

**National Assembly for Wales**  
Constitutional and Legislative  
Affairs Committee

## Financial Education and Inclusion (Wales) Bill

November 2014



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

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Constitutional and Legislative  
Affairs Committee

## Financial Education and Inclusion (Wales) Bill

November 2014



Cynulliad  
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## **The Constitutional and Legislative Affairs Committee**

The Committee was established on 15 June 2011 with a remit to carry out the functions of the responsible committee set out in Standing Orders 21.2 and 21.3 and to consider any other legislative matter, other than the functions required by Standing Order 26, referred to it by the Business Committee.

### **Current Committee membership**



**David Melding (Chair)**  
Deputy Presiding Officer  
Welsh Conservatives  
South Wales Central



**Suzy Davies**  
Welsh Conservatives  
South Wales West



**Alun Davies**  
Welsh Labour  
Blaenau Gwent



**William Powell**  
Welsh Liberal Democrats  
Mid and West Wales



**Simon Thomas**  
Plaid Cymru  
Mid and West Wales

# Contents

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<b>1. Introduction</b> .....	<b>5</b>
The Committee’s remit .....	5
Introduction and consideration of the Bill .....	5
<b>2. Background</b> .....	<b>7</b>
Purpose of the Bill .....	7
<b>3. Legislative Competence</b> .....	<b>8</b>
Explanatory Memorandum .....	8
Evidence from the Minister .....	8
Evidence from the Member in Charge.....	9
Our view .....	10
<b>4. General observations</b> .....	<b>11</b>
Evidence from the Minister .....	11
Evidence from the Member in charge .....	13
Our view .....	15
<b>5. Powers to make subordinate legislation – observations on specific powers</b> .....	<b>16</b>
Background.....	16
Section 9 – Content of Strategy; Section 10 - Guidance .....	16
Evidence from the Minister .....	16
Evidence from the Member in Charge.....	17
Our view .....	18
Section 14 – Commencement.....	18
Evidence from the Minister .....	19
Evidence from the Member in Charge.....	20
Our view .....	21
<b>Annexe 1: Letter from Lesley Griffiths AM, Minister for Communities and Tackling Poverty, 16 September 2014</b> .....	<b>22</b>

<b>Annexe 2: Letter from Bethan Jenkins AM, Member in Charge, 25 September 2014.....</b>	<b>29</b>
<b>Annexe 3: Letter from Lesley Griffiths AM, Minister for Communities and Tackling Poverty, 16 October 2014.....</b>	<b>33</b>

# 1. Introduction

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## The Committee's remit

1. The remit of the Constitutional and Legislative Affairs Committee (“the Committee”) is to carry out the functions of the responsible committee set out in Standing Order 21 and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

## Introduction and consideration of the Bill

4. On 15 July 2014, Bethan Jenkins AM introduced the Financial Education and Inclusion (Wales) Bill (‘the Bill’) and laid the accompanying Explanatory Memorandum.<sup>1</sup>
5. The National Assembly’s Business Committee referred the Bill to the Children, Young People and Education Committee for consideration setting a deadline of 14 November 2014 to report on its general principles.
6. The Constitutional and Legislative Affairs Committee considered the Bill at its meetings on 22 September 2014, taking evidence from the Member in charge, Bethan Jenkins AM, and on 6 October 2014, taking evidence from Lesley Griffiths AM, Minister for Communities and Tackling Poverty.
7. The Minister provided written evidence to the Committee on 16 September 2014; this is available at Annexe 1.

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<sup>1</sup> Bethan Jenkins AM, *Financial Education and Inclusion (Wales) Bill, Explanatory Memorandum*, July 2014

8. The Committee also received a letter from the Member in Charge, Bethan Jenkins AM, following the evidence session on 22 September 2014, this is available at Annexe 2. A further letter from the Minister, on 16 October 2014 is available at Annexe 3.

