



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

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

**Dydd Mercher, 25 Mehefin 2014
Wednesday, 25 June 2014**

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

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

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

Keith Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Rebecca Evans	Llafur Labour

Bethan Jenkins	Plaid Cymru The Party of Wales
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
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**

Joni Alexander	Cyfarwyddwr Dros Dro, Undeb Cenedlaethol y Myfyrwyr Cymru Interim Director, National Union of Students Wales
Ben Arnold	Cynghorydd Polisi, Addysg Uwch Cymru Policy Adviser, Higher Education Wales
Beth Button	Llywydd Undeb Cenedlaethol y Myfyrwyr Cymru President, National Union of Students Wales
Kieron Rees	Swyddog Polisi a Materion Cyhoeddus, Undeb Cenedlaethol y Myfyrwyr Cymru Policy and Public Affairs Officer, National Union of Students Wales
Yr Athro/Professor Colin Riordan	Cadeirydd, Addysg Uwch Cymru Chair, Higher Education Wales
Amanda Wilkinson	Cyfarwyddwr, Addysg Uwch Cymru Director, Higher Education Wales

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

Sarah Bartlett	Dirprwy Glerc Deputy Clerk
Gareth Pembridge	Cynghorydd Cyfreithiol Legal Adviser
Gareth Rogers	Ail Glerc Second Clerk
Anne Thomas	Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 09:32.
The meeting began at 09:32.*

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

[1] **Ann Jones:** Good morning, everybody, and welcome to the Children, Young People and Education Committee. I will just do the usual housekeeping rules. If you have a mobile phone, can you make sure that you have switched it off? It affects the broadcasting and the translation. Translation of the proceedings from Welsh into English is on channel 1, and channel 0 is for amplification of the floor language, should you need it. We are not expecting

a fire alarm, so, if we hear it, we will take instructions from the ushers. The assembly point, if we are able to go through the main entrance, is at the Pierhead building. We have apologies from Angela Burns this morning, and from Lynne Neagle. There are no substitutions, so we will move on. No Members declared an interest at the start of this, so I will take it that nothing has changed in that regard. We will move on to the scrutiny session on Higher Education (Wales) Bill.

09:33

Y Bil Addysg Uwch (Cymru)—Sesiwn Dystiolaeth 5 Higher Education (Wales) Bill—Evidence Session 5

[2] **Ann Jones:** Today, we have with us Higher Education Wales. You are more than welcome. We have Professor Colin Riordan, who is the chair, Amanda Wilkinson, who is the director, and Ben Arnold, who is a policy adviser. You are all very welcome. Thank you very much for your evidence. We have quite a number of questions, and about an hour to do them in. So, we will go straight into questions, if that is okay. Suzy, you have the first set.

[3] **Suzy Davies:** You say in your written evidence that you support the purposes of the Bill, even though you have some quite major concerns about it. Would you have preferred the Government to have proceeded using an alternative regulatory approach?

[4] **Professor Riordan:** We do certainly realise the need for a regulatory framework; that is extremely important. We understand that the conditions have changed and that we are not in the same position as we were in previously when universities were, to a much greater extent, funded by grants at arm's length by the Government. So, we do accept that need. There are, obviously, models around the world of different regulatory frameworks. Sometimes they are legislative, sometimes they are not, and what we have at the moment is a kind of co-regulatory approach, which involves the funding council, at arm's length from the Government, working with the universities. So, there is a model there, and it has served us for a number of years.

[5] **Suzy Davies:** Do we need a Bill? That is what I am asking you, I think.

[6] **Professor Riordan:** I do not think that a Bill is absolutely essential. It is possible to function—we have functioned for quite some time without legislation. However, on the other hand, there is a range of areas for which it would be sensible to have a framework to work within. So, we can see ways in which a Bill might be desirable.

[7] **Suzy Davies:** Okay, thank you. On the basis of that answer, and in your evidence you say that you think that the Bill may go beyond the existing principle that regulatory control should extend only as far as public funding, having accepted that a framework is necessary to tie money to control, where do you think there may be risks of the current Bill, as drafted, going beyond influence over activities that are publicly funded?

[8] **Professor Riordan:** There are two aspects to that. It is not clear from the face of the Bill that the provisions that are referred to refer only to public funding—to funding that comes either via the funding council, through the fee grant route or through other types of funding from the funding council. So, it is not clear from the Bill that that is what it is applying to. So, implicitly, it could apply to the three quarters of our funding that comes from other sources, which are neither of those two things. So, that is really the key element that we are concerned about. The other point is that the face of the Bill leaves an awful lot open because so much of it is regulated by the negative resolution procedure.

[9] **Suzy Davies:** I believe that you will be asked questions by other Members on that.

[10] **Professor Riordan:** Sure, but the point I wanted to make is that it is difficult to say, because there is so much scope with regard to what a Minister might have powers to do that it is difficult to answer at the moment whether it really does just apply to public funding.

[11] **Ms Wilkinson:** There are some issues relating to that that we have to try to work through. If it is not further clarified, what does that mean for the arrangements that we enter into with other parties that want to invest in universities? Are we able to sign off donations? Are we able to give surety about purpose of donation, unless we get some further clarity on the face of the Bill on those issues? That is quite a fundamental issue in terms of how universities operate.

[12] **Suzy Davies:** Just to finish on this point, are you saying that you think that there is a risk that, for example, the requirement for fee and access plans will in some way limit the freedom with which donations might be given to institutions?

[13] **Ms Wilkinson:** It really comes down to the point about the scope of the Bill and the coverage of the Bill in relation to universities' total income base.

[14] **Suzy Davies:** Okay, I will let somebody else come in.

[15] **Ann Jones:** Simon wants to come in on this point.

[16] **Simon Thomas:** I just want to press you on the fact that three quarters of your income is not public funding. What is that, then?

[17] **Professor Riordan:** If you take the sector as a whole—so, the £1.3 billion income of the sector—the proportion of that that comes via a grant, quality-related funding, the premium for expensive subjects or the fee grant is only about a quarter of our total income.

[18] **Simon Thomas:** So, is three quarters of your income private?

[19] **Professor Riordan:** It does not have to be private; it could be from UK research councils or from other sources. So, what this is is the money that flows through the Higher Education Funding Council for Wales; let us put it that way.

[20] **Simon Thomas:** So, where do you place, for example, the ability of students to take a loan through a public loan system?

[21] **Professor Riordan:** That would be included.

[22] **Simon Thomas:** So, that is included in the quarter.

[23] **Professor Riordan:** Yes.

[24] **Simon Thomas:** Okay, thank you.

[25] **Suzy Davies:** I would just like to finish off on that point. That is not consistent across all universities, surely.

[26] **Professor Riordan:** No, that is for the sector as a whole.

[27] **Mr Arnold:** In page 3 of the submission, in the footnote, I have given brief details, which—

[28] **Suzy Davies:** My apologies.

[29] **Mr Arnold:** That is okay; it is easily missed. There is a lot to go through.

[30] The estimated fee grant payments for students at Welsh institutions is £158 million for 2014-15 and the funding available for allocation to universities is £174 million. So, on those broad figures, it is about a quarter of the total income of universities. This was based on the notion that we have moved across from a system where some of that funding has been re-routed from grant funding via fee grant payments. So, the basic point is that that re-routed funding altogether is still only a small proportion of the total income of universities.

[31] **Professor Riordan:** To clarify that, if you look at the 1992 Act, which is where we started with all of this, it is very clear that what that Act is doing is setting out the terms and conditions of grant. It clearly applies only to moneys that come from the funding council. The Secretary of State, as was then, had quite significant powers to work with the funding council to enforce and regulate on the basis of the terms and conditions of the grant. So, it was really clear what that was about. What we would like is that kind of clarity in this Bill, which makes it absolutely clear that what we are dealing with here is funding that comes through that funding mechanism. If we receive, as Amanda said, a donation or a grant from a funding council or we have a contract with industry, very specific terms and conditions will be attached to that. There is a potential danger that the legislation might conflict with other terms and conditions. So, we would like it to be very specific about what it is dealing with, and that should be the funding that comes through the funding council, whether it is by fee grant, that is fine; that is understood.

[32] **Suzy Davies:** So, your main concern, just to make up an example, is that you would not want these regulations to mean that a donation—perhaps one that has come from a wealthy benefactor somewhere—would then be compromised because that donation by law would also need to, somehow or another, attract people from deprived backgrounds or those with particular disabilities, or something like that; it needs to be able to function as a freestanding loan without legal fetter.

[33] **Professor Riordan:** Essentially, if money comes to my university, for example, I will receive a letter saying, 'We're very pleased to say that you're getting £1 million, £13 million or whatever it might be', or, 'Here's money from the research council', I have to sign a piece of paper saying that we agree to the terms and conditions of that grant, and that is very specific to that. The 1992 Act made it very clear that that was kind of covering that as far as all the funding council grants were concerned.

[34] **Suzy Davies:** So, different silos for funding streams; that is okay.

[35] **Ann Jones:** David wants come in on that point, and then I will come back to you.

[36] **David Rees:** I have two points, but I will take the one. Just for clarification, you say that that quota is for the sector, but there are institutions within the sector that have a far bigger percentage of that than other institutions. Is that not the case? So, for some institutions, it will be a far more significant figure.

[37] **Professor Riordan:** And for some, much less so.

[38] **David Rees:** I have a question linked to quality assurance; it is just a quick point.

[39] **Ann Jones:** Go on, then.

[40] **David Rees:** You talk about the regulations therefore only being related to that

element of public funding. However, there is an aspect of quality assurance that is linked to that as well. You are not questioning that quality assurance should apply to all aspects, not only to those that are publicly funded, are you?

[41] **Professor Riordan:** No, we would not distinguish in terms of quality assurance, because that is focused very much on students. We would not distinguish, because that is about the quality of provision, and you are providing a provision to a whole range of students. We do not put on a course that is only for international students or only for home students usually, so—

[42] **David Rees:** That has been known to be the case.

[43] **Professor Riordan:** Okay, but we do not normally. Put it this way: it is about the quality of the provision itself, rather than who is receiving it.

[44] **Ann Jones:** Go on then, Keith, because I know this is a—.

[45] **Keith Davies:** In annex A, there is a table that talks about the source of income for higher education institutions in Wales. It says that HEFCW grants are £268 million, but that tuition fees and education contracts are £559 million. So, they are controlled. Research grants are £175 million, so they are controlled. The other income is only £262 million, so the other income is only 25%.

[46] **Professor Riordan:** I agree with that; that is right. What we are talking about is whether this Bill should concern itself with the money that flows through the funding council from the Welsh Government.

[47] **Keith Davies:** Fine, thank you.

[48] **Ann Jones:** Sorry; we are still on Suzy's questions.

[49] **Suzy Davies:** I only have a couple of short ones left. You explained that the existing system made it very clear about which income streams were controlled by legislation, and which were not. Are you worried that the potential confusion with this Bill will deter existing HEIs from signing up to become regulated institutions?

[50] **Professor Riordan:** Sorry, but I did not catch the last bit.

[51] **Suzy Davies:** At the moment, you have institutions that are more than happy to sit within the existing law because they know what exactly is regulated and what is not. Even though that law imposes burdens on them, they are prepared to take on those burdens because they know what applies to what. You are saying that the confusion here is that you do not know what is regulated, effectively. So, do you think that will deter existing institutions from seeking to be regulated if they are not automatically coming in under the Bill?

