

## Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**11 June 2012**

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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**

#### Negative Resolution Instruments

##### **CLA152 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2012**

Negative Procedure. Date made 19 May 2012. Date laid 22 May 2012. Coming into force date in accordance with article 1(1)

##### **CLA153 – The Badger (Control Area) (Wales) (Revocation) Order 2012**

Negative Procedure. Date made 23 May 2012. Date laid 25 May 2012. Coming into force date 15 June 2012

#### Affirmative Resolution Instruments

**None**

#### Super Affirmative Resolution Instruments

**CLA155 – The Natural Resources Body for Wales (Establishment) Order 2012**  
Super Affirmative Procedure. Date made 2012. Date laid not stated. Coming into

force date – see article 1

### **3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

#### Negative Resolution Instruments

#### **CLA151 – The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2012** (Pages 1 – 124)

Negative Procedure. Date made 16 May 2012. Date laid before Parliament 21st May 2012. Date laid before the National Assembly for Wales 21st May 2012. Coming into force date 18th June 2012

#### Affirmative Resolution Instruments

None

### **4. Inquiry into the establishment of a separate Welsh jurisdiction: Winston Roddick, CB, QC** (Pages 125 – 150)

**Papers:**

CLA(4)-13-12(p1) – submission to the Inquiry from Mr Winston Roddick, CB, QC

CLA(4)-13-12(p1) – Annex

**Present:**

- Mr Winston Roddick, CB, QC

### **5. Paper to note** (Pages 151 – 157)

CLA(4)-12-12 – Report of the Meeting 28 May 2012

#### **Date of the next meeting**

18 June 2012

### **6. The Committee will be invited to resolve to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi):**

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the Committee is deliberating on the conclusions or recommendations of a report it proposes to publish

### **7. Consideration of the evidence submitted to Inquiry to date**

## **Constitutional and Legislative Affairs Committee Report**

**CLA151**

**Title: The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2012**

**Procedure: Negative**

These composite Regulations, which extend to England and Wales only (save for Regulation 11 that extends to all of the UK) further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments introduce changes to the repayment system and the level of interest that will accrue on income-contingent student loans for individuals who have started their studies after academic year 2012/13.

### **Technical Scrutiny**

Under Standing Orders 21.2 the Assembly is invited to pay special attention this instrument:-

These Regulations have been produced in the English language only.

(Standing Order 21.2 (ix) that it is not made or to be made in both English and Welsh).

### **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.3 in respect of this instrument at this stage.

### **Legal Advisers**

Constitutional and Legislative Affairs Committee

**May 2012**

**The Government has responded as follows:**

**The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2012**

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

**2012 No. 1309**

**EDUCATION**

**The Education (Student Loans) (Repayment) (Amendment)  
(No. 2) Regulations 2012**

<i>Made</i>	- - - -	<i>16th May 2012</i>
<i>Laid before Parliament</i>		<i>21st May 2012</i>
<i>Laid before the National Assembly for Wales</i>		<i>21st May 2012</i>
<i>Coming into force</i>	- -	<i>18th June 2012</i>

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by sections 76 and 78 of the Education Act 2011<sup>(a)</sup> and sections 22 and 42 of the Teaching and Higher Education Act 1998<sup>(b)</sup>.

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 76 and 78 of the Education Act 2011 and in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them<sup>(c)</sup>.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2012 and come into force on 18 June 2012.

(2) Subject to paragraph (3), these Regulations extend to England and Wales only.

(3) Regulation 11 extends to all of the United Kingdom in so far as it imposes any obligation or confers any power on HMRC, an employer or a borrower in relation to repayments under Part 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009<sup>(d)</sup>.

**Amendment of the Education (Student Loans) (Repayment) Regulations 2009**

2. The Education (Student Loans) (Repayment) Regulations 2009 are amended in accordance with regulations 3 to 14.

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- (a) 2011 c.21.
- (b) 1998 c.30; Section 22 was amended by the Learning and Skills Act 2000 (c.21) section 146, the Income Tax (Earnings and Pensions) Act 2003 (c.1) Schedule 6, the Finance Act 2003 (c.14) section 147, the Higher Education Act 2004 (c.8) sections 42, 43 and Schedule 7, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) section 257 and the Education Act 2011 (c.21) section 76.
- (c) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) were exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32) section 162 and paragraph 30 of Schedule 11.
- (d) S.I. 2009/470, amended by S.I. 2010/661, 2011/784 and 2012/836.

**3.** In regulation 3—

- (a) before “In these Regulations” insert “(1)”;
- (b) after the definition of “the 2008 Act” insert—
  - ““the 2011 Support Regulations” means the Education (Student Support) Regulations 2011(a);
  - “the 2011 Welsh Regulations” means the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011(b);”;
- (c) after the definition of “part-time” insert—
  - ““post-2012 student loan” has the meaning given in paragraph (2)”;
- (d) delete the definition of “repayment threshold” and insert—
  - ““repayment threshold”—
  - (a) in relation to a student loan which is not a post-2012 student loan, has the meaning given to it in regulation 29(7);
  - (b) in relation to a post-2012 student loan, has the meaning given to it in regulation 29(8);”;
- (e) after the definition of “Welsh Ministers” insert—
  - “(2) In these Regulations a “post-2012 student loan” means any student loan paid under the 2011 Support Regulations or the 2011 Welsh Regulations or any subsequent Regulations made by the Secretary of State or the Welsh Ministers (as the case may be) under section 22 of the 1998 Act and taken out by a borrower in respect of a course which that borrower begins on or after 1 September 2012 and which is not—
  - (a) a full-time honours degree course beginning on or after 1 September 2012 which, disregarding any intervening vacation, a student begins to attend immediately after ceasing to attend a full-time course mentioned in paragraph 2, 3 or 4 of Schedule 2 to the 2011 Support Regulations or a full-time foundation or ordinary degree course, which started before 1 September 2012, having achieved a qualification; or
  - (b) one to which the borrower’s status as a student eligible for support under Regulations made under section 22 of the 1998 Act has been transferred from another course which the borrower began before 1 September 2012 and where the transfer takes place on or after 1 September 2012 and it is from a full-time course to a full-time course.”.

**4.** In regulation 9(1), after the definition of “the 2006 Welsh Regulations” insert ““course start date” means 1 January, 1 April, 1 July or 1 September of the calendar year where the first day of the course is on or after 1 January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August or on or after 1 August and on or before 31 December, respectively;”.

**5.** In regulation 15—

- (a) in paragraph (2), before “A borrower is not required” insert “Subject to paragraphs (2A), (2B) and (2C),”; and
- (b) after paragraph (2) insert—
  - “(2A) Subject to paragraph (2C), where a borrower takes out a post-2012 student loan in relation to a part-time course, the borrower is not required to repay any part of that post-2012 student loan until the earlier of—
  - (a) the start of the following tax year commencing on 6 April after the borrower ceases to be eligible for financial support under Regulations made pursuant to

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(a) S.I. 2011/1986.

(b) S.I. 2011/886 (W.130), amended by S.I. 2011/1978 (W.218), 2012/14 (W.5) and 2012/1156 (W.139).

section 22 of the 1998 Act whether by reason of having completed that course or otherwise; or

- (b) the start of the following tax year commencing on 6 April after the fourth anniversary of the course start date.

(2B) Subject to paragraph (2C), a borrower who takes out a post-2012 student loan and who changes their mode of study between full-time and part-time study is required to repay—

- (a) where there is a change from a full-time course to a part-time course, in accordance with paragraph (2A);
- (b) where there is a change from a part-time course to a full-time course before the requirement to repay under paragraph (2A) applies, in accordance with paragraph (2);
- (c) where there is a change from a part-time course to a full-time course and the requirement to repay under paragraph (2A) applies, in accordance with paragraph (2A).

(2C) A borrower with a post-2012 student loan is not required to repay any part of the post-2012 student loan under paragraphs (2), (2A) and (2B) before 6 April 2016.

(2D) For the purposes of paragraphs (2), (2A) and (2B), an original course and a top-up course are treated as one course where—

- (a) “original course” means a course which, disregarding any intervening vacation, a student attended immediately before a top-up course; and
- (b) “top-up course” means—
  - (i) a full-time honours degree course beginning after 1 September 2012 which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a full-time course mentioned in paragraph 2, 3 or 4 of Schedule 2 to the 2011 Support Regulations or a full-time foundation or ordinary degree course, which started on or after 1 September 2012, having achieved a qualification; or
  - (ii) a part-time honours degree course beginning after 1 September 2012 which, disregarding any intervening vacation, a student begins immediately after ceasing to attend or undertake a part-time higher education course mentioned in paragraph 2, 3 or 4 of Schedule 2 to the 2011 Support Regulations or a part-time foundation or ordinary degree course, which started on or after 1 September 2012, having achieved a qualification.”.

6. After regulation 18 insert—

#### **“18A. Division of repayment**

Where a borrower has a post-2012 student loan and a student loan which is not a post-2012 student loan and it is time for the borrower to repay both loans in accordance with regulation 15, the repayment will be divided between the loans so that—

- (a) the part of the repayment relating to income above the repayment threshold in regulation 29(8) is to reduce the outstanding balance of the post-2012 student loan; and
- (b) the part of the repayment relating to income above the repayment threshold in regulation 29(7) up to and including the repayment threshold in regulation 29(8) is to reduce the outstanding balance of the student loan which is not a post-2012 student loan.”.

7. In regulation 19—

- (a) In paragraph (2), after “section 22 of the 1998 Act” insert “, other than a post-2012 student loan,”;

- (b) in paragraph (3)(c) delete “or”;
- (c) in paragraph (3)(d)—
  - (i) after “post-2006 student loans” insert “and not post-2012 student loans”; and
  - (ii) delete the “.” and insert “; or”; and
- (d) after paragraph (3)(d) insert—
  - “(e) in the case of post-2012 student loans, the 30<sup>th</sup> anniversary of the date on which the borrower became liable to repay the student loan.”.

**8. In regulation 20—**

- (a) in paragraph (1), delete from “as if it were the principal” to the end and substitute “in accordance with paragraph (1A).”;
  - (b) after paragraph (1) insert—
    - “(1A) Interest is calculated—
      - (a) for a student loan which is not a post-2012 student loan on or after 18 June 2012 up to and including 5 April 2016, as if it were the principal of a student loan outstanding from the date of receipt of the repayment to the date of the refund;
      - (b) for a student loan which is not a post-2012 student loan on or after 6 April 2016, as if it were the principal of a student loan, which is not a post-2012 student loan, outstanding from the date of receipt of the repayment to the earlier of—
        - (i) the end of a period 60 days after the Authority issues a notice; or
        - (ii) the date on which the Authority makes the refund to the borrower;
 after which period no interest will accrue;
      - (c) for a post-2012 student loan, as if it were the principal of a student loan outstanding, to which the interest rate is limited to that in regulation 21A(9), from the date of receipt of the repayment to the earlier of—
        - (i) the end of a period 60 days after the Authority issues a notice ; or
        - (ii) the date on which the Authority makes the refund to the borrower;
 after which period no interest will accrue;
- (1B) The notice to the borrower under paragraph (1A)(b)(i) and (c)(i) must state that interest will accrue on any overpayment from the date of receipt of the repayment, under paragraph (1), until the earlier of—
- (a) the end of a period 60 days after the Authority issues the notice; or
  - (b) the date on which the Authority makes the refund to the borrower;
- after which period no interest will accrue.”;

- (c) after paragraph (5) insert—
  - “(6) Where a borrower has a post-2012 student loan and a student loan which is not a post-2012 student loan and the Authority has received a repayment either directly from the borrower under regulation 15(1) or from HMRC under Parts 3 and 4—
    - (a) which results in the student loan which is not a post-2012 student loan being repaid in full but where the post-2012 student loan has not been repaid in full, or
    - (b) when the student loan which is not a post-2012 student loan has already been repaid in full but where the post-2012 student loan has not been repaid in full,

the Authority must give notice to the borrower that any amount not required to repay the student loan which is not a post-2012 student loan and which was a repayment above the repayment threshold for the student loan which is not a post-2012 student loan and not above the repayment threshold for a post-2012 student loan, shall be treated as a direct payment to the Authority under regulation 15(1) for the post-2012 student loan unless the borrower notifies the Authority, within 60 days of the date of the Authority’s notice, that an amount should be refunded to the borrower.

(7) A refund under paragraph (6) will carry interest calculated as if it were the principal of a student loan, which is not a post-2012 student loan, outstanding from the date of receipt of the repayment to the earlier of—

- (a) the end of a period 60 days after the Authority issues a notice; or
- (b) the date on which the Authority makes the refund to the borrower;  
after which period no interest will accrue.

(8) A notice given by the Authority in paragraph (6) must state that interest will accrue on a refund from the date of receipt of the repayment until the earlier of—

- (a) the end of a period 60 days after the Authority issues the notice; or
- (b) the date on which the Authority makes the refund to the borrower.”.

9. In regulation 21, before paragraph (1) insert—

“(A1) This regulation applies in relation to students loans which are not post-2012 student loans.”.

10. After regulation 21 insert—

**“21A. Interest rate on post-2012 student loans**

(1) This regulation applies in relation to post-2012 student loans.

(2) Subject to paragraphs (3), (4) and (5), during any academic year, if the Authority determines that post-2012 student loans will bear interest, loans bear interest at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 2010 equal to—

- (a) the standard interest rate plus 3%, until the earlier of the end of the tax year in which—
  - (i) the borrower completes the course;
  - (ii) the borrower leaves the course; or
  - (iii) the fourth anniversary of the course start date occurs, in the case of loans in relation to part-time courses;
- (b) after the period in sub-paragraph (a) for a borrower to whom Part 3 or 4 applies—
  - (i) in a tax year in which the borrower’s interest income is the lower interest threshold or less, the standard interest rate;
  - (ii) in a tax year in which the borrower’s interest income is more than the lower interest threshold but not more than the higher interest threshold, the standard interest rate plus the additional interest rate; or
  - (iii) in a tax year in which the borrower’s interest income is more than the higher interest threshold, the standard interest rate plus 3%;
- (c) after the period in sub-paragraph (a) for a borrower to whom Part 5 applies, where the Authority has determined under regulation 75(1) that the borrower may repay a loan by income-related instalments and the Authority considers that the interest income the borrower is likely to receive in the next 12 month period is—
  - (i) the lower interest threshold or less, the standard interest rate;
  - (ii) more than the lower interest threshold but not more than the higher interest threshold, the standard interest rate plus the additional interest rate;
  - (iii) more than the higher interest threshold, the standard interest rate plus 3%;
- (d) after the period in sub-paragraph (a) for a borrower to whom Part 5 applies, in any period during which a borrower is required to pay to the Authority a fixed instalment in accordance with a notice served under regulation 73, the standard interest rate plus 3%.

(3) During any academic year, which starts on or after 1 September 2012 but ends on or before 31 August 2015 and for the period from 1 September 2015 to 5 April 2016, if the

Authority determines that post-2012 student loans will bear interest, loans bear interest at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 2010 equal to—

- (a) the standard interest rate plus 3%, until the end of the tax year in which the borrower—
  - (i) completes the course; or
  - (ii) leaves the course,
- (b) after the period in sub-paragraph (a) the standard interest rate.

(4) During any academic year or part of any academic year beginning on or after 6 April 2016, where a borrower fails to comply with one or more of regulations 22, 23(4) and 72, post-2012 student loans bear interest at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 2010 equal to the standard interest rate plus 3% for the period from the date the borrower fails to comply with one or more of regulations 22, 23(4) and 72, until the borrower complies with those regulations.

(5) Where a borrower changes their mode of study between full-time and part-time study the interest under paragraph (2)(a) is to be calculated as if the course is a—

- (a) full-time course, where there is a change from a part-time course to a full-time course but before the requirement to repay under regulation 15(2A) applies;
- (b) part-time course, where there is a change from a part-time course to a full-time course and the requirement to repay under paragraph 15(2A) applies;
- (c) part-time course, where there is a change from a full-time course to a part-time course.

(6) Interest is calculated on the principal outstanding daily and is added to the principal monthly.

(7) The Authority must publish, at least once a year, by whatever means and in whatever media the Authority thinks fit, the interest rate determined in accordance with paragraphs (2) and (4) or where relevant paragraph (3), for any forthcoming academic year or part of that year.

(8) If, for any academic year, the Authority publishes more than one rate of interest to apply to post-2012 student loans, any subsequent rate so published will replace any previously published rate as the rate to apply from the date specified in the notice published in accordance with paragraph (7).

(9) The standard interest rate is the greater of—

- (a) 0%; or
- (b) an amount equal to the percentage increase between the retail prices all items index published by the Office for National Statistics for the two Marches immediately before the commencement of the academic year.

(10) The additional interest rate is a percentage equal to  $3 \times (I - L)/(H - L)$  where—

I is the borrower's interest income,  
L is the lower interest threshold,  
H is the higher interest threshold.

(11) The borrower's interest income is—

- (a) for a borrower to whom regulation 28 (but not regulation 42) applies, total income as calculated in accordance with regulation 29(4) but without excluding the repayment threshold in regulation 29(4)(a);
- (b) for a borrower to whom regulation 42 (but not regulation 28) applies, earnings as defined in regulation 41;

- (c) for a borrower where the Authority makes a determination that the borrower may repay a loan by income-related instalments under regulation 75, gross income as defined in regulation 71;
- (d) for a borrower to whom both regulations 28 and 42 apply in the same tax year, total income as calculated in accordance with regulation 29(4) but without excluding the repayment threshold in regulation 29(4)(a).

(12) The lower interest threshold is—

- (a) for a borrower to whom Part 3 or 4 applies, an amount of £21,000; and
- (b) for a borrower to whom Part 5 applies, an amount to be determined by reference to the most recent price level index for the borrower’s country of residence and in accordance with the following table—

<i>Band</i>	<i>Price Level Index</i>	<i>Lower Interest Threshold</i>
A	0<30	£4,200
B	30<50	£8,400
C	50<70	£12,600
D	70<90	£16,800
E	90<110	£21,000
F	110<130	£25,200
G	130+	£29,400

(13) The higher interest threshold is—

- (a) for a borrower to which Part 3 or 4 applies, an amount of £41,000;
- (b) for a borrower to whom Part 5 applies, an amount to be determined by reference to the most recent price level index for the borrower’s country of residence and in accordance with the following table—

<i>Band</i>	<i>Price Level Index</i>	<i>Higher Interest Threshold</i>
A	0<30	£8,200
B	30<50	£16,400
C	50<70	£24,600
D	70<90	£32,800
E	90<110	£41,000
F	110<130	£49,200
G	130+	£57,400

(14) In relation to the tables in paragraphs (12)(b) and (13)(b) the following conditions apply—

- (a) the price level index for the United Kingdom is 100;
- (b) price level indices are to be calculated using the most recent provisional comparative price level indices measured in gross domestic product produced by the World Bank’s Development Indicators ;
- (c) subject to sub-paragraph (d), where a price level index cannot be calculated under sub-paragraph (b), the applicable thresholds are those for band A;
- (d) the Authority may determine that the applicable threshold for a borrower is to be that for a country other than the borrower’s present country of residence.”.

**11.** In regulation 29—

- (a) in paragraph (7) before “The repayment threshold is” insert “Subject to paragraph (8)”;
- (b) in paragraph (7)(b), for “tax year” substitute “repayment threshold year”;

(c) after paragraph (7) insert—

“(8) The repayment threshold for a borrower with a post-2012 student loan is an amount of £21,000.”.

12. In regulation 71 delete the definition for “Eurostat”.

13. In regulation 75—

(a) for paragraph (3), substitute—

“(3) “The Authority must determine the amount of each instalment and must ensure that the total amount of all instalments paid in the period up to 12 months from the date of the first instalment referred to in paragraph (2) must not exceed the relevant amount.”; and

(b) for paragraph (5), substitute—

“(5) The amount of each instalment must be stated in the determination.”.

14. In regulation 76—

(a) in paragraph (1), delete the table and insert—

<i>“Band</i>	<i>Price level index</i>	<i>Fixed instalment for student loans which are not post-2012 student loans</i>
A	0<30	£49.20
B	30<50	£98.40
C	50<70	£147.60
D	70<90	£196.80
E	90<110	£246
F	110<130	£295.20
G	130+	£344.40
<i>Band</i>	<i>Price level index</i>	<i>Fixed instalment for post-2012 student loans</i>
A	0<30	£40.20
B	30<50	£80.40
C	50<70	£120.60
D	70<90	£160.80
E	90<110	£201.00
F	110<130	£241.20
G	130+	£281.40
<i>Band</i>	<i>Price level index</i>	<i>Applicable threshold for student loans which are not post-2012 student loans</i>
A	0<30	£3,160
B	30<50	£6,320
C	50<70	£9,480
D	70<90	£12,640
E	90<110	£15,795
F	110<130	£18,955
G	130+	£22,115
<i>Band</i>	<i>Price level index</i>	<i>Applicable threshold for post-2012 student loans</i>
A	0<30	£4,200

B	30<50	£8,400
C	50<70	£12,600
D	70<90	£16,800
E	90<110	£21,000
F	110<130	£25,200
G	130+	£29,400”

- (b) in paragraph (1A)—
- (i) for “2012” substitute “2013”;
  - (ii) for each occurrence of “Applicable threshold” substitute “Applicable threshold for student loans which are not post-2012 student loans”; and
  - (iii) delete “in the amount”;
- (c) in paragraph (3), for “Eurostat” substitute “the World Bank’s Development Indicators”;
- (d) delete paragraph (4);
- (e) in paragraph (5), delete “or (4)”.

**Education Act 2011 prescribed exceptions to student loans: interest rates**

**15.** For the purposes of section 76 of the Education Act 2011, the circumstances in which that section will not apply are where a student enters into a loan, made in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998, in respect of a course which satisfies one or both of the following conditions—

- (a) it is a full-time honours degree course beginning on or after 1 September 2012 which, disregarding any intervening vacation, a student begins to attend immediately after ceasing to attend a full-time course mentioned in paragraph 2, 3 or 4 of Schedule 2 to the Education (Student Support) Regulations 2011<sup>(a)</sup> or a full-time foundation or ordinary degree course, which started before 1 September 2012, having achieved a qualification;
- (b) it is one to which the student’s status as a student eligible for support under Regulations made under section 22 of the of the Teaching and Higher Education Act 1998 has been transferred from another course which the student began before 1 September 2012 and where the transfer takes place on or after 1 September 2012 and is from a full time course to a full time course.

16th May 2012

*David Willetts*  
Minister of State for Universities and Science  
Department for Business, Innovation and Skills

15th May 2012

*Leighton Andrews*  
Minister for Education and Skills  
One of the Welsh Ministers

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(a) S.I. 2011/1986.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”). The Principal Regulations govern the repayment of income-contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998.

Regulations 3 to 14 amend the Principal Regulations to set out the repayment conditions for loans in relation to new students starting new courses on or after 1 September 2012 (“new loans”).

Regulation 5 sets out when borrowers become liable to repay new loans.

Regulation 6 sets out how repayments will be divided between new loans and loans which are not new loans.

Regulation 7 makes provision in relation to the cancellation of new loans.

Regulation 8 makes provision in relation to new loans and loans which are not new loans, where a borrower repays more than they owe.

Regulation 10 sets out provisions relating to the interest which the new loans may carry.

Regulation 11 provides the repayment threshold for new loans.

Regulations 12 and 14 make changes to the price level indices which are used for loans where the borrower is not resident in the UK.

Regulation 13 makes changes to how the value of income-related instalments is determined for loans where the borrower is not resident in the UK.

Regulation 14 makes changes to the applicable threshold for loans and provides fixed instalments for new loans where the borrower is not resident in the UK.

Regulation 15 prescribes exceptions to the interest rate limit imposed by section 76 of the Education Act 2011 on some loans made under section 22 of the Teaching and Higher Education Act 1998.

An impact assessment has not been produced for this instrument as it has no impact on businesses or civil society organisations. The instrument has a minimal impact on the public sector. The Explanatory Memorandum is published alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **Explanatory Memorandum to The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2012**

This Explanatory Memorandum has been prepared by the Higher Education Division of the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2012. I am satisfied that the benefits outweigh any costs.

*Leighton Andrews*

Minister for Education and Skills

15 May 2012

## **1. Description**

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments introduce changes to the repayment system and the level of interest that will accrue on income-contingent student loans for individuals who have started their studies after academic year 2012/13.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ("the 2009 Regulations"). The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State and they govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which began on or after September 1998. Although most of the provisions made by the Secretary of State only apply in relation to England, the 2009 Regulations do contain provisions which are made by the Secretary of State in relation to England and Wales which concern the tax system, to the extent that student loans can be collected through the taxation system operated by Her Majesty's Revenue and Customs ("HMRC").

This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Given the composite nature of the 2009 Regulations, it is not considered reasonably practicable for this instrument to be made bilingually.

## **3. Legislative background**

The Regulations are made by the Welsh Ministers in relation to Wales (save for regulation 11) in conjunction with the Secretary of State in relation to England (save for regulation 11 which extends to all of the United Kingdom) under sections 22 and 42 of the Teaching and Higher Education Act 1998 and sections 76 and 78 of the Education Act 2011".

The functions of the Secretary of State under Section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions in section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under sub-sections (2)(a), (c) and (k) became exercisable concurrently with the National Assembly. The functions in sections 22(2)(j), 22(3)(e)-(h) and section 22(5) remain Secretary of State functions. The above functions of the National Assembly were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Under section 76 of the Education Act 2011 (which provides for changes to the interest rate applicable to students loans), the Welsh Ministers may prescribe, by regulations the circumstances in which section 76 is not to apply to in relation to a

student who begins a course on or after 1 September 2012.

This instrument will follow the Negative Resolution procedure.

#### **4. Purpose & intended effect of the legislation**

This is part of a suite of legislation intended to implement the Welsh Government's policy on higher education funding and student finance for academic year 2012/13 onwards (a number of related statutory instruments were made last year, including the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) regulations 2011). The overall policy is being implemented in response to the report by Lord Browne on higher education funding and student finance in England and consequent decisions by Ministers in England to cut higher education funding and allow higher education institutions (HEIs) to charge significantly higher tuition fees.

In England, and in addition to the changes being introduced by these amendment regulations:

- the basic tuition fee will increase to £6,000 per annum;
- HEIs will be able to charge tuition fees up to £9,000 per annum, providing they can demonstrate a commitment to widening access;
- maintenance grants for those below £42,000 will increase to a maximum of £3,250;

In response to the changes announced in England, the Minister for Children, Education and Lifelong Learning (now the Minister for Education and Skills) made a statement to the Assembly on 30 November 2010. In order to provide additional support for students ordinarily resident in Wales, and to ensure that Wales continues to benefit, economically, socially and culturally from the investment that the Government makes in higher education, the Minister announced that:

- tuition fees in Wales would increase from academic year 2012/2013 and higher education institutions (HEIs) would be able to charge tuition fees up to £9,000 per annum, provided they could demonstrate a commitment to widening access and other strategic objectives through fee plans approved by the Higher Education Funding Council for Wales ("HEFCW") in line with its corporate strategy;
- students ordinarily resident in Wales would continue to be eligible for subsidised loans to meet the cost of fees up to the current level (£3,465 per annum in respect of academic year 2012/13). The Welsh Government would provide a non-means-tested tuition fee grant for the balance over and above current fee levels, to be paid through the HEFCW (and the Student Loans Company in respect of English HEIs) on behalf of students ordinarily resident in Wales wherever they study;

As regards the regulations which form the subject matter of this memorandum, the Minister also stated in the same announcement that the income repayment threshold for student loans will increase from £15,000 to £21,000, and variable progressive rates of interest charged depending on income;

The rationale for the policy concerning the repayment of student loans is set out more fully in the Regulatory Impact Assessment (RIA) below. An Inclusive Policy Making Assessment including an equality impact assessment was carried out as part of the Policy Gateway process in relation to the suite of legislation introduced last year.

These Regulations implement changes to the student loans repayment system for new borrowers entering higher education from September 2012. The repayment system has been designed to be affordable and progressive. This means that those who progress up the salary scale will repay at a higher rate – i.e. those who earn more pay more. Repayments will be tailored to income ensuring that repayments match ability to pay. By raising the repayment threshold to £21,000 and introducing a progressive rate of interest greater protection is offered to the lowest graduate earners. After 30 years all graduates will have any outstanding balance written off.

Under this system, around a quarter of graduates with the lowest lifetime earnings will pay less overall than people under the current system do now.

The changes to the repayment system are set out below:

#### Eligibility to be treated as a continuing student under the existing student finance package

The Education Act 2011 allows for exceptions to those who should be subject to real rates of interest. The Regulations will ensure that all new terms, including real interest rates, are applicable to only those who start new courses in September 2012 or later. Those who are studying courses end-on will continue to take out loans under the existing student finance system.

#### Statutory Repayment Due Date - when repayments become due

The earliest date for repayment for all new borrowers will be April 2016. HMRC is unable to implement the new repayment threshold until that date, so borrowers may make direct payments to the Student Loans Company (“SLC”) if they choose to, but no deductions will be made by employers (through Pay As You Earn (“PAYE”)) or through Income Tax Self Assessment until April 2016.

Write-off of loan – the outstanding balance of a new loan will be cancelled 30 years after the Statutory Repayment Due Date (that due date will usually be the start of the tax year following the date on which the student completes the course). As well as the anniversary date, the loan can be cancelled if the borrower dies or the borrower receives a disability related benefit and because of the disability is permanently unfit for work (as is the case with current student loans).

Credit balance - Interest Rate - new interest rate provisions for borrowers who have student loan balances in credit, due to over-repayment. SLC will usually only find out that a borrower has over-repaid after the end of the tax year when HMRC advise SLC of a borrower’s deductions and that amount has been applied to the customer’s account.

- For the existing system - From the date the loan is repaid in full, interest will continue to accrue at the rate of Retail Price Index (RPI) (subject to the low interest cap being in use). After the end of the relevant tax year, SLC will write to the borrower and advise them that interest will accrue for a further 60 days at RPI (or low interest cap), but that beyond that period no further interest will accrue on the credit balance. Following the 60 day notice the credit balance will not attract interest (0%).
- For the new system - From the date the loan is repaid in full, interest will accrue at the rate of RPI only, irrespective of the (variable) rate of interest which has been charged up to that point. After the end of the tax year, SLC will write to the borrower and advise them that interest will accrue for a further 60 days at RPI, but that beyond that period no further interest will accrue on the credit balance. Following the 60 day notice the credit balance will not attract interest (0%).
- For borrowers with both types of loans - Where one loan has been over-repaid, borrowers will be offered the option to either be refunded or to use the over-repaid amount towards repayment of the remaining loan. Where SLC do not receive a response, after 60 days the over-repayment will automatically default to the outstanding loan balance.

#### Real and Variable Interest rate provisions:

The Education Act 2011, which amended the Teaching and Higher Education Act 1998 to insert a cap on student loan interest rates, prescribes that the rate of interest on student loans will be:

- lower than those prevailing on the market, or
- no higher than those prevailing on the market, where the other terms on which such loans are provided are more favourable to borrowers than those prevailing on the market.

Last year, a detailed analysis was undertaken to define what 'the market' is; what the rates prevailing on that market are; and how such rates will be monitored going forward. The most suitable benchmark for monitoring the compliance of student loan interest rates with the terms of the Education Act 2011 (and the consequent exemption from the EU Consumer Credit Directive) is the Bank of England published rates for £10,000 unsecured personal loans. Analysts will continue to ensure that this remains the most relevant benchmark available.

Definition of income – to align the definition of "income" for calculation of variable interest rate for PAYE borrowers, Self Assessment borrowers and borrowers who reside overseas with their respective definition of income for establishing their repayment deductions.

- Interest rate whilst studying - Whilst studying, the interest rate to be charged to new students entering Higher Education for the first time from September 2012 onwards will be Retail Price Index ("RPI") + 3%. This rate will apply until

the Statutory Repayment Due Date (usually the start of the tax year following the date on which the student completes the course).

- Variable interest post Statutory Repayment Due Date - Once a borrower has reached their Statutory Repayment Due Date, a variable rate of interest will be charged, which is dependent upon income. Borrowers who are resident in the UK earning £21,000 or less will be charged a rate equivalent to RPI. Interest will then be charged on a sliding scale starting at £21,000.01 up to £41,000. At £41,000 or more, the interest rate will be RPI + 3%.
- Overseas residents – there will be equivalent £21,000 and £41,000 thresholds for borrowers who reside overseas so that variable interest can be applied. World Bank data will determine the relevant threshold for each country.
- Interest rate for borrowers who come into repayment before April 2016 - HMRC are unable to take repayments under the new system before April 2016. Some borrowers who are on short courses or who leave their course early will be due to repay before that date. Those borrowers will be charged interest at RPI + 3% until the April after they leave their course (a notional Statutory Repayment Due Date); RPI only between their notional Statutory Repayment Due Date and April 2016; and the appropriate rate of variable interest from April 2016.
- Interest rate for borrowers who lose touch with the SLC - These borrowers will be charged interest at the rate of RPI + 3%. This rate will be charged until they get in touch with SLC and have provided the relevant information needed by SLC. Once SLC have the information they require, the variable interest rate will apply. This will apply to all new borrowers and will include those who move overseas straight after graduation without advising the SLC.

#### Interest rates and repayments from those leave the UK to reside abroad

For those who move away from the UK, SLC will establish a 12 month repayment schedule with both repayments and interest based on predicted income. This may be re-determined, if appropriate, during or at the end of that 12 month period.

#### Threshold

The repayment threshold will be £21,000 and the upper limit for determining the variable interest rate will be £41,000. Setting the contribution at £21,000 is a core part of making the system more progressive. It will mean that low earning graduates are not required to make payments and those that earn above £21,000 will contribute less each month than borrowers would under the current system. Raising the threshold for new graduates is part of the overall package of reforms to make the system more progressive and protect those that do not go on to enjoy high earnings – whilst asking those that do to contribute more.

#### **5. Consultation**

All relevant stakeholders have been consulted on the proposed changes to the Higher education and student finance system. These included proposals for the reform of the student loans repayments and - the increase of repayment thresholds from £15,000 to £21,000 and the introduction of a variable progressive rate of interest charged depending on income. Technical consultation papers on the following issues were published on the Assembly Government's consultation web page:

- the implementation of the proposed new system of higher education funding and student finance; and
- the proposed system for part time higher education funding – including student finance for 2012/13

Details of the consultations undertaken and the responses received are included in the annexes to the RIA below.

## **6. Regulatory Impact Assessment (RIA)**

### **REGULATORY IMPACT ASSESSMENT**

#### **Options Appraisal**

**Option 1 – do nothing.** To do nothing in response to the changes announced in England in respect of higher education tuition fees and student finance would have important negative consequences for students ordinarily resident in Wales.

**Option 2 – make these regulations.** to introduce the intended policy would see the introduction of a progressive and affordable repayment system and the maintenance of a consistent repayment policy for England and Wales.

#### **Costs & benefits**

The changes to higher education student support introduced by these Regulations will come into force for the start of academic year 2012/13.

#### **Students**

Each of the options identified above would impact on students in the following ways.

##### Option 1

#### **Existing Students**

There will be no financial impact if they started their course on or before the 1 September 2012 as they would continue to repay their student loans under the existing interest rate and repayment threshold system.

#### **New students**

Students who enter university after 1 September 2012 will be subject to tuition fees of up to £9,000 per annum. If the £15,000 repayment threshold remained unchanged, Welsh domiciled students would enter repayment earlier than English students and would be charged the same interest rate regardless of their income level.

Welsh domiciled student loans will be written off earlier (after 25 years) than English domiciled students (after 30 years).

No increased protection to the lowest graduate earners - a quarter of graduates with the lowest lifetime earnings would continue to pay the same as higher earning graduates not less.

## Option 2

### **Existing Students**

There will be no financial impact if students started their course on or before the 1 September 2012 as they would continue to repay their student loans under the existing interest rate and repayment threshold system.

### **New students**

Students entering university after 1 September 2012 will be subject to the following:-

- the interest rate that is to apply to student loans whilst the student is studying will be RPI +3%;
- for part-time students, the statutory repayment date will be the April after three years of study (e.g. 1<sup>st</sup> statutory repayment date will be April 2016) unless their course is shorter in length. Full-time students will continue to enter the repayment system in the April after they finish their course;
- the repayment threshold will increase from £15,000 to £21,000;
- for graduates, the interest will accrue on a sliding scale depending on income. It will range from
  - RPI for graduates with an income of £21,000 per annum and less, to
  - RPI +3% for graduates with an income of £41,000 per annum and above.
- the loan balance be written off after 30 years.

The repayment system has been designed to be affordable and progressive. This means:

- Welsh domiciled students would enter repayment at the same time as English domiciled students (April 2016) and would be subject to the same variable interest rates depending on their income;
- The timescale regarding the write off of student loans would be the same for both Welsh and English domiciled students;
- Students who earn more after graduation will repay at a higher rate – i.e. those who earn more pay more;

- Repayments will be tailored to income ensuring that repayments match ability to pay. By raising the repayment threshold to £21,000 and introducing a progressive rate of interest to offer greater protection to the lowest graduate earners;
- Under this system, around a quarter of graduates with the lowest lifetime earnings will pay less overall than people under the current system do now.

### **Welsh Government**

The non cash costs of introducing a revised repayment system in Wales have been estimated as follows:

2012/13	£2.5m
2013/14	£7.7m
2014/15	£14.4m

The additional costs have been included in the Welsh Government budgets.

### **Consultation**

All relevant stakeholders have been consulted. Technical consultation papers on the following issues were published on the Assembly Government's consultation web page:

- the implementation of the proposed new system of higher education funding and student finance; and
- the proposed system for part time higher education funding – including student finance for 2012/13

Key stakeholders consulted include:

- HEIs in Wales
- Higher Education Wales
- Further education colleges in Wales
- NUS Wales
- Student unions
- Local authorities in Wales
- Student Loans Company
- Higher Education Funding Council for Wales
- UCAS
- Children in Wales
- National Association of Student Money Advisers
- Student Finance Officers in local authorities, HEIs and further education colleges

The consultation periods lasted for four weeks - a summary of the consultation consultation exercises can be found at **Annex 1(i) and (ii)**.

### **Competition assessment**

The results of the competition filter test are set out below:

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

### Post implementation review

This is part of a suite of legislation that is or has been introduced since the Ministers announcement in order to ensure that the new higher education funding and student finance systems can be implemented effectively for academic year 2012/13.

The objective of the post implementation review will be to assess whether the reforms to higher education funding and student finance are operating as expected and whether they have achieved the policy objectives set. The review will need to be based on an ongoing evaluation of the reforms and their impact, taking account of the fact that the new systems will not be fully operational until 2014/15 when three full cohorts of students will have entered higher education under the new tuition fee and student finance regime proposed.







ANNEX 1(i) – consultation on the implementation of the proposed new system of higher education funding and student finance

Name & organisation	Q1. Fee planning guidance	Q2. Advantages / Disadvantages of lower basic fee rate	Q3. Design to minimise admin burden	Q4. Implementation issues	Q5. Simplify SFW processes	Q6. Any other related issues
Margaret Phelan University and College Union	<p>Demonstrable/evidenced improvements in student and staff engagement within institutions should be a required as a condition of the fee plans. All institutions should have effective mechanisms for evaluating the student experience. Clearly UCU would argue strongly that effective student support requires an appropriate level of staffing with the time in timetables to be able to deliver that effective support at the front line. UCU would argue strongly for institutions to be required to allow more time in the teaching time tables for the tutorial support necessary to improve rates of retention. This time should be costed and be a required, clear component of any fee</p>	<p>UCU would be extremely concerned at the perception that a such a move might create. It is our view that given the rate set in England that Wales must not take a decision which could suggest that the fees are cheaper in Wales because the education one receives is not as good as England.</p>	<p>A technical issue best dealt with by the institutions</p>	<p>Whatever method is chosen, UCU would argue that its members are key to delivering student support and therefore they must be involved in that process.</p>	<p>A matter for institutions and NUS.</p>	<p>No comment supplied</p>

	<p>plan. UCU believe that institutions wishing to charge more than the basic fee rate in Wales should be required to use a proportion of that fee to provide job security for staff on atypical contracts, for example rolling fixed term contracts. They argue that the uncertainties in funding, especially with regard to research funding, requires them to act in this way. One way to ensure a future for the research base in Wales would be to attract key research staff to work in institutions in Wales. This could be done by offering permanent contracts to research staff currently working on a series of fixed term contracts elsewhere in the UK. Their ability to charge above the basic fee rate would provide funding and prevent them for continuing to use funding uncertainties argument. HEFCW might want to consider expressing this in the guidance as the need to see a percentage</p>					
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	<p>reduction over a period of years. We would also wish to see a review period within the period covering the fee plan, not just at the end of the plan period.</p>					
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<p>Mike Williams Coleg Sir Gar</p>	<p>From and FE perspective, and as a College that franchises provision from HEIs, some consideration needs to be given to percentage of the student fee that a franchising HEI is allowed to keep (ie, a maximum needs to be set). We have experienced a situation whereby 30% of the 'fee grant' was retained by the franchising HEI in addition to 30% of the HEFCW funding. Our view is that the fee needs to be with the provider to pay for direct costs, development and to ensure the quality of provision, ie, supporting front line services. 2. Institutions charging over and above the basic fee rate need to set out student entitlement. We are convinced that as higher fees are charged, student expectations will increase and students will need reassurance about levels of service, delivery and support etc they can expect. 3. We are mindful that the Minister</p>	<p>We see no advantages in setting a lower basic fee rate in Wales compared to England and agree that it would be sensible to have a basic rate that is in line with England at £6000. In determining the basic fee rate level, the existing funding package (ie, what is currently HEFCW teaching grant and student fee) needs to be considered in relation to this. Only when institutions set fee levels that will attract income over and above what is the norm currently, should additional fee plans be required</p>	<p>The proposed scheme sounds simple and there is recent experience of managing fee grant monies through HEFCW. Could there be a link to the target 'capped' FT numbers set by HEFCW (subject to confirmation on recruitment)?</p>	<p>Draft written proposals circulated to the sector backed up by opportunities for face-to-face regional meetings would be our preferred option.</p>	<p>Centralisation of the processing of applications as in England -to allow access to supporting bodies to clarify information required (ie, HMRC to qualify parental/student income). Better procedures for part time students.</p>	<p>No comment supplied</p>
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	<p>has already announced that access to the new fee regime, will be dependent on HEI reconfiguration (with 6 HEIs being preferred). We would assume (unless informed otherwise) that our membership of the Dual Sector University with TSD (and other partners in SWW) addresses this issue from a directly funded FEI perspective. This has required significant adjustment for us and a refocusing of our partnerships within region. 4. As is the practice currently, institutions need to set out the financial assistance that will be available for students by means of bursaries etc. The issue of FT fees and PT fees needs to be resolved, identifying what the expectations are for PT students in future.</p>					
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<p>Peter Haughton Denbighshire County Council</p>	<p>HEIs should have strong, mutually binding, legal contracts with all applicants to ensure that the expected level of service, including tuition, is provided by them and that participation by students is satisfactory. In the days of Mandatory Student Grants, there were three rates of fee for home students based upon the nature of the course. Purely academic lecture room based the latter plus a significant element of lab and / or field work or Medical, Dental or Veterinary. There is a certain correlation with respect to the tuition regime and expected earnings with the three basic course models; would a similar scheme be worth considering?</p>	<p>One advantage might be that it would attract more applicants to Welsh HEIs, giving them the opportunity to accept only those with the highest entry qualifications. This would ensure the selection of a base line student population with the highest academic potential. Different rates of fees would potentially cause confusion to applicants filling in either paper or online applications for student support. A definitive set of criteria that would fit all situations and establishments would be difficult to determine as it could be subject to many differing factors. For instance one HEI</p>	<p>Cut out the suggested HEFCW involvement from the equation and administer all the tuition fee support in the same way through the LAs as the existing residual Tuition Fee Grants. This would ensure that the appropriate support would be available to students studying in all UK domiciles as the LAs already have a proven track record for delivering the service.</p>	<p>Whilst not having details of the Board membership If WAG are running true to recent form it will primarily be at the “ strategic level “. I would however strongly recommend the involvement of a judicious mix of both strategic and operational stakeholders. The devil is quite often in the detail with respect to the delivery of student support and it is potentially dangerous to have theorists in charge of the development and implementation process without also actively consulting on the operational viability of the proposals with those who currently and in the future will be expected to deliver the support .</p>	<p>Ensure that the Student Loans Company’s, Protocol software is actually fully fit for purpose. Ensure that the course fees are hard coded into the HEI course data base to ensure the correct level is displayed on the online application and relevant sections of the LA data entry screens.</p>	<p>Given the lower rate of fees in Wales is there not a possibility of higher numbers of EU students taking advantage of this to the detriment of home students. If this indeed proved to be the case would a cap on the number of EU students in Welsh HEIs be considered? Given the increasing cost of studying in the UK would the Minister give consideration to funding cheaper comparable and appropriately accredited courses at overseas institutions?</p>
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		<p>might have a particular faculty that has a world class reputation for excellence compared to another with a mediocre reputation and both would be offering a course with the same qualification. Should one be allowed to charge a premium on their fees because of their reputation for excellence and the additional opportunities they offer? The performance of HEIs should be closely monitored and action taken against those who are performing badly. Basically students would be expected to pay the appropriate rate of fee for the level of service provided. It would then be up to the HEI perform to the</p>				
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		<p>expected standard in order to gain and retain the right to charge higher rate fees. Conversely those that continue to underperform could be compelled to reduce or refund a proportion of their tuition fees to those students they have failed. The other option in this scenario is the possibility of partial or full tuition fee waivers for eligible students undertaking unsupported periods of repeat study due to a failure on the part of their HEI.</p>				
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<p>Dr David Grant Cardiff University</p>	<p>Under the proposed new fee system the overall level of funding for teaching will stay approximately the same as at present but the burden of cost will be shifted significantly from the state to the student. As such it seems appropriate that the fee plan to access the new fee regime should relate predominantly to the student experience and other aspects of For our Future and the HEFCW Corporate Strategy relevant to the student experience (including widening access), to ensure that students are receiving a good value education for their increased investment and that the additional cost does not discourage students from low income backgrounds from entering higher education. Cardiff continues to work towards all areas of the For our Future and the HEFCW Strategy and will demonstrate an appropriate contribution</p>	<p>While there may be some superficial attraction in setting a basic rate at a lower level the consequences could be serious and would need to be carefully considered. From a marketing perspective having a lower basic fee rate than England would make Welsh higher education look cheap to non-Welsh students and may therefore pull in greater numbers of applications from beyond Wales, but under the proposed arrangements for tuition fee compensation, the lower fee level would offer no competitive advantage in attracting Welsh students.</p>	<p>Whilst the previous system that was established with the Student Loans' Company had some initial difficulties it worked relatively well once established. A transaction directly between HEFCW and universities would require one or other to undertake eligibility assessment for each Welsh-domiciled student (this check is currently done by the SLC/LEA as part of the statutory student support assessment). It would be unlikely to be cost-effective to require this assessment of eligibility to be undertaken by HEFCW or universities. Careful attention will need to be paid to detailed student communications on this matter. For example, under the</p>	<p>HEIs have a major role in delivering student finance and together with their role in providing advice to students this means that they are well placed to work together with WAG and HEFCW on the effective introduction of new student finance measures. It is therefore disappointing to note that there is no HE representative on the Programme Delivery Board. We would urge the board to draw on the expertise of higher education institutions at appropriate stages in its discussions in order to ensure that appropriate recognition is given to the impact that the implementation of the Assembly Government's new fee proposals will have upon both HEIs and their students. Workshops on specific topics may indeed be</p>	<p>No comment made</p>	<p>We believe that it would be appropriate for fee plans to be reviewed after three years. A timescale for review any shorter than this would not allow sufficient time for institutions to be able to show progress against their targets and would be unduly bureaucratic to implement. We would expect that any arrangements that are introduced need to be appropriate for the medium to long term. Any short term measures will inevitably lead to confusion for students and HEIs, and be wasteful of the resources necessary to develop and implement the new system (in</p>
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	<p>to all priority areas. Input targets, such as money spent in support of a particular activity, are not an effective way of measuring progress as there is no guarantee for WAG/HEFCW that the desired outcomes will transpire. It should also be noted that the new fee regime will be delivering little or no additional funds to the HE sector when combined with HEFCW cuts and so it would not be reasonable to expect institutions to be making significant additional expenditure as part of their fee plans. Outcome targets would be a better way of monitoring progress than financial expenditure targets and would ensure that real change against WAG priorities is delivered. Universities already have a set of national targets set out in the HEFCW Corporate Strategy, against which they are monitored. It would be appropriate for a simple set of targets to form the basis both of the</p>	<p>Meanwhile given the parameters within which the HE funding methodology for 2012/13 onwards is being planned (ie that no HEI would be worse off under the new system than it would otherwise have been) HEFCW would need to find balancing funding to compensate the institution for the lower fee rate charged to non-Welsh students. If the HEFCW “institutional subsidy” is automatic and ensures that any institution choosing to set lower rates is compensated for the absence of a new fee income there could be perverse consequences. We understand that WAG</p>	<p>previous tuition fee grant introduced in 2007 students were asked what fee they were being charged when filling out forms to be assessed for financial support. However the wording of the question led to significant confusion as, for Welsh-domiciled students it was not clear whether they were being asked for the figure before or after the tuition fee grant had been taken into account. This often resulted in students needing to resubmit funding applications to their LEAs, delays in registration and to funding received. Such delays can cause distress to students and a serious administrative problem for universities. The Assembly Government should</p>	<p>useful, as may task groups of experts from the sector and other organisations to look at specific issues. The exact mechanism of consultation is perhaps not as important as ensuring that, if there are issues which are going to affect universities, those institutions are given sufficient opportunity to make a genuine contribution to the discussion and help the Assembly Government and HEFCW to deliver processes and policies that are fit for purpose.</p>	<p>WAG, HEFCW and the sector). We do, however, recognise that these are major changes to the fee and student finance arrangements that are being introduced. The policies introduced and accompanying funding mechanisms should therefore be kept under scrutiny to ensure they are fit for purpose and a comprehensive review be scheduled after a suitable period of operation. Provision of a quality student experience has different costs in different subject areas. It must be recognised that while the substantial planned increases in student fees</p>
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	<p>fee plans and for HEFCW Corporate Strategy (with any adjustments that are necessary) and for the fee planning process to be linked to the existing process for monitoring performance against the HEFCW Corporate Strategy and the delivery of For our Future. The link between the introduction of the new fee regime and the drive for reconfiguration and collaboration needs to be expressed carefully; any fee plan provisions relating to reconfiguration need to be explained in a way that ensure that the student experience remains at the heart of the requirements on institutions. Any targets relating to reconfiguration in fee plans might therefore be linked to HEFCW Corporate Strategy target 11 and ask of institutions whether they have, or are moving towards, a critical mass sufficient to assure a high quality student experience, an acceptable range of</p>	<p>modelling work for the sector has shown that the average fee level necessary to allow historical funding levels to be maintained is ca. £6000. There is a significant risk that setting a basic fee rate lower than K£6 would be financially burdensome to WAG. The lower the fees across the sector the higher the level of institutional subsidy that HEFCW would need to provide if it were to balance the funding with historical levels. Meanwhile, institutions setting fees in excess of K£7 to maintain and develop the quality of the student experience would receive little or no “institutional subsidy” for their</p>	<p>ensure that all statutory forms make clear the information to be provided by Welsh domiciled students in relation to the fees that they are paying. The involvement of university staff in drawing up detailed communications to students on financial support matters will be vital if all complexities are to be addressed. Issues such as dates for withdrawal from courses and eligibility for payment of all or a proportion of fees do differ between institutions and will need to be clarified in advance to all students.</p>			<p>shift substantially the burden of funding from the state to the individual student, even at the maximum level of fees the full cost of education in strategically important subjects – science, engineering, medicine and dentistry for example – will not be met from student fees alone. Assurance is sought from WAG and HEFCW on how such subjects will still be supported in Wales in a manner which ensures a high quality student experience can still be funded and delivered. We are very conscious that the delivery expectations of students will increase as they pay more for their</p>
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	<p>educational provision in both breadth and depth and student services and support appropriate to student needs and appropriate to their mission. For a university like Cardiff this would ensure that the particular demands of a research-led teaching experience were reflected. Using a target of this type would also ensure that past reconfiguration activity is acknowledged within the fee plan provisions.</p>	<p>efforts but also would find that there was a reducing balance of funding available from HEFCW to support high-cost strategic subjects. We are not supportive of a lower rate being set as we believe there is a significant danger of widening the funding gap between English and Welsh higher education even further, of compromising the quality of the student experience and of creating the perception at large of a cheap and underfunded HE sector in Wales. Maintaining parity of funding and parity of esteem with England is vital for universities that</p>				<p>education. We are also aware that the proposals under consideration may not actually ensure any additional funding to the universities to deliver on those expectations. We would therefore argue that the responsibilities of HEFCW to reflect the differing costs of teaching in subject areas be maintained and HEFCW teaching funding for universities must continue to reflect the different subject mixes and cost of provision at those universities and not simply be modelled on an historical cost basis.</p>
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		<p>recruit from across the UK. Should, however, the decision be taken that the standard rate be lowered or removed in Wales, we would argue that any institution choosing to charge fees at below the standard rate agreed in England (anticipated to be K£6) do so at their own risk. Any institutional subsidy that is paid to universities in Wales should be limited and calculated against the assumption of all institutions having charged fees at least at the standard rate in England.</p>				
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<p>Kym Roberts Skill Wales</p>	<p>Skill Wales urges the Welsh Assembly Government to state their expectations of HEIs (planning to set tuition fees above the fee rate) for widening access strategies and action, for the specific participation, support and progression of disabled students. This will include putting in place, action based monitoring mechanisms. Statistics show that over 50% (ONS 2009) of disabled people are unemployed, while the economic fate of young disabled people is significantly equalised through access to higher education, where differences in employment rates reduce to within a narrow percentile. This is ultimately significant to the social justice drivers of the Welsh Assembly Government, and the economy of Wales, and the work being undertaken in relation to NEET. It is imperative therefore, that young disabled people</p>	<p>The concern of Skill Wales for those HEIs who wish to retain fees at lower than the revised fee level, is that conversely, access to higher education by young disabled people could be affected adversely. We seek re-assurance that the access to higher education for young disabled people will be secured and promoted.</p>	<p>No comment made.</p>	<p>No comment made.</p>	<p>No comment made.</p>	<p>No comment made.</p>
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	participate and succeed in higher education.					
David Moyle Higher Education Liaison officers Association (HELOA Wales)	The fee plan conditions that should be imposed on HEIs is a matter that our members feel should be addressed by our individual institutions, in consultation with the Assembly Government and HEFCW.	HELOA Wales cannot see any real advantages of implementing a fee rate lower than that proposed by the Minister for Education. Given the reductions in public funding for higher education over the coming years, the raising of the basic fee rate would appear to be the most likely mechanism of bridging this shortfall to ensure that the HE sector in Wales continues to deliver excellence in teaching, research and the	HELOA Wales feels that the issues regarding reducing the administrative burdens of the fee grant scheme on HEIs and HEFCW is a debate best advanced through consultation with individual HEIs and their finance offices.	HELOA Wales would welcome the opportunity to feed into the Programme Delivery Board. Our members have regular contact with the vast majority of post-16 education providers in Wales. We are therefore on the 'front-line' with regard to communicating the emerging student financial provision to students considering entry into higher education. We feel that for further discussions and engagement to be most fruitful, consultations should take place on a number of different levels: Local	HELOA Wales feel that any changes to the existing Student Finance Wales mechanisms should be developed so that the process is as simple and non-burdensome for the end user as is possible. Timely publication of the student finance provision (e.g. maintenance loan thresholds) would reduce some of the anxieties amongst students and parents concerned about the financial aspects of entry into HE. We feel that publication of student financial provision should be	There is a considerable risk that we could find ourselves at a significant marketing disadvantage if fee levels in Wales are not published before or shortly after similar announcements from HEIs in England. Students wishing to enter HE in 2012 are likely to be conducting their initial research over the coming months, so it is vital that Welsh HEIs are able to publish their fee

		<p>student experience. Every necessary step should be taken by the Assembly Government and HEFCW to ensure that the exiting funding gap between England and Wales does not widen in the coming years. Our members are concerned about the potential for fee pricing becoming inextricably linked with quality. For example, if one institution was to charge £9,000 per year and another to charge £7,000, would a student looking at the figures automatically assume that the 'cheaper' HEI offered less quality? In the event that there are differences in 2012/13 fee levels</p>		<p>(individual HEIs), Regional (HEI partnerships), and National (stakeholder organisations).</p>	<p>made available in the January of the year of entry, with details readily available on SFW website.</p>	<p>thresholds at the earliest opportunity.</p>
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across Wales, this price:quality perception is something that will need addressing by HEIs, HEFCW and the Assembly Government.

<p>Helen Jeffery, Management Accountant Coleg Gwent</p>	<p>No comment made.</p>	<p>Advantages: A lower rate in Wales will give the students a chance to repay their debt in line with their expected future income levels. The lower fee will encourage Welsh resident students to remain in Wales. Disadvantages: If the fee is lower, then there may be an influx of English students who want to attend University but do not want to pay the inflated fees charged in England. These students may move back to England after completing their course meaning a potential loss of skilled employees and income.</p>	<p>No comment made.</p>	<p>No comment made.</p>	<p>We currently offer a HE provision which is franchised through two Universities. Our students apply to Student Finance Wales for help with their costs, but we are not allowed to contact Student Finance directly to discuss our student's fees. It would be very useful for Colleges to be able to contact Student Finance directly when we have a query regarding one of our student's fees or discover that they have applied using incorrect course information. This would ensure that any corrections required by Student Finance would be dealt with promptly thereby releasing the payments and reducing the administration work at both ends.</p>	<p>No comment made.</p>
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<p>Elaine Moore Alliance of Sector Skills Councils</p>	<p>Publication of an Employability Strategy, with details of the content to enable students to see how this issue is articulated. The obligation to publish data on origin of student intake if they plan to charge more and to demonstrate how the commitment to Widening Access is to be maintained.</p>	<p>Advantages: Attract greater diversity of students; Retain more Welsh- educated students.</p> <p>Disadvantages: (Appear to) Undercut other universities; Create 'market' rivalry on the basis of fees not standards.</p> <p>Criteria: No disadvantage caused to p/t students</p>	<p>We very much support the principle that the funding should always be linked to the individual student and not the course followed nor the institution attended. This should enable appropriate adjustments to be made in future as required and enable data to be generated that shows the impact overtime of differential fees on the cohort of students who study at various HEIs</p>	<p>Not set up additional mechanisms but use existing channels and structures.</p>	<p>Perhaps some worked through examples could be provided to illustrate different scenarios as they might affect a range of individuals to ensure that Welsh students understand what it means for them if an HEI decides to charge more.</p>	<p>The principles being applied in WAG's proposals are about ensuring equality of opportunity and support to widening access for a greater range of students. In making proposals about funding systems, it is important to ensure that inadvertent consequences can be quickly addressed and regulations changed if necessary. This may require a more holistic approach than the checking of figures and funding arrangements implies.</p>
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<p>SIMON PHILLIPS, SAM HEAL &amp; ALLISON JONES UNIVERSITY OF WALES, NEWPORT</p>	<p>No comment made.</p>	<p>We ask that WAG undertake detailed market research within Wales in order to understand better the impact that increased tuition fees may have on peoples' perception of the financial accessibility of higher education. Does WAG know what levels of debt aversion people in Wales have and how will these perceptions impact on their higher education and vocational aspirations?</p>	<p>No comment made.</p>	<p>No comment made.</p>	<p>No comment made.</p>	<p>We would like the Minister, when considering responses to this Consultation, to also take into account the reduction in the Financial Contingency Fund budget. Newport is part of a Financial Contingency Fund Administrators Group which undertook a survey that was submitted to the Assembly in 2007. The results of this survey demonstrated the advantage of a locally administered hardship fund. It proved that a client centred approach, which is accessible and able to respond individual circumstances maximises the positive effect FCF has on the</p>
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						<p>retention and progression of students. There has not been a reduction to date in Further Education FCF, yet there are a high number of FE students studying at Newport, who need support with childcare in particular and disability costs, since there are ineligible to claim Disabled Student's Allowance. A large proportion of the fund is also spent on helping students to cover the cost of diagnostic tests, which is not funded by Local Education Authorities. In order that Newport is able to retain students who experience unexpected and emergency situations, it is</p>
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						vital that FCF remain at its current level so that these students can be supported.
Professor Noel G Lloyd, Vice-Chancellor;  Aberystwyth University	The new tuition fee regime provides the opportunity for HEIs to make further progress in achieving the strategic priorities contained in For Our Future. At institutional level, AU's strategic planning takes account of these priorities, and we recognise our responsibility to account transparently to the WAG for the use of public monies and to explain how we are contributing to the Government's objectives. We understand the arguments in favour of some reconfiguration of the HE sector. We have	We believe the substantial reduction in resources available at Welsh Universities which would be the direct consequences of the introduction of a lower basic fee rate in Wales would be detrimental to the delivery of two major WAG policy priorities of supporting a buoyant economy and improving social justice.  A major	We would wish to assist in every way possible to minimise the administrative burden and associated costs and consequently to maximise the resources which can be used to deliver an excellent student experience including a high quality learning experience. Exploring the ways to minimise the amount of duplication should be given a high priority. We would propose that the scheme should be designed to make	We believe that it would be helpful to involve representatives of the sector in order to ensure that unintended consequences are avoided. We appreciate that the timetable to deliver the objectives is necessarily restricted. Using electronic means to improve the flow of information would be a sensible way to facilitate the consultation process aimed at addressing the issues involved. Using the expertise already available in	We support the principle underpinning the question and perhaps an external review of the operation of Student Finance Wales would be appropriate.	No comment made.

	<p>had experience of a number of mergers – with the Welsh Agricultural College, the Welsh College of Librarianship and, recently, IGER. Like all institutions, we have a portfolio of approaches to working with others. In some cases – and IGER is an example – merger is the appropriate mechanism. In others an agreement on strategic collaboration is the way forward.</p> <p>We established the Research and Enterprise Partnership with Bangor University because we were convinced that collaboration of this kind was necessary to establish the range of expertise required to be internationally competitive in research, and we are pleased with the successes that has been achieved. We are committed to broadening and deepening the partnership with Bangor we are working together to take this forward. The relationship with Bangor is an important one, but it</p>	<p>disadvantage of a lower basic fee would be that students would eventually find the student experience in Welsh HEIs degraded and inevitably therefore move in larger and larger numbers to study in English HEIs. Given the commitment of WAG to provide a non-means-tested grant to cover the balance over and above the current fee levels there would be a positive incentive for Welsh domiciled students to study outside Wales in order to benefit from a student experience supported by a fee regime funded at anything up to say £4,000 per capita greater than that available</p>	<p>maximum use of existing mechanisms, e.g. S.L.C. and Student Finance Wales.</p>	<p>the sector could be facilitated by the use of a dedicated website attached to the existing site e.g. HEFCW.</p>		
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	<p>is not exclusive, and Aberystwyth University is open to discussing with other institutions ways in which we can work together in order to deliver the strategic objectives of HEFCW. Indeed we are keen to establish more partnerships in Wales and beyond, but it is essential that these are focused, have clearly defined objectives, are based on mutual benefit, with real efficiencies and synergies.</p> <p>We also note the rapid and extensive progress being made within our region of Mid and North Wales, for which we are the lead partner. These regional developments are all taking place on the basis of the policies announced by HEFCW, and are already having a substantial impact upon the planning and the funding of HE, through the allocation of funded numbers to reflect success in reconfiguration.</p> <p>The graduate contribution</p>	<p>in Welsh HEIs if the basic fee was permitted to be below £6,000.</p> <p>At present Wales, and in particular the economy, has the benefit both of the majority of Welsh domiciled students studying at Welsh HEIs together with a substantial net inflow of English domiciled students relative to the outflow Welsh domiciled students. A relative loss of resourcing, as compared to English institutions, with the resulting inevitable effect on the student experience at Welsh HEIs would be highly disadvantageous.</p> <p>We note currently that in the National Student Survey the average three</p>				
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	<p>needs to be such that, as a minimum, total income following any decrease in direct public support will not be reduced and will be similar to that available to Universities in other parts of the UK. It is an important principle that institutions in Wales must be able to ensure that the provision which they offer is of a least the same quality as that available in comparator institutions elsewhere in the UK and that levels of student satisfaction remain high.</p> <p>In response to the specific questions on a fee plan in the consultation, we suggest that an element of the difference between total resource per student available following the introduction of the graduate contribution and that available currently should be used to deliver the strategic priorities contained in For Our Future. Currently the total resource consists of the existing fee together with the average unit of</p>	<p>year score in Wales over the period 2007-2009 was ahead of the average in English HEIs (Welsh HEIs average 83.3%; UK HEIs average 81.7%).</p> <p>The substantial fall in the quality of provision in Welsh HEIs as a consequence of the reduction in resourcing available as compared to the current level of total resource, (comprising the student tuition fee, HEFCW recurrent and capital funding), will also impact negatively on our International competitiveness. International students - who provide benefit to the Welsh economy - will be deterred from coming to study in Wales. The loss</p>				
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	<p>funding per full-time student and the capital funding provided, expressed on a per capita, basis by HEFCW. In the existing fee plan, designed when the current student fee was established at a maximum of £3,000, there is a requirement to devote 30% of the additional income to the support of WAG strategic priorities.</p> <p>We suggest that under this proposal a proportion of the order of 30% of the additional net income should be used to provide for the further enhancement of responses to For Our Future priorities, including:</p> <ul style="list-style-type: none"> <li>Additional improvements in the student experience measured by the NSS;</li> <li>Developments to further enhance the skills of graduates in order to improve their career prospects;</li> <li>Enhanced knowledge transfer;</li> <li>Enhanced Research performance including Research Grant Capture.</li> </ul>	<p>of resource resulting from the imposition of a lower basic rate would therefore impact negatively on a key priority of WAG of sustaining a buoyant economy. Furthermore, the consequent movement of larger numbers of Welsh-domiciled students into England noted above will inevitably mean that those who are unable to move to study will be particularly negatively affected. Students from poorer background are more likely to choose to study close to home. Therefore a consequence of the policy would be to impact adversely on the policy objective of</p>				
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	The provisions relating to guidance for the planning should, of course, ensure the delivery of the twin priorities for Higher Education in Wales which are enhancing social justice and supporting a buoyant economy.	WAG namely achieving greater social justice.				
Gwawr Hughes Skillset (SSC) The Sector Skills Council for Creative Minds	The Creative Industries is one of six key priority sectors identified by the Welsh Assembly Government in its Economic Renewal Programme and the Hargreaves' Creative Industries Strategy. We therefore believe that Higher Education has an important role to play in driving forward the creative industries, responding to employer needs. 'For Our Future - The 21st Century Higher Education Strategy and Plan for Wales' specifies that it wants to see :- "education services, which is designed with	If the financial model works, we believe that those courses which can be delivered effectively at a lower basic fee rate should be considered whenever possible. However for those subject areas that cost more to deliver and are of economic importance to Wales such as those for the Creative Media industries, exceptional	We agree with the proposal that the fee grant follows the individual student and is paid to the institution of choice.	As mentioned previously, <i>For Our Future</i> makes it clear that the Welsh Assembly Government wants Higher Education provision to be designed with the employer and business in mind and that Sector Skills Councils have a key role in taking this agenda forward. The Government's Economic Renewal Programme has also specifically identified the Creative Industries as a priority sector for the Welsh economy. We therefore believe	We believe that the Student Finance Wales process should enforce baseline standards of quality and that students receive high quality information to help them choose the HEI and courses which best matches their aspirations. For example, courses that are Accredited by the industry through Skillset should be brought to the attention of students when choosing their courses. This	No comment supplied

	<p>the employer and business in mind, and a supply of learning and services which is better informed about employer and business needs. This should take account of the differing contexts of small, medium and large employers and, drawing on the work of the Wales Employment and Skills Board and the Sector Skills Councils (SSCs) and others". As the Sector Skills Council for the Creative Media Industries Skillet has been proactive with the HE sector in Wales and has established effective mechanisms for ensuring provision is led and informed by industry. We have devised a system of accrediting courses in subjects across the Creative Media Industries including computer games, animation, film production and digital media. So far, we have approved 4 such courses in Wales and aim to expand such accreditation in the near future. Where institutions</p>	<p>funding should be given to those courses by whatever means possible on par with STEM subjects.</p>		<p>that the Programme Delivery Board should either have Sector Skills Council representation on it or that effective structures are established for consultation with those SSC's where Higher Education have been identified as key partners in addressing the economic needs of their sectors, such as Skillset.</p>	<p>industry accreditation should be seen as equivalent to the professional bodies' accreditation. Our industry accreditation will provide a strong signal and clear signpost to students that this particular course they are choosing has got that industry recognition and backing. And with such a wide range of courses on offer in these subjects and the variable quality, we feel that this will support informed consumer choice, especially in the creative content industries with high growth economic potential.</p>	
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	<p>offer a range of courses that together interlink to provide an interdisciplinary approach to skills and knowledge, and they have strong links with the industry, we also approved HE institutes as Skillset Academies. We have an active Academy in Wales which is supported by industry and HEFCW. HE courses accredited by Skillset have technology as an integral component which involves STEM subjects. Our approval also means that employers can target their support in a variety of ways including involvement in design, delivery and in some cases by providing bursaries, scholarships and internships. Our industries need and will use high calibre graduates. The Skillset accredited courses are however at the expensive end of the current banding system. We therefore believe that Skillset Accredited courses within HE</p>					
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	<p>institutes in Wales should be able to receive “exceptional funding” with parity alongside STEM related subjects. Our fear is that without this funding, higher education institutions will not be able to offer these more expensive courses at the high standards that industry requires and the very education base needed for a growing part of the economy will be lost, together with the creative media industries’ confidence and support in the higher education system and their appetite to co-invest and build on the strong foundations we have established. The Skillset accreditation process should form part of the fee planning process proposed and provisions relating to reconfiguration of HE and other For Our Future strategic priorities. Indeed, Skillset via its accreditation of courses is already addressing the strategic priority within For Our Future which relates to HE meeting the</p>					
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	needs of industry. As a Sector Skills Council with a strong employer voice in Wales, we want the Welsh Assembly Government to show commitment to the accreditation of industry courses and their exceptional financing on par with STEM subjects moving forward.					
Phil Gough Swansea University	The planning guidance should address the following issues: - it will not be possible to prepare fully credible fee plans without knowing how HEFCW intends to allocate its residual funds to support teaching priorities; the diversity of the sector, i.e. HEIs will have different objectives; access targets should take account of student progression; clarify what is meant by 'willingness to progress swiftly to merger and reconfiguration'; how will national and international collaborations be protected and encouraged? What appeal mechanism will be put in place. How will	The lower basic fee level should be set at £6,000 (uplifted by GDP). This will be comparable with England and will give HEIs more flexibility to set differential fees below £6,000.	Although there have been a number of teething problems with the Student Loan Company (SLC), it is a tried and tested mechanism. It makes no sense to introduce a high-cost parallel mechanism via HEFCW which would increase administrative costs significantly. Welsh students should continue to be awarded a tuition fee grant (TFG), if deemed eligible by Student Finance Wales (SFW), on receipt of an annual student support application. HEIs do	The composition of the Programme Delivery Board is noted. The Board will be considering issues which will impact significantly on HEIs and students. As such its membership should include representatives from HEIs and the student body. If the membership of the Board cannot be expanded, it is important that a parallel stakeholder group be established immediately. The stakeholder group must include representatives of HEIs and students. In particular the Welsh	The drive to on-line delivery of the student finance system should be continued.	With regard to reconfiguration, approval should only be given to genuine mergers with the potential to release resources for front line services. The various group structures under discussion in the sector only add layers of administration and will not be able to demonstrate value for money. There is a need for mature conversations with HEIs on the diverse ways in which they address social

	<p>opportunities be provided to renegotiate fee plans? This is particularly important given the large uncertainties over the effect of fees on demand and cross-border flows; how frequently should plans be updated - every three years is suggested.</p>		<p>not have the level of expertise or resources to assess eligibility for the TFG or to charge varying fee rates based on a student's domicile, cohort or funding regime. The adverse impact on cash flows to HEIs will have to be addressed.</p>	<p>HE student finance practitioners group (WHESPG) should be represented. A further workshop should be held to consider part-time students. Representatives from employers should be invited to the workshop.</p>		<p>justice issues. In order to protect public investment, KPIs should be focused on the proportion of widening access students that are able to complete their courses of study.</p>
<p>Dewi Knight Open University</p>	<p>The OU in Wales recommends that the Government, when developing its plans on fee and loan regulations and related higher education finance proposals, bears in mind the commitment in For our Future of 'greater opportunities for individuals to learn on a part-time basis'. To encourage this, we wish to see arrangements which place the funding and support of those who study, or wish to study, on a part-time basis on an equal footing with those who study full-time. As recommended by the</p>	<p>We note the UK Government's extension for England of the threshold from the 33% intensity (40 credits) proposed in the Browne Report, which followed the department's policy impact assessment that estimated (at 33% intensity) 'around two thirds of part-time students will not be eligible for fee loans'. round 2,000 Open University students in Wales study 30 credits</p>	<p>No comment supplied.</p>	<p>No comment supplied.</p>	<p>No comment supplied.</p>	<p>We have some concerns that the modelling released by the Department of Children, Education, Lifelong Learning &amp; Skills to demonstrate the 'top-slicing' of the teaching grant to cover the non-means-tested grant for full-time undergraduates doesn't explicitly state the need to consider, and then reserve, the funding needed to support high quality teaching</p>

	<p>Department for Business Innovation &amp; Skills, all students in England who study at the equivalent of 25% or more of a full-time course (30 credits) will be eligible for a non-means tested loan for tuition. We view this as a good template for Welsh policy, ensuring as it does, a more equal access to grants and loans, regardless of mode of study.</p>	<p>per year, with a further 1,000 studying at least one 30 credit course/module and another course/module. Of those studying solely a 30 point course/module, 45% are studying a STEM subject. We would also recommend that the Government considers a further 'fair access' measure by extending the eligibility for grants that cover the cost of fees for students with low household incomes to those studying 30 credits or more. Presently both the fee and course grants, dependent on household income, are only available to those who study at or above 50% intensity (60 credits).</p>				<p>and learning for part-time students. It will be vital to ensure that there are no detrimental unintended consequences which flows from the settlement for full-time students and which diminishes the volume, range, quality and accessibility of part-time higher education. This is a potential function of the full-time arrangements being addressed in the first place but would remind the Government that with four in ten of all undergraduates in Wales studying part-time, a significant proportion of the teaching grant goes to ensure the best student experience possible. You will</p>
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						<p>be aware that, for the sixth year running, students at The Open University in Wales were more satisfied with the quality of their higher education than those at any other university in Wales, according to the National Student Survey 2010. We would not like to see the quality and range of part-time provision reduced by the gap between funding support for full-time and part-time study. Helping deliver on the Government's principle of 'access to higher education should be on the basis of the individual's potential to benefit' and the 'secure foundation of social justice', and indication of the value and</p>
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						<p>benefit of part-time learning is that almost 40% of Open University undergraduate students in Wales join us without the standard university entry level qualifications and a quarter of current new entrants to the OU in Wales are from "low affluence" areas as defined by HEFCW. In support of a 'buoyant economy' and priority economic renewal areas, more than a third of all OU in Wales student study a STEM subject and 81% of all OU undergraduates work whilst studying, demonstrating that part-time distance learning can be the most convenient quality way of upskilling or reskilling, whilst</p>
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						<p>also bearing in mind part-time undergraduate students' wider economic contributions through taxation. The OU's work with trades unions in Wales widens participation in learning, and in many instances provides an initial engagement with higher education learning. The OU in Wales become the first university to receive a 'Quality Award' from the Wales TUC for its trades union learner engagement activities and work with UNISON, which has seen over 700 sponsored learners in three years, won the Times Higher Education UK Widening Participation Initiative of the</p>
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						Year in 2010.
Cerys Furlong NIACE National Institute of Adult Continuing Education (NIACE) Dysgu Cymru	In relation to fee plans, we hope that the Assembly Government will consider the commitment in For Our Future for 'greater opportunities for individuals to learn on a part time basis'.	No comment supplied.	No comment supplied.	No comment supplied.	No comment supplied.	We are concerned that failing to consider issues in relation to part time learners and learning now, while decisions are being made in relation to full time undergraduate study, could result in unintended consequences, particularly in light of constraints on resources. In all its considerations we hope that the Assembly Government will consider that with a changing demographic (an ageing society) and a volatile economic climate where many face uncertainty in employment, the opportunity to re-

						train, up-skill and change careers is increasing in importance. For many adults, part time study is the only way to do this.
Elaine Robinson Debra Thorne NASMA - National Association of Student Money Advisors	The fee plans would in part express how the universities charging more than the basic fee rate aimed to put practical measures in place to increase access to higher education from underrepresented groups and further the aims of For Our Future. If they are to be effective, fee plans need to be explicit and offer specific guidance on what is expected and how outcomes will be measured. Will HEFCW have any power in relation to ensuring that fee plans are adhered to. Will there be timely monitoring of progress and how will progress be measured? We would like to see measures which include pre-entry aspiration raising work	If the basic rate is lower than the proposed £6K there may be a number of issues. If lower, would there be a significant rise in applications from English applicants which would result in less places for Welsh domiciled students? If the basic fee rate was lower it would decrease student indebtedness but how would universities be funded to ensure that student experience and support is not detrimentally affected? This policy would need to ensure that	This needs to be as simple as possible. It is important that there are clear guidelines in advance of issues eg what happens when a student transfers/withdraws/ has an interruption to study/ has previous study?. To simplify, and ensure that financial complications are not a barrier to a student transferring to a more suitable course, common guidance and an agreed cross-HEI approach to fee liability would be preferable. We recommend that Registry and Finance Officers who deal with	NASMA is an organisation with over 500 professionals working in the field of student funding and collectively we are recognised as the leading authority on all matters relating to student advice and funding. We think it is essential that the Programme Delivery Board is also representative of the HE sector. Face to face consultation and communication is very useful eg road shows and regional stakeholder groups. Road shows enable a broad range of practitioners as well as other interested parties to attend and contribute. NASMA would be willing to	In terms of complexity – we would put in a plea for some stability and less year on year changes. The number of changes over the last decade has led to the possible co-existence of 5 or 6 different cohorts, requiring significant experience and expertise within student support at HEIs in order to ensure students are able to make informed choices and fully understand the financial implications of their decisions to, e.g, transfer, suspend or withdraw.  Similarly, significant	Increase in preparation for study to remove barriers to learning and aspiration eg financial capability. This should be part of the curriculum and compulsory in schools and FE colleges. Students will then be able to make informed choices and enjoy and benefit from university if they arrive prepared. This would improve the academic outcome and student experience. These skills can also be helpful throughout

	<p>and more encouragement of contextual admissions to enable more representation of State educated students, Care Leavers and other low income groups, ensure adequate hardship funds and financial capability provision both pre and post entry. Hardship funding has been reduced significantly but childcare grants only offers 85% of costs up to a maximum amount. Could universities be encouraged via the fee plan to cover the 15% shortfall as a childcare grant or bursary? HEI hardship funds could be established to support vulnerable group such as parents, care leavers, disabled students. Will the fee plans include measures for postgraduate and part-time students? E.g. If HEIs increase MA/MSc postgraduate fees in line with undergraduate fees can they also be encouraged to offer bursaries/scholarships to low income students to</p>	<p>government provided funding from the centre with less onus on the individual. If we are stating that the basic rate will match England we also need to actively manage and match fair access in a more rigorous way as proposed in England. If the basic rate is £6K how will this be justified if the actual costs of the providing the course is less than this? In addition, we are concerned that the £6K basic rate will be a disincentive to students from families who are debt averse. This is already clear from our experience answering queries from prospective students. We do need to get a</p>	<p>SFE/SLC on a daily basis as well as a student funding expert are included in the design of any new system. These staff have a detailed understanding of the reporting, billing and attendance record management. They would be able to offer ideas to ensure the design of any new system was fit for purpose. From a student support perspective we think that students need to understand what happens if they transfer etc.(cf SCOP guidance in 2006) Clear and timely IAG will be crucial. Students will start applying for 2012 course in the near future so timing is important. As stated in Q2 many HEIs have open days well in advance. We are getting many queries about 2012 already. We would also</p>	<p>consider helping with these if they are resourced appropriately. Given that we operate in all 4 UK regions and many NASMA colleagues from England. Scotland and NI also advise and assist students domiciled in Wales briefings for these colleagues will be needed. Could there also be roadshows for colleges/schools, students and parents? If LAs are no longer operational there will be a significant gap in the IAG work needed to be delivered to ensure that prospective students understand what financial support is available and enable them to make an informed choice. This is particularly important for students from non-traditional backgrounds and households with no experience of HE. Also, with regards to</p>	<p>experience and expertise is available within Local Authorities to utilise to ensure support, and correct information advice and guidance is given to prospective and current students, in particular students from non-traditional backgrounds, mature students and students with additional costs/needs, e.g. children/disabilities. Local authorities also undertake significant work liaising with schools and colleges and delivering talks/providing information to their pupils. A centralised SLC based system would not provide this. It would therefore be highly beneficial to maintain this resource if existing experienced staff and expertise were</p>	<p>with informed choice in life after HE.</p> <p>Consideration could be given to monthly payments of SL to enable students to survive better financially?</p> <p>We are concerned as a sector with ensuring students get IAG pre-entry and throughout their time in HE – we would like to ensure students receive a good service from agencies administering their loans and assessing their applications. They will have higher expectations on the back of greater investment so we need ensure IAG is fit for purpose. Many NASMA members are concerned about this</p>
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	<p>enable them to fund this area of further study which is often down to self funding or family help. Similarly, part-time students from low income backgrounds will need encouragement to study, especially if they are re-training and have previous study at HE level.</p> <p>Bursaries/scholarships to address this need would be helpful. Are there to be time limits on the plans eg will they cover a 3 or 5 year period? The new access agreements in England are to be reviewed annually so that that any issues can be identified early in the new scheme and guidance issued if appropriate. Will Wales be joining England and Northern Ireland in the new Key Information Strategy (KIS) work currently underway which also enables students to compare HEIs? Depending on the future plans for the Financial Contingency Fund, would WAG wish to require HEI's to ring fence a</p>	<p>positive message across about HE and affordability but debt aversion and fear of debt can create barriers to aspiration. The new fee grant is a positive contribution for Welsh domiciled students – we will need further clear guidance as soon as possible, including domicile criteria, entitlement when a student is repeating, and entitlement for those with previous HE study. This guidance is required early to ensure that HEI Advisers can answer queries from prospective students. Open days for 2012 will begin as early as April to July 2011 for most HEIs. Re part-time students</p>	<p>recommend that students are clear about the fee loan figures they need to put on the PN and PR 1 forms. If students are not in attendance for any reason (including ill health) on Dec 1st the tuition fee loan is not activated. This leaves it up to each HEI's fee policy to determine whether they waive term one's fees, part waive them or charge the full amount. When the fees rise significantly this could create heavy burdens on some vulnerable students who may not be allowed to re-enrol when they are due to return to study until they had cleared the fee debt accrued as a personal liability. The fee loan should be available at an earlier date. Another issue to consider is the point at which</p>	<p>devising an administratively light fee grant system, utilising the knowledge and operational expertise of HEI members of the already established HEI /SLC Communications Forum would be very useful. Many members have considerable experience of the previous fee grant system, and can articulate the significant issues that they encountered. Learning from this experience would help greatly in ensuring a reduction in complexity and cost.</p>	<p>kept within Wales rather than the proposed centralised SLC solution.</p> <p>Has the effectiveness and costs of the SFW call centre been reviewed? Could WAG save money by utilising instead the considerable expertise already existing within Local Authorities to give prospective students and applicants more in depth information, advice and guidance regarding applying for funding and queries about assessments?</p> <p>Student Finance England are introducing changes to processes to gain efficiencies that aren't being introduced in Wales. For example, the</p>	<p>potential loss of the LAs as the working relationship between HEI support staff and LA staff has been very successful in addressing the needs of students quickly and efficiently, with minimal distress to the student. It is very difficult to imagine how this could be achieved by a remote centralised system based outside of Wales with no system of ownership of applications. This is particularly detrimental for vulnerable students with additional needs, e.g. those with children, mature students, disabled students. All are more vulnerable to leaving the course if things go wrong with their</p>
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	<p>specific amount of money based on student numbers to provide adequate hardship funding for their students? This ring-fencing should also include adequate human resource to manage and administer the Fund effectively. If Fee Plans are to include incentives to widen access, this should include adequate resourcing to support such students fully. Students from non-traditional backgrounds utilise the services of Student Money Advisers at a much greater level than others. They need expert information, advice and guidance in order to ensure that their financial circumstances are not a barrier to higher education and to enable them to continue on the course once enrolled and avoid withdrawal. Student expectations will continue to rise, especially in the context of increased tuition fees. HEIs will need to ensure that they provide excellent student</p>	<p>– we know they should have access to fee loans but if courses are half the full undergraduate price this could be a disincentive especially to those who may be re-skilling after having a degree from years ago and may not be able to access a fee loan. This is not within the scope of this consultation but any fee rise may need to result in a review of current PCDLs. We do not know if the fee rises will place a burden on the NHS for Nursing degree and healthcare courses so some guidance on this would be appreciated.</p>	<p>the new fee grant comes into operation ie will the loan pay the fees first and the new fee grant later? If HEFCW administered the fee grant scheme - could it be paid in one instalment? If so what month would it be paid? This is an area for consultation with HEIs. The advantages of using the SLC is that they have set up systems already but previous experience of administration of the old tuition fee grant has raised serious issues which need thorough exploration with relevant operational staff at HEIs in order to unpick and hopefully iron out these difficulties. One suggestion that could be considered to minimise the administrative burden on HEIs is reducing significantly the number of</p>		<p>non-means tested rollover and HMRC data share. Both should reduce the administrative burden and turnaround time of applications. Perhaps SFW should be adopting these too.</p> <p>Re-doubling efforts to attain alignment with UCAS would lead to efficiencies.</p>	<p>assessment as the stakes are higher in their personal lives. Swift resolution to problems, and a friendly face helping them with this at the HEI are very important.</p> <p>The need to ensure any IAG materials for 2012 are produced and validated by sector experts and are free from ambiguity and spin.</p>
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	<p>support services including finance and funding advice to meet this expectation and put in place appropriate levels of support staff to guarantee this. This should include a commitment to ensure an appropriate advice, guidance and counselling mechanism is in place for every case where a student wishes to repeat study/withdraw/suspend etc as such decisions will have serious financial circumstances. In the long term this investment can only improve retention and the student experience. Course costs for the duration of course should be made clear at start of course. What happens if the fees decrease at the HEI for future cohorts? Clear and transparent widening access targets should be detailed within the fee plans and HEI to clearly demonstrate how these will be met. Changing courses will be a minefield if different HEIs adopt different rules</p>		<p>Change of Circumstances (CHOC) forms that are generated. Currently, if a student changes courses, but remains on the same year and on an eligible course, the HEI has to submit a CHOC form. The students' entitlement to support is not affected, therefore is this really necessary? Glamorgan alone has activated around 1000 CHOC's so far in 2010/11.</p>			
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	regarding fee liability. We suggest that HEFCW consider the requirement that HEIs sign up to a common approach to minimise financial barriers to changing unsuitable courses and enable students to make informed choices when transferring/changing courses.					
Sam McIlvogue Coleg Llandrillo Cymru	<p>People associate price with quality, a higher value is placed on more expensive items or goods. Differentiation in fees may cause people to make a value judgement regarding the qualification and interpret higher tuition fees to mean academic excellence and a better student experience thus creating a quality benchmark based upon perception.</p> <p>Institutions should be allowed to agree their own fee structure to capitalise on areas of excellence.</p> <p>Higher fees and fee differentiation could also have a negative effect on</p>	<p>Tuition Fees in Wales should not be set lower than England for the reasons stated in Q1.</p> <p>We would welcome more guidance on the fee structure for part time undergraduate studies.</p> <p>Guidance may suggest that HEIs use a pro rata model when setting the part time fees thus lessening the differential between part time and full time fees</p>	<p>Any change to administration must not be detrimental to the cash flow of the HEI.</p> <p>Consideration should be given to the direct funded FEIs when developing the scheme.</p>	<p>Is the voice of FE and Employers adequately represented on the Board?</p> <p>Participation of and engagement with pupils in year 12 &amp; 13, parents, FE level 3 students and employers is important to ensure that all views are heard and represented.</p>	<p>Review the withdrawal procedures for undergraduates.</p> <p>Improve the general awareness of students regarding their responsibility for repaying any funding if they withdraw from their programme of study.</p> <p>In our experience, LEAs provide excellent information and advisory support services to students and institutions. Any changes in the administration of the scheme must continue to ensure</p>	<p>There is still misunderstanding amongst students in Wales about the differences between the Welsh and English HE fees scheme. This could have an unnecessary adverse impact on Welsh students HE aims. We would recommend a campaign to raise awareness and understanding.</p>

	<p>collaboration and potentially damage the widening participation agenda. Therefore it would be a useful strategy to ensure those who want to charge higher fees have plans in place for widening access, as is planned in England.</p>	<p>whilst also placing a real comparative value on the qualification.</p> <p>There is concern that as HEIs set part time fees using a pro rata model the cost of part time fees will increase quite substantially. A £6k tuition fee equates to a 10 credit module costing £500. This is a significant increase in the current level of part time fees for some bodies.</p> <p>We suggest that WAG should clearly define what is meant by 'intensity of study'. Current guidance refers to having an upper band of intensity set as 75% or more. This upper intensity band should have a</p>			<p>effectiveness and efficiency.</p>	
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		<p>ceiling e.g. 90% so that institutions can clearly communicate to prospective students what is part time and what is full time.</p> <p>No mention has been made regarding the continuation of the part time Fee and Course Grant. What changes will be made to the financial support that is available to students? As fees are set to increase will WAG also increase the level of financial support available for part time undergraduate students? The PT Fee Grant needs to be proportionate to the PT Fees institutions may charge therefore WAG would need to increase the amount of support</p>				
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		currently available.				
Mary Curnock Cook UCAS	<p>Applicants to Welsh Universities come from a wide spread of geographical locations across the UK, Europe and the rest of the world. In the interests of providing all learners with the widest range of potential HE options across the UK, it makes sense to maintain, as far as practicable, a level playing field in relation to outreach, access and widening participation activities. Therefore, although fee plans will reflect Welsh strategic priorities, it would also be desirable for the plans to take account of the principles underpinning access agreements for English institutions wishing to charge more than £6,000 per annum.</p> <p>In addition, it would be sensible for fee plans to build on existing institutional outreach, access and WP activities</p>	<p>Discussions about possible fee rates should be informed by evidence on the application behaviours of Welsh domiciled learners, and the behaviour of applicants applying to Welsh institutions.</p> <p>Wales is a net importer of students. UCAS end-of-year data for 2010 show that 30,686 applicants applied to study at Welsh institutions; of these the breakdown was:  15,927 (51.9%) Welsh domiciled  10,907 (35.5%) English domiciled  75 (0.2%) Scottish domiciled  203 (0.7%) NI domiciled  1,610 (5.2%) EU-</p>	No comment.	UCAS would wish to be consulted directly and involved in the relevant high level discussions around the process for the approval of fee plans by HEFCW, particularly any discussions about the process and timetable for the publication of tuition fees information (see question 6). We would also be willing to participate in any of the relevant workshops.	UCAS is working with the Student Loans Company to explore the scope for a single application portal which would allow learners to apply for higher education courses and student finance at the same time. This would give applicants a simpler and more efficient means to submit all of the information they need to apply to higher education and access student finance. UCAS would like to explore with the SLC and Student Finance Wales what opportunities they might be to better support Welsh domiciled students and other studying in Wales.	<p>The consultation emphasises the importance of the new funding arrangements being in place for the 2012-13 academic year. We wish to draw attention to a number of issues around the timing of decisions and release of information on any new student finance arrangements in order to meet this challenging timetable.</p> <p>In many respects the entry cycle for admissions to universities and colleges in autumn 2012 is already underway. Potential applicants are starting to research higher</p>

	<p>in Wales such as widening access premiums for Communities First areas, Reaching Wider partnerships, POLAR2 participation and Assembly Learning Grant for eligible students. Fee plans might also usefully include guidance on the provision of high-quality, consistent information about institutions and their course offerings.</p>	<p>other 1,964 (6.4%) international (non EU)</p> <p>Of these, accepted applicants, out of a total of 25,162, were:</p> <p>12,178 (48.4%) Welsh domiciled 10,469 (41.6%) English domiciled 55 (0.2%) Scottish domiciled 169 (0.7%) NI domiciled 1,044 (4.1%) EU-other 1,247 (5.0%) international (non EU)</p> <p>Welsh domiciled applicants (total 24,908) applied to, and were accepted (total 18,671) by the following institutions:</p> <p>15,927 (63.9%) applicants to Welsh institutions, 12,178 (65.2%) accepts</p>				<p>education options and are looking for advice from a wide range of sources. In March UCAS will be running conventions with schools and colleges across the UK to provide advice on how to apply. University open days typically start in April and run through to July, with many institutions already taking bookings.</p> <p>UCAS believes that it is desirable that learners applying to UK universities and colleges should have access to the full range of study options when considering which courses and institutions best meet their needs. Financial considerations are important part of</p>
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		<p>8,745 (35.1%) applicants to English institutions, 6,393 (34.2%) accepts 226 (0.9%) applicants to Scotland institutions, 92 (0.5%) accepts 10 (less than 0.1%) applicants to NI institutions, 8 (less than 0.1%) accepts</p> <p>UCAS would be happy to work with the Welsh Assembly on any further data requirements.</p>				<p>this decision making process and we believe that it essential that all applicants understand the financial commitments they are making before submitting their UCAS applications.</p> <p>In view of the current uncertainty around course offerings and fee levels across the UK, UCAS is delaying the collection and publication of course information which will now go live in May 2011. Applicants will be able to register with UCAS from June, and will be able to submit their applications from September 2011. The deadline for applications for medicine, dentistry and</p>
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						<p>veterinary science courses, as well as for applications to the Universities of Oxford and Cambridge, is 15th October 2011. The deadline for the majority of other courses is 15th January 2012.</p> <p>English institutions wishing to charge tuition fees of more than £6,000 per annum will need to prepare new access agreements which will have to be approved by the Office for Fair Access (OFFA). UCAS is working with OFFA to determine when tuition fee information about courses at English institutions starting in 2012 will be available to applicants. We anticipate that this will be in early</p>
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						<p>July 2011.</p> <p>In the interests of fairness to Welsh domiciled applicants and to help maintain the institutional competitiveness of Welsh institutions, it would highly desirable if Welsh institutions were in a position to publish their approved tuition fees for individual courses at the same time as institutions in other parts of the country. This would require HEFCW approval of the proposed fee plans by the end of June 2011.</p> <p>UCAS is willing to work with the Welsh Assembly and HEFCW to help deliver whatever new student finance arrangements are agreed, in order to</p>
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						support Welsh learners and to enable Welsh universities and colleges to achieve fair, transparent and efficient admissions to higher education 2012.
Oona Stannard Catholic Education Service for England and Wales	Fee plans could reasonably make allowance for measures to charge lower or different fees for provision specifically meeting specific Welsh needs alongside For Our Future priorities. Fee planning guidance will have to have regard to part time students and their needs and further attention should be given to this and why they are part time when fee provisions are set eg where students are part time because they are carers and therefore already carrying additional burdens/helping society, could they have some extra protection in fees	To set basic fee level below that of England would be challenging but offer some opportunities as well as constraints. Firstly, could Wales afford to do this and would it suggest an inferior product? If Welsh higher education cannot meet the same spread of provision as England would it be divisive to have some provision that students can access more cheaply in Wales when other students will have	Whatever scheme is designed to enable the funding to follow the student ref 6.c it should be transparent to all parties. With an identification system for students it should be possible for all parties to electronically monitor payments made and received thus easing bureaucratic burdens.	No comment	No comment supplied.	No comment supplied.

	structure.	to leave the Country to follow their study pathway? Conversely, would a lower fee help to keep Welsh talent in Wales?				
John Graystone ColegauCymru	<p>Introductory comment NB Currently 18 FE colleges deliver HE courses, enrolling around 7,500 students annually. Many of these are taking courses franchised from local higher education institutions (HEIs). Six colleges receive direct funding from HEFCW. FE colleges make a significant contribution to the future direction of higher education in Wales.</p> <p>Around 80% of HE students at FE colleges attend on a part-time basis. Most study vocational/professional qualifications.</p> <p>Current fee plans require all institutions to commit to widening participation targets. Further education institutions (FEIs) strongly support this</p>	<p>In terms of simplicity and administrative convenience there would be advantage in setting a basic fee rate of £6,000 in line with England.</p> <p>However, in relation to the widening participation aspirations of the Welsh Assembly Government, some consideration might be given to differentiated basic fee rates for students following HE programmes in FEIs.</p> <p>Most HE in FE provision in Wales is delivered under franchise arrangements</p>	<p>ColegauCymru would welcome efforts to produce a simple, non-bureaucratic fee grant scheme for Wales. The proposed scheme appears to be simple and straight forward. FEIs offering HE programmes will need to be consulted as part of any future discussions designed to minimise the administrative burden of new arrangements for funding and student finance.</p> <p>Any change to administration must not be detrimental to the cash flow of the HEI.</p> <p>Consideration should be given to</p>	<p>Draft written proposals circulated to all institutions delivering HE programmes in Wales and to all interested stakeholders with a reasonable timeframe for responses. Regional meetings providing opportunities for face-to face contact and open and transparent discussions. Stakeholder workshops to consider arrangements for supporting part-time learning in Wales as proposed by the Minister in his Foreword to the consultation document. FEIs and employers need to have adequate representation on the</p>	<p>Centralisation of the processing of applications along the lines adopted in England might improve the access of students to up-to-date information and to supporting bodies. Review the withdrawal procedures for undergraduates. Improve the general awareness of students regarding their responsibility for repaying any funding if they withdraw from their programme of study. LEAs provide excellent information and advisory support services to students and institutions. Any changes in the administration of the</p>	<p>In summary: The standardisation of franchising arrangements especially in relation to funding arrangements. Consideration of differentiation of basic fee rates Separate and clear guidance on funding arrangements for part-time students. Finally, there is misunderstanding amongst students in Wales about the differences between the different fee schemes in Wales and England. This could have an unnecessary adverse impact on Welsh students'</p>

	<p>requirement and are well placed to meet local needs.</p> <p>ColegauCymru supports the principle that institutions wishing to set tuition fees above the basic fee rate will be required to submit fee plans for approval by HEFCW. In addition ColegauCymru is mindful of the recent Ministerial announcement that access to the new fee regime will be dependent on the willingness of institutions to play a part in the reconfiguration of higher education in Wales.</p> <p>It is unlikely that any FEIs offering HE in FE will wish to set tuition fees above the basic rate fee.</p> <p>Any institution intending to charge above the basic rate fee should be required to set out clearly the additional student entitlement. This should involve clear identification of what students might expect over and above the norm for the extra fee.</p>	<p>between HEI and partner FEIs. There is considerable variation, within a band of some 30% - 60%, in the proportion of the fee grant retained/top-sliced by the franchising HEI. Some colleges have experienced a situation where 30% of the fee grant has been retained by the franchising HEI in addition to 30% of the funding received from HEFCW.</p> <p>ColegauCymru is strongly of the view that the fee needs to be with the provider and directly related to the delivery of learning and the provision of front line services such as development costs and quality assurance. FEIs have established</p>	<p>the direct funded FEIs when developing the scheme.</p>	<p>Board.</p> <p>Participation of and engagement with pupils in year 12 &amp; 13, parents, FE level 3 students and employers are important to ensure that all views are heard and represented.</p>	<p>scheme must continue to ensure effectiveness and efficiency.</p>	<p>HE aims. We would recommend a campaign to raise awareness and understanding.</p>
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	<p>As noted above, 80% of students following HE programmes in FEIs study part-time. The fee planning guidance should provide clear and detailed guidance on part-time student fees with clear specification of their entitlements.</p> <p>In line with current practices, institutions will need to set out the financial assistance that will be available to students, for example, in the form of bursaries.</p> <p>People associate price with quality, a higher value is placed on more expensive items or goods. There is a risk that differentiation in fees may cause people to make a value judgement regarding the qualification and interpret higher tuition fees to mean academic excellence and a better student experience thus creating a quality benchmark based upon perception.</p> <p>Institutions should be allowed to agree their own fee structure to capitalise on areas of</p>	<p>a reputation for the provision of high quality HE provision (evidenced in recent NSS outcomes and in assessments undertaken by the Quality Assurance Agency for Higher Education).</p> <p>Consideration needs to be given to standardising the amount HEIs are allowed to retain/top-slice.</p> <p>Tuition Fees in Wales should not be set lower than England for the reasons stated in Q1.</p> <p>We would welcome more guidance on the fee structure for part time undergraduate studies.</p> <p>Guidance may suggest that HEIs use a pro rata model when setting the part time fees thus</p>				
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	<p>excellence. Higher fees and fee differentiation could also have a negative effect on collaboration and potentially damage the widening participation agenda. Therefore it would be a useful strategy to ensure those who want to charge higher fees have plans in place for widening access, as is planned in England.</p>	<p>lessening the differential between part time and full time fees whilst also placing a real comparative value on the qualification. There is concern that as HEIs set part time fees using a pro rata model the cost of part time fees will increase quite substantially. A £6k tuition fee equates to a 10 credit module costing £500. This is a significant increase in the current level of part time fees for some bodies. We suggest that WAG should clearly define what is meant by 'intensity of study'. Current guidance refers to having an upper band of intensity set as 75% or more. This upper</p>				
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		<p>intensity band should have a ceiling e.g. 90% so that institutions can clearly communicate to prospective students what is part time and what is full time.</p> <p>No mention has been made regarding the continuation of the part time fee and course grant. What changes will be made to the financial support that is available to students? As fees are set to increase will WAG also increase the level of financial support available for part time undergraduate students? The PT fee grant needs to be proportionate to the PT fees institutions may charge therefore WAG would need to increase the amount of support</p>				
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		currently available.				
Rebecca Williams Undeb Cenedlaethol Athrawon Cymru (UCAC)	Deallwn mai ehangu mynediad a symud ymlaen gyda'r agenda rhanbartholi ac ail-gyflunio bydd yr amodau ar gyfer codi ffioedd ar lefel uwch. Mae hwyluso astudio trwy gyfrwng y Gymraeg 'mewn amrywiaeth ehangach o raglenni a lleoliadau' yn un o amcanion 'Er Mwyn Ein Dyfodol'. Awgrymwn felly ei bod hi'n briodol i wneud darpariaeth cyfrwng Cymraeg yn amod i godi ffioedd uwch. Gallai'r amod gael ei fynegi fel: - nifer neu ganran o gyrsiau/modiwlau cyfrwng Cymraeg, mewn isafswm o feysydd gwahanol - nifer neu ganran o fyfyrwyr sy'n dilyn cyrsiau/modiwlau cyfrwng Cymraeg Byddai'r ail ffordd o fynegi'r amod yn fanteisiol am y byddai'n rhoi cymhelliad i Brifysgolion annog	O ran myfyrwyr o Gymru, hyd y gwelwn ni, nid yw'n gwneud gwahaniaeth am fod Llywodraeth y Cynulliad yn talu unrhyw beth dros yr hyn sy'n cyfateb â £3,375. Yr hyn sy'n bwysig yw sicrhau bod digon o fyfyrwyr o Loegr yn dod i brifysgolion Cymru er mwyn sybsideiddio'r system Addysg Uwch. Felly mae'r cwestiwn o fantais/anfantais yn dibynnu ar y cwestiwn hwn: A oes rhagdybiaeth y bydd digonedd neu brinder myfyrwyr am ddod o Loegr i brifysgolion Cymru? A oes angen gwneud rhywbeth	Dim sylw.	Byddai gweithdai/cyfarfodydd ymgynghori (torfol neu gyda mudiadau/sefydliadau unigol) yn bosib, neu ymgynghoriadau pellach ar bapur/arlein.	Dim sylw.	Teimlwn fod rhaid codi'r cwestiwn ynglŷn ag ariannu myfyrwyr o Gymru sy'n astudio tu allan i Gymru. Deallwn yr ymdeimlad o 'gyfrifoldeb i fyfyrwyr sydd fel rheol yn byw yng Nghymru', ond rhaid gofyn y cwestiwn, a rhaid ystyried yr opsiynau. Mae'n glir, o dan y cynlluniau presennol, y byddai swm sylweddol o arian Llywodraeth Cynulliad Cymru yn dilyn myfyrwyr o Gymru sy'n dewis astudio mewn prifysgol yn Lloegr, er enghraifft. Byddai'r swm hwnnw'n sybsideiddio prifysgolion tu

	<p>myfyrwyr i ddilyn cyrsiau cyfrwng Cymraeg, yn ogystal â'u cynnig yn y lle cyntaf.</p>	<p>ychwanegol i'w denu i Gymru - ai peidio?  Manteision  - Gallai ddenu mwy o fyfyrwyr o Loegr a thu hwnt i brifysgolion Cymru  - Byddai modd cael ffi sylfaenol is, a chadw'r gofynion o ran graddau Lefel A ac ati yn uchel am fod galw a chystadleuaeth am lefydd  Anfanteision  - Gallai greu problemau ariannol i brifysgolion Cymru, gan eu gadael heb ddigon o gyllid i lenwi'r bwloch ar ôl torri (top-slice) grant dysgu'r Prifysgolion  - Gallai ddibrisio graddau prifysgolion Cymru o ran canfyddiad myfyrwyr o'u gwerth; gallant</p>				<p>allan i Gymru, ac yn annog myfyrwyr i adael Cymru i fynd i'r brifysgol. Y tebygolrwydd yw na fydd y rhan fwyaf ohonynt yn dychwelyd i Gymru wedyn i weithio, magu teuluoedd, cyfrannu i'r economi ac ati.  Byddai Llywodraeth Cynulliad Cymru'n chwarae ei rhan ym mharhad y llif o dalent ifanc allan o'r wlad sydd wedi bod yn gymaint o broblem i Gymru dros y blynyddoedd.  Gallwn weld dadl dros ariannu myfyrwyr sy'n gadael Cymru ble nad oes cwrs ar gael yng Nghymru sy'n cyfateb â'u dewis pwnc; milfeddygaeth yw'r enghraifft amlwg. Ond tu hwnt i'r pynciau</p>
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		edrych fel graddau 'rhad'				cyfyngedig iawn hynny, nid yw UCAC wedi'i ddarbwylo o'r gwerth i Gymru – ei heconomi, na'i sector Addysg Uwch – o dalu ffioedd myfyrwyr sy'n mynd i'r brifysgol yn rhywle arall. Mae gan Gymru berffaith hawl i gynnig cymhelliad i'w myfyrwyr i astudio yng Nghymru – neu o leiaf i beidio â chynnig cymhelliad i adael.
Adam Rees NUS	Within a number of statements and speeches, the Minister for Children, Education and Lifelong Learning has spoken of his intention to link For Our Future priorities to the ability of Welsh higher education institutions to charge higher tuition fees. In particular, he has made several references to the reconfiguration agenda and to widening access. NUS Wales broadly	NUS Wales does not believe that higher education institutions have done anything to 'deserve' the automatic right to charge above the current rate. As a result, we would suggest that the basic tuition fee rate should be at the current maximum rate of £3,375 rather than at	NUS Wales believes that the administration of the tuition fee waiver / grant should be as simple and efficient as possible, in order to ensure that students, institutions and the government feel that they have full confidence in the process. It should also be as cost effective as possible, ensuring that the maximum amount of	NUS Wales understands that the Programme Delivery Board deliberately consists of delivery partners, rather than stakeholder groups. However, if institutions were to gain representation on this body through Higher Education Wales - as a stakeholder making representations on the development of his policy - then we would insist that students	No comment	NUS Wales has significant concerns about the timescale for this policy to be implemented. Although we recognise that this process has been somewhat forced by events in England, we are extremely worried that the system for regulating the ability of higher

	<p>welcomes the move to place conditions on institutions with regards to their ability to charge higher tuition fees. It must not be the case the institutions are 'automatically' or 'easily' allowed to charge fees at a higher level than they do now. However, we believe that this should be focussed on particular For Our Future priorities more than others. NUS Wales also believes that the process associated with these conditions and subsequent regulation should be robust and challenging to institutions, and must not be a simple 'tick box' exercise. Although the Minister has stated his intention to link institutions' ability to charge higher tuition fees to the reconfiguration agenda, this is not something that NUS Wales can support. We understand the Welsh Assembly Government's plan for reconfiguration, and have been broadly supportive of its aims</p>	<p>£6,000 per annum. Since the last increase in tuition fees to £3,000 per year, we have seen no evidence that there has been any improvement in the student experience, In fact, in both England and in Wales student satisfaction dropped slightly as the new tuition fee regime was introduced, The National Student Survey 2010 surveyed the first cohort of students in Wales to have been charged £3,000 per year tuition fees. The results for 'overall satisfaction with the quality of the course' dropped by one percentage point across Wales. Although this is not a significant</p>	<p>funding reaches students and institutions, rather than being spent on administrative systems. If this function were to be administered through the Student Loan Company, then steps should be taken to ensure that students feel confident in this function and are assured that they will not encounter similar problems to those faced by English students in receipt of maintenance loans during the 2009/10 academic year.</p>	<p>should also be represented through NUS Wales. If, however, the membership of the Programme Delivery Board remains the same, NUS Wales would urge DCELLS to ensure that there is an opportunity to consult further with student representatives from a variety of institutions across Wales; NUS Wales is happy to facilitate such a meeting. The scale of the changes to higher education funding and the timeframe within which these changes are to be determined and implemented is far from ideal. NUS Wales urges DCELLS to ensure maximum consultation with stakeholder groups in order to limit opportunity for unintended consequences.</p>		<p>education institutions to charge higher tuition fees will fail to be as robust as it should be. The tripling of the maximum level of tuition fees is a significant change to the higher education landscape. It completely contradicts the Minister's statement in October that 'The One Wales government does not believe in full-cost or near full-cost fees' and will leave students / graduates with up to £27,000 in debt from tuition fees alone. As previously stated, the system for regulating institutions' ability to charge higher fees should not be a simple tick box exercise. It should</p>
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	<p>over the past year. We cannot however support a system that effectively uses differing levels of graduate debt as an incentive for institutions to engage with this agenda. We recognise that the Welsh Assembly Government, through its remit letter to HEFCW, has used government funding to incentivise engagement with and delivery of government priorities such as reconfiguration. However, NUS Wales does not believe that students' money should be used to deliver a government priority such as this. We fail to see how this strategy could be adequately justified to graduates who could leave university with different amounts of debt, depending on their institutions' willingness or ability to engage with the reconfiguration agenda. If the government wishes to deliver the reconfiguration agenda,</p>	<p>reduction in statistical terms, we would have expected an increase in satisfaction in line with expectations that higher tuition fees would have been channelled into improving the student experience. There is no evidence that students have received any benefit from the last increase in tuition fees, in fact they have simply seen their graduate debt increase. As a result, we do not believe that any institution should automatically be able to charge above the current level of £3,375. NUS Wales also has concerns that if set at £6,000, some institutions may choose to charge this basic rate instead of</p>				<p>not be 'easy' for institutions to charge above the basic rate, We are extremely concerned that the timescale for this policy to be determined and implemented may lead to a less robust system and we would urge DCELLS to ensure that this is not the case.</p>
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	<p>then it is well within its rights to instruct HEFCW to utilise public funding strategically in order to achieve this objective. However, we believe that the government should not use tuition fees and student debt as a threat or incentive for institutions to engage with this issue.</p> <p>As the proposals for fee plans concern the ability of institutions to charge increased undergraduate tuition fees, we believe that they should not include requirements based on national research priorities. Although we recognise that research can often compliment teaching within a university, we believe that any action required for an institution to be allowed to charge higher tuition fees must be more directly linked to access to higher education and to the undergraduate learning and teaching experience, rather than the institution's research</p>	<p>having to take steps to address the issues within the fee plan framework, such as widening access. We believe that any increase in the level of tuition fees should require firm commitments to widening access and the student experience. We believe that doubling the level of tuition fees with no requirement for such commitments would be detrimental to the widening access agenda, effectively allowing institutions to double their fees without tackling the impact on widening access. This point also applies to the student experience. If</p>				
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	<p>profile. The proposed increase in tuition fees will leave students with up to £27,000 of debt from tuition fees alone. The decision to triple tuition fees will affect students and graduates, and regulation must be based on this assumption. It is therefore our opinion that tuition fee plans and the ability to charge fees above the current level must be based on two themes.</p> <p><b>Widening access</b> – Research conducted in 2010 by the Sutton Trust showed that significant numbers of students would be deterred from entering higher education if tuition fees were to be increased. The research<sup>1</sup> also showed that those from the poorest backgrounds were more likely to be deterred. It is our view that any ability to charge higher tuition fees must be based on institutions demonstrating a serious commitment to widening</p>	<p>institutions are able to increase tuition fees to any level above the current rate, they must be able to demonstrate the actions they will take that will benefit the student experience.</p>				
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	<p>access, as well as meeting hard targets associated with this issue.</p> <p><b>Student experience</b> – NUS Wales believes that if students are to pay up to £9,000 per year for higher education, then they should expect a significantly better return. As the financial burden of higher education is being shifted onto the students more than ever before, institutions must be able to deliver an excellent student experience. As the government is aware, we represent both Welsh domiciled and non-Welsh domiciled students studying at Welsh institutions. Although Welsh domiciled students will initially be protected from the increase in tuition fees, we have no guarantee that this policy will continue in the long term. As a result, we will be basing our representation on the assumption that this policy is a temporary measure that will be</p>					
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	<p>implemented within a more permanent framework of higher tuition fee levels. We are fully aware that the tuition fee waiver may not continue beyond a certain timeframe and therefore feel that the below representations are valid for both Welsh domiciled and non-Welsh domiciled students of the future. However, while the fee waiver system exists, Welsh domiciled students will have the same demands as their non-Welsh counterparts, as they have a choice to take their fees to an English institution, rather than a Welsh institution.</p> <p><b>Widening Access and Retention</b></p> <p>The aim of opening out higher education to groups in society that are not well represented continues to be hugely important. It is a matter of fairness and also a matter of leadership: while higher education cannot correct all of</p>					
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	<p>society's ills, it should play a central role in advocating for social change and innovating in practical developments to support that aim.</p> <p>Although fee plans have been used since the introduction of variable tuition fees in Wales, we believe that the new system must reflect the significant change to the funding of higher education. Fee plans should be scrutinised and monitored more vigorously, with a greater emphasis on outcomes rather than outputs. The focus of fee plans must move away from a simple description of the activities an institution will undertake to attempt to widen access. NUSW believes that fee plans should require monitoring of widening access initiatives against hard targets on recruitment, retention and achievement, thus contributing to the national ambition of increasing the number of students from</p>					
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	<p>disadvantaged backgrounds in Welsh higher education. In order for the process to be as open and transparent as possible, NUS Wales should be represented on the body that determines whether fee plans are acceptable. There should also be a requirement for the provider to formally consult the students' union when developing their fee plan. Tuition fee plans should be monitored regularly to ensure that a provider is meeting its targets. We would suggest that there is annual monitoring of the fee plans and associated targets, and therefore an annual review of whether an institution should be allowed to charge above the basic tuition fee level. As stated previously, we believe that the ability to charge higher tuition fees should be dependent on an institutions' commitment to widening access and their ability to deliver on associated targets. It is</p>					
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	<p>also crucial that providers are judged on admissions and retention of people from disadvantaged backgrounds, not simply on applications. NUS Wales believes that these targets should be ambitious. Any institution which does not show adequate ambition should be refused the ability to charge higher tuition fees. We also believe that those with further to travel must do more – those institutions who have failed to adequately deliver on widening access in the past should demonstrate a strong commitment to changing their behaviour and delivering suitable outcomes. NUS Wales believes that there is little point in having a fee plan system if it becomes a simple ‘tick-box’ exercise. We believe that the government and HEFCW should make it clear that an institution’s ability to charge higher tuition fees will be withdrawn if the institution does not meet</p>					
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	<p>the widening access targets outlined in their fee plan. However, institutions must not be allowed to set feeble targets in order to mitigate the risk of failing to achieve them.</p> <p>NUS Wales has concerns that the short timescale for implementing this policy could lead to a less rigorous system being introduced. The lack of time should not be an excuse for allowing a weak fee plan system to exist. Students are going to be charged up to triple the amount of tuition fees than those within the current system, and any fee plan system must reflect the severity and significance of this change.</p> <p>As well as monitoring and responding to widening access targets, institutions should also show a commitment to providing academic, financial and welfare support for students. It is essential that students, who could be paying up</p>					
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	<p>to £9,000 per year, have access to high quality academic and welfare support services on campus. There can no longer be any excuses for allowing students to drop out of higher education due to lack of academic and welfare support. As students build up over £27,000 in tuition fee debt, institutions have a duty to make every effort to ensure that a student can complete their chosen course and achieve success. Institutions must demonstrate a commitment to investing in these services, rather than cutting student support, as we have seen in institutions across Wales in recent times. Research has shown that those from the poorest backgrounds are more likely to be deterred by higher tuition fees. Maintenance Grants have been frozen, yet cost of living has increased, and many students' unions have reported that halls</p>					
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	<p>of residence fees are often more expensive than the total maintenance loan on offer to students. In light of tuition fee debt potentially tripling, many students may take on extra part time jobs in order to reduce their total debt on graduation. In addition to this, the Financial Contingency Fund in higher education has been cut by 60%, preventing many students from accessing much needed hardship funding during their time at university. The UK government has announced a National Scholarship Scheme to support widening access. NUS Wales believes that the Welsh Assembly Government should also look to allocate funding towards supporting access from disadvantaged backgrounds. Although the bursary system associated with the introduction of variable tuition fees had many flaws, we believe that</p>					
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	<p>institutions should also allocate resources from tuition fee income to financially support students from disadvantaged and non-traditional backgrounds. We believe that institutions should demonstrate within their tuition fee plans how they are going to provide academic, financial and welfare support for students. If they do not demonstrate an adequate commitment to funding student support, they should not have the ability to charge higher tuition fees.</p> <p><b>Student Experience</b> Under the new tuition fee regimes, where students will be charged up to £9,000 per year NUSW believes that institutions should be required to produce accurate and detailed information for potential and current students, as well as taking significant steps to ensure an excellent student experience. This should be detailed within fee plans and any failure</p>					
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	<p>to deliver on this should mean that the institution concerned is not allowed to charge higher tuition fees.</p> <p>Centrality of the student voice</p> <p>The new funding arrangements mean that the principal source of funding for higher education becomes the individual, who studies a course and then pays back the costs of providing that course over time. This must imply a far more powerful role for the voice of students within providers, influencing the way that learning and teaching takes place and how other services are provided. The starting principle for the sector must be to ensure that students' unions are well funded and supported by their institution. In recent years we have seen students' union 'block grants' being cut and the ability of students' unions to provide representation and advice for students being seriously</p>					
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	<p>compromised by their institution's decision to reduce students' union funding. Student officers must have the financial support they need to provide effective student representation, especially as students begin to pay up to £9,000 per year in tuition fees. Institutions must show a commitment to adequately funding their students' unions. Any failure to do this should lead to the ability of the institution to charge higher tuition fees being withdrawn. Students should be well represented at every level of the institution and there should be at least two student representatives on the institution's governing body. The introduction of the 'Annual Statements', as outlined in the QAA Institutional Review handbook, should become funded by institutions and developed to ensure that students' unions have the resources to research and analyse aspects of</p>					
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	<p>the student experience. In particular, there should be greater commitment to improving assessment and feedback. Fee plans should demonstrate the steps providers are taking to fund and support the students' union and engage with the student voice at every level of the institution. information for students and applicants In this new market landscape there must be a huge push for improved information for students. The National Student Survey has been a hugely important tool for monitoring student satisfaction; it should continue and be extended. Some additional work is well underway in England, with the development of the Key Information Set (KIS), which will give comparable information about all programmes in England. NUS Wales believes that Welsh institutions should have to provide information to at least the same level as English providers. The</p>					
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	<p>Key Information Set should include details of contact time and an indication of which types of staff will be involved. Prospectuses used to be dull and detailed; they are now glossy brochures, which can be very useful in some ways but are largely useless for really understanding the structure, content or methods used on a given programme. We propose that full programme specifications and course outlines should be available for every programme offered, and provided accessibly through organisations' websites. No programme should be advertised without detailed information. Lack of information about the learning schedule (especially the timetable) can present a significant barrier to part-time students and to those with caring responsibilities. We believe that for every programme offered, a provisional timetable</p>					
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	<p>should be published for the first term or semester at the point the application round opens. We also believe that comprehensive induction plans should exist for all new students. Future earnings should not be the primary driver for people to study in higher education, but they are important and accurate data should be available to applicants. A graduate earnings report for each higher education organisation, and for different subject groups should be released, derived from the repayment profiles of former students who are repaying their loans. This would be a huge advance on sampled earnings research at six months post completion. Higher education providers should be required to write to all its registered students each year with a full breakdown of their expenditure apportioned in relation to income from their fees. This would ensure transparency</p>					
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	<p>about how student fee income is actually spent and becomes of very great importance in an environment where fee income makes up the bulk of higher education resources. NUS Wales believes that regulations should be issued to organisations with regards to what charges additional to the main fee are permissible and impermissible. For example, it may specify that increases to accommodation costs be held to a certain level, that bench fees in science subjects be blocked, or even that every student be given a minimum number of printing credits included in the main fee. In an environment where students are paying up to £9,000 per year in tuition fees, NUS Wales believes that there should be no 'hidden costs of study' in higher education. Institutions who wish to charge above the basic level of tuition fees should state</p>					
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	<p>in their fee plans that they will not charge students any additional mandatory course costs such as:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Fees;</li> <li><input type="checkbox"/> Materials for art degrees, such as canvasses, paints, clays, textiles, metals, etc;</li> <li><input type="checkbox"/> Materials to support health courses, eg, stethoscopes, optometry lens sets, lab coats;</li> <li><input type="checkbox"/> Outdoor equipment, eg, waterproof clothing; hiking boots, waterproof notebooks, hard hats, sports equipment;</li> <li><input type="checkbox"/> Learning resources, including books, journals, photocopying etc;</li> <li><input type="checkbox"/> Criminal Records Bureau (CRB) checks/ Independent Safeguarding Authority registration;</li> <li><input type="checkbox"/> Study visits/field courses: outdoor field courses, museums, events, galleries, theatres, film festivals, youth and community projects, construction or engineering sites, prisons;</li> <li><input type="checkbox"/> Conferences and registration;</li> </ul>					
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	<p><input type="checkbox"/> Costs of additional facilities, eg, studio fees, laboratories, darkrooms, workshops;</p> <p><input type="checkbox"/> Printing, and binding costs</p> <p><input type="checkbox"/> Health checks, vaccinations for fitness to practice, study or travel;</p> <p><input type="checkbox"/> Work placement costs</p> <p><input type="checkbox"/> Coaching awards.</p> <p>At the very least, any institution wishing to charge above the current tuition fee of £3,375 should be required to detail all additional costs of study on their websites, at both institutional and course levels.</p> <p>Student Charters</p> <p>As students start to pay up to £9,000 per year, there will be increased pressure for HEIs to be clear about the student experience that they provide. We believe that the time is right for all HEIs and Students' Unions to review the top level information and commitments which they provide to students – as detailed in Student Charters and similar</p>					
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	<p>agreements. By investing time now, they will help current students to make the most of their time in higher education and also begin to establish mechanisms for updating and refreshing their charters on a regular basis. In short, we consider that, if charters are: kept up to date through regular review, jointly owned by the HEI and the Students' Union, written concisely with clear links to detailed information, clearly communicated to all staff and all students, then they can be: important communication tools for HEIs to establish clear mutual expectations, help monitor the student experience and how relationships are working. NUS Wales believes that such a process should be a requirement set out in the fee plans of institutions wishing to charge above the basic tuition fee level. Student charters should be short, clear statements - of</p>					
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	<p>student rights and responsibilities - so students know broadly what they should be able to expect, what is required of them, and what to do if things do not meet expected standards. There should be clarity and consistency throughout the institution, across all subject areas. Student charters should provide a focus for regular engagement and review with student representatives - to consider alongside other feedback from students and internal quality assurance and management information. We believe that student charters should be based on the following principles:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> This is a joint venture with the students' union - must involve students and student reps at outset.</li><li><input type="checkbox"/> Partnership working must continue after development - with joint monitoring and review.</li><li><input type="checkbox"/> Review regularly - at least annually - with SU</li></ul>					
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	<p>and use other evidence and feedback e.g. student surveys.</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Senior staff buy in at strategic committee – e.g. Learning and Teaching – and Vice Chancellor to sign off (together with students’ union president).</li><li><input type="checkbox"/> Communication and dissemination needs careful thought – to reach all students (and staff)</li><li><input type="checkbox"/> For all staff - engage and involve all student facing staff</li><li><input type="checkbox"/> For all students – ensure that it covers both undergraduate and postgraduate (and is also relevant</li><li><input type="checkbox"/> Main focus is current students – for induction and during their time in higher education</li><li><input type="checkbox"/> Be clear on purpose - charter is a front page – which links included to more detailed information in university regulations and course handbooks.</li><li><input type="checkbox"/> Be clear what a charter is not – not a detailed personal agreement or contract.</li><li><input type="checkbox"/> A charter also</li></ul>					
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	<p>communicates the ethos of the institution</p> <p>□ And emphasises that students need to work in partnership with academic staff (and other students)</p> <p><b>Conclusion</b></p> <p>As previously stated, NUS Wales believes that the introduction of a £9,000 cap on tuition fees has the greatest impact on students. As a result, any ability to charge above the current level must be based on an institution's commitment to widening access and the student experience. Fee plans must be robust; they must require hard, ambitious targets; and most importantly they must be heavily scrutinised and monitored to ensure that the ability to charge above the current level is not 'easily' or 'automatically' awarded to institutions in Wales.</p>					
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## **ANNEX 2 (ii) – consultation on the proposed system for part time higher education funding – including student finance for 2012/13**

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### **Introduction and overview**

The Welsh Assembly Government issued a consultation paper on proposals to be made to the fee regime and student support system for part-time study in 2012/13 and were announced **by the Minister for Education and Skills on 21 June 2011**.

On 4 November 2011, having considered the consultation responses, the Minister announced his intention to postpone implementation of a revised system for part-time higher education tuition fees and student support until academic year 2013/14.

### **The consultation process**

The consultation on the proposed changes to higher education part-time fees and student support was launched on 5 September 2011 and was open for responses until 3 October 2011. The consultation was aimed specifically at stakeholders, but was also published on the Welsh Government consultation web page, making it available to the wider public. The consultation **invited comment on some key questions (as listed in Annex A)**.

A total of 9 questions were set out in a proforma-style document within the consultation, and an online form was provided for ease of email return. The broad principles of the policy had already been agreed, meaning questions were specifically related to the finer details of the proposed changes and their implementation.

### **Consultation feedback and Welsh Government comments**

#### **Statistical analysis of consultation responses – summary**

<b>Total number of responses:</b>	<b>32</b>	
	responses	per cent
Higher education institutions (HEIs) and bodies	11	34
Further education institutions (FEIs) and bodies	8	25

Other organisations	7	22
Local authorities	2	6
NUS and student bodies	2	6
Members of the public	1	3
Third Sector organisations	1	3

Figures have been rounded to the nearest per cent, as such the sum of the constituent parts may not add to 100%.

A synopsis of the key issues identified by respondents is outlined below, grouped by all the stakeholder responses to the questions as laid out in the consultation document. Annex B provides a list of respondents for reference and excludes those who requested their response should remain confidential. Due to the delay in implementing the changes and the further ongoing analysis being done, the responses will not be published with this summary. On completion of the analysis, which is expected to be around Spring 2012, copies of non-confidential responses received in their original format and language will be available on request.

Some comments were outside the scope of the consultation, and although every effort was made to link these responses to the key themes of the consultation, this was not always possible. However, the essence of all such comments have already, or will be fully considered. The consultation document and response proforma adopted for this consultation can be found in the Education and Skills section (closed consultations) on the Welsh Government's website at: [www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations). We would like to take this opportunity to thank everyone who responded to the consultation for their contribution.

#### Main themes arising out of the responses received

The overriding common theme was a request to delay the implementation of the changes until academic year (AY) 2013/14 instead of AY 2012/13 as originally proposed. However, there was also general agreement with the aims and objectives proposed in the consultation, especially with giving part-time study closer parity with full-time. Points for development and action were provided by many respondents. The delay to implementation of the changes was announced **by the Minister for Education and Skills on 4 November 2011. The full statement can be found at:**

<http://wales.gov.uk/about/cabinet/cabinetstatements/2011/21juneparttime/?lang=en>.

Below are the key themes arising from the responses to each of the consultation questions. More detail of the responses under each question can be found at Annex A. Although this document does not contain specific Welsh Government responses to the views provided at each of the consultation questions, the statement made by **Minister for Education and Skills covers** most of the major issues and concerns raised in the responses received. A list of the stakeholders providing responses (excluding those who expressed confidentiality) can be found at Annex B.

#### Key themes

- Importance of parity of part-time study with full-time.

- Timing of change.
- Retention of credit based funding system.
- Desire to maintain flexibility of study patterns.
- Recognition of need for fee plans to justify higher charges.
- Recognition of complex nature of part time study.
- Need for clear communication of changes.
- Need to reconsider approach for private providers.

## **Main points – summary of comments**

### **Importance of parity of part-time study with full-time**

- Respondents welcomed greater parity with full-time study and stated that the proposed part-time fee charging arrangements, including the setting of basic and higher amounts was to be commended and welcomed.
- Concerns were expressed about the proposal to link the part-time tuition fee grant with a requirement to take out a fee loan. Respondents suggested that this arrangement should be reconsidered and brought in line with the policy for full-time study.
- Part-time students will enter compulsory repayment after their third year of study if their income is above £21,000, even if they are still studying – respondents regarded this as a potential deterrent to applicants.

### **Timing of change**

- The majority of respondents strongly advised delaying implementation until academic year 2013/14 to allow for further consideration of the changes and their impact.

### **Retention of credit-based funding system**

- Respondents overwhelmingly wanted to retain a credit-based funding system, they viewed this as the fairest way to reflect a student's changing pattern of study.
- The majority of respondents considered that a pro-rata basis of fee charging based on credits and intensity of study across all modes of part-time study was the fairest way forward.

### **Desire to maintain flexibility of study patterns**

- Several respondents indicated that they would like the Welsh Government or HEFCW to provide a clearer definition of part-time study.
- The majority of respondents considered that intensity of study over 75 per cent of full-time and below 120 credits should be treated as part-time study for the purpose of student support and fee controls.

## **Recognition of need for fee plans to justify higher charges**

- The majority of respondents agreed that all institutions providing higher education courses should be subject to the same fee planning requirements as for full-time provision when setting fees above the basic amount.
- There were differences of opinion between further and higher institutions on the level (basic fee) at which fee plans would be required. Further education institutions preferred institutional flexibility around the fee level whereas higher education institutions prefer to have basic and the maximum fees that can be charged aligned to the full-time fee arrangements.
- Respondents considered that linking part-time fee planning requirements to *For Our Future*<sup>1</sup> priorities would help contribute to achieving its objectives.

## **Need for clear communication of changes**

- Respondents indicated that there should be clearer communication of entitlement to part-time tuition fee loans and grants for those who have already undertaken higher education study.
- Respondents suggested that there should be a clear strategic communications plan in place to fully inform stakeholders and students of the part-time study changes in 2012/13 (or 2013/14 if implementation of the changes was to be delayed).
- Stakeholders requested that consideration be given to HEI and FEI representation on the Programme Delivery Board to help facilitate improved communication and understanding of implications for institutions.

## **Concern over possible changes in demand**

- The majority of respondents envisaged the potential for a marked decrease in part-time study as a result of the introduction of higher fees combined with the current trend of the reduction in take up of provision.
- Respondents had mixed views on the question of capping student numbers, believing higher fees would themselves help to limit numbers.
- Respondents questioned whether any financial arrangements are to be put in place for those undertaking courses at an intensity of less than 25 per cent of full-time study and queried whether an increase in bursary awards may help to overcome this issue.

## **Need to reconsider approach for private providers**

- Public money being used to finance tuition fee loans at private providers was seen almost universally as going in the wrong direction.

## Stakeholder responses to the consultation questions

### Key questions

The main proposals announced by the Minister for Education and Skills on the 21 June, both in relation to the part-time higher education fees and student support have been welcomed by the National Assembly for Wales. Therefore, the consultation paper did not invite comment on those broad principles. There remained, however, some key questions in relation to implementation of these proposals on which it was helpful to have views from stakeholders and delivery partners.

### Part-time tuition fees

**Q1. What should be the basic amount for part-time tuition fees, above which fee plans would be required from institutions wishing to charge a higher amount? Are there any advantages or disadvantages associated with establishing the basic fee amount at a fixed value for all part-time courses or varying the basic amount according to the course intensity?**

### Summary of responses

Most respondents welcomed the introduction of greater parity with full-time study and considered that the arrangements proposed for part-time fee charging and setting of the basic and higher amounts was to be commended. However some considered there may be risks associated with the proposals such as higher fees reducing demand for and take up of part-time courses, as well as administration costs to institutions, especially if a *variable* basic fee were to be introduced.

Some further education (FE) colleges considered that a variable basic fee instead of a fixed one would give them more flexibility. Higher education (HE) institutions considered that a fixed basic fee was fairer with some stating it should match the full-time amount thereby allowing them to maximise income.

The majority of respondents considered that a pro-rata basis of fee charging based on credits and intensity of study across all modes of part-time study was the fairest way forward. This would allow institutional flexibility, take account of differences between part-time and full-time study modes and limit the cost to students.

Most respondents agreed that whatever the fee caps were, systems were needed to ensure that fees could not be charged above the cap (i.e. the higher amount). Some FE colleges considered that higher fees could have detrimental effects on their part-time student intake and that flexibility on fee charging was crucial. The impact of higher fees on employer contributions was also a concern of several respondents.

Several institutions and other organisations provided differing pro-rata and fee setting options and indicated that some specific specialised provision might need to have fees set at higher levels to reflect the full cost of course delivery. Part-time fee plans (or combined with full-time fee plans) were seen as a crucial control measure and a way to direct institutional resources. Some FE colleges considered that their

pricing of courses is already based on the real costs of delivery. Several institutions felt linking part-time fee planning to *For Our Future*<sup>1</sup> would help towards achieving its objectives.

Some concern was noted over the requirement for part-time students to take out a fee loan to access the tuition fee grant, which is not the case with full-time study.

**Q2. Should institutions charging above the basic fee amount for part-time courses be subject to the same fee planning requirements as for full-time courses? Are there any specific issues which should be taken into account in respect of the fee planning guidance to be issued to HEFCW for part-time provision?**

### **Summary of responses**

The majority of respondents agreed that all institutions providing part-time higher education courses should be subject to the same fee planning requirements as for full-time provision when setting fees above the basic amount. Respondents suggested that fee plans needed to be adjusted to fully take account of the differing nature of part-time modes of study across the sector. This would address the “widening access” agenda, student support arrangements and strategic priorities such as *For Our Future* and the National Student Survey<sup>2</sup>.

It was suggested that if fee plans were merged for all modes of study, more detail would be required to show how institutions are addressing or meeting government priorities/objectives. Several respondents indicated that institutions should strengthen pastoral and financial support provided to students, as this may increase retention rates. The provision of such support should, in their view recognise the differences between part-time and full-time study.

Several respondents raised concerns over potential employer reaction to higher part-time fees and saw this as a significant risk to part-time vocational provision (an important part of the sector) that needs to be carefully considered.

Several respondents considered that the proposed timescales (2012/13) to introduce higher fees for part-time study were insufficient to allow the changes for full-time students to be properly assimilated and communicated to students. Most considered that implementation should be delayed for one full academic year to 2013/14. Early and specific communication to all students was seen as crucial.

Most respondents considered that account needs to be taken that similar services with similar costs are provided to both part-time and full-time students. However, to reduce administrative burdens and to allow flexibility to reflect the differing and complex needs of part-time students, fee plans should be written in a more targeted way for these students.

**Q3. The Welsh Government proposes to make fee support available to eligible part-time students studying at an intensity of between 25 per cent and**

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<sup>1</sup> For Our Future – The 21st Century Higher Education Strategy and Plan for Wales’ is the higher education strategy and plan for Wales. Welsh Assembly Government, 2008.

<sup>2</sup> National Student Survey. Unistats.Directgov, 2011.

**75 per cent of the full-time equivalent. Should students studying between 75 per cent and 99 per cent intensity be treated as part-time students for the purposes of the student support (fee grant and loans) and fee capping legislation?**

### **Summary of responses**

The majority of respondents considered that intensity of study over 75 per cent of full-time and below 120 credits should be treated as part-time study as now. This was, however, not a universal view. Full-time study was seen by most respondents as 120+ credits per annum. The limited numbers of students studying over 75 per cent of full-time intensity should be subject to the same conditions as those studying between 25 and 75 per cent of full-time intensity, especially if in one academic year, they reduce or increase their intensity of study. Some respondents raised concerns about institutions not allowing students to study over 75 per cent of full-time intensity when fees are raised and reported that this currently happens at some HE institutions.

The credit based system equivalences (e.g. 90 credits = 75 per cent of full-time intensity, etc.) should be retained, with some respondents suggesting other calculations as alternatives, which could help reflect a student's changing pattern of study. Some respondents pointed out the potential complications for the support system in trying to differentiate between modes of part-time and full-time study between 75 and up to 99 per cent of full-time intensity. Some respondents raised significant concerns about the lack of financial support to be provided to students undertaking less than 25 per cent intensity of full-time study and questioned the future funding arrangements for this intensity of study.

**Q4. In view of the way in which the intensity of part-time study is negotiated between the student and their institution would the proposed method for determining pro-rata fee to be charged best work on:**

- a. a credit basis where the full-time equivalent study is defined as being 120 credits per year;**
- b. a banding basis where rates are set for 25 per cent, 50 per cent and 75 per cent study intensity; or**
- c. some other means of defining course intensity? e.g. on the basis of the number of years required to complete the course:**

**number of years of full-time course**

**\_\_\_\_\_ x 100 = percentage course intensity**  
**number of years of part-time course<sup>3</sup>**

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<sup>3</sup> Subject to a maximum of 16 years to complete the course.

## Summary of responses

The majority of respondents reported option (a) as their preferred choice as credits are currently used by institutions, would have less disruptive consequences to internal systems and would provide institutions with the greatest flexibility.

Several respondents provided advantages and disadvantages for each option.

Two respondents indicated that they would like to see a move to option (b) – that is banding.

## Financial support

**Q5. We intend to introduce support arrangements for part-time undergraduates which are similar to those for full-time undergraduates including access to a loan and a fee grant to cover the up-front costs of tuition fees for part-time courses between 25 per cent and 75 per cent intensity of a full-time course. Will these arrangements encourage applications for part-time study?**

## Summary of responses

Some respondents considered these proposals would assist the *widening access* agenda but many felt that charging higher fees would deter prospective part-time students from undertaking part-time HE with the potential effect being greatest on the least well off, most marginalised and socially excluded students. Many respondents felt those considering undertaking *bite sized* modules with an intensity of less than 25 per cent of full-time study would potentially be affected the most. Several respondents raised concerns about this issue, especially if the HEFCW teaching grant is, in future, no longer available.

Respondents noted that institutions have already experienced reductions in the number of students undertaking part-time study and even with no upfront fees and the availability of grants/loans, the *price sensitive* or *debt adverse* student might be put off. Again, the potential impact on employer contributions for part-time study was cited as a concern, as was the potential impact on both up-skilling and re-skilling opportunities. Concerns were also raised over current HEFCW funding for these types of courses and other short course provision. Respondents wanted reassurance or clarity over the levels of funding provided by HEFCW for this course provision when fee levels are raised.

Many respondents felt, some strongly, that the proposal to start loan repayments after three years of part-time study would have a detrimental effect on students. Although this proposal is based on the conditions already established for full-time study where the student usually completes their studies after 3 years, respondents stated it seemed to them to be unfair to apply the same repayment timescales to part-time study. Several respondents suggested some other method of repayment would be preferential, such as loan repayments starting when a student's course ends or when they have graduated and are earning over the £21,000 threshold. Several respondents were strongly opposed to the requirement to take out a fee

loan to access the part-time tuition fee grant on the basis that this requirement would reduce the parity with full-time students.

Respondents considered that the communications strategy to publicise the changes to the part-time fees and support arrangements, needed to be carefully considered and managed. They stated that an appropriately targeted strategy should help correct any misconceptions students may have surrounding higher fees and the nature of the support package available.

In terms of whether the new arrangements would encourage applications for part-time study, concerns were raised by, in the main, institutions providing courses to students who have had previous financial support. Under previous study rules such students would not be entitled to further support and consequently an impact of higher fees may be a reduction in the number of applications from students seeking to up-skill or change careers. Stakeholders considered that many such students currently benefit from *fee waivers* supported by HEFCW funding and if this funding were to be removed it would have a significant affect on them. Many respondents again suggested delaying the implementation of the part-time changes until 2013/14 to provide more time to consider the potential implications arising from the shift in funding to student support and also to take account of the experience in England in 2012.

Several respondents raised concerns over the lack of current financial support for students undertaking Equivalent or Lower Qualifications (ELQs) and that this may be exacerbated with the introduction of higher part-time fees.

**Q6. We propose to make a tuition fee loan available for part-time students studying designated courses at private providers. The arrangements proposed for full-time students will provide for a maximum fee loan of £6,000. What do you consider should be the maximum loan available for part-time students?**

### **Summary of responses**

The majority of respondents had concerns about extending these support arrangements to private providers. Respondents considered that provision of increased loans could be seen as providing a subsidy to institutions which are not subject to the same requirements to meet *For Our Future* priorities as publicly-funded institutions. If fee loans are provided to part-time students to attend private institutions, they should be required to provide a part-time fee plan to explicitly outline how they will target *widening access*, equality of opportunity and other stated Welsh Government priorities.

On the whole it was considered that this approach could be damaging for higher education, academia and the student experience in Wales, that it might lead to an influx of private HE provision and that it runs counter to the Welsh Government's reconfiguration agenda. In summary, stakeholders put forward the view that the provision of public funding to enable students to study at private institutions represents a significant risk to the Welsh Government and to the higher education budget.

There was some support for matching the same pro rata levels of fee loans as for full-time study as is the case in England. However, if loans are to be made available to students studying at private institutions then stakeholders considered that they should be subject to the same regulatory and accountability requirements as publicly-funded institutions. Additionally, respondents considered that fee plans should be a requirement for private institutions charging fees above the pro-rata basic amount for part-time study.

**Q7. In order to ensure that the policy is sustainable in the long term, we intend to control the number of under-graduate students eligible for part time support. What system and processes do you feel would be the most effective way of implementing a control on part-time student numbers in 2012/13?**

### **Summary of responses**

Many of the respondents considered that there is currently insufficient data available to assess whether part-time student numbers need to be capped in the future. Experience may demonstrate that there will be an overall reduction in student numbers if higher fees are introduced, creating a lower demand for part-time provision.

The introduction of penalties for over-recruitment and might help to limit numbers, although some priority courses would need to be exempted. Such provision could include employer sponsored courses, NHS bursary, work based learning or European Social Fund sponsored Foundation Degree courses.

Some respondents pointed out that one of the objectives of *For Our Future* is to *increase* the numbers of part-time students by 2012/13 and the opportunities to study part-time, which is at odds with capping numbers or provision.

If capping were to be introduced, as the consultation question suggests, respondents provided a range of possible flexible options. These included credits capping (favoured by most respondents), capping full-time equivalent (FTE) values, limiting Welsh domicile numbers at Welsh institutions or postponing implementation for one year (2013/14) along with ring-fenced funding in the interim. Concerns were raised that capping student numbers could result in reduced course or module provision.

Most respondents acknowledged the need for fiscal restraint in the current financial climate, but at the same time noted the need to increase take up of provision from its current level. Reducing the cost of part-time provision was seen by many colleges as a way forward.

Overall respondents considered that the changes to part-time fees and student support could lead to a much reduced take up of part-time HE provision. This could be exacerbated if employer contributions are significantly affected and the current trend towards lower demand continues. Some respondents indicated that some course provision could also be lost over time if a cap on numbers were to be introduced, unless careful consideration is given as to how this could be achieved.

**Q8. Do you foresee any operational difficulties with student finance in relation to the changes we propose?**

**Summary of responses**

Most respondents could foresee a number of operational difficulties with implementing these proposals. These included:

- the timescales are too tight and need to be delayed until 2013/14;
- the unpredictability of the part-time sector, the market and students;
- staff understanding the changes;
- implementation and operation of the proposals by the local authorities and the Student Loans Company systems;
- the interface with employer and bursary sponsorship;
- support arrangements for specific groups of students, for example, students with disabilities, carers and lone parents;
- transfers between modes of study;
- the arrangements for students with previous study or who are seeking to study equivalent or lower qualifications; and
- institutional planning assumptions.

It was suggested that these and other issues will require further and more detailed engagement with the sector in order for implementation to be successful. The communications strategy for prospective students needs to be sufficiently robust to dispel misconceptions about higher fees for part-time study. A multi-agency approach is needed to fully consider implementation of these proposals.

Respondents considered that the views of employers will also be important in respect of students taking vocational courses and those on continuing professional development courses. This was seen as a key component of the changes and potential impacts. Changes in circumstances are more prevalent to part-time students and systems need to be strengthened and made robust for the sector to capture them.

Respondents stated that more consideration should be given to the issue of fee loan repayments especially if implementation is delayed until 2013/14. Several respondents re-iterated their concerns about loan repayments being required 3 years after students commence their courses.

**Q9. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.**

**Summary of responses**

These comments were miscellaneous in nature, and some fell outside of the scope of this exercise, but are listed here for completeness.

- Should costs be related to the amount of teaching or contact the student has with the institution?
- Representation from higher education institutions on the Programme Delivery Board is desirable.
- Will there be any protection for high cost, Science, Technology, Engineering and Mathematics (STEM) or Welsh medium subjects?
- Consideration of the impact of the proposed changes across different communities within Wales needs to be further explored.
- The effect on cross border flows of students needs to be considered or researched.
- A quick response to respondent calls for a delay to implementation would be desirable.
- Consideration of unintended consequences as a result of these proposals.
- The effect of the proposed changes on the different types of part-time student should be considered.
- The sector seeks a clearer definition of part-time study.
- Clarification on the eligibility of those taking resits, part-time and full-time study mixed modes.
- The overall effect on teaching budgets once they are reduced to take into account new fee loans/grants – clarification on how this funding will be prioritised.
- Will the fee levels be subject to inflationary annual increases?

## **Full list of respondents**

Respondents to the consultation (excepting those not consenting to publication):

### **Higher education institutions (HEIs) and bodies**

Aberystwyth University  
Cardiff University  
Glyndwr University  
National Association of Student Money Advisers (NASMA)  
Open University in Wales  
Swansea University  
University of Wales, Newport

### **Further education institutions (FEIs) and bodies**

Coleg Llandrillo  
Colleges Wales/Colegau Cymru  
Deeside College  
Merthyr Tydfil College  
Pembrokeshire College  
Wales Evangelical School of Theology

### **Other organisations**

Catholic Education Service for England and Wales (CESEW)  
NIACE Dysgu Cymru  
UALL Cymru

### **Local authorities**

Cardiff Council (Cardiff/Newport Student Support Team)  
Neath Port Talbot County Borough Council

### **NUS and student bodies**

National Union of Students (NUS) Wales  
Open University Students Association (OUSA) in Wales

### **Members of the public**

Mrs Doyle, private individual



The submissions of Winston Roddick CB QC on a separate Welsh jurisdiction.  
June 2012

## **Introduction**

1. I congratulate the Committee on its decision to conduct this very timely inquiry into a matter of considerable importance to the people of Wales. I am grateful to the committee for inviting my submissions. You have asked me to provide a brief description of my involvement with the subject. I regularly broadcast on radio and TV in Wales and England on matters to do with the constitution of the UK, and Wales in particular, and about the administration of justice. I do so in Welsh and in English. My practice at the Bar is in the field of public and constitutional law. I have lectured extensively on constitutional matters including the Freedom of Information Act and the Government of Wales Acts 1998 and 2006. I have delivered addresses (as the Counsel General) in Dublin, Cork, Belfast, USA and Canada about the UK's changing constitution and that of Wales in particular. I addressed the Conference of the "Presidents of the Supreme Courts of the Member States of the EU and their Attorneys General" on this last subject in 2000. In 2008, I addressed the Franco-British lawyers Society Colloquium at Oxford on Wales's constitutional changes, delivered the Ninth Annual Lecture of the Centre for Welsh Legal Affairs on the subject of "The Development of Devolution and Legal Wales"<sup>1</sup> and the Lloyd George Memorial Lecture on the subject of "Devolving Justice" (previous speakers have included Roy Jenkins and Shirley Williams) In April of this year I addressed the London Glamorgan Society on the Changing Shape of Britain

## **Summary**

2. This submission defines the expressions "separate Welsh jurisdictions" and "administration of justice", summarises the constitutional and other arguments in favour of establishing a separate Welsh jurisdiction and the principal arguments against doing so and then focuses on the potential benefits to Wales, the barriers and the costs and the practical implications for the professions of devolving the function. My conclusion is that there is a sound case for creating the jurisdiction. References in this submission to the Act are to the Government of Wales Act 2006.

## **The four specific questions within the terms of reference**

The meaning of the term "separate Welsh Jurisdiction" (the first question)

3. As we are here concerned with the jurisdiction of the National Assembly for Wales (the Assembly) and not that of a court of law or a nation, the modified Oxford Dictionary definition<sup>2</sup> would be 'the territory or sphere of activity over which the legal authority of the Assembly extends'. As its territorial extent is defined by the Act that element of the definition requires no further definition. This inquiry is not concerned with **Wales as a jurisdiction**. It is concerned with the **Assembly having jurisdiction**. Assuming that to be correct, the second paragraph of Mr Melding's letter of 9 December 2011 inviting submissions makes clear that the central question with which this inquiry is concerned is

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<sup>1</sup> I attach my address to the Centre for Welsh Legal Affairs the paragraphs of which I have numbered to facilitate cross referencing.

<sup>2</sup> See footnote 2 on page 2 of the scoping paper

whether the Assembly should have authority or, more simply, responsibility over the administration of justice in Wales. In other words, should the administration of justice in Wales become a devolved function. That being the central question, “jurisdiction” simply means responsibility for the administration of justice in Wales. That is the sense in which I use the expression in this submission and the sense in which I used it in the passage quoted at page 4 of the scoping paper. If that function were to be devolved, Wales through its Assembly would have jurisdiction over the administration of justice just as it has jurisdiction over health matters and environmental matters today and the administration of justice in Wales would thereby cease to be part of a unified system with England.

4. I include in the expression “administration of justice” the Crown Court, the High Court, the criminal and civil divisions of the Court of Appeal, the Prosecution Service, all Tribunals, the Magistrates Courts Service, the prison service, the Civil Service responsible for the administration of justice in Wales, and the police service. I also include the authority to appoint judges subject, however, to the supervision of an independent judicial appointments commission.<sup>3</sup>

5. After the referendum, the Assembly’s legislative competence (or ‘fields of responsibilities’ as they were called), is to be ascertained by reference to section 108 and Schedule 7 Part 1. The Assembly may legislate in relation to the subjects listed under any of the headings in Part 1 of that Schedule. By section 109 (1), further headings may be added to that list by Order in Council<sup>4</sup>. The administration of justice in Wales is not a subject listed under any of the headings in part 1 of Schedule 7. That function is vested in Ministers of the Crown<sup>5</sup>. By section 58 and Schedule 3 Part 1 these may be transferred by Order in Council to Welsh Ministers. So the mechanism for devolving jurisdiction to the Assembly for the administration of justice in Wales is by a transfer of the function by Order in Council under section 58 and for the Assembly’s legislative competence to be enhanced by Order in Council under section 109 (1). The property, rights and liabilities of the Ministers of the Crown from whom the functions are transferred under section 58 to the Welsh Ministers will vest in the latter<sup>6</sup>.

6. That concludes my submission on the definition of ‘jurisdiction’ and ‘administration of justice’ and how the function may be transferred to the Assembly.

The second question in the terms of reference

7. Although this question is specifically concerned with the three elements of the potential benefits, barriers and costs of devolving the jurisdiction to the Assembly I take it to be concerned also with the arguments for and against the

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<sup>3</sup> This definition is wider than that adopted in the response of the Wales Council of judges

<sup>4</sup> See Explanatory Notes at para 411

<sup>5</sup> The Minister of Justice (who administers the function through HMCTS), the Home Secretary and other Ministers of the Crown respectively

<sup>6</sup> See section 88 and schedule 4

devolving of this responsibility (these being relevant to the assessment of the benefits). I deal with potential or perceived barriers in paragraphs 20, 21 and 23 below. I have taken as my background to the opinions I express in this part of my submissions the significant constitutional changes which the first Blair Government introduced to the UK generally and Wales in particular and the effects of these changes on the administration of justice and the practice and the teaching of law in Wales. I have described these in some detail in my address to the Centre for Welsh Legal Affairs, in particular at paragraphs 9 to 13, 31 to 41 (pages 3-5 and 11-15).

8. The arguments I have previously advanced in favour of devolving the function are quoted on page 4 of the committee's scoping paper. I would also adopt the arguments advanced in the submissions of the Legal Wales Standing Committee.

9. I come then to other arguments in favour.

10. In its consideration of the effects of further legislative powers for the Assembly upon the administration of justice in Wales, the All Wales Convention was primarily concerned with whether responsibility for administering justice was necessary as a precondition for operating part 4 of the Act. Its conclusion was that it was not but it also made the following findings based upon a very broad consultation. The emphases in the passages quoted below are mine.

- The evidence showed that “the people of Wales support for and acceptance of devolution is solid. Our polling results showed 72% favour the present devolution **or more**”<sup>7</sup>.
- “There was a general feeling that the differences in the settlements of Scotland and Northern Ireland on the one hand and Wales on the other are unfair.<sup>8</sup> *One member of the public stated “Wales should have an Assembly with powers comparable to Scotland and Northern Ireland. There is no reason for us to have a weaker form of devolution”.*
- Having noted the developments I refer to in paragraph 7 above, it stated that “Yet there is scope for **more change**”.<sup>9</sup>
- “As devolution progresses, more laws applicable only to Wales are created”<sup>10</sup>
- “The ..... legal community in Wales was aware of the need to adapt to devolution”<sup>11</sup>

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<sup>7</sup> See its executive summary at paragraph xxii

<sup>8</sup> Para 3.8.6

<sup>9</sup> See the report at paragraph 3.9.13. In the context of these findings, for “scope” read “need”?

<sup>10</sup> Para 3.9.4

<sup>11</sup> Para 3.9.6

- “Public servants should sufficiently understand the legal and constitutional framework within which they are working”<sup>12</sup>
- The changes in the administration of justice and the practice of the law in Wales since devolution were the products of initiatives by individuals rather than part of a coherent response to devolution<sup>13</sup>.
- Although Wales for the purposes of administration of justice was part of the England Wales combined jurisdiction “the system is London-centric, and Wales has tended to be treated as part of England”<sup>14</sup>
- “Devolution has brought opportunities to the legal profession in Wales, ... Capacity and skills need to be built up so that opportunities can be exploited. New avenues of work are opening up .... and there is no shortage of talent available in Wales and outside”
- “Having considered all the evidence, we conclude that there is a growing concept of Wales having more of its own legal personality. Certainly it needs appropriate legal institutions and systems to support the progress of devolution and the developing legislative competence of the National Assembly for Wales. A legal check is needed on the activity of both legislature and executive, preferably with adjudications and remedies more available in Wales”.

11. That last reference to recognising the needs of Wales to have its own legal institutions resonates with the words of Lord Bingham of Cornhill, the Lord Chief Justice of England and Wales, as he then was, who said on the occasion of the opening of the Mercantile Court in Cardiff

“This court represents the long overdue recognition of the need for the Principality of Wales to have its own indigenous institutions operating locally and meeting the needs of its citizens here.”

12. As to costs of further devolution, whenever there is discussion about enhancing the Assembly’s powers, concern is expressed about the costs of doing so especially in these times of economic difficulties. That was the experience of the All Wales Convention<sup>15</sup> but when it looked in detail at the cost of giving the Assembly the enhanced legislative powers contained in Part 4 of the Act it concluded that the extra cost was largely neutralised by savings.

“ .. evidence suggests that while costs are an important dimension, in particular for the public’s perceptions, the likely impact ..... of a move to Part 4 would be, broadly speaking, financially neutral .....”<sup>16</sup>

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<sup>12</sup> Para 3.9.8 The inference being they are ‘devolution blind’

<sup>13</sup> Para 3.9.10 See also the submissions of the Legal Wales Standing Committee for further arguments about piecemeal development and devolution by evolution.

<sup>14</sup> Para 3.9.11

<sup>15</sup> Para 3.2.1

<sup>16</sup> See its summary at para 3.2.9

13. The Convention made clear findings as to the economic impact on Wales of its emerging jurisdiction over the administration of justice in Wales<sup>17</sup>. These were

- Legal services in Wales represent a significant contribution to economic activity, **vital** to the economic and social development of the nation<sup>18</sup>
- A strong legal profession is needed to service the developments in the administration of justice which have occurred in the wake of devolution
- A growing number of lawyers in Wales are specialising in ‘Welsh’ public law
- There is a need for growth in the number of lawyers in Wales to cope with the changing demands and there is a corresponding need for growth in the educational and training opportunities to ensure that the young lawyers of Wales “have the essential skills necessary to service [Wales’] 21<sup>st</sup> century economy”<sup>19</sup>
- There is a real and pressing need in the public sector for more young people trained as lawyers in the new devolved fields of responsibilities.
- “To date, the needs of the profession in Wales are not fully met. There remains a skills deficiency, particularly in commercial activity and the complex, high value specialist work ..... Meeting these requirements is important for devolution, **economic transformation**, and developing a modern profession, tailored to the needs of the modern Wales”<sup>20</sup>

14. It is remarkable, is it not, that in this period of severe economic austerity when central government is being criticised for failing to identify opportunities for growth in the economy, Wales is identifying demand and opportunities for growth and career opportunity essential to the Nation’s well being. In my opinion, these economic impact arguments would assume far greater force if the question were should the assembly be given responsibility for the administration of justice in Wales rather than that this development be left to evolve over time.

15. The expression ‘Legal Wales’ has become part of Wales’ everyday language since devolution. It simply means the development of the legal institutions in Wales in a way that is consistent with devolution. As the findings of the All Wales Convention show, there is considerable support for its further development across all the legal ‘constituencies’ of Wales. Andrew Davies, the former Economics Minister in the Welsh Government was convinced that the economic advantages of its development could be very significant.

16. Devolving the function of administering justice to the Assembly would not create an upheaval. It could be seamless, cost very little, result in substantial savings, boost the Welsh economy and provide significant career opportunities. All the necessary experiences and qualifications in the administration of justice are already present. It would require very little additional, if any, new office space and what it would require would be reflected in the saving of office space and expenses in England. As devolving responsibility for administering justice as I

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<sup>17</sup> See paras, 3.9.4 to 3.9.10

<sup>18</sup> Paras 3.9.4 See also paragraph

<sup>19</sup> See para 3.9.8 per Jane Williams of Swansea University

<sup>20</sup> Para 3.9.10

defined that expression earlier<sup>21</sup> would not require further primary legislation<sup>22</sup> there would be no need to find time for it in Westminster's long legislative queue.

17. The way the administration of justice is structured and run in Wales could be so arranged as to make a very significant contribution to the Welsh economy. I am not aware what the position is in the changed economic climate of this period but until recently legal services (apart from administration of justice) in Wales contributed 1% to Wales' GDP. Agriculture contributes a little more (about 0.5% more) but there is considerable scope for increasing the contribution of the former. There is therefore much more than just a constitutional case for devolving this function. Amongst the advantages it would bring to Wales are

- the administration of justice in Wales and its institutions would become closer to the people of Wales;
- the organisation within Wales of court and tribunal sittings in Wales is likely to add to the efficiency of those bodies and to the prompt disposal of work;
- the economic benefits which flow from the existence of a legal system in society would become available within Wales. For example, employment in support industries, the generation of fee-earning work in related professions, construction of new courts and offices to manage the system from Wales.
- the existence of legal institutions within Wales would create work and career structures not presently available in Wales.
- the development of expertise amongst the legal profession in Wales.
- access to the courts in Wales by solicitors, barristers and other eligible advocates would not become restricted<sup>23</sup>

#### Arguments against devolving the responsibility

18. A number of substantial arguments have been advanced against devolving responsibility for the administration of justice to the Assembly. I would refer the committee to those arguments which are summarised in the submission of the Legal Wales Standing Committee and I adopt its responses to those arguments

19. There are two other contrary arguments I should like to deal with. These are set out on page 5 of the committee's scoping paper. The paper draws from the report of the All Welsh Convention "a general consensus that a separate jurisdiction is not required at this time". That interpretation of the report's findings is mistaken. The consensus it found was that devolving justice is not necessary to "support a move to give the National Assembly for Wales's powers to pass Acts under Part 4 of the 2006 Act"<sup>24</sup>. That it is not necessary for that purpose is quite obvious and I have not heard or seen any argument to the contrary. The basic purpose of the All Welsh Convention was to increase understanding of how the National Assembly worked at that time and to ask the

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<sup>21</sup> See paragraph 4 above

<sup>22</sup> See paragraph 5 above and the statutory provisions there referred to.

<sup>23</sup> See the answers to questions [X] and [Y] below

<sup>24</sup> See the All Wales Convention Report at para 3.9.18

people of Wales what they thought about the Assembly having increased legislative powers<sup>25</sup>. It had, therefore, just two broad roles, - to prepare the ground for a possible referendum on full law-making powers for the assembly (majority support for which would bring Part 4 of the Act into force) and to explain the then system of powers available to the assembly. It explained that the question about full law making powers was limited to the 20 fields of responsibilities already devolved<sup>26</sup>. It was not concerned with the devolution of further functions and fields of responsibilities to the Assembly (eg the administration of justice in Wales) save only if they were necessary for activating Part 4.

20. The other arguments on page 5 of the scoping paper are those of The Rt Hon Jack Straw MP QC. His “strong advice” was against any move to devolve this function. In support of this advice he said that there were overwhelming arguments against such a move. He said that it was likely to create enormous practical implications. He did not specify what the arguments were nor what those implications were likely to be other than by postulating four questions to which he did not provide any answers. The four questions were

- Would decisions of the English courts be merely persuasive in Welsh courts rather than binding
- Would a separate legal profession need to develop, with its own systems of professional regulation
- Could Welsh judgements be enforced against English defendants, or Welsh proceedings served in England.

In the second paragraph quoted from his address he advances the argument that the administration of justice in Wales should be allowed to evolve. – devolution by evolution

21. With respect to Mr Straw, these arguments so called are hardly persuasive. The ‘binding’ nature of high court decisions on lower courts is based mainly on the accepted authority of the higher courts over lower courts and I cannot imagine the lower courts treating the decisions of higher courts, whether they are in England or Wales as having any less authority than they have at the present time. As for the authority of the Court of Appeal over the High Court, the argument assumes that the High Court of Wales would not treat decisions of the Court of Appeal in England as binding. Why should the Assembly wish to legislate to that effect when to do so adds uncertainty to the laws of Wales? The answer to his third question is yes. If England and Wales were to become separate jurisdictions in the sense which I have understood that expression, PIL (Public International Law) rules would be introduced probably based on the PIL rules applicable to cases arising between the three legal jurisdictions of the UK which are foreign to each other for these purposes. There are well worked out mechanisms within existing rules to deal with Mr. Straw’s third question. I have addressed the second question in paragraph 23 below. As for the arguments in his second paragraph, I would respectfully adopt what the Standing Committee of Legal Wales states about the devolution by evolution argument.

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<sup>25</sup> See the report at para 1.1.6

<sup>26</sup> See its executive summary

The third question in the terms of reference

22. This is concerned with the practical implications for the legal profession and the public. So far as the Welsh public are concerned, the benefits are overwhelmingly positive. The quality of justice will not be diluted one bit. The rule of law would remain the strongest of our constitutional principles. Justice would be no less accessible than it is at present and is likely to become more accessible. Our judges would be chosen from the same pool as they are chosen at present. The separation of powers would be as stringent as it is today. The judiciary would be no less independent than they are today. Justice and its administration would become closer to the people for whom the laws and our courts exist and the economic benefits for Wales would be substantial. See also paragraphs 7 and 13 to 17 above

23. As for the implications for the professions and their members, the form of the question especially its use of the words “separate” might cause them (especially those outside Wales and those not as familiar with devolution and what the inquiry is really about as others are) to wonder what exactly the Assembly has in mind if responsibility for administration of justice were to be devolved to it. The word “separate” might cause them to think that the Assembly has in mind a measure of separation from or discrimination against those who do not live or practice habitually in Wales. If that were the impression they obtain, it would be a consequence of the form of the question rather than what the committee really has in mind. The professions have nothing to fear from devolution. It creates more and not less opportunities. The regulation of the professions, including matters involving competence and control, is a matter for the professions and the statutory regulators and not of the ministries I described in paragraph 5 above. The regulators and the judges and to a lesser extent the professions have authority over rights of audience. These are not functions that are under consideration for devolving to the Assembly. Whether the administration of justice is devolved or not, the need for advocates who are familiar with the differences in the substance of the laws applicable to Wales and, in some more limited circumstances, the ability to represent clients through the medium of the Welsh language, will be precisely the same whether the function is devolved or not. The regulators will stipulate what the basic competencies of advocates should be. This inquiry is about the machinery by which justice is administered and not about how the professions are to be regulated or about the substance of our laws.

Winston Roddick QC

7<sup>th</sup> June 2012

## Ninth Annual Lecture of the Centre for Welsh Legal Affairs

28 November 2008

### The development of devolution and Legal Wales

1. Vice Chancellor, distinguished guests, ladies and gentlemen. I am grateful to you Vice Chancellor for your very generous introduction. It is a particular pleasure for me to be participating in so important an event in the University's calendar. I felt honoured to receive Ann Sherlock's letter in May of this year inviting me to deliver this prestigious annual lecture. My active association with Aberystwyth University goes back to the mid nineties when I was instructed to appear on its behalf before His Honour Judge Roderick Evans QC as he then was. I am not at liberty to tell you what the matter was about nor to name names but I can say that right and virtue were definitely on our side.

2. As the Vice chancellor has said, I was made an Honorary Fellow of the University in 1999. I wondered if that honour was because of the modesty of the fee I received for representing the University in the case I just mentioned but I suspect it was more to do with the fact that by 1999 I had been appointed Counsel General to the National Assembly for Wales.

3. In that post, I consolidated my relationship with the university. My close friend of many years, Lord Elystan Morgan, was then its President and the immensely talented Professor Derek Llwyd Morgan was the Vice Chancellor. It was here at the hall of residence on Penglais Hill that I launched what became known as Legal Wales. I invited each of the University of Wales' Law Schools to meet with me here at Aberystwyth so that I might explain to them what my own thoughts were about the potential impact of devolution upon the practice and the teaching of the law in Wales. I was concerned to create a corporate awareness of the important opportunity which devolution presented for reawakening Wales' distinct identity in matters of law including the teaching and the practice of the law and the administration of justice.

Professor Derek Llwyd Morgan chaired the meeting. Professor Iwan Davies of Swansea has since described it as a meeting of seminal importance.

4. In 2002, I was invited to be one of the University's Vice Presidents and I continue to hold that position. In that role, I have been drawn further and further into the life and business of the university.

5. It was Ann Sherlock who suggested the title to this year's lecture. She very diplomatically made it clear that the choice was of course entirely mine but I did not think that a title which brought together the development of devolution and Legal Wales could be improved on. I thought it a very appropriate subject to look at at this time.

6. What I propose to do is to outline very briefly where we have reached in the process of devolution and its effect on Legal Wales and then to look more closely at the future.

7. My thesis is really quite simple. I have three principal points. The first is that a third devolution settlement is almost inevitable. I qualify the inevitability of it in that way simply to acknowledge that the world might come to an end in the meantime. Subject to that very remote possibility, my view is that a third devolution settlement is bound to come about. The second point is that the third devolution settlement will devolve full legislative responsibility. What else might be the purpose of a third settlement if it is not to take Wales to full devolution? And my third point is that the next devolution settlement is almost certainly bound to have a very substantial impact on the administration of justice in Wales. Those three points come together in the title of this lecture 'The Development of Devolution and Legal Wales' and I congratulate Ann Sherlock on her suggestion.

8. Let me begin therefore by looking at where we have reached.

9. In May 1998, the constitution of the United Kingdom changed for ever, and it was changed in very fundamental respects by the process of devolution. The instrument of change in Wales was the Government of Wales Act 1998. There was a second devolution settlement in 2006. As a result of this process Wales' constitutional status has changed and despite its limited legislative competence its laws are becoming increasingly different from those of the remainder of the United Kingdom. Wales is a bilingual nation. It is a bilingual jurisdiction. Many of its laws are in bilingual form. Court proceedings, Jury and non-jury, are regularly conducted in Welsh or bilingually.

10. The constitution of the UK is to be found in a patchwork of Acts of Parliament, in the common law and the customs and conventions of our constitution and it can be changed without constraint or formality other than what is involved in making or in changing any of its other laws. With that degree of flexibility in our constitution, you would have expected changes to have been frequent but, on the contrary, they have been very infrequent. Such changes as have occurred have done so in distinct periods of reform of which the closing years of the 20<sup>th</sup> century will rank amongst the most significant.

11. The devolution settlements which created a Parliament for Scotland, and Assemblies for Northern Ireland and Wales, each of which, to different extent, having powers to exercise legislative and executive functions previously exercised by the Westminster Parliament, brought about fundamental change but they were not the only fundamental changes to the British Constitution which took place during the closing two years of the twentieth century. Other significant changes were the Human Rights Act 1998 by which the European Convention on Human Rights became incorporated into the domestic law of the UK; Freedom of Information Act 2000 which aims to be make government more open and less secretive; the reform of the House of Lords, which aims to reduce the number of hereditary peers as members of the second chamber and the reforms in our system of voting which have been

introduced for elections to some of our democratic institutions such as the Assemblies and the European parliament. There have been other Acts which have introduced far reaching changes, e.g. the Data Protection Act and the Race Relations (Amendment) Act 2000.

12. Devolution was therefore but a part of a much wider process of change in the relationships between Westminster and each of the other home countries; between the state and the citizen and between citizen and citizen. These changes flow from a greater sense of understanding, of respect, recognition and tolerance of the differences which mark us out as different nations within the United Kingdom and as different individuals with different interests and aspirations and out of recognition of the importance of the individual. In introducing these and other changes, the Labour Government of 1997 shook the structures of our constitution. Professors Jowell and Oliver have described the changes as hammer blows to our established constitutional principles (The Changing Constitution 4th ed page 16). In his address to the 2007 Legal Wales Symposium, “Devolution in Wales: The Challenges Ahead”, Professor Sir David Williams said that the Welsh devolution settlements had brought about an astonishing burst of constitutionalism.

13. Not only has the extent of these changes to our constitution been remarkable; the rapidity of them has been astonishing. The British constitution is in a near fluid state at this time. Professors Jowell and Oliver wrote the first edition of ‘The changing constitution’ in 1985. In the following 22 years there were a further five editions, almost one every four years. This, they say, provides an insight into the evolutionary constitutional developments in the UK over the 22 years that straddle the 20<sup>th</sup> and 21<sup>st</sup> centuries. Constitutional principles which had become established for a century “have come under pressure as constitutional arrangements in the UK respond to changing political, economic, social and international circumstances and to changing conceptions of the values and institutions which should support a modern constitutional democracy” and in a later passage they say “that even an established democracy needs constantly to be reviewed and renewed”.

### **The reasons which drove devolution**

14. It is important to remind ourselves of the reasons which drove the devolution settlements of 1998 because those same reasons continue to exert pressure for yet another devolution settlement for Wales. There were many of them. Some lie deep in the history of the United Kingdom and in the constitutional relationship between England and each of the other three home countries. Cultural and institutional differences between England on the one hand and the other home countries on the other were another reason. Linguistic differences between Wales and England were a factor. The geographical distances between London on the one hand and the other three home countries on the other and the consequent feeling of remoteness from the decision-making process were other strong reasons. The simplest and perhaps one of the most cogent reasons which drove devolution was our desire to play a greater part in running our own affairs. But perhaps the strongest reason of all lies in the quality of democracy itself. It is this last reason which is presently exerting the strongest pressure for further change in Wales. The unitary system which had been in place for a number of centuries was perceived as no longer capable of performing effectively or meeting the demands of democracy of the latter half of the 20<sup>th</sup> century not to mention those of the 21<sup>st</sup> century<sup>7</sup>. Those were the forces which drove devolution and they continue today to exert pressure for yet further changes here in Wales.

15. In what direction are these forces pulling us today? Reinforced as they now are by the perceived shortcomings of the 1998 and 2006 devolution settlements, I believe the direction to be that of yet a third devolution settlement – one which will devolve to the Assembly full legislative competence – what Ron Davies calls ‘real devolution’. That then is the prediction.

16. I shall return in a moment to the question of what else might ‘full devolution’ entail as well as legislative responsibility and also to the question what might be the

impact of legislative responsibility on legal Wales but first I would like to look at the soundness of that prediction

**Is the prediction of a third settlement sound or not?**

17. The Government of Wales Acts of 1998 and 2006 Acts created settlements which are far too complex and they discriminate unacceptably and unnecessarily against Wales. Dealing with the first of those points, - the complexity of the settlements - the 1998 Act created a cumbersome and complex model of government by failing to separate the legislative side of the Assembly from the Government side of it and by creating a system of empowering the Government and its Ministers and their civil servants through a system of delegations. That system meant it was for the Assembly Members to decide whether governmental powers would be delegated to ministers and civil servants and upon what conditions, if any, the delegation should be made. It was a cumbersome system and one which placed a very real fetter on the ability of the Assembly Government and its Ministers to govern and civil servants to administer. The 2006 Act in what can be described as the “AMs By-Pass” removed that particular complexity but at the same time reduced the influence of AMs. The Welsh Assembly Government now derives its authority directly from Westminster. These were substantial improvements over the previous settlement but the process by which the Assembly makes secondary legislation remains as complex as ever and the process for making Assembly Measures (primary legislation), a power given to the Assembly by the 2006 Act, is unprecedented and very complex.

18. In his address to the 2007 Legal Wales Symposium (op cit), Professor Sir David Williams said

“The Government of Wales Act 2006 has many important and workable provisions but its avoidance of a clear-cut move towards what Kilbrandon described as “legislative devolution” is a recipe for continuing irritation and frustration”

That irritation is already manifesting itself and I believe it is likely not only to continue until the 2006 settlement is replaced by a less complex settlement which

devolves full legislative competence but also that the irritation with Westminster and with the Welsh Affairs Committee in particular will intensify. Let me explain why I am of that view.

19. The NAW (Legislative Competence) (Social Welfare & Other Fields) Order 2008 has very recently been through Parliament. This Order, which relates to safeguarding and promoting the well-being of children and young people in Wales, will confer legislative competence on the National Assembly for Wales under Section 95 of the Government of Wales Act 2006. The Order in Council process created by the 2006 Act provides an enhanced mechanism to enable the Assembly to achieve its legislative priorities. The order is subject to affirmative resolution in both Houses and to the approval of the National Assembly. This is a measure which is sought by the Welsh Assembly Government. The case for it has been through the Assembly's democratic process. It is the will of the people of Wales that the Order be made.

20. This is what the Welsh Affairs Committee had to say when it came to examine the Order

“The purpose of this Committee's inquiry was to examine the scope and appropriateness of the proposed Order under the Government of Wales Act 2006. We considered whether the proposed Order is in the spirit and scope of the devolution settlement; the extent to which there is a demand for legislation which might follow the adoption of the proposed Order; and whether the use of the Legislative Competence order in Council procedure is more appropriate in this instance than, for example, the use of framework powers in a Westminster Bill.”

21. With great respect to the members of the Committee, that approach to the question of the competence of the National Assembly to be granted these powers or indeed any powers was entirely misconceived. The three questions which they asked themselves were of doubtful validity legally, constitutionally and politically and I can quite understand the irritation expressed in Cardiff.

22. I could not possibly improve on what Lord Prys Davies said in the course of the debate on the order in the Grand Committee on the 12<sup>th</sup> of this month:

“I want to concentrate on one paragraph in the Fifth Report of sessions of the Welsh Affairs Select Committee. I concentrate on that paragraph because this Order will set precedents and hurdles for the future. My concern is that paragraph 10 of the report sets out the principles which guide the committee in its examination of the Order. The first question is whether the Order is within the spirit and scope of the devolution settlement. Secondly, whether there is a demand for the legislation that will follow the Order, and thirdly, whether the LCO (Legislative Competence Order) is more appropriate than the use of framework powers in a Westminster Bill.....I am troubled by the criteria, on the spirit and scope of the devolution settlement. I have been re-reading the Second Reading debate on the Government of Wales Bill in 2006.”

23. Lord Prys Davies went on to point out that the phrase about the spirit and scope of the settlement was nowhere defined – he could have added that it was nowhere used – and he reminded their Lordships that the phrase actually used in the debate of 2006 was this “the provisions represent a development of the current settlement” (official Report, Commons 9/06; col32). He made the point which had been made earlier in the debate by Lord Elystan Morgan – that for the past 15 years Welsh devolution has been seen as a process – a dynamic process – and he added these very important words:

“I hope we are not abandoning the vision of a process or development”.

24. As for the third criteria, whether there is a demand for the legislation and whether the LCO is the most appropriate procedure, he pointed out that there was no reference whatever to those criteria in the debates on the 2006 Bill. After describing these third criteria as “novel and brand new” he made the point – and in my view it is the weightiest point of all - that those two matters are for the judgment and initiative of

the Assembly. I cited the reaction to the WAC's approach to the competence of the National Assembly as an example of irritation, but it might also serve as a significant instance of conflict between Westminster and Cardiff – of which I am sure there is more to come.

25. Another very recent but more general example of irritation was that expressed last week by Tomorrow's Wales in its representation to the All Wales Convention through the Archbishop Dr Barry Morgan – a person not known for his revolutionary thoughts. Its criticism of the present settlement was that it was deficient in principle and in practice. And the third example, again very recent, is the irritation expressed from within the Assembly at WAC's recommendation to deny WAG's request for powers to limit the right of council tenants to purchase council properties.

26. Moving from irritation and conflict I come then to examine the strength of the case for a devolution settlement which devolves full legislative competence to Wales? What is its strength? It was considered and recommended by the Royal Commission on the Constitution in 1973. It was considered and recommended by the Richard Commission in 2002. Those two Commissions were publicly appointed bodies and representative of all the main political parties of the time. Their conclusions and recommendations were evidence based. That there are over 30 years between the one report and the other and that they came to similar conclusions and made similar recommendations shows the consistency and enduring soundness of the case. How often you might ask does the case need to be made out.

27. Further evidence of the likelihood of a third devolution settlement within the foreseeable future and of its scope is the agreement of last year made between Labour and Plaid at the Assembly

“to proceed to a successful outcome of a referendum for full law-making powers .... as soon as practicable at or before the end of the Assembly term”.

28. The ultimate test of the strength of the case and of its democratic legitimacy is therefore to be a referendum and, of course, I accept that it is the democratic strength of the case which has to be made out. Is there anyone present who thinks that those who favoured devolution in 1979 and those who favoured it in 1997 will have changed their minds? Is there anyone present who does not believe that there is by today a stronger majority of opinion in Wales in favour full legislative devolution? Is there today a political party in our National Assembly which would speak against it? The prospect of a different party in power at Westminster from that in power at the Assembly is no longer the threat to further constitutional changes in Wales it has been held out to be. True, the Conservative Party under Margaret Thatcher and John Major was opposed to any kind of constitutional change but as Professor Brazier states in the third edition of his book "Constitutional Reform. Reshaping the British Constitutional System" (page 6)

"The Conservative Party has however adjusted its views following its electoral rout by the Labour Party at election after election since 1997 ... in some respects ... the Conservatives have become more radical than labour in their constitutional reform policy"

In that passage, Professor Brazier was referring to the Conservative Party at Westminster but could any fair minded observer of the Welsh Conservative Party claim that it is anything other than strongly committed to the Assembly and to devolved government? Is the Conservative Party at Westminster any more likely to put the brake on further devolution for Wales than the Welsh Labour MPs at Westminster? What do the examples I cited earlier as to WAC approach to the interpretation and application of the present settlements tell us on this issue? Does a referendum pose a threat? I think not. That is not to say we should take it for granted. The Convention under the chairmanship of Sir Emyr Jones Parry has a very important role to play in creating a debate and in persuading a wider cross-section of the people of Wales to engage in it. It is this debate which will lay the ground for a successful outcome to the referendum. The decision of the people must be made on an informed basis. The Convention can provide that basis.

29. Full legislative responsibility would bring about consistency between the constitutions of Scotland, N Ireland and Wales. It would make for simpler, better and more effective governance not only of Wales but of the United Kingdom. The present settlement demeans Wales. The case for a better settlement is a just one. For these various reasons, I am convinced that the prediction that Wales will have a further devolution settlement in the near future and that it will confer full legislative powers on the Assembly is a sound prediction.

### **Devolution by evolution**

30. The last point I should like to address in considering the case for a third settlement is whether devolution can now be left to evolve without the need for a further devolution settlement. It is true that as a result of the devolution settlement of 1998, some non devolved functions affecting Wales that had hitherto been exercised only in England came to be exercised in Wales. This has been especially so in the field of administration of justice as is demonstrated by the examples which I shall provide in the second part of this address. It should not be thought, however, that the present settlement could develop through an evolutionary process not involving primary legislation from Westminster into 'real devolution' or that somehow this evolutionary process could lead eventually to jurisdictional devolution. Plainly, it could not. Such evolutionary changes as have occurred were described by the Richard Commission as "ad hoc, piecemeal development, on a case by case basis, not founded upon any agreed general policy or informed by any clear set of devolutionary principles" (Report at chapter 14 para 17).

### **Legal Wales**

31. I come then to the other limb of the title to the address, namely Legal Wales. What might be the impact of real devolution on Legal Wales including the administration of justice in Wales? Again, I begin by asking - where have we reached so far? Significant changes to the legal landscape have already taken place in the wake of the present devolution settlements.

### **Administration of Justice**

32. Although the administration of justice is not a devolved responsibility, it too has been the subject of significant developments in Wales in the wake of devolution.

33. The introduction to the Wales & Chester Circuit directory, published in the year 2000 contains the following passage,

“Between AD 48 and 79, the Roman armies conducted several campaigns into Wales, constructing roads, forts and settlements along the way. Chester emerged as the centre of authority in North Wales ... a position which it has preserved ever since”

34. In 2007, that position changed when the Government brought the annexation of North Wales to Chester for the purpose of administration of justice to an end by establishing Her Majesty’s Court Services Wales (HMCS Wales). The administration of justice in Wales is now administered on an all Wales basis. The title ‘HMCS Wales’ acknowledged Wales’ status as a nation. Until 2007, the courts of Cheshire, including, Chester were part of this circuit. They are now part of the Northern Circuit.

35. This has not been the only change to Wales’s legal landscape since 1998. We now have a Mercantile Court for Wales. The Court of Appeal, Civil and Criminal Division, now sit here regularly; most judicial review cases involving decisions of Welsh public authorities including the National Assembly for Wales are heard in Wales; it is likely that there will soon be an Administrative Court for Wales sitting here permanently; The Employment Appeals Tribunal now sits regularly in Wales. We already had a Chancery Court by 1998.

36. As recently as last month, there was established the Association of the Judges of Wales which will be an association of District Judges, and judges of the Circuit Bench, High Court, Court of Appeal and House of Lords and the Supreme Court. And in April there was established the Wales Bench Chairmen’s Forum.

37. When opening the Mercantile Court, Lord Bingham as Lord Chief Justice of England and Wales, said

“This court represents the long overdue recognition of the need for the Principality of Wales to have its own indigenous institutions operating locally and meeting the needs of its citizens here.”

38. Another development was the creation of ‘Legal Wales’ or ‘Cymru’r Gyfraith’ as it is called in Welsh. The Government of Wales Act 1998 had ushered in significant constitutional changes and it was of the highest importance that Wales’ various and separate ‘legal constituencies’ should come together to form a legal civic society to engage with the new order and that is what Legal Wales is, a new civic society. It has a representative committee which was established in 2000. Its members are drawn from every constituency of law in Wales including barristers, solicitors, judges, the magistracy, the Law Schools of the universities of Wales, lawyers in Local Government, lawyers in the service of the Government of the National Assembly for Wales, lawyers on the legislative side of the Assembly, the Institute of Legal Executives, the Tribunals and the specialist law associations of Wales. The Legal Wales Standing Committee speaks for that civic community. It is the forum for collecting the views of the community and for representing those views; it provides from a Welsh perspective a response to consultation documents; it promotes debate and discussion between members of that broad legal community about the development of the law in Wales and about Wales’ changing constitution; it promotes change and it is there to support and to create a relationship between that community and the National Assembly for Wales. Our collective experience is very wide ranging from the practice of the law to the teaching of law, from advocacy to adjudication of legal disputes and the conduct of public inquiries.

39. Those of you who are judges or solicitors will have discovered for yourselves that the strength of the Bar in Wales is very considerable in terms of breadth and depth of experience especially in crime, family and common law fields. Specialization too is strong. It has been so since the early seventies but is now in an expansive phase. It is developing,

hand in hand, with the specialist courts which have been established in Wales in recent years and with the National Assembly's expanding responsibilities. With specialization and devolution of government came opportunities and challenges. The legal profession in Wales is up to the challenge and has seized the opportunities. Since we have had devolution, there have been established three specialist associations – the Wales Public Law and Human Rights Association, the Wales Commercial Law Association and the Wales Personal Injuries Law Association and a fourth is about to be formed namely the Wales Parliamentary Bar Association of which Graham Walters is to be Chairman, Keith Bush the Treasurer and Emyr Jones the Secretary. It was born out of the fact that those three members of the circuit including myself have been presenting a matter to the Assembly's equivalent of a Parliamentary Committee during the past couple of months. A new need creating a new opportunity.

40. These developments were a spontaneous adjustment of the legal profession and the machinery of justice in Wales in response to devolution. They provide further evidence in support of Professor Tim Jones' description of Wales as an "emerging jurisdiction", a description which exudes energy and promise. It catches the notion of birth and youth most vividly.

## Wales Law

41. What are the other signs of this emerging jurisdiction? Although the National Assembly for Wales was not given primary law-making powers by the 1998 Act, as a result of the volume of secondary legislation made by the Assembly and of the number of Wales only legislation from Westminster, by the time Wales had its second devolution settlement in 2006, the law in Wales was already significantly different in a number of respects from what it was in England. The 2006 Act increased the legislative competence of the Assembly by devolving to it, albeit by a very complicated process, some primary legislative competence through Assembly measures. This is bound to increase the rate at which our laws become different from those of England. Imagine therefore the rate of change in our laws if the Assembly

were to have primary legislative competence on the scale enjoyed by the Parliament of Scotland and the Assembly of Northern Ireland. The devolution of primary legislative powers to Wales on that scale would have a major impact not only as to the content of our laws and their differences from the laws of other parts of the United Kingdom but also for the machinery of justice in Wales – it would have an enormous effect on all aspects of Legal Wales.

42. Is full legislative competence an end in itself or should it be part of a more comprehensive constitutional settlement? For example, should it comprise the Civil Service in Wales? What about the police service and the prosecution service and the administration of justice? What about the position of the Counsel General? Should his functions be more clearly defined to give him a constitutional role? Should that office be part of Government or independent of it? These are all elements of the constitution. Are they not inseparable parts of a settlement which confers full legislative responsibility? Should they be part of the next devolution settlement? These are questions which need to be addressed as part of the wider debate. My concerns are that as there is very little experience of the administration of justice within the Welsh Assembly Government or amongst the members of the All Wales Convention that there might not be effective discussion about some of those wider aspects of real devolution. This is all the more reason why these questions need to be addressed publicly on occasions of this kind.

43. If there is a sound case for a devolution settlement which confers full legislative responsibility, is there not also a sound case for jurisdictional devolution as well? What I mean by jurisdictional devolution is a devolution settlement which includes rather than excludes responsibility for the administration of justice. The aspects of administration of justice to which I refer are all branches of the High Court, the Court of Appeal Civil Division, the Court of Appeal Criminal Division, the Prosecution Service, all Tribunals and the Magistrates Courts Service. I also include in the expression “administration of justice” an all-Wales police service responsible to the

Assembly. Responsibility for the administration of justice includes the authority to appoint judges subject, however, to the supervision of an independent judicial appointments commission.

44. What are the arguments for devolving the administration of justice? It should not be thought that the re-emergence of Wales' distinct identity in matters of law and the administration of justice is to be attributed entirely to devolution. The process of change began much earlier. It has been taking place albeit very gradually for about 63 years. Some may quarrel with that figure of 63 years and therefore I should explain that I take it from the passing of the Welsh Courts Act, 1942. That Act might have been the smallest possible step forward but it began a process of change to which momentum was added by the Welsh Language Acts of 1967 and 1993 and the pace of which quickened following the passing of the Government of Wales Act 1998. Since 1942, therefore, the scope for doing it differently in the practice and the teaching of the law in Wales has increased. Once we come to understand the significance of Legal Wales and the significance of the fact that Wales is an emerging jurisdiction, once we acknowledge these significant developments, we see immediately the case for not excepting jurisdictional devolution from the next settlement. But these are the historical arguments.

45. What are the constitutional arguments? In my opinion, the principal argument is that including responsibility for the administration of justice as part of a devolution settlement which devolves full law making powers makes good constitutional sense if the institution which is responsible for making the laws were also to have the responsibility and the accountability for their administration. Is there an Assembly or Parliament enjoying full legislative competence which does not also have responsibility for the administration of justice within its territorial jurisdiction? Secondly, it would be internally logical, consistent and coherent. Thirdly, it would make for consistency between the constitutions of Scotland, Northern Ireland and Wales and fourthly it would bring justice closer to the people for whom the laws were made.

**Conclusion**

46. To devolve the administration of justice in Wales to the National Assembly would be a radical change in the established model by which justice is administered in England and Wales. The question is should that model be changed in the event of the National Assembly assuming full legislative powers in the next devolution settlement. The background against which I raise that question is provided by the changes which have already occurred to the British constitution, by the changes which are occurring to it and by the changes which are about to occur. These are exciting challenges. These are exciting opportunities.

Winston Roddick  
9 Park Place  
Cardiff

28 November 2008

**END**



Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



## **Constitutional and Legislative Affairs Committee**

**Report: CLA(4)-12-12 : 28 May 2012**

**The Committee reports to the Assembly as follows:**

**Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

### **Negative Resolution Instruments**

**CLA145 – The Velindre National Health Service Trust Shared Services Committee (Wales) Regulations 2012**

**Procedure:** Negative.

**Date made:** 8 May 2012.

**Date laid:** 11 May 2012.

**Coming in to force date:** 1 June 2012

**CLA146 – The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) (Amendment) Regulations 2012**

**Procedure:** Negative.

**Date made:** 9 May 2012.

**Date laid:** 11 May 2012.

**Coming into force date:** 2 June 2012

**CLA148 – The Tobacco Advertising and Promotion (Display) (Wales) Regulations 2012**

**Procedure:** Negative.

**Date made:** 14 May 2012.

**Date laid:** 16 May 2012.

**Coming into force date:** in accordance with regulation 1(1)

**CLA149 – The Tobacco Advertising and Promotion (Specialist Tobacconists) (Wales) Regulations 2012**

**Procedure:** Negative.

**Date made:** 14 May 2012.

**Date laid:** 16 May 2012.

**Coming into force date:** 6 April 2015

### **Affirmative Resolution Instruments**

## **CLA147 – The Tobacco Advertising and Promotion (Display of Prices) (Wales) Regulations 2012**

**Procedure:** Affirmative.

**Date made:** Not stated.

**Date laid:** Not stated.

**Coming into force date:** in accordance with regulation 1(1)

### **Other Legislation**

## **CLA150 – Statutory Guidance to Risk Management Authorities – Flood and Water Management Act 2010**

The Committee considered Statutory Guidance to Risk Management Authorities – Flood and Water Management Act 2010. The Committee took into account that although the Guidance is largely concerned with practical arrangements, the procedure applicable to it is distinctly legislative in character. Therefore, the Committee decided that it would scrutinise guidance to which such a procedure applies. Nevertheless, the Committee agreed that the only matter worthy of report on this occasion was the procedure applicable to the Guidance. The Committee's report on this Guidance is attached as Annex 1 to this Report.

## **Instruments that raise reporting issues under Standing Order 21.2 or 21.3**

### **Negative Resolution Instruments**

None

### **Affirmative Resolution Instruments**

None

### **Other Business**

## **CLA CM4 – Consent Memorandum for The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012**

The Committee considered CLA CM4 – Consent Memorandum for The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012. Although it was observed that it would be clearer if the abolition of the Public Guardian Board and the HM Inspectorate of Court Administration were achieved through the making of two different orders, the Committee had identified no reason why consent should be withheld and recommended that it was content with the current Order.

## **Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction**

The Committee took oral evidence from Elfyn Llwyd MP, Group Leader, Plaid Cymru, House of Commons. Mr Llwyd agreed to seek to provide additional statistical information in respect of the number of administrative law cases heard in Wales since 2010, when a specific office was established in Cardiff to deal with the Administrative Court claims.

## **School Standards and Organisation (Wales) Bill**

The Committee took oral evidence from Leighton Andrews AM, Minister for Education and Skills, Welsh Government in respect of the School Standards and Organisation (Wales) Bill. The Minister was accompanied by the following Welsh Government officials: Anthony Jordan, Head of School Governance and Organisation, Amina Rix, Lawyer, Simon Morea, Lawyer, Ceri Planchant, Lawyer, Welsh Government. The Minister has promised to provide additional information in respect of:

1. The Draft of the School Organisation Code at the stage 2 proceedings
2. Details of where the powers contained in section 58, section 67, section 82 and para. 34(1)(b) of Schedule 5 are currently to be found and, specifically, whether, and if so when these powers have been used.
3. A table of derivations setting out the sources of the legislation proposed to be consolidated in the present Bill.

## **Food Hygiene Rating (Wales) Bill**

The Committee considered the Food Hygiene Rating (Wales) Bill laid before the Assembly 28 May 2012 and decided to invite the Minister for Health and Social Services Lesley Griffiths AM to give evidence.

## **Resolution to Meet in Private**

In accordance with Standing Orders 17.42(vi) and (ix) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction, the evidence on the School Standards and Organisation (Wales) Bill and the Welsh Government's Response to the Inquiry into Powers granted to Welsh Ministers in UK Laws.

**David Melding AM**  
Chair, Constitutional and Legislative Affairs Committee

**28 May 2012**

## Annex 1

### Constitutional and Legislative Affairs Committee

(CLA(4)-12-12)

CLA150

### Constitutional and Legislative Affairs Committee Report

#### **Title: Statutory Guidance to Risk Management Authorities – Flood and Water Management Act 2010**

1. “The purpose of the guidance is to provide advice to enable Risk Management Authorities to work together constructively to manage flood and coastal erosion risk. It also aims to ensure that when information is requested, it is done in an appropriate way.”
2. On the 18<sup>th</sup> May 2012, the Statutory Guidance was laid before the National Assembly together with a brief Explanatory Note. Statutory guidance may (or may not) constitute subordinate legislation. The usual test is whether or not the guidance is legislative in character. The persons (including public bodies) to whom the guidance is directed are required to have regard to such guidance. In practice this means that they must have a very good reason for not following that guidance. That reason must be capable of justifying the course of action adopted in any judicial review proceedings.
3. The Guidance under consideration is largely concerned with practical arrangements, and includes information such as contact details of the relevant authorities. It might therefore be argued that it is not legislative in character. However, the procedure applicable to it is distinctly legislative in character.

#### **Enabling power**

4. The enabling power is section 8 of the Flood and Water Management Act 2010 (“the Act”), subsection (1) of which provides that –

*“The Welsh Ministers must develop, maintain and apply a strategy for flood and coastal erosion risk management in Wales (a “national flood and coastal erosion risk management strategy”).”*

It is in that context that subsection (6) of that section provides that –

*“The Welsh Ministers may, in particular, issue guidance about*

*how Welsh risk management authorities are to comply with the duties under sections 13(1) and 14.”*

5. Section 13(1) requires relevant authorities to “*co-operate with other relevant authorities in the exercise of their flood and coastal erosion risk management functions.*”

Section 14 empowers Welsh Ministers, the Environment Agency and lead local flood authorities to request a person to provide information in connection with their flood and coastal erosion risk management functions.

The guidance applies to the duty to co-operate and the requesting of information.

### **Procedure**

6. What makes this guidance unusual is the procedure applicable to it. That procedure is set out in section 8(7) as follows –

*“The Welsh Ministers must lay any guidance in draft before the National Assembly for Wales; and it may not be issued if during the period of 40 days beginning with the date of laying (ignoring any periods for which the National Assembly is dissolved or is in recess for more than 4 days) the National Assembly resolves that it should not be issued (in that form).”*

7. Statutory guidance is not usually subject to an Assembly procedure, but in this case there is a variation on the negative procedure. As in negative procedure cases, the guidance can be made and come into force unless the Assembly resolves to the contrary within a specified period. However, in the case of statutory instruments made under a negative procedure, the instruments are normally made before they are laid. In this case, the guidance is laid in draft, and may not be made until the end of the specified period. The procedure therefore provides a greater measure of scrutiny than a standard negative procedure.

### **Scrutiny**

8. If the guidance is therefore regarded as subordinate legislation not made by statutory instrument, the Constitutional and Legislative Affairs Committee may report on it under Standing Order 21.7(i). Even if it is not so regarded, the Committee may still report on it as being a legislative matter of a general nature under Standing Order 21.7(v). It would be such a matter by virtue of the fact that similar procedures are proposed in the School Standards and Organisation (Wales) Bill (“the Bill”) currently before the Assembly. Section 33 of the Bill gives the power to Welsh Ministers to issue school improvement guidance but subject to a scrutiny procedure laid out in section 34 of the Bill. Similarly section 39 of the Bill sets out a procedure for Welsh Ministers

to issue a Statutory Code on school organisation. The present case therefore provided an opportunity for the Committee to consider and express a view on whether this procedure is appropriate, and whether it is, by virtue of that procedure, to be regarded as subordinate legislation for the purposes of the Assembly and its Standing Orders.

### **Technical Scrutiny**

9. For the record, no technical points are identified that would have been reported under Standing Order 21.2 if this had been a statutory instrument.

### **Merits Scrutiny**

10. Similarly, no merits points are identified that would have been reported under Standing Order 21.3 if this had been a statutory instrument.

This matter is drawn to the attention of the Assembly under Standing Orders 21.7 because it raises legislative and procedural issues likely to be of interest to the Assembly.

**David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**28 May 2012**