## 2. Background

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### *Purpose of the Bill*

9. The Explanatory Memorandum states that:

“The Bill seeks to address the very timely and important issue of equipping people in Wales with the financial competency they need to manage their financial circumstances effectively. In doing so, the proposals will help to increase prosperity in Wales by improving the financial education and capability of its citizens.”<sup>2</sup>

10. It further explains that the Bill:

- “provides a legislative footing for financial education in Wales by making it a statutory part of the school curriculum.
- will require local authorities to adopt a financial inclusion strategy outlining what steps they intend to take to promote the financial inclusion of residents in their area
- places requirements on local authorities in respect of providing advice to citizens about financial services and financial management.”<sup>3</sup>

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<sup>2</sup> Explanatory Memorandum, paragraphs 13

<sup>3</sup> Explanatory Memorandum, paragraphs 4-6

### 3. Legislative Competence

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#### *Explanatory Memorandum*

11. The Explanatory Memorandum states:

“The legislative competence enabling the National Assembly for Wales to make an Act in relation to financial education and inclusion is contained in Part 1 of Schedule 7 to the Government of Wales Act 2006.

In particular, subject 5 (education and training) is directly relevant as is subject 12 (local government) which governs the ‘powers and duties of local authorities’. Heading 15 (social welfare) governs the ‘protection and well-being of children’ as well as the ‘care of children’ and ‘vulnerable persons’.”<sup>4</sup>

#### *Evidence from the Minister*

12. In her letter to the Committee of 16 September, the Minister, referring to section 12, which provides information about sources of advice, said:

“The provisions of the Bill, particularly as drafted, do need careful consideration to determine whether they might potentially fall with the following express exception in Schedule 7 to the Government of Wales Act 2006, namely “Financial services, including investment business, banking and deposit-taking, collective insurance schemes and insurance.”<sup>5</sup>

13. When questioned she told us:

“It is not my role to determine whether or not the Bill is within competence. I am aware that the Presiding Officer has made a statement to the effect that the Bill is within competence. Members will have noted that, in my letter to this committee, I raised the matter that the provisions of the Bill would need very careful consideration to determine whether they might potentially fall within the express exception in the Government of Wales Act 2006 of financial services, including investment,

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<sup>4</sup> Explanatory Memorandum, paragraphs 10 and 11

<sup>5</sup> Annexe 1, Letter from the Minister to the Chair of the Constitutional and Legislative Affairs Committee, 16 September 2014

business banking and deposit taking, collective insurance schemes and insurers, because I noted that there was no analysis of that in the explanatory memorandum.”<sup>6</sup>

14. The Minister said that she had not had any discussions with the Member in Charge regarding competence.<sup>7</sup>

***Evidence from the Member in Charge***

15. When asked whether the Bill was within competence Bethan Jenkins AM said:

“We have had advice from many quarters, but obviously this has been accepted by the Presiding Officer as being within competence and so we have exercised all manners of making sure that it is within competence.”<sup>8</sup>

16. When asked about the Minister’s views regarding competence specifically in relation to section 12, Bethan Jenkins AM said:

“As you will see from the explanatory memorandum, I was looking at issues such as cold-calling zones and many councils, such as Swansea, had come to me saying that they wanted to limit the amount of betting shops on their street corners. We took advice then from the drafting lawyer. Obviously, we could not delve into those areas, and that is why... we wanted to put within the financial inclusion strategies some of those core elements, if only to educate people about what they could do and to empower them to be able to choose the right resources or the right educational tools, because we do not have powers over the financial sector in Wales.”<sup>9</sup>

17. She went on to add:

“... with regard to competence, the advice that I have had is that this provision relates to the powers and the duties of local authorities, and their members’ officers. So, when we talk about financial management, that means the use of financial services, and managing debt—it would not touch on the

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<sup>6</sup> Constitutional and Legislative Affairs (“CLA”) Committee, *Record of Proceedings* paragraph [10], 6 October 2014

<sup>7</sup> CLA Committee, RoP paragraph [16], 6 October 2014

<sup>8</sup> CLA Committee, RoP paragraph [8], 22 September 2014

<sup>9</sup> CLA Committee, RoP paragraph [10], 22 September 2014

financial sector in any way. So, that is the advice that we have had.”<sup>10</sup>