09:45

[52] **Professor Riordan:** I think that that is very unlikely because we would not then be able to teach students; it would be an existential problem. However, I do not know what would happen. The problem is that there is so much that is not clear. It is all in the policy intent; the policy intent is very helpful in one way, but in another way, it tells you that there is an awful lot that is not there and has yet to be determined. So, it really, in many ways, depends on what comes out in that, and at that point, we do not have any chance to affect it, as it were, if you see what I mean. So, I guess that we would be taking legal advice and seeing what our position was. It is difficult to tell without knowing what it actually looks like, so

what we are dealing with here is an unknown quantity.

[53] **Suzy Davies:** But, you are unlikely to turn your back on 25% of your funding basically.

[54] **Professor Riordan:** We just could not do that. We have a public duty; we are universities and we are here for—

[55] **Suzy Davies:** I had to ask the question because we asked others the question. [*Laughter.*]

[56] **Professor Riordan:** And I am answering it.

[57] **Suzy Davies:** I want to see if you said the same thing as him; that was all.

[58] **Mr Arnold:** If I can follow up a little bit on that. It has been our assumption going through that, as the Bill says, our current universities would wish to become regulated institutions, subject, of course, to any major concerns being ironed out through the process at the moment. However, the framework as it is presented does lack quite a lot of the details. We do not know what applies to the case-by-case designation process at this stage, and that includes things like fee limits or student numbers and the regulatory requirements that might apply to those. This Bill does not actually set out what the benefits, if you like, for the different pathways are. The regulated institution status on the face of the Bill does not actually confer automatic designation as it stands, and we presume that that would be introduced under the existing student support regulations at a later stage and may be changed at a later stage for regulated institutions.

[59] The key thing that we know from policy intent is that those regulated institutions would have access to student loans and grant support up to £9,000, whereas unregulated institutions, on a case-by-case pathway, would have access to only the student loan part. However, if you bear in mind that the grant element would actually be paid out of the budget for universities already in place, it is, at this stage, quite difficult to see the relative benefits and regulation that would be in place for those. You have to bear in mind also that for universities that come into being regulated institutions, a number of other provisions already apply to them by virtue of other things. So, for instance, the student support legislation under the Higher Education Act 2004 would continue to apply to those types of institutions that are listed, not because you become a regulated institution, which would have implications if other providers were to take that route as well.

[60] **Ms Wilkinson:** The other issue about whether or not institutions become regulated providers, as you will see from our written evidence, relates to whether or not governing bodies can take a view as to whether they can fulfil their duties as trustees of the charity in signing their institutions up to regulated status. That is something else that we are going to need to keep working through as the detail of what is behind the Bill comes through.

[61] **Suzy Davies:** You may get some more questions on that actually. I just have one to finish off because we have dealt with case-by-case designation. It is this, and it actually follows on quite nicely from what you have said: you seem to suggest that the Bill as it is currently drafted might compromise your ability to be directly accountable to your students. On the basis that students come to a given institution on the basis of what is offered, and in Wales that is going to be perhaps more regulated, in what way do you think your accountability relationship with students could be compromised?

[62] **Professor Riordan:** It would depend on what is in the regulations. It is very clear that the regulations can be varied by the Minister, but it is not clear at the moment, obviously,

what those variations could be. So, you could get in a situation where students come along and say that such and such has happened, but we will say, ‘We’ve been directed to do that by HEFCW; you’ll have to go and talk to them about it’ or ‘The Minister has directed this; you’ll have to go and talk to the Minister’. We are not in that position at the moment. It is very clearly laid out in the existing legislation, although it does not put it exactly in these terms, that we have academic freedom and autonomy as institutions. That is very important.

[63] **Suzy Davies:** That will only be an issue, however, if there is a swift change to regulation, because, whenever a student applies to go to an institution, they are going to know in advance what the landscape is, surely. It is only if changes take place while they are in the institution that it is going to be an issue.

[64] **Professor Riordan:** It could be a change has taken place before they got there and they do not like the effect of it, whereas, as the moment, that is—

[65] **Suzy Davies:** They should have known before they applied, then, surely.

[66] **Professor Riordan:** I do not know; you would have to take that up with them. It is difficult to say, is it not? It is very speculative.

[67] **Suzy Davies:** Yes, okay. I have finished, Chair. Thank you.

[68] **Ann Jones:** We move on to timescales and powers in subordinate legislation.

[69] **Rebecca Evans:** With regard to regulations, the Minister told the Constitutional and Legislative Affairs committee that he hoped to have regulations available for scrutiny ahead of Stage 2. Would the opportunity to scrutinise regulations at that stage allay some of your fears?

[70] **Professor Riordan:** It would certainly help to see any regulations as soon as possible, but one of the issues is, of course, that they can be varied and changed. It is very clear—the point is made continually throughout the policy intention—that the external landscape may change and so these powers may change. We feel that we would really need—. I think that we should all look very carefully at that and at how far those powers could really extend. The potential could be greater than we imagine.

[71] **Ms Wilkinson:** I think we need to think carefully about what we have; there are 27 new powers coming through by regulation, and we are looking at a very short time frame. So, seeing those at the start of Stage 2, what does that mean? What does that mean for going through the sort of process one might normally expect to go through if we had an affirmative or superaffirmative process in place? You will see from our submission that we have some very particular recommendations in relation to where we think some of the crucial issues are.

[72] **Rebecca Evans:** Some of those crucial issues include the Henry VIII powers in the Bill. Can you talk to us a bit more about your specific concerns regarding the provisions under section 13 about the failure to comply with the general provisions of the plan, and then section 37, which relates to the duty to withdraw approval?

[73] **Professor Riordan:** If you look at section 13(3), it says:

[74] ‘Regulations under this section may (among other things)’—

[75] which could be anything, I suppose—

[76] ‘amend or apply, with or without modifications, any provision made by or under this

Act.’

[77] So, section 13(3) would seem to allow Ministers to change the Act. That is a pretty sweeping power. You normally expect with a Bill that it is enacted and then the law is interpreted. What appears to be happening with this is that the Bill will be enacted and then the Ministers can interpret it at will under the various subordinate regulations or amend the whole of the Act. It is possible that section 55 might allow consequential amendments to any other Act if it has an effect on this legislation, so, it appears to give the Minister powers to amend any Act enacted by the Welsh Assembly. That is pretty sweeping, if that is the case. I do not know, Ben, whether you—

[78] **Mr Arnold:** Similarly, section 37 is designed to allow you to change sections 40 to 43, that is, the requirement for HEFCW to give a warning notice and take representations from institutions. You have to question whether these are necessary or anticipate issues that we might prefer to see in the Bill, and the—. Also, whether the—. Sorry, I will have to pause for a moment.

[79] **Ms Wilkinson:** Section 55(3) looks like it must be a mistake. We do not think that that could possibly be right. We hope that we are misinterpreting that, because it looks as though, through this legislation, any other Act passed by the Assembly could be amended, which cannot be the intention here. So, we think that there are probably some issues to be thrashed through just to get that right.

[80] **Mr Arnold:** I will come back in. It must have been a lack of coffee; I apologise. In effect, if you can change a section by a negative resolution procedure, that is, by subordinate legislation, is that not tantamount to making it subordinate legislation? Section 37 does that in respect of a small part of this Bill. Section 13 appears to do that in relation to the whole of this Bill, and section 55 appears to allow it in respect of any other Bill. So, I am very worried about how far these powers are limited in scope. It would, obviously, be for the Assembly to determine whether that raises constitutional issues as well.

[81] **Rebecca Evans:** Would the use of the affirmative procedure in the Assembly allay some of those concerns about the use of the powers?

[82] **Ms Wilkinson:** Not in relation to what we have just described.

[83] **Professor Riordan:** The ability to amend the legislation—what appears to be an ability to amend the legislation itself, and/or amend any other related Act that might have an effect on the provisions of this—is something, I think, that really needs to be looked at. However, in terms of the negative resolution procedure, it would be much better if it was clear in the legislation itself, and on the face of the Bill, what the provisions are, because it is impossible to tell at this stage. Even when we are told what the regulations will be, they can be changed at any time, so, it makes it very difficult to plan, it puts us in a difficult position in terms of autonomy and in relation to third parties, very many of which we deal with all of the time from all three sectors, that is, the public, private and third sectors.

[84] **Rebecca Evans:** With regard to the implementation of the Bill, do you think that implementation in 2016 is realistic? Further to that, in your evidence, you say that:

[85] ‘Above all, we must ensure that we do not rush legislation that has long-term consequences for the sector’.

[86] Do you think that is what is happening, that we are rushing into legislation here?

[87] **Professor Riordan:** Well, I think that we have outlined that there is a very

considerable degree of uncertainty: you just have to look at the policy intention and see how often putative provisions are made or examples given of something that might happen or something that may happen—there are very many of them and they have wide-reaching consequences. So, it really is a question of the practicality of working through all the detail of that, considering the fundamental questions of the extent of the powers that are in this Bill to vary matters that could be extremely substantial for the sector for a period of years. So, it is more important to get this right than to do it quickly.

[88] **Ms Wilkinson:** We think that there are probably things that we could look at in the interim to address certain matters, looking at powers through existing financial memoranda. There are certain things that we could look at in the interim, if that was felt necessary. However, certainly, a longer timescale and doing this properly would be our preferred option.

[89] **Rebecca Evans:** Okay. HEFCW said that it thought that the timescale was tough but doable. Would you agree with that?

[90] **Ms Wilkinson:** It is technically doable. Can you deal with any unintended consequences within the time frame proposed? I think that is the real issue. We have talked about some potential unintended consequences here, but we come back to the point that we are still awaiting a lot of regulation, we are trying to get this through very quickly, and there are 27 powers, all requiring—. We have got commencement Orders and all sorts of other things in the mix with that. So, I suspect that it is technically doable, but what are the issues that arise from that?

[91] **Professor Riordan:** Also, will we have the best Bill that we can get?

[92] **Mr Arnold:** I would like to add to that that former fee legislation operated on the basis that we need to have certainty 18 months in advance in order to protect the interests of students, so, that puts a very tight timescale on implementing everything post Royal Assent, even assuming that it goes through in the sort of timescales that are currently envisaged.

10:00

[93] **Ann Jones:** Thanks. Before we leave this subject, Simon, you have some questions.

[94] **Simon Thomas:** Yes. I just wanted to put it to you that it seems to me that you can sum up your evidence so far as: ‘Let us wait for Diamond to report and then put a new legislative framework around that and continue with the present funding condition regime for the time being’. Would that be a fair summary of what you are saying?

[95] **Professor Riordan:** I do not think it is exactly a summary of what we are saying, but I can see the sense of what you are saying. [*Laughter.*]

[96] **Ann Jones:** There you go then. We will not have a vote on that; we will just move on. Are you happy with that, Simon? You are. Rebecca, had you finished?

[97] **Rebecca Evans:** Yes, thanks.

[98] **Ann Jones:** Okay. We will move on then. David, do you want to ask about powers for HEFCW?

[99] **David Rees:** Thank you, Chair. You mentioned this morning your concerns about the regulatory provisions that are in the Bill and not knowing what they are, but I think Amanda has mentioned twice that there are new powers in the Bill. In paragraph 12 of your submission, you state that:

[100] ‘In many instances the new powers do not appear to serve any genuine identified need.’

[101] You actually go on to say that these powers are ‘draconian’ and:

[102] ‘The main impact of the new legislative powers in this area would therefore be to undermine confidence in the current system’.

[103] Could you expand upon and justify those statements?

[104] **Professor Riordan:** Yes. Partly because the powers are not specified, they are potentially very wide-ranging. So, that is the underlying issue. However, they are the powers to direct governing bodies, the powers to inspect and intervene, and the powers to direct expenditure—all of these things. What the legislation needs to do is protect the interests of students—that is absolutely critical—and it has to protect the interests of taxpayers and I think it needs to allow the Welsh Government to make its priorities clear, because this is a democracy, obviously, and there needs to be the opportunity for higher education policy to be implemented.

[105] However, it is very important that Welsh universities remain internationally competitive and that we do not find ourselves at a disadvantage in that respect. That is why institutional autonomy and academic freedom are absolutely critical and those are the bits that we are most worried about, because we cannot see where in the legislation there are explicit or even implicit protections for those things and a clear definition of how this Bill will protect the interests of students and those of taxpayers in terms of the money that flows from the Welsh Government through HEFCW. So, we would really rather that there was much greater specificity about that and then that the powers were devolved very clearly, at arm’s length, to HEFCW, if that is what it will be called, or whatever body would succeed it.

[106] I think that it would give everybody comfort, even if the body has powers that were previously exercised, such as for terms and conditions of grants, that no longer are—because it is not grants but fees flowing through, although some of it still could be grants—that that was very clearly articulated so that we understand that the funding body can intervene and take action where it sees public money being used in ways that are not consonant with the spirit of the legislation, but we just do not see any of that.

[107] **David Rees:** You have mentioned academic freedom a couple of times this morning and I know that my colleagues are going to raise that question with you, otherwise I would, but HEFCW gave evidence that indicated that the additional powers of intervention, for example, would be used only in situations of crisis. I agree that there needs to be a definition of ‘a situation of crisis’, but does that allay your fears or reassure you in any sense that, in fact, generally, the current system will be operated?

[108] **Professor Riordan:** I think that it is the case now that funding councils do have powers that they could exercise in times of crisis and they do not exercise them when there are not. So, I think, in a sense, that is what the situation is now. However, it depends what the powers are. At the moment, the powers are such that you really would exercise them only in times of crisis, when things had gone very badly wrong, whereas, potentially, in the case of the Bill as it is articulated or in the regulations as implied—it is really in the policy intentions that one can see this—there is—. Hang on a second, Amanda. [*Laughter.*]

[109] **David Rees:** She is desperate to say something.

[110] **Professor Riordan:** I will just finish what I am saying. It is not clear to what extent

those powers might actually be more graded so that you could find intervention before crisis. It is not clear. Clearly, we work with the funding council. We do not expect it to suddenly become crazed power-wielders. We do not expect that. However, we have to think about decades' worth potentially of the higher education landscape in Wales being governed under this Act. We really have to take into account that circumstances might change. We do not know what might happen in the future.

[111] **Ms Wilkinson:** We also need to be clear what the existence of powers means for the other regulatory environments, which we have to interact with. So, we now have some more detailed legal advice, for example, on our charitable status—the status of our governors as charitable trustees. The enforcement element of the Bill, as it is currently drafted, is a key issue in relation to the legal advice that we have received, for example. The Bill has to be able to interact in a reasonable way with other regulations that we have to comply with in order to maintain—

[112] **David Rees:** I think that you will get questions from colleagues on that, which might put a different slant on it. You have mentioned the situation in relation to the advice and the direction of governing bodies, for example, or institutions, and you have queried whether that is a good thing. In fact, you have actually said that it is not. However, that is mandatory. Why is it so bad, in your eyes, for it to be mandatory? Is it not good practice to actually be able to provide a reasoned argument as to whether you have taken account of advice, whether you accept it or not, and to provide an argument and justification for that?

[113] **Professor Riordan:** Yes. I do not think that that is what we are objecting to or taking issue with. It is about being specific about what, on the face of the Bill, those circumstances would be. You just cannot tell because so much of it is in regulation yet to be determined, which can then subsequently be amended. It looks to us as though the Act itself could be amended. So, you are in a position of real uncertainty. What we want is clarity that those provisions mean that, if there is statutory guidance, it clearly applies to the funding that comes via HEFCW, whether that is via a fee grant or whatever, and that the clear intention is to protect the interests of students, taxpayers and the international competitive ability of Welsh universities. It seems to me that it is still the Government's higher education policy that we should be aiming to become a world-class system. We are saying that these are the things that one needs to take into account if Government policy is to be delivered.

[114] **Ms Wilkinson:** We need to be able to provide surety for third parties in relation to the contracts that we enter into.

[115] **David Rees:** Surety to—. You say third parties, for example, but it is not just students that you are talking about there. You are talking about organisations that you may have partnership relationships with?

[116] **Ms Wilkinson:** All of the bodies that we have previously—. Yes, businesses—

[117] **Professor Riordan:** Funding councils.

[118] **Ms Wilkinson:** —research councils, Europe. There are a whole range of issues.

[119] **David Rees:** Okay. May I just raise one final point on this section?

[120] **Ann Jones:** Yes, go on.

[121] **David Rees:** In the same paragraph, you talk about inviting costly litigation instead. That is the last point. Do you anticipate costly litigation?

[122] **Professor Riordan:** It is just impossible to say. This is the problem and the point that we keep making. Without knowing or without having clarity about the focus of the Bill and what it applies to, with so much being left to negative resolution, and with that being potentially variable and the Bill itself being variable, it is really difficult to say. You have to take into account the possibility that you would find yourself in a difficult legal position.

[123] **David Rees:** So, to clarify, your position and your view is that, because you are unaware of the regulations at this point in time, your mechanism of challenging those regulations will be litigation.

[124] **Professor Riordan:** No, we are just saying that that is a possibility that we do not want to get into. We are in a position now where that really is not the case. We have clarity about the relationship, we understand how it functions and we just do not find ourselves in that position. However, if there is the potential for mandatory guidelines where it is not clear what the framework for those is, in the way that I have outlined, then it is possible. We do not want to go down this route. We do not want to end up in a position where the resolution is then via the law. That would not be very sensible at all. We do see that happening around the world. The European University Association and, I think, the European Commission do regular reports on university autonomy, and the UK always comes out very high and it is seen as one of our greatest advantages that we do not have those kinds of issues to deal with—that we can deal within a clear framework relating to terms and conditions of grants, and that we can operate freely beyond that. We want to see those principles preserved in the Bill, and we do not see that at the moment.

[125] **Mr Arnold:** Just to come back on some of those points, obviously, one of the key purposes of the Bill was to provide means of leveraging enforcement through legal procedures, so, yes, it presumes that there would be further costs of litigation of some form or another, it seems to me on that. Albeit, with some of these powers, we are catering for situations that would occur in crisis or extreme positions. We can recognise that. However, we are still trying to attempt to cater for them, and one of the issues I think we are raising is that, for instance, with the powers of entry and inspection, you already have that covered under a quality assurance process whereby, if you do not co-operate with the requirements of the inspection, you are in danger of not receiving a satisfactory quality assessment. That is something that no institution would willingly put at risk.

[126] **David Rees:** Well, our particular point is that there would therefore be no harm in this particular aspect because, as you were saying, you accept that it is something that is required because, otherwise, you get a bad report in your QA.

[127] **Mr Arnold:** If we assume that these are there for use at the time, you are obviously comparing it to situations where you might use it. So, you may say that a further point with these powers is that, because they are providing legal enforcement on top of the existing framework, you have to question whether they are necessary. In fact, one of the points made to us in advice we received was that powers of inspection are actually very similar to the HM Revenue & Customs powers but without the same level of restrictions. So, while I think that it is absolutely right that there are probably issues of greater impact and priority, these are still areas it would be worth going back to and just carefully reviewing whether the Bill is actually doing what we want it to do, sending the right signals and addressing the situation that is actually needed with the appropriate level of robustness.

[128] **Ann Jones:** Okay. We are going to have to try to make some swifter progress because we have quite a number of areas that we have not touched on. Aled, do you want to deal with the impact on institutions?

[129] **Aled Roberts:** Yes. I am looking at the impact on individual institutions, really. Your

submission suggests that you accept that the provisions of the Higher Education Act 2004 with regard to academic autonomy are transferred, but you then raise specific concerns with regard to key provisions in the 1992 Act that are not transferred, and you list six particular concerns you have. Is that a complete list of your concerns? Would you like to amplify why you have those concerns with regard to, for example, the one I picked out, which was the selection and appointment of academic staff?

[130] **Professor Riordan:** Well, I think it goes back to the point that the 1992 Act and the 2004 Act were much more broad ranging, as it were, about the protections for the appointment of staff, the kinds of things we teach—and what we research; that is in there as well. None of those safeguards are in this Bill, implying that it is to do with only students, but the actual provisions could apply to almost anything. That is the issue that we have.

10:15

[131] **Aled Roberts:** You will have heard the evidence from the Minister when he was challenged on this, and he said that the Bill contains safeguards throughout. You do not sound as if you are reassured. Would you be looking at a specific provision within the Act if the Government was to pursue the legislation?

[132] **Professor Riordan:** The sorts of safeguards that we would like to see are real clarity that this is about public funding flowing through HEFCW and much more clarity about institutional autonomy and academic freedom and the importance of that, because what we have essentially had up to now is a balance between autonomy and accountability. You have to be accountable. There has to be responsible autonomy; autonomy does not just mean having the freedom to do whatever you like at any point. It is not that. There needs to be a framework, but what we know works well is a legal framework within which you enter into a contractual relationship that is legally binding in that we receive public money and, therefore, we will fulfil certain conditions. We would like to see the spirit of that maintained rather than powers that are indeterminate, potentially absolutely variable into the future and enforceable by injunction. That is a really very different relationship.

[133] I know that higher education in Wales often comes in for a lot of criticism, but if you look at the facts, you will see that we actually have some very good universities here in the international context, and we need to take that into account. They are on an upward trajectory and it would be an unintentional consequence of this if we ended up in a position where the framework and the set of relationships, which do have very positive functions, were compromised in an effort to set in place a new framework, which we need. We understand that. The situation is now different; we do not get block grants in quite the same way as we did, so there needs to be a new framework, but it needs to focus much more clearly on the principles that have served us so well up to now.

[134] **Aled Roberts:** Moving on to the cost borne by individual institutions, we raised this as a concern to the Minister and I think that, to be fair, he suggested that the Government would come back to us with greater detail on some of the issues that we raised on the explanatory memorandum. Do you have any observations on the balance concerning the indicative costs for the new regime within the explanatory memorandum, the proportion that falls on individual institutions and the impact on those institutions?

[135] **Professor Riordan:** I do not know whether you want to say something about this, Amanda, but it is another area where I think that there is an awful lot to be done to understand what those costs might be. I do not think that we have got anywhere near enough information yet, but—

[136] **Ms Wilkinson:** We do not properly understand those costings as they are currently

laid out, and I would say that, actually, we have not gone through a process to understand those costings. Probably, questions on those costings would be more appropriate for the Welsh Government and the funding council. Clearly, there could be costs to the sector in implementing the Bill, but, again, it really depends on the detail.

