



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

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

Dydd Mercher, 9 Gorffennaf 2014
Wednesday, 9 July 2014

Cynnwys **Contents**

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

Y Bil Addysg Uwch (Cymru)—Sesiwn Dystiolaeth 7
Higher Education (Wales) Bill Evidence Session 7

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

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

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

**Eraill yn bresennol
Others in attendance**

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

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

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| Sarah Bartlett | Dirprwy Glerc Deputy Clerk |
| Gwyn Griffiths | Uwch-gynghorydd Cyfreithiol Senior Legal Adviser |
| Gareth Rogers | Clerc Clerk |
| Anne Thomas | Y Gwasanaeth Ymchwil Research Service |

*Dechreuodd y cyfarfod am 09:31.
The meeting began at 09:31.*

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

[1] **Ann Jones:** Welcome to the Children, Young People and Education Committee. I will do the usual housekeeping. Switch your mobile phones off if they are on; I have been told that they do not affect the broadcasting and the translation, but I would be annoyed if they started ringing in the middle of the meeting, and you would not want that, I am sure. We have headphones for translation from Welsh to English, on channel 1, and the floor language is on channel 0, should you need it for amplification. We have had apologies from Angela Burns and Rebecca Evans and, at this point, I think that we should thank Rebecca Evans for

all the work that she has done on this committee. She has been on the committee since the beginning—

[2] **Simon Thomas:** Has she gone already? These things happen so quickly.

[3] **Ann Jones:** Yes, these things do happen quickly; once you are elevated to the fifth floor, I think that is it. So, we place on record our thanks to Rebecca for her work on the committee.

09:32

Y Bil Addysg Uwch (Cymru)—Sesiwn Dystiolaeth 7 Higher Education (Wales) Bill—Evidence Session 7

[4] **Ann Jones:** We will move on to the last evidence session on the Higher Education (Wales) Bill. As is custom and practice, we have the Minister with us. Welcome, Minister. Would you like to introduce your team?

[5] **The Minister for Education and Skills (Huw Lewis):** Neil Surman is on my left and Grace Martins is on my right.

[6] **Ann Jones:** We have had some substantive papers from you for this evidence session. So, thank you for that. We have about an hour, and we have quite a few questions. So, we will see how it goes, but I might start chivvying you along a bit—all of you. We will start with the scope of the Bill. Suzy, you have some questions on that.

[7] **Suzy Davies:** You have explained in previous evidence, Minister, that you think that this Bill is necessary. How do you respond to Cardiff Metropolitan University's comment that the legislation is being rushed at the expense of getting it right?

[8] **Huw Lewis:** I think that that is an ill-informed comment. There is a clear need for this piece of legislation at this point in time. We have a period now, between this year and the likely implementation of whatever Sir Ian Diamond comes up with, in terms of a revamped student support system and a financial picture around HE, which might not be implementable until 2020 or so. Within that period of time, we have this hiatus, where the traditional means by which the public good was guaranteed through the Higher Education Funding Council for Wales's terms and conditions of grant machinery could not apply, or have the same traction, as it used to, because money flows in a different way through student support to ensure that public good, to ensure that students can be reassured that their institutions are of best quality and are regulated well and to ensure the best reputation possible for Welsh higher education institutions. I think that now is the time to act in order to make sure that we have a new regulatory framework around Welsh higher education to ensure that Cardiff Met and all the others are unimpeachable in terms of the quality and reputation that they can present to the world.

[9] **Suzy Davies:** Of course, this is—you mentioned the word yourself there—a hiatus. We have a period of uncertainty pending the Diamond review, and it has been suggested to this committee, even by those who think that a Bill is useful, that there is still a possibility on a voluntary basis to use the means by which you hope to retain a level of control for the public good—for good reasons—and that there is a genuine opportunity to use that sort of goodwill and voluntary offer to work in the way that you would hope the Bill would work during that period, rather than rushing the Bill through. That is, a longer implementation period. Do you think that there is merit in that?

[10] **Huw Lewis:** I assume that you are alluding to the idea of voluntary agreements and

so on—

[11] **Suzy Davies:** Yes, temporary.

[12] **Huw Lewis:** Yes, but there is temporary and there is temporary. We could be talking about some passage of academic years here. Ian Diamond will be reporting in 2016, so it will be a new Government that will take a look at what Professor Ian Diamond is saying. So, there will be a considerable passage of time between the report of the Diamond review and the implementation of whatever that future Government might want to do with that review. Voluntary agreements are all very well, and goodwill is good, but we have to be very mindful of the fact that there are large sums of public money being channelled through student support. We have to act as custodians of that as well as being custodians of the stability and reputation of the system as a whole. I believe that regulation as well as goodwill is the surest means by which we get to that happy conclusion. There are very unpredictable things going on in the world of higher education at the moment. This is not just the reassuring picture of the old large eight HEIs in Wales as we know and love them. There are all kinds of developments now in terms of what HE might look like in Wales and across the UK over the next few years. There are all sorts of new entrants. There are all sorts of questions around online delivery of courses. There are private providers in numbers that are unprecedented. It is a volatile and competitive sphere, and we need to make sure that, in Wales, we have all the tools necessary to make sure that no part of that system can be called into question in terms of quality and in terms of the best use of public money.

[13] **Suzy Davies:** Well, as you say, it is a competitive and possibly volatile arena that we are working in, which involves not just the usual suspects, if you like, but potential new entrants to the market. Many of them have given evidence to this committee about their concerns about the timing of the Bill. Bearing in mind that you will have heard that evidence, do you think that there might be any key milestones that need to be met for the Bill that have not yet been met and that might give you some sort of concern for your timetable at the moment for full implementation in 2016-17? How on track are you?

[14] **Huw Lewis:** We are on track. We will be talking, of course, about a phased implementation of the new regulatory system. The intention is that, in 2015-16, we will have a transitional year in which only certain of the regulatory controls will actually apply, and then we are heading for full implementation come 2016-17. There are tight aspects to this timetable, but it is absolutely manageable in terms of our business here and the effect on HEFCW and our HE partners.

[15] **Suzy Davies:** In terms of the transitional period—it is a good example, actually—part of it will have to be managed via secondary regulation. I appreciate that you have said that this is not a framework Bill, but others have different view on that. You have given us some written evidence, which I need to take some time to digest, I think, before we get to the next stage of this.

[16] However, perhaps I can just use one example that illustrates concerns that people have about some holes in this Bill that are important pieces of legislation that are not on the face of the Bill but have been left to regulation. I want to use one example from the written evidence that you have given to us. In the Constitutional and Legislative Affairs Committee, we raised a concern about section 2(4) by which the Minister has the power to introduce regulations about how to apply for approval of a fee plan. In that committee, we challenged whether that was a permissive power or an enabling power, on the basis that if you did not bring in those regulations, the Bill would become unworkable because no-one would know how to make an application for approval of a fee plan. You dealt with that in your written response to us, stating that, at the moment, there are no regulations that tell HEFCW how to deal with the approvals of fee plans. However, in your written response you do refer to the

fact that HEFCW can issue guidance and that the matters to which you must give consideration in issuing guidance are governed by section 34 of the Higher Education Act. Of course, the Higher Education Act 2004 is itself a statute. That power is on the face of that statute. While, in the response that you have given to this committee about secondary legislation, you have given us indication of the Counsel General's guidance to you, you have not mentioned the Counsel General's guidance on consolidation of legislation. I think that it would be helpful if you could give us an explanation as to why it is okay to refer to UK legislation about what HEFCW can do at the moment, but you are not prepared to use this Bill to be clear about what HEFCW can do from now on. I am just wondering whether you are missing an opportunity here to put into Welsh legislation more information about the functions and responsibilities of HEFCW.

[17] **Huw Lewis:** Yes. I think that I will hand over to Grace on this. [*Laughter.*]

[18] **Ms Martins:** I am really quite confused. Perhaps the letter—

[19] **Suzy Davies:** I am trying to summarise it, but it is difficult.

[20] **Ms Martins:** Section 34 does not contain the content of the guidance; it is a power for HEFCW to issue guidance. It is not set out in the 2004 Act. The content of the guidance is not—

[21] **Suzy Davies:** No, but it is a duty to HEFCW, is it not?