18. In her subsequent letter to the Committee, Bethan Jenkins AM confirmed that:

“... I am advised and satisfied that the power set out in Section 12 (2) relates to the powers and duties of local authorities and their members and officials and is therefore within competence in accordance with Heading 12 in Schedule 7 to GOWA. I emphasise that this is a power. No local authority will be compelled to exercise this power.”<sup>11</sup>

### ***Our view***

19. We note that the UK Government has not raised any issues with the Member in charge or Minister regarding the National Assembly’s ability to make this legislation under Schedule 7 to the *Government of Wales Act 2006*.

20. We note the further clarification from the Member in Charge about the intention of the provision in section 12(2). However, we recommend that the Member in Charge reviews the provision to determine whether an amendment could provide clarity to the meaning and extent of section 12(2).

21. As we have previously reported in relation to other Bills, there would appear to be a lack of clarity around the mechanism by which a backbench Member in charge of a Bill should seek the views of the UK Government on matters of legislative competence, should that be necessary. We may therefore consider it as part of our inquiry into Making Laws in the Fourth Assembly.

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<sup>10</sup> CLA Committee, RoP paragraph [12], 22 September 2014

<sup>11</sup> Annexe 2, Letter from Bethan Jenkins AM to the Chair of the Constitutional and Legislative Affairs Committee, 25 September 2014

## 4. General observations

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### *Evidence from the Minister*

22. In her letter to the Committee, the Minister stated that whilst she supported the aim of the Bill she did not consider that the provisions will deliver anything additional and could result in additional bureaucracy. She also stated that “the proposals in the Bill could be delivered using existing legislation”.<sup>12</sup>

23. The Minister added that the Well-being of Future Generations (Wales) Bill seeks to make provision in relation to local well-being plans prepared by public service boards and that these could be used by local authorities to promote financial inclusion.<sup>13</sup>

24. When questioned on this by the Committee the Minister said:

“... From a financial education point of view, that is already being delivered using existing powers, and local authorities already promote financial inclusion, both for residents and for their employees... My main concern, I think, around financial management and inclusion is that we will put unnecessary burdens on local authorities and create more bureaucracy at a time, obviously, when we are trying not to do that. I also think that, in relation to financial inclusion, not everything has a legislative solution.

...In relation to financial education... It is very clear; we have the literacy and numeracy framework, which has only been in place for about a year, so we need to see how that is rolling out. We have also had financial education on the statutory curriculum since 2008. It is also in the frameworks for personal and social education. So, I think that we are doing a great deal already.”<sup>14</sup>

25. The Minister elaborated on existing powers and those proposed in the Well-being of Future Generations Bill:

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<sup>12</sup> Annexe 1, Letter from the Minister to the Chair of the Constitutional and Legislative Affairs Committee, 16 September 2014

<sup>13</sup> Ibid

<sup>14</sup> CLA Committee, RoP paragraph [20], 6 October 2014

“As I have already stated, a local authority has very wide-ranging well-being powers, so they could be used to promote financial inclusion, and we have said that we could issue guidance around financial inclusion. Under the provisions proposed in the Future Generations Bill, there will be public service boards. They could be used to assess the well-being of the area and create local well-being plans. I think that that is where the assessment should be done as to what needs to be brought forward in relation to financial inclusion. I think that that is where the guidance could be issued. I think that we could do it under public service boards.”<sup>15</sup>

26. Responding to questioning that the provisions in the Bill will place duties on local authorities and not just use existing powers, the Minister said:

“...for what Bethan is trying to do in the Bill, I think that the legislation is already there and I do not think that any new legislation is needed.”<sup>16</sup>

27. An official accompanying the Minister added:

“...In terms of duties, they are not currently in the legislation, but, as the Minister has already said, in relation to the Well-being of Future Generations (Wales) Bill, they could be incorporated into the local well-being plans and the strategic needs assessment that public services boards would need to carry out.”<sup>17</sup>

