

Children, Young People and Education Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date:

Thursday, 25 September 2014

Meeting time:

09.15

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

Private Pre-meeting – 09.15 – 09.30

1 Introductions, apologies and substitutions

2 Financial Education and Inclusion (Wales) Bill – Evidence session 4

(09.30 – 10.30) (Pages 1 – 13)

NAHT and ASCL

CYPE(4)–22–14 – Paper 1

Robin Hughes, ASCL Cymru Secretary

Dr Chris Howard, Acting Director, NAHT Cymru

3 Financial Education and Inclusion (Wales) Bill – Evidence session 5

(10.30 – 11.15) (Pages 14 – 18)

Wales Illegal Money Lending Unit

CYPE(4)–22–14 – Paper 2

Stephen Grey, Investigations Manager

4 Financial Education and Inclusion (Wales) Bill – Evidence session 6 (11.15 – 11.45) (Pages 19 – 22)

Association of British Credit Unions Limited

CYPE(4)–22–14 – Paper 3

Matt Bland, Policy Manager

Delyth Shearing, Manager of Merthyr Tydfil Credit Union

5 Papers to note

**Letter from the Chair of the Communities, Equality and Local Government Committee
(Page 23)**

CYPE(4)–22–14 – Paper to note 4

**Higher Education (Wales) Bill – Additional information from the Minister for Education
and Skills following the meeting on 9 July (Pages 24 – 28)**

CYPE(4)–22–14 – Paper to note 5

**Higher Education (Wales) Bill – letter to the Education and Skills Minister from the
Chair of the Constitutional and Legislative Affairs Committee (Pages 29 – 35)**

CYPE(4)–22–14 – Paper to note 6

**Financial Education and Inclusion (Wales) Bill – Letter from Minister for Communities
and Tackling Poverty to the Chair of the Constitutional and Legislative Affairs
Committee (Pages 36 – 42)**

CYPE(4)–22–14 – Paper to note 7

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

Item 7

7 Higher Education (Wales) Bill – Consideration of draft Stage 1 Report (11.45 – 12.15) (Pages 43 – 77)

CYPE(4)-22-14 – Private paper 8

Agenda Item 2

Document is Restricted

National Assembly for Wales
Children, Young People and Education Committee
Financial Education and Inclusion (Wales) Bill
CYPE(4)-22-14 – Paper 1
Response from : ASCL Cymru & NAHT Cymru

**Joint submission to Children, Young People and Education Committee –
evidence on the Financial Education and Inclusion (Wales) Bill**

NAHT Cymru and ASCL Cymru are pleased to provide this brief summary of our response to the Bill. We both look forward to the oral session with the Committee.

This is a very brief summary of basic observations that both our organisations share. Each of us has benefited from canvassing the views of members.

Our observations (numbered for reference, not priority)

1. We welcome the Bill as it presents an opportunity to consider an important matter, namely the financial literacy of people in Wales. It is clearly desirable that there is a high standard of financial literacy in Wales.
2. The Explanatory Memorandum provides a significant amount of information to support the proposal. It also accurately describes the high volume of change that is either already underway or is about to happen in our schools.
3. A major curriculum review is due to report in January 2015. Many stakeholders have participated in the discussions with Professor Donaldson during the last few months. It would be premature to create a requirement upon teachers that is not clearly part of that review.
4. Micro managing curricula, irrespective of how supportable the intention is, is likely to create a rigid set of prescriptions that are dated at the point of their introduction.
5. Curricula work best when they describe a broad set of parameters that can inform teaching and assessment over an extended period of time, meaning more than 5 years.
6. Recent history is littered with examples of Government seeking to micro manage curricula, prescribe subject content, tinker with examinations and apply accountability as a lever. Almost without exception, they fail to have the impact intended. These mechanisms do not have a direct impact on the quality of teaching. It is this that holds the key to raising numeracy levels generally and financial literacy specifically.
7. Financial literacy competes with many other worthwhile aspirations, for instance digital literacy and citizenship. There is a clear danger that competing interests will overload a curriculum. Yet, the timetable in a school is fixed. Something has to give; what should it be – less time for literacy? Less foreign language or music? Art? Sport?
8. The Literacy and Numeracy Framework is underway but has not had sufficient time to see what impact it will have on numeracy generally. This is clearly relevant to considering what might be seen as a subset of numeracy – financial literacy.
9. New GCSEs in Numeracy and Mathematical Techniques are due to start teaching in September 2015. As yet, it is unclear if either GCSE will provide support for financial literacy.
10. New Welsh Baccalaureate frameworks are due for first teaching in September 2015. As yet, it is unclear if the frameworks will support more or less financial literacy activities. END

Agenda Item 3

National Assembly for Wales

Children, Young People and Education Committee

Financial Education and Inclusion (Wales) Bill

CYPE(4)-22-14 – Paper 2

Response from : Wales Illegal Money Lending Unit (WIMLU)

Context

Historically, illegal money lending although widespread in deprived communities had been largely invisible and a little understood crime in the UK with the law not enforced for decades, leaving victims isolated, vulnerable and with little means of redress. Illegal lenders are lenders of last resort. Borrowers are typically excluded from the credit market as a result of credit delinquency or reaching the end of legal credit lines. In current market conditions very many high risk borrowers are unable to obtain credit.

The Wales Illegal Money Lending Unit (WIMLU), funded by the UK government, was launched in February 2008 hosted by Cardiff Council Trading Standards in partnership with the Wales Heads of Trading Standards. The WIMLU investigates and prosecutes loan sharks throughout Wales. In addition it has Client Liaison officers providing victim support.

The WIMLU is made up of individuals from a variety of frontline backgrounds. They have experience of investigation, victim support, doorstep crime and community engagement within Trading standards and the Police.

WIMLU Objectives

The following objectives for the team illustrate the emphasis placed not just upon prosecution of offenders but in promoting financial capability. To be effective, this holistic approach requires the team to work in partnership with a host of organisations.

1. To have an impact on illegal money lending, seeing more prosecutions and eventually reducing the incidence.
2. To increase awareness of the problems of illegal lending amongst partner agencies and third sector providers of affordable credit.
3. To create a climate where victims can come forward, confident that prosecution will be undertaken, and convictions obtained, without fear of reprisals.
4. To change the perception, amongst those lending, that illegal money lending is rarely prosecuted.
5. To develop formal relationships and processes for referring victims/enquiries to local debt advisers, sources of legal affordable credit or other sources of support, and to record these referrals.

6. To develop an understanding of victims' needs in the medium to long term and the interventions required for a sustained move away from illegal lending.

7. To develop links with other Financial Inclusion Fund projects, where they are operational in the same locality. In order to achieve these aims it is necessary to build strong partnerships with a wide range of public, private and voluntary bodies; in order to raise awareness and establish an understanding of the impact of illegal lending activity in Wales.

Current Experience / Trends

Illegal lending has grown in the recent recession, primarily due to shrinkage of credit supply, particularly in the home credit and high risk sectors and within the most deprived communities. The UK Government's current wide ranging welfare reforms will have both direct and indirect consequences which are likely to tempt hard pressed benefit claimants to seek temporary financial respite in the hands of loan sharks.

Levels of stress across a wide range of financial and quality of life dimensions are much higher than among users of the highest cost legal credit. Fear of lenders and the experience of intimidation and violence leads to a significant net increase in mental health problems and family breakdown.

To their cost, victims often find that loan sharks are friendly to start with. Typically the shark will be known to the victim, and will 'befriend' her, sympathising with her problems and encouraging her to borrow money, reassuring her that it's an arrangement 'between friends'. This is what WIMLU has learnt to recognise as grooming behaviour, building up a false sense of trust and loyalty. Only later does the victim find out that the friendly approach has hidden a greedy determination to extract as much profit as possible from her. That initially appealing casual approach (no complicated paperwork!) hides the trap: The victim has no record of the agreement, the instalments, the penalty payments, or the interest rate. And now the shark can extort whatever sums she wants, by starting to use pressure, intimidation or threats. Before she knows it, the victim is in a frightening situation she can't control, perhaps forced to hand over her Post Office card and PIN. The 'friend' has become a predator.

The Appendix to this submission attempts to capture a few 'real life' examples of how families and children are impacted by unscrupulous illegal lenders.

Enforcement

WIMLU works closely with the four police forces across Wales and engages strongly with the newly formed Financial Conduct Authority and other agencies to combat illegal lending. Timely intelligence is key to success in this area and the team is working hard to forge good working relationships with a much wider range of organisations embedded in local communities across Wales. A number of significant custodial sentences obtained and 'asset seizures' bear testimony to the effectiveness of the team's enforcement activity.

Education Initiative

WIMLU is currently developing resource packs which, it is hoped, will be useful for both primary and secondary schools. These packs which will be free to schools are being funded by 'Proceeds of Crime' money which has been confiscated from loan sharks.

Ages 5-11 Years:

The activities within the packs are designed to build children's knowledge and understanding of handling money, making choices and paying for the things we need and want. Core to this is developing sound attitudes to managing money effectively, developing an appreciation of needs and wants and an understanding that we can't always have everything we want.

Many schools, especially primary schools like to engage with parents to support their children's learning. Some of the activities in these packs can provide useful starting points for this shared learning while getting across important messages about the dangers of loan sharks to parents too.

Ages 11-19 Years:

The Secondary resource pack has been developed so that activities can be delivered in many areas of the curriculum such as maths, English, art and design, drama and PSHEe. Pupils are provided with relevant advice on the dangers of borrowing money and the accompanying DVD, containing interviews with victims of loan sharks, is excellent at illustrating the consequences of using illegal money-lenders.

At any age children can carry many of these messages home with them and encourage parents, who may already be in difficulties to seek help and, equally importantly prevent them getting into difficulties in the first place.

Outside School:

In addition, in a non-school setting it is also hoped that by providing real life contexts will encourage young people to think about the importance of making considered spending choices and managing their money well in order to live their lives independently and safely. These resources may prove useful to trainers, support workers and others working in the community to provide opportunities to explore these issues with young people, helping them to make sound financial decisions.

Stephen Grey

Manager – Wales Illegal Money Lending Unit

12th September 2014

Appendix

Illegal Money Lending: impact on children

“58% of those using illegal lenders are family households 27% are single parents.”
(2010 Policis evaluation)

Some examples (some identifying features changed):

Case A

Extracts from Victim Personal Statements

“It still affects how we live, and our son’s life. We don’t walk little D to nursery school, as we don’t know who we’ll bump into. Other family members take and collect him for us. He’s at an age when we’d like to take him to the cinema to see a cartoon or something, but we don’t because we don’t know who will be there, or who will follow us.”

“Some days we were so frightened we didn’t even open the curtains. My little boy used to sob himself to sleep; we all did, some nights. I wouldn’t wish that life on a dog; I wouldn’t want anyone else to go through it. My wife got really ill with depression, her mind was somewhere else. I’d have to talk to her two or three times before she’d answer me. One day she told me to take the baby out, and when I came back and saw she’d taken a glass and cut her hands, I felt like killing my own self, as it was all because of me. I nearly lost my wife because of them, because they wouldn’t leave us alone.”

Case B

Toni was a single mother with an eleven year old daughter Bethan. For several years, a loan shark targeted Toni, demanding more and more money from her in repayment of a loan, and threatening her that if she didn’t pay him he’d empty her house, and get his money “in whichever way”. Toni got by on the very little money she was left with, and felt very guilty that Bethan also had to go without. When the loan shark was arrested, Toni’s life started to return to normal, but she was left with her guilt at what she’d put her daughter through. Bethan was offered a week’s holiday with a friend’s family, but Toni couldn’t send her without spending money. The Client Liaison Officers made a payment of £50 to Toni, to enable Bethan to go on holiday. As Toni said, “she’s such a good child, she deserves a lovely break”.

Case C

Michelle lived alone with her toddler, and had been in debt to a loan shark for several years. She suffered from depression, had many other debts, and was unable to see a way out of her situation. When the situation became too much for her, she would self-harm. When IMLU started to investigate the loan shark, Michelle confided in the Client Liaison Officers just how low she was feeling. The CLOs arranged an urgent appointment at the local Citizens’ Advice Bureau for debt

advice, and also found a local counselling service which was able to offer appointments for a token payment of £5 per session on a charitable basis. The CLOs were able to arrange a referral for Michelle to have counselling, thanks to funds from the Victim Support Fund.

Case D

A Swansea social worker was supporting Gemma, a mother of five, one of whose children was disabled. In a state of extreme distress, Gemma asked the social worker if all five children could go into care temporarily as she had no food to give them. The social worker discovered that there was no food in the cupboards, and eventually Gemma confided that she was paying nearly all her benefits to a female loan shark. The social worker persuaded Gemma to let her contact WIMLU, and following the arrest Gemma was able to stop payments to the loan shark immediately and use her income to feed her children. Gemma had been reduced to such poverty that not only was she not heating the house on the January day when WIMLU visited her, but she was only using the electric lights after the children returned from school.

Consultation on the Financial Education & Inclusion (Wales) Bill

Children, Young People & Education Committee – consultation on the Financial Education & Inclusion (Wales) Bill

*Response from the Association of British Credit Unions Limited
(ABCUL)*

Introduction

We appreciate the opportunity to respond to this consultation. The Association of British Credit Unions Limited (ABCUL) is the main trade association for credit unions in England, Scotland and Wales. Out of the 338 credit unions which choose to be a member of a trade association, 70% choose to be a member of ABCUL. In Wales, ABCUL represents 59% of credit unions who, in turn, represent 80% of the Welsh sector by assets and membership.

Credit unions are not-for-profit, financial co-operatives owned and controlled by their members. They provide safe savings and affordable loans. Some credit unions offer more sophisticated products such as current accounts, ISAs and mortgages.

At 31 December 2013, credit unions in Great Britain were providing financial services to 1,122,461 people, including 126,217 junior savers. The sector held more than £1.1 billion in assets with more than £676 million out on loan to members and £949 million in deposits.¹

Credit unions' work to provide inclusive financial services has been valued by successive UK Governments. Credit unions' participation in the DWP Growth Fund from 2006 – 2011 saw over 400,000 affordable loans made with funding from the Financial Inclusion Fund. The DWP has contracted ABCUL to lead a consortium of credit unions under the Credit Union Expansion Project, which will invest up to £38 million in the sector and aims to make significant steps towards sustainability. 6 credit unions in Wales are participating in the programme.

The Welsh Government has also consistently supported the Welsh credit union sector in order to ensure Welsh people are provided with inclusive and affordable financial products. Most recently the Welsh Government invested nearly £2 million in credit unions to expand and develop their services between July 2013 and March 2014 and a further £1.9 million award has been invested to support the sector over the next three years to March 2017 to move closer to sustainability and to continue to serve the financially excluded. We are extremely grateful for this support and the great benefits it has had for credit union development in Wales.

ABCUL response

ABCUL supports the purpose of the Bill. Financial education is important if Welsh citizens are to successfully navigate the increasingly financialised modern economy in which successful

¹ Figures from unaudited quarterly returns provided to the Prudential Regulation Authority

Consultation on the Financial Education & Inclusion (Wales) Bill



engagement with financial products and services is critical to all parts of life. For this reason, many credit unions in Wales are active in providing financial education and financial capability skills to their membership and wider communities in line with the objects of a credit union set down in the Credit Unions Act.

For instance, under the round of funding provided by the Welsh Government in 2013, Merthyr Tydfil Credit Union has been piloting a financial education programme in partnership with My Bnk which specialises in hands-on and engaging financial education sessions for youngsters at Key Stage 4 and 5 and in post-school education. Another example is LASA Credit Union in Swansea which actively provides financial education and runs collection points in primary schools across the city to support financial education. Many other credit unions do similar work in schools.

A key challenge for many credit unions in this respect, however, is successfully engaging with schools due to the pressures on their time and competing priorities. While in England the National Curriculum was recently changed to require financial education to be delivered in schools (both as Personal, Social and Health Education and within mathematics), this is not the case in Wales and so we would support the requirement contained in the Bill to do so. This should help agencies like credit unions and others to deliver vital financial education to school children.

One area in which the Bill's provisions might be strengthened, however, is around providing resources and guidance to schools in fulfilling their obligations to provide financial education under the Bill. If the Welsh Government were able to co-ordinate resources and partners who might be able to assist schools in meeting their financial education obligation this would assist schools in the delivery of the Bill's requirements.

In terms of the Bill's second provision, i.e. to require local authorities to implement financial inclusion strategies, ABCUL is also supportive. Many local authorities in Wales and across the UK are already active in this area and there is a great deal of evidence that there can be significant benefits to implementing a comprehensive, cross-cutting financial inclusion strategy in a local area.

An excellent example of a successful initiative in this respect is that pursued by Leeds City Council and evaluated by Salford University. Here it was found that for every pound spent on the strategy, there was a benefit of £8.40 for the regional economy in terms of saved interest, reduced evictions and other measures.² The same report found a ten-fold return on investment in the city's credit union in terms of forgone interest to high-interest lenders. The success of the scheme was rooted in its comprehensive, cross-cutting approach to financial inclusion which incorporated all aspects of the council's operations and much can be learned from this experience for financial inclusion strategies devised by Welsh local government.

Specifically in terms of credit unions, it is clear that there can be great benefits to extending and expanding credit union services in a local area in order to provide inclusive and affordable financial services for local communities. Through providing access to affordable and inclusive financial services, credit unions can support communities to maximise their limited financial resources and to become financially resilient. However, the key challenge here is to ensure that credit unions are supported to become self-sustaining organisations so that their services can be guaranteed for the long-term and do not remain reliant upon external support to be maintained. This is particularly the

² http://usir.salford.ac.uk/19122/1/ec_impact_report_final_web_version.pdf

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case in the context of the Bill since local government currently faces an almost-unprecedented squeeze on budgets limiting their ability to support credit unions financially.

To this end, while the sector is extremely grateful for the support it has received from the Welsh Government and others for many years, the Welsh sector remains stubbornly dependent upon external support. While this is not exclusively a problem in Wales, it is more pronounced. The latest figures from the Prudential Regulation Authority, for instance, show that in the year to 30 September 2013, Welsh credit unions saw 27% of their total income come from grants while the same figure in England was 10% and in Scotland only 4%.³ Of course government support has helped credit unions to provide services to the financially excluded and great strides have been made in this respect with all Wales coverage achieved and membership growing from around 11,000 in 2000 to nearly 70,000 in 2013 but it also creates challenges.

Where credit unions are most successful around the world the notion of grant support is anathema to the co-operative, self-help philosophy of the movement. While credit unions remain in receipt of such large amounts of support from external funders, they will remain vulnerable to its sudden withdrawal and their products and services will continue to lag behind their competitors in the financial services market. Furthermore, as already noted, while the Bill would require local government to incorporate credit unions into their financial inclusion strategies, the pressure on their budgets limits their ability to do so financially.

Our key message then in terms of incorporating credit unions into local authority financial inclusion strategies is to ensure that this is done in a way that does not precipitate grant dependency but instead encourages and helps credit unions to engage with a broad range of people, not simply those that are facing exclusion, in order to support their sustainability. For instance, many of the strongest and most successful credit unions in England and Wales began life serving the employees of local government before expanding out into the community – this was the case with Glasgow Credit Union (the largest in the UK), London Mutual Credit Union (feted for its rival product to payday loans, CUOK!) and Cardiff & the Vale Credit Union in Wales. It is also a common theme running through the US Community Development Credit Union sector.

Therefore, we would like to suggest that local authorities, as well as asking credit unions to engage with excluded local communities (as most credit unions do extremely well already) use the opportunity of the Bill's requirement to implement a financial inclusion strategy which supports their credit unions to engage their own staff and those of large local businesses with which local government is engaged in an economic development capacity. This has benefits for local government in terms of more financially resilient staff and the boost to productivity that this entails but it also strengthens the credit unions' underlying business in order to help it do more to serve underserved communities. It presents a way of strengthening the credit union and the local authority without the need to find financial resources which in any case can weaken a credit union's long-term prospects.

At a recent conference on financial wellbeing in Wales, the Welsh Government's Minister for Health and Social Service, Mark Drakeford AM, made a strong case for encouraging all public sector organisations to extend credit union services to their staff for these very reasons – it benefits public sector workers, credit unions, public sector employers and the wider community too.⁴

³ <http://www.bankofengland.co.uk/pr/Pages/regulatorydata/creditunionsstatistics.aspx>

⁴ <http://www.youtube.com/watch?v=IqBPAj39EL0>

Consultation on the Financial Education & Inclusion (Wales) Bill



A key feature of credit unions' successful engagement with employers is through the provision of services via payroll deduction and promotion of the service in internal communications and therefore a useful addition to the Bill in that respect would be to require local government to provide payroll deduction facilities for its local credit union.

Conclusion

Credit unions in Wales, as across Britain, play an active role in providing financial education and financially-inclusive products and services to their members. As such, ABCUL and our members support the thrust of the Bill which will support credit unions in their pursuit of both ends.

Having financial education on the Welsh curriculum will enable credit unions and other agencies to engage more successfully with schools in order to support financial education provision. Currently many credit unions find engaging with schools difficult since schools are facing a number of competing priorities and demands. To this end, the Bill's provisions may be strengthened by Welsh Government providing support and guidance for schools on the resources available to them for financial education.

In terms of financial inclusion strategies, there are a number of examples of very successful initiatives in this respect. The example of Leeds City Council in particular has demonstrated the great economic and social value that can be created by a financial inclusion strategy effectively implemented. Many examples of successful strategies involve credit unions in order to provide inclusive and affordable financial services to those otherwise denied such services.

Where these strategies incorporate credit unions, however, it is imperative that they seek to support credit unions' sustainable development. On average, credit unions in Wales are more reliant upon external grant support than their counterparts in England and Scotland and this leaves them vulnerable to funding withdrawal and distorts business models. If credit union services are to be secured for the long-term, therefore, they need to move towards self-sustainability.

As such, we recommend that the Bill and its surrounding documentation makes this sustainability imperative clear and further recommend that an ideal means of providing for this is to assist credit unions to engage local authority and other employees through the provision of payroll deduction both by local government itself and by local employers. By building a diverse membership base in this way, credit unions can be strengthened in order to sustainably serve excluded groups.

Once more, we greatly appreciate the opportunity to respond to this consultation and would be very happy to provide further information or oral evidence if required.

Contact details

Matt Bland – Policy Manager – 0161 832 3694 / 0960044716 / matt.bland@abcul.org

ABCUL – September 2014

Pwyllgor Cymunedau, Cydraddoldeb a
Llywodraeth Leol

Communities, Equality and Local Government
Committee



Ann Jones AM
Chair
Children, Young People and Education
Committee

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

4 September 2014

Dear Ann

Scottish Parliament Equal Opportunities Committee – Fathers and parenting

The Scottish Parliament Equal Opportunities Committee published its first report on Fathers and Parenting on 18 May this year - link enclosed below:

http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-14-01w.pdf.

The Communities, Equality and Local Government Committee discussed addressing the matter of fathers and parenting before the summer recess, but agreed that the matter fell within the remit of the Children, Young People and Education Committee.

I should be grateful if you would consider fathers and parenting as a matter for your Committee's forward work programme. I would be grateful if you could write back to me to inform me of your decision, so that it can be communicated to my Committee.

Yours sincerely

A handwritten signature in black ink, which appears to read 'Christine Chapman'.

Christine Chapman AC / AM
Cadeirydd / Chair



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref

Ein cyf/Our ref

Ann Jones AM

Chair

Children, Young People and Education Committee

National Assembly for Wales

Cardiff Bay

CF99 1NA

17 July 2014

Dear Ann,

CHILDREN, YOUNG PEOPLE AND EDUCATION COMMITTEE - STAGE 1 SCRUTINY OF THE HIGHER EDUCATION (WALES) BILL

Following my attendance at the Children, Young People and Education Committee on 9 July, I agreed to provide some further information in response to some questions from Committee members. For ease of reference, I have set out my further evidence below underneath each of the action points provided by the Committee following the evidence session.

“Given that the Bill as drafted does not require all the regulations specified to be made ‘must’ by the Welsh Ministers, can the Minister confirm if there is sufficient legislative provision in the Bill to enable HEFCW to undertake all of its functions effectively and deliver all the Welsh Government’s policy intentions?”

I can confirm that there is sufficient provision in this Bill to enable HEFCW to undertake all of its functions effectively and to deliver on Welsh Government policy. In my written response to the Constitutional and Legislative Affairs Committee (“CLA Committee”) of 2 July 2014, I set out in some detail why the Welsh Ministers have been provided with powers, as opposed to various duties, to make regulations in this Bill. In summary, a duty to make regulations is only appropriate where the regulations in question and the associated duty are very limited in scope (for example section 43(3) of the Bill requires the Welsh Ministers to make regulations in connection with the review of notices and directions).

I also acknowledged that some regulations will need to be made at an early stage in order for the regulatory system established under the Bill to work effectively. In this regard, I am hoping to provide the Committee with copies of draft regulations during Stage 2 scrutiny.

During the recent evidence session, I also noted that specific reference was made to section 2(4) of the Bill and section 34 of the Higher Education Act 2004. Section 2(4) enables the Welsh Ministers to make regulations about the making of applications for

approval of a fee and access plan. As explained in my letter to the CLA Committee, institutions will be able to make applications to HEFCW for approval of a fee and access plan without these regulations being made. However, if necessary, these regulations will enable the Welsh Ministers to bring further clarity to the application process. This may be particularly helpful in relation to applications by new entrants to the system which have not previously had a relationship with HEFCW.

In addition to the Welsh Ministers' power to make regulations, it will also be open to HEFCW to issue information and advice to institutions on the application process under section 51(3) of the Bill. I hope this will allay some of the concerns expressed by Committee members in relation to HEFCW's ability to issue guidance to institutions and in particular the read across with section 34(3) of the Higher Education Act 2004 (the power to issue guidance about the matters to which it will have regard in determining fee plan applications).

Can the Minister provide clarification on points raised in the evidence from HEW:

“[29] The new powers mean that HEFCW can refuse to approve a fee and access plan not just for non-compliance with the fee and access plan itself but for non-compliance with quality directions or the financial Code.”

In relation to the first point, it is important to note that fee and access plans provide the entry point into the new regulatory system. Approval by HEFCW of a fee and access plan will result in an institution becoming a regulated institution for the purposes of the Bill. Therefore, it is appropriate that the power to refuse to approve a new fee and access plan is linked to the actions and activity required across the regulatory framework.

Section 36 of the Bill provides that HEFCW may give notice to an institution's governing body that it will not approve a new fee and access plan if one of the conditions set out in section 36(3) is satisfied.

The conditions in section 36(3) are as follows: that a governing body has failed to comply with the requirement in section 10(1) that its regulated fees do not exceed the applicable limit (section 36(3)(a)); that it has not complied with the general provisions of its approved fee and access plan (section 36(3)(b)); that it has failed to comply with a direction under section 19 in respect of improving the quality of education or preventing the quality of education from becoming inadequate (section 36(3)(c)); that it has failed to comply with a direction under section 32 in respect of dealing with, or preventing, a failure to comply with the financial management code (section 36(3)(d)).

Where HEFCW has given notice under section 36 of the Bill, it must not approve a proposed fee and access plan before the end of the period specified in the notice. It is therefore correct to say that HEFCW may not approve a new fee and access plan where there is non compliance with one or more of the conditions provided for in section 36(3). It should be kept in mind though that, in the case of a failure to comply with the general provisions of an approved plan (section 36(3)(b)), a governing body is not to be treated as having failed to comply with those provisions where HEFCW are satisfied that the governing body has taken all reasonable steps to comply with them.

In the case of a failure to comply with a direction under either section 19 in respect of inadequate quality, or section 32 in respect of a failure to comply with the code, it is the failure to comply with a direction that triggers the giving of notice under section 36. In issuing a direction, HEFCW will have had to have followed the appropriate procedure and applied the accompanying safeguards set out in Part 6 of the Bill (as they would to the issuing of a notice under section 36(1)).

To be clear, I consider that a failure to deliver education of adequate quality and/or a failure to comply with the proposed financial management code are matters which could impact adversely on the educational experience of students and on the reputation of the regulated HE sector in Wales and that, subject to the procedural protections outlined above, HEFCW needs to be empowered to take action in the event of such failures. I would repeat here what I said to the Committee – that this legislation is intended to provide HEFCW with effective powers to regulate an increasingly diverse and unpredictable higher education sector. Regrettably, we have seen very recently the Home Office and UK Visa and Immigration take urgent action to deal with alleged student visa fraud affecting institutions across the UK. We cannot take it for granted that all potential providers of higher education in Wales in future will be “traditional” campus-based universities akin to the current publicly-funded institutions represented by Higher Education Wales. It would, in my view, be irresponsible for Government not to provide HEFCW with the tools to do the job when faced with such an unpredictable HE landscape going forward.

“[30] The Bill partially reintroduces an existing provision for England (section 37(2) HEA 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’. This safeguard does not appear to extend to enforcement provisions more generally, however, as it continues to do in England.”

Section 37 of the Higher Education Act 2004 (the 2004 Act) relates to sanctions that the Director of Fair Access in England (‘the Director’) may impose where an institution funded by the Higher Education Funding Council for England (HEFCE) has breached a condition in an English approved plan. Section 24(1)(c) of the 2004 Act provides that an element of the conditions that can be imposed by HEFCE on the governing body of an English institution is that it complies with “the general provisions of any English approved plan that is in force in relation to the institution during any part of the grant period during which it is in force”. The effect of section 37(2) of the 2004 Act is that even where the Director considers that the governing body of an institution has failed to comply with section 24(1)(c) of that Act, the governing body is not to be regarded as having failed to comply with that section if the governing body shows that it has taken all reasonable steps to comply with the general provisions of its approved plan.

Section 38 of the 2004 Act contains the current equivalent provision that applies in Wales where a HEFCW-funded institution has failed to comply with the fee limits set out in its fee plan or the general provisions of its plan. It should be noted, however, that section 38 does not contain a safeguard similar to that in section 37(2). As such, no safeguard in the equivalent form currently exists for Welsh institutions. The Bill introduces a safeguard which is similar to section 37(2) for the first time in Wales, providing an extra layer of assurance to Welsh institutions.

I do think the premise of the question, i.e. that the Bill “partially reintroduces an existing provision” is wrong because such protection does not currently exist in Wales. As regards the suggestion that the safeguard in England applies to “enforcement powers more generally”, it is important to note that the only sanctions available to the Director and HEFCE under the 2004 Act in respect of English institutions which fail to comply with the general provisions of their plans are either the repayment, withdrawal or refusal to award grant funding or the refusal to approve a new plan. It is therefore not possible to make a direct comparison between the situation in England and HEFCW’s proposed powers of enforcement under the Bill.

To be clear, section 37 of the 2004 Act applies both during the currency of an approved plan in England (financial requirements), as well as providing a potential sanction at the expiry of an approved plan (i.e. non approval of a new plan). In comparison, section 36(4) of the Bill follows the effect of section 37(2) of the 2004 Act in respect of a refusal to approve a new fee plan. Section 36(4) of the Bill provides that where there is a failure to comply with the general provisions of an approved fee and access plan, HEFCW can issue notice of their intention not to approve a new fee and access plan, except where they are satisfied that a governing body has taken all reasonable steps to comply with the general provisions of its plan. This in essence reflects the sanction in section 37(1)(b) of the 2004 Act and the corresponding safeguard in section 37(2) of that Act. I have though asked my officials to consider if the protection provided in section 36(4) of the Bill could be extended to other provisions of the Bill.

It should also be noted that section 37(1)(a) of the 2004 Act enables the Director to direct the Secretary of State or HEFCE to e.g. recover or withdraw grant funding from an institution. There is no equivalent sanction in the Bill given that the rationale underpinning the Bill is to move away from reliance on terms and conditions attaching to funding provided by HEFCW. Instead, the Bill provides separate provisions to deal with institutions that exceed the fee limits contained in their fee and access plans (see section 10) and failure to comply with the general provisions of plans (see section 13).

“Can the Minister please provide a definition as to what the term ‘provided’ within S17 means and will the Minister be considering validation programmes overseas / courses validated by an institution from Wales / courses validated at an institution overseas, outside Wales, but not necessarily a franchise.”

Section 17 of the Bill deals with the assessment of the quality of education, I do not think it necessary to include a definition as “provided” in the context of section 17 of the Bill. It should be given its ordinary meaning which in my view is clear enough in this context.

In terms of validation of courses, institutions and other providers of HE courses may be involved in a variety of collaborative arrangements. Such arrangements may range from validation-only relationships in which an institution with UK degree awarding powers (a recognised body) validates the degree courses provided by another institution or provider which does not hold degree awarding powers (a listed body¹) to arrangements in which the courses designed by the degree-awarding institution are provided, or part-provided by another institution or provider (franchise arrangements).

Under the requirements of the UK Quality Code² individual universities and other organisations that are legally entitled to award degrees (i.e. have degree awarding powers) are ultimately responsible for the academic standards and quality of higher education programmes leading to their qualifications. These degree-awarding bodies are independent and self-governing. They remain responsible for their qualifications regardless of where a programme is provided or who provides it on their behalf.

¹ Listed bodies are those institutions and other providers which do not have power to award their own degrees but which offer complete HE courses which lead to recognised UK degrees which are awarded by a separate institution with degree awarding powers. In relation to Wales, ‘listed bodies’ are currently set out in the Education (Listed Bodies) (Wales) Order 2012 (SI 2012/1259 (W.154)).
<http://www.legislation.gov.uk/wsi/2012/1259/contents/made>

² UK Quality Code sets out the formal Expectations that all UK higher education providers reviewed by QAA are required to meet. It is the nationally agreed, definitive point of reference for all those who deliver or support UK higher education programmes.

As regards validated courses and the new regulatory system introduced by the Bill, a charitable institution in Wales which does not have degree-awarding powers but which provides degree courses which are conferred (validated) by a recognised body could either apply to HEFCW for approval of a fee and access plan or apply for case-by-case designation. Such an institution with an approved fee and access plan in place would be subject to the fee limit and fair access requirements of the Bill, to quality assessment and to the financial management code.

I trust this letter clarifies matters for the Committee, but should there be any further issues upon which you would find further detail of assistance please do contact me.

Best Regards
Huw

Huw Lewis AC / AM

Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Huw Lewis AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/HL/0741/14

David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

23 July 2014

Dear David,

CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE - STAGE 1 SCRUTINY OF THE HIGHER EDUCATION (WALES) BILL

During my attendance at the Constitutional and Legislative Affairs Committee on 16 June, Members requested additional information, in the form of a flow diagram, about whether the new regulatory system to be introduced by the Bill could operate on the basis of statutory guidance without the need for regulations. In order to illustrate the proposed working of the new regulatory system I am appending a diagram which deals with the fee and access plan application and approval process under the Bill.

The accompanying diagram (annex A) sets out a guidance only approach as a starting point and illustrates that the fee and access plan application and approval process can operate effectively without regulations being in place in respect of these processes. The flow diagram should be read in conjunction with the accompanying explanatory note (annex B) which provides an explanation as to various powers and functions of the Welsh Ministers and HEFCW within the Bill which are to be relied upon for the operation of the fee plan application and approval process.

As explained in the annex to my letter of 2 July there is an implicit requirement on the Welsh Ministers to make certain regulations under the Bill. Such regulations adopt the "prescribed" formulation and their making is necessary for the operation of the new regulatory system, examples include: the power under section 4(2) concerning the maximum duration of a fee and access plan, the powers under sections 5(2)(b), 5(3) and 5(5) which deal with qualifying courses, the maximum fee amount and qualifying persons respectively and the power under s6(1) concerning

the contents of fee and access plans. These regulations are therefore included at the outset of the process depicted in the flow diagram.

In the absence of regulations Welsh Ministers will be able to provide guidance to HEFCW concerning their functions and HEFCW will be able to specify in its information and advice to institutions details relating to the application and approval process and in respect of the determination of fee and access plans. However, the Bill provides for regulations to be made to bring clarity to the process or to respond to changes in the operating environment.

Members also questioned why the Bill has not been drafted on the assumption that where regulations may be needed, there should be a duty to make them. I provided a detailed response on this matter in my letter of 2 July which included an analysis of the use of the terms “may” and “must” throughout the Bill. It is my view that the new regulatory system could operate adequately on the basis of guidance alone. However, it may become necessary for regulations to be made to bring clarity to certain processes or to respond to changes to the higher education sector in Wales, the nature of HEFCW’s operations or the manner of delivery of courses.

I trust that the diagram and accompanying explanatory note clarifies matters for the Committee. I am also copying this letter to the Chair of the Children, Young People and Education Committee for information.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Huw Lewis', with a stylized flourish at the end.

Huw Lewis AC / AM

Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills

Introduction

The accompanying document provides a diagrammatic representation of the application and approval cycle for fee and access plans and demonstrates that these processes can operate effectively in the absence of regulations.

The process cycle assumes that regulations relating to the duration of a fee and access plan (Section 4(2)), qualifying courses (Section 5(2)(b)), fee limits (Section 5(3)) and qualifying persons (Section 5(5)) will be made. These regulations are implicitly required in order for the system to operate.

With these regulations in place, the diagram shows that the application and approval cycle operates initially on a guidance only basis. The guidance only cycle is illustrated using solid flow lines.

The regulation making process is shown as a subsidiary process using a dashed flow line which is triggered by and feeds back into the application and approval cycle at appropriate points. In the event that regulations are not made, the application and approval process can continue to operate on a guidance only basis.

Notes

1. The Bill makes provision for Welsh Ministers to issue guidance under Section 46. Guidance would be developed in consultation with HEFCW and could be used in the absence of regulations being made.

In relation to the application and approval this guidance could, amongst other things, relate to type of evidence that an institution may be required to provide in support of its application for a fee and access plan and matters that HEFCW should take into account in considering the approval of this application.

2. Under Section 46, HEFCW are required to take account of guidance issued by the Welsh Ministers.
3. Section 51(4)(c) allows HEFCW to provide information and advice concerning the effect of approval of a fee and access plan¹. It is envisaged that HEFCW may wish to make use of this advisory function in providing information to fee and access plan applicants about the requirements with which regulated institutions must comply. This guidance may, amongst other things, set out that HEFCW would take into account the quality of education and financial management at an institution in determining a plan and provide details of the information that institutions would be required to provide to HEFCW in order to demonstrate this.

¹ Paragraph 1 of Schedule 1 to the Further and Higher Education Act 1992 may also be relevant as well.

HEFCW may decide to provide detailed guidance to institutions including the consequences of having an approved fee and access plan and the expectations that HEFCW will have about how an application should be formulated. HEFCW may also set out its expectations concerning the monitoring and enforcement of plans in order that institutions are aware of the need to return information to HEFCW at stated times to allow for the monitoring of the delivery of plan commitments, and the actions HEFCW may take if those commitments are not met.

4. The core contents of a fee and access plan are laid out on the face of the Bill at Sections 4-6 (see 7 below). HEFCW may provide additional information or detail in relation to these requirements in their guidance to institutions and may do so whether regulations are in place or not.
5. Section 2 allows the governing body of an institution to apply to HEFCW for approval of a proposed fee and access plan relating to the institution if it is an institution in Wales that provides higher education and is a charity (section 2(3)).
6. Regulations made under Part 2 of the Bill relate to 4 broad areas namely, the application process, the contents of fee and access plans, the approval of a fee and access plan (and compliance with its general provisions) and the publication of a fee and access plan (also included are regulation making powers in respect of designation, prescribed courses, variation of an approved plan and compliance and reimbursement directions). These are as follows but are expanded upon in the Statement of Policy Intent² and in the analysis provided to the Committee on 2 July:

a) - Application process

Section 2(4) enables the Welsh Ministers to make provision, via regulations, about the making of applications for approval of a fee and access plan. The regulations could for example require institutions to provide HEFCW with certain information or documentation alongside their applications for approval of a fee and access plan. These requirements regarding information and documentation are likely to change over time following changes in the delivery of higher education in Wales as well as technological advancements. The Welsh Ministers need the flexibility to respond to these changes which will ensure that the fee and access plan application process remains up to date.

b) - Approval of a fee and access plan

Section 7(3) enables the Welsh Ministers to make regulations about matters to be taken into account by HEFCW in determining whether to

² <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=9722>

approve or reject a fee and access plan. The matters which will be relevant to a decision by HEFCW to approve or reject an institution's fee and access plan are likely to change over time. These matters may be influenced by the types of institution applying for approval, the range of courses offered in Wales and other changes to the higher education sector. This power will enable the Welsh Ministers to update the fee and access plan approval process in accordance with these changes.

c) -Contents of a fee and access plan

Under Section 4(2), the Welsh Ministers may prescribe in regulations the maximum period to which a fee and access plan is to have effect. The maximum period in respect of which a fee and access plan is to have effect is likely to change over time in response to changes to the higher education sector in Wales. This regulation making power is required to enable the Welsh Ministers to respond to these changes. These regulations are necessary to enable the system to function effectively and as such there is an implicit requirement that they will be made.

Section 5(2)(b) enables the Welsh Ministers to prescribe in regulations descriptions of 'qualifying courses'. Such courses must be wholly or principally provided in Wales. Qualifying courses are courses that will attract a fee limit. These regulations are necessary to enable the system to function effectively there is an implicit requirement that they will be made.

Section 5(3) enables the Welsh Ministers to set a maximum amount for a fee limit. The maximum fee limit applicable to certain higher education courses ('qualifying courses') is likely to change over time, in response to changes in student support policy, the fees in other UK administrations and other economic and social factors. The system could not operate effectively without these regulations and so there is an implicit requirement to make regulations.

Section 5(5) enables the Welsh Ministers to prescribe classes of persons in regulations who will be 'qualifying persons' for the purposes of the fee limit. This power will provide the Welsh Ministers with the flexibility to update the meaning of 'qualifying persons' as and when required. These regulations are necessary for the system to operate properly; there is an implicit requirement to make regulations.

Section 5(9) enables the Welsh Ministers to make regulations which specify circumstances where fees payable to another person in connection with a qualifying person's course, are to be regarded as fees payable to the institution in connection with that course. It is required to enable the Welsh Ministers to respond to changes in the way fees are charged by higher education institutions in Wales.

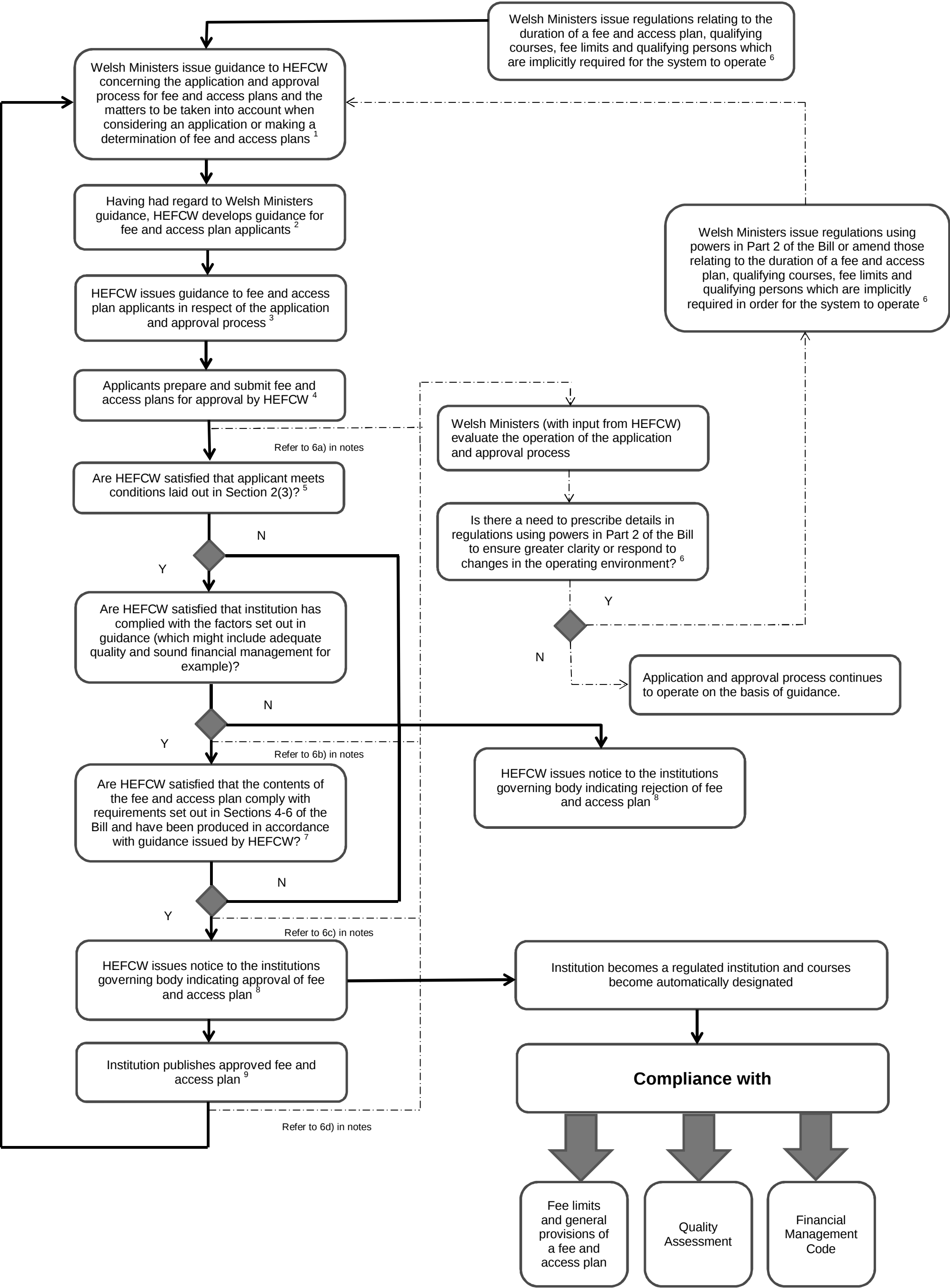
Section 6(1) requires a fee and access plan relating to an institution to include such provision on the promotion of equality of opportunity or the promotion of higher education as may be prescribed by the Welsh Ministers in regulations. This power enables the Welsh Ministers to prescribe the information on equality of opportunity and higher education for this purpose. The information and priorities associated with the promotion of equality of opportunity and the promotion of higher education is likely to change over time alongside changes to the higher education sector in Wales. This power will enable the Welsh Ministers to respond to these changes by adapting the requirements imposed on institution's fee and access plans.

d) - Publication of a fee and access plan

Section 8(1) enables the Welsh Ministers to require institutions with an approved fee and access plan to publish their approved plan. The regulations requiring publication may make specific provision on how and when a plan is to be published. This regulation power will enable the Welsh Ministers to respond to changes over time and allow for a flexible and up to date approach to publication (see also 9 below).

7. Sections 4-6 set out requirements for the contents of fee and access plans. These include the period to which a plan relates, the fee limit and provisions relating to equality of opportunity or the promotion of higher education. Guidance issued by HEFCW to institutions may provide additional information or detail in relation to these requirements
8. Under Section 7(1) HEFCW must notify the governing body of an institution that it has either approved or rejected a fee and access plan.
9. The expectation is that institutions will publish their fee and access plans as a matter of course, however, Welsh Ministers have the power to issue regulations in respect of the publication of approved plans if this is considered necessary to ensure a consistency of approach.

Fee and Access Plan Application and Approval Cycle



Agenda Item 5.4

CYPE(4)-22-14 - Paper to note 7

Lesley Griffiths AC / AM
Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty



Llywodraeth Cymru
Welsh Government

David Melding AM
Chair of the Constitutional and
Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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16 September 2014

Dear David

Financial Education and Inclusion (Wales) Bill

Thank you for your letter of 22 July inviting the Government to give evidence to the Constitutional and Legislative Affairs Committee on 22 September. In advance of my appearance before the Committee, I am grateful for the opportunity to provide you with my written evidence on the Bill.

I have copied this letter, and my evidence, to the Chair of the Children, Young People and Education Committee.

Regards

Lesley

Lesley Griffiths AC / AM
Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty

Constitutional and Legislative Affairs Committee: consideration of the Financial Education and Inclusion (Wales) Bill

Introduction

1. I understand the main intention of the Bill is preventative, namely to address the position where many people in Wales are falling into financial difficulty due to a lack of knowledge and skills in managing money. Whilst I fully support the aim of strengthening financial education and financial literacy, I do not consider the proposals in the Bill will result in anything additional to what is currently delivered. Indeed I am concerned the Bill may deflect from frontline delivery as it introduces new processes and, potentially, additional bureaucracy without a clear explanation of the measurable outcomes being sought.

Existing legislation

2. It is the case almost all the proposals in the Bill could be delivered using existing legislation. For example a Local Authority could use its general well-being powers in section 2(1) of the Local Government Act 2000 (“the 2000 Act”) to produce a strategy to promote financial inclusion. This provides every Local Authority in Wales with the power to do anything they consider likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. Arguably the promotion of financial inclusion would fall into promoting the economic and social well-being of their area. In addition, section 3(5) of the 2000 Act requires a Local Authority to have regard to any guidance issued by the Welsh Ministers before exercising their power. Guidance could potentially deal with the promotion of financial inclusion.
3. Local Authorities also currently have a duty under the Local Government (Wales) Measure 2009 (“the Measure”) to create a community strategy relating to long term objectives for improving the social, economic and environmental well-being of the area.
4. The Well-being of Future Generations (Wales) Bill (“the Future Generations Bill”) which has been recently introduced seeks to repeal provisions relating to community strategies and proposes to make provision in relation to new local well-being plans prepared by public service boards. Whilst the Future Generations Bill may be subject to amendment as part of the Assembly’s consideration, a number of the provisions in the Bill, as introduced, could be used by Local Authorities to promote financial inclusion.
5. The law on the curriculum in Wales is set out in Part 7 of the Education Act 2002 (“the 2002 Act”); section 101 of the 2002 Act sets out the requirements of the Basic Curriculum in Wales. That Basic Curriculum comprises of a number of different elements including the National Curriculum for Wales. The National Curriculum includes the foundation phase, the second, third and fourth key stages and the local curriculum. The specific subjects that form part of the National Curriculum for Wales are set out in sections 105 and 106 of the 2002 Act. Those subjects are called the foundation and core subjects.

6. There is a power in section 108 of the 2002 Act for the Welsh Ministers to set out by way of subordinate legislation areas of learning, desirable outcomes, educational programmes assessment arrangements for the foundation phase. That section also provides a power for the Welsh Ministers to set out in subordinate legislation programmes of learning, attainment targets and assessment arrangements for the foundation and core subjects in the key stages. In essence, this allows the Welsh Ministers to specify what must be taught and how it must be assessed. It is a means of being able to set out a complete National Curriculum for Wales. It is worth noting the power in section 108 of the 2002 Act was used to make the literacy and numeracy framework a statutory part of the National Curriculum.
7. Therefore, the Welsh Ministers already have extensive powers in existing education legislation to set out curriculum and assessment arrangements for the foundation phase and the key stages for the subjects required to be taught in those phases of education. The Welsh Ministers also have powers in existing education legislation to add new areas of learning to the foundation phase and new foundation subjects to the national curriculum for the key stages by way of subordinate legislation. Therefore, I consider sections 4 and 5 of the Bill to be an unnecessary duplication.
8. The Bill prescribes that financial inclusion strategy should include facilitating free access to online financial education and management services (whether through libraries or otherwise). However, Section 7 of the Public Libraries and Museums Act 1964 (“the 1964 Act”) imposes a duty on each library authority (which in practice is each Local Authority by virtue of section 4 of that Act) to provide a comprehensive and efficient library service; section 8 of the 1964 Act provides no charge shall be made by a library authority for library facilities made available by the authority, unless specified in regulations made by the Welsh Ministers¹ - currently the Library Charges (England and Wales) Regulations 1991 (“Library Charges Regulations”) make such provision.
9. 1964 Act and the Library Charges Regulations provide that libraries currently are able to charge for internet access. However, that position could change, given the Welsh Ministers have the executive powers to amend these Regulations which could be exercised so as to prevent libraries from charging for internet access.
10. The Fifth Framework of the Welsh Library Public Standards, issued by the Welsh Ministers, outlines the core entitlements public library services should provide. This includes “*free use of computers and the internet, including Wi-Fi.*”
11. Finally, there are existing legislative functions which have a similar effect as sections 7 and 11 of the Bill, namely provisions under the Children Act 1989 and the Children (Leaving Care) (Wales) Regulations 2001. There are also powers that will be able to be utilised under the Social Services and Well-Being (Wales) Act 2014 once that Act comes into force in respect of looked after children.

¹ Functions of the Secretary of State have been transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, and subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to Government of Wales Act 2006

Detail of the Bill

12. Notwithstanding my position that this Bill is unnecessary, I remain to be convinced the Bill as drafted, conveys the policy intentions set out in the accompanying Explanatory Memorandum. For example, a Local Authority's financial inclusion strategy must set out how the Authority will use its powers to promote the financial inclusion of individuals who live in its area. 'Financial inclusion' is defined as meaning access to financial services and financial education at a reasonable cost. The intended relationship between commercial entities and local authorities in the exercise of this provision is not clear; who decides that a financial service is at a reasonable cost, and will this have the effect of the local authority '*promoting*' commercial products? Will an Authority come under pressure from, for example, a bank for not promoting its latest loan products which the bank considers is available at a reasonable cost?
13. Turning to section 5 of the Bill, I believe the Member in Charge considers the Welsh Ministers could make an order under section 108(3) of the Education Act 2002 setting out a programme of study, attainment targets and assessment arrangements for financial education. However, whilst section 4 of the Bill proposes financial education be made a new requirement of the Basic Curriculum (by means of adding it to section 101 of the 2002 Act), it is not made an area of learning for the foundation phase or a foundation subject for any of the key stages by the Bill. The power to set out curriculum and assessment arrangements by way of an order made under section 108(3) only applies to areas of learning and foundation subjects.
14. Further, the Bill seeks to impose a duty to consult upon financial education orders, but to do so creates some unnecessary duplication as it does not take account of section 117 of the 2002 Act. This places a duty upon the Welsh Ministers to consult such persons as they think appropriate when making an order under section 108, setting out desirable outcomes or educational programmes for the foundation phase or attainment targets or programmes of study for the key stages.
15. I am concerned some of the provisions in section 9 relating to the content of a Local Authority's financial inclusion strategy are ambiguous. For example, I am not clear as to what the 'implications and effects of street-trading and cold-calling' are, and how they relate to financial literacy (which is not defined), and it is not clear whether free access to the internet as a whole is to be facilitated, or access only to financial education and management services. Nor is it clear what financial education is to be provided on-line and by whom.
16. A further example of the Bill as introduced not necessarily meeting the policy intention can be seen in section 12 of the Bill. Under section 12(1) an Authority must signpost where to find advice about financial management, and under section 12 (2) the Local Authority may provide advice about financial management where it thinks the advice is not reasonably available otherwise. Therefore, there could be a situation where the Local Authority thinks there is not advice reasonably available in its area, but decides not to provide any such

advice itself. As drafted, the Bill does not make provision which ensures reasonable advice is provided within an authority's area.

17. Under section 13, a Local Authority must take reasonable steps to ensure universities and further education corporations in its area provide advice about financial management to students. I am concerned about this provision. Local Authorities have no direct relationship with either universities or further education corporations which would, in turn, give them authority to enforce this requirement. It is not a duty which would be within an Authority's power to discharge, nor could the duty be enforced. I am also concerned with the ambiguity of the drafting of this section: there are no definitions of the terms used; further education corporations are just one type of further education institution, and it is not clear why other ones are not included; it touches on the fundamental principle of the independence and autonomy of higher education and its position at arms length from government. The Welsh Government believes there are other, more effective ways of focussing resources on financial education, for both higher and further education. There already exists a broad range of provisions of financial education at both higher and further educational institutions in Wales, as part of pastoral and welfare services.

Powers to make subordinate legislation

18. As outlined above, financial education and inclusion can already be addressed in existing legislation. For example, there are detailed skills relating to managing money and financial education within the literacy and numeracy framework which has been in force since September 2013. These were developed in partnership with the Welsh Financial Education Unit, and through open consultation.
19. Also we have recently consulted on revisions to be made to the existing programmes of study which are given legal effect by way of subordinate legislation. In particular the mathematics programme of study, which embeds the literacy and numeracy framework into it, and again, has a detailed set of skills statements relating to financial education within the 'Manage money' element. By way of example, this element contains statements regarding using cash, comparing costs from different retailers, discounts, budgeting, planning and tracking savings accounts, profit and loss, bank accounts, bank cards, VAT, saving, borrowing, interest rates, exchange rates and insurance. This will be published in October 2014, and made statutory from September 2015.
20. In the interest of thoroughness, I would like to comment on the provisions for subordinate legislation within the Bill:
- a. *Section 6(2) and (3)*: Section 6 appears to duplicate what is effectively already provided for in legislation. Section 20 of the Education Act 2005 places a duty on Estyn to keep the Welsh Ministers informed about the quality of education provided by schools, how far the education provided meets the needs of the pupils in those schools and the educational standards achieved by those schools. In addition, Estyn has a duty to provide the Welsh Ministers with advice on such matters as they specify.

Additionally, the power in the Bill to 'direct' the Inspector to prepare the report is very limited in nature, and there is no discretion for the Welsh Ministers to specify how the Inspector should conduct the report, or what should be included.

It is also unusual to prepare a progress report by way of direction. The Welsh Ministers have several direction-making powers in education legislation but they apply where the person directed (a school governing body or Local Authority) has acted unreasonably or unlawfully. In those cases the legislation provides such direction can be enforced by way of a court order. The Bill does not do this, and therefore it is unclear how it could be legally enforced or indeed if the policy intention behind the provision is that it should be enforced by way of court order. It is also not clear whether the policy intention is that the direction-making power to be exercisable by subordinate legislation or to be exercised more in the nature of executive instruction enforceable by the courts.

Finally, the approach does not seem to take proper account of the existing statutory scheme of powers and duties of Estyn set out in the Education Act 2005.

- b. *Section 9(2) and (3)*: under these provisions the Welsh Ministers may by way of regulations, made following consultation with Local Authorities, amend the prescribed content of a financial inclusion strategy made under section 9(1) of the Bill.

Notwithstanding my view such a strategy is unnecessary, to the extent that provision is made I consider that the proposal which allows the Welsh Ministers some flexibility in deciding what should be included in the strategy is acceptable. This is because it will allow account to be taken of the changing landscape; I do however have some concerns with the way the power has been drafted, given: the power in section 9(2) is very wide. The Assembly in passing the Bill should be satisfied it can contemplate what a power is likely to be used for. I would be interested in understanding how the Member in Charge of the Bill envisages this power should be used and in what circumstances, so the Government can consider whether the way this provision is drafted is suitable for its purpose.

- c. *Section 10*: this enables the Welsh Ministers to issue guidance about financial inclusion strategies and requires a Local Authority to have regard to any guidance issued. The Welsh Ministers already have the powers to promote financial inclusion and to require a local authority to have regard to any guidance issued by the Welsh Ministers before exercising their power, and therefore the power provided for in the Bill is unnecessary.

Commencement provisions

21. I have considered carefully the commencement provision in the Bill, and make the following observations:

- a. Firstly, it is proposed a commencement order containing solely commencement and transitional, transitory or saving provisions would be subject to Assembly procedure. This is unusual. The Assembly has already approved the subject matter of the Act by passing it, such that further scrutiny would not, I believe, be appropriate. The standard approach is that commencement orders are not subject to any procedure, on the basis they are giving effect to provisions already approved by the Assembly. The same reasoning applies to, in particular, transitional, transitory or saving provisions, which are included in a commencement order to ensure the proper operation of the Act being brought into force, and ensure it is clear when the old law and new law apply. Therefore my first concern relates to the *principle* of whether a commencement order should be subject to Assembly procedure.
- b. My second concern is in relation to its practical application; it is not clear what the procedure would be if the Assembly passed a motion for annulment, by virtue of the order being subject to the negative procedure, once any commencement order had been made and had come into force. The Welsh Ministers would have to lay an order revoking the commencement order; this would not affect the validity of anything done whilst the provision was in force, and would not have the effect of 'undoing' the commencement, but would remove the effect of any transitional provisions which would leave the position of those persons affected by the law very unclear.
- c. Thirdly, section 14(3) refers to an order under section 14(2)(b), however, the power to create the order is contained in section 14(1)(a).
- d. Finally, section 14(4) of the Bill provides that provisions will come into force in January 2018 if not in force at that time. This is a restriction on the Welsh Ministers' powers to decide when the circumstances are right to commence the provisions of the Bill. I do not support this provision.

22. I do not consider this commencement provision as drafted is appropriate.

Matters of legislative competence

23. The provisions of the Bill, particularly as drafted, do need careful consideration to determine whether they might potentially fall with the following express exception in Schedule 7 to the Government of Wales Act 2006, namely "Financial services, including investment business, banking and deposit-taking, collective insurance schemes and insurance". I note simply at this point that the Explanatory Memorandum contains no such analysis.

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