[22] **Ms Martins:** Yes.

[23] **Suzy Davies:** It is not a power. This is the distinction that we have been trying to make with this Bill all along. There are certain things where it is not clear in the legislation at the moment about what a Minister needs to do and what he or she may do in order to get the Bill to work.

[24] **Ms Martins:** Right. I think that this is a question of why—

[25] **Suzy Davies:** This does feed to the scope of this Bill.

[26] **Ms Martins:** We are talking about different things with legislation and guidance. The Ministers, mostly, in the Bill have a power to make legislation. When we are talking about outside bodies, if you want them to do something, or if you feel that it is quite important or essential that that body does something, you have to make it do it. You cannot leave it to its discretion.

[27] **Suzy Davies:** Perfect. You have just proven my point. Why is there not something in this Bill stating that HEFCW must do certain things—that it must issue guidance, for example? Then there is the question about whether Ministers must or may introduce subsequent regulations that affect that guidance. You need some clarity about what they have to do to make the Bill work and what they may do in order to improve the Bill as implementation goes on.

[28] **Ann Jones:** Would it help if you were to go—. Unless you—

[29] **Suzy Davies:** I certainly do not want to use a lot of the time on it, but it is an important point.

[30] **Ann Jones:** No. If you have an answer to it, that is fine, but if not, we would take a note, but we would want to know fairly quickly in order to do key issues.

[31] **Mr Surman:** Yes, of course. I can attempt an answer. It is very clear that we do not need to specify the process through which an application is made in order for applications to be made.

[32] **Suzy Davies:** May I then ask you, before you move on, why you would need to reserve any kind of powers at all in order to influence where that might work in future?

[33] **Mr Surman:** That is because it might be helpful—

[34] **Suzy Davies:** If it would be helpful, it would be helpful now.

[35] **Mr Surman:** It is not true that, without those regulations, an applicant could not apply to HEFCW for approval of a fee plan. They could do so by letter or e-mail. It might go to HEFCW and simply say, ‘We want to be automatically designated for Welsh student finance going forward. How do we go about that?’. HEFCW might reply simply by means of saying, ‘You will need a fee and access plan approved by us’. There might be, therefore, some correspondence between them about what a fee and access plan looks like. HEFCW would give guidance as to what it expects to see in a fee and access plan. By that process, approval would or would not be given. So, the facility exists for an application to be made however it is made. It may, however, be helpful to that process, and there might be a process of learning involved here, at some point to regulate so that there is consistency in that approach. However, it is not reliant upon regulations made by Ministers for an applicant to be able to access that facility through HEFCW.

09:45

[36] **Suzy Davies:** That still does not deal with the issue of HEFCW having some sort of level of discretion at the moment about how it issues guidance.

[37] **Mr Surman:** That is true, but I think your initial question, or your assertion, was that without regulations of this sort, applicants would not be able to apply to HEFCW, but—

[38] **Suzy Davies:** That was my original challenge some time ago, but now I am saying, ‘Well, you are saying the reverse—.’ I do not know how much time you are allowed to give me on this, Chair—.

[39] **Ann Jones:** I am not now, because I am totally confused. You have totally confused me. I thought that I had it quite clear at one point, but I am totally confused now, so—

[40] **Suzy Davies:** Because I am challenging your response, so, how do I do that?

[41] **Ann Jones:** Simon wants to come in as well, but I think that if we have a note from the Minister on this, we will then take some legal advice on the note and will sit and talk to—

[42] **Suzy Davies:** Okay. May I speak to Gwyn before that, so that you know the question that I am asking?

[43] **Ann Jones:** Yes, we will do that, but I just think that we are going backwards and forwards and now I am confused—.

[44] **Suzy Davies:** I appreciate your time.

[45] **Ann Jones:** I am not sure that we are going to get much out of it at this stage. I think there are some points that we need to put to you, Minister, quite specifically, and I think if we

put them in and get a note back and then it is a public—

[46] **Huw Lewis:** Of course, Chair.

[47] **Suzy Davies:** Okay, well, it just speaks to the necessity of parts of the Bill, so I will not take it any further.

[48] **Ann Jones:** Yes. Simon, you wanted to come in.

[49] **Simon Thomas:** Yes. Leaving that aside for the moment—I understand that we will get further information on that—I am interested now in what the practical implication of this will be. My concern is that a well prepared institution will plan its recruitment in two years' time now. It is now thinking about where it needs to go in terms of recruitment fairs and getting it out there and meeting potential sixth formers and so forth. It is doing it now. However, it does not know now—whatever the issue that Suzy referred to—what the fee and access plan that it might be required to have will include. There are existing kinds of tuition fee plans, so there is a kind of basis there, but we do not have the regulations, as Suzy said, so it is not clear what that might be. Therefore, how can we be assured that the transitional arrangements will not prove to be a real hiccup in the process, with institutions finding it unclear as to what HEFCW is expecting and that affecting their recruitment?

[50] **Huw Lewis:** That is a fair question. Hence the need for a transitional period, so that everyone can get their heads around the new system and understand it as best they can. Hence also the need throughout this process for constant three-way communication between us, HEFCW and the HEIs concerned. It is important to grasp that.

[51] Much of what this Bill enables is a maintenance of the current way of working between HEFCW and the HEIs. In other words, the intention is that there would be very few shocks to the system. One of the things that I hope will become much more concrete and hard-edged, if you like, is the issue around fair access to higher education, which, at the moment, is incentivised through HEFCW handing out extra money to universities in order to get them to be enthusiastic partners in terms of that work. The new system will engage the HEIs in having to make that part of their core mission and to evidence that. That is a bit of a leap. My intention is that that makes the whole process of the implementation of fair access initiatives much more concrete and much more systematic in terms of the way that HEIs work. However, essentially, they are expected to be doing that stuff now.

[52] **Simon Thomas:** But, as you say, it is a bit of a leap for some of them, at least. So, can that really be done in three years?

[53] **Huw Lewis:** Oh gosh, I believe so.

[54] **Ms Martins:** May I help a little with the more technical side of the plans? The system will not be fully implemented straight away. Next year, only certain elements will apply: it will be fee limits and quality monitoring. The institutions—the Bill makes provision for this in the Schedule—will be operating under their current plans, which were approved previously, so that is how they will go, and then in the autumn, as the Minister has indicated, we are hoping to have all the draft legislation to deal with the next stage, for the contents of the plans, the duration of the plans, what HEFCW will take into account in approving them and all of that, to come before committee in draft. We will, of course, go through the normal process of consultation late in the winter and we are hoping to have all the regulations in place that will inform the new fee and access plans, and everything that the institutions need to know to operate under the new system. The subordinate legislation should be made as soon as possible after the Bill gets Royal Assent, which will be in late spring. So, the institutions will know in late spring what they will have to be doing for the following academic year and

what to put in their fee plans. That is the technical plan for it. So, we think that we are giving enough time. It is very tight—

[55] **Simon Thomas:** I was going to say that I accept that that, as HEFCW said, is doable, but tight.

[56] **Ms Martins:** Yes, it is very tight. We will all be chained to our desks.

[57] **Simon Thomas:** I am only interested in the institutions today, I am sorry, not your work. [*Laughter.*] My original question was about, if it is spring and it is the following academic year, there are a lot of things that institutions will have in train that this could potentially cut across. How will you make sure that the dialogue around that will not significantly affect an income stream that an institution may have been looking at and which will now be affected by a fee and access plan?

[58] **Huw Lewis:** I cannot see how good dialogue would adversely affect an income stream. Neil, do you want to come in?

[59] **Mr Surman:** I will add to what Grace said. There will be guidance from us to HEFCW and from HEFCW to the institutions as to how to go about this process. We have recognised in planning for implementation in 2016-17 that we probably need to allow a little longer timescale for applications for fee plans for that first year. For the current publicly funded institutions that already have fee plans in place, it will largely be a continuation of current business, so there ought not to be a significant shift for them, either in terms of HEFCW's expectations or the work required to draw up fee plans. They may, however, be submitting those to a slightly more relaxed timescale than they have in previous years. It will not be a very much more relaxed time frame, but they will have a little longer to do that than they would otherwise, supported by guidance, as I say, from us to HEFCW and from HEFCW to the sector. For new entrants, there should be scope, and we do not imagine that there will be many of them, frankly, in the first year of the new system. For those entering the automatic designation route via these means, it will require a significant degree of work on their part. The chances of seeing many new applicants in 2016-17 are pretty slim.