28. At a later evidence session with the Member in Charge of the Well-being of Future Generations Bill, Carl Sargeant AM, Minister for Natural Resources, we asked if the provisions within that Bill could be used to address the aims of this Bill in terms of financial inclusion. The Minister said:

“...Of course, while the direct answer on Bethan Jenkins’s Bill is ‘no’, the consequences are possibly a ‘yes’. The well-being of an individual, and the well-being and sustainable development of a community, surely have to encompass a prosperous Wales. That is just one of the goals and aspirations. If the public

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<sup>15</sup> CLA Committee, RoP paragraph [27], 6 October 2014

<sup>16</sup> CLA Committee, RoP paragraph [32], 6 October 2014

<sup>17</sup> CLA Committee, RoP paragraph [33], 6 October 2014

service boards believe that the educational attainment or knowledge of an individual needs to be enhanced on that basis, of course, it could possibly be one of the indicators or set in guidance around that, but we would not seek to be specific with Bethan Jenkins's objectives in terms of her Bill process, to include it in the architecture of this Bill."<sup>18</sup>

29. An official accompanying the Minister for Natural Resources added:

"...we would expect financial inclusion to be a part of any assessment of well-being in an area. So, we would expect public service boards to be taking in the financial inclusion of communities...We would certainly want to make it clear in the guidance to the Bill that financial inclusion is an important part of any such assessment."<sup>19</sup>

***Evidence from the Member in charge***

30. In considering the need for legislation, Bethan Jenkins AM told us:

"I think that what we would say is that it is an important core life skill, so that is the reason why it needs to be in primary legislation. It also needs to be in primary legislation because we do not want it just to be at a whim of a Government, in terms of when they decide that something is in trend or is not in trend. At the moment, the Programme for International Student Assessment is the talk of the day, but we do not want it just to be about the here and now—we want to enshrine financial education and inclusion for future generations."<sup>20</sup>

31. She went on to say:

"...Yes, there are different ways of doing it. Yes, different countries legislate in different ways. However, this would be showing the way. As opposed to always looking at other countries and thinking, 'Where can we pick up on what they are doing?', perhaps Wales could be the first in the world in this

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<sup>18</sup> CLA Committee, RoP paragraph [163], 6 October 2014

<sup>19</sup> CLA Committee, RoP paragraph [164], 6 October 2014

<sup>20</sup> CLA Committee, RoP paragraph [35], 22 September 2014

regard. That is what I would say, in terms of why we need the legislation.”<sup>21</sup>

32. On the question of whether there are existing powers that could deliver the aims of the Bill, the Member in charge said

“At the moment, we are seeing wide variation, not only in the local authorities and their financial inclusion strategies, or lack thereof—I think that only one has a strategy—but on the education side, where there is huge variation in how it is delivered at the moment, from some schools having 260 hours in financial education to others having two hours. Yes, you reference the Local Government Act 2000, but if that were working, and if the Minister says that that is the vehicle for it, then why is the Minister not using those powers now?

... we have not had an update since 2010 on the Government’s financial inclusion strategy. There is no way of knowing how local authorities are acting, apart from the consultation that we had. Unfortunately, bodies like the WLGA did not see fit to respond. So, if it is not a priority now under the current system, why should I rely on the Government to say that it will change in future? I think that it needs to have primary legislation, because we cannot just assume that things will change under ministerial guidance or the current Act, which is very broad. It does not mention financial inclusion in any way; it mentions well-being and so forth, but it does not mention financial inclusion.”<sup>22</sup>

33. When questioned by the Committee on the scope to deliver the aims of the Bill through guidance under existing legislation, Bethan Jenkins AM said:

“...we are making sure that it is there, that it is strong, that it is robust and that it is locked in for future generations. At the moment—for example, on the educational front—any changes are made through subordinate legislation. While there is some element of scrutiny via the lawyers on committee, not all of that would be coming to committee for you, as Assembly Members, to see. At the moment, the Government is not

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<sup>21</sup> CLA Committee, RoP paragraph [36], 22 September 2014

<sup>22</sup> CLA Committee, RoP paragraphs [38 and 39], 22 September 2014

making any moves to make this a priority. It says that it could issue guidance and do things in this area, but it is not. Primary legislation will make sure that it happens and that it has to happen. The Bill has checks and balances in place to make sure that it does.

