyn yn llai, serch hynny, nag a oedd yn y Papur Gwyn yr oeddech wedi ymgynghori arno, ac mae pethau nad oedd yn y Papur Gwyn nawr yn ymddangos yn y Bil. Beth yw'r bwriad polisi o ran y rhan hon o'r Bil sy'n delio ag addysg uwch? Yn benodol, ym mha ffordd a ydych wedi trafod â'r Comisiynydd Gwybodaeth ynglŷn â rhannu gwybodaeth yn y ffordd sydd wedi ei hamlinellu yn y Bil?

I move on therefore to the higher education sector. Part of the Bill deals with this sector, but it is not as significant a part as it was in the White Paper on which you consulted, and there are things that were not in the White Paper that have now appeared in the Bill. What is the policy intention in terms of this part of the Bill that deals with higher education? Specifically, in what way have you discussed with the Information Commissioner the sharing of data in the way outlined in the Bill?

[176] **Leighton Andrews:** We regard these clauses as, principally, tidying up clauses, in the sense that the powers that exist allow the Secretary of State to participate in the sharing of information, but they do not allow Welsh Ministers or the Student Loans Company to do so. What we are seeking to do here is essentially to streamline the supply of information so that student data can be verified against tax data held by Her Majesty's Revenue and Customs. These things can be done currently, but not through the powers of Welsh Ministers, so I do not think that there are any new issues there with regard to information provision.

[177] **Simon Thomas:** So, this has been brought to your attention as a result of the consultation because it was not in the original consultation, was it?

[178] **Leighton Andrews:** No.

[179] **Ms Martins:** This is incredibly technical. It is an entirely technical provision; it is kind of a lacuna, although it was policy at the time in the Higher Education Act 2004. There is a mechanism for automatic transfer from the tax office to the Student Loans Company, just for the verification of the information that students supply when they make applications for support. That allows the tax office to transfer automatically the information to the Student Loans Company in relation to students in Northern Ireland and England.

10.30 a.m.

[180] We were left out, so all of our applications had to be done on paper. The students had to provide everything on paper, and then, if we had any doubts—local authorities used to process the applications—they would have to go to the tax office, and the tax office would have to verify that separately. It made the process a lot longer. That is all that this does; this does not ask for any additional information to be provided—

[181] **Simon Thomas:** It is only the manner of the sharing, not the actual information that is being changed.

[182] **Ms Martins:** Absolutely. It is the direct sharing of information between HMRC and SLC, which is working for us.

[183] **Simon Thomas:** Will this make it easier for you to chase debts?

[184] **Leighton Andrews:** I do not know. That is a good question.

[185] **Ms Martins:** I do not think that it will make it easier—

[186] **Leighton Andrews:** I will go away and ask.

[187] **Simon Thomas:** The unpaid debt held is increasing.

[188] **Leighton Andrews:** It is increasing. It is a good question, so I will go away and ask.

[189] **Simon Thomas:** Thank you for that.

[190] **Ann Jones:** Suzy has a short question on this.

[191] **Suzy Davies:** It is short, but it is related to this specific point. First, in terms of section 9(b), we were just talking about a power to transfer this information from HMRC to Welsh Ministers, but it only says ‘may’ rather than ‘must’. So, there is an implication that HMRC is not obliged to pass this information over. I wanted to know why, because otherwise it is pointless having this.

[192] Secondly, because you are attempting to make legislation that relates to HMRC, which is not devolved, can you just reassure us on the competence issue there?

[193] **Ms Martins:** Yes. We have the consent of HMRC. We have spoken to HMRC, and everything is above board. We have no problems of competence there. Again, this is the same power that it has in relation to England and Northern Ireland. Again, it is a power, not a duty. We are just putting ourselves on the same footing.

[194] **Suzy Davies:** So, it has never said, ‘No, we will not hand the information over’.

[195] **Ms Martins:** No.

[196] **Ann Jones:** Minister, Angela has sat patiently waiting with a list of questions. Can we just extend this session by 10 minutes?

[197] **Leighton Andrews:** I think that we can.

[198] **Ann Jones:** That means no supplementaries from Members other than Angela. If you have supplementaries we will write to the Minister.

[199] **Leighton Andrews:** The Chair looked in your direction, David. [*Laughter.*]

[200] **Angela Burns:** Thank you so much for your indulgence. I would like to whizz back to my comment on collaboration. The reason I raised it was, of course, because, in the summary of White Paper consultation responses, there were quite a few people who suggested that there should be a formal collaborative alliance between higher education and further education institutions. Their concerns were around the way that the funding follows. I wondered if that had any impact on the decision in the Bill to remove the section, which I think is section 7, that enables further education institutions to offer courses that once upon a time were deemed to be the prerogative of higher education institutions. We touched on it briefly in Plenary, I know.

[201] **Leighton Andrews:** No.

[202] **Angela Burns:** So, that has nothing to do with that whole area. Could you perhaps explain why you have chosen to remove that ability?

[203] **Leighton Andrews:** The power has never been used and we do not anticipate it needing to be used.

[204] **Angela Burns:** Do you think that if we free up this whole area, and there is more leakage between higher and further education institutions—

[205] **Leighton Andrews:** Can you define ‘leakage’?

[206] **Angela Burns:** In terms of the crossover of courses and the blurring of the lines of who offers which kind of course, and what is seen as a traditional FE course and a traditional HE course—

[207] **Leighton Andrews:** If an FE institution is offering higher education courses, they will have to be validated by a higher education institution.

[208] **Angela Burns:** Yes, but the actual provision can still be undertaken by an FE institution. What I am trying to understand is whether we could be in danger of opening the door to overcapacity. I think that it is pertinent because of the direction of travel of the policy, which is rightly trying to give greater strength to FE institutions. There is also a direction of travel that wishes to reduce HE institutions, and I wondered if removing this ability for the Welsh Minister to control this area of education provision could be a hostage to fortune some years down the road when we may have overcapacity, and everybody is scrabbling after the same kinds of students and courses.

[209] **Leighton Andrews:** I do not think so. These are policy issues rather than legislative issues. I do not think that the power is needed. There are other ways in which the validation of higher education, and the quality of higher education is safeguarded. Obviously, the Higher

Education Funding Council for Wales and the Quality Assurance Agency for Higher Education will have a role in this. As I said, the power has never been used. In the context of future discussions on emerging higher education policies, we will want to look at the way in which there is collaboration between further and higher education institutions. However, I do not see the need for this power explicitly.

[210] **Angela Burns:** Thank you for that. I would like to clarify in my own head a comment that you made to Keith Davies when he talked about having a common set of standards and the fact that HEIs do not have the power under the Bill to dissolve themselves, but that you are giving that power to FEIs. Has that not been included in this Bill because it is a UK law that you are unable to work on and, if you could, would you want to make that change?

[211] **Leighton Andrews:** You need to distinguish between different kinds of HEIs, of course: those formed before 1992 and post 1992, royal charter bodies, and so on. There are also different issues with regard to higher education corporations. From our point of view, we are dealing with a specific problem in respect of further education institutions in this Bill. I do not see a need to address the situation with regard to higher education at the present time.

[212] **Angela Burns:** Once again, I think that you have touched on my next point because other Members have asked this question, but in the White Paper, there were quite a lot of issues to do with higher education that have not been brought forward in this Bill, and I think that you said that, if you had brought those forward, it would have been too unwieldy—you did not use that word, but that was the implication. Could you perhaps go through that logic once again, because you went out to consultation on this relating to higher and further education, but there is actually very little about higher education? I am just trying to get a handle on your decision-making process in terms of why you left out things that you were going to put in it. Can you give us some clarity regarding when those things might come forward?

[213] **Leighton Andrews:** I do not really think that I have anything to add to the previous question that I answered, Chair.

[214] **Angela Burns:** Okay; thank you.

[215] **David Rees:** May I ask a question?

[216] **Ann Jones:** You are cutting in on the Minister's time, so if he does not speak to you ever again, it is your problem. [*Laughter.*] Very quickly, then, but we are finishing at 10.40 a.m.

[217] **Leighton Andrews:** I am just wondering what decisions are pending in the Aberavon constituency. [*Laughter.*]

[218] **David Rees:** I have a question on funding. I understand that you have never used the powers, but obviously HE courses have traditionally been delivered in FE institutions. My question is on funding aspects. There are moves afoot by the UK Government to look at FE being able to validate foundation degrees. Should that type of approach come so that an FE college would be able to validate its own HE awards, would those FE colleges be expected to follow the same rules that you currently have in place for HE institutions about the fees they charge and having to seek approval?

[219] **Leighton Andrews:** I am not sure that decisions that might be taken by the relevant Minister for universities for institutions in England need to concern us. We will make our own decisions in our own way.

[220] **Ann Jones:** Minister, I thank you very much for coming today to the scrutiny session, and thank you for allowing us to run over time. I will be getting the resident experts brought into line before the next set of witnesses comes in. As you know, you will get a copy of the transcript to check for accuracy, and I am sure that you will come back after the evidence sessions to answer any further questions that we may have. Thank you very much.

10.38 a.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Wahardd y Cyhoedd o Weddill y
Cyfarfod**

**Motion under Standing Order No. 17.42 to Exclude the Public for the
Remainder of the Meeting**

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

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi).

[222] Are all Members content? I see that you are.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.38 a.m.
The public part of the meeting ended at 10.38 a.m.*