[60] **Ann Jones:** Aled, do you have a point?

[61] **Aled Roberts:** Yes. I suppose that what we are trying to tie down here is that the levers will probably continue with regard to fee limits and quality for the coming year, and you are then talking about secondary legislation being in place in late spring of 2015. Following on from Simon's point earlier, to all intents and purposes that means that the public policy issues that you say are the drivers for this legislation for the 2015-16 year, given that all the recruitment will be based under the old system, the suspicion that we have is that those public policy drivers and the levers that you have will not be in place until 2016-17 academic year, by which time, the Diamond review may have reshaped the system that you are trying to eke out as much—.

[62] **Huw Lewis:** We are not eking anything out. I do not have any overarching worry about what the Diamond review may deliver in terms of this Bill. Essentially, the core elements of this Bill are to maintain traction with the higher education community in much the same way that strategic public priorities are met at the moment through the terms and conditions of grants that HEFCW uses. Essentially, the Bill is largely about continuity. Sir Ian Diamond has been asked to take a step back and take a long hard look and a universal view of the overall financial stability and fairness of the system going forward, considering that that system is in a global context of change. I cannot envisage that Professor Sir Ian Diamond will come up with proposals that would make this piece of legislation in any way unnecessary. I find it difficult to imagine ways in which it could be made incomplete. We are talking about

bare bones here about what the public should expect from its investment in higher education. It is about good regulation that carries on regardless of what Sir Ian Diamond says. It is about quality, which would carry on regardless of what Sir Ian Diamond says.

[63] So, I do not see that the two things are in any way contradictory. Although the timetables are tight, they are deliverable and they are doable, and hard work never hurt anyone, in my view, in terms of what the Government needs to do and in terms of what the sector needs to do as well. If I could, Chair, this Bill is not—. It is not my sole concern within this Bill to be continually reassuring higher education in Wales. It is a key partner and key stakeholder, but there are others—there are the students and there is the public. To my mind, it is this tripartite picture of stakeholding within this system; there is not one of those partners whose needs and concerns necessarily outweigh all of the others.

[64] **Ann Jones:** Aled wants to come back on this point. Did anybody else want to come in on this point before we move on? We will have Aled first and then Suzy.

[65] **Aled Roberts:** Mae Undeb Cenedlaethol y Myfyrwyr wedi dweud ei fod yn rhannu peth o'r feirniadaeth o ran faint o'r pwerau yma sy'n ymwneud â rheoleiddio yn hytrach na—. Mae'n dweud ei fod yn meddwl bod y cydbwysedd yn anghywir a bod ganddo bryderon ynglŷn â hynny. Rwy'n deall eich bod yn dweud mai nid dim ond edrych ar ôl y sefydliadau addysg uwch ydych chi, a bod rhanddeiliaid eraill yma, ond maen nhw hefyd yn rhannu rhai o'r pryderon rydym ni'n eu mynegi y bore yma.

Aled Roberts: The National Union of Students has said that it shares some of the criticism in terms of how many of these powers are to do with regulation rather than—. It says that it believes that the balance is wrong and that it has concerns about that. I understand that you say that you are not just looking after the higher education institutions, and that there are other stakeholders here, but they also share some of the concerns that we are expressing this morning.

[66] **Huw Lewis:** I have to say, Chair, that I am not entirely familiar with what the NUS said on that particular point. Do you want to add anything, Neil?

[67] **Mr Surman:** I am not familiar with the NUS evidence. The NUS has been very clear in its support for the principle and the need for legislation. There is always a question about the appropriate balance to be struck between what is on the face of the primary legislation and what falls to subordinate legislation. Clearly, that is a particular concern and interest, both of this committee and of the Constitutional and Legislative Affairs Committee. I think that this is exactly the sort of debate that we need to have around any piece of legislation, not just this Bill, and there will be different perspectives on that. Our position from Government is that we have sought to strike the right balance. Others may take a different view as to what that balance is. There are, however, timing difficulties potentially, in the sense that the more that we put on the face of the Bill—thinking about a 2016-17 implementation, and the risks around that—that requires regulations and detailed forms of regulations to be made, particularly those that are then to be subject to affirmative procedure, the more of a time impact there will be, which might impact on the overall implementation of this Bill, assuming that it receives the Assembly's assent in due course. So, there are all sorts of issues around this, and it is a matter, I think, that will probably be debated at some length as the Bill continues its process.

[68] **Ann Jones:** Right; we are going to move on. We are halfway through the session and we have had three questions, so we need to make some progress. Suzy, do you want to finish your section off on the scope, purpose and timescale?

[69] **Suzy Davies:** Yes. Going back to your point, Minister, about confidence for students and for the public, I wonder how the Bill in its current form can give that confidence to

students and the public, when it is unclear about how new entrants into the market might be treated under this Bill. I am talking about the provisions for the case-by-case entrants and whether there are any questions about whether they might be treated differently from the existing institutions, or the automatically designated institutions.

[70] **Huw Lewis:** I am not sure whether I would accept the idea that it is unclear how new entrants might be treated. I intend to consult on the proposals for case-by-case course designation later on in the year. What that needs to contain are robust requirements for quality assurance, of course, and the financial health of those providers. Entrance to the regulated HE sector in Wales has always been, and will always continue to be, voluntary, so we know how that stuff works, and I will be consulting, as I say, on the regulations around new entrants later on in the year. There will not be any black magic associated with this. It will be about quality assurance in terms of the courses and in terms of the financial health of the providers. We can all see, in terms of the volatility of the sector, that this is most particularly something that, at the moment, does not necessarily impact upon Wales that much, but we can certainly see in London, and the south-east of England, an explosion in terms of the variation of providers that could conceivably be out there, and there could, conceivably, be issues that we have to contend with very soon, and we have to be ready for that. As I say, Chair, we will consult later on in the year in terms of those proposals.

10:00

[71] **Suzy Davies:** Well, you anticipate this Bill having some longevity, so the scope for new people coming into the sector is probably greater than we think now, I suppose.

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

[73] **Suzy Davies:** But do you anticipate any significant difference between the rules that would apply to those new entrants, and those that we already know about under automatic designation? I am just curious as to why they are treated differently, that is all.

[74] **Huw Lewis:** Well, I mean, they will be treated differently, because they will not have opted to voluntarily join the mainstream HE family, if you like. That may well be all to the good in terms of what is on offer to potential students across the country. I mean, there is an essential difference in that, if an institution is going for case-by-case designation, then the student support regime around that institution would be different. We are talking only about a £6,000 loan being available to potential students for an institution like that. So, in other words, joining the mainstream, if you like, in terms of the HE family in Wales—the fee and access plan, and signing up to all that—gets you into the full consideration of regulation, and student support, that the Welsh Government is offering. Case-by-case designation does differ in that regard, but, then again, this is nothing new. Do you want to come in on this issue, Grace?

[75] **Ms Martins:** I think that, perhaps, we are conflating two things. I am not sure whether I understood your question as to how new entrants will be treated. Case-by-case designation and automatic designation are not dealt with in primary legislation now, and they are not dealt with in the Bill. It is a completely different system. That is all under student support regulations. That is about access to student support. So, at the moment, if you are a publicly funded institution—so, basically, if you are funded as you were in the past, mostly by HEFCW—then all your courses are automatically designated, which means that students are able to get student support to study those courses without any further issue.

[76] Case-by-case designation is also dealt with by regulations, and they are regulations that you make under the same enabling power, and you decide what you have to do to be able for one of your courses to be designated. This is completely over-simplifying it, but it is an

undergraduate HE course, which is full time. That is how you get your course designated, if you are not an automatically—. So, if you are a private institution, or an institution that is not funded by HEFCW, that is what you would have to do to have your course designated. For example, some ballet courses, in private schools in London, affect very few students. You could have a lot of courses designated on a case-by-case basis, but, actually, very few students are affected.

[77] So, that is the process, and that is completely separate from the Bill. This Bill does not deal with that, because that is student support legislation. It is just the way that you identify the courses that students are able to get student support to study.

[78] **Suzy Davies:** It still does not explain why there is a difference, though.

[79] **Ms Martins:** Well, there should not—. As far as I know—and this is a policy thing—I do not think that there will be a difference. So, for example, for your courses to be automatically designated, instead of the regulations saying that you have to be funded by HEFCW—publicly funded—it will say that you have to have an approved fee and access plan. So, then, if you have one of those, all of your courses are designated. If an institution has chosen not to have a fee and access plan, it will apply to have its courses designated so that students can get student support, and it will be the same—it will probably say, ‘Yes, if your course is a HE course and is at an undergraduate level and is full time’. I really do not know; please do not take this as if I am stating the policy, but, at the moment, that is pretty much what it boils down to, and, as far as we know, there are no intentions of changing this massively. So, there will be no big difference, and it will still be dealt with in the way that it is dealt with at the moment.

[80] However, in terms of new entrants and the regulated system, which will give you access to the automatic designation, it will be the same: you will have to be an institution providing HE in Wales, and you will have to be charitable. Everyone will have to fulfil those criteria, whether they are new or old institutions, so that they can enter the regulated system. So, they are all treated the same—if that was your question.

[81] **Suzy Davies:** I will not take that on.

[82] **Ann Jones:** No. We have to make some progress. We have 20 minutes left to cover about seven sections.

[83] **Suzy Davies:** I will just ask you something very straightforward then, and a one-sentence answer will do on this one. Some concern has been expressed about the Henry VIII powers involved in the Bill. You have already made representations on this, but, of course, we have had evidence subsequent to that, which I am sure that you have seen. Have you got anything to add to what you have already said about that?

[84] **Huw Lewis:** I think that we have spelled out, both in terms of verbal responses and through the letters that the committee has received from me, the basis of this stuff. The Henry VIII powers are very contained and very specific. I know that they tend to provoke among some commentators a huge amount of suspicion, but I do not consider them to be in any way novel or controversial powers and they are technically necessary to ensure that the legislation actually works.

[85] **Ann Jones:** We will now move on to the impact of HEFCW and higher education institutions. David is first and then Aled.

[86] **David Rees:** I will not take that long, Chair, given that some of my questions have already been answered through the various answers from the Minister. A couple of points

have been raised about the capacity of HEFCW to be able to deliver to the timescale, particularly given that we have already identified that time is tight. The Welsh Government is funding HEFCW, so the question is: does it have sufficient capacity and resources to meet your expectations from this Bill, particularly in the timescales that it has been given? If you answer that first, I will then come back to my other points.

[87] **Huw Lewis:** ‘Yes’ is the short answer.

[88] **David Rees:** I knew that that would be your answer. [*Laughter.*]

[89] **Huw Lewis:** HEFCW has the capacity at the moment to be doing this sort of work through the terms and conditions of grant. What is being asked of HEFCW is that it does the same work but through a regulatory framework instead. So, the context in which it is working will change, but the work itself should be of roughly the same quantum and of the same degree of difficulty and all the rest of that. So, I do not anticipate that HEFCW will suffer any serious shocks to the system in terms of what is being demanded of it.

[90] **David Rees:** I have two quick points. The chairs of Higher Education Wales have highlighted their concern about the academic freedom of the individuals and the autonomy of institutions and the Learned Society of Wales has also talked about the micromanagement of the institutions. Will you put anything into either the Bill or the explanatory memorandum to clearly ensure and reassure them that they are not to be affected in any way whatsoever? Linked to that, I also want to know about the part-time aspect. We talked about it before. The answer that you have given in your written response indicates that you see that the institutions that are part-time only at this present time will continue to operate under the current scheme because they will be funded by HEFCW and they should transfer once that part-time aspect becomes a part of the regulatory process. Why did you not take the opportunity in this Bill to put that into action and have it totally covered, so that there is no split, in a sense, on part-time provision, given that part-time provision by a regulated institution will be covered by this Bill, but there will be one or two institutions that will not be? Surely it would have been common sense to do some work to ensure that all part-time provision was covered. Why did you not take that opportunity?

[91] **Huw Lewis:** On your first question, there is absolutely nothing in this Bill that interferes in any way—with any jot or comma—with the academic freedom of universities. Quite where anyone would get that idea is puzzlement to me. There is no repeal here of the basic legislation around the restrictions on Ministers in terms of what they can impose on universities. I cannot tell a university, ‘Thou shalt teach a particular course’, or anything like that. Those restrictions are still enshrined in law. I forget the latest—

[92] **Mr Turbervill:** There are funding restrictions in the Further and Higher Education Act 1992 and we are not touching those with this Bill.

[93] **Huw Lewis:** All of that stuff remains; so, there is nothing to repeal all of that stuff. I am happy to consider reassuring the sector—it seems to need a lot of reassurance.

[94] **Simon Thomas:** We all do these days.

[95] **Huw Lewis:** Yes, perhaps we all do; that is fair enough. I am happy to consider making that more explicit in terms of what this Bill is all about, even if it means saying that this Bill is not about restricting academic freedom. The idea that this is about micromanaging higher education institutions is, frankly, bonkers. I do not know where anyone would get that idea from—perhaps they are completely misreading what is going on or perhaps there is some attempt at mischief. However, I am very happy to consider perhaps making it more explicit at Stage 2 in whatever way—we could obviously talk as the Bill progresses about how that

might be done.

[96] In terms of the second question around part-time, I was not quite sure about the response there.

[97] **Mr Surman:** I would take it back, first and foremost, I suppose, to the Ian Diamond review. Part-time policy and funding have been under continuous review over the last few years in Wales. We set out initially, when we responded to the report from Lord Browne—way back in 2010, now, was it?—to do something rather similar to what has since happened in England. However, happily, we waited a while and we have seen what has happened to part-time provision in England. The previous Minister and the current Minister have taken the view that we do not want that experience repeated in Wales; we have seen very dramatic fall-offs in part-time study in England. So, we are taking an extra-cautious approach, if you wish, to how we support and promote part-time study in Wales.

[98] The broader policy that sits around part-time study has, therefore, been under review, and is now under review again by Professor Sir Ian Diamond and his panel. I think that, coming out of that, we will need to take stock of whether any significant funding changes are needed in relation to part-time and how it is supported in Wales, and what that may, therefore, mean in terms of bringing this legislation into force in respect of those other bits of the part-time sector that will remain unregulated under the current system. However, it is a very uncertain situation in relation to part-time. Our fundamental position is that we do not wish to do anything currently to destabilise what we have. It is a matter of protecting part-time while Ian Diamond and his panel take a view on the longer term and how that can be built back up, because, even in Wales, numbers have been declining, sadly.

[99] **David Rees:** You mentioned that you do not expect any changes as a consequence of the Diamond review to the proposals in reality. Are changes more likely, as a consequence of the Diamond review, in relation to part-time, because you have highlighted to us your concern about part-time and its continuation? It is an important area in our higher education sector here. Is there any expectation that you will be coming back to revisit this Bill specifically on part-time issues?

[100] **Huw Lewis:** Well, I do not know; I would not like to second-guess what Sir Ian Diamond is going to say. In my very first conversation with the professor, I made it very clear that, within the overarching brief, which is very onerous, there are two standout issues—three, actually—that concern me very much, and I was looking forward to him giving us some good, constructive ideas about how we can maintain a distinctive aspect to Welsh higher education, because these things matter very much to us. One was access, one was postgraduate support, and the other was part-time. I made it clear that, whatever system Sir Ian Diamond was coming back to us with, I would very much like him to concentrate on maintaining those as important aspects of the way that Welsh HE operates, regardless of what is happening over the border; in fact, we would like something that was in contradistinction to what was happening across the border. He took that on board, I know, very seriously right from the off.

[101] However, it would be unwise for me to say, ‘Well, yes’—I do not know what Sir Ian Diamond is going to come up with in this regard as yet. So, in terms of the impact on future legislation, it is very difficult for me to answer that.

[102] **Mr Turbervill:** Just to add to that one point, there is nothing in this Bill that stops the Bill from applying to part-time courses; it is just a question of those fees being regulated. Subject to what Ian Diamond says, this Bill should be flexible enough to include part-time courses in future.

[103] **Ann Jones:** Before I bring Aled in, Suzy has a question. I am holding my breath,

Suzy, that we do not open another big can of worms. [*Laughter.*]

[104] **Suzy Davies:** No, no. It will be a lovely short answer, Minister.

[105] **Huw Lewis:** What do you mean ‘a can of worms’? [*Laughter.*]

[106] **Suzy Davies:** Going back to David’s earlier question about the capacity of HEFCW to deal with this Bill, I note from the explanatory memorandum that the costs of the key regulatory tasks, depending on which of these options and configurations you look at, could be up to twice as much. Are you able to say at this stage that, if it does turn out to be twice as much, you already have sign-off in any budget negotiations that that money would be available, particularly as there are variations about where that extra burden falls?

10:15

[107] **Huw Lewis:** I will hand over to Neil.

[108] **Mr Surman:** I think that that is part of our routine business with HEFCW. I hold quarterly monitoring meetings with HEFCW, looking at its operational plan, which, of course, now includes how it is gearing up to deal with the implementation of this legislation, should it become law. The Minister similarly has quarterly meetings with the chair and chief executive of HEFCW, and there is an opportunity at every one of those meetings to take stock of the impact on the organisation of what is being proposed here. So far, HEFCW’s position has been consistent: that this is a big ask of it, but I think that it is satisfied at the moment that it can probably do this. If it becomes dissatisfied with that notion, and it wishes to take up with us at any point the need for potential extra capacity within the organisation, the facility is there and we have that dialogue. It happens more than quarterly, but, formally, we do it on a quarterly basis.

[109] **Aled Roberts:** Ar y pwynt hwnnw, mae Cardiff Met yn dweud yn ei dystiolaeth nad yw’n bosibl i ddweud yn union beth fydd gofynion cyllidol y ddeddfwriaeth achos bod cymaint yn cael ei gynnwys yn yr is-ddeddfwriaeth, ac mae’n cwstyynu a yw’r darlun llawn am y costau i’r sefydliadau yn amlwg ac yn dweud nad yw’n bosibl iddo gwestiynu a yw’r ffigurau yn gywir o achos hynny. A oes gennych chi unrhyw sylw ar hynny?

Aled Roberts: On that point, Cardiff Met says in its evidence that it is not possible to say exactly what the financial requirements of the legislation will be because so much is contained in the subordinate legislation, and it questions whether the full picture in terms of the costs for the institutions is clear and says that it is not possible for it to question whether the figures are correct because of that. Do you have any comment on that?

[110] **Huw Lewis:** Only in that the costs that will be necessary will be those costs that are necessary for good governance, for good quality and for addressing issues of social justice around the access agenda, and I do not anticipate—. Let us remember that, at the moment, Welsh HEIs are taking advantage of funding streams flowing through HEFCW in addition to their budgets in the round, if you like, in order to be able to deliver on this stuff. This is also happening in the context of above-inflation increases in terms of the public money that is flowing into these institutions year on year as far into the future as we can reasonably predict at the moment—at least until 2020. So, I do not anticipate that we are going to hit any problems. Of course, good dialogue is very important. We need to make sure that we are not creating a system that has flab attached to it; that is not good for anybody, and that constant dialogue, as Neil has described, between the three partners will steer our way through this. I am confident of it.

[111] **Aled Roberts:** Mae gennych un neu **Aled Roberts:** I have one or two questions to

ddau gwestiwn i orffen. O ran darpariaeth rhan amser, rwy'n deall yn iawn bod y penderfyniad i beidio â chynnwys cyrsiau rhan amser o fewn y ddeddfwriaeth hon ar hyn o bryd yn seiliedig ar y ffaith eich bod chi'n gweld bod cyswllt pendant rhwng cyllido a rheoleiddio cyrsiau rhan amser. Mae'r rheswm nad yw'n cael eu cynnwys yw eich bod yn awyddus i gymryd llwybr gofalus iawn ynglŷn â chyllido, oherwydd yr hyn yr ydych wedi ei weld yn Lloegr. Mae yna gwestiwn yn codi ynghylch diffyg rheoleiddio o gyrsiau rhan amser gan eich bod chi wedi eu cymryd nhw o'r darlun, ac mae rhai ohonom yn pryderu achos hynny.

conclude. In terms of part-time provision, I quite understand that the decision not to include part-time courses within this legislation at present is based on the fact that you see a clear link between funding and regulation of part-time courses. The reason it is not included is that you are eager to take a very cautious line in terms of funding because of what you have seen in England. A question then arises about insufficient regulation of part-time courses because you have taken them out of the picture, and some of us are concerned because of that.

[112] **Mr Surman:** It is not true that part-time courses will not be regulated. For the institutions will be regulated institutions under the new provisions of this Act, it will cover all of that provision, both part-time and full-time. For those institutions that are exclusively part-time—so we are talking primarily about the Open University, obviously—they will still, because they are in receipt of continuing recurrent funding from HEFCW, be subject to terms and conditions of funding. So, HEFCW has a locus in respect of part-time provision that is not caught by this Bill, simply because our expectation is that it will continue to provide substantial amounts of recurrent funding for that provision, and it is only through that recurrent funding that HEFCW and the sector in Wales are able to maintain part-time fees at what we regard as a more reasonable level in Wales. So, it is simply not the case that they will not be regulated; they will be regulated on a different basis.

[113] **Huw Lewis:** It carries on as before.

[114] **Aled Roberts:** Rydych chi'n gwybod hefyd fod achosion wedi codi yn y dystiolaeth lle mae pobl yn gofyn ynglŷn â chanlyniadau'r ddeddfwriaeth hon o safbwynt y Swyddfa Ystadegau Gwladol. Rwy'n meddwl i chi ddweud pan oeddech yn delio â'r Bil addysg bellach eich bod wedi cael rhyw fath o drafodaethau i weld a oeddech yn sicr eich barn. Rwyf yn meddwl i chi ddweud yn eich tystiolaeth chi eich bod yn fodlon na fydd newid o ran categoraiddio'r swyddfa ystadegau, ond, er mwyn rhoi rhyw fath o sicrwydd i'r sector, a fydddech yn ystyried cael rhyw fath o drafodaethau anffurfiol â'r swyddfa er mwyn cadarnhau hynny?

Aled Roberts: You also know that cases have arisen within the evidence where people are asking about the outcomes of this legislation in terms of the Office for National Statistics. I believe that, when you dealt with the further education Bill, you said that you had had some discussions to see whether you were sure of your view. I think that you have said in your evidence that you are content that there will not be any changes in terms of the ONS categorisation, but, in order to give some sort of reassurance to the sector, would you consider having some kind of informal dialogue with the ONS to confirm that?

[115] Yn yr un modd, a gaf ofyn hyn i chi? Yn amlwg, rydym wedi derbyn tystiolaeth gan y Comisiwn Elusennau, ac, eto, mae cryn gwestiynu ynglŷn â safbwynt y comisiwn ac a yw'n safbwynt cywir hefyd, o ystyried yr is-ddeddfwriaeth hon.

By the same token, may I ask you this? Clearly, we have received evidence from the Charity Commission, and, again, there are some questions about the commission's point of view and whether that point of view is correct, considering this subordinate legislation.

[116] Mae gennyf un cwestiwn arall. Mae gan bob prifysgol siartr gan y *Privy Council*. A oes proses lle mae caniatâd y *Privy Council* yn ofynnol os ydych yn newid natur y rheoleiddio o ran y Llywodraeth? I have one other question. Every university has a charter from the Privy Council. Is there a process whereby the consent of the Privy Council is required if you change the nature of the regulation in terms of Government?

[117] **Huw Lewis:** Thank you, Aled. In terms of the first question, on the ONS, it is very important first of all to acknowledge that the ONS does not make public policy in Wales. That is not its job. I am thoroughly convinced that there is nothing in this Bill that should engage the interest or the indicators of strategic control—I think that is the terminology associated with this—of the ONS. It would not be usual practice at all for Government to ask the ONS to comment on the proposals in a Bill. I can tell you, from personal experience, actually, that the ONS probably would not engage in any case. The ONS does not engage in hypothetical conversations. That is not the purpose of that body. It is very different, for example, from the Charity Commission in the way that it works. I am convinced that there is nothing here that should trigger the interest or concern of the ONS in terms of the Bill.