...We need people to understand laws, and I think that this law would provide that very simple way for people to understand what rights they have in terms of accessing financial education and inclusion.”<sup>23</sup>

### ***Our view***

34. It is clear from the evidence that there is a difference in view between the Minister and Member in charge regarding the need for this legislation.

35. As we have previously reported<sup>24</sup> the need for legislation is a relevant consideration for this Committee particularly in the context of acquiring knowledge and understanding about the body of law that is developing to be a Welsh Statute Book. It is equally important for this Committee to consider whether provisions are best delivered by means of law rather than, for example, through guidance.

36. We have also previously noted that we believe that it is perfectly legitimate for a Bill to be brought forward that creates new duties because existing discretionary powers are not being used or exercised.

37. We acknowledge the evidence from the Minister that the Well-being of Future Generations Bill could provide that financial inclusion be a consideration in guidance through public service boards. However, we note the Member in charge’s intention to ensure that financial inclusion is delivered through duties on local authorities provided for in this Bill. We do not consider that the aim of the Bill could be addressed fully in another piece of legislation.

38. We are content with the balance between what is on the face of the Bill and what is left to subordinate legislation.

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<sup>23</sup> CLA Committee, RoP paragraphs [41 and 42], 22 September 2014

<sup>24</sup> Constitutional and Legislative Affairs Committee, *Report on the Holiday Caravan Sites (Wales) Bill*, October 2014

## **5. Powers to make subordinate legislation – observations on specific powers**

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### ***Background***

39. The Bill contains two order-making powers (section 9(2) and (14(1)), a power to give directions (section 6(2)) and a power to issue guidance (section 10(1)). Page 51 of the Explanatory Memorandum describes the order-making powers in more detail.

### ***Section 9 – Content of Strategy; Section 10 – Guidance***

40. Section 9(1) provides a list of the factors which must be set out in a financial inclusion strategy. The list may be amended, by order, by the Welsh Ministers. An order will only come into force if it has been approved by the National Assembly via the affirmative procedure.

41. Section 10 states that the Welsh Ministers may issue guidance about financial inclusion strategies. Local authorities must have regard to any guidance issued. Any guidance issued will not be subject to any further Assembly scrutiny but section 10(2) only requires local authorities to give due regard to it. This allows a degree of flexibility to local authorities to deviate from any guidance if they have specific reasons relating to their locality for doing so.

### ***Evidence from the Minister***

42. In her letter to the Committee the Minister explained that she felt the provision in section 9(2) was too wide.

“I would be interested in understanding how the Member in Charge envisages this power should be used and in what circumstances.”<sup>25</sup>

43. She also stated in her letter that the Welsh Ministers already have the power to promote financial inclusion.<sup>26</sup> Therefore she was of the view that the provision in the Bill was unnecessary.

44. When questioned by the Committee, the Minister stated that her concerns were over the drafting style of section 9(2).<sup>27</sup>

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<sup>25</sup> Annexe 1, Letter from the Minister to the Chair of the Constitutional and Legislative Affairs Committee, 16 September 2014

<sup>26</sup> Ibid

45. An official accompanying the Minister added:

“We have no objection to that power being there; we think it is a sensible idea that we can update the things that should be included in a strategy as time progresses and as important things in financial management change. It is just that we would prefer to see the drafting explicitly say that the power is to be used to amend the things that could be included in the strategy, whereas, at the moment, it is just drafted a bit wider. As we say, however, that is really just a matter of drafting style.”<sup>28</sup>

46. Expanding on her views that section 10 was unnecessary, the Minister said:

“The comment that you referred to about section 10 being unnecessary has to be taken in the context of the whole Bill, for the reasons that I have already explained. If the Bill progresses as it is currently drafted and there is a duty on the local authority to have a financial inclusion strategy, then, in my opinion, it is appropriate to have a guidance-making power relating to that strategy.”<sup>29</sup>

