



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

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

Dydd Iau, 24 Hydref 2013
Thursday, 24 October 2013

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Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from the Meeting

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

Angela Burns	Ceidwadwyr Cymreig Welsh Conservatives
Keith Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Rebecca Evans	Llafur Labour
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
Bethan Jenkins	Plaid Cymru The Party of Wales
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

Andrew Clark	Dirprwy Gyfarwyddwr, yr Is-adran Addysg Bellach a Phrentisiaethau, Llywodraeth Cymru Deputy Director, Further Education and Apprenticeship Division, Welsh Government
Huw Lewis	Aelod Cynulliad, Llafur (Y Gweinidog Addysg a Sgiliau) Assembly Member, Labour (The Minister for Education and Skills)

Grace Martins	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Simon Morea	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Gemma Nye	Prif Swyddog Polisi Cyngor y Gweithlu, Llywodraeth Cymru Lead Policy Official, Workforce Council, Welsh Government
Ceri Planchant	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Marcus Richards	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Mair Roberts	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Emma Williams	Pennaeth Cymorth i Ddysgwyr, Llywodraeth Cymru Head of Support for Learners, Welsh Government

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

Sarah Bartlett	Dirprwy Glerc Deputy Clerk
Michael Dauncey	Gwasanaeth Ymchwil Research Service
Bethan Davies	Clerc Clerk
Steve Davies	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 09:02.
The meeting began at 09:02.

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 just do the usual housekeeping rules. We operate bilingually, so translation is available—channel 1 is from Welsh to English, and channel 0 is the language of the floor for amplification, should you need it. I ask that you switch your mobile phones off, as they affect the translation equipment and the broadcasting. If you could do that, it would be good. We do not expect the fire alarm to operate, so if it does, we shall take directions from the ushers. I ask this every time, but I do not think that we have ever had anybody do this: does anybody need to declare anything that they have not already declared in the register of Members' interests? I see that you do not. That is all right then. Fine; thanks very much. We have no apologies, so we have a full committee today.

09:03

Bil Addysg (Cymru): Cyfnod 1—Sesiwn Dystiolaeth—y Gweinidog Addysg a Sgiliau
Education (Wales) Bill: Stage 1—Evidence Session—The Minister for Education and Skills

[2] **Ann Jones:** We have the Minister with us all morning. We are going to try to separate our work into two very separate sessions, not least of all for me, because I find it quite difficult to flip from one to the other. The Minister is here for this evidence session,

which is Stage 1 of the Education (Wales) Bill. As you know, the Minister is here to answer some of the questions that other people have raised in our evidence sessions. Minister, would you like to introduce yourself and your officials?

[3] **The Minister for Education and Skills (Huw Lewis):** My name is Huw Lewis. I am the Minister for Education and Skills.

[4] **Ms Nye:** I am Gemma Nye, education workforce council.

[5] **Ms Roberts:** I am Mair Roberts, from Legal Services at the Welsh Government.

[6] **Ann Jones:** Thanks very much. As you know, we always have far too many questions that we want to go through. So, if it is all right with you, can we move straight to questions? I think that Rebecca is going to take the first set, and then it is David.

[7] **Rebecca Evans:** Good morning, Minister. Witnesses have told us that the way in which the categories are defined for the education workforce council will be crucial to its success. We have had varying views as to whether youth workers should be included. Some people think that it is entirely appropriate, while others say that youth workers are not technically part of the education workforce. Have you given any further thought to this?

[8] **Huw Lewis:** Yes. The Bill as it stands does not include youth workers as part of the initial registration, so we are talking about teachers, learning support workers, further education teachers and FE learning support workers. Schedule 2 has a description of the categories. However, I do not want to close the door on other groups, and it is my intention to require youth workers to register over time. Members will be aware that the sector varies quite considerably in terms of how you might define a youth worker, and that their contractual arrangements can be very variable as well. So, for all those reasons of complexity, it was decided to make secondary legislation to require youth workers to register. That will require further full consultation to inform the policy.

[9] I am content that youth services need to be seen across Wales as a strategic service. I want to show that we value that profession, and that we care about its status as a profession. So, it is my intention to move to secondary legislation to register youth workers in time.

[10] **Rebecca Evans:** Have you given any further thought to including staff in independent schools within the Bill?

[11] **Huw Lewis:** Yes, we looked at the evidence around that, but I am satisfied that, by the very nature of independent schools as private autonomous businesses, in effect, they are in a very different situation. I am content that the safeguards that we already have around the quality of those establishments and around safeguarding will remain as they have been, and so there is nothing to be lost by this legislation in terms of the requirements that are put upon independent schools.

[12] **Rebecca Evans:** How do you propose to deal with visiting or part-time professionals who would spend one day a week, maybe, or a few days a term, in FE colleges?

[13] **Ms Nye:** With regards to FE, the Bill enables us to set the qualifications and standards, and, as evidence to this committee has shown, across the wider workforce there is quite a lot of variation and difference in the qualifications. What the Bill enables us to do is set those qualifications and standards, but we will need to work with the workforce to make sure that we reflect what those appropriate qualifications are. The education workforce council will then need to continue to keep that under review to make sure that the qualifications continue to be relevant.

[14] **Rebecca Evans:** Finally, we have had some suggestions that the proposed name of the body, ‘the education workforce council’, does not suit everyone, and that some people would prefer to see the words ‘teaching’ or ‘professional’ in the title as well. Is this something that you will look at?

[15] **Huw Lewis:** I have heard a number of opinions raised in terms of the name, but I have not heard anything that persuades me that the title ‘education workforce council’ is inadequate in any way. I think that it accurately reflects what we are about here, and, essentially, that is the wording on the tin—it does what it says on the tin.

[16] **Aled Roberts:** Just to pick up on your point on independent schools, a number of points were raised in Plenary on 2 July, and you said that you wanted to consider those points. Obviously, we have heard evidence from a number of organisations. The Association of Teachers and Lecturers, in particular, said that someone who has been disciplined and dismissed, or even struck off the register, and who was no longer able to work in the maintained sector, should not be able to get a job in an independent school, which they currently can. So, I am surprised at your assertion that there are sufficient safeguards at the moment. Even the General Teaching Council for Wales said that it is a serious loophole currently that the Bill fails to put right.

[17] **Huw Lewis:** I will pass this over to Gemma in a second, but it is worth saying that we are dealing with private businesses here. There has been no consultation with the independent school sector around these issues, and there would be real problems in terms of trying to bolt on pieces of legislation at this stage as regards the independent sector. The safeguards as they are have been sufficient for a great number of years, and this Bill does not disturb that situation in any way. Gemma, could you respond on the specifics?

[18] **Ms Nye:** Yes. The Independent School Standards (Wales) Regulations 2003 set the standards and requirements of independent schools and Estyn inspects against those regulations. Those regulations cover a range of criteria, including the quality of education and the suitability of staff. Within that, they need to consider previous employment, so, as the Minister has mentioned, we think that those are appropriate safeguards for an independent sector.

[19] **Ann Jones:** Do you want to come back on that?

[20] **Aled Roberts:** Yes. If the Government’s position is that it would be inappropriate to extend the statutes in line with what a number of witnesses feel—and, certainly, what we as Members feel—why was the decision taken initially not to include the independent sector in any consultation, so as to bring them all within the same regime, albeit that you are saying that there are regulations going back to 2003? It seems rather strange that, if we are looking at consolidating legislation, we do not set up one regime that applies to the whole profession, regardless of whether you are employed within the state sector or the private—

*Nid oes recordiad ar gael o’r cyfarfod rhwng 09:11:24 a 09:11:47
No recording is available of the meeting between 09:11:24 and 09:11:47*

[21] **Huw Lewis:** —governing that sort of registration. It was not intended to be something that broke new ground in terms of other sectors.

[22] **Aled Roberts:** This is not widening the category of the profession, however, this is actually ensuring that there is a difference between what the state sector operates under and what the private sector operates under.

[23] **Huw Lewis:** As I say, the GTCW has an existing role and purpose. It is the evolution of that role and purpose that is the subject matter of this Bill.

[24] **Ann Jones:** Bethan has a supplementary question, and then Angela.

[25] **Bethan Jenkins:** My question is just on that point about consultation. You may not have consulted with the independent sector, but we had evidence from trade unions that represent the independent sector. They told us that they feel that teachers in the state sector can go forward and work in the independent sector without the scrutiny that you mentioned from that piece of legislation. I would be very uneasy in agreeing to a piece of legislation that misses out teachers just because they happen, at that stage in their lives, to go into the independent sector. They are still teachers at the end of the day. I think that the Association of Teachers and Lecturers has made that point very clear, as have other people in their evidence sessions.

[26] **Huw Lewis:** Well, I have heard what the ATL and others have said. This legislation, as I say, has a very specific purpose. It is about the evolution of the GTCW in terms of its relationship with professionals in the state sector.

[27] **Angela Burns:** I just want to add my voice to what both Aled and Bethan have said. You talk about evolution. I think that this is a golden opportunity for the new workforce council to look at ensuring that, in Wales, we have a very defined, professional cadre. I think that asking all teachers who practice in any school in Wales to be registered actually helps that industry and that sector to build on its professionalism. It gives it a real clear identity, and gives a very strong message going back out. I would urge the Government to review this. Even if you can build the legislation in some way so that this is something that you might do in a year's time, or whatever, this really has to be part of the evolution. To be frank, I was absolutely astonished when I first found out that teachers did not have to be registered to teach. You do not go into a hospital and have a nurse or a doctor who is not registered, or have an accountant in an accountancy practice who is not registered. Teaching is either a profession or it is not. In my view, it is one of the most well-respected professions and everything that we can do to underpin that has to be a positive move.

[28] **Huw Lewis:** Chair, I think that topics such as this are for consideration for future legislation. It is quite open to the National Assembly for Wales to think these things through and to discuss them. There are various means by which further pieces of legislation could be considered. I do not believe that it is a practical or, indeed, fair response to try to get this particular subject matter covered by this particular Bill. As I said, apart from anything else, there was no consultation with the independent sector on this. It is important also to understand that there are no retrograde steps here. In fact, we are taking great big steps forward in terms of registration of the workforce. I point out that there is a total contrast here with what is going on just over Offa's Dyke, where we have unqualified people entering the state sector.

9:15

[29] **Ann Jones:** Can you hold all your thoughts on this? You are going to have to repeat them again. Apparently, there is a problem with the recording and the broadcasting, so we are not broadcasting or recording. We will have to go back and start again.

[30] **Huw Lewis:** I cannot remember what I said.

[31] **Simon Thomas:** Perhaps you can change your mind on this one. [*Laughter.*]

[32] **Ann Jones:** We will have a ten-minute break to allow the technicians to try to sort

this out. I am sorry about this.

*Gohiriwyd y cyfarfod rhwng 9:16 ac 9:28.
The meeting adjourned between 9:16 and 9:28.*

[33] **Ann Jones:** We will reconvene. We realise that there is no broadcasting, but we have an audio link. So, we will go back to Bethan. You were asking a supplementary question, but it has been missed. So, if you could remember it and try to ask it again. Then, Minister, if you could give us the same answer, it would be helpful.

[34] **Bethan Jenkins:** I was animated at the time. [*Laughter.*] My question was about the fact that you had stated that you had not undertaken any consultation with the independent sector. Some of the trade unions that we have talked to, such as the ATL, have members who are in the independent sector, and they are very concerned that teachers could be disciplined in the state sector and then go on to work in the independent sector, without having the checks and balances that it recognises as necessary. This would not be about changing categories, because this would relate to teachers in general. So, the question was about the concern that I and other Members have about not including those independent schoolteachers in this particular Bill.

09:30

[35] **Huw Lewis:** I hear what the ATL is saying. There are multiple ways in which the Assembly could consider some kind of future legislation, if it was so minded. However, it is not fair to say that there are no standards and regulations surrounding this area at the moment, because there are. The Independent School Standards (Wales) Regulations 2003, against which Estyn inspects, cover a range of criteria, including the quality of education and suitability of staff within the independent sector. So, there is nothing in this Bill that takes any kind of retrograde step, as regards education in the maintained or independent sectors. It is worth pausing to consider that across Offa's Dyke we are facing a situation where unqualified staff are entering the state sector, which I regard as a massive retrograde step. There is nothing to take anything backwards in this Bill.

[36] **Angela Burns:** I just wanted to add my voice to Aled and Bethan's voices, because it is incredibly important that we take this opportunity to evolve—and 'evolution' is your word, Minister—the standards within the teaching profession in Wales. I think that we should have qualified teachers operating in all our schools in Wales; they should be registered. I would also like to point out, Minister, that across the border, over Offa's Dyke, as you term it, they are bringing in new legislation that will ensure that every teacher in every maintained school is either qualified or undergoing qualification training. So, it would be worth you having a look at some of that policy, because I think that it would be very good to reinforce the professionalism of teaching and the notion of teaching as a profession for people to go into. It is about giving real confidence to parents and students that we have the best of the best here in Wales. I think that we do have that. Having this registration throughout the whole of Wales is uniform and clear and can do nothing but good for the profession.

[37] **Huw Lewis:** It is good to have an update on education policy across the border today. It is different to the education policy across the border yesterday. It may well be different to the education policy across the border tomorrow. What we are engaged with in Wales is a sensible evolution of the remit of the now GTCW. This Bill is about enhancing and recognising the professionalism and status of those involved in supporting teaching across the board. It was never intended to extend towards what are, essentially, private businesses in the independent sector. I am sure that that is a discussion that will continue, if it is strongly felt that it is needed by Members. However, there has been no consultation with the sector, and to introduce that kind of consideration at this stage would be unfair and enormously disruptive.

[38] **Keith Davies:** Later on we will be talking about sending children to independent special schools. My understanding is that you can teach in an independent school even if you are not a qualified teacher. I am concerned about that.

[39] **Huw Lewis:** I hear your concerns, but I would also refer you to the stipulations within the legislation that we will be talking about here in terms of quality, against which Estyn would inspect and against which local authorities would have duties. So, there are safeguards within the system, and I am satisfied that they are as good as they have always been.

[40] **Aled Roberts:** I would like to test those safeguards, because the impression that I gained from the evidence was that there were instances, particularly with regard to competence, where a teacher could be prevented from being employed within the maintained sector where issues of competence had been raised, and where the current Independent School [41] Standards (Wales) Regulations 2003 would not ensure that that person could not transfer to the independent sector. So, I still think that there is an issue regarding the quality of protection for children, not on the basis of any safeguarding issue, but on the basis that they are protected from a teacher that has been found to be an incompetent teacher within the state sector.

[42] **Huw Lewis:** As I say, the regulations within the 2003 Act cover a wide range of criteria, including the quality of education and the suitability of staff. If there is a failure within an independent school to maintain those standards, then, ultimately, that can lead to the closure of that school. So, there is quite a powerful set of regulations surrounding the operation of independent schools as it is.

[43] **Ann Jones:** David is next. Could we make some progress, please, David?

[44] **David Rees:** I will make some progress, Chair, although I do have views on the independent sector.

[45] A question raised by many witnesses was on the independence of the new body that is being proposed. Currently, GTCW is operated by its members, effectively, but the Bill talks about Welsh Government Ministers being able to appoint members to the new board of the new body. Is that really and truly independent, or are we just creating another quango?

[46] **Huw Lewis:** As I have mentioned, Chair, what the Bill does, essentially, is to evolve and widen the current role and remit of the current GTCW. Its legal status, if you like, will not change as a body, and it would be independent of Government in the same way that the GTCW is independent. There are of course things that need to be done in order to set up the GTCW. For instance, there is its initial code of practice and so on, in which Ministers would have to have some engagement. Essentially, however, the arm's-length relationship is completely analogous for the workforce council, as it would have been for the GTCW.

[47] **David Rees:** I appreciate that the legal status is the same as the GTCW's, as you have stated, but the legal status and the possible perception of Government influence through appointees are quite different, and I think that the professions that want to use this body and feel that it has an important role need to be convinced that there is no possible influence from Government by appointees. Can you therefore reassure them, and how can you reassure them, that that is not going to be the case?

[48] **Huw Lewis:** I will hand over to Gemma in a second for some of the detail on this. It is important to remember that we are talking about professions here, and we must have a care to make sure that there is no monopolisation of the agenda in the first instance by any

particular one of those professions, but that we have a proper balance and understanding from the very first days of the workforce council that it is dealing with a broader group of professionals than was the case previously. Gemma, did you want to add something?

[49] **Ms Nye:** Yes, just on the appointment by Welsh Ministers. At the moment, council membership of the GTCW is at 25, and of those 25 appointments, 13 are made by Welsh Ministers. We recognise, as indeed does the GTCW, that a membership of 25 is not sustainable moving forward, so we are looking at a smaller council representing a larger and more varied workforce. So, the appointment of those members to that council is going to be key. That is why we have been proposing that those members be appointed by Welsh Ministers through an open and transparent public appointments process built on the core principles of merit, openness and fairness.

[50] **David Rees:** Yes, but you are going from 50% being appointed to 100% being appointed, and we could have used the Bill to identify which elements should be on the board. If we see another Bill coming up shortly, we would want to identify the number of people from particular areas that could be on boards. You could actually use the Bill to do that.

[51] **Ms Nye:** We have an affirmative Order-making power in the Bill in reference to the number for council membership, because while we have a ballpark figure that is broadly in agreement with GTCW, it is something in which we have to work with the sector, because we have more sectors to represent, and not only teachers, and, as I say, we are talking about a much smaller council.

[52] **David Rees:** There are ways around it, without them all being appointees. You could specify particular numbers from particular sectors.

[53] **Ms Nye:** The public appointments procedure is designed to achieve the appointment of the most suitable candidate available, selected on merit.

[54] **David Rees:** But there is an alternative way—yes or no?

[55] **Ms Nye:** Well, at the moment, as I say, there are 25 members, 12 of whom are elected and 13 are appointed.

[56] **Huw Lewis:** You have to remember as well, Chair, that there has to be flexibility within the Bill for the inclusion of other professional groups. I have mentioned youth workers, but there could well be others. The rate at which technology is changing, for instance, means that we could be dealing with professionals who do not currently exist in terms of education provision within schools. So, we have to have that flexibility, while keeping the council a reasonable size, to be able to deal with those future developments.

[57] **Ann Jones:** Okay. Thank you. Are you happy, David? We will move on, then, to the practical arrangements for the new registration body with Simon first, then Aled.

[58] **Simon Thomas:** Rwy'n deall bod y cyfieithu yn gweithio. Weinidog, cawsom ni dipyn o dystiolaeth gan sawl ffynhonnell bod anghydbwysedd yn y Bil a bod y Bil fel ag y mae yn ceisio cyflawni dyletswyddau ynglŷn â chofrestru, disgyblu a rheoli'r gweithlu ond hefyd dyletswyddau ynglŷn â datblygiad proffesiynol a safonau tu fewn i'r gweithlu, a bod yr un yn gryfach na'r llall. A ydych chi wedi ystyried ac edrych ar y dystiolaeth

Simon Thomas: I understand that the interpretation is working. Minister, we heard a fair bit of evidence from several sources that there is an imbalance in the Bill and that the Bill, as it is currently drafted, seeks to introduce duties in terms of the registration, discipline and conduct of the workforce, but also duties in terms of professional development and standards within the workforce, and that one is stronger than the

honno ac a ydych chi wedi dod i'r farn bod y Bil, yn ei ffurf bresennol, yn ddigonol neu a ydych chi yn ystyried ei wella i fod yn fwy cyson rhwng y ddau amcan hynny?

other. Have you reflected upon that evidence and have you come to the conclusion that the Bill, in its current form, is adequate or are you considering amending it so it can be more consistent between the two objectives?

[59] **Huw Lewis:** No, I think that what is set out on the face of the Bill, in terms of the main functions, gets the balance about right. We have to remember, first of all, that there is, and there would need to be, considerable variability across the arrangements that we might have for professional development across the workforce. We cannot have a one-size-fits-all situation there, when we are dealing with professional staff with different types of qualifications and different types of professional development needs and so on. So, we need that kind of flexibility there. It does encompass, of course, raising standards in terms of education workers, because we are talking about that being tied up with issues around registration, appraisal, induction and conduct. These are all part of raising standards.

[60] **Simon Thomas:** Yn yr ymgynghoriad gwreiddiol a gynhaliwyd cyn ddatblygu'r Bil, rwy'n cofio yr oedd pethau penodol yn cael eu trafod fel ffwythiannau'r corff newydd, gan gynnwys y cyfrifoldeb dros ymarfer dysgu—rydych newydd sôn am *induction*—a datblygiad proffesiynol. Yn y Bil presennol, mae hynny'n cael ei adlewyrchu fel pŵer gan y cyngor i ymwneud â'r meysydd hyn, ond pŵer sy'n cael ei arwain gan gais gan y Llywodraeth i adrodd ar y meysydd hynny. Oni fyddai'n well bod gan y cyngor ei hun yr hawl i roi ei farn i'r Llywodraeth a'r cyhoedd ar y meysydd hynny, heb fod gofyn aros i'r Llywodraeth ofyn iddo? Oni fyddai hynny'n unioni tipyn bach ar yr anghydbwysedd mae rhai pobl yn ei weld yn y Bil hwn?

Simon Thomas: In the original consultation, which was held before the drafting of the Bill, I recall that specifics were discussed as the functions of the new body, including the responsibility for teacher training—you have just mentioned induction—and CPD. In the current Bill, that is reflected as a power for the council to be involved in these areas, but a power that is led by a request from the Government to report on those areas. Would it not be better if the council itself had the right to express its view to the Government and the public on those areas, without having to wait for a request from the Government? Would that not correct somewhat the imbalance that some people see within this Bill?

[61] **Huw Lewis:** As I said, Ministers can request advice from the new council on a variety of topics. I imagine that this is the kind of interaction that you are talking about here. There is also a need, I think, to be very careful around issues of duplication, potentially, and of focus, frankly, around what the new body is all about, which is professional development, standards, and recognising professionalism across the workforce, across quite a diverse group of professionals. So, I think that the balance is about right in terms of the way that we are approaching the issues. It is very important, to my mind, that the workforce council focuses on its job of work and that it is not necessarily going off and attempting, say, to duplicate a piece of work that Estyn might be tasked with doing. I think that there is a danger of that unless we make sure that there is rigour in terms of the job description of the workforce council. Gemma, would you like to add something?

09:45

[62] **Ms Nye:** Yes. I would just like to say that, from our point of view, the concept of professional development is a very broad one, and there are many aspects of that within the Bill. The core functions, as laid out in section 4, cover not only conduct and discipline, but also the aspects of professional development.

[63] **Simon Thomas:** Weinidog, a yw'n **Simon Thomas:** Minister, is it your

fwriad gennyh, felly, i gyflwyno is-ddeddfwriaeth ym maes datblygu proffesiynol yn sgîl pasio'r Bil hwn? intention, therefore, to introduce subordinate legislation in the area of professional development as a result of passing this Bill?

[64] **Huw Lewis:** Yes. Needs must, I think, and there are a number of regulation-making powers that would relate to professional development and standards that are tied up with the Bill. We could enumerate them if Members wanted to get down to specifics on it, but—

[65] **Simon Thomas:** What is your priority? Is there a particular priority?

[66] **Huw Lewis:** Well, these will all be tied up with professional development and maintaining standards, obviously. They involve such things as the code of conduct, appraisals and induction, as I said. Did I mention registration? That as well. So, those are all tied up with the issues around CPD, with the issues of professionalism and standards, and we would need that secondary legislation as time went on to make sure that we address these things properly.

[67] **Simon Thomas:** Gan droi at yr ochr disgyblu, sydd, yn fy marn i, yn fwy eglur yn y Bil, eto i gyd yn yr ymgynghoriad roedd tipyn o sôn am fodel amgen o ddisgyblu, sef y model addasrwydd i ymarfer, yn hytrach na'r model presennol sydd braidd yn gymhleth yn nhyb rhai tystion. A ydych wedi ystyried model mwy syml, mwy *streamlined*, os liciwch? Pam, felly, nad yw wedi ei amlygu ar wyneb y Bil hwn?

Simon Thomas: Turning to the disciplinary side, which, in my opinion, is more clearly set out within the Bill, once again in the consultation there was mention of an alternative disciplinary model, namely the fitness-to-practice model, rather than the current model, which is a little complex in the opinion of some witnesses. Had you considered a simpler, more streamlined model? Why, therefore, is that not apparent on the face of the Bill?

[68] **Huw Lewis:** Essentially, the idea of fitness to practice is encapsulated within the disciplinary functions that the council would be able to consider. They are not described in that way, but that is what it amounts to. Alleged unacceptable professional misconduct, for instance, would be one, or professional incompetence or criminal convictions of a registered person, which, essentially, pretty much encapsulates fitness to practice. Those are the matters that the council would have to consider in terms of making any kind of disciplinary orders.

[69] **Aled Roberts:** Rwyf eisiau symud ymlaen at gyllideb y corff newydd a gofyn pa mor realistig yw'r amcan y dylai'r cyngor fod yn hunangynhaliol o ran ei arian.

Aled Roberts: I want to move on to the budget of the new body and ask how realistic is the objective that this council should be financially self-sufficient.

[70] **Huw Lewis:** It is entirely realistic, and the council will, by definition, have to be. It will raise its funds through an annual registration fee, and those will be the means within which it will have to function.

[71] **Aled Roberts:** Os yw'r amcan yn realistig, beth yw'r bwriad tu ôl i'r ffaith nad y cyngor ei hun fydd yn penderfynu ffi gyffredinol y cyngor? Sut mae'r cyngor yn mynd i weld beth yn union yw ei incwm os mai'r Gweinidogion sy'n gyfrifol am sefydlu'r ffi?

Aled Roberts: If the objective is realistic, what is the intention behind the fact that it is not the council itself that will be determining the overall fee level for the council? How will the council see exactly what its income is if it is Ministers who are responsible for deciding that fee?

[72] **Huw Lewis:** Ministers in the end will set the fee, although, of course, it will be something on which I will work very closely alongside the council in order to do that in a transparent and fair manner. I am satisfied this is the most just way forward. We have to

consider here that we are now dealing, as the workforce broadens away from teaching only, with quite large disparities in terms of the income of the professionals involved, which might grow even larger as time goes on. I would be very keen to make sure that there was fairness within that, and a balance within that in terms of what people were contributing. So, I think the role of the Minister in the first instance anyway is absolutely critical in that regard, although it would be in very close consultation alongside the members of the council.

[73] **Aled Roberts:** Mae gwahaniaeth barn, wrth gwrs, rhwng y Llywodraeth a'r cyngor ynglŷn â chost datblygu proffesiynol. Mae'r memorandwm esboniadol yn sôn am wariant o ryw £100,000 y flwyddyn, ond eto, yn ei dystiolaeth, awgrymodd y cyngor fod y costau presennol tua £0.75 miliwn. Felly, os mai'r Llywodraeth sy'n gyfrifol am bennu incwm y cyngor, ac mae'r camddealltwriaeth hon ynglŷn â'i gostau datblygu proffesiynol, o ble y gallwn gael yr hyder bod yr hyn yr ydych chi'n ei wneud yn gywir?

Aled Roberts: There is a difference of opinion, of course, between the Government and the council in terms of the cost of professional development. The explanatory memorandum talks about expenditure of around £100,000 a year, and yet, in its evidence, the council suggested that current costs are around £0.75 million. So, if the Government is responsible for setting the council's income, and there is this misunderstanding of the costs for professional development, how can we be confident that what you are doing is right?

[74] **Huw Lewis:** Well, there is a misunderstanding here, and this is a good opportunity for me to attempt to clear this up. We have not set any funding levels for professional development—we have never put a figure on this. Certainly, the Bill would not be the place to do it anyway. The figure of £100,000 in the explanatory memorandum is about the promotion of careers. It is not about professional development, and it does not relate to professional development in any way. It is a budget to promote careers, so I think that there have been some crossed wires as to what the £100,000 refers to.

[75] **Aled Roberts:** A fydd y Llywodraeth felly yn pennu'r ffioedd ar y ddealltwriaeth mai rhyw £0.75 miliwn fydd y gwariant presennol ar ddatblygu proffesiynol? Rydych yn ddigon parod i gynllunio ar y sail hwnnw, a ydych?

Aled Roberts: Will the Government therefore be setting the fees based on the understanding that current expenditure on professional development will be around £0.75 million? You are willing to plan on that basis, are you?

[76] **Huw Lewis:** Well, this animus is not really a matter for the Bill itself, is it? Obviously, precedent matters, and I think that it is also important to take a look around at what other professional bodies regard as reasonable. You must have a mind to fairness in terms of the income levels of the people who are involved, and I would be very interested also in strengthening professional development. I think that it is part of the deal, in that recognising a profession is all very well, but what really matters is enabling people to progress along a professional path and thus raise the standards of teaching and learning in our schools. I suppose that, if you put all of those ingredients together, those are the considerations that I would have, but the primary consideration, of course, is how this aids teaching and learning, and the quality of that, in a school context or in an FE context. If we are doing right by the professionals in that regard, and making sure that their skill levels are being continually enhanced, then we are doing right by the student.

[77] **Aled Roberts:** I accept that it is not a matter for us to determine what the expenditure is, but, given that the Minister will be assuming responsibility for setting fee levels, if the Minister is questioning the level of current activity for professional development—I am not suggesting that you are, but if that were the case and we were accepting evidence on that basis, it might affect our decision as to whether we were content that the Minister would actually operate that situation, given that the Bill also states that the council will be self-

financing.

[78] **Huw Lewis:** Yes, there is a balance to be struck. Obviously, the council has to be self-financing, but, equally, it is very clear that the intent of the legislation is that the council should be more than the maintainer of a list. This is about a dynamic, professional process between the council and the professionals involved. It is about professional development; it is about standards. It is not just about maintaining a register. Gemma you wanted to add something.

[79] **Ms Nye:** I thought that I just might helpfully clarify the £0.75 million. That is a long since historic figure, from when we worked with the Department for Education in England with the teacher development agency. So, it was about marketing campaigns—you may remember the advertisements for getting into teaching. The figure has not been anywhere near that amount for some considerable time. The sum of money that we have is, and currently remains at, £100,000.

[80] **Ann Jones:** We are going to move on to the next couple of things, which are on SEN. Before we do, however, Minister, when you made your initial appearance here, you said that you recognised that the SEN aspects of this Bill were the first steps in the Welsh Government's complete transformation of support for learners with additional needs. We have heard a lot of evidence that people think that this just does not sit comfortably within this Bill. Can you tell us why you have put just these two items of SEN in this Bill?

[81] The officials will need to introduce themselves, as you have changed officials.

[82] **Ms Williams:** I am Emma Williams, the head of the support for learners division.

[83] **Mr Morea:** I am Simon Morea, a Welsh Government lawyer.

[84] **Ann Jones:** Thank you.

[85] **Huw Lewis:** The short answer is, Chair, because we can. It is timely. In other words, we can short-circuit delay. This is an opportunity to improve and simplify the current system, while bearing in mind, of course, that there is a wider agenda that needs to be addressed around SEN. There is no reason in my view to hold back on those provisions that we are talking about in this Bill. In other words, why would we not? If we can deliver discrete and concrete improvements through this Bill, then this is a legislative vehicle that we should use.

[86] **Ann Jones:** Okay. Thank you. I do not want to open this up to a big debate, but Angela has a small point on this and we will then move on.

[87] **Angela Burns:** I know that we will move on to look at this in detail, but the observation, surely, Minister, is that that kind of principle works well if the lead up and what you are basing this Bill on is sound. The issue is that pre-16 special educational needs and additional learning needs support in Wales is inconsistent and there are enormous issues with it, which I know we will explore in further detail. So, because that is such a tremulous foundation, surely it is wholly inappropriate to try to build a post-16 edifice upon that?

[88] **Huw Lewis:** We are dealing here with provisions that are specific, discrete and very concrete and, to my mind, they would deliver simplification and improvement. The alternative, really, would be to wait for 18 months or two years for, perhaps, a more elegant legislative vehicle to pull up and then we could jump aboard that one. However, there is the opportunity within the legislative timetable to deliver concrete improvement through these means. It is certainly not dependent on the outcome of the wider SEN agenda.

[89] **Ann Jones:** Thank you. We will move on to the reform of the registration approval and the approval of independent schools in respect of special educational needs. Suzy is first and then Keith.

[90] **Suzy Davies:** Obviously, the forthcoming questions will be about independent schools once again. We all heard the evidence that you gave earlier that you do not think that, for the majority of this Bill, it is worth involving independent schools. In part of your answer to that question, you said that you had not consulted independent schools. This part of the Bill has a major effect on the relationship between independent schools and the state and the way in which children with special educational needs are referred to them. So, did you consult independent schools on this part of the Bill?

[91] **Huw Lewis:** This is a little before my time, so I will turn to Emma.

[92] **Ms Williams:** There was a broad consultation and independent schools had the opportunity to respond to it.

[93] **Suzy Davies:** Did they or did they not?

[94] **Ms Williams:** I am sorry?

[95] **Suzy Davies:** Did they or did they not respond on this part of the Bill?

[96] **Ms Williams:** I cannot give you an exact response, but I am happy to write to the committee.

[97] **Ann Jones:** If we could have a note on who responded, it would be helpful.

[98] **Suzy Davies:** Thank you for that; I am sure that you will let us know in due course.

[99] I want to remind everyone here of Keith Davies's earlier question to you, Minister, in response to which you seemed to be content that teachers or learning assistants may be in independent schools without confirmation that they are suitable to be registered. Bearing that in mind, do you have any concerns that the change to the way in which children with special educational needs are to be referred to these schools will proceed, bearing in mind that the safeguard of individual consents where Estyn's advice is given to the Welsh Government will be removed?

[100] **Huw Lewis:** There is sufficiency here in terms of safeguards in the Bill. It will remain the responsibility of the local authority to assess the needs of a particular child and be satisfied that they receive suitable provision that will meet their needs. That includes, of course, the setting that delivers the educational provision that that child needs. It is, after all, the local authorities that, in the main, will be in the position to have the greatest grasp of the needs of a particular learner. In most cases, they would have had a relationship with that learner for some years, and it is their responsibility to ensure that a suitable placement is achieved.

10:00

[101] **Suzy Davies:** At that stage when the local authority is making a decision, albeit that they might know the child a little better, they do not have the benefit of that Estyn advice and support that the Welsh Government does at the moment when making decisions about individual consents.

[102] **Huw Lewis:** Local authorities should be more than capable of making a decision on

the appropriateness of a placement, best based on the individual's statement and Estyn's annual monitoring report of the setting. Taken together, that is a much more robust system than the one that we have at the moment.

[103] **Suzy Davies:** Are you worried that if the local authorities are responsible for making the decision they will be under considerable financial pressure to make decisions of a certain type, beginning with statementing, which we are dealing with in another Bill, and in terms of deciding on which school a child should go to perhaps on the basis of cost?

[104] **Huw Lewis:** First of all, it is the duty of local authorities to meet the needs of the learner. That is the wording. Within that, like any level of Government or public body, they have a duty to provide value for money. Essentially, that is their job; that is the day-to-day business with regard to local government's duties to any learner, these learners included. Simon, did you want to add something?

[105] **Mr Morea:** It is important to remember that in the case of the majority of pupils placed by a local authority, Estyn is not involved at all anyway in their placement in independent schools. It is only when the school has not been approved to admit pupils with a statement—

[106] **Suzy Davies:** Sorry, can I just butt in there? We heard evidence from Estyn that it supported the Welsh Government in making decisions about children in individual consent situations.

[107] **Mr Morea:** Schools can be approved generally to admit pupils with statements of SEN, and if they are approved generally, Estyn does not get involved in the admission of an individual's placement. It is only in a small number of cases, because the school has not been approved, that Estyn will involve itself in the admission process. It is still the local authority's responsibility to do so, and I think that Estyn also gave evidence that it tended to agree with the placements anyway.

[108] **Suzy Davies:** Thank you, that is helpful. We are still in a position, though, that a cash-strapped local authority might place a child in a school where teachers are not registered. Estyn's role in that is merely to approve the standards of the school once a year, and not the appropriateness of the setting. Does that give you any concerns?

[109] **Huw Lewis:** If the local authority fails in its duty to the learner, it will have failed. Safeguards are built into the system to make sure that there is recourse for a parent and a child to take. The duty is there upon local government to make sure that the needs of the learner are satisfied. If they are not, the system provides a path of recourse because the local authority has failed in its duty.

[110] **Mr Morea:** The concern here is about non-qualified teachers teaching in independent schools; I think that this is what you are saying. The first thing that would happen in an independent school is that they would take references up. So, with regard to the concern that Mr Roberts talked about earlier that someone had been removed from being able to teach in the state sector, the references would show that. Secondly, the independent school standards require heaps of duties on the proprietors and staff of independent schools. If during an investigation by Estyn or others it comes to light that poor professional practice is going on, Welsh Ministers can intervene. The ultimate thing would be to remove the school from the register of independent schools, and if a school is continuing and it is unapproved, it is a criminal offence for the proprietor to manage that school unless it is registered.

[111] **Suzy Davies:** Would it not be more appropriate for this particular part of the Bill to be part of an amendment to existing legislation, rather than trying to crowbar it into this,

which has nothing to do with the workforce council question.

[112] **Huw Lewis:** It is not crowbarring; it is taking an opportunity to simplify an existing system and to make sure that there is less of a chance of duplication with the work of the various actors. That will deliver a better service for the learner in my view. It is grasping a legislative opportunity to deliver a discrete package of improvement for the children concerned.

[113] **Suzy Davies:** Thank you, it is just that I am very mindful of the Government's own principle about the consolidation of legislation.

[114] I have one more question and it is to do with the annual inspection by Estyn of the schools involved. Are you certain that there is enough money for these annual inspections? We took evidence from Estyn and at that time it told us that there had been no discussion with the Welsh Government about how they would be funded.

[115] **Huw Lewis:** My officials have certainly discussed the provisions with Estyn on the potential implications for monitoring independent schools. I have been advised, and my understanding is, that Estyn was content with the proposed changes.

[116] **Suzy Davies:** We have conflicting evidence, then, Minister.

[117] **Ann Jones:** Aled, you can make a very brief point, and then we need to make some progress.

[118] **Aled Roberts:** As far as this provision is concerned, my only concern is not the unqualified teachers within the independent sector but the issue of whether independent schools are able to deal with the needs of a child with a statement. We received evidence from the third sector in particular that there are independent schools that are suggesting that they are able to look after those needs when they clearly are not. Estyn's evidence to us states that

[119] 'placing authorities do not always take enough care to ensure that a school is able to meet a pupil's special educational needs.'

[120] So, what might be seen as duplication by you is seen both by Estyn and the third sector as a safeguard. Relying on the annual monitoring visit might be all very well, but there may be 12 months between the actual date of placement and the annual monitoring visit, during which the child has been placed in provision that is wholly inappropriate for their individual needs. That is the point that has been made.

[121] **Huw Lewis:** If the local authority is doing its job properly then that simply should not happen. It is the intention here that we strengthen the registration regime around independent schools because those schools, apart from anything else, will have to indicate what type and level of SEN provision they are able to cater for and that is checked by Estyn. On the case-by-case basis that we have at the moment, that is simply not happening in that way. The school will have to register for a particular type and level of provision, against which they would be inspected.

[122] **Keith Davies:** Byddaf yn gofyn fy nghwestiwn yn Gymraeg. I ddilyn beth y soniodd Aled amdano, rydym wedi cael tystiolaeth gan bobl sy'n dweud os bydd ysgolion annibynnol eisiau cael eu cofrestru, bydd yn rhaid iddynt roi gwybodaeth i chi o dan adran 160. Fodd bynnag, mae pobl wedi **Keith Davies:** I will ask my question in Welsh. To follow what Aled was talking about, we have had evidence by people who have said that if independent schools want to be registered, they will have to provide you with information under section 160. However, people have told us that the

dweud wrthym nad yw'r wybodaeth yn adran 160 crystal â'r wybodaeth yn adran 347. A ydych yn gweld y gwahaniaeth? Roeddent yn dweud wrthym nad oedd digon o fanylder yn adran 160.

information in section 160 is not as good as the information in section 347. Do you see the distinction? They told us that there is not sufficient detail in section 160.

[123] **Huw Lewis:** Can I clarify, Keith, who was saying that?

[124] **Keith Davies:** The RNID was one group and Snap Cymru was another. There were two or three of them, actually.

[125] **Huw Lewis:** Right. I think that I will turn to you, Emma.

[126] **Ms Williams:** The difficulty here is that at the moment we have a mixed economy. We have some placements and registrations under one part of the legislation and some under another, and children are being placed in different ways. So, we are looking broadly here for consistency—one single register. It will still fall to the local authority to reassure itself that an individual placement for a child is suitable to meet their needs and then to review that placement on a regular basis to ensure that it continues to meet that need. Registering under section 160 will provide clarity across all schools that wish to offer themselves to take children with SEN and provide consistent evidence of who may be able to meet which needs. From there, it is for the local authority.

[127] **Keith Davies:** Rôl yr ysgolion yw llenwi'r wybodaeth yn adran 160. Ai chi fel Llywodraeth fydd yn rhoi'r wybodaeth yna i'r awdurdodau lleol?

Keith Davies: The role of the independent schools will be to fill in the section 160 details. Will it be you as a Government that gives that information to the local authorities?

[128] **Ms Williams:** The information will be in the public domain, yes.

[129] **Keith Davies:** Fy nghwestiwn olaf yw hwn: beth fydd yn digwydd os nad ydych chi'n hapus â'r hyn y mae'r ysgolion annibynnol yn ei gynnig i blant? A fyddwch chi'n tynnu'r busnes cofrestru oddi wrthyn nhw?

Keith Davies: This is my final question: what happens if you are not content with what these independent schools are offering to children? Will you be taking the registration off them?

[130] **Huw Lewis:** Yes, if the independent school is failing to meet the standards. There are existing provisions in the Education Act 2002 and those are applied to any independent school that fails to provide what it has been specifically registered for.

[131] **Aled Roberts:** A gaf i ofyn am nodyn gan y Llywodraeth yn nodi beth sy'n ofynnol o dan adran 160 o'i gymharu ag adran 347?

Aled Roberts: Can I ask for a note from the Government on what is required under section 160 compared with section 347?

[132] **Huw Lewis:** Yes, of course.

[133] **Ann Jones:** We will move on to specialist post-16 provision for learners with learning difficulties and/or a disability. Lynne, you are going to take the first set of question on this.

[134] **Lynne Neagle:** The first question is about the ability of local authorities to carry out these assessments for post-16 learners. You indicated that you feel that local authorities are

best placed to fulfil that role. What consideration has been given to how that would work in practical terms at a local authority level? Who would be doing these assessments and what discussions have taken place with local government about that?

[135] **Ann Jones:** May I just interrupt? We have a new official at the table. Could you introduce yourself, please?

[136] **Ms Martins:** I am Grace Martins from Legal Services.

[137] **Ann Jones:** Thank you. Minister?

[138] **Huw Lewis:** I am a little unclear as to the question, Lynne. Are we talking about—

[139] **Lynne Neagle:** Post 16—

[140] **Huw Lewis:** Resources?

[141] **Lynne Neagle:** No, I will come to resources in a second. I wanted to talk about the ability of local authorities to do this, especially given that some of our local authorities are in special measures.

[142] **Huw Lewis:** I will return to a point I made earlier, which is that there should be no-one in a better position to understand the needs of learners in these groups of young people. They have generally been known to the local authority and the local authority would have been working with them throughout their childhood. All of those details should be known and that expertise should be applied in terms of what the local authority needs to take into account as regards the transition. It would be difficult to point to a body or organisation that is better placed. I cannot think of one, other than the local authority itself.

[143] **Lynne Neagle:** I will now ask about resources. When we heard from the WLGA, our understanding was that the funding for post-16 learners will be going in to the rate support grant. One of the things that we raised with the WLGA was the concern that, at the moment, the provision is variable across Wales. So, how would we ensure that the right amount of funding goes to each local authority to meet those needs? What discussions have been held between your department and local government on this issue of how the funding will be distributed?

[144] **Huw Lewis:** I would refer Members to the explanatory memorandum and, within that, the regulatory impact assessment, which sets out the estimated costs associated with these sorts of provisions. Details that are related to the skills and the expertise would be taken into account as part of the transition planning that we would have to go through with local authorities. That will have to be considered in due time by the distribution sub-group, which consists of local government and Welsh Government officials. It would need to work through that. The sub-group knows about the proposed transfer and the detailed work on that will begin early next year.

10:15

[145] **Lynne Neagle:** Do you have any reservations about it going into the rate support grant and therefore not being protected funding?

[146] **Huw Lewis:** No, because it is very clear what the statutory duty of local authorities will be towards these learners.

[147] **Ann Jones:** Okay. Angela is next.

[148] **Angela Burns:** What assessment have you given to the fact that an assessment of a person for post-16 provision is entirely reliant on them already having a statement in place?

[149] **Huw Lewis:** There are currently two categories of learners: those with statements and those without. The proposals in the Bill have to be set in the context of the current statutory requirements for SEN, and the entitlement to assessment has to be consistent with those currently available to learners with and without statements. That does not mean that young people without a statement cannot request them, and there would also be a right of appeal to a decision not to carry out an assessment. However, at the moment, we have to deal with that current landscape in terms of those two categories of young people.

[150] **Ms Williams:** To add some reassurance there, we can identify learners with statements as a specific group. Learners beyond that who may need an assessment post-16 are more difficult to define on the face of the Bill. However, the code of practice, the statutory guidance, that will sit alongside it will set out guidelines to learners that would fall into that group, those whom we would expect to normally receive an assessment.

[151] **Angela Burns:** I would respectfully like to make the comment that nothing about this section reassures me whatsoever. If we were in a better world, where we could trust our local authorities to have done the correct job for children with special educational needs, I might be prepared to accept what you say, but I am concerned about a number of issues. Minister, your actual words earlier were that local authorities have ‘the greatest grasp of the needs of a particular learner’, and yet we have had an enormous amount of evidence from people saying that the situation is patchy and inconsistent throughout Wales. Some local authorities will push the boat out and pick up a learner at a young stage. They will give them a statement and ensure that they have the right provisions, thereby allowing them to access this post-16 support that you talk of here. Others simply do not do that. When the Government brought forward this measure, I remember the debate in the Chamber when a great many Members were keen to ensure that one of the outcomes of this is that parents of post-16 learners no longer have to fight tooth and nail to get the provision that they require. I fail to see how this will help in that.

[152] Another thing that I think that we need to bear in mind is that—and this comes back to the Chair’s earlier question about why this is a bit in this Bill, rather than having a whole Bill—there is real confusion about the differentiation between special educational needs and additional learning needs and whether disruptive behaviour classifies as one of those. When we look at those educated outside of the school setting, we will see that 90% of them are defined as having learning difficulties. So, local authorities are not picking up those children now: 90% of all the children educated in Wales outside of the school setting have some form of learning or behavioural needs. They are not being picked up and given statements and they are not getting their life opportunities.

[153] So, I remain so unconvinced, and I ask the Government to seek to reassure us that we can trust local authorities to not put all these parents through the mill as soon as their children hit 16 and that they will be able to access the appropriate provision afterwards, because if they are not picking them up before they are 16, and there is a legion of evidence out there that they are not, they will certainly not pick them up post 16. Bearing in mind Suzy and Keith’s points about funding and the pressures on funding, I am worried that this section of our learning community will suffer.

[154] **Huw Lewis:** We all recognise that we are not anywhere near where we would like to be in terms of the overall landscape of ALN. However, this Bill will move us forward. Welsh Ministers would be under a duty, for instance, to issue a code of practice, which local authorities would have to adhere to. There would be a new right of appeal for learners, which

did not previously exist in terms of their feelings regarding whether a local authority has discharged its duties appropriately.

[155] Many of the issues that Angela is quite rightly concerned about are issues that we need to address in terms of the wider ALN agenda, which we talked about earlier. This Bill is an opportunity to take some discrete forward steps in terms of issues like a code of practice, a right of appeal and so on, and the lessening of the risk of duplication and the overall simplification of the system as well. This takes us forward. It does not take us to exactly where we might want to be, but there is a wider conversation that needs to be had around additional learning needs and policy that is all-encompassing in that regard. This specific Bill does not pretend to be an all-encompassing cure-all for the ALN landscape out there; it is about a discrete piece of improvement that is possible now.

[156] **Angela Burns:** I have two small questions on that, Minister. Could you please identify for us, given what you have just said and given our concern over the inconsistency of provision, how you will be able to monitor whether local authorities are doing what you say they should be doing? Would you also please give consideration to changing the timescales involved? My understanding is that, at present, they have six months to sort it out, but that is another six months out of a child's life. Can you try to bring forward some kind of system, if not in your Bill, in your code of conduct? I would also like to ask when that code of conduct will appear after the Bill. Will you bring forward some kind of system that outlines how you will monitor them and make sure that they are doing what they should be doing? Will you also look at how we can compact that timescale so that these children can get back into education in order to maximise their life chances?

[157] **Huw Lewis:** I hear what you are saying and I share your concerns on these issues. In terms of monitoring, there is the collection of annual statistics and so on in terms of pupils with special educational needs, and Estyn considers things as part of its regular inspections, but I will undertake to look at how, perhaps, we can further tighten the regime through the code of conduct, for instance. I will undertake to look at that.

[158] In terms of timescales, the regulations will have to contain details on timetabling. I heard very clearly, once again, what Angela Burns said about bringing forward an appeal, appeal proceedings and so on. We need to understand that justice delayed is justice denied. I will undertake to do some further work on that as well, as part of the run-up to the detail being drawn up on timetabling. The content of regulations would be subject to consultation as well.

[159] **Ann Jones:** Aled is next. Please be brief, Aled.

[160] **Aled Roberts:** If there is work to be done in relation to statistics et cetera, and I understood what you said regarding the distribution sub-group needing to look at it with the WLGA if we moved to this position, will those annual statistics reveal how many of these children move from one authority to another? I had an experience last Friday dealing with one child who had moved between three counties in north Wales since January. My fear would be that, if we set a formula, then there is the issue of variation in assessment et cetera, but there is also the fact that there would be a fixed special needs budget within that authority, and his or her needs might not be addressed purely because of financial considerations. Where currently there is, perhaps, some protection with regard to a national pot, we then face difficulties—and I am thinking about south-east Wales, where a child might move only 2 miles, but could move from one authority to another.

[161] **Huw Lewis:** Obviously, this is something that needs to be taken on board and considered as part of the ongoing work. I am glad that Aled has raised those points.

[162] **Ann Jones:** We will move on, then, to the final section, which is on school term dates and appointments to Estyn. Bethan, that is yours.

[163] **Bethan Jenkins:** Rwy'n mo'yn **Bethan Jenkins:** I just want to talk about the siarad am harmonieiddio tymhorau ac a ydych harmonisation of terms and whether you, as chi, fel Gweinidog, wedi sicrhau cydbwysedd Minister, have ensured a balance between the rhwng manteision cael trefn trwy Gymru advantages of having an all-Wales system gyfan a'r hyn sydd yn digwydd gydag and what is happening with specific schools. ysgolion penodol.

[164] **Ann Jones:** May we have the name of your official, as a new official has come to the table?

[165] **Mr Planchant:** Yes, I am sorry. I am Ceri Planchant, a lawyer in the Welsh Government.

[166] **Huw Lewis:** A balance—I wonder, Bethan, whether you could expand on that.

[167] **Bethan Jenkins:** The balance between having national harmonisation and what individual schools would want to do, or individual local areas.

[168] **Huw Lewis:** I think that we begin from a situation where, in the main, localised consultation about the sensible setting of term-time dates is the norm anyway. Most local authority areas have a degree of harmonisation. So, I do not believe that it is beyond the wit of man for us to be able to move to a regularised situation where all schools in the maintained sector are, essentially, harmonising their term dates for the simple reason that, in today's more and more pressurised world, it is a better deal for parents and carers to be able to rely on that kind of predictability when it comes to childcare. I would not see any schools as being exceptions to this, but all schools would need to be part of the forward planning within a particular area in order to enable that to happen. It is worth pointing out that, in general, school term dates are set anything up to five years in advance, so there is a goodly amount of time for all the various interests within a community of schools to get their point across, to find a compromise and to settle upon harmonised dates.

[169] **Bethan Jenkins:** You said previously that some variation could be afforded. In relation to faith schools, we have had evidence from the Catholic Education Service, which is concerned about the feast of Easter and how that might affect its schools. Is there any way that you could make it feel more comfortable with what is happening in terms of harmonising, potentially, around that holiday or encouraging it to talk to other schools at an earlier point, because we have had quite some communication from it with regard to the fear that it would have to make huge efforts to try to have that time respected within the system?

[170] **Huw Lewis:** There is no need for fear or alarm here, I think. Again, all schools would be included in that conversation well in advance of the school year in question, but the aim would be that we would have harmonisation across the system, because that is the best deal for parents and carers. However, everyone's voice would be heard in terms of the conversation leading up to a particular school year.

[171] **Bethan Jenkins:** I just wanted to go on—

[172] **Ann Jones:** I am sorry, Bethan. Suzy wants to come in on this point.

[173] **Suzy Davies:** Yes, it is on this particular point. What you say is very reassuring, Minister, so I am genuinely curious as to why we need legislation on this point at all.

[174] **Huw Lewis:** I think that the legislation gives us the national co-ordination that is necessary, particularly because, with small local authorities in Wales, it is not unusual for parents, for instance, to be in a situation where one child is at primary school and one child is at secondary school and those schools might have a disconnect in terms of their term dates. They might have one child, particularly if they are involved in Welsh-medium education, who is in one local authority's remit and another child in another local authority's remit. So, although there is a lot of goodwill out there and people do try to work towards sensible arrangements—I know that—there is no duty on anyone to sit down, thrash it out and agree. Essentially, this legislation pushes us into that situation.

[175] **Suzy Davies:** May I ask a tiny supplementary question on that? I am just wondering about the collaboration agenda. Will that not sort that out?

[176] **Huw Lewis:** No, unless we have an overall duty to bring—. This has to have an all-Wales reach. We cannot afford to have gaps in the system or a local authority that just decides, 'Well, we are just going to opt out of this for this particular year'. We need a system that settles down and is consistent across the country, in my view. It is better for parents and carers, and that means there are implications for better learning, in my view, as well.

10:30

[177] **Ann Jones:** Rebecca, you have a supplementary question before we go back to Bethan.

[178] **Rebecca Evans:** Yes. I have the equality impact assessment on the harmonisation of school dates in front of me, and it identifies the impact on the protected characteristic of religion as 'positive', 'negative', 'none' and 'negligible', so I was wondering which it was. [*Laughter.*] Also, in the impact assessment, it identifies as a risk that other faiths may be upset—it specifies the Jewish faith and the Muslim faith—if school dates were harmonised to suit Christian schools. I was wondering whether you had actually had any representations to that effect, because in my experience the inter-faith community in Wales is actually very supportive.

[179] **Huw Lewis:** Yes, I think that in general it is. No specific worries have reached me.

[180] **Bethan Jenkins:** The trade unions and the teaching councils have said that they would need to have this legislation because people are not doing it at the moment, so I think, on the record, I would support legislation on this.

[181] I want to go on to ask about the powers of intervention that you have as a Minister, and how you intend to use them in the future. I think the concern was that there could be instances where you would deem something to be important—I think that some people did not appreciate the Ryder Cup example, but you will never win everybody over—whereas there might be other instances that would be a priority in some areas. Would you have set criteria as to what you, as a Minister, would deem to be in the national interest, perhaps, in terms of big events, so that people could fully understand why you would intervene in the future?

[182] **Huw Lewis:** This intervention really is about the unforeseen, in the main, so a much better example, I think, might be issues such as the measles outbreak. If we have public health issues that need to be addressed across a local authority area, or group of schools, then it is very important we have this sort of failsafe mechanism at the back of things. There are other issues. You could foresee good things happening, such as major sporting events that we would want—the Welsh Olympics 2032 or whatever—where we might want young people to be very much part of those things, and, God forbid, there could be issues around a breakdown

of infrastructure, or cataclysmic weather conditions, or whatever. However, this is really a fallback power for those things that are generally unforeseen in a five-year cycle of setting school dates.

[183] **Bethan Jenkins:** I am glad you support independence now, Minister, because we would need to be an independent nation to have the Olympics.

[184] **Ann Jones:** I do not think that is part of the Bill. [*Laughter.*]

[185] I am going to break here, because I think we have covered all the questions and we could move on. There are a couple of notes that your officials have agreed to send us: on the consultation that was received around independent schools, and then a note on the differences between sections 160 and 347—that was Aled’s point. Could we beg that we have them fairly soon, because it is about writing our report?

[186] **Aled Roberts:** Also the information on possible movements between local authority areas.

[187] **Ann Jones:** Oh yes, movements between local authorities as well. Thank you very much. Apparently we are back on camera and the system is all working well, but we will have a break anyway, just to make sure.

*Gohiriwyd y cyfarfod rhwng 10:34 a 10:41.
The meeting adjourned between 10:34 and 10:41.*

**Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru)—Cyfnod
2: Trafod y Gwelliannau
Further and Higher Education (Governance and Information) (Wales) Bill—
Stage 2: Consideration of Amendments**

[188] **Ann Jones:** Welcome back to the Children and Young People Committee. We are going to move to Stage 2 proceedings of the Further and Higher Education (Governance and Information) (Wales) Bill. Minister, welcome back. Do you want to introduce your officials?

[189] **The Minister for Education and Skills (Huw Lewis):** Andrew is on my left.

[190] **Mr Clark:** I am Andrew Clark, deputy director for the further education and apprenticeships division.

[191] **Huw Lewis:** And Marcus is on my right.

[192] **Mr Richards:** I am Marcus Richards, from Legal Services.

[193] **Ann Jones:** Thank you very much. As I said, this is Stage 2, and it is usually a tight process that we have to go through. Members, I will just do a quick run-through of how the process works, just to refresh your memories. I will call the proposer of the first amendment in a group—amendments are grouped, as we know—who should speak to and move their first amendment. They may then speak to other amendments in the group. Please feel free not to do so—you do not have to speak to all of the amendments if you do not want to. I will then call other speakers, including the proposers of any other amendments in the group, but they should not move their amendments at that stage. Members who do not have an amendment in the group, but who wish to speak, should indicate that they wish to speak in the normal way. I will then call the Minister to speak on each group.

[194] In concluding each debate, I will call the proposer of the first amendment to wind up the debate. Following on from that, I will clarify whether the Member who moved the amendment still wishes to press the matter to a decision. If that is the case, we shall go to a vote. There is an issue, in that, at the moment, we are on camera, so we can vote in the usual way. However, should we get a power surge, I may have to ask you by name to state how you are going to vote on amendments, because, if we are down to audio only, we will have to do it that way to make it go through. We will proceed in that way. Only members of the committee can move amendments, so, Minister, I shall move any amendments that you have tabled for you.

[195] That is it. We shall now proceed and see how we get on.

Grŵp 1: Sefydliadau Dynodedig: Newidiadau i Offerynnau ac Erthyglau (Gwelliant 4)
Group 1: Designated Institutions: Changes to Instruments and Articles (Amendment 4)

[196] **Ann Jones:** This is the first group, and there is only one amendment in it: amendment 4. Minister, would you like amendment 4 in your name to be moved?

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

[198] **Ann Jones:** I move amendment 4 in the name of the Minister. Minister, do you want to speak to your amendment?

[199] **Huw Lewis:** Thank you, Chair, yes. Amendment 4 is a technical amendment that places a requirement on designated institutions to engage with trustees. It simply recognises the special circumstances of institutions that were at one time voluntary aided schools. Its intention is to place an obligation on governing bodies to seek the consent of the trustees to any modifications to, or replacement of, the instrument and articles of government. Currently, this provision would apply only St David's Catholic College, as it is the only former voluntary aided school in Wales. The amendment is supported by the Catholic Education Service and St David's Catholic College. So, I ask Members to support the amendment.

10:45

[200] **Ann Jones:** Does anyone wish to speak?

[201] **Simon Thomas:** Hoffwn ofyn **Simon Thomas:** I would like to ask the
 cwestiwn i'r Gweinidog ei ateb wrth gloi'r Minister a question for him to answer in
 ddadl, os gall. A yw hyn yn ymwneud mewn closing the debate, if he can. Does this relate
 unrhyw ffordd â chyfraith elusennau, ac a in any way to charities law, and is the
 yw'r Gweinidog yn fodlon bod y camau Minister happy that the appropriate steps
 priodol wedi cael eu dilyn i sicrhau hynny? have been taken to ensure that?

[202] **Ann Jones:** Does anybody else wish to speak in the debate? I see that no-one does. Minister, do you want to respond?

[203] **Huw Lewis:** I am not aware of any tripping over of charities Acts. As I said, we have consulted the Catholic Education Service and the sixth-form college. It is a technical amendment for one particular institution that we need to undertake. My understanding is that there is no conflict with charities Acts in any way.

[204] **Ann Jones:** Thank you very much. Minister, do you wish to move to a vote?

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

[206] **Ann Jones:** Thank you very much. The question is that amendment 4 be agreed to. Does any Member object? There is no objection. Therefore, amendment 4 is agreed in accordance with Standing Order 17.34.

*Derbyniwyd gwelliant 4.
Amendment 4 agreed.*

Grŵp 2: Diddymu Pŵer i Reoleiddio Cyrsiau Addysg Uwch yn y Sector Addysg Bellach (Gwelliant 1)

Group 2: Abolition of Power to Regulate Higher Education Courses in Further Education Sector (Amendment 1)

[207] **Ann Jones:** The lead and only amendment in this group is amendment 1. I call on Simon to move the amendment and speak to it.

[208] **Simon Thomas:** Cynigiaf welliant 1 yn fy enw i. **Simon Thomas:** I move amendment 1 in my name.

[209] Efallai fydd aelodau'r pwyllgor yn cofio cyd-destun y gwelliant hwn. Mae'r Llywodraeth, yn y Bil, yn colli grym, fel petai—sy'n beth anarferol iawn—a cholli'r gallu i reoli cyrsiau addysg uwch yn sefydliadau addysg bellach. Bu inni holi yn y pwyllgor, wrth gasglu tystiolaeth oddi wrth y Gweinidog blaenorol, Leighton Andrews, pam roedd yn teimlo bod angen colli'r grym hwn, o gofio bod cryn dipyn o newid yn digwydd yn y sector addysg uwch. Y dau newid oedd o ddiddordeb i ni oedd y ffaith bod nifer y myfyrwyr rhan amser yn tyfu, yn ogystal â nifer y myfyrwyr sy'n cymryd cyrsiau addysg uwch mewn sefydliadau addysg bellach. Mae hynny wedi cael ei gadarnhau gan ColegauCymru. Rydym hefyd yn gweld mwy o sefydliadau addysg bellach yn uno; maent bellach yn rhan o grwpiau sy'n cael eu rheoli gan brifysgolion ac ati, ac mae'r datblygiad hwnnw yn amlwg drwy Gymru.

Committee members may remember the context of this amendment. The Government, in the Bill, loses a power, as it were—which is very rare—and loses the ability to control higher education courses in further education institutions. We asked in committee, when taking evidence from the former Minister, Leighton Andrews, why he felt it necessary to lose this power, bearing in mind that a lot of change is happening in the higher education sector. The two changes that were of interest to us were the fact that the number of part-time students is increasing, as is the number of students who undertake higher education courses in further education institutions. That has been confirmed by ColegauCymru. We have also seen more further education institutions merging; they are now part of groups that are managed by universities and so on, and that development is evident throughout Wales.

[210] Dywedodd Leighton Andrews, y Gweinidog ar y pryd, y byddai'n ailedrych ar y sefyllfa hon i weld a oedd angen i'r Llywodraeth feddu ar y pŵer o hyd er mwyn ateb gofynion y dyfodol. Dywedodd y Gweinidog ar y pryd nad oedd wedi defnyddio'r grym, ond bod y cyd-destun yn newid ac efallai fod angen ailedrych ar hwn. Felly, pwrpas cynnig y gwelliant heddiw yw cael clywed gan y Gweinidog newydd a ydyw wedi cael cyfle i edrych ar hwn, beth yw ei gasgliadau erbyn hyn, ac a yw'n teimlo bod colli'r grym hwn yn ymwneud â'r cynnydd o ran darpariaeth cyrsiau addysg

Leighton Andrews, the Minister at the time, said that he would revisit this to see whether there was a need for the Government to retain this power in order to meet future requirements. The Minister at the time said that he had not exercised the power to date, but that the context was changing and perhaps there was a need to look at it again. So, the purpose of moving the amendment today is for us to hear from the new Minister whether he has had an opportunity to consider this, what his conclusions are by now, and whether he feels that losing this power relates to the increase in the provision

uwch mewn sefydliadau addysg bellach. of higher education courses in further education institutions.

[211] **Ann Jones:** Does any other Member wish to speak? I see that no-one does. I call the Minister.

[212] **Huw Lewis:** Thank you, Chair. We have listened carefully to the comments and the points outlined by Simon. We have also reflected on the recommendations of the committee that were made during Stage 1. As Simon explained, amendment 1 would mean that Welsh Ministers would retain the power to make regulations in terms of the provision of HE courses delivered by FE institutions. Having reflected, the Welsh Government's policy remains to remove the powers of Welsh Ministers to make regulations controlling HE within FE from the Education Act 2002. The powers have been in existence for over 12 years. They have not been used at any time, and my officials are not aware of any issues presently that would result in their being used. To summarise, that means that, for over a decade, Welsh Ministers have not needed to seek to prohibit the provision by a further education institution of a HE course, they have not needed to determine the number of persons who may undertake HE courses at an FEI, and they have not needed to determine the number of persons in different categories who may undertake an HE course in an FEI. I do not foresee any implications associated with the removal of these powers, and our intention in the future is that FE institutions in Wales that deliver HE courses will be subject to the same controls as HE institutions. Those controls were recently the subject of the technical briefing on the higher education (Wales) Bill, and I intend to bring forward higher education legislation in this Assembly. I believe that that would be the most appropriate arena in which to discuss the controls on the provision of HE by further education institutions. Therefore, I ask committee members to resist amendment 1.

[213] **Ann Jones:** Thank you. Simon, do you want to reply to the debate?

[214] **Simon Thomas:** Diolch. Roeddwn wedi gobeithio clywed ychydig yn fwy gan y Gweinidog, nid am y gorffennol—rwy'n derbyn pwynt y Gweinidog ynglŷn â hynny—ond ynglŷn â'r ffordd y gallai ddefnyddio grymoedd yn y dyfodol ar gyfer y ffaith bod newid sylweddol yn y maes hwn. Mae'r Gweinidog wedi cyfeirio at bolisi pellach, ac efallai Fil addysg uwch. Rwy'n derbyn y pwynt hwnnw, ond, os felly, byddai'n well gennyf ein bod yn gadael y grym hwn gyda Llywodraeth Cymru am y tro, ac ailedrych arno yng nghyd-destun Bil ehangach ar addysg uwch yn y man. Felly, rwyf am i'r pwyllgor benderfynu ar y gwelliant.

Simon Thomas: Thank you. I had hoped to hear a little more from the Minister, not about the past—I accept the Minister's point about that—but about the way that he could use the powers in future in light of the fact that there will be substantial changes in this area. The Minister has referred to further policy, and a higher education Bill, perhaps. I accept that point, but, if that is the case, I would prefer that we leave this power with the Welsh Government for the time being, and look at it again in the context of a wider Bill on higher education in due course. So, I would like the committee to decide on the amendment.

[215] **Ann Jones:** Do you wish to proceed to a vote on amendment 1?

[216] **Simon Thomas:** I do.

[217] **Ann Jones:** The question is that amendment 1 be agreed to. Does any Member object? There is objection. We will take a vote by show of hands.

*Gwelliant 1: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 1: For 5, Abstain 0, Against 5.*

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

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

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

Davies, Keith
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David

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 1.
Amendment 1 not agreed.*

Grŵp 3: Adolygu Gweithrediad y Ddeddf (Gwelliannau 9, 13, 14 a 15) **Group 3: Review of Operation of Act (Amendments 9, 13, 14 and 15)**

[218] **Ann Jones:** The lead amendment in this group is amendment 9. I call on Aled Roberts to move and speak to the amendment and to the other amendments in the group if he wishes.

[219] **Aled Roberts:** Cynigiau welliant 9 yn fy enw.

Aled Roberts: I move amendment 9 in my name.

[220] Rwyf yn awyddus i ddiogelu'r ddarpariaeth ar gyfer yr iaith Gymraeg, a hefyd ar gyfer addysg anghenion arbennig. Roedd nifer o fudiadau yn awyddus i weld bod y sefyllfa ynglŷn â'r iaith ac anghenion arbennig yn cael ei diogelu i ryw raddau. Roedd argymhelliad 2 yn adroddiad y Pwyllgor Plant a Phobl Ifanc yn dweud bod yn rhaid diogelu'r ddarpariaeth hon. Yn arbennig, roedd NDCS Cymru yn dweud bod perygl, wrth i'r colegau fynd yn fwy annibynnol, na fydd y grant ar gyfer anghenion arbennig yn cael ei glustnodi.

I am keen to safeguard the provision for Welsh language and also for special educational needs. Many organisations were keen to see the situation regarding the language and additional needs safeguarded to some extent. Recommendation 2 in the report of the Children and Young People Committee stated that this provision should be safeguarded. In particular, NDCS Cymru said that there was a danger, as the colleges become more independent, that the grant for additional needs would not be ring-fenced.

[221] O ran yr iaith Gymraeg, roedd rhywfaint o gonsŷrn ynghylch a fyddai'r colegau yn atebol o dan Mesur y Gymraeg (Cymru) 2011 a'r safonau y bydd y Llywodraeth yn eu cynnwys yn y pen draw. Felly, rwy'n meddwl bod yn rhaid diogelu'r ddarpariaeth hon. Y rheswm yr wyf wedi gofyn am ryw fath o adolygiad ar ôl blwyddyn yw bod hyn yn cael ei grybwyll yn y memorandwm esboniadol, ond nid oes dim byd yn y Bil ei hun. Felly, rwy'n gofyn i'r pwyllgor gefnogi'r gwelliant hwn.

In terms of the Welsh language, there was some concern as to whether the colleges would be accountable under the Welsh Language (Wales) Measure 2011 and the standards that the Government will include eventually. So, I think that this provision should be safeguarded. The reason why I have asked for some sort of review after a year is that this is mentioned in the explanatory memorandum, but there is nothing within the Bill itself. Therefore, I ask the committee to support this amendment.

[222] **Ann Jones:** Does anyone else wish to speak to amendment 9 or the other amendments in the group, amendments 13, 14 and 15?

[223] **Bethan Jenkins:** I want to speak to the amendments that I have put in, amendments 13 and 15, which are to do with 16-18 protection in further education and the terms and conditions of persons employed in FE. I am proposing a 16-18 amendment because, during scrutiny of the Minister's education budget, he stated that funding for 16 to 18-year-olds would be protected. However, when questioned, it emerged that Welsh Ministers would not be able to direct FE and HE institutions in that way as a result of this Bill. Therefore, I am seeking to try to remedy a situation whereby courses could be cut by FE institutions that affect the educational development of 16 to 18-year-olds in FE, by calling for the undertaking of a review of the operation of this Act with a view to assessing its impact on funding for 16 to 18-year-olds in further education institutions. As Members will know, FE institutions are already seeking to cut services as a result of budget cuts. Therefore, some accountability needs to be built into the system to ensure that those receiving their education in the FE sector will not lose out to those who are in sixth-form colleges. Simon Thomas stated during the last budget scrutiny session that

[224] 'we will be giving more freedom to this sector if the legislation that you have asked the Assembly to approve goes through. So, when you say that it is protected, how is that done, because this is not evidenced very easily'?

[225] For me, at the moment, it is unclear how this Bill as it stands will protect this age group. Therefore, I urge Members to consider this when we take amendment 13 to a vote.

[226] The second amendment, amendment 15, addresses a key element of concern for me and others with regard to this Bill: how do we ensure that staff terms and conditions are protected and respected when we are affording the FE sector less, not more, autonomy and thus a stark decrease in public scrutiny? We have seen in the press much talk of the problems that zero hour contracts cause for individuals. Sadly, these contracts still remain in the public sector and the educational world. We know that the national contract has been negotiated, which I welcome, but trade unions such as the University and College Union are deeply concerned that, with the passing of this Bill, coupled with budget cuts in general, colleges will seek to use more part-time hourly contracts, which are proven to adversely affect staff morale and put tutors in vulnerable situations where they cannot afford to pay their bills, pushing them into poverty—female and ethnic minority tutors more often than not. The evidence by UCU confirmed that.

[227] I urge Members to support the aim in this amendment that, no later than the end of the period of one year beginning immediately after the commencement of the Act, a review be undertaken assessing its impact on the terms and conditions of all persons employed by further education corporations. The Minister, in his evidence to this committee in relation to the budget, stated that he had set up an FE sub-group to discuss such issues. That sub-group could be the vehicle to review this particular issue in my opinion, although I think, from the letter we have received from the Minister within the last few days, that the scope and membership of that sub-group is very narrow. If we do care about the working conditions and contracts of staff we should all support this amendment, because it is some way of us retaining a level of scrutiny that may not be afforded to us in the future with the passing of this Bill, especially with the lack of accountability afforded by the Office for National Statistics reclassification. I believe that staff and tutors in the sector would support this aim too.

[228] **Ann Jones:** Simon, do you wish to speak?

[229] **Simon Thomas:** Os gwelwch yn **Simon Thomas:** Yes, please. I want to speak dda. Rwyf am siarad yn fyr i gefnogi briefly to support Aled's amendment and gwelliant Aled a gwelliannau Bethan Jenkins Bethan Jenkins's amendments too.

hefyd.

[230] Fe wnaethom gydnabod, wrth gymryd tystiolaeth ar y Bil hwn, y gallai fod sgîl-ffeithiau nad ydym yn eu rhagweld ar hyn o bryd o ran anghenion dysgu ychwanegol a darpariaeth yn yr iaith Gymraeg. Felly, rwy'n meddwl ei bod yn gwbl briodol bod adolygiad yn digwydd i weld a yw sgîl-ffeithiau felly wedi deillio o'r Bil. Fel y dywedodd Aled, mae sôn yn y memorandwm am adolygiad beth bynnag. Mae fy ngwelliant i, sef gwelliant 14, sydd yn y grŵp hwn, yn hynod debyg i welliant Aled a dweud y gwir—

We acknowledged, in taking evidence on this Bill, that there could be side effects that we have not anticipated as yet on additional learning needs and also Welsh-medium provision. So, I believe that it is quite appropriate that there should be a review to discover whether such side effects arise from the Bill. As Aled said, there is a mention in the memorandum of having a review in any case. My amendment, namely amendment 14, which is in this group, is exceptionally similar to Aled's to be honest—

[231] **Keith Davies:** Gair am air.

Keith Davies: Word for word.

[232] **Simon Thomas:** Efallai ei fod yn air am air; efallai cawsom gyngor o'r un ffynhonnell. Mae'n ceisio gwneud yr un peth yn y cyd-destun hwnnw. Rwyf am ddweud hyn yn awr achos mae'n bwysig ein bod yn agored ac yn ystyrlon. Os yw'r Gweinidog yn teimlo nad yw blwyddyn yn ddigon o amser ar gyfer adolygiad, ac os yw'r Gweinidog yn dweud y daw'n ôl gyda gwelliant gan y Llywodraeth sy'n sôn am adolygiad ar ôl cyfnod arall, buasem yn barod i wrando ar hynny. Fodd bynnag, mewn egwyddor, dylai fod adolygiad sy'n cael ei arwain gan y Llywodraeth o'r effaith ar yr iaith Gymraeg ac ar anghenion dysgu ychwanegol yn benodol. Mae'r iaith Gymraeg wedi datblygu'n ofnadwy o dda o fewn colegau, ond digwyddodd hynny o dan bwysau cyson gan Aelodau'r Cynulliad a'r sector ehangach. Y targed ar hyn o bryd yw y dylai 7% o'r ddarpariaeth fod ar gael yn Gymraeg. Yn gyffredinol, mae'r colegau'n cyrraedd tua 6%. Felly, nid ydynt cweit ar y targed, ond maent yn nesáu ato. Credaf fod yn rhaid cadw'r pwysau hynny yn y system i gyrraedd yr amcan. Mae gwelliant Aled a'm gwelliant i yn help yn hynny o beth.

Simon Thomas: It may be word for word; perhaps we got advice from the same source. It endeavours to do the same thing in this context. I will say this now, because it is important that we are open and frank. If the Minister believes that a year is not long enough for a review, and if the Minister says that he will come back with a Government amendment that mentions a review after another period, we would be willing to listen to that. However, in principle, there should be a review led by the Government of the impact on the Welsh language and on additional learning needs in particular. The Welsh language has developed exceptionally well in colleges, but that has happened under consistent pressure from Assembly Members and the wider sector. The current target is that 7% of provision should be available in Welsh. Generally, the colleges are reaching about 6%. So, they are not quite on target, but they are getting there. I think we must keep that pressure in the system to attain that target. My amendment and Aled's amendment are of assistance in that respect.

11:00

[233] I droi at welliannau Bethan, rwyf yn eu cefnogi oherwydd yr un egwyddor o adolygu'r effaith, yn enwedig ar y sector 16-18, fel yr amlinellodd Bethan. O edrych ar amodau gwaith, rwy'n meddwl ei fod yn deg i ddweud nad oes gennym reolaeth yma yn y Cynulliad dros amodau gwaith staff, ond mae

To turn to Bethan's amendments, I support them because it is the same principle of reviewing the impact, particularly on the 16-18 sector, as Bethan outlined. In looking at the conditions of service, I think that it is fair to say that we do not have control here in the Assembly over staff terms and conditions,

modd inni gael rhyw fath o orolwg o'r hyn sy'n digwydd.

but it is possible for us to have an overview of what is happening.

[234] Os ewch yn ôl dwy flynedd, fe welwch fod pawb yma yn gytún, pob plaid, y dylid cael adolygiad Humphreys a bod ffordd ymlaen i'r colegau addysg bellach a fyddai'n arwain at gytundeb cenedlaethol. O ganlyniad i benderfyniad yr ONS, rydym wedi gorfod symud adolygiad Humphreys i'r drôr gwirfoddol. Mae rhai colegau yn mynd ymlaen ag adolygiad Humphreys, ac rwy'n derbyn hynny, ond mae'r cytundeb cenedlaethol erbyn hyn wedi mynd i 20 o wahanol gyfeiriadau, ac nid oes cytundeb eto. Heb yr orfodaeth yr ydym yn ei cholli yn y Bil hwn, nid oes modd sicrhau cytundeb cenedlaethol os yw un coleg yn penderfynu, 'Na; diolch yn fawr, ond rwy'n cerdded i ffwrdd o hynny'. Felly, mae'r adolygiad y mae Bethan yn ei amlinellu yn ffordd o gadw llygad barcud ar ddatblygiadau yn y sector honno. Nid yw mewn unrhyw ffordd yn dirymu pwerau'r Gweinidog, ac nid yw'n dirymu'r Bil, na phwrpas y Bil; mae ond yn gosod adolygiad mewn ar ôl cyfnod. Rwy'n meddwl bod hynny'n ofyniad digon rhesymol, ac felly rwy'n cefnogi'r gwelliannau.

If you go back two years, you will see that we were all agreed, every party, that there should be the Humphreys review and that there was a way forward for FE colleges that would lead to a national agreement. Given the decision of the ONS, we have had to move the Humphreys review into the voluntary drawer. Some colleges are proceeding with the Humphreys review, and I accept that, but the national agreement by now has gone to 20 different directions, yet we still do not have an agreement. Without the requirement that we lose in this Bill, it is not possible to get a national agreement if just one college decides to say, 'No; thank you very much, but I am walking away from that'. So, the review that Bethan outlines is a way of keeping a very close eye on developments in that sector. It is not in any way taking the powers away from the Minister, and it does not actually weaken the Bill or its purpose in any way; it is just a way of having a review after a period of time. That is quite a reasonable request, and therefore I support the amendments.

[235] **Ann Jones:** Does any other Member wish to speak? If not, I call the Minister.

[236] **Huw Lewis:** The intention of amendment 9 is to insert a new provision that requires Welsh Ministers to review the operation of the Act within 12 months of its commencement, focusing on the impact of the Act on Welsh-language provisions and on additional learning needs. Amendment 14 also identifies the need to review the impact of the Act on the Welsh-language provisions and ALN, but, crucially, in the field of FE rather than in education in general. The committee recommended in its Stage 1 report that the Welsh Government keeps under close review the effects of the Bill in practice, and whether those effects have any repercussions for other parts of our legislative programme, or on wider matters such as provision for the Welsh language or ALN. In my address to Plenary on 24 September, I informed the Assembly that I accepted the recommendation in principle, and that my officials will keep under close review the effects of the Bill in practice on matters such as Welsh-language provision and additional learning needs provision. You will already know through your scrutiny of the Education (Wales) Bill that FE colleges have existing duties towards disabled people under the Equality Act 2010. As a condition of funding they are required to have regard to the content of assessments undertaken in accordance with section 140 of the Learning and Skills Act 2000. Colleges would also be expected to work with authorities and other providers when responding to local needs to strengthen local provision.

[237] On Welsh-language provision, the Department for Education and Skills published its Welsh-medium education strategy in April 2010, setting out a national policy framework for the development of Welsh-medium and Welsh-language education across all phases of education. Annual updates are published on progress in implementing the strategy, and a comprehensive review will take place in 2015. The strategy contains targets for increasing the

delivery of Welsh-medium and bilingual learning in FE, and these are monitored annually through regular data collection. Progress towards these targets is supported through structures. In FE, these include bilingual champions in every college in Wales, dedicated support through Sgiliaith, and a focus on Welsh language and culture in Estyn inspection and self-assessment requirements. So, I am confident that the Welsh Government already has in place robust mechanisms that safeguard the proper delivery of ALN and monitor the delivery of Welsh-medium and bilingual learning in FE. I would therefore ask committee members to resist amendment 9 and amendment 14 on the basis that I instruct my officials to rescope amendment 14, and bring forward at Stage 3 an amendment that would ensure that the timescale for review coincides with existing planning and review mechanisms. I hope that that responds to one of Simon's points.

[238] Turning to amendment 13, I think that it is important to remind ourselves that the Act will not impact on the planning and funding system for post-16 provision. I will expect FE institutions to prioritise their delivery and deliver not only to the 16-18 cohort, but also to maintain their high-level skills provision and support for those learners considered most vulnerable. Delivery plans from colleges will be monitored at regular intervals. It is worth bearing in mind that I could ring-fence money if that was necessary. However, I am supportive of the principles of amendment 13, but, even so, I would ask committee members to resist it as currently drafted, on the basis that I will instruct my officials to rescope the amendment so that the timescale for review coincides with the existing planning and review mechanisms.

[239] Moving to amendment 15, impressive progress has been made on the delivery of the common contract for the FE sector in Wales by ColegauCymru and the joint trade unions. September 2016 is the date for implementation, subject to an equality assessment that is being undertaken. The common contract will benefit members, learners and employers, and I believe that it will firmly place FE as a key contributor to the success of the Welsh economy and help raise the profile of vocational education. Given that and the direction of travel on the common contract, I firmly consider that amendment 15 is unnecessary, and, more importantly, Welsh Ministers do not have any statutory powers in relation to staff terms and conditions.

[240] As a side issue, but an important issue nonetheless, it is worth noting that the amendment as drafted would apply only to further education corporations. That would exclude certain important FE deliverers—designated institutions in Wales such as the YMCA, St David's Catholic Sixth Form College, the Workers' Educational Association South Wales, Coleg Harlech WEA North, and nor would it include Coleg Sir Gâr or Coleg Ceredigion. These are not further education corporations in law. Therefore, I ask Members to resist amendment 15.

[241] **Ann Jones:** Thank you, Minister. Aled, do you want to respond to the debate?

[242] **Aled Roberts:** Rwy'n derbyn yr hyn y mae'r Gweinidog wedi'i ddweud. I fod yn hollol onest, roeddwn yn yr un sefyllfa â Simon Thomas; yr unig reswm y rhoddais flwyddyn i mewn o ran yr adolygiad oedd mai dyna oedd y cyfnod a gafodd ei roi yn y memorandwm esboniadol. Nid oeddwn yn meddwl bod hynny yn ddigon o amser, ac rwy'n derbyn beth rydych chi'n ei ddweud ynglŷn â gwneud yn siŵr bod yr amserlen o ran cynllunio yn iawn. Rwy'n derbyn yr hyn y gwnaethoch ei ddweud ynghylch y

Aled Roberts: I accept what the Minister has said. To be completely honest, I was in the same situation as Simon Thomas; the only reason that I put in a year in terms of the review was because that was the period put in the explanatory memorandum. I did not think that that was enough time, and I accept what you say about ensuring that the timescale for planning is correct. I accept what you say in terms of the Government bringing forward amendments, so I am content that we do not vote on amendment 9 at this point.

Llywodraeth yn dod â gwelliannau gerbron, felly rwy'n ddigon bodlon i beidio pleidleisio ar welliant 9 ar hyn o bryd.

[243] **Ann Jones:** Do you wish for amendment 9 to be withdrawn?

[244] **Aled Roberts:** I will not put it to a vote.

[245] **Ann Jones:** Okay. Does any Member object to the withdrawal of this amendment? There is no objection.

*Tynnwyd gwelliant 9 yn ôl drwy ganiatâd y pwyllgor.
Amendment 9 withdrawn by leave of the committee.*

[246] **Ann Jones:** We will return to vote on the remaining amendments in this group later in proceedings, in accordance with the marshalled list.

**Grŵp 4: Trefniadau Trosiannol (Gwelliannau 10 ac 11)
Group 4: Transitional Arrangements (Amendments 10 and 11)**

[247] **Ann Jones:** The lead amendment in this group is amendment 10. I call on Aled Roberts to move and speak to amendment 10 and to speak to the other amendments in the group if he wishes.

[248] **Aled Roberts:** I move amendment 10 in my name.

[249] The main reason for putting these amendments forward was because the report of the Constitutional and Legislative Affairs Committee noted that commencement Orders would not be subject to procedure within the National Assembly for Wales, and therefore the committee was concerned that that did not ensure a suitable level of scrutiny. Its letter confirms that transitional, transitory and saving provisions within secondary legislative powers are not normally subject to Assembly procedure, therefore Ministers could enact provisions that act beyond the original intentions of the Bill. In accordance with the CLAC recommendation, amendment 10 is tabled to ensure that any Order is subject to the negative procedure. My only purpose in doing this is to ensure that there is an appropriate level of scrutiny regarding any new provisions emerging from the use of secondary legislative powers.

[250] Amendment 11 is consequential to amendment 10.

[251] **Ann Jones:** Does any other Member wish to speak?

[252] **Simon Thomas:** Rwyf yn aelod o'r pwyllgor ac mae Aled wedi cydnabod yn iawn y consŷrn sydd gan y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol. Felly, rwy'n cefnogi'r gwelliant.

Simon Thomas: I am a member of the committee and Aled has recognised rightly the Constitutional and Legislative Affairs Committee's concern on this. So, I will support the amendment.

[253] **Huw Lewis:** I have listened carefully to the arguments put forward by Aled Roberts and I agree that there is a need to ensure appropriate scrutiny by the Assembly. However, that has to be balanced against the need for effective and efficient arrangements to bring Assembly Acts into force. The effects of amendments 10 and 11 would be to require an Order, including a commencement Order, which includes ancillary provision relating to the commencement of the Act, to be subject to the negative procedure in the Assembly. A commencement Order is one way in which provisions of an Assembly Act are brought into force. As part of a commencement Order, it is usual to include ancillary provisions, which can commonly

include transitional, transitory and saving provisions to cover the transition from old law into new law. I consider that it is necessary to distinguish between ancillary matters that are properly part of commencement Orders and those that are not.

[254] Ancillary provisions included in a commencement Order must relate to the commencement of the Act. They are provisions that are necessary or are desirable for the purpose of bringing new legislation into force. To be clear, they are not freestanding, substantive provisions. The transitional ancillary provisions in a commencement Order allow for an orderly transition to a new legal regime when it comes into force, for example to ensure that procedures under previous legislation continue to apply to existing cases after the commencement of new legislation. The power to make ancillary provisions in section 10 of the Bill is limited to that purpose. Therefore, section 10 of the Bill can only be relied on to make ancillary provision that is in connection with the coming into force of this Act.

[255] Commencement Orders are usually subject to no Assembly procedure, as the effect of a commencement Order is to bring into force provisions of an Assembly Act that the Assembly has already approved. The Assembly will have approved the substance of the Act and, as I have already said, the commencement Order simply implements that Act, with ancillary provisions to give practical effect to that commencement. By the stage of the implementation of an Act, the Assembly would already have considered the issues. There will be no new issues arising out of the bringing into force of the Act for the Assembly to scrutinise. Accordingly, I do not think that the important balance between Assembly scrutiny and the need for effective and efficient implementation of an Act would be best served by a commencement Order that contains ancillary provisions being subject to a negative procedure.

[256] Commencement Orders related to primary legislation—be they Bills or Measures—have, to date, not been subject to a procedure and I am not aware of any issue in relation to this Bill that would justify a different approach being taken. I ask the committee Members to resist amendments 10 and 11.

[257] **Aled Roberts:** Mae'n amlwg bod gwahaniaeth barn rhwng y Llywodraeth a'r pwyllgor cyfansoddiadol, ond, ar hyn o bryd, rwy'n ddigon bodlon bod pleidlais yn cael ei chymryd heddiw. Felly, rwy'n gofyn am bleidlais ar y gwelliannau.

Aled Roberts: It is clear that there is a difference of opinion between the Government and the constitutional committee, but, at present, I am willing for a vote to be taken today. So, I would ask for a vote on the amendments.

[258] **Ann Jones:** The question is that amendment 10 be agreed to. Does any Member object? There is objection, so we will move to a vote by show of hands.

Gwelliant 10: O blaid 5, Ymatal 0, Yn erbyn 5.

Amendment 10: For 5, Abstain 0, Against 5.

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

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

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

Davies, Keith
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David

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 10.
Amendment 10 not agreed.*

[259] **Ann Jones:** We will return to vote on the remaining amendment in this group later in the proceedings, in accordance with the marshalled list. We now turn to amendments debated earlier and to dispose of those in accordance with the marshalled list. So, Bethan would you like to move amendment 13?

[260] **Bethan Jenkins:** No, I would not like to move amendment 13 in my name.

[261] **Ann Jones:** Does any Member object to amendment 13 not being moved? I see that no-one does.

*Ni chynigiwyd gwelliant 13.
Amendment 13 not moved.*

[262] **Ann Jones:** Simon, would you like to move amendment 14?

[263] **Simon Thomas:** Given that the Minister is bringing forward his own amendment, taking into account amendment 14, I do not wish to move amendment 14.

[264] **Ann Jones:** Does any Member object to amendment 14 not being moved? I see that no-one does.

*Ni chynigiwyd gwelliant 14.
Amendment 14 not moved.*

11:15

[265] **Ann Jones:** Bethan, would you like to move amendment 15?

[266] **Bethan Jenkins:** Yes, in light of the fact that I do not agree that it is unnecessary.

[267] I move amendment 15 in my name.

[268] **Ann Jones:** So, the question is that amendment 15 be agreed to. Does any Member object? There is objection. We will move to a vote, then.

*Gwelliant 15: O blaid 2, Ymatal 0, Yn erbyn 8.
Amendment 15: For 2, Abstain 0, Against 8.*

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

Jenkins, Bethan
Thomas, Simon

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

Burns, Angela
Davies, Keith
Davies, Suzy
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David
Roberts, Aled

*Gwrthodwyd gwelliant 15.
Amendment 15 not agreed.*

[269] **Ann Jones:** Aled, would you like to move amendment 11?

[270] **Aled Roberts:** I move amendment 11 in my name.

[271] **Ann Jones:** The question is that amendment 11 be agreed to. Does any Member object? There is objection. We will move to a vote.

*Gwelliant 11: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 11: For 5, Abstain 0, Against 5.*

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

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

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

Davies, Keith
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David

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 11.
Amendment 11 not agreed.*

**Grŵp 5: Cynrychiolaeth ar Gyrff Llywodraethu (Gwelliannau 2, 8, 5 a 6)
Group 5: Representation on Governing Bodies (Amendments 2, 8, 5 and 6)**

[272] **Ann Jones:** The lead amendment is amendment 2. I call on Simon to move amendment 2 and to speak to it and the other amendments in the group.

[273] **Simon Thomas:** Rwy'n cynnig gwelliant 2 yn fy enw i.

Simon Thomas: I move amendment 2 in my name.

[274] Rwyf hefyd yn gefnogol o'r gwelliannau eraill yn y grŵp hwn, ar wahân i welliant 6 gan y Llywodraeth. Mae gwelliant 2 yn mynd i'r afael ag un o'r problemau mwyaf amlwg a welsom wrth gasglu tystiolaeth ar y Bil hwn, sef yr angen i sicrhau bod cynrychiolaeth gan y staff a'r myfyrwyr a bod ymwneud â'r gymuned yn lleol yn cael ei glustnodi a'i gadw yn y Bil hwn. Wrth i ni ryddhau colegau addysg bellach o hualau'r Llywodraeth ganolog, rydym yn gwneud hynny am resymau cyllidol, yn benodol, oherwydd penderfyniad yr ONS. Fodd bynnag, ni ddylem eu rhyddhau o'u dyletswyddau mwy eang tuag at eu cymuned, eu staff, a'u myfyrwyr. Roedd hynny'n dystiolaeth gref iawn i'r pwyllgor, ac mae hynny wedi ei adlewyrchu yn adroddiad y pwyllgor, gan bob un

I am also supportive of the other amendments in this group, with the exception of amendment 6 from the Government. Amendment 2 addresses one of the most obvious problems that we saw in taking evidence on this Bill, namely the need to ensure representation by the staff and students and that engagement with the community locally is designated and retained in this Bill. As we free further education colleges from the shackles of central Government, we are doing so for financial reasons, mainly, because of the decision of the ONS. However, we should not release them from their broader responsibility to their community, staff, and students. That was very strong evidence to the committee, and it is reflected in the committee report, from all of us, which states that the representation

ohonom, yn dweud y dylai'r gynrychiolaeth barhau. Roedd hwn yn fater y bu i ni ei ystyried a'i drafod yng nghyd-destun penderfyniad yr ONS, ac rwyf o'r farn ei bod yn bosibl i ni estyn hyn, drwy'r gwelliannau hyn, heb beryglu penderfyniad terfynol yr ONS, sy'n benderfyniad i'r corff hwnnw, ac rwy'n derbyn hynny. Fodd bynnag, o safbwynt y dystiolaeth yr ydym wedi ei chasglu, credaf fod modd i ni estyn hyn a gwneud hynny yn well. Er bod ychydig o wahaniaethau rhwng fy ngwelliant 2 a gwelliant 8, sef un Angela, yn y bôn maent yn ymwneud â'r un egwyddor, sef y dylai fod cynrychiolaeth ac ymwneud penodol rhwng y coleg a'r gymuned. Rwy'n derbyn bod sawl un o'r colegau—rwyf wedi trafod gyda nhw—yn gwneud hyn beth bynnag, yn enwedig y colegau hynny sydd wedi dilyn y syniadau yn adroddiad Humphreys ac sy'n symud ymlaen i greu corff mwy o faint sy'n ymwneud â'r gymuned yn lleol a'i chynnwys.

[275] Y rheswm nad wyf yn gallu cefnogi gwelliant 6 gan y Gweinidog yw ei fod, yn fy marn i, yn cyfyngu'n ormodol ar gynrychiolaeth staff. Ni chredaf fod angen bod mor benodol ynghylch pwy ddylai gynrychioli staff a myfyrwyr, yn enwedig o gofio nad oes undeb myfyrwyr gan bob sefydliad coleg addysg bellach, am wahanol resymau. Credaf fod gwahaniaethu rhwng *teaching staff* a *non-teaching staff* yn anffodus o ystyried y Bil arall y byddwn yn ei drafod, sy'n newid y gweithlu dysgu yn llwyr. Rwy'n meddwl bod hynny'n wahaniaeth hen ffasiwn iawn. Byddai'n well gennyf ei bod yn datgan, ar wyneb y Bil, yn syml iawn—fel mae fy ngwelliant 2 i a gwelliant Angela'n cynnig—fod cynrychiolaeth yn cael ei hethol gan holl staff y sefydliad. Rwy'n meddwl bod hynny'n llawer mwy syml ac yn caniatáu i bethau ddigwydd mewn ffordd llawer mwy agored.

[276] Felly, rwy'n cynnig gwelliant 2, ac, os nad yw gwelliant 2 yn ddigon da, bydd yn rhaid i ni dderbyn gwelliant 8, os oes rhaid i ni dderbyn unrhyw welliant arall yn y grŵp hwn. Fodd bynnag, rwy'n awgrymu wrth y pwyllgor nad yw gwelliant 6 gan y Llywodraeth yn cyfateb yn llawn i'r hyn a wnaethom ei ddarganfod yn y dystiolaeth a'r hyn a ddywedasom yn ein pwyllgor yr

should continue. This was an issue that we considered and discussed in the context of the ONS's decision, and I am of the view that it is possible for us to extend this, through these amendments, without endangering the final decision of the ONS, which is a decision for it, and I accept that. However, from the point of view of the evidence that we have collected, I think it is possible for us to extend this and to do it better. Although there are some differences between my amendment 2 and amendment 8, which is Angela's amendment, essentially they deal with the same principle, namely that there should be representation and specific engagement between the college and the community. A number of colleges—I have had discussions with them—do this anyway, particularly those that have followed the ideas in the Humphreys report and which are moving on to create a larger body that engages with and includes the community locally.

The reason I cannot support the Minister's amendment 6 is because, in my view, it restricts staff representation excessively. I do not think that there is any need to be as prescriptive about who should represent staff and students, particularly bearing in mind that, for various reasons, not every FE institution has a students union. Making a distinction between teaching staff and non-teaching staff is unfortunate when you consider the other Bill that we will be discussing, which changes the education workforce totally. I think that that is a very old fashioned distinction. I would prefer that it be stated, on the face of the Bill, very simply—as my amendment 2 and Angela's amendment propose—that representation will be elected by all the staff of the institution. I think that that would be much simpler and allow things to happen in a much more transparent way.

Therefore, I move amendment 2, and, if amendment 2 is not good enough, we will have to agree amendment 8, if we must agree any other amendment in this group. However, I suggest to the committee that the Government amendment 6 does not respond fully to what we discovered in the evidence and what we said in committee that we were searching for in seeking to improve this Bill.

oeddem yn chwilio amdano wrth geisio gwella'r Bil hwn.

[277] **Ann Jones:** Thank you, Simon. Does any Member wish to speak in the debate?

11.20

[278] **Angela Burns:** Yes, I would like to speak to this group of amendments, Chair. First, I would like to put on record that we will be supporting Simon Thomas's amendment and the other amendments in the group, with the exception of amendment 6.

[279] If I may speak to my amendment for a moment, Chair, the reason why our amendment differs marginally to the one put forward by Plaid Cymru is that, when we took evidence, you made the comment, Minister, that you felt it would be very difficult to engage with business and to choose which businesses and members of the local community to bring into the debate, and which ones not to, and that you felt that it would be over-burdensome. While I do not go along with that argument, I can see that you might use it to oppose Simon Thomas's amendment. Therefore, I am giving you the opportunity to support ours, which does not include that particular clause. I felt that that was only fair to follow through on your words in the Children and Young People Committee.

[280] The reason why we will not be supporting amendment 6 is that, as Simon says, we are talking about the education workforce being a unified force for education, and therefore to have this artificial barrier with staff would be completely inappropriate. There is a great distinction between staff bodies and student bodies, and therefore it is only right and proper that staff and students should have the ability to vote within their particular cohorts. That is absolutely right. We need to ensure that we have fair and equitable representation, and, above all, choice. I believe that Simon Thomas's amendment and our amendment ensure openness, transparency and choice for those who will be doing the voting. At the end of the day, it is entirely up to the staff to decide who they wish to represent them, and whether that is someone from the teaching or non-teaching sectors should be completely irrelevant. It is their choice, and they have the responsibility, maturity and professionalism to make that decision.

[281] **David Rees:** I oppose the amendments from my colleagues on the other side, and I support amendment 6 for the very opposite of what you have just said. As a member of governing bodies at HE and FE level in my previous roles, I appreciate the very important need to identify the responsibilities for each section within an institution. It is very important that those different sections have a belief in a part ownership of the representation. It would be very easy for two teaching staff to be elected onto the body, rather than someone representing the non-teaching staff, and they would not understand some of the issues facing non-teaching staff. The indication that there will be a requirement to make sure that there are representatives from different areas of an institution is critical. We are moving, voluntarily mainly, into an area where this is happening. However, this is putting on a statutory basis that this is a requirement, not on a voluntary basis. That is the crucial element to me; we can go by volunteers, but you do not have to abide by a voluntary rule. This is a requirement that different aspects of different employees are considered, because they are different roles. So, I will be supporting amendment 6 on that basis, but I have concerns over the chief executive, because sometimes a chief executive is accountable to a board, and is not necessarily on a board. However, I have sought advice on that, and I understand now where that comes from. That is why I can live with that one at the moment.

[282] **Bethan Jenkins:** I want to endorse what people have said about Simon and Angela's amendments. We had representation from students, staff representatives and also local employers—we had evidence from employers who said that they felt it was vital in terms of course provision and the nature of course provision for them to be involved in discussions of

this nature. Picking up on what David Rees said with regards to the chief executive, I know that some people might not feel comfortable speaking on a body if the chief executive is there, and that is something that would sit uncomfortably with me. Perhaps the Government could clarify the role of the students union, because, as far as I know, everyone who is a student is part of the National Union of Students, and even though there is not a students union in some places, membership is by default. It is not like other trade unions, as every student is naturally a member of the NUS. That is a matter of semantics, really, but it is important in where we go with this particular amendment for the future. All I will say is that, with regard to the separation of the staff element, we have heard evidence from trade unions and from staff, and there is quite a lot of sensitivity with regards to the differentiation. If we start categorising people in different areas, then we start putting labels on people, and I think that it would be much safer and much more appropriate to have a wider base of staff who are consulted or can stand for election, as opposed to it being prescriptive, because then, when they go out to seek election, it is not on the basis of their particular job reference, it is on the basis of representing the institution as a whole. That is why I would oppose that initiative.

[283] **Aled Roberts:** Rwy'n mynd i gefnogi gwelliannau Simon ac Angela hefyd, achos fy mhrofiad i ar fwrdd llywodraethol; fel David Rees, roeddwn i'n aelod o fwrdd a wnaeth symud ymlaen ag argymhellion adroddiad Humphreys. A dweud y gwir, mae gennyf brofiad o sefyllfa lle'r oedd pleidleisiau y tu mewn i garfanau yn y gweithlu, ond, ar ôl hynny, fe aethom ymlaen i bleidleisio ar sail staff drwy'r corff. Rwy'n teimlo bod yr hyn a ddywedodd Bethan yn berffaith onest, achos, o dan yr hen drefn, lle'r oedd y staff dysgu yn cael un aelod a'r staff arall yn cael un aelod, roedd gan y staff nad oedd yn dysgu ryw fath o enw israddol, ond ni ddigwyddodd yr hyn yr oedd David Rees yn poeni amdano, achos fe gafodd aelod o staff nad oedd yn dysgu ei ethol gan y staff yn gyfan gwbl. Felly, rwy'n teimlo mai llawer iachach yw creu sefyllfa lle mae'r cynrychiolwyr ar gyfer y staff yn gyfan gwbl, yn lle eu hethol o garfannau unigol.

Aled Roberts: I am going to support Simon's and Angela's amendments, because of my experience of being on a governing board; like David Rees, I was a member of a board that moved forward with the Humphreys recommendations. To be honest, I have experience of a situation in which there were votes within sections of the workforce, but, after that, we moved forward to vote on the basis of staff throughout the organisation. I feel that what Bethan said was quite honest, because, under the old system, in which the teaching staff had one member and other staff had one member, the non-teaching staff seemed to have some kind of inferior name, but what David Rees was concerned about did not happen, because a non-teaching member of staff was elected by the entire staff. So, I feel that it is far healthier to create a situation in which the representatives are for the entire staff, rather than their being elected from particular sections.

[284] Rwyf hefyd yn meddwl bod pwynt ynglŷn â'r myfyrwyr eu hunain. Yn fy mhrofiad i, nid oedd pob aelod yn aelod o'r NUS. Yn hytrach na bod yr NUS yn trefnu'r pleidleisiau, roedd pleidlais ar draws y campws, gyda'r myfyrwyr yn ymgyrchu, ac roedd hynny'n iach o beth, a chafodd dau aelod o blith y myfyrwyr eu hethol i'r bwrdd llywodraethol, gan gymryd rôl eithaf pendant yn y ffordd yr oedd y coleg yn symud ymlaen. Felly, mi fyddaf i'n cefnogi gwelliannau Simon ac Angela ar y sail honno.

I also feel that there is a point with regard to the students themselves. In my experience, not every member was a member of the NUS. Rather than the NUS organising the votes, there was a vote across the campus, for which the students campaigned, and that was a healthy state of affairs, and two student members were elected to the governing board, where they played a positive role in how the college moved forward. So, I will support Simon's and Angela's amendments on that basis.

[285] **Keith Davies:** Rwyf i'n mynd i

Keith Davies: I am going to support what the

gefnogi beth mae'r Gweinidog wedi ei ddweud, achos rwy'n mynd o'm profiad o fod ar fyrddau ysgolion lle mae aelodau'r staff wedi cael eu rhannu, ac rwy'n credu bod hynny'n werth ei wneud. Dyna pam yr wyf i'n ei gefnogi.

Minister has said, because I am going on my experience of having been on school governing bodies where the staff have been designated into various groups, and I think that that is worth doing. That is why I support it.

[286] Cyn belled ag y mae'r prif weithredwr yn y cwestiwn, o ran yr hyn sy'n digwydd yn yr ysgol, y prifathro sydd i benderfynu yn y pen draw a ydyw am fod ar y bwrdd. Yn y rhan fwyaf o'r lleoedd yr wyf wedi bod, mae'r prifathro yno, ac felly dylai fod i'r prif weithredwr benderfynu a yw yno ai peidio. Ni welaf y byddai prifathro, o fod ar y bwrdd rheoli, yn cymryd mantais o hynny. Felly, rwy'n cefnogi'r hyn y mae'r Gweinidog yn ei ddweud.

As far as the chief executive is concerned, with regards to what happens in a school, it is up to the headteacher whether he or she wishes to be a member of the governing body. In the majority of the places that I have been, the headteacher is there, and so it should be up to the chief executive to decide whether they are there or not. I do not see that a headteacher being on the management board would take advantage of that. So, I support what the Minister says.

[287] **Huw Lewis:** As Members have described, amendments 2 and 8 essentially relate to the same issue as amendment 6, which is tabled in my name, and all three reflect the recommendations made by this committee in the Stage 1 report, which sought to ensure that at least two members of staff and at least two students of the institution were members of the governing body. So, thus far, we are all as one. However, my belief is that amendment 6 goes further, by requiring that at least one member of staff is from the teaching staff and is elected by the teaching staff of the college, and that at least one other member of staff is from the non-teaching staff and elected by the non-teaching staff. Now, there are good reasons for this that have been ably described by David Rees and Keith Davies. One of the implications to bear in mind, of course, is that the staff are generally represented by different trade unions, which is important. Also, doing things this way ensures that all staff issues are potentially covered in terms of the discussion that goes on within the governing body. Those staff issues, as David Rees has said, could be very different in terms of the two groups within the workforce.

11:30

[288] In terms of David's concerns about the CEO, I just wanted to say a couple of quick things. First, it is important to remember that the CEO reports to the chair of the governors and not to the governing body itself. That person needs to be a board member, because he or she is the accounting officer and needs to be, therefore, a part of all discussions and decisions.

[289] Amendment 6 also requires that student members are elected by the students of the institution, either through the students union or another association representing students at that institution.

[290] To just go back to Simon Thomas's amendment 2, which seeks to extend the guarantee of governing body membership to local employers or businesses, I want to remind committee members that the purpose of Schedule 1 is to legislate for the essential elements of good governance, rather than what is considered to be good practice, as such, and I think that this kind of undertaking belongs within the realm of good practice. It is a matter for each individual governing body to agree on its membership—the independent Humphreys review came to the same conclusion—to ensure that governing bodies can best meet the needs of learners and stakeholders. Governing bodies already do operate a skills audit, ranging from finance to human resources to education, in order to ensure that their boards are properly and effectively populated. There is, really, something amiss fundamentally if we do not have faith

in organisations that have been autonomous for nigh on 20 years to recognise for themselves the need to have some business acumen on their boards.

[291] Turning to amendment 5, this is a technical amendment that serves to make clear the distinctive approach between England and Wales on the appointment or election of members, and is a result of the changes made by amendment 6. Importantly, as drafted, amendments 2 and 8 are not limited to institutions in Wales. As they are worded, they would also apply to institutions in England. Accordingly, I consider that the amendment falls outside the competence of the National Assembly. So, I ask committee members to resist amendments 2 and 8 and support amendments 5 and 6.

[292] **Ann Jones:** I call Simon to respond to the debate.

[293] **Simon Thomas:** Diolch i'r Aelodau a oedd yn gefnogol ac a gymerodd rhan yn y drafodaeth. Hoffwn ddelio gyda phwynt olaf y Gweinidog. Rydym yn derbyn bod gwall technegol yn hyn, ond byddai'n bosibl cywiro hyn yng Nghyfnod 3 gyda gwelliant digon syml, felly, rwyf am barhau gyda'r drafodaeth ar yr egwyddor hon.

Simon Thomas: I thank the Members who were supportive and who participated in the discussion. I would like to deal with the Minister's final point. We accept that there is a technical error here, but it would be possible to correct this in Stage 3 with a simple enough amendment, so, I would like to continue with the discussion on this principle.

[294] Nid wyf yn derbyn pwynt y Gweinidog nad oes modd cynnwys cynrychiolaeth o fyd busnes a chyflogwyr lleol. A dweud y gwir, rwy'n meddwl bod disgwyl bod hynny i'w weld ar wyneb y Bil. Byddai busnesau yn synnu pe na baem, fel corff deddfu yng Nghymru, yn gwneud yn siŵr bod eu lleisiau yn cael eu cynrychioli ar y cyrff newydd hyn, sy'n hollbwysig i'r ochr alwedigaethol, prentisiaethau a datblygiad y cwricwlwm yn yr ardal honno. Er bod gwelliannau y byddwn yn eu trafod yn nes ymlaen yn delio gyda rhai agweddau ar hynny, credaf fod cynrychiolaeth o'r sector busnes ar y corff llywodraethu yn bwysig. Mae'r colegau wedi llwyddo yn ddiweddar drwy fod llawer yn fwy cynhwysfawr o ran y sector busnes nag oeddent yn y gorffennol.

I do not accept the Minister's point that it is not possible to include representatives from business or local employers. To be honest, I think that there is an expectation that that is seen on the face of the Bill. Businesses would be surprised if we, as a law-making body in Wales, did not ensure that their voices are represented on these new bodies, which are crucial for the vocational side, apprenticeships and the development of the curriculum within that area. Although there are amendments that we will be discussing later that deal with some aspects of that, I think that representation of the business sector on the governing body is important. The colleges have succeeded recently by being much more inclusive of the business sector than they have been in the past.

[295] Rwy'n meddwl bod pwyntiau Bethan wedi delio ag agwedd arbennig ar welliant y Gweinidog, sy'n iawn o ran yr egwyddor, ond credaf fod y geiriad llawer yn rhy gaeth a chul. Nid ydym am glymu'r hyn sy'n datblygu yn y gweithlu i rywbeth fel hyn. Nid yw'r ffaith ei fod yn digwydd mewn ysgolion yn ddadl dros ei fabwysiadu mewn colegau. Mae'r ffaith ei bod yn digwydd yn yr ysgolion efallai yn ddadl dros edrych ar hynny hefyd rhywbryd yn y dyfodol.

I think that Bethan's points dealt with a particular aspect of the Minister's amendment, which is fine in terms of the principle, but I think that the wording is far too restrictive and narrow. We do not want to bind whatever happens in the workforce to something like this. The fact that this happens in schools is not an argument for it happening in colleges. The fact that it happens in schools is perhaps an argument for looking at that sometime in the future, too.

[296] Y ffaith amdani yw bod y gweithlu'n The fact of the matter is that the workforce is

datblygu ac mae nifer o undebau. Mae mwy na dwy undeb, felly nid oes modd dweud bod hyn yn rhywbeth yn ymwneud â'r undebau, achos mae sawl undeb yn ymwneud â hyn. Nid ydych yn rhoi lle i bob undeb, nac ychwaith i bobl nad ydynt yn aelod o undeb. Felly, y ffordd fwyaf teg i sicrhau'r llais mwyaf effeithiol i'r holl staff yw bod y person gorau, neu'r ddau berson gorau, yn cael eu hethol, sy'n gallu cynrychioli buddiannau staff ac sydd yn rhydd o feddwl eu bod nhw'n gorfod cynrychioli un undeb neu un garfan; byddant yn cynrychioli'r staff ar y bwrdd llywodraethol. Rwy'n meddwl bod y gwelliant yn fy enw i, a gwelliant Angela, yn cyflawni hynny, a'u bod yn fwy positif o lawer tuag at y staff na'r hyn sy'n cael ei adlewyrchu yng ngwelliant 6.

developing and there are a number of unions. There are more than two unions, so it is not possible to say that this is something to do with unions, because there are a number of unions involved. You do not give every union a place, nor do you give a place to non-union members. So, the fairest way of ensuring the most effective voice for all staff is to elect the best person, or the best two representatives, who can represent the interests of staff and are free from thinking that they have to represent one union or section; they would represent the staff on the governing body. I think that my amendment, and Angela's amendment, gives effect to that, and that they are much more positive towards the staff than what is reflected in amendment 6.

[297] **Ann Jones:** Do you wish to proceed to a vote on amendment 2?

[298] **Simon Thomas:** Ydw, os gwelwch yn dda. **Simon Thomas:** Yes, please.

[299] **Ann Jones:** If amendment 2 is carried, amendment 8 will fall. The question is that amendment 2 be agreed to. Does any Member object? There is objection, so we will go to a vote.

*Gwelliant 2: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 2: For 5, Abstain 0, Against 5.*

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

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

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

Davies, Keith
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David

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 2.
Amendment 2 not agreed.*

[300] **Ann Jones:** Angela, would you like to move amendment 8?

[301] **Angela Burns:** I move amendment 8 in my name.

[302] **Ann Jones:** The question is that amendment 8 be agreed to. Does any Member object? There is objection, so we will move to a vote.

Gwelliant 8: O blaid 5, Ymatal 0, Yn erbyn 5.

Amendment 8: For 5, Abstain 0, Against 5.

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

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

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

Davies, Keith
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David

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 8.
Amendment 8 not agreed.*

[303] **Ann Jones:** Minister, would you like amendment 5 in your name to be moved?

[304] **Huw Lewis:** I would, thanks.

[305] **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 no objection. Amendment 5 is agreed.

*Derbyniwyd gwelliant 5 yn unol â Rheol Sefydlog 17.34.
Amendment 5 agreed in accordance with Standing Order 17.34.*

[306] **Ann Jones:** Minister, would you like amendment 6 in your name to be moved?

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

[308] **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. So, we will proceed to a vote.

*Gwelliant 6: O blaid 5, Ymatal 0, Yn erbyn 5.
Amendment 6: For 5, Abstain 0, Against 5.*

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

Davies, Keith
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David

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

Burns, Angela
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 6.
Amendment 6 not agreed.*

Grŵp 6: Ymgynghoriad gan y Corff (Gwelliannau 3 a 7)
Group 6: Consultation by the Body (Amendments 3 and 7)

[309] **Ann Jones:** The lead amendment in this group is amendment 3. I call on Simon Thomas to move amendment 3, and to speak to it and the other amendment in the group.

[310] **Simon Thomas:** Cynigiau welliant 3 yn fy enw i. **Simon Thomas:** I move amendment 3 in my name.

[311] Rwy'n sylweddoli bod gwelliant 7 gan y Llywodraeth yn yr un grŵp, sy'n hynod o debyg ac yn gwneud gwaith tebyg. Mae'n debyg, felly, ein bod ni yn awr yn delio â phwynt arall sydd wedi cael ei godi gan y pwyllgor, sef yr angen i wneud yn siŵr bod y gymuned ehangach, sy'n cynnwys cyflogwyr lleol, myfyrwyr a'r gymuned ehangach—mae hyn yn adlewyrchu'r drafodaeth yr ydym newydd ei chael—yn rhan o'r gwaith o helpu i gynllunio'r hyn y mae'r sefydliad yn ei wneud. Yn fy ngwelliant, rwy'n dweud y dylai hyn ddigwydd bob tair blynedd. Nid yw gwelliant y Llywodraeth yn sôn am gyfnod penodol. Byddwn yn licio clywed nes ymlaen gan y Gweinidog pam nad yw wedi rhoi cyfnod penodol i mewn. Fodd bynnag, y peth sy'n bwysig yw ein bod ni'n ymwneud gymaint ag sy'n bosibl, ac mewn ffordd mor ystyrlon ag sy'n bosibl, â'r gymuned ehangach, fel ei bod yn cael mewnbwn i ddarpariaeth addysgiadol mewn sefydliadau, yn ogystal â mewnbwn pwysig i'r cynllunio cwricwlwm lleol. Yna, bydd cyflogwyr, er enghraifft, yn gallu dweud wrth sefydliad addysg bellach, 'Tair neu bedair blynedd lawr y lein rydym yn disgwyl gweld angen am blymwyr sy'n gallu gosod paneli solar—a wnewch chi sicrhau yn eich cwricwlwm bod hyn yn cael ei ddarparu?' Dyna enghraifft o'r hyn all digwydd.

[312] Mae hefyd yn bwysig bod canlyniadau'r ymgynghori hyn yn cael eu cyhoeddi. Nid wyf yn gweld hynny ychwaith yng ngwelliant y Llywodraeth. Y rheswm dros gyhoeddi canlyniadau'r ymgynghoriad yw ei bod yn cyfoethogi'r drafodaeth ynglŷn â'r hyn y dylai sefydliad ei wneud. Nid oes gorfodaeth fan hyn ar sefydliad i ymddwyn mewn ffordd arbennig, dim ond i ymgynghori. Felly, nid wyf yn meddwl y byddai'n amharu ar brif bwrpas y Bil o ran rhyddhau'r sefydliadau o ofynion yr ONS. Mae'n ddyletswydd ymgynghori, ond nid oes

I realise that, in this group, there is also the Government's amendment 7, which is very similar and has a similar effect. It seems, therefore, that we are now dealing with another point that has been raised by the committee, which is the need to ensure that the wider community, including local employers, students and the wider community—this reflects the discussion that we have just had—participates in the process of helping to plan what the institution does. My amendment states that it should happen every three years. The Government amendment does not mention a specific period. I would like to hear later from the Minister why he has not specified a period of time. However, what is important is that we should engage as much as possible, and in as meaningful a way as possible, with the wider community, so that they have input into educational provision in institutions, as well as an important input into local curriculum planning. Then, employers can say to further education institutions, 'In three or four years' time, we want more plumbers who can fit solar panels—can you therefore ensure in your curriculum that provision is made for that?' That is an example of the type of thing that could be included.

It is also important that the results of this consultation are published. I do not see reference to that in the Government amendment either. The reason for publishing the results of the consultation is that it enriches the discussion regarding what the institution should do. There is no compulsion here for an institution to behave in a particular way, only to consult. So, I do not think that it would affect the main purpose of the Bill in terms of releasing the institutions from the ONS requirements. There is a duty to consult, but they do not have to behave in

rhaid ymddwyn mewn ffordd arbennig yn dilyn yr ymgynghoriad. Fodd bynnag, drwy ddwyn pobl at ei gilydd, rydych, wrth gwrs, yn cyfoethogi'r drafodaeth ynglŷn â'r cwricwlwm a darpariaeth ac ati.

a particular way following that consultation. However, in bringing people together, you enrich the discussion on the curriculum and provision and so on, of course.

[313] Rwy'n gweld bod gan y Llywodraeth gynnig hefyd, ac rwy'n ei gefnogi. Felly, rwyf am wrando ar y drafodaeth i weld ym mha ffordd y mae'r Llywodraeth yn meddwl bod ei gwelliant hi yn gwella ac yn rhagori ar fy ngwelliant i. Cawn weld sut gallwn symud ymlaen. Y prif bwrpas yw ein bod yn cynnwys y gymuned ehangach yn y ffordd y mae sefydliadau'n gweithio.

I see that the Government also has a proposal, and I support it. So, I will listen to the discussion to see in which way the Government thinks that its amendment improves the legislation more than mine does. We will see how we can move forward. The main purpose is that the wider community is included in the way that institutions work.

[314] **Ann Jones:** Do any other Members wish to speak? If not, I call the Minister.

[315] **Huw Lewis:** Thank you, Chair. Amendment 3 tabled by Simon Thomas reflects the recommendation made in the committee's Stage 1 report. I agree with the sentiments of this amendment, and I have attempted to address the matter in amendment 7. Of course, it is right that colleges consult with local employers, students and communities on local curriculum and delivery. As such, amendment 7 will place a broad responsibility on colleges to do that, even though I believe that there are sufficient requirements and evidence in place to support that this consultation already takes place, for example, with learners and staff. Consultation with both staff and learners is widespread and considered good practice throughout the sector. The governing body is responsible for the determination and periodic review of the educational character and mission of the institution and the oversight of its activities. The Bill ensures that the instruments and articles of Government will obligate colleges to set out how they will obtain staff and student views on these matters.

[316] A central element of the Welsh Government's quality and effectiveness framework already requires colleges to consult with their learners and other stakeholders as part of their decision-making and learner-involvement processes. This approach builds on existing good practice and allows each college to put in place arrangements that reflect its structures and the needs of its learners. When it comes to employers, it is essential that the Welsh Government continues to promote and add value to existing mechanisms for employers and raise the quality and volume of training. In my capacity as Minister for Education and Skills, I also issue FEIs with a priorities letter. In the last letter to the sector, which was back in May, four priorities were set out, one of which was employer engagement. ColegauCymru advised, in its evidence session to this committee, that employer engagement is at the top of its agenda and there is no evidence to counter that.

[317] All of that is as well as the Welsh Government's activities, such as the sector priorities fund pilot programme, which enables the Welsh Government to provide feedback on the responsiveness of FE to employer demand, the advocate service, and the work that the Department for Education and Skills's employer engagement team leads on, meeting regularly with organisations such as the CBI and FSB and so on, as well as having strong relationships and arrangements in place with anchor companies and regionally important businesses. It might be important and useful to remind ourselves of the evidence that ColegauCymru gave to the committee earlier this year. This is a direct quotation:

[318] 'We are not-for-profit institutions and we are there to benefit learners, our local communities and employers; that is our raison d'être. That is what we are there to do, and that is what we will continue to do.'

[319] I am confident that there are sufficient processes and requirements already in place to gauge the effectiveness of colleges' consultation with key stakeholders without requiring them to publish consultation outcomes.

[320] Importantly, as drafted, once again, amendment 3 is not limited to institutions in Wales and also applies to institutions in England. Accordingly, it would fall outside the competence of the National Assembly.

[321] **Simon Thomas:** Will you take a question?

[322] **Huw Lewis:** That is up to the Chair.

[323] **Ann Jones:** You are not meant to. You can ask a point of clarification.

[324] **Simon Thomas:** On a point of clarification, then, would your amendment require a regular review to ensure that this does not become a static process?

[325] **Huw Lewis:** I have not set any timescales within the wording of the amendment. It is important that this is a broad duty, but I would be interested in any interesting ideas that might be put forward around ways of making this a more perfect instrument in Stage 3.

[326] **Ann Jones:** I call Simon to respond to the debate.

[327] **Simon Thomas:** Diolch, Gadeirydd, a diolch am y cyfle i fod yn glir am un agwedd ar welliant y Llywodraeth. Unwaith eto, rwy'n derbyn bod camgymeriad technegol yno, fyddai'n gallu cael ei gywiro, wrth gwrs, yn nhrefodion Cyfnod 3.

Simon Thomas: Thank you, Chair, and thanks for the opportunity to clarify one aspect of the Government's amendment. Once again, I accept that there is a technical error there, which could, of course, be corrected in Stage 3 proceedings.

11:45

[328] Wedi dweud hynny, rwy'n meddwl bod gwelliant y Llywodraeth, gwelliant 7, yn gwneud yr un peth â'm gwelliant i, ar wahân i'r consŷrn sydd gennyf fod angen gwneud yn siŵr nad yw'r corff yn gadael rhywbeth eithaf statig nad yw'n ymateb i alw sydd yn newid. Dyna bwrpas dod tair blynedd yn fy ngwelliant. Yr hyn y byddwn yn licio ei wneud, felly, os yw'r pwyllgor yn caniatáu, yw tynnu yn ôl fy ngwelliant i er mwyn caniatáu i welliant y Llywodraeth fynd drwyddo, gan roi cyfle i ni ailedrych ar sut allwn ni wneud yn siŵr bod cyfle i wneud yn siŵr bod nad yw'r broses yn aros yn statig, ond bod proses barhaus o adolygu gofynion, fel mae'r Gweinidog wedi ei awgrymu. Efallai fod hynny yn rhywbeth y gallwn ddod yn ôl ato yng Nghyfnod 3.

Having said that, I think that the Government's amendment 7 does have the same impact as my amendment, apart from the concern that I have that there is a need to ensure that the institution does not let something become quite static and unable to respond to changing need. That is the purpose of including three years in my amendment. What I would like to do, therefore, if the committee allows, is to withdraw my amendment in order to allow the Government's amendment to proceed, giving us an opportunity to look again at how we can ensure that there is an opportunity to ensure that the process does not remain static, but is a continuous process of reviewing needs, as the Minister has suggested. Perhaps that is something that we could return to in Stage 3.

[329] **Ann Jones:** Are Members content that amendment 3 be withdrawn? I see that you are.

*Tynnwyd gwelliant 3 yn ôl drwy ganiatâd y pwyllgor.
Amendment 3 withdrawn by leave of the committee.*

[330] **Ann Jones:** Minister, would you like amendment 7 in your name to be moved?

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

[332] **Ann Jones:** I move amendment 7 in the name of the Minister.

[333] The question is that amendment 7 be agreed to. Does any Member object? There is no objection, therefore amendment 7 is carried.

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

Grŵp 7: Colli Swyddi (Gwelliant 12) Group 7: Redundancy Dismissal (Amendment 12)

[334] **Ann Jones:** The only amendment in this final group is amendment 12, and I call on Bethan to move and speak to that amendment.

[335] **Bethan Jenkins:** I move amendment 12 in my name.

[336] I know that, again, as drafted, there is a technical issue with the wording in that it applies to England and Wales at the moment.

[337] The reason why I have put this amendment forward is that, currently, the legislation does not provide guidance for the hearing of redundancy appeals. My concern is that, without it, redundancy appeals might be put before the principal or chief executive who would, more than likely, have been involved in redundancy decisions in the first place. In the interests of maintaining a fair and transparent procedure, it would seem more appropriate that final appeals in such circumstances are not chaired by the principal or chief executive, as this might result in a conflict of interest. The Advisory, Conciliation and Arbitration Service guidance suggests that it is good practice in appeals procedure to provide for the appeal to be heard by someone senior in authority to the person who made the redundancy decision and, if possible, someone who was not involved in the original meeting or decision.

[338] In terms of this particular Bill, Schedule 1 replaces Schedule 4 of the Further and Higher Education Act 1992. Schedule 1 does not contain any reference to the instruments provided for the dismissal of staff. Section 11 of Schedule 2 of the Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006 deals with dismissals appeals. I am concerned that, if this amendment is not made to the Bill, the right to appeal to governors in the case of dismissal will be removed from the instruments and articles. In the case of a redundancy dismissal, the principal will have been involved, as I have said, in key decisions on selection and therefore will have a conflict of interest. It is therefore important that there is a statutory protection for staff so that a fair and transparent process can be maintained. The wording of the amendment is similar to that already contained in the 2006 regulations, so it is important that this is not lost.

[339] The argument by many, including trade unions, is that the amendment is in the interests of good practice rather than Government control, which I know that some people have been concerned about. As I have highlighted earlier in what I have said, it would conform to ACAS guidance and good practice, and I do not believe that this would jeopardise the ONS reclassification in any way.

[340] **Suzy Davies:** I just want to raise a note of caution on this particular amendment. I have two concerns about it. One is mainly to do with, bearing in mind the ONS reclassification issue, how far the Government can go in interfering in the human resources procedures of what is, effectively, an independent organisation and whether that sets some sort of precedent that may jeopardise the ONS reclassification. There is a more general point that redundancy law remains within UK competence, and I am slightly nervous about this committee getting involved in any question that would drag us down the competence route. So, that is a word of caution on this particular amendment.

[341] **Ann Jones:** Does any other Member wish to speak?

[342] **David Rees:** Thank you, Chair. As a former lay officer of a trade union, representing colleagues such as those we are talking about today, I have great sympathy with the amendment, particularly in looking at every avenue that we can get to protect and give opportunities for individuals to challenge any such proposals. However, I do not often agree with Suzy, but on this occasion I do have concerns over the competence issues as to whether it is an employment law issue. At this point I want to seek further clarification on that, and I will be objecting on that basis, because I am not convinced that we have the competence, and I do not want to put this Bill in a position where it could be challenged because of competence issues. So, I have sympathy with this, but I need to seek clarification on that point first.

[343] **Ann Jones:** Minister, do you wish to speak?

[344] **Huw Lewis:** If I could, Chair, yes. Like David Rees, I am sympathetic to what Members are saying around the table, but Suzy Davies makes some important points. We have existing employment law. It is not devolved, and it requires that procedures leading to dismissal by reason of redundancy are fair within the remit of that law. This amendment will not offer any additional protection, in my view, over existing employment rights. If an employee is not satisfied with the process leading up to dismissal by reason of redundancy, the remedy lies in complaint to an employment tribunal. That is not different for staff in FEIs. I do not think that it is appropriate that we interfere in employment matters by placing such a specific legislative requirement on governing bodies. I am particularly concerned that amendment 12 singles out FEIs. We do not put a similar requirement on HEIs or other publicly funded bodies, as far as I am aware. So, putting that responsibility on governing bodies, would at the very least require its own risk assessment in terms of legalities and how it would impact on the role of the governing body and on individual governors. I am sympathetic, as I say, to issues that touch on staffing matters such as this, and I am very content to instruct my officials to work with key stakeholders in the FE sector to ensure that the issue of staff appeals on redundancy is covered in the new guide for governors setting out best practice.

[345] The final point I wanted to raise has been fessed up to by Bethan, and that is that there is a technical problem here with this wording covering England as well.

[346] **Ann Jones:** I call Bethan to respond.

[347] **Bethan Jenkins:** Obviously, I put this amendment forward because I sought legal advice and, apart from the technicality, I have been assured that it is within competence. Also, on the issue of wages and so forth, we know that the Government put forward the Agricultural Sector (Wales) Bill, which was with regard to wages. So, I think that a precedent has been set by the Welsh Government already with regard to looking at these issues.

[348] **Suzy Davies:** Has it not gone to the Supreme Court, though?

[349] **Bethan Jenkins:** Yes, but—. I appreciate what the Minister says about taking this forward in guidance. However, I have assurances from those whom I have spoken to outside of this institution who are keen for this amendment to go through that this is necessary and that, when proposals go forward in terms of redundancy, they are very strongly of the view that the person who made the dismissal should not be involved in any appeals process, and that is the strength of the argument here. So, I would like to take it to a vote.

[350] **Ann Jones:** The question is that amendment 12 be agreed to. Does any Member object? There is objection, so we will go to a vote.

*Gwelliant 12: O blaid 3, Ymatal 0, Yn erbyn 7.
Amendment 12: 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:

Burns, Angela
Davies, Keith
Davies, Suzy
Evans, Rebecca
Jones, Ann
Neagle, Lynne
Rees, David

*Gwrthodwyd gwelliant 12.
Amendment 12 not agreed.*

[351] **Ann Jones:** We have now disposed of all of the amendments, you will be pleased to know. For the record, all sections of the Bill have been agreed by committee. As we have disposed of all the amendments, Stage 3 begins tomorrow and the deadline for tabling amendments will be notified to Members in due course.

[352] At this point, I have to ask whether Members agree that the Minister should prepare a revised explanatory memorandum. Have we moved the Bill sufficiently, or are we happy with the memorandum as it stands? We are happy with the memorandum as it stands. There we go. That concludes Stage 2 proceedings of the Further and Higher Education (Governance and Information) (Wales) Bill.

11:54

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

[353] **Ann Jones:** The committee will now go into private session to deal with some private papers, if someone would move the motion.

[354] **Angela Burns:** 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).

[355] **Ann Jones:** Thank you.

*Derbyniwyd y cynnig.
Motion agreed.*

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