[118] The Charity Commission has made it absolutely clear in its response to you as a committee that it does not have any concerns about the policy intentions of the Bill or the regulatory framework in terms of charity law. It has made that crystal clear. I believe it, and I cannot see any reason to distrust what it is saying, and I do not think that there are any observers better placed than the Charity Commission itself to be able to make a definitive statement—and its statement has been definitive.

[119] In terms of the Privy Council aspects, this is not something—.

[120] **Mr Surman:** Well, we have, I think, half of our institutions now established by royal charter, and the others are higher education corporations—so, essentially, established under corporate law. The Privy Council certainly has a role. What this Bill is not doing—and it is for this reason, among others, that we do not think that we fall foul, either, of the ONS classifications or potential charity issues—is that we are not doing anything in relation to institutional-level governance, for instance. We are not giving Ministers the power to hire and fire boards of governors in universities through this means, and neither will the Welsh Government become the majority fundholder, if you like. We are in the same—[*Inaudible.*]—with FE institutions. Neither will we be taking control over the detailed day-to-day operations of institutions. If an institution wishes itself to amend its governing articles, its charter, its statutes, and so on—that is, those that are royal charter bodies—then, yes, they have to apply to the Privy Council, and the Privy Council takes the view of Welsh Ministers in coming to a decision on those matters, but the decision is not in the hands of Welsh Ministers. So, it is a complex mix of relationships, and it is not true that all of our institutions are formed on the same basis; some are charter bodies proper, and others are HECs, and each brings with it a different set of relationships with Government.

[121] **Aled Roberts:** Finally, could I just ask this? There is a technical point that has been raised in the evidence as well, which states that the Bill is also partially introducing an existing provision for England under section 37(2) of the Higher Education Act 2004, which provides that a governing body is not to be treated as having failed if the governing body has shown that it has taken all reasonable steps to comply. The evidence that we have had is that this safeguard does not appear to extend to enforcement provisions more generally in the way that it continues to in England.

[122] **Huw Lewis:** You really are drilling down there, Aled.

[123] **Aled Roberts:** It is in our evidence. I was just wondering whether you have taken a view on that evidence. Basically, it has called for the extension of this safeguard to the Welsh

provision.

[124] **Mr Turbervill:** May we provide you with a note on that?

[125] **Ann Jones:** Yes. There are several things that we want a note on, which we will tell you about later. So, yes, we will have a note on that. Are you happy now, Aled?

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

[127] **Ann Jones:** Okay. We will move on to look at fee and access plans, with Simon first and then Bethan.

[128] **Simon Thomas:** Weinidog, erbyn hyn rydym wedi derbyn tipyn o dystiolaeth ynglŷn â'r cynlluniau mynediad a ffioedd. Credaf fod rhai wedi gofyn a fyddant yn addas at eu pwrpas. Mae'r cwestiynau, neu'r feirniadaeth, mewn tri maes, hyd y gwelaf i. Yn gyntaf, dywedir bod y cynlluniau fel ag y maent ar hyn o bryd mewn perygl o ffocysu'n ormodol ar weithgareddau yn hytrach nag ar ddeilliannau a chanlyniadau. Mae hynny wedi cael ei fynegi gan Gyngor Cyllido Addysg Uwch Cymru, ymysg eraill.

Simon Thomas: Minister, we have now received a considerable amount of evidence with regard to the fee and access plans. I believe that questions have been asked as to whether they will be fit for purpose. The questions, or criticism, fall into three categories, as far as I can see. First, it is said that the plans as they have been outlined are in danger of focusing too much on activities rather than outcomes and results. That has been expressed by the Higher Education Funding Council for Wales, among others.

[129] Yr ail feirniadaeth yw bod y cynlluniau hyn yn cymryd o leiaf dwy flynedd, ac efallai tair blynedd, i fod yn weithredol cyn y gallwn farnu a ydynt yn llwyddiannus ai peidio. Wrth gwrs, dyna sy'n mynd â ni y tu hwnt i amserlen Diamond gymaint ag unrhyw beth arall yn y Bil hwn. Felly, bydd yn amhosibl gweld a yw'r Bil wedi cyflawni ei amcanion nes y bydd cyfnod sylweddol, o hyd at bedair neu bum mlynedd, wedi pasio ar ôl pasio'r Bil. Fel y dywedais, mae hynny yn mynd â ni i faes cwbl newydd, oherwydd bydd Diamond wedi adrodd, bydd newidiadau wedi digwydd yn Lloegr, ac yn y blaen.

The second criticism is that these plans will take at least two years, and possibly three years, to become operational before we can decide whether they are successful or not. Of course, it is that that takes us beyond the Diamond timetable as much as anything else in this Bill. So, it would be impossible to see whether the Bill had accomplished its goals until a considerable period of four or five years had passed following the enactment of the Bill. As I said, that takes us into a new field, because Diamond will have reported, there will have been changes in England, and so forth.

[130] Y drydedd feirniadaeth, yn fras, yw'r ffaith, er bod y cynlluniau hyn yn disodli'r cynlluniau presennol, fel rydych newydd grybwyll mewn ateb i gwestiynau eraill, bydd meysydd sylweddol o arian cyhoeddus—megis y Coleg Cymraeg Cenedlaethol, astudiaeth rhan-amser ac astudiaeth ôl-raddedig—lle mae'r cyllid yn cael ei ddyrannu o dan system arall, sef y system bresennol. Felly, i bob pwrpas, mae gennych ddwy system o reoleiddio yn rhedeg ochr yn ochr â'i gilydd, hyd yn oed o dan y Bil newydd. Wrth roi hynny i gyd at ei gilydd, mae'r cwestiynau sydd wedi cael eu codi

The third criticism, briefly, is the fact that, even though these plans displace the current plans, as you have just mentioned in answer to other questions, there are still considerable publicly funded areas—such as the Coleg Cymraeg Cenedlaethol, part-time study and postgraduate study—in which the finance is allocated under a different system, namely the current system. So, to all intents and purposes, you have two systems of regulations running parallel with each other, even under the new Bill. Putting all of that together, the questions that have arisen in evidence suggest that these fee and access

mewn tystiolaeth yn awgrymu nad yw'r plans are not as effective as they might be. cynlluniau mynediad a ffioedd hyn mor Have you considered that evidence and have effeithiol â hynny. A ydych wedi ystyried y you come to any conclusions about how to dystiolaeth honno, ac a ydych wedi dod i improve the provision in the Bill for these unrhyw gasgliad ynglŷn â gwella'r plans? ddarpariaeth yn y Bil ar gyfer y cynlluniau hyn?

[131] **Huw Lewis:** What I would say first of all is that the fee and access plans are an essential piece of kit. Without them, it is very difficult to see how you can, for instance, be serious about safeguarding the interests of students, or the wider public in terms of their investment in the whole higher education set-up. The Bill also, of course, enhances HEFCW's ability to monitor, through those fee and access plans, the compliance of HEIs with things like fee limits and other planned commitments that are set down and agreed. So, the whole system is more robust in that concern, to my mind.

[132] I am a little bewildered by the comments that you said had come from HEFCW that the focus is not on outcomes. I freely accept that there will be a process of evolution in terms of how everybody learns through using this system of fee and access plans. My intent is that, as time goes by and we learn about what delivers outcomes in terms of what levers can be pulled through a fee and access plan, HEFCW, the HEIs and Government get better at this. In other words, the intention is that it should be a self-improving, self-critical system. I am quite prepared for that to be done at an early evolutionary stage in the early years of this new system.

10:30

[133] That is a good aspect of the new system and a good aspect of the legislation, in that it does allow that the system can learn from itself, grow and become more efficient, for example, in terms of the actual policy levers that deliver on fair access. There is no definitive handbook in terms of what delivers on fair access— certainly not in Wales. This learn-as-you-work-through-the-issues approach is implicit in terms of the way that the system would work. Have you got anything to add to that, Neil?

[134] **Mr Surman:** Just a couple of things, if I may. First of all, on the timing difficulties that you describe in terms of assessing the real on-the-ground impact of fee and access plans, it is for that very reason that we are proposing in the Bill that those plans should focus more on the promised actions set out in the plans, and HEFCW's ability therefore to influence and make sure that those things happen. Over the slightly longer term, HEFCW could take a retrospective view and evaluate how effective those various actions have been, and then disseminate good practice guidance on that basis to institutions, setting out the learning that has been taken from that process. So, as the Minister has just described, it will hopefully be a self-improving system over time.

[135] I think that you raised the question of whether we were having two separate systems of regulation, which I think deserves an answer as well. I do not think we are, frankly. It is the fact that HEFCW, historically, has given such large amounts of recurrent funding to institutions that has allowed HEFCW, as part of its relationship with the sector, to have a wider locus in its financial quality assurance activities. It is only based on that premise that HEFCW has had that ability at all. Without those large sums of recurrent funding going into the existing publicly funded institutions, HEFCW cannot do that anymore—not legitimately anyway. It is for that reason that we need to do what is in the proposal set out in this Bill.

[136] In relation to the other parts of the sector—part-time provision, the Open University and the other activities that you describe—where that recurrent funding is still a very

substantial part of an institution's funding, which certainly remains the case with the OU, it is still legitimate for HEFCW to regulate on that basis. It is simply not legitimate for HEFCW to regulate on that basis when those very large sums are not going into the institution. We have to give it another statutory locus, therefore, in terms of quality assurance and financial assurance, which otherwise might not exist. Does that help to explain?

[137] **Simon Thomas:** Rwy'n deall y pwynt bod yr arian yn gyffredinol yn lleihau yn y ffordd y mae'n cael ei ddyrannu yn uniongyrchol i sefydliadau, ac felly dyna bwrpas y Bil hwn. Rwy'n dal i ddod yn ôl at y ffaith y bydd arian, serch hynny, yn parhau i gael ei ddyrannu i'r sefydliadau yn uniongyrchol gan HEFCW, yn enwedig o gwmpas darpariaeth rhan amser; mae darpariaeth ôl-radd a'r Coleg Cymraeg Cenedlaethol yn enghreifftiau eraill, ac mae cyrsiau cost uchel yn enghraifft arall efallai. Oherwydd bod hynny yn cael ei reoleiddio o dan y drefn bresennol ac y bydd—yn ôl beth rwyf yn ei ddeall o'r Bil hwn—yn parhau i gael ei reoleiddio o dan y drefn bresennol, byddwn yn dadlau bod gennyh, i bob pwrpas, ddwy drefn reoleiddio ochr yn ochr. Y cwestiwn yw: a ydych wedi ystyried—mae'n mynd yn ôl at bwynt David Rees, rwy'n meddwl, sef mai darpariaeth rhan amser yw'r broblem yn y fan hon, yn y bôn—rhyw ffordd o lapio hynny i gyd mewn un cawdel? Efallai nad 'cawdel' yw'r disgrifiad cywir, ond ei lapio mewn un pecyn, fel petai, fel bod modd rheoleiddio dan un drefn yn unig.

[138] Dof yn ôl at fy ail gwestiwn i'r Gweinidog. Er fy mod yn derbyn pwrpas y cynlluniau hyn, yr hyn sydd ymhlyg yn yr ateb rydych wedi ei roi i'r pwyllgor yw nad yw'r cynlluniau presennol wedi bod yn ddigon effeithiol i roi arfau da ynglŷn â mynediad sy'n rhoi hyder i chi fod y cynlluniau presennol yn gweithio. Gan fod y cynlluniau newydd hyn yn seiliedig ar y drefn bresennol, er eich bod eisiau cryfhau yr ochr fynediad, rwy'n gofyn eto: a ydych chi wir wedi'ch argyhoeddi eich bod wedi taro ar y dull rheoleiddio mwyaf effeithiol yn y fan hon i gyflawni eich amcanion polisi?

Simon Thomas: I understand the point that the funding is reducing, in general, in how it is allocated directly to the institutions, and that that is the purpose of this Bill. However, I still come back to the fact that funding will continue to be allocated directly to the institutions by HEFCW, particularly around part-time provision; postgraduate provision and the Coleg Cymraeg Cenedlaethol are other examples, and high-cost courses are perhaps another example. Given that that is to be regulated under the current system and that—from what I understand of this Bill—it will continue to be regulated under the current system, I would argue that you have, to all intents and purposes, two parallel regulatory regimes. The question is: have you considered—this goes back to David Rees's point, I believe, that part-time provision is the problem here, fundamentally—some way of lumping all of that up together? 'Lumping' may not be the right word, but wrapping it all up in one parcel, as it were, so that you can regulate it under one system.

I return to my second question to the Minister. Although I accept the purpose of these plans, what is implicit in the answer that you have given to the committee is that the current plans have not been effective enough in giving you the correct tools in terms of access so that you are confident that the current plans work. Given that the new plans are based on the current system, even though you want to strengthen the access part, I ask again: are you really convinced that you have struck on the most effective regulatory method here to achieve your policy objectives?

[139] **Huw Lewis:** In terms of wrapping up in one parcel, I will say frankly that, no, I have not considered putting those together in one legislative package. I am not quite sure how you might approach that. You are quite right to say that, even next year, in terms of the percentage income of higher education in Wales, the grant funding from HEFCW is considerably down. We are still talking about £140 million plus, so it is still a considerable chunk of money. There is an established way of working around that, which I do not expect to be disturbed.

Essentially, my concern through this legislation has been to ensure that the greater some of money, which is now travelling through student support, is genuinely engaged through scrutiny in delivering the very best for students, the public and the institutions themselves. So, frankly, no; I have not considered winding the two up together.

[140] Are current plans effective enough? No, but then again, I do not think that anyone, anywhere in the UK, can boast of having, for instance, cracked the access issue, in terms of whatever mechanism is being used. Through this legislation, we hit upon the best conceivable method, for a couple of reasons. First, I think that it gives an enhanced role for HEFCW, in terms of monitoring what is achieved, mainly through dialogue, by the investment of the public in, for instance, access—we are talking about other issues here as well. So, the monitoring and the dialogue are more intensive. We have to always take into account that these are independent, autonomous institutions. The quickest route for a Minister to deliver on all of these issues, 100%, is to take direct control of the institutions, but I would imagine that the committee might have something to say about that—quite rightly, too.

[141] We are dealing here with a piece of legislation that has to construct a scaffolding around an interaction of partners to make very clear what Government priorities are—I make no bones about it—and to allow for autonomous institutions to engage in meaningful dialogue within that structure. This Bill gives us that, and it is quite clear in that regard. Nothing is perfect in public life, but this gives us the best that we can envisage at the moment.

[142] **Mr Surman:** We have some figures taken from the HEFCW allocation letter for next year. It is true that there is still over £100 million left in HEFCW's budget, but a large proportion of that is for research; then there is part-time and one or two of the other things that you have mentioned. However, in relation to its undergraduate taught provision and postgraduate certificate in education support, the amount from HEFCW, if you take the 2011-12 academic year—the last year of the old system—that was over £200 million for those purposes. For 2014-15, it is £15 million. That is a 90% reduction in core support for undergraduate taught provision. So, HEFCW can continue to—

[143] **Simon Thomas:** That is basically teaching grants.

[144] **Mr Surman:** Yes. HEFCW can continue to attach terms and conditions to the research money, as to what it is spending on, in relation to research and, perhaps, also in relation to part-time and the other specific issues. However, it cannot cast sway across the entire institution in terms of its quality assurance and financial assurance on the basis of that small amount of money for those specific purposes. That provision no longer exists, and we need to address that.

[145] **Bethan Jenkins:** Mine is a broader question relating to what I asked when you initially came in—I think that it was you who said it, when I questioned whether Diamond could make fundamental recommendations. Perhaps it is pie in the sky thinking, but could Diamond come back and say, 'We have a new way of working whereby there is an alternative to the fee and access plans'? There will always be a need for regulation, because there is that large pot of public money, but this pot of money follows the student now, as opposed to going into the institution. Could Diamond suggest an alternative system, so that this system becomes defunct as a way of operation? Obviously, it is for the Minister at the time to refuse that system or to say, 'This works; we wouldn't want to adopt anything new', but could that be the case—this is anticipating it, I suppose, although we would not want to anticipate it—and that, therefore, this would be very short term in that instance and that we would be putting something new in place for a very short period of time?

[146] Secondly, following on from Simon's question, NUS Wales has said that, currently, it is very difficult for it to monitor and evaluate the system and that, sometimes, many

institutions just see the fee plans as a tick-box exercise, especially with regard to consulting with students who may not have a very strong student union base. That worries me because the whole focus, from what I can see from the Minister, is on equality in the system and the students being able to access education. If it means that there are problems at the moment whereby students are not being engaged in the process, how can we be assured, with the transitional timeline, which is already tight, that any new system will be more effective in terms of how they can be involved and how they can scrutinise how effective that plan is in terms of the students that are recruited and the students that benefit from the system in the end, if that is the end game?

[147] **Huw Lewis:** Ian Diamond could suggest anything that he thinks is viable. I suppose the answer to your question is ‘yes’; Ian Diamond could come back to me and say, ‘You need direct state control of HEIs’. It is not an unknown thing in Europe; there are European countries that operate very well with direct ministerial control of HEIs. However, I would like to think that I do not suffer from megalomania—not yet. [*Laughter.*] I think that it is highly unlikely, and the reasons are, of course, that Sir Ian Diamond is following the progress of this Bill. This process is informing his thinking and his work will reflect the overall thrust of Government policy within Wales and so on. It is hypothetical really; it is conceivable, but I think that it is highly unlikely and it is not something that I can legislate for literally in that regard.

[148] I am very sensitive to issues around student bodies and the difficulties that they encounter in terms of monitoring what is going on within their institutions and across Wales as a whole. Now, this is not necessarily something that concerns the structure of this Bill, but I have already been speaking to Higher Education Wales about how we can construct a wider social partnership around the monitoring of issues like protection of part-time; provision for postgraduate support; fairer access to Welsh HE and so on, through means of a social partnership forum of some kind. That would include fair representation for students within it, so that the dialogue is broadened beyond myself and vice-chancellors to a much wider group of stakeholders, which I hope will become the norm in terms of how the Welsh Government interacts with the interests of the sector. The sector, to my mind, is not necessarily the thoughts and ideas solely of vice-chancellors; the sector is a much broader community of interest than that. However, that is not something, Chair, that necessarily impacts upon this Bill, except to say that those elements around part-time, post-grad and fair access that we have discussed are issues that should be enabled by this legislation much better than the situation as it is at the moment.

[149] **Ann Jones:** We are already out of time, but if we could just quickly pursue two more areas, it would save you having to come back, and it means that we can perhaps get our Stage 1 report looked at. So, quality assessment and financial monitoring are the two areas that we need to look at. Lynne will look at quality assessment.

10:45

[150] **Lynne Neagle:** Is there any update, Minister, on any discussions that you have had with the Department for Business, Innovation and Skills, and the Wales Office, regarding cross-border issues?

[151] **Huw Lewis:** No update of substance, except to say that I have been in dialogue. Last week, actually, I wrote to Baroness Randerson on the issues surrounding the proposed Order under section 150 of the Government of Wales Act 2006. My understanding is that officials are working well through these issues and that there are no apparent blockages in the system at the moment. There is good dialogue going on at the moment.

[152] **Ann Jones:** Okay. David has a very short question.

[153] **David Rees:** It is a very short one, Chair. The Bill as it is worded and drafted under section 17 talks about courses that are provided outside of Wales by institutions. It says that they will be treated as being provided in Wales if they are provided as part of a course that is provided principally in Wales. It is all about the word ‘provided’—I think that I would like to have a definition of ‘provided’, because I do not believe that this covers all courses. You mentioned earlier this morning, Minister, that we are looking at the custodians of the reputation of the system—in quality and regulation—and, therefore, that will be the quality of all courses that are associated with any institution of HE in Wales.

[154] We have seen in the past that some of those overseas programmes are definitely not meeting some of the standards that we would expect, and I do not believe that this Bill actually takes care of those. Will you be looking at the validation of programmes overseas, namely all courses that are validated by an institution from Wales, to ensure that a course that is validated at an institution overseas, outside of Wales, anywhere, but that was not necessarily a franchise—because there is a difference between franchising and validation, and I do not believe that this Bill covers that aspect—covers the quality assurance of every single course that has the name of an institution here in Wales?

[155] **Huw Lewis:** I am very willing to engage in whatever dialogue Members think is constructive in this regard. As I mentioned, we are working with the Wales Office in terms of making sure—and the vast majority of instances where this would be a concern would be courses that are delivered in England.

[156] **David Rees:** No, there would be lots of overseas courses, Minister.

[157] **Huw Lewis:** Okay. Well, I am more than happy to talk through wider implications around that, and if Members feel that there are things that are slipping the net, I would be more than happy to take a look at it. If I could learn more about Members’ concerns—

[158] **Ann Jones:** You could perhaps drop the Minister a note on that one.

[159] **Huw Lewis:** Okay.

[160] **Simon Thomas:** Just to say, I have evidence that some have slipped the net, and we have seen that only recently.

[161] **Ann Jones:** Okay, fine.

[162] Can we move to financial monitoring? Keith has the next questions.

[163] **Keith Davies:** Mae fy nghwestiwn i yn eithaf byr, mewn ffordd. Mae nifer o’r colegau a’r bobl sydd wedi dod o’n blaen ni yn poeni am y pŵer, efallai, sydd gan HEFCW o dan y cod rheoleiddio cyllid. Sut allwch chi sicrhau eich bod chi am i HEFCW, fwy neu lai, gadw pethau fel maen nhw nawr, ac mai dim ond mewn argyfwng y byddwch yn rhoi’r hawl iddo ddwyn sancsiynau yn erbyn colegau?

Keith Davies: My question is quite brief, in a way. A number of the colleges and the witnesses that have appeared before us are concerned about the power, perhaps, that HEFCW has under the financial regulatory code. How can you ensure that you want HEFCW to maintain things, more or less, as they are now, and that only in crisis situations will it then be given the right to impose sanctions on colleges?

[164] **Huw Lewis:** This could get rather involved, in terms of a full response. First of all, there is no apology—and I do not make any apology—for ensuring that we do have robust financial management arrangements in place. We need that—it is self-evident that we need

that. This can be a very volatile sector, as I have said before. Luckily in Wales—up until now, at least—we have not suffered too much in that regard. What the legislation does enable, and which is better, in my view, than what went before, is that we are explicitly laying out a sort of gradation of levels of intervention—or various tools, if you like—that HEFCW could use in terms of making sure that this sort of financial management is conducted well. In other words, there is not just the question of HEFCW having a large red button to push as a final resort and say, ‘Well, that is it—no more public money’. That button exists—it has never pushed it.

[165] Within this legislation, we will be talking about various levels of engagement that HEFCW can go through. So, it is much more subtle and it begins with dialogue. HEFCW could say that it thinks there is an issue that it would like to talk about, through various shades of grey towards the ultimate sanction. We have a much more flexible system under this legislation, which is also much more user friendly in my view. It is also clearer for all the partners concerned what is expected of them. Hopefully, it should avoid any kind of temptation towards brinkmanship in the relationship between HEFCW and any given HEI.

[166] **Mr Surman:** This legislation is also clearer in terms of the safeguards that are in place for institutions at the receiving end of HEFCW’s interventions. That is not set out in the current legislation, and we are providing here clearly for the safeguards for the institutions and appeal mechanisms, which simply do not exist currently. So, we are trying to build in a greater level of scrutiny of HEFCW’s actions and a level of accountability and an appeals mechanism, which we hope gives greater protection for institutions affected by those actions.

[167] **Huw Lewis:** The route-map is laid out. At present, it is not, and what is written down on paper is that HEFCW does something and, if it does not work, you push the big red button. That is the situation at the moment. The route-map to guide people through a financial governance issue is much more explicit in this body of legislation and regulation.

[168] **Ann Jones:** Thank you, Minister, for those answers. There are a number of points that we will ask you to clarify, about which the committee’s clerks will get in touch with you. You know that you will have a copy of the transcript to check for accuracy. I thank you very much. This is the last evidence session, so we will be producing our Stage 1 report at some point. Thank you for bearing with us, because we are some 20 minutes late.

10:52

**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**

[169] **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(ix).

[170] If the committee is agreeable, we will move 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 10:52.

The public part of the meeting ended at 10:52.