### ***Evidence from the Member in Charge***

47. Commenting on the provision in section 10 for the Welsh Ministers to issue guidance, Bethan Jenkins AM said:

“We are not saying that they have to issue guidance, as it depends whether the local authority seeks that guidance, and that is why we wrote it in that way. Also, we want to make sure that the local authorities concerned would be able to seek guidance if they so wished, and so I would argue that it would not be a problem.”<sup>30</sup>

48. In her follow-up letter to the Committee, in relation to section 9 and the provision for a local authority strategy, Bethan Jenkins AM

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<sup>27</sup> CLA Committee, RoP paragraph [48], 6 October 2014

<sup>28</sup> CLA Committee, RoP paragraph [49], 6 October 2014

<sup>29</sup> CLA Committee, RoP paragraph [54], 6 October 2014

<sup>30</sup> CLA Committee, RoP paragraph [49], 22 September 2014

explained that she wanted to “give Ministers the flexibility to update section 9(1), but with full Assembly scrutiny.”<sup>31</sup>

49. The Member in charge acknowledged that there are existing powers for Welsh Ministers to issue guidance in relation to well-being but added:

“... I would make the point that the 2000 Act does not specifically refer to financial inclusion. So I want to make it crystal clear, in legislation, that Ministers may issue guidance in the area.”<sup>32</sup>

### ***Our view***

50. We note the explanation given by the Member in charge for the use of each procedure and are content with the affirmative procedure applied in respect of the order-making provision in section 9(2).

### ***Section 14 – Commencement***

51. Section 14 gives the Welsh Ministers power to commence the Act by order. The Welsh Ministers may commence different provisions on different days and may also make incidental, consequential or transitional provisions.

52. There is no Assembly procedure for an order which simply commences provisions of the Act. However, any commencement order which includes incidental, consequential or transitional provisions will be subject to annulment by the National Assembly (negative procedure). The use of the negative scrutiny procedure for making an order containing incidental, consequential or transitional provisions is considered in line with recommendations made by this Committee in the past in relation to previous Bills.<sup>33</sup>

53. Section 14(4) provides that any provisions of the Act, which are not already in force, will come into force on 1 January 2018 (a “sunrise” clause).

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<sup>31</sup> Annexe 2, Letter from Bethan Jenkins AM to the Chair of the Constitutional and Legislative Affairs Committee, 25 September 2014

<sup>32</sup> Ibid

<sup>33</sup> Explanatory Memorandum, paragraph 248

### ***Evidence from the Minister***

54. In her letter to the Committee the Minister set out concerns in relation to the commencement provisions in section 14. She raised concerns relating to the “*principle* of whether a commencement order should be subject to Assembly procedure”.<sup>34</sup> She went on to raise issues over the practical application of annulment of a commencement order.

55. She also stated that in relation to the “sunrise clause” in Section 14(4):

“This is a restriction on the Welsh Ministers’ powers to decide the circumstances are right to commence the provisions of the Bill.”<sup>35</sup>

56. In response to questions from the Committee the Minister said:

“If the Bill is passed by the Assembly, the Assembly already has approved its provisions. So, all that needs to be done after passing is to bring the agreed provisions into force. With any Bill that is passed in the Assembly, it is implicit, or there is acceptance, that Welsh Ministers will then decide when to bring those provisions into force, in accordance with the commencement powers contained in the Bill. The First Minister wrote to this Committee last year regarding commencement orders and set out how ancillary provisions that are included in commencement orders are there to ensure the smooth commencement of the Act, if you like. They are not freestanding, substantive provisions. Given that the Bill will already have been approved by the Assembly, Welsh Ministers then have the responsibility for the decision to commence. I think that it goes against this to then subject commencement Orders to further scrutiny by the Assembly.”<sup>36</sup>

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<sup>34</sup> Annexe 1, Letter from the Minister to the Chair of the Constitutional and Legislative Affairs Committee, