

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

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Meeting date:

**14 July 2014**

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Meeting time:

**14.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3** (Pages 1 – 4)

**CLA(4)–20–14 – Paper 1 – Statutory instruments with clear reports**

Negative Resolution Instruments

**CLA419 – The Plant Health (Export Certification) (Wales) (Amendment) Order 2014**

Negative procedure; Date made: 2 July 2014; Date laid: 4 July 2014; Coming onto force date: 31 July 2014

**CLA420 – The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014**

Negative procedure: Date made: 2 July 2014; Date laid: 4 July 2014; Coming into

force date: 1 October 2014

**CLA421 – The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014**

Negative procedure; Date made: 2 July 2014; Date laid: 4 July 2014; Coming into force date: 1 October 2014

**CLA422 – The Mobile Homes (Site Rules) (Wales) Regulations 2014**

Negative procedure; Date made: 2 July; Date laid: 4 July 2014; Coming into force date: 1 October 2014

**CLA423 – The Education (Student Support) (Wales) (Amendment) Regulations 2014**

Negative procedure; Date made: 1 July 2014; 4 July 2014; Coming into force: 25 July 2014

**CLA424 – The Mobile Homes (Written Statement) (Wales) Regulations 2014**

Negative procedure; Date made: 2 July 2014; Date laid: 4 July 2014; Coming into force date: 1 October 2014

**CLA425 – The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014**

Negative procedure; Date made: 3 July 2014; Date laid: 7 July 2014; Coming into force date: 1 September 2014

**CLA426 – The Plant Health (Fees) (Wales) Regulations 2014**

Negative procedure; Date made: 6 July 2014; Date laid: 8 July 2014; Coming into force date: 2 August 2014

Affirmative Resolution Instruments

**CLA418 – The Residential Property Tribunal Procedures and Fees (Wales) (Amendment No. 2) Regulations 2014**

Affirmative procedure; Date made: Not stated; Date laid: 25 June 2014; Coming into force date: 1 October 2014

### **3 Papers to note**

**Correspondence in relation to the Higher Education (Wales) Bill** (Pages 5 – 21)  
**CLA(4)–20–14 – Paper 2** – Letter from the Minister for Education and Skills

**Correspondence in relation to the Well-being of Future Generations (Wales) Bill**  
(Pages 22 – 31)

**CLA(4)–20–14 – Paper 3** – Letter from the Minister for Communities and Tackling Poverty

**CLA(4)–20–14 – Paper 4** – Statement of Policy Intent

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

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

### **5 Supplementary Legislative Consent Memorandum (No.3) Deregulation Bill** (Pages 32 – 43)

**CLA(4)–20–14 – Paper 5** – Draft Report

**CLA(4)–20–14 – Paper 6** – Legal Advice Note

**CLA(4)–20–14 – Paper 7** – Supplementary LCM

**Draft Report on the inquiry into Disqualification of Membership from the National Assembly for Wales** (Pages 44 – 110)

**CLA(4)–20–14 – Paper 8** – Draft Report

**Forward Work Programme** (Page 111)

**CLA(4)–20–14 – Paper 9** – Forward Work Programme

# Agenda Item 2

Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
14 July 2014

**CLA418 – The Residential Property Tribunal Procedures and Fees (Wales) (Amendment No. 2) Regulations 2014**

**Procedure:** Affirmative

The Mobile Homes (Wales) Act 2013 (“the 2013 Act”) consolidates existing provisions regarding residential mobile home sites, and makes provision in relation to how residential mobile home sites are managed and maintained in Wales.

The Mobile Homes (Site Rules) (Wales) Regulations 2014 (“the Site Rules Regulations”) are made under the 2013 Act and introduce new grounds for applications to the Residential Property Tribunal (“the tribunal”).

These Regulations amend the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 (“the Principal Regulations”) in light of the 2013 Act and the Site Rules Regulations. The Principal Regulations are amended to update references to the Mobile Homes Act 1983 to the equivalent provision in the 2013 Act. In addition, provision is made in respect of new applications which may be made to the tribunal under the 2013 Act and the Site Rules Regulations.

**CLA419 – The Plant Health (Export Certification) (Wales) (Amendment) Order 2014**

**Procedure:** Negative

This Order amends the Plant Health (Export Certification) (Wales) Order 2006 (“the 2006 Order”).

This Order provides for increases on the fees specified in the 2006 Order as follows:

- (a) fees for services in respect of applications for certificates by a range from 4% to 52% (article 2(3)) and
- (b) fees for pre-export services by 19% (article 2 (4)).

#### **CLA420 – The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014**

**Procedure:** Negative

These Regulations prescribe the form of the document that must accompany a pitch fee review notice (served under paragraph 17(3) or (8) (b) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013) which proposes an increase in the pitch fee.

#### **CLA421 – The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014**

**Procedure:** Negative

These Regulations introduce new procedures for the selling and gifting of mobile homes and assignment of agreements under provisions in Part 4 of the Mobile Homes (Wales) Act 2013.

#### **CLA422 – The Mobile Homes (Site Rules) (Wales) Regulations 2014**

**Procedure:** Negative

These Regulations prescribe the procedure for the making, variation and deletion of site rules, prescribe the matters to which site rules may and may not relate and grant appeal rights in relation to these matters, under section 52 of the Mobile Homes (Wales) Act 2013.

#### **CLA423 – The Education (Student Support) (Wales) Regulations 2014**

**Procedure:** Negative

The Education (Student Support) (Wales) Regulations 2013 (“the 2013 Regulations”) provide for financial support for students who are ordinarily resident in Wales and taking designated higher education courses in respect

of academic years beginning on or after 1 September 2014. These Regulations amend the 2013 Regulations.

#### **CLA424 – The Mobile Homes (Written Statement) (Wales) Regulations 2014**

**Procedure:** Negative

Before a person enters into an agreement to occupy a mobile home as a main residence, the Mobile Homes (Wales) Act 2013 requires site owners to give a written statement to the proposed occupier. These regulations specify that the written statement must contain certain information namely:

- information about the occupier's rights under the agreement (including the terms that apply to the agreement and how to challenge those terms); and
- information about the start date of the agreement, the size and location of the pitch, the pitch fee and other charges.

#### **CLA425 – The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014**

**Procedure:** Negative

Amendments made to section 96A of the Town and Country Planning Act 1990 by the Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014 (S.I. 2014/1770 (W.182)) allow local planning authorities in Wales to make non-material changes to planning permissions relating to land in their area.

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801 (W. 110)) to make provision for the form and manner in which applications are to be made. The Order also places requirements on local planning authorities as to consultation and publicity.

## **CLA426 – The Plant Health (Fees) (Wales) Regulations 2014**

**Procedure:** Negative

These Regulations specify fees payable to the Welsh Ministers in the field of plant health. They revoke and replace the Plant Health (Fees) (Wales) Regulations 2013 (S.I. 2013/1700 (W. 164)).

The fees are payable in relation to specified inspections and other operations carried out pursuant to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No L 169, 10.7.2000, p. 1).

Ein cyf/Our ref LF/HL/0645/14

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

02 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 raised a number of questions about the Higher Education (Wales) Bill. This letter seeks to respond to the specific matters raised by Members. To aid the Committee's consideration further, however, I set out first the broad principles which have underpinned the drafting of the Bill.