[137] **Aled Roberts:** May I move on to cross-border issues? You mentioned the need to retain international competitiveness. There are changes across the border in England that mean that the English institutions, in particular, are perhaps operating in a more competitive environment than they have previously. Have you any concerns as to whether the regulatory regime in Wales would reduce the competitiveness of Welsh institutions per se? I am thinking in particular of activities carried out by institutions that may have their headquarters in England, but which have a presence in Wales, and seeking your view as to whether or not there is likely, in the current climate, to be a greater presence in Wales from those English institutions.

[138] **Professor Riordan:** I suppose that it is possible that we might get direct competition in Wales, but we already compete very much with English institutions just by the nature of the geography. Most Welsh universities will have a proportion of Welsh students; I happen to know that, in mine, the home undergraduates figure is 65% from England and 35% from Wales. So, we will still be catering to all of those students. That is probably the way in which the competition happens more. I do not think it is necessarily the case that English universities would want to settle here; they probably would not need to—they can compete from where they are.

[139] There is a potential issue that has to be taken into account as to the environment in which we operate in the UK nationally and internationally, namely that we are able to compete as freely as our rivals. That is important.

[140] **Mr Arnold:** I do not think that the Bill is very clear about what the position would be for providers in other parts of the UK that offer provision in Wales. One of the things that we point out in the submission is that we would welcome greater clarity over exactly what the eligibility requirements are under sections 2 and 3 of the Bill, whether that includes institutions in Wales, or which institutions would qualify for the automatic designation, and which are the eligibility requirements for the regulated institutions. That would be an important issue to resolve through the process.

[141] **Ann Jones:** On fees and access plans, I turn to Simon and Bethan.

[142] **Aled Roberts:** You raised this issue—and we have this direct conflict; we had this debate on the FE Bill and the Office of National Statistics classification—in your submission, which clearly states that it is your belief that the new regime might lead to ONS looking at reclassification. The Minister is saying that the Government is assured that that is not the case.

[143] **Ms Wilkinson:** In relation to ONS, we still have some concerns. Part of that is based on what is on the face of the Bill particularly for those institutions that are higher education corporations. However, the ONS concerns could apply to all institutions in Wales. It is very difficult upfront for the ONS or the Charity Commission to give any sort of assurance based on what the Act might look like at the end of the process. We are very grateful to the committee for taking those matters seriously. As all of this goes through, there will need to be a referral to the ONS and the Charity Commission, because we have very many regulations still to come through that could alter the position. We need to be very alive to that because of the consequences for Government and for the sector.

[144] **Ann Jones:** Are you saying that the Charity Commission has made a statement

saying that it has no concerns about the policy intentions or the proposed new framework in the higher education Bill? Are you saying it has done that ahead of time, and that it has made a sweeping statement that it cannot justify?

[145] **Ms Wilkinson:** I do not know on what basis it has said that or what discussions it has had.

[146] **Ann Jones:** The commission clearly says that it has no concerns, yet you are saying that there are some real concerns. You have just said that the commission does not know what the Bill is going to look like, so how can it make that comment, yet it has made that comment? The commission must be sure within its own mind; it would not have plucked a comment from the air, would it?

[147] **Ms Wilkinson:** Based on the information that we have, it is not clear to us that that surety can be provided upfront. We are in receipt of legal advice on the position of our governors as trustees of the charity, which we would probably need to pick up directly with the Charity Commission ourselves. We just need to make sure that that position is absolutely cleared off.

[148] **Ann Jones:** Okay. We will move on to fee and access plans, with Simon.

[149] **Simon Thomas:** Gofynnaf fy nghwestiynau yn y Gymraeg. Hyd yma, rydym wedi trafod nifer o bwerau eang sydd yn y Bil fel ag y mae, ond rwy'n credu ein bod yn iawn i ddweud mai'r prif ffordd y bydd Cyngor Cyllido Addysg Uwch Cymru yn chwilio i reoleiddio yn y maes hwn yw drwy gynlluniau ffioedd a mynediad. Rydych wedi mynegi pryderon ynglŷn ag ystod yr hyn sy'n gallu cael ei gynnwys yn y cynlluniau hynny ac, eto, bryderon ynglŷn â'r ffaith bod llawer o hyn yn cael ei wneud drwy reoliadau nad ydynt ar wyneb y Bil. A fedrwch chi grynhoi eich pryderon, ac ym mha ffordd yr ydych yn gweld y cynlluniau newydd hyn yn wahanol i'r cynlluniau presennol yr ydych yn gyfarwydd â gweithio gyda nhw?

Simon Thomas: I will be asking my questions in Welsh. So far, we have discussed a number of the broad-ranging powers contained within the Bill as currently drafted, but I think we are right in saying that the main way in which HEFCW will be seeking to regulate in this area is through fee and access plans. You have expressed concerns about the breadth of content contained within those plans, and again, concerns about the fact that much of this is done through regulation that does not appear on the face of the Bill. Can you summarise your concerns and how you see these new plans being different to the current plans with which you work?

[150] **Professor Riordan:** The framework is different because compliance with these fee plans will be enforceable by injunction rather than there being, in essence, a contractual relationship between the institution and the funding body. That is a fundamental transformation. You then have to ask questions about the powers of a governing body of the university and what the constitutional position is, and, if entering into a particular relationship with a third party or making particular plans, whether we would have to first of all obtain permission from the funding bodies. That is the kind of issue that we do worry about, and that is why we would like to have an awful lot more understanding of how this is all going to work.

[151] **Simon Thomas:** O'r hyn rwy'n gallu ei weld o'r Bil, er bod lot yn dod yn y rheoliadau, ac er bod y posibilïad yn y pen draw o rywbeth eithaf eithafol yn digwydd, mae camau onid oes? Mae'r gweithredu a'r

Simon Thomas: From what I can glean from the Bill, although much is to emerge in regulations, and although there is the possibility ultimately of something relatively extreme happening, there are stages, are there

gorfodi wedi'u gosod allan fesul cam. Onid ydych yn gweld bod honno yn ffordd mwy rhyngweithiol rhyngoch chi a'r cyngor cyllido? Hynny yw, efallai fod gennych chi bryderon ynglŷn â geiriau moel ar wyneb y Bil, ond, gan fod profiad o rywbeth fel 10 mlynedd o weithio system tebyg i hwn, os nad yn union yr un peth, onid ydych yn hyderus y bydd hyn, yn y bôn, yn parhau i fod yn debyg i'r hyn yr ydych yn gyfarwydd ag ef?

not? Implementation and enforcement are set out stage by stage. Do you not see that as being a more interactive way between yourselves and the funding council? That is, you may have some concerns about bare words on the face of the Bill, but, as there is experience of some 10 years of working with a system similar to this, if not exactly the same, are you not confident that this, essentially, will continue to be similar to what you are currently familiar with?

[152] **Professor Riordan:** There is a big difference, in that, ultimately, the decisions of the funding council could be enforceable under the law. That is a major difference. It could, potentially, have knock-on effects that we cannot predict at the moment, particularly because there is so much yet to be determined.

[153] **Ms Wilkinson:** There is an issue of principle as to whether or not you want a system that is ultimately based on some process of litigation. There are other issues around how fee and access plans might work, and Ben can probably say a little bit more about that, particularly in relation, for example, to the potential retrospective nature of some of the arrangements, which could be quite difficult for institutions compared with what we work with currently. I do not know if you want to say a bit more about that, Ben.

[154] **Simon Thomas:** Just before you do that, may I just add another question, which is about how these fee and access plans may be wider, to go back to your earlier concerns, than the focus just on public money, which you have already raised? How might that be operated as well?

[155] **Mr Arnold:** That is certainly one of the key issues, namely that the fee and access plans could now refer to activities or money that are not the regulated fees or the grant, but would cover a much wider set of activities. Indeed, the intention apparently is to extend the use of fee plans as they are currently to covering all of the areas of the corporate plan. So, if you saw the recent consultations from HEFCW and its interpretation of those provisions, it would cover a wide range of activities, bar research and reconfiguration, and governance, I think. The Bill allows, and clearly it is envisaged, that these will be applied much more widely. It has far fewer limitations than we had under the previous Act, in terms of finance and those important protections of academic and institutional autonomy that we refer to in sections 65, 66 and 68 of the Further and Higher Education Act 1992. You also have powers to enforce those, and new mechanisms of doing that, which do not limit it to serious instances as a backstop, fail-safe power. So, taken altogether, that is a very different regulatory requirement than it has been before, and it is exactly the sort of thing that needs to be carefully prescribed, as it is.

10:30

[156] **Simon Thomas:** A ydych yn credu bod CCAUC yn ddigon annibynnol i fod yn gyfrifol am y mathau hyn o gynlluniau eang?

Simon Thomas: Do you believe that HEFCW is sufficiently independent to be responsible for these kinds of broad-ranging plans?

[157] **Professor Riordan:** I think that, as it is presently constituted, it is. I think that we would be confident that HEFCW is an arm's-length body as it presently exists. It is not clear to me at least exactly what the relationship would be in future because of the nature—and we have to keep coming back to this—of the uncertainties that are in the Bill, the proposed

regulations and the policy intention before us. All of the experience around the world of successful national set-ups for universities shows that an arm's-length funding body is very important, unless you have astounding amounts of money. There are countries in the world, like Switzerland, which have enormous amounts of money that they put into the higher education system, and, there, the system is, in some cases, a little bit less arm's-length, but the most successful universities are the ones where there is an arm's-length system.

[158] **Simon Thomas:** Diolch am hynny. Yn olaf, a bwrw bod y cynlluniau ffioedd a mynediad hyn yn mynd ymlaen fel y maent ar hyn o bryd ar wyneb y Bil, a ydych yn credu bod y bwriad y tu ôl iddynt yn ddigon cadarn, yn benodol o gwmpas y ffocws y cododd CCAUC gyda ni yn ei dystiolaeth ar weithgarwch yn hytrach na deilliannau? Hefyd, o ran y cyfnod y bydd hyn y para, rwy'n credu y dywedodd y Gweinidog ei fod yn edrych, yn y lle cyntaf, ar gyfnod o ddwy flynedd ar gyfer y cynlluniau hyn, tra bod HEFCW wedi dweud wrthym fod angen o leiaf dair blynedd, ac, mewn lle arall, mae'r Llywodraeth wedi sôn am bum mlynedd. Felly, yn ymarferol, sut ydych yn gweld y cynlluniau hyn yn gweithio a thros ba gyfnod, a beth ddylent ganolbwyntio arno o ran y gwahaniaeth y gallant ei wneud?

Simon Thomas: Thank you for that. Finally, assuming that these fee and access plans do proceed as they are currently set out on the face of the Bill, do you believe that the intention behind them is robust enough, particularly around the focus that HEFCW raised with us in its evidence on activity rather than outcomes? Also, on timescales, I believe that the Minister said that he was looking initially at a period of two years for these plans, while HEFCW has told us that there needs to be at least three years, and, in another place, the Government has mentioned five years as a timescale. Practically speaking, how do you see these plans working and over what timescale, and what should they concentrate on in terms of the difference that they can make?

[159] **Professor Riordan:** I think that the Minister said two years in the first instance, moving to five years. There is a sense in which there is very little that you can achieve in two years. The fundamental point is that the strong thrust of all the regulations and, in fact, of the whole Bill, is intervention in activities—for example, what universities are doing, how they run themselves and how they are going to spend their money, rather than saying, 'You are receiving an amount of public funding and for that we expect to see the following results; you need to achieve this and that', and whatever it might be, and then that being an enforceable contract, which is rather what we have now. It would be possible to do that under these circumstances, so that you essentially replicate the terms and conditions of grant, but you do it in a slightly different way. I think, and we as Higher Education Wales think, that that would be a preferable way of dealing with this, rather than the notion that, at some point, there might be an inspection and that the governing body might be directed to do things differently.

[160] **Simon Thomas:** Is it simply the case that governments find it easier to monitor activity than they do outcomes?

[161] **Professor Riordan:** Possibly. I have not been in government, but I can see how it might be that or the temptation to feel that it is something that somebody is doing wrong and you can fix it, but I do not know what surety there will be that anybody else could do a better job. For example, I hold my management team accountable and say, 'This is what you have to do over the course of the year'. If someone does not do it, then there are consequences for that—if they do not achieve their objectives. That, surely, is a better way than following them around all of the time and checking that they have attended all of the right meetings and written the right papers.

[162] **Bethan Jenkins:** To follow on from that, the Minister's special adviser, Neil Surman, said that there was nothing wrong with the current system and that it was working fine, but that this needed to happen regardless because they wanted to make some changes in terms of

the activities, because they were saying that some people were organising summer schools, but were not able to measure that. Do you feel that it is necessary to make this legislative change for those particular ground-level changes to take place, or is it still too prescriptive?

[163] **Professor Riordan:** I am sure that it would be possible; if the Government wants to see certain developments, there are ways of making that happen that are outcome orientated and results orientated. I personally do not think that very detailed levels of prescription are the best way of achieving certain outcomes.

[164] **Bethan Jenkins:** My other question is to return to Diamond, which Simon referred to earlier on. That review is ongoing at the moment and could pose key changes to the way the system could work in future. Fee plans could go up to five years, eventually, and the Minister has said that, because of Diamond and other issues in the system, this legislation could change. Do you think that it is too pre-emptive therefore, because we could introduce a new system that would then need to be changed a year or two after it was introduced?

[165] **Professor Riordan:** There is clearly the potential for that in this Bill and in the provisions that have been raised. The potential for changing—and we have gone over that ground a lot—is really there. Where higher education thrives best is within a reasonably stable environment. To be honest, we have not had that in the UK for quite a number of years now. It would be very helpful for higher education generally if we had stability for a number of years because we are slow-burn, long-term institutions. We are around for a long time. We do things quite slowly, which people find a bit irritating sometimes, but it is in the nature of the academic endeavour. In some ways, it is essential to success. The provisions of the Bill that allow changes to be made, which would allow us to take account of Diamond, might also allow us to take out something else that happens a year later, or two years after that, or with a change in Government. That has the potential to create an unstable environment, which would not be conducive to the success of higher education.

[166] **Bethan Jenkins:** Finally, we have not really mentioned part-time students at all today. I wonder whether you can expand on the fact they are not going to be touched on by this Bill.

[167] **Professor Riordan:** It is a real issue, because, in the world today, there is going to be an increasing proportion of students that are part time. They will be people who have not gone through the conventional route of going to school, doing A-levels and then three years and then come out. They will be people who are re-training or who have decided to go straight into work and then decided, at a later stage, to study while they are working. The Diamond review, I very much hope, as its remit allows it, will address those types of issues. It would be very helpful to have a good sense of what the funding system or framework will be in Wales and then say, 'Okay, what legislation do we need to deliver that?' That would be helpful within a stable policy environment with an arm's-length funding body that has the powers it needs to make institutions accountable for their use of public money.

[168] **Bethan Jenkins:** So, you do not see a problem at the moment that this would be focused on full-time undergraduates and not even post-grad, part-time. You do not see that there is an issue.

[169] **Professor Riordan:** No, there potentially is, is what I was trying to say in a roundabout way.

[170] **Bethan Jenkins:** There is. Okay, I was not hearing that.

[171] **Mr Arnold:** If I can follow that up, it does raise some questions about how that might successfully tackle some of the potential situations in future. There is clearly provision to

bring in part-time to the Bill, but if it was brought in, it would have to be subject to fee limits as the Bill stands. If it is not brought into the Bill, then where is the duty to assess quality? That is removed, under the provisions of the Bill, from the Further and Higher Education Act 1992. HEFCW would cease to have a duty to assess the quality of the provision of the providers it funds; its duty would be for regulated institutions only, as things stands. So, yes, there are quite a few issues to work through on that at this stage.

[172] **Ann Jones:** We are out of time, but I will bring you in, Aled, and you, David. I do want to get to the financial management code as well, so we will extend the session. Go on, Aled.

[173] **Aled Roberts:** Ar ba sail yr ydych chi'n dweud hynny? Mae'r holl dystiolaeth rydym wedi'i derbyn hyd yn hyn yn dweud bod ansawdd o ran myfyrwyr rhan-amser yn rhan annatod o'r ddeddfwriaeth hon. Dyna'r dystiolaeth yr ydym wedi'i derbyn. Felly, ar ba sail yr ydych chi'n dweud bod y ddarpariaeth ar gyfer myfyrwyr rhan-amser yn cael ei thynnu allan o ran ansawdd?

Aled Roberts: On what basis do you say that? All the evidence that we have received to date suggests that quality in terms of part-time students is an integral part of this legislation. That is the evidence that we have received. So, on what basis do you say that the provision for part-time students is withdrawn in respect of quality?

[174] **Mr Arnold:** The amendments in the Bill remove reference to Wales in the relevant section of the Further and Higher Education Act, which establishes the duty of HEFCW in terms of assessing quality of provision in relation to funding providers. Instead, it establishes a new duty in respect of regulated institutions under the Bill. Subject to any other legislation, which there may be, it would be the position that the quality assurance duties that exist are only from HEFCW in respect of regulated institutions. More widely, it means that there is a question around the quality assurance in respect of institutions under the case-by-case designation process. How would that be ensured? That is the basis on which—

[175] **Ms Wilkinson:** We should be clear that we do not think that this is a purposeful situation; it is just the way it has been drafted, we suspect.

[176] **Aled Roberts:** A allwch chi roi nodyn inni ar hynny? Rydym wedi gofyn cwestiynau penodol ar hyn ac mae'r Llywodraeth a HEFCW wedi dweud nad dyna eu dehongliad nhw o'r sefyllfa. Mae hwn yn bwysig inni fel pwyllgor, os mai dyna yw eich dealltwriaeth chi o'r sefyllfa.

Aled Roberts: Could you provide us a note on that? We have asked specific questions on this issue and the Government and HEFCW have told us that that is not their interpretation of the situation. This is important for us as a committee, certainly if that is your understanding of the situation, at least.

[177] **David Rees:** I just have a couple of points—[*Inaudible.*]—so for the vast majority, part-time is actually covered. In relation to the other aspects of quality, I agree with you. Can I go onto quality assurance? It will be a quick one.

[178] **Ann Jones:** You need to be very quick.

[179] **David Rees:** I agree with most of the comments that you make in paragraph 21, to be honest, on quality assurance. I suppose it does cover some aspects of delivery outside Wales. How do you believe that it can be strengthened to ensure that all provision that is delivered or validated by institutions from Wales—in other words, it has a Welsh institution's name associated with it—is quality assured? How do we amend the Bill to ensure that? My concern is that provision outside Wales, part-time or full-time, is covered, to ensure that the reputation of your institutions is kept at the high standard that it should be.

[180] **Ms Wilkinson:** That is currently covered as part of the issue. Ben, you can deal with the technical bits of that.

[181] **Mr Arnold:** Yes, thank you for that; that is another issue that we raise in our paper. As drafted in the current Bill, the duty to assess quality would extend only to provision by Welsh-regulated institutions in Wales.

[182] **David Rees:** No, it mentions provision delivered partly outside Wales in section 2.

[183] **Mr Arnold:** I am paraphrasing, and probably not very accurately, but it is those that are substantially the same courses that you are running in Wales. They would be covered. If they are new courses, outside Wales, then that is another matter. We think that this is probably one of those unintended consequences. We understand from our discussions that it may be in part due to the legislative competence and issues about drafting regulations that apply beyond Wales. I am not qualified to advise on that, but what I would say is that the current Bill appears to provide that duty and quality assurance, whereas the new arrangement does not, at the moment.

10:45

[184] We would be worried about a situation where you are moving from a position where you are covered to one where you are not. So, it is a classic case of the institutions wanting more regulation in that respect. It is important that there is appropriate robust regulation in quality assurance areas.

[185] **Ann Jones:** We will now move on to the financial management code. I do not care how many more questions people have, because I want these questions asked. Keith will now ask a question.

[186] **Keith Davies:** Byddaf yn gofyn fy nghwestiwn yn Gymraeg.

Keith Davies: I will ask my question in Welsh.

[187] Ar y cod rheoli ariannol, a ydych chi'n credu bod y Bil yn rhoi digon o gyfle i ymgynghori ac i graffu ar y cod rheoli ariannol, achos yr hyn rydym wedi ei glywed hyd yma yw nad oes digon o graffu arno? Yr ail beth, sydd ynghlwm wrth y cod rheoli ariannol, yw: a oes pryderon gennych chi y bydd yn rhoi mwy o fiwrocratiaeth yn y system?

On the financial management code, do you think that the Bill contains sufficient provision for consultation on, and scrutiny of, the financial management code, because what we have heard to date is that there is not enough scrutiny of it? The second thing, related to the financial management code, is: do you have any concerns that it will increase bureaucracy in the system?

[188] **Professor Riordan:** On the first point, we do not think that there is enough scope for consultation. It is important for a smooth running system for the institutions to deal with the funding body, which is what we do, so that the discussions allow us to reach a sensible conclusion, whereas, it appears from the Bill, this will be a matter between the Minister, the Minister's department and HEFCW, without the involvement of the institutions, and I could see us ending up in a situation where we look at it and there are a number of things that are either unintentional—

[189] **Keith Davies:** That is not only relevant to the institutions, but for the committee as well.

[190] **Professor Riordan:** That is right. On the bureaucracy of that, I think that it will just

end up being an awful lot more work, because we will find that we will have to sort through things that are not working for us, or that will cause real genuine problems for students that will then need to be resolved, whereas you could do that informally and through other formal mechanisms if there was a proper consultation procedure in a formal position for the institutions in the development of that code.

[191] **Ms Wilkinson:** We are probably talking about some of the issues that we have already raised as applied to the code as well, including the fact that there is no indication that the code will be subject to protections of institutional academic autonomy or restricted to any financial scope. We have probably gone over those sorts of matters pretty well already. We are not clear where governance fits within the code either, and there is not much laid out in relation to that and in relation to the code, unlike the current arrangements.

[192] **Mr Arnold:** A more general point is that the protections that are in place are primarily procedural here, whereas it is the substantive issues and the scope of those powers that are of the primary concern.

[193] **Ann Jones:** Thank you very much for that. We have now exhausted all the questions. I will not even look at Members because I am sure that they will find others. So, thank you very much for coming this morning and for giving evidence. We have found that very helpful. We will send a copy of the transcript to you to check for accuracy. Also, I think that you said that you will provide us with a note in relation to a specific item. So, that will be great.

[194] We will now break until 11.00 a.m.

*Gohiriwyd y cyfarfod rhwng 10:49 ac 11:02.
The meeting adjourned between 10:49 and 11:02.*

Y Bil Addysg Uwch (Cymru)—Sesiwn Dystiolaeth 6 Higher Education (Wales) Bill—Evidence Session 6

[195] **Ann Jones:** Members, if you switched your mobile phones on during that break, can you make sure that they are switched off again? We are desperately behind time, so we will move on now.

[196] We are delighted to have Beth Button with us, who is the president of NUS Wales; Joni Alexander, who is the interim director of NUS Wales; and Kieron Rees, who is the policy and public affairs officer. You are all very welcome. Thank you very much for bearing with us being late. We have received your evidence and we have a set of questions, so if we could go straight into those, that would be very helpful. In the first instance, we are going to talk about the scope and purpose of the Bill, including the timescales, the case-by-case designation and powers to make subordinate legislation. Suzy is going to start us off and then Rebecca will come in.

[197] **Suzy Davies:** To speed things up, it is clear from your evidence that you think that there is a need for a Bill, so I will just ask you a couple of specific questions. What are the specific benefits that this Bill will provide for students, compared to the current regulatory framework? I refer, particularly, to your comments that existing fee plans are ‘toothless’. You might have heard HEW’s evidence a little earlier that it is nervous that, perhaps, the new regime will go too far. I just wondered what your observations were. Does the Bill need to be in the form that it is on fee and access plans?

[198] **Mr Rees:** In terms of the benefits to students, it is important to put the benefits in context. So, previously, the way that the Higher Education Funding Council for Wales had to

lever policy from institutions was focused around terms and conditions attached to funding. Since the change to the funding regime in 2012, the amount of money that HEFCW has been allocating has been diminishing and, as such, its ability to lever policy from institutions has also diminished. So, one of the key benefits that a new regulatory framework would have would be to re-enable HEFCW to utilise fee plans as a way of ensuring that priorities, such as widening access and part-time provision, are delivered.

[199] In terms of the effectiveness of fee plans themselves, when we describe them as ‘toothless’, it is because they are largely seen to be the nuclear option. If a fee plan for an institution was not approved, that institution would only be able to charge £4,000 in fees. Given that every higher education institution that provides full-time provision charges £9,000, such a move would essentially decimate the institution. I do not think that it is any secret to say that the chances of HEFCW ever using that power are practically nil, and there is a general awareness in the sector that HEFCW will never use that power. So, there are no other forms of sanction that could be used to ensure compliance with the measures in the fee plans. I think that what the Bill is attempting to do is to provide a series of sanctions ranging from the less onerous to the more powerful sanctions, as there are at the moment.

[200] **Ann Jones:** We were going to move on to fee plans, because we have a section on fee plans, but because we have touched on it early on, we might as well do that now, and then I will come back to you, Suzy, to finish off. So, we might as well get on with the fee plans questions.

[201] **Simon Thomas:** Byddaf yn gofyn yn Gymraeg. Mae’n amlwg mai dyma’r prif arf rheoleiddio yn y Bil. Rydych wedi disgrifio’r drefn bresennol fel un diddannedd; nid ydym ym maes Luis Suárez yn y fan hon, felly mae’n rhaid inni fod yn ofalus. [*Chwerthin.*] A ydych yn gweld bod y cynlluniau mynediad a ffioedd fel ag y maent wedi eu gosod yn y Bil yn rhai mwy pwerus? Rwy’n gwybod eich bod yn dweud nad yw’r opsiwn niwclear hwnnw ar gael, i bob pwrpas, ond a ydynt yn mynd y cam hwnnw ymhellach?

Simon Thomas: I am going to ask in Welsh. It is clear that this is the main regulatory tool in the Bill. You have described the current regime as being toothless; we are not discussing Luis Suárez here, so we have to be careful. [*Laughter.*] Do you think that the fee and access plans as they are currently set out in the Bill are more robust? I know that you say that that nuclear option is not available, to all intents and purposes, but do they go that extra step?

[202] **Mr Rees:** I think so. I will touch on some specific points. They are more robust in the sense that there are more sanctions available to enforce them—

[203] **Simon Thomas:** A tiered set of sanctions.

[204] **Mr Rees:** A tiered set of sanctions. However, one of our concerns, which I am sure we can touch on later, is that in section 13 of the Bill, there is vagueness around what those sanctions are or how they can be amended. In terms of whether the Bill, in other ways, makes fee plans more robust, we are slightly concerned, as we mentioned in our response, about the focus on activities rather than outcomes. When you look at the explanatory memorandum, it talks about things like summer school visits and outreach activities, which are great, but in and of themselves do not necessarily lead to widening access outcomes. I think that something that Beth would probably want to explore is how the fee plans work with the students union and the student voice, and how students input into that.

[205] **Ms Button:** Yes, it is a concern that we have raised before. Given the quick turnover of sabbatical officers or student representatives within the institutions, the fee plans can often be implemented way after the consultations have taken place with the student unions, and so the new ones are presented as what is occurring, as opposed to anyone asking, ‘What input

can you have?’ So, I think that our concerns around the fee plans are around how there can be meaningful student input when the timescales for the fee plans are so long.

[206] **Simon Thomas:** You say ‘so long’, but we have had different, conflicting bits of evidence there. HEFCW has told us that it is really three years before you can see the effect of a fee plan, while the Minister said that, initially, we will have them for two years, but we could go to five years. What happens now in terms of ongoing student involvement in the current plans, and what do you think could happen to strengthen the Bill to ensure that that student voice continues?

[207] **Ms Button:** In terms of current student input, there is consultation, but there is a difference between consultation and actual input. There is consultation with student unions, but how much the student unions are actually shaping what goes into the fee plans is unclear, from the feedback that we receive. I do not know if you want to touch on our thoughts about the potential viewpoint, Kieron.

[208] **Mr Rees:** Some of the challenges with fee plans, in terms of their timescales, are that they are one-year plans, but, to put that in perspective, the fee plans for 2015-16 have already been signed off—well over a year in advance. HEFCW is only now monitoring the 2012-13 fee plans and we are over a year out from their implementation. A key part of fee plans, as they currently stand, is around the targets that institutions have set themselves. Unfortunately, the way that the data reporting happens means that it takes time for those data to become available for the institutions’ performance to be assessed against their fee plan. So, again, you have the issue where, if you have a one-year fee plan, you are asking a students union to feed into the next year’s fee plan in April where there is no evidence to hand for the students union to make any kind of evaluation of how effective the fee plan has been. Longer fee plans do tackle a number of these problems, but what would have to be ensured through a longer fee plan is that there is a suitable opportunity throughout the life of the fee plan—if it was a three-year fee plan, through those three years—for the students union and the students to hold the institution to account on how well it is meeting its objectives and activities.

[209] **Ms Alexander:** I think that that, actually, also touches on the issues that we have with the vast differences within our students unions in Wales. You have very highly resourced unions in Cardiff and Swansea, and then you have very tiny students unions, such as the one at Glyndŵr University, which, quite frankly, could be facing a lot of challenges in the next few months. Its only resource is one sabbatical officer and two very low-on-the-ladder part-time staff, one of whom is not even going to be able to help tomorrow. So, that gives you a picture of how well-resourced unions are to have their say when these fee plans are being scrutinised and the consultation process goes on.

[210] **Ms Button:** It is also—

[211] **Ann Jones:** Suzy has a point. Sorry; you finish. Then, Suzy has a point on this point.

[212] **Ms Button:** I was going to say that it is also one of the reasons why we welcome greater regulatory powers from HEFCW in terms of the student voice, because it has a greater opportunity to influence the financing of the student voice within institutions, which, as you have seen with Glyndŵr University, is essential in order to enable a strong and active students union that is not shut off from what is occurring within the institution and has that lifeline then to HEFCW. With HEFCW having more levers to control the provision, these students are not going to be represented by a students union with one sabbatical officer and no funding. So, in terms of these fee plans, it also means that, when a students union is doing a consultation on fee plans, it also has the resource to be able to actually implement meaningfully.

[213] **Suzy Davies:** On that NUS capacity point, how do you assist students who are attending franchised courses, perhaps, in an FE institution, but under an HEI umbrella of some description, and on courses that may only be part time? Is there a particular problem there, do you think?

[214] **Mr Rees:** There are issues with franchised courses and how effective the student representation structures are—not just representation but access to services. The picture in further education institutions is very different in terms of what the established structures are for student representation and learner voice.

[215] **Suzy Davies:** So, their ability to feed into consultations on access plans, for example, is limited?

[216] **Ms Button:** It would be very limited.

[217] **Suzy Davies:** That is all that I needed to ask.

[218] **Ann Jones:** Do you have a question, Simon?

[219] **Simon Thomas:** Yes. A final point, really, would be just looking across what might be in fee and access plans, but also the other issues that are relevant to the student experience. So, you have the fee and access plans and a focus on equality, perhaps, and access in those terms, but you also have other issues that students will be interested in, such as the Welsh language, HE, STEM subjects and research, of course—we tend to focus on undergraduates, but there are other aspects there. How do you see the fee and access plans fitting into that range of issues in which you would want the student voice to be reflected, and what other regulatory tools do you think that HEFCW can bring to bear on this? You have already said, as other witnesses have told us, that a greater focus on outcomes would be more useful. Do you see that as something that HEFCW should carry across the range of the way that it regulates under the Bill?

[220] **Mr Rees:** Yes, I think that, for a lot of the things that you mentioned, there is scope within the fee plans to incorporate those measures. For example, Welsh-medium provision is, I would say, an issue of equality of opportunity. A lot of the issues around STEM subjects are around equality of opportunity—for example, the representation of women in STEM subjects and their progression into STEM careers.

[221] **Simon Thomas:** So, in a way, could the fee and access plans, if they were just slightly recast, focus on outcomes? Could they become the main regulatory tool for ensuring that the public good is preserved within the university structures? Is that too fanciful a way to view it?

[222] **Mr Rees:** I would argue so, if they were re-tooled so that their length would be appropriate, and so that the measures that they were required to include in the development of the plans were appropriate, along with a focus on outcomes. I think that they could be an effective tool. I do not think that they are at the minute.

11:15

[223] **Simon Thomas:** In that context, although the student voice in every institution would be important, it would be just as important to have a national student voice on the sort of HEFCW level designing the plans. Is that not the case?

[224] **Ms Button:** Yes, and we would ask that we have national representation from NUS on the HEFCW quality control committee. The student voice is paramount in all of this from

when we discussed the franchise courses in further education with regard to the way in which the FE students' voices are feeding in to the HE provision to the fee plans right through to our representation on a national level. So, I think that it should be a statutory requirement within the Bill that there is national representation on the committee.

[225] **Ann Jones:** Bethan is next.

[226] **Bethan Jenkins:** Just following on from Suzy's question, at the moment, in terms of consultations with students, is it referred to the sabbatical officers or does every students union have, say, an AGM to discuss content or to approve the current fee plans?

[227] **Ms Button:** Currently, it would probably fall within the remit—if it is a well-funded students union—of maybe the education officer or the president of the students union. From conversations we have had, I think there is limited opportunity to take the fee plans out to wider consultation with the student body. It is very often the case of being insular within the students union. If it is a well-funded students union, they may have staff support to help with that, but I think that the majority of students unions in Wales do not have a staff team behind the sabbatical officers to be giving them context and knowledge. Sabbatical officers start their term of office in the summer and are given the fee plans that have just been signed off by the previous team to work on with the institution for the following year, and it requires a high level of knowledge from sabbatical officers who, a lot of the time, are either coming straight from graduation or taking a year out of study and who are not going to be familiar with the nuances of the fee plan. So, where you do not have a strongly funded students union with that staff support base, you do not get that meaningful student voice because those student officers are expected to have a lot more knowledge than it is fair to expect of them.

[228] **Mr Rees:** When you look at the plans as they currently stand, there is huge variation from institution to institution, just in how often students are even mentioned throughout the plan. You can see, I would argue, in the text, the fee plans where students have had a significant input around some of the commitments. An example I always go back to is that Bangor, in its fee plan, through discussions with the students union, committed to making sports and activities free at the point of access because the union made an impassioned argument for the impact it has on wellbeing and retention. As a result of that, they had a fee plan commitment. Where I think sometimes things fall through the cracks at the minute is that there was a lot of student involvement for the first fee plan in 2012-13, but what I think we have seen since are very minor revisions to the fee plan. In one instance—I will not name the institution—it had forgotten to change the date in the new fee plan. It had just taken the existing fee plan to the students and said, 'Look, can you just sign this off?', and we do not think that that is a partnership approach.

[229] **Bethan Jenkins:** That is what I am asking about, really. In terms of any future change, you would want to make sure that there was fundamental consultation and that it would not be done piecemeal so that it can permeate throughout the system, as opposed to it being a few officers scrabbling around trying to put a few comments forward—[*Laughter.*] Judging from my past experience.

[230] **Ms Button:** We have taken great strides in the sector with commitments from the Government and institutions in terms of this idea of students as partners, and it is one of our core values. I think that we have had the commitment there, but what we need to do is move from a commitment to the rhetoric of students as partners to actually having it in practice and action. Having a greater commitment in the fee plans to engaging students right throughout the process would see that it is embedded and that it is more than just a consultation and more than just rhetoric so that students are active partners. This goes right from not just a statutory obligation on student involvement in the fee plans to ensuring that, where communication from HEFCW to the institution takes place, there is also communication with the students

union. I think that we saw this with Glyndŵr University yesterday, where the students union was not involved directly with decisions that were made externally. The students' guild was only informed of the situation with the Home Office when we spoke to it directly. The institution had not relayed that information, and that is not good enough in terms of the communication between institutions and their student representatives. So, I think that, if we want to talk about students as partners, we have an opportunity now to move beyond having it as just rhetoric to having a real commitment from the sector to embedding it in everything we do.

[231] **Bethan Jenkins:** This is my final question. I have asked most of the people who have given evidence about the Diamond review. Do you think that this is pre-empting changes that could be made long term, and that we will introduce this and then Diamond may come up with something strategically very different?

[232] **Ms Button:** Obviously, from NUS Wales's point of view, as opposed to my view as a Diamond review panel member, it is important to recognise that, so far, we have only had a context-setting session. So, it is very difficult to predict the outcomes of the review, or even the timescales. I think that any changes that we see from the Diamond review are, realistically, not going to be until 2020. We cannot predict the outcomes because we do not know what the setting in Westminster, or even here in the Assembly, will be. So, we are talking about longevity in terms of the impact that Diamond will have, and, inevitably, whatever the outcome, it may have an impact on this Bill. However, from our point of view, we feel that some regulation in the meantime is necessary and that the regulation that the Bill would provide is better than no regulation at all.

[233] **Mr Rees:** Essentially, although Diamond will report in 2016, as Beth said, the likely time frame for any implementation would probably be about 2020. So, you still have an intervening period of around four years.

[234] **Ann Jones:** Right. I knew that this would happen; we are still on Suzy's questions, but I have Keith, Aled and Simon, and then we are going to have to come back, because we are going to have to make some progress. I just thought that, because we were discussing fees plans, I would do it, but perhaps I should not have done it. I should have stuck to the original script.

[235] **Simon Thomas:** It is a lovely circle, and we have come back to it. [*Laughter.*]

[236] **Ann Jones:** Yes, we are just going around in circles. So, it is Keith next, and then we will move round.

[237] **Keith Davies:** Beth sy'n digwydd yn y colegau addysg bellach sy'n cynnig cyrsiau gradd ac yn y blaen cyn belled ag y mae'r cynlluniau yn y cwestiwn? **Keith Davies:** What happens in the FE colleges that provide degree courses as far as the fee and access plans are concerned?

[238] **Mr Rees:** It is such a varied set of arrangements, and I think that we have a couple of concerns, generally. It is our understanding that those FE colleges that provide directly-funded higher education currently would seek automatic designation, which would mean that they would have to adhere to the requirements, including fee and access plans. So, it does touch on one of our earlier points, namely that the unions are underdeveloped in further education. There is only one full-time sabbatical officer in the entirety of Wales in further education, so, we would be concerned about how effectively the students would be feeding into those fee and access plans.

[239] Similarly, where there is a validated course and the students in the further education

institution come under the regulated institution—the validator—we would have a twofold concern, essentially. One is how those students would access the services being provided for them in the fee and access plans. So, fee and access plans will include commitments to a variety of student services, but, just because of geographical distance, there will be a number of those services that students at a franchise provider will not be able to access, and there is an issue of fairness associated with that. Also—I think that this is something that Beth spoke about earlier—how do you insure that those franchise students in, for example, an FE college are feeding into the development of the fee plan and are having their voices heard, given that they are in what will likely be very small cohorts? So, it is about how you build into the consultation mechanisms the reach to those students, so that they do not feel isolated from what their peers are getting in terms of services and support.

[240] **Ms Button:** I think that that requires a wider conversation about how the learner voice in further education is funded and supported. The idea that there can simply be a consultation from the higher education institution to the franchised further education institution students that it represents to feed into the fee plans is very difficult, knowing the nature of the further education sector student voice—as we said, there is only one sabbatical officer. Where there are partners with higher education and further education institutions we have had conversations about how the learner voice structures may feed in and geographically, and also just given the very different nature of the courses and the students involved in those courses, it is very difficult to have structures that feed effectively back up to the higher education provider. You are requiring a sabbatical officer from the higher education institution to reach out to multiple campuses that do not have learner voice structures—they may have one student council member or one course representative whose job it would be to represent tens of thousands of students at the college—to try to gather their opinions. There needs to be a wider conversation about a commitment from the sector to funding the learner voice if we are going to move to a system where FE colleges move to being self-designated institutions.

[241] **Ann Jones:** I am moving round to this side of the table now, to Aled.

[242] **Aled Roberts:** Hoffwn ddatblygu'r pwynt o ran yr hyn sy'n digwydd yn y cyfamser, rhwng rŵan a diwedd adolygiad Diamond. Bu ichi ddweud bod angen y Bil oherwydd bod hynny'n well na pheidio â chael rheoleiddio o gwbl, ond, wrth gwrs, mae trefniadau rheoleiddio ar hyn o bryd. Pam ydych yn meddwl bod angen y Bil yn hytrach na newid y rheolau fel y maent yn awr, oherwydd yr ansicrwydd dros y bum mlynedd nesaf?

Aled Roberts: I just want to develop the point regarding what happens in the meantime, between now and the end of the Diamond review. You said that the Bill is necessary because that is better than not having any regulation whatsoever, but, of course, there are regulatory arrangements in place at present. Why do you think that this Bill is required, rather than simply changing the regulatory regime as it currently exists, because of this uncertainty over the next five years?

[243] **Mr Rees:** In terms of the need for the Bill, there are regulatory arrangements as it currently stands, but they do not actually provide the ability to regulate, as such. What you have is an engagement with processes, and, in many ways, that is almost done out of goodwill. To come back to my opening point, institutions know that HEFCW will never deny them the ability to charge £9,000 in fees as it would be too damaging to Wales's reputation as a higher education brand and it would be too damaging to Wales's economy. The specifics of this area are, I would imagine, for other organisations to comment on, particularly perhaps the funding council itself, but there are issues, we understand, with monitoring and fee plans at the minute that really do demonstrate the need for some further power.

[244] **Aled Roberts:** Fodd bynnag, **Aled Roberts:** However, that is a weakness

gwendid o ran trefniadau'r cyngor cyllido yw hynny, os ydych yn dweud bod problem ynglŷn â monitro'r cynlluniau hyn. Oni fyddai'n bosibl i ni neu'r Gweinidog gyflwyno sancsiynau o'r newydd fel rhan o'r rheoliadau yn hytrach na chyflwyno Bil?

with regard to the arrangements of the funding council, if you are saying that there is a problem in terms of monitoring these plans. Would it not be possible for us or the Minister to introduce sanctions anew as part of regulations rather than introducing a Bill?

[245] **Mr Rees:** It then comes down to what you are linking those sanctions with. Currently, legally, the only sanctions you can provide HEFCW with are associated with the terms and conditions of funding, of which there are not a great deal. So, there is not that much that it would be able to do with regard to deploying sanctions to support that.

[246] **Ann Jones:** Simon's question has been answered, so we will now go back on script and move on to Suzy's questions.

[247] **Suzy Davies:** I would like, very quickly, to extend and cover Keith's point. You dealt with the concerns about student protection and feeding in to the process for courses that stem, at least, from a regulated institution. However, what about non-regulated institutions and courses and the maybes—the case-by-case designations? I do not need a long answer on this, because there is a lot of uncertainty on this, is there not?

[248] **Ms Button:** I would waffle, so I will let you deal with this question, Keiron. *[Laughter.]*

[249] **Mr Rees:** We are really worried about the case-by-case regulation. It was our understanding during the technical consultation that this was going to be included in the framework. I think, if we are putting together a whole-system framework, then it should cover the whole system, and yet we are left with the explanatory memorandum saying that case by case will, essentially, be handled down the road. What particularly concerns us is proportionality. For example, the proportionality of quality assurance. For robust quality assurance, how can that be proportional? There is also the matter of the potential impact that opening up the case-by-case designation would have on automatically designated institutions in terms of the competition for profitable and lucrative courses.

[250] **Suzy Davies:** What sort of organisation can you imagine applying for a case-by-case designation? Is it just private colleges? I do not know.

[251] **Mr Rees:** We would imagine that there may be some colleges that would want to pursue it and some charities as well, particularly when you look at the lower level higher education courses, rather than full undergraduate degrees.

[252] **Suzy Davies:** Okay, thank you. I have one final question. You may have heard HEW's evidence a little earlier on. One of its concerns is that, shall we say, money that flows via HEFCW—the 25%, as it has identified it—may have conditions placed upon it through this Bill, which may affect money that comes in from other sources.

11:30

[253] What I have inferred from your evidence is that you quite welcome the idea that public money could be used for policy purposes beyond providing a course for individual students. First, do you have any concerns that too much money might be used for things like access, rather than on the provision of courses? Secondly, do you share HEW's concern that there might be some sort of bleed-through here because we do not have clarity within the Bill, and whether that matters?

[254] **Mr Rees:** In terms of whether there is a risk that too much of that money will be spent on widening access, you have to ensure that the institution is still able to deliver what it is required to deliver to meet those students' needs.

[255] **Ms Button:** On that, a lot of the work that we have done recently with our Imagine Education commission is around looking wider than just access and supporting students to get into institutions, but also how we support them when they are there. If we focus access just purely on widening access and getting students into an institution, we are forgetting things like retention and the support that institutions are putting in place to support those students while they are studying, whether that is giving extra financial support or even just the ability to provide the course that they are there to study.

[256] **Mr Rees:** In terms of the potential impact on other sources of funding, we are not best equipped to understand how universities' commercial dealings, for example, may be impacted by the Bill; that would be something that the institutions would be far better qualified to speak about. In principle, we see the fee grant as being public money—not student fees—which is essentially what it is. Compared with a few years ago, you have the same amount of money going to the same places, just by a different route. It is something that we mentioned in our submission on the Bill, namely that we believe that there should be, for example, the scope to include part-time student number targets in fee plans. We understand that there is an argument that says, 'Well, this is full-time students' fee money, why should we be using it to fund part-time study?', but our argument would be, 'No, it's public money, and part-time study is a crucial element in enabling people to access education'.

[257] **Suzy Davies:** That is very helpful; thank you.

[258] **Ann Jones:** Rebecca is next on the timescale of powers to make subordinate legislation.

[259] **Rebecca Evans:** The Minister said that he hoped to make available regulations ahead of Stage 2 scrutiny of the Bill. Would that go some way to allaying some of the concerns that you have given in your evidence about the extent of the regulation-making powers in the Bill?

[260] **Mr Rees:** I think that that timescale would help. There are logistical worries at the moment in the sense that the fee plan guidance for 2016-17 is probably to be published in March of next year. Perhaps you would have a case of HEFCW having to pre-empt what would be in regulations for its guidance, which would be a problematic situation. Early publication of regulations would allay a lot of fears with regard to the Bill, particularly as you would still have Stage 3. However, it also comes down to the difficulty with the regulations in the sense that the regulations may be perfectly adequate now, but the powers in terms of the procedure that subordinate legislation has to go through would mean that a lot of those regulations could probably be changed without appropriate scrutiny down the road.

[261] **Rebecca Evans:** Are there specific regulations that you would like to see subject to the affirmative process in the Assembly, or is it more of a general concern about the volume or the number of provisions?

[262] **Mr Rees:** I think there is a range. Some regulations, particularly in terms of what should be taken into account in the approval of fee plans, might be better placed with the funding council as an arm's-length body, rather than with Government. In terms of things such as what constitutes failure to comply and what powers to direct HEFCW will have, we think that that would benefit from the affirmative resolution procedure. There are also a couple of points in the Bill where it makes provision for primary legislation to be amended through the affirmative resolution procedure. We consider that to not be appropriate scrutiny for what would be amending primary legislation.

[263] **Ms Button:** On that, one thing we discussed is that one of our core values as an organisation is democracy. One of the dangers, when a democratic process is messed about, is that it could sacrifice transparency and accountability. As an organisation, we could not support something that goes against our values in that sense.

[264] **Mr Rees:** The purpose of this entire process is to ensure that the Bill gets due scrutiny. However, you have a potential situation down the road where the Act could be amended by subordinate legislation. It seems to be a strange constitutional arrangement.

[265] **Rebecca Evans:** Do you think that that could be part of future-proofing the Bill? You have already talked about the effect that Diamond could have on provision in future. Is it about striking a balance?

[266] **Mr Rees:** Potentially, but, in that case, you would at least want to use something like the superaffirmative procedure for when you have, for example, section 13, which is all about the powers that HEFCW has to make institutions do things. They are left to regulation, yet you can have the entire section changed by regulation. Although it is future-proofing it, you can future-proof it in a more robust way, I would argue.

[267] **Ann Jones:** We will move on to quality assurance and Aled has a couple of questions on this.

[268] **Aled Roberts:** A yw'r Bil yn cyflwyno unrhyw newidiadau a fyddai'n gwella ansawdd cyrsiau ar gyfer myfyrwyr? **Aled Roberts:** Does the Bill introduce any changes that will bring about improvements in the quality of courses for students?

[269] **Mr Rees:** I am not sure that 'improvements' would be the right word. Our understanding of the Act is that a lot of what it is seeking to achieve is to ensure that HEFCW is still in a position to have responsibility for quality assurance. The current institutional review procedures are very robust, but there is always scope for improvement. Our understanding of the Bill is that a lot of the statutory power that will be provided to HEFCW is about enabling HEFCW to discharge its quality assurance function without the terms and conditions of funding being its principal lever.

[270] **Aled Roberts:** Roedd tystiolaeth y cyngor cyllido yn awgrymu ei fod yn mynd i barhau â'r trefniadau presennol o ran y QAA. Roedd yn gweld bod ansawdd ar lefel Prydeinig yn rhoi rhyw fath o sicrwydd a bod hynny'n bwysig yn rhyngwladol. A ydych yn fodlon ar y trefniadau presennol o ran y QAA ac ansawdd cyrsiau ar gyfer myfyrwyr? **Aled Roberts:** The funding council's evidence suggested that it will continue with current arrangements in terms of the QAA. It saw that quality at a British level provides some sort of assurance and that that is important internationally. Are you content with the current arrangement in terms of the QAA and the quality of courses for students?

[271] **Ms Button:** Yes. I have not had this in my handover yet. *[Laughter.]*

[272] **Mr Rees:** We share an office with the QAA so—

[273] **Aled Roberts:** It is not the landlord.

[274] **Mr Rees:** No, we are. *[Laughter.]*

[275] **Ann Jones:** Well, there you are then.

[276] **Mr Rees:** We are involved with the current quality assurance committee; we feed

into that. There are issues. We have advocated for a long time for a shorter review cycle, for example, which would engage more students because six years means you can go through two full cohorts of undergraduates before you have an institutional review.

[277] **Ms Button:** On that, there are strides that it is making to listen to our feedback, in terms of doing annual student written submissions as opposed to simply the institutional review student written submissions. There are things that can always be improved, but I am confident that the relationship that we have with the QAA will enable that to happen.

[278] **Mr Rees:** We do not have any concerns about the quality assurance of current courses in Wales.

[279] **Aled Roberts:** Beth am y ffaith bod y Bil yn creu dwy haen o ran y cyrsiau sy'n cael eu rheoli o ran ansawdd gan y QAA drwy'r cyngor cyllido, a'r ffaith bod y cyrsiau rhan amser yn cael eu rheoli o ran ansawdd gan y cyngor cyllido ac nid yn uniongyrchol trwy amodau'r QAA? **Aled Roberts:** What about the fact that the Bill introduces a two-tiered arrangement for those courses that are quality assured by the QAA through the funding council, and the fact that the part-time courses are regulated in terms of quality by the funding council, not directly by the QAA?

[280] **Mr Rees:** I am not entirely clear about the relationship of part-time quality assurance. It was my understanding that a lot of part-time courses still have to be assured by the QAA through the service level agreement, and I understood that although part-time courses would not come under the quality assurance provisions of the Bill, because they still receive credit funding, the requirement to comply with quality assurance procedures would be through that. I know, for example, that the QAA has been involved in reviewing the quality of part-time provision or flexible provision, such as foundation degrees, on HEFCW's behalf. So, it is my understanding that that kind of approach would continue to take place.

[281] **Ann Jones:** Keith is next, on the financial management code.

[282] **Keith Davies:** Gofynnaf fy nghwestiwn yn Gymraeg hefyd. Rydym wedi trafod â sawl un sydd wedi dod i'r fan hon y cod rheoli ariannol. A ydych yn credu bod digon o gyfle wedi bod i ymgynghori ag ef ac wedyn i graffu arno hefyd? **Keith Davies:** I will ask my questions in Welsh as well. We have discussed the issue of the financial management code with many witnesses who have come here. Do you think that there has been sufficient opportunity to consult on the code and to scrutinise it?

[283] **Mr Rees:** I think that the financial management code is very much an area for HEFCW and the institutions. We understand that the Bill makes a range of provisions for consultation on the draft code and if the draft code and subsequent measures are not approved, our principal ask, in terms of the arrangements in the Bill around the financial code, would be to do with monitoring, particularly in terms of ensuring that student unions were informed of any difficulties that arose so that they could then best support the student body.

[284] **Ms Button:** Again, to use Glyndŵr—I feel like I have used it as an example a lot today—that is an example of where there was not that communication between the institution and the student union about the difficulties that had been going on there for a number of months. If HEFCW had had greater powers to be able to intervene earlier, and to communicate that with the student voice, more could have been done to support the student union in protecting the students' interests there.

[285] **Keith Davies:** Felly, yr hyn rydych chi'n ei ddweud yw y bydd y trefniadau **Keith Davies:** So, what you are telling me is that the new financial arrangements will

ariannol newydd hyn yn diogelu buddiannau safeguard the interests of students more
myfyrwyr yn well na'r sefyllfa bresennol. effectively than is the case at present.

[286] **Ms Button:** To be completely honest, this is not an area that I am completely confident to give an answer on right now, but if it is something that you would be interested to know our thoughts on, I would be more than happy to go away and have a look at it in a bit more detail, because I do not feel comfortable giving an answer right now. We can provide some evidence about that at a later date, if that is okay.

[287] **Keith Davies:** Diolch yn fawr. **Keith Davies:** Thank you very much.

[288] **Ann Jones:** That would be helpful.

[289] **Simon Thomas:** On that, I think that one of the reasons that you—if I can presume—might have said that is that we do not actually have the detail in the Bill of what this might look like. We know that it will only be prepared by HEFCW and the Government and simply laid before the Assembly. Do you feel that there should be more public scrutiny of the content before that happens?

[290] **Mr Rees:** Again, it comes down to our core values and we would expect that such a code might be consulted on with the sector.

[291] **Simon Thomas:** However, I do not think that that is explicitly laid out in the Bill as it is now, is it?

[292] **Mr Rees:** It may be that I have misread the Bill, but it is my understanding that there is a requirement to consult, but I might not have—

[293] **Simon Thomas:** To consult with yourselves; yes, but does that include consulting specifically with students?

[294] **Mr Rees:** No, that does not include consulting specifically with students. That is something that we would advocate.

[295] **Aled Roberts:** Higher Education Wales has indicated that there may very well be a draft financial code published in July and that that would be open to consultation. Have you been involved in any discussions with regard to the content of the draft code, given that we are a few weeks away?

[296] **Mr Rees:** We have not been involved in any discussions on the draft code.

[297] **Ann Jones:** Are Members content? I see that you are. Thank you very much.

[298] **Ms Button:** Oh, okay [*Laughter.*]

[299] **Ann Jones:** That was a bit of a surprise. Thank you. We have exhausted all of our questions, unless Members have any others; I am always nervous saying that. We will send you a copy of the transcript to check for accuracy, so that we do not put anything that you have not said on public record. Thank you for bearing with us with the late start. We appreciate what you have done; it has been helpful.

[300] **Ms Button:** Thank you for having us.

11:45

**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**

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

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

[302] Is the committee happy to go into private session under Standing Order 17.42? I see that you are.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:45.
The public part of the meeting ended at 11:45.*