When I introduced the Bill on 19 May 2014, and during my attendance at the Committee, I provided assurance that in preparing this legislation we have had regard throughout to the Counsel General's guidelines on subordinate legislation. The guidelines recognise that in each case there is a balance to be struck between:

- scrutiny by the Assembly;
- consumption of Assembly (or committee) time;
- the significance of the provisions in question; and
- the making of legislation in the most efficacious manner.

The guidelines outline a range of factors that may, to a greater or lesser extent depending on the context, either suggest the application of the "draft affirmative" procedure; or else require particular justification if a procedure other than "draft affirmative" procedure is applied. Those factors are:



- “1) powers that enable provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly;
- 2) powers, the main purpose of which is, to enable the Welsh Ministers, First Minister or Counsel General to confer further significant powers on themselves;
- 3) powers to apply in Wales provisions of, for example, Acts of Parliament that in England, Scotland or Northern Ireland are contained in the Act itself (whether with or without modifications);
- 4) powers to impose or increase taxation or other significant financial burdens on the public;
- 5) provision involving substantial government expenditure;
- 6) powers to create unusual criminal provisions or unusual civil penalties;
- 7) powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion;
- 8) powers that impose onerous duties on the public (e.g. a requirement to lodge sums by way of security, or very short time limits to comply with an obligation).
- 9) powers involving considerations of special importance not falling under the heads above (e.g. where only the purpose is fixed by the enabling Act and the principal substance of the legislative scheme will be set out in subordinate legislation made in exercise of the power).”

As the analysis which follows I hope will demonstrate, where proposals relating to subordinate legislation in the Higher Education (Wales) Bill satisfy any of the above criteria they are to be subject to the affirmative procedure. For the most part, however, and as I also explained to the Committee, the subject matter of the proposed subordinate legislation deals with relatively minor practical detail in the overall legislative scheme; is likely to be updated on a regular basis or otherwise be subject to change; and circumstances may arise in which it may be necessary to legislate swiftly.

I contend, therefore, that the Bill as drafted allows for an appropriate balance between scrutiny by the Assembly and effective use of Assembly or Committee time.

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. A duty to make regulations is only appropriate where the regulations in question and the duty are very limited in scope. I also start from the presumption that Government should regulate only to give effect to the overall legislative scheme or otherwise when the need for such regulation is established on some other grounds. I acknowledge that in a number of cases the system established under the Bill will not be able to perform effectively without regulations in place. For instance regulations will need to be made which prescribe the maximum fee limit and description of qualifying persons

and qualifying courses. However, other draft provisions are more permissive in nature in order to permit regulations to be made where they might assist the operation of the new regime or where circumstance or experience demonstrate a need for regulation in those areas. My officials have undertaken an analysis of the use of the terms "may" and "must" throughout the Bill. That analysis is included as an annex to this letter. I trust that this additional information will be of assistance.

## **Part 2: Fee and access plans**

### **Section 2: *Application by institutions for HEFCW's approval of fee and access plans***

This section permits the governing body of an institution of a certain type to apply to HEFCW for approval of a fee and access plan. Section 2(4) enables the Welsh Ministers to make regulations about the making of applications under this section. In specifying that the Welsh Ministers "may" make regulations under this section we have applied the principle that we will not be legislating unless it is necessary to do so. If regulations are not made that fact would not prevent institutions applying to HEFCW for approval of their plans.

Under the current system, institutions funded by HEFCW may apply to HEFCW for approval of a fee plan and there are no regulations in place which make provision about the making of such applications. HEFCW is able to issue guidance to institutions about the matters to which it will have regard in determining plan applications (section 34(3) of the Higher Education Act 2004 enables this) and there is nothing to prevent HEFCW also from issuing non-statutory guidance to institutions about the application process and the provision of supporting information.

Under the new regulatory system HEFCW could issue information and advice to institutions under section 51(3) about the application process for approval of fee and access plans and the information to be submitted as part of applications. Consequently institutions could be made aware by HEFCW of the process and information required for approval of fee and access plans without the need for the Welsh Ministers to make regulations. If the Welsh Ministers do not make regulations under this section that would not open HEFCW up to legal challenge. However, if, after operating the system either HEFCW or institutions indicate that the application process could be clarified then the Welsh Ministers' power under section 2(4) would enable regulations to be made to provide that clarity. For example, it may prove to be helpful to make regulations if there are new entrants to the system which have not previously applied to HEFCW for approval of a fee plan. There is a clear distinction to be drawn between a need to make regulations for the system to work and the discretionary use of a regulation making power to improve the operation of the system. The regulation power in section 2(4) falls into the latter category and consequently the Bill has been drafted to enable the Welsh Ministers to make regulations should they prove to be necessary.

### **Section 3:** *Designation of other providers of higher education*

This section enables the Welsh Ministers to designate a charitable provider of higher education in Wales, which would not otherwise be regarded an institution, as an institution for the purposes of the Bill. Such designations will ensure that providers of higher education which may not be regarded as institutions are not prevented from applying to HEFCW for approval of a fee and access plan. A designation under section 3 does not mean that a charitable provider will automatically enter the new regulatory system established under the Bill. Following designation as an institution for the purpose of the Bill such a provider will still need to apply to HEFCW for approval of a fee and access plan, under section 2 of the Bill, in order to become a regulated institution. Consequently such providers will also need to satisfy the conditions at section 2 of the Bill namely, that it is an institution in Wales, that it delivers courses of higher education and that it is a charity.

Section 3(4) enables the Welsh Ministers to make provision, via regulations about applications for designation, the making and withdrawal of designations, including matters to be taking into account when considering whether to make or withdraw a designation, and the effect of a withdrawal of designation. However, section 3 does not depend upon regulations being made to make it work. Providers of higher education could be designated as institutions by the Welsh Ministers without regulations being made under section 3(4) – there is nothing to prevent such providers applying to the Welsh Ministers for designation and indeed section 3(1) makes provision for that.

In specifying that the Welsh Ministers “may” make regulations under this section we have applied the principle that we will not be legislating unless it is necessary to do so. The number of providers applying for designation under section 3, especially in the near future, is likely to be limited and in the first instance it is unlikely that regulations will need to be made, however, the power set out in section 3(4) will enable regulations to be made if they prove to be necessary. Additionally, section 3(3) provides a default position that a provider designated as an institution is to be treated as an institution for the purposes of the Bill unless the designation is withdrawn.

### **Section 6:** *Promotion of equality of opportunity and promotion of higher education*

Section 6(1) of the Bill requires that a fee and access plan must include such provisions relating to the promotion of equality of opportunity to access higher education or the promotion of higher education as may be prescribed. This provision enables the Welsh Ministers to make regulations. Information on the type of

provision relating to the promotion equality of opportunity and the promotion of higher education which may be included in regulations is set out on the face of the Bill in section 6(3).

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 as well as developments in evidence about the effectiveness of activities and interventions which institutions include in their fee and access plans. This power will enable the Welsh Ministers to respond to these changes regularly by adapting the requirements imposed on institution's fee and access plans. Crucially, we do not yet know what HEFCW's evaluation of fee and access plans will identify and therefore need the flexibility to adapt the information and priorities associated with the promotion of access to higher education and the promotion of higher education from time to time.

The proposal that regulations made under section 6(1) are subject to the negative resolution procedure has been informed by application of the Counsel General's guidelines. Taking those guidelines into account it is my view that the regulation making power under this section does not fall into any of the categories to which the affirmative procedure should apply. A considerable amount of detail concerning provisions that may be prescribed in regulations made under section 6(1) is to be found on the face of the Bill at sections 6(3) and 6(4). Additionally, section 6(5) provides for certain restrictions on the requirements that may be included in regulations. I am therefore of the opinion that the principal substance of the legislative scheme concerning the contents of fee and access plans has been set out on the face of the Bill rather than being reserved to subordinate legislation. The regulations will provide further detail as to how the required content of fee and access plans is to be applied in the context of a wider range of tuition fees than under the current regime. Consequently regulations to be made under section 6(1) are suitable for the negative resolution procedure.

I hope to have these regulations available in draft form to allow Members to scrutinise them at Stage 2. The intention is to also consult stakeholders on the draft regulations at the appropriate time.

### **Section 7: *Approval of fee and access plans***

Under section 7 HEFCW may either approve or reject an application for approval of an institution's 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 approve or reject a plan.

The intention is that HEFCW should be required to take into account the quality of education at the institution; the organisation of its financial affairs; and the adequacy of the measures committed to in the plan against the proposed tuition fee level. These requirements are designed to ensure that the interests of prospective

students are protected and also to ensure that HEFCW adopts a proportionate approach to the approval of plans in line with the level of fees charged. They will also give applicant institutions an insight into the issues that HEFCW will be weighing up when considering their fee and access plans. This will be particularly useful for new applicants, who are applying for approval of a fee and access plan for the first time.

The proposal that regulations made under section 7(3) are subject to the negative resolution procedure has been informed by application of the Counsel General's guidelines. It is my view that the regulation making power under this section does not fall into any of the categories to which the affirmative procedure should apply. I do not consider that these regulations are appropriate for the affirmative procedure as they are relatively minor in the overall legislative scheme, if made they may need to be updated on a regular basis to take account of changes in the higher education landscape. It is also worth noting that HEFCW may approve or reject fee and access plans without these regulations being made.

#### **Section 8:** *Publication of an approved plan*

Section 8(1) enables the Welsh Ministers to make provision, via regulations, which requires an institution to publish its approved fee and access plan. Section 8(2) confirms that these regulations may make provision about how and when an approved fee and access plan is published. Section 8 of the Bill is derived from section 34(6) of the Higher Education Act 2004 which similarly makes provision for the Welsh Ministers to make regulations that may require institutions subject to an approved plan to publish their plans in the manner prescribed in regulations. Therefore, the use of regulations for the purpose of requiring publication of approved plans is not new and is already in operation under the current system. Furthermore, as institutions currently publish their approved fee plans are familiar with the need to ensure that those plans are made accessible to students and other interested parties it may not prove to be necessary to make these regulations. If however, feedback from HEFCW, students and other stakeholders indicates that there is a problem this regulation making power will allow the Welsh Ministers to legislate if it proves to be necessary to do so.

#### **Section 9:** *Variation of plans*

Section 9(1) enables Welsh Ministers to make regulations in order to allow approved plans to be varied in accordance with the procedure laid down in regulations. The regulations must provide that a variation will only take effect if approved by HEFCW. This power will be relevant where, following approval of a fee and access plan by HEFCW, an institution wishes to vary its approved plan. The Welsh Ministers currently have a similar power in section 36 of the Higher Education Act 2004.

Although, the Welsh Ministers would be able to issue guidance to HEFCW (as provided for in section 46 of the Bill) I consider the variation of approved plans to be a matter more suited to regulations than guidance. HEFCW would be required to take such guidance into account, but could divert from such guidance if it had good reason for doing so. The current legislative architecture under the Higher Education Act 2004 makes use of regulations for the purpose of providing certainty about the procedure and processes associated with variation of an approved fee plan and my intention is to do likewise in respect of the variation of approved fee and access plans under the new regulatory system.

The policy intention is to provide an effective procedure for approved plans to be varied during the lifetime of the plan. Variations to approved plans are more likely to raise practical issues about how an institution applies for a variation and how HEFCW considers a variation. My view is that regulations are a better means of dealing with such issues than guidance as they provide certainty. Guidance does not provide the same level of certainty; whilst institutions must have regard to guidance they are not obliged to follow it in all circumstances. Although institutions could apply for approval of a fee and access plan without these regulations being in place they could not apply to vary an already agreed plan during the lifetime of that plan.

#### **Part 4: Financial affairs of regulated institutions.**

For the avoidance of doubt I wish to clarify that there are no regulation making powers arising from Part 4 of the Bill. HEFCW's functions of preparing, consulting on, issuing and keeping under review the proposed financial management code will not be supported by regulations. Currently HEFCW develops, consults on and issues a financial memorandum applicable to funded institutions. Under the new regulatory framework HEFCW will be required to consult all regulated institutions on a draft financial management Code and will additionally be required to provide a summary of those consultation responses when they submit the draft code to the Welsh Ministers for approval.

#### **Part 5: Withdrawal of approval of a plan**

##### **Section 36:** *Notice of refusal to approve a new fee and access plan*

Under the proposed regulatory system if HEFCW are satisfied that a regulated institution has failed to comply with the applicable fee limits or general provisions of its approved fee and access plan, or has failed to comply with a direction from HEFCW concerning quality of its education or its financial management, HEFCW may give notice to the institution that they will not approve a new fee and access plan before the end of the period specified in the notice. This function is distinct from that of approval of a fee and access plan under section 4 of the Bill and forms one of

a menu of sanctions available to HEFCW in the event of an institution's failure to comply with specified requirements of new regulatory framework. The conditions under which HEFCW may give notice to the governing body of a regulated institution are set out on the face of the Bill at section 36(3).

Section 36(7) enables the Welsh Ministers to make regulations relating to the notices and decisions of HEFCW not to approve a new fee and access plan. This includes provision about the period specified in a notice during which HEFCW will not approve a new fee and access plan, the matters to be taken into account by HEFCW in deciding whether to give, or withdraw, such a notice and the procedure to be followed if such a notice is withdrawn. Regulations made under section 36(7) cannot be used to make additions to the conditions specified in section 36(3). This means that the conditions under which HEFCW may issue notice of refusal to approve a new fee and access plan cannot be changed by the proposed regulations.

It is expected the matters to be taken into account by HEFCW in deciding whether to give notice of their intention to refuse to approve a new plan might include consideration of the severity of the compliance failure and whether alternative courses of action may be appropriate. With regard to withdrawal of a notice it is expected that the matters to be taken into account by HEFCW might include any mitigating action taken by the institution (post issue of the notice) in order to effect its compliance with the conditions at section 36(3) of the Bill. I consider that these matters are appropriate for inclusion in regulations to be made by the negative procedure as they concern technical and procedural detail about the issuing of notices under section 36 of the Bill. These matters will require updating over time, following any changes to the higher education sector in Wales and in response to feedback received from HEFCW on the operation of their enforcement powers. For example, it may be appropriate to increase or reduce the maximum period a notice refusing to approve a new plan can apply for, following discussions and engagement with HEFCW on the effectiveness of such notices.

I also wish to clarify the position with regard to the provision at section 36(7)(a) which states:

*“(7) Regulations may make provision about –  
(a) the period that may be specified in notice under this section;”*

The first reference to 'may' is concerned with enabling the Welsh Ministers to make regulations on any of the matters specified in section 36(7) (a) – (c). The second use of the word 'may' is entirely different in its context. The effect is not to permit a notice to specify a period as a notice is required to do this by virtue of subsection 36(2). The purpose here is to confer discretion on the Welsh Ministers to require a notice to specify a particular period, or to require a notice to specify one period within a range of permissible periods, or to confer discretion on HEFCW to determine

periods in accordance with certain formulae. The use of “may” in this context is to refer to the range of ways in which notice can potentially be specified in accordance with regulations. The use of the word “may” is entirely appropriate in both instances and does not result in any problems in relation to application of this regulation making power.

**Section 37: *Duty to withdraw approval of a fee and access plan***

Section 37 requires HEFCW to withdraw their approval of a fee and access plan by giving notice to an institution if they are satisfied that the institution has ceased to: (a) be an institution in Wales; (b) provide higher education; or (c) be a charity.

Under section 37(2), the Welsh Ministers may make provision in regulations about the matters to be taken into account by HEFCW in determining whether to withdraw approval of a fee and access plan and the procedure to be followed in connection with giving notice of withdrawal of such a plan. Section 37(3) provides that the regulations may amend or apply (with or without modification) the procedural requirements relating to warning notices and representations (set out in sections 40 to 43) to any notice issued under section 37.

Section 37 only requires HEFCW to withdraw approval of a fee and access plan when HEFCW is satisfied that an institution no longer falls within section 2(3) of the Bill. Consequently, this section does not apply when something goes wrong under section 36 and is not connected in any way to HEFCW’s function of issuing notice of intention of refusal to approve a new fee and access plan.

Regulations are not required under section 37 for the section to operate. HEFCW will be able to satisfy themselves as to whether an institution is no longer in Wales, is no longer providing higher education or is no longer a charity without regulations. However, if as a consequence of operating the system HEFCW, institutions or other stakeholders consider that the process for withdrawal of approval of a fee and access plan would work more efficiently or effectively with matters being set out in regulations then the power at section 37(2) enables the Welsh Ministers legislate should that prove to be necessary. I am however starting from the principle of not legislating unless there is a proven need to do so. The regulation making power provides the necessary flexibility in a process which has not previously been operated by HEFCW.



## **Matters not falling within the scope of the Bill**

Finally, it may be helpful if I clarify the situation with respect of case-by-case course designation. The Bill does not provide for either automatic or specific course designation, my intention is to consult on new requirements for specific course designation with the aim of introducing rigorous quality assurance and robust checks on the financial health of institutions delivering such courses. Any new arrangements for specific course designation will be progressed by way of the Welsh Ministers' existing regulation making powers under the Teaching and Higher Education Act 1998. Therefore new legislation is not needed.

I trust that the information is helpful and provides clarity to Members. I will write further to address issues on which Members have requested additional information in due course. 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 cursive script, appearing to read 'Huw Lewis', written in black ink.

**Huw Lewis AC / AM**

Y Gweinidog Addysg a Sgiliau  
Minister for Education and Skills

## Use of “may” and “must” for regulation making powers

### Part 2 – Fee and access plans

#### Section 2

**S.2(4):** Regulations “may” make provision. This concerns the making of applications for approval of a fee and access plan. The system would operate without these regulations (albeit perhaps not as efficiently) because regulations are not actually required to make the provision operative; a governing body of an institution within s.2(3) could apply to HEFCW even if no regulations were in place. We think it would only be appropriate to include a duty where both the duty and the regulations are narrow in scope. It is therefore our view no change to “must” is required because the regulation making power in s.2(4) encompasses a variety of matters.

#### Section 3

**S.3(4):** This section concerns the designation of other charitable providers of HE in Wales who would not otherwise be designated as “institutions”. This means that designated institutions will be covered by the provisions of the Bill and regulation made under the powers in it. This might for example be a provider that whilst not providing degrees, does provide other courses of higher education at a lower level on the credit and qualifications framework but may nevertheless wish for those courses to be automatically designated by student support regulations (for the purposes of student support from the Welsh Ministers) and to be able to apply for approval of a fee and access plan. The system would operate without these regulations (albeit perhaps not as efficiently). Regulations therefore provide the vehicle for supplemental detail involving the mechanics of application, but are not actually required to make the provision operative as applications for designation could be made without any regulations having been made; on this basis we believe there is no need to include “must”. As with s.2(4) we also think it would only be appropriate to impose a duty to make regulations where the scope of the regulations is narrow. In this case the scope of the regulations that might be made under s.3(4) is potentially wide and would therefore not be amenable to becoming a duty (because the system for designation could in theory operate without regulations ever being made).

#### Section 4

**S.4(2):** The sub-section adopts the “prescribed” formulation and concerns the maximum period to which fee and access plans relate. Whilst the system could operate without these regulations, we recognise that it would operate more effectively with regulations being made which set such a limit. In this instance we believe there is an implicit requirement to make regulations. It is recognised by the Welsh Ministers that in order for the system to work effectively regulations are necessary; it would therefore not be in the interests of the Welsh Ministers to fail to bring such regulations forward. As such there is no need to change the current “prescribe” formulation to refer to “regulations must make provision”.

#### Section 5

Overview: section 5 provides for regulations to set out qualifying courses and persons, and to set the maximum amount that can be specified in a fee and access plan, as well as the treatment of fees

paid in the case of franchised courses. Together these regulations will form the foundations of the regulatory regime contained in the Bill.

**S.5(2)(b):** The paragraph adopts the “prescribed” formulation. This concerns descriptions of qualifying course. The system could not operate properly without these regulations. There is therefore an implicit requirement on the Welsh Ministers to make regulations and, as such, there is no need to change the “prescribe” formulation to refer to “regulations must make provision”. If the Welsh Ministers were to commence s.5(2)(b) with no intention of making qualifying course regulations, then an issue of rationality may arise as there would be no way of knowing what would be a qualifying course. Under the current regime qualifying course regulations have been made, and there is no reason why the Welsh Ministers would not make such regulations under this provision were it enacted.

**S.5(3):** The sub-section adopts the “prescribed” formulation. This concerns the prescription of a “maximum amount”. The system could not operate effectively without these regulations. There is an implicit requirement to make regulations as such there is no need to change the “prescribe” formulation to refer to “regulations must make provision”. If the Welsh Ministers were to commence s.5(2)(a) with no intention of making provision on maximum fees then the fee and access plan system would not function properly as applications for approval of fee and access plans could not be made without knowing the maximum amount.

**S.5(5):** The sub-section adopts the “prescribed” formulation. This concerns descriptions of qualifying person. The system could not operate properly without these regulations. There is an implicit requirement to make regulations and, as such, there is no need to change the “prescribe” formulation to refer to “regulations must make provision”. If the Welsh Ministers were to commence s.5(2)(a) but not make qualifying persons regulations, then the fee and access plan system would not function properly as there would be no way of knowing who is a qualifying person for purpose of s.5(2)(a).

**S.5(9):** Regulations may make provision in respect of fees being treated as paid to a provider who has an approved fee and access plan in place, rather than to another person i.e. being paid to the franchisor institution rather than the franchisee institution. We recognise that a variety of franchise arrangements may exist and some or all of the fees charged for a qualifying course may be payable to a partner institution. Regulations will ensure that the total fees paid by a student do not exceed the maximum fee limit, even where the fees are paid to two different institutions. The system could still operate without these regulations but as a matter of policy it is intended to bring forward such regulations to protect the interests of students.

## **Section 6**

**S.6(1):** This section adopts the “prescribed” formulation and concerns the contents of fee and access plans relating to equality of opportunity or promotion of higher education. Whilst the system could operate without these regulations, we recognise that it would operate far better with regulations in place setting out what should be included within a fee and access plan. In this instance, we would argue that there is an implicit requirement to make regulations based on them being part of the foundation required to make the new system effective. As such, we are of the view that there is no need to change the “prescribe” formulation to refer to “regulations must make provision”.

Additionally given the breadth and range of matters that might be included in these regulations, and the fact that they may need periodically to be updated to keep pace with the changing demographics of the student population in Wales; it is in our view highly questionable whether an express duty would be appropriate.

## **Section 7**

**S.7(3):** Regulations may make provision about the matters that HEFCW must take into account when deciding whether or not to approve a fee and access plan. The system for approval or rejection can operate without regulations being in place (albeit perhaps not as efficiently). Regulations will provide details of supplemental factors HEFCW must consider in light of the potentially wide range of providers who may apply for approval. Given the potential range of providers that may apply to HEFCW and the changing nature of the sector changes may need to be made quite quickly to the factors HEFCW considers. The system could however operate without regulations with HEFCW determining whether or not to approve fee and access plans for example by taking account of guidance provided by the Welsh Ministers under section 46; on this basis we believe it is appropriate for “may” rather than “must” to be used.

## **Section 8**

**S.8(1):** Regulations may require a governing body to publish the institution’s approved plan. The system will operate without these regulations, and so we take the view that “may” is in this context appropriate. In any event the existing power in section 34(6) of the Higher Education Act 2004 requiring publication is formulated as “may” and so it would seem odd to move away from this formulation when the current system has worked effectively in this regard. In section 8(1) “may” is used to denote a permission; the Welsh Ministers “may” make regulations. Whereas in 8(2) “may” is used to indicate the possibility that the regulations “may” make provision about how the plan is published.

## **Section 9**

**S.9(1):** Regulations may provide for an approved plan to be varied. This power mirrors similar powers in the Higher Education Act 2004 (section 36) which are formulated as “may”, therefore any change to “must” would appear unnecessary. Whilst the new system for approving fee and access plans would operate without these regulations the Welsh Ministers intend to ensure continuity in the system by bringing forward regulations under this new section enabling institutions to apply to vary an already agreed plan during the lifetime of that plan. Regulations (rather than guidance under s.46) are more appropriate as regulations can deal with practical issues about how an institution might apply for a variation and how HEFCW considers a variation, whereas guidance is better suited to matters of best practice. The use of regulations to allow variation (rather than an express power on the face of the Bill) enables the Welsh Ministers to respond promptly to any changes in the sector, and if appropriate remove the ability of institutions to vary approved plans.

## **Section 11**

**S.11(5):** Regulations may make provision about how and when HEFCW gives a copy of a compliance and reimbursement direction to the Welsh Ministers, and about how and when HEFCW must publish the direction. The detail contained in regulations under this section will be administrative and

technical in nature and requirements may change over time, for example as HEFCW's working practices develop or technology advances. The system would still operate without these regulations. The use of regulations though will future proof the system, enabling amendments to be made about how and when HEFCW publish such a direction in light of experience gleaned from operating the new system. Directions will be of interest to students and prospective students; the use of regulations will help ensure there is flexibility in enabling access to them.

### **Section 13**

**S.13(1):** Regulations may make provision as to steps to be taken by HEFCW where regulated institutions fail to comply with the general provisions of its approved plan. This concerns compliance by institutions with their fee and access plans. The core requirements of a fee and access plan are set out in section 6, this section provides flexibility to deal with the enforcement of non-standard aspect of fee and access plans. For instance regulations may confer a power on HEFCW to direct the governing body of an institution to take steps to ensure compliance with the general provisions of its approved fee and access plan. Regulations provide a mechanism for defining what constitutes a failure to comply with the general provisions of an approved plan. The system would operate without these regulations. Since the regulations need to be responsive and able to cover a number of areas we take the view that in this context "may" is appropriate. As regulations under section 13 may amend the Bill the affirmative procedure is appropriate.

## **Part 3 – Quality of education**

### **Section 17**

**S.17(4):** Regulations may make provision about the circumstances in which a person is (or is not) to be treated as responsible for providing a course. The rationale for this power is to enable a flexible approach to be adopted by the Welsh Ministers enabling them to respond to changes in the numbers of franchised courses and/or the manner in which such courses are delivered. The statement of policy intent gives the example of excepting individual tutors who help to deliver courses on behalf of regulated institutions. The regulations could confirm that such individuals should not be treated as external providers for the purposes of quality assessment. The regulations will be narrow in scope and technical in nature. The system would operate without these regulations and so the use of "may" in this context is appropriate.

## **Part 5: Fee and access plans: withdrawal of approval etc**

### **Section 36**

**S.36(7):** Regulations may make provision about the period that may be specified in a notice refusing to approve a new fee and access plan; matters to be taken into account by HEFCW in deciding whether to give notice or withdraw such notice; and the procedure to be followed in connection with a withdrawal of notice. There may in time be a need to vary regulations made under this section by for example specifying a different period of notice during which HEFCW cannot approve a fee and access plan, or by specifying matters that HEFCW must take into account whether to give or withdraw notice as well as specific procedural elements associated with a decision by HEFCW not to renew a fee and access plan. The system would operate without these regulations so it is our view that "may" rather than "must" would be appropriate here.

## **Section 37**

**S.37(2) and (3):** Regulations may make provision about matters to be taken into account by HEFCW in making a determination that an institution is no longer within s.2(3) and the procedure to be followed when giving notice of withdrawal of approval. Section 37(1) provides that HEFCW must withdraw approval of an institution's fee and access plan where HEFCW is satisfied that the institution no longer falls within s.2(3). The use of "must" here is appropriate because it sets out the action that HEFCW must take if HEFCW is "satisfied" a regulated institution is no longer within s.2(3). Regulations under this section "may" though set out the matters that HEFCW should consider in determining whether an institution still falls within s.2(3), for example decisions of the Charity Commission where HEFCW believe the institution no longer has charitable status. Regulations may also make provision about procedural requirements in connection to s.37(2)(b) by amending or applying (with or without modification) sections 41,42 and 43 enabling institutions to have recourse to a defined process in the event of a proposed withdrawal of a fee and access plan. We are of the view that the balance between "must" and "may" is appropriate in this section given regulations will set out procedural requirements, and can be revised in light of experience gleaned from operating the new system.

## **Section 38**

**S.38(3):** Regulations may make provision about matters to be taken into account by HEFCW in deciding whether to give notice of withdrawal of approval. The system would operate without regulations given the conditions which may give rise to HEFCW deciding to withdraw approval of a plan are set out on the face of the Bill (s.38(2)). Regulations will though add supplemental detail by setting out the factors that HEFCW must consider in deciding whether to give notice, but regulations are not necessary for the section's operation. Regulations serve to provide a layer of detail setting out the factors for HEFCW to consider when exercising its discretion. On this basis we think that the use of the word "may" is entirely appropriate.

## **Section 39**

**S.39(2):** Regulations may make provision about how and when HEFCW gives a copy of a notice under section 36, 37 or 38 to the Welsh Ministers and about how and when HEFCW must publish such a notice. It is appropriate to require HEFCW to undertake these actions to ensure the Welsh Ministers retain an overview of the sector. Regulations would be entirely procedural in nature, specifying the timings for HEFCW to provide notices to the Welsh Ministers, and where notices should be published. Given this; the fact the requirement to publish is on the face of the Bill and that the system would operate without these regulations it is our view the power to make regulations should remain as "may".

## **Section 41**

**S.41(2)(d):** " any provision made by regulations" as to the period within which, and the way in which representations are to be made in response to a proposed warning notice. These are administrative and technical provisions that may need updating from time to time in light of technological advances and experience gleaned from operation of the system. However the system will operate without

these regulations being made, on this basis we believe that the use of a discretion equivalent to “may” is entirely appropriate.

#### **Section 42**

**S.42(c):** The section adopts the “prescribed” formulation. Regulations can prescribe additional information to be included in a notice or direction issued under s.7(1)(b); s.11; s.19; s.32; s.36; or s.38. Section 42(a) and (b) already provide that HEFCW must include reasons for issuing a notice or direction, and alerting the governing body that it may apply for a review of the notice or direction. Regulations would provide for certain supplementary information to be included such as informing a regulated institution that a copy of a notice or direction will be given to the Welsh Ministers and published. This power enables the Welsh Ministers to ensure that statements keep pace with changes in practice by making changes as to the required content.

#### **Section 43**

**S.43(3):** The Welsh Ministers must by regulations make provision in connection with reviews under s.43. This power reflects existing provisions within section 39 of the Higher Education Act 2004. S.43(4) sets out what might be contained within regulations. Updates to the regulations might be required from time to time in light of feedback from the sector and HEFCW as to its operation.

#### **Section 49**

**S.49(4):** Regulations may make provision about preparation of the statement in respect of HEFCW’s intervention functions (including as to the statement’s form and content); its publication; the consultation to be carried out in relation to the statement in respect of intervention functions. These are procedural and technical provisions, and whilst relevant to HEFCW and the higher education sector are otherwise of limited interest. The intention is to provide the key components that HEFCW must address in preparation of the statement although in theory this could be achieved by the Welsh Ministers issuing guidance to HEFCW rather than via regulations. It will be for HEFCW to fill in the operational detail following consultation and dialogue with regulated institutions and other stakeholders. It may also be the case that requirements change over time and the Welsh Ministers will have power to respond to such changes. On this basis we believe it is appropriate to use “may” rather than “must” to afford the Welsh Ministers the degree of flexibility that is required to give proper and meaningful effect to this section.

#### **Section 54**

**S.54(1):** The section adopts the “prescribed” formulation. Certain fees can be excluded from the definition of “fees” in section 54(1). The system will operate without regulations being made. The power to make regulations is to future proof the system in the event that it becomes necessary to exclude other types of fee from the definition of fees.

#### **Section 55**

**S.55(3):** The Welsh Ministers may by regulations make such incidental, supplementary or consequential provision as they think appropriate in consequence of, or for giving full effect to, a

provision of the Bill. There may not be any incidental, supplementary or consequential provision required so this has to remain as “may”.

## **Section 56**

**S.56(2):** Most provisions of the Bill come into force on such day as the Welsh Ministers may appoint by order. Commencement of provisions has to remain at the discretion of the Welsh Ministers so that they can respond to any unforeseen issues that may arise, and also to ensure the system is rolled out in a timely and well co-ordinated manner, enabling the new system to achieve the best results for the sector, students and HEFCW. On this basis “must” is inappropriate and removes this necessary degree of flexibility and responsiveness required to give proper effect to the legislation.

**Schedule, paragraph 28(e):** No reference to “may” or “must”. Regulations can specify any other enactment for which a 2004 Act plan is to be treated as a plan approved under the Bill. There may be no practical need for such regulations, but having such a power provides for a degree of future proofing to be made by enabling additional provisions to be added to those already listed in paragraph 28 should the need arise, so “must” would be inappropriate here.

**Schedule, paragraph 30(1):** Regulations may make provision about the application of a provision listed in paragraph 28(a) – (d) to a 2004 Act plan. This is again a safety mechanism to enable Welsh Minister to deal with any unforeseen circumstances that may arise after Royal Assent and affect the way in which 2004 Act plans are to be treated as fee and access plans. The system could operate without these regulations so “must” would be inappropriate.



# Agenda Item 3.2

Jeff Cuthbert AC / AM

Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref GB/21/14  
Mr Alun Ffred Jones AM  
Chair of the Environment & Sustainability Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

8 July 2014

Dear Alun,

## WELL-BEING OF FUTURE GENERATIONS (WALES) BILL

To support the Committee's scrutiny of the Well-being of Future Generations (Wales) Bill which I introduced into the National Assembly for Wales on 7 July, please find attached a statement of policy intent. This document provides information on the policy intent for the delegated powers within the Bill, if enacted. An implementation timeline is included in the document, which assumes that Royal Assent will be achieved in spring 2015.

I trust Members will find this document helpful and I look forward to providing evidence to the Committee in due course.

Yours sincerely

**Jeff Cuthbert AC / AM**

Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty

CC: Chair of the CLA Committee



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Llywodraeth Cymru  
Welsh Government

# **WELL-BEING OF FUTURE GENERATIONS (WALES) BILL**

Policy intent for regulations, directions and  
guidance

July 2014

## **WELL-BEING OF FUTURE GENERATIONS (WALES) BILL 2014 POLICY INTENT FOR SUBORDINATE LEGISLATION, DIRECTIONS AND GUIDANCE**

This document provides an indication of the current policy intention for the subordinate legislation, directions and guidance that the Welsh Ministers are empowered or required to make under the provisions of the Well-being of Future Generations (Wales) Bill ('the Bill'). It has been published in order to assist the responsible Committee during the scrutiny of the Bill and should be read in conjunction with the Explanatory Memorandum and Explanatory Notes.

The key purposes of the Bill are:

To strengthen existing governance arrangements for improving the well-being of Wales in order to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (the sustainable development principle). It identifies well-being goals which specified public authorities are to seek to achieve in order to improve the well-being of Wales both now and in the future;

To set out how those authorities are to show that they are working towards the well-being goals. It also, through the introduction of national indicators, ensures that the difference being made to the well-being of Wales will be evaluated and measured;

To establish a Future Generations Commissioner for Wales to be an advocate for future generations who will advise and support Welsh public bodies in carrying out their duties under the Bill;

To put Local Service Boards (to be known as Public Services Boards) and well-being plans on a statutory basis and simplify current requirements as regards integrated community planning;

Apart from some technical provisions, the Bill will be commenced by Order. A diagram outlining the intended timelines for the implementation of the framework set by the Bill is at page 9. It should be noted that there are likely to be changes in the local government sector as a result of the public service reform agenda, including the report of the Commission on Public Service Governance and Delivery. Therefore some of these timelines might be subject to change.

Section	Description	Policy intention
<b>Wellbeing Goals</b>		
6 (3)	The Welsh Ministers have the power to add, remove or amend the well-being goals provided for in the Bill.	<p>The well-being goals are set out on the face of the Bill and it is intended that, once established in law, they will only be added to, removed or amended if there is a significant change or prioritisation of the long-term generational (sustainability) challenges arising in the future for Wales.</p> <p>The 'Future Trends' Report published by the Welsh Ministers and 'Future Generations Report' and any recommendations published by the Commissioner for Future Generations will be drawn on to judge whether amendments to the well-being goals are needed. There will also be consultation with the Commissioner, the other public bodies listed in the Bill and more generally, as required by Section 6(4) of the Bill, before the regulations to amend the goals are made.</p>
<b>Guidance on the SD Duty</b>		
15	The Welsh Ministers are under a duty to issue guidance to the other public bodies listed in the Bill about the exercise of functions under Part 2 of the Bill	<p>It is planned that the guidance will provide further detail covering:</p> <ol style="list-style-type: none"> <li>1) The well-being goals, namely: <ul style="list-style-type: none"> <li>• interpretation of the goals;</li> <li>• the interaction and relationships across the goals and between the goals and the activities of the bodies;</li> </ul> </li> <li>2) How public bodies comply with the duty in respect of the process for setting their well-being objectives and preparing the 'statement' required to support the objectives;</li> <li>3) Application of the sustainable development principle and the five governance approaches by public bodies when setting and achieving their well-being objectives.</li> <li>4) The approach public bodies should adopt when preparing the annual report on their progress against their well-being objectives;</li> <li>5) The purpose of the national indicators and how public bodies can utilise these indicators when setting their well-being objectives and reporting annually on their progress against those objectives.</li> </ol>
<b>Future Generations Report</b>		
21 (8)	The Welsh Ministers can amend the	The reporting period is set out on the face of the Bill, and is linked to the

	definition of the 'reporting period' in which the Future Generations Report must be prepared and published.	Assembly electoral cycle. If the length of the electoral cycle changes in the future, there might be a need to change the reporting period as otherwise it would be too short or too long.
<b>Future Generations Commissioner</b>		
20(2)	The Welsh Ministers can issue guidance to other public bodies about how to respond to recommendations made by the Future Generations Commissioner.	<p>The policy intention is that this guidance will cover the process and potential means for responding to recommendations made by the Commissioner.</p> <p>The guidance is likely to cover:</p> <ul style="list-style-type: none"> <li>Why a response is needed and how it will support the work of the Commissioner and the wider aims of the Bill;</li> <li>Who must respond to the Commissioner's recommendation, including any approval arrangements;</li> <li>The way that any response should be conveyed to the Commissioner;</li> <li>When a response should be issued to the Commissioner;</li> <li>The type of information that should be contained within that response; and</li> <li>What are the consequences if public bodies do not respond or the response provided is considered unsatisfactory.</li> </ul>
Schedule 2, paragraph (12)(2)(a)	The Welsh Ministers can specify what interests are considered to be 'registrable interests' and must therefore be declared by the Future Generations Commissioner of Wales in their register of interests.	The policy intention is that these Regulations will be made around the time of the appointment of the first Commissioner under the Bill. The interests specified will be consistent with those prescribed for the Welsh Language Commissioner in SI 2012/753.
Schedule 2, paragraph 19 (1)(b)	The Welsh Ministers can issue directions, with the consent of the Treasury, about how the Commissioner's accounts should be prepared	The Bill makes the Commissioner the accounting officer for the office of the Commissioner, and therefore answerable for the propriety and regularity of the public finances of that office. The Welsh Ministers issue periodic Accounts Directions to relevant Accounting Officers specifying the requirements in relation to their annual accounts, covering their form and content, and the methods and principles according to which they are to be prepared. In issuing the directions, the Welsh Ministers seek to ensure that good practice is followed.
<b>Public Services Boards</b>		
31(1)	The Bill gives the Welsh Ministers the power to amend the list of statutory members, invited participants or other partners of	The members, invitees and partners are listed on the face of the Bill. It is intended that, once established in law, this power would generally only be used to change the list if there is a significant change of circumstance,

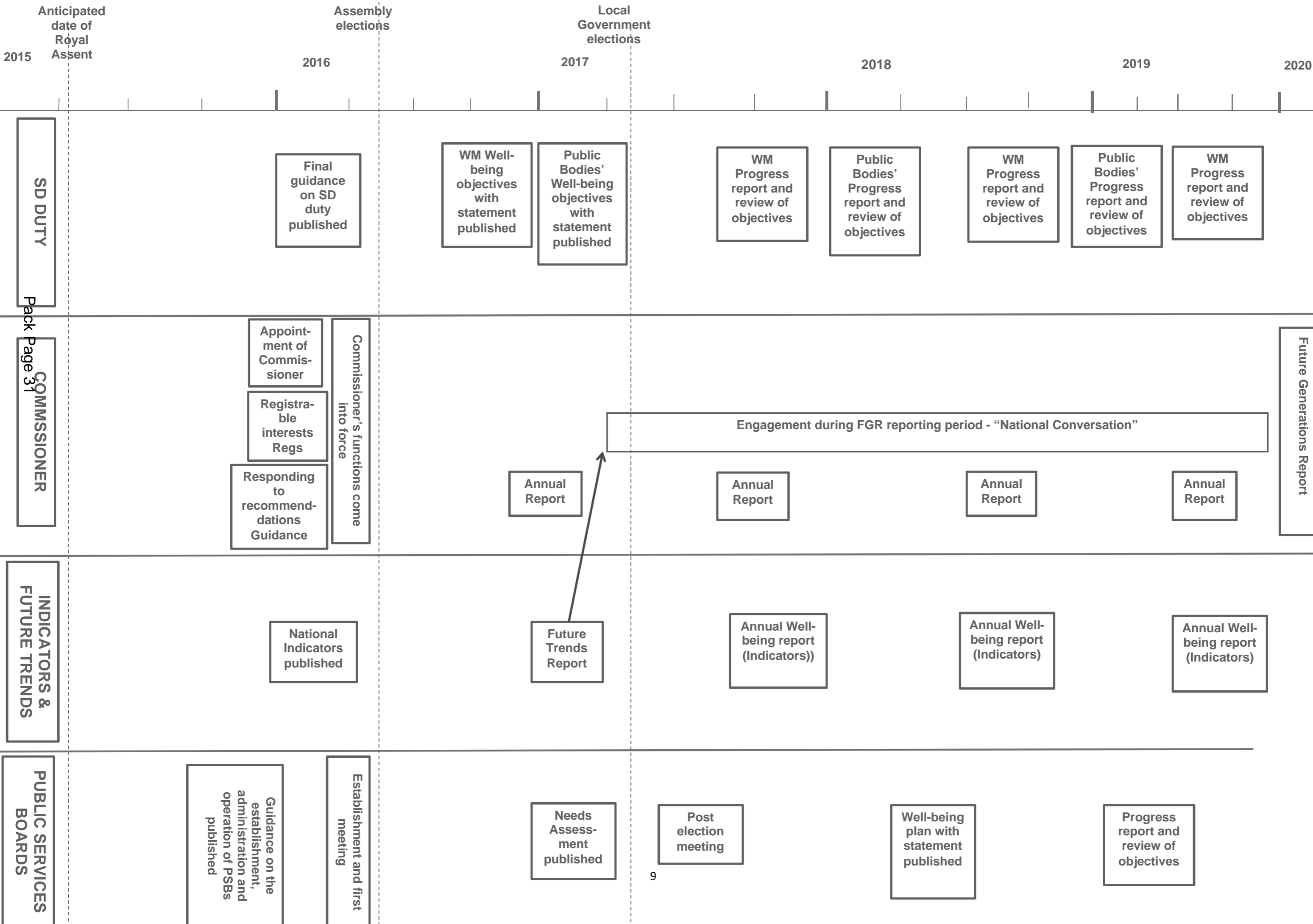
	Public Service Boards.	<p>such as the creation of new statutory bodies that have a role in improving the well-being of communities, in the future. It could also be changed if there was change in the title or description of a listed body.</p> <p>There will be consultation with the members of the relevant PSB and with any person whom it is proposed to add to the list before any regulations under this section are made.</p>
33(1)	The Welsh Ministers can refer matters relating to Public Services Boards to the relevant local authority overview and scrutiny committee for consideration.	<p>It is considered essential that the Welsh Ministers have a role in monitoring the work of the Public Services Boards (PSBs), in particular, the quality of the assessments of local well-being and well-being plans that are produced, and that there is a mechanism in place for them to seek to secure improvement in the well-being plans where the Welsh Ministers consider them not to be up to standard.</p> <p>The power to refer matters to the overview and scrutiny committee will ensure that the integrity of local government scrutiny is maintained. PSBs will be scrutinised by their own local government scrutiny committee. This is to ensure that concerns over matters including poor performance of PSBs, whether isolated incidents or more long-running issues are dealt with at a local level, rather than being prescribed by the Welsh Ministers. If the Welsh Ministers are aware of such matters, they can refer such matters to a scrutiny committee which will then provide a report to the Welsh Ministers. This will represent clear accountability for PSB members that has thus far been sporadic in relation to Local Service Boards.</p>
46(2) 47(2)	The Welsh Ministers can issue directions requiring two or more Public Services Boards to merge or collaborate if this is considered beneficial to improving the economic, social or environmental well-being of the Boards' areas.	<p>These powers would be used in limited circumstances where issues such as operational efficiency, economies of scale, and circumstances where the need to match boundaries with another service provider mean that a merger/collaboration would be the best way of delivering services for the area.</p> <p>For example, the joint boundaries of the Rhondda Cynon Taff and Merthyr Local Service Board (LSB) areas are coterminous with those of Cwm Taf Local Health Board (LHB). Therefore, for important matters relating to health and social care, the two LSBs have determined to work together with the LHB, as the LHB does not take account of the boundaries of the two principal council areas when planning its provision. A similar</p>

		arrangement is also now being established in Cardiff and the Vale for the same reasons.
49 (1)	The Welsh Ministers can set indicators and standards in relation to measuring the performance of Public Services Boards.	The policy intention is that this power would only be used if there is a need to ensure that data on performance in relation to specific processes or activities in specific areas relating to integrated community planning can be collected and monitored. This might be needed in order to add further consistency to the way performance is measured across the public sector. There will be consultation with the members of the relevant PSB or those persons that the Welsh Ministers consider to represent those members and with any person the Welsh Ministers feel it is appropriate to consult.
50	The Welsh Ministers can issue guidance to Public Services Boards about the exercise of functions under Part 4 of the Bill	It is policy intention to publish the guidance prior to the duties relating to Public Services Boards being brought into force. It is proposed that a consultation be undertaken on the draft guidance prior to its publication.  It is intended to use this guidance to ensure Public Services Boards are provided with the necessary support and direction to implement the provisions of Part 4 of the Bill in a consistent and robust manner. It is planned that the guidance will provide further detail about the practical arrangements for preparing the assessments of local well-being and local well-being plan and the areas to be covered in the assessment and plan..
<b>Local Well-being Plans</b>		
35(5)(a)	This power will give the Welsh Ministers the ability to determine the communities that comprise the area of a Public Services Board	The main considerations for determining communities may vary significantly from place to place. There can be considerable variation between different parts of the area of a Public Services Board, for instance, between urban and rural areas. The policy intention is that communities that comprise the area of a board are to be determined in accordance with regulations made by the Welsh Ministers or, if no such regulations have been made, by the Public Services Boards.
36(3)(h)	This power will give the Welsh Ministers the ability to prescribe other reviews or assessments (beyond those prescribed on the face of the Bill) which a Public Services Board must take into account in preparing its assessment of well-being.	The reviews and assessments that must be taken into account are listed on the face of the Bill and it is intended that additional requirements will only be prescribed if there is a subsequent change in the law in relation to the preparation of assessments such as the creation of a new statutory assessment.
39(3)	The Welsh Ministers can amend the	The threshold is set out on the face of the Bill and reflects an existing

	threshold for community councils to become subject to a duty to take all reasonable steps towards meeting the well-being objectives included in the local well-being plan for its area.	threshold in respect of community councils, as provided for in regulations made under section 39 of the Public Audit (Wales) Act 2004. At the time of introduction these were the Account and Audit (Wales) Regulations 2005 as amended by the Account and Audit (Wales) (Amendment) Regulations 2010.  It is intended that this regulation making power would generally only be used to amend the threshold in the Bill should the relevant provisions in the regulations under the Public Audit (Wales) Act 2004 be amended. However, the threshold may also be amended to reflect changes to the community council sector that may result from the work resulting from Commission on Public Service Governance and Delivery. There will be consultation with the Future Generations Commissioner, the community councils that would become subject to this duty if the threshold is changed and any other appropriate persons before the regulations are made.
39(7)	The Welsh Ministers are under a duty to issue guidance to those community councils who are subject to the duty to take all reasonable steps towards meeting the objectives contained in the relevant local well-being plan.	It is planned that the guidance will provide further detail covering:  1) The role community councils can undertake in contributing to the well-being plan of the Public Services Board for their area; 2) The approach community councils should adopt when preparing the annual report on their progress against the well-being plan.
43(2)	The Welsh Ministers can direct a Public Services Board to review its local well-being plan	It is anticipated that the annual reviews undertaken to produce the progress reports will be sufficient to monitor the effectiveness of each Public Services Board and its well-being plan, and the service delivery arrangements made thereunder. However, exceptional circumstances might arise during the life-time of a plan, for example, significant changes in the political or administrative structure of a statutory member or external factors such as a severe economic crisis which may require a wholesale review of the plan. The Welsh Ministers must publish their reasons for giving any direction under this section.
<b>Public Bodies</b>		
51 (1)	The Welsh Ministers can amend the list of Welsh public bodies specified in the Bill.	The organisations that will be subject to the provisions of Parts 1 and 2 of the Bill are defined as 'public bodies' for the purposes of the Bill and listed



		<p>on the face of the Bill.</p> <p>These public bodies were selected by assessing those organisations in Wales who undertake functions of a public nature which relate to devolved matters against a set of policy criteria. This power would be used where new organisations (i.e. a new Welsh Government Sponsored Bodies) were established which met the criteria to be a public body for the purposes of the Bill. The power would also be used to remove an organisation from the list of public bodies if that organisation was abolished.</p> <p>There will be consultation with the Future Generations Commissioner, any person to be added to the list and any other appropriate persons before the regulations are made.</p>
<b>General</b>		
52 (1)	The Welsh Ministers can make supplementary, incidental, consequential, transitional or saving provisions in order to give full effect to a provision of the Bill	This power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill, or to deal with unforeseen details arising out of the implementation of the new system. Transitional, saving and consequential elements are designed to cater for the process of moving from one regime to another, so that the process is as “seamless” as possible and that the new law works.
55(3)	This provision enables the Welsh Ministers to bring the provisions of the Bill into force.	The policy intention is that there will be a small number of commencement orders. The intended implementation timetable for the Bill is set out in the table on page 9



# Agenda Item 5

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 5.1

By virtue of paragraph(s) vi of Standing Order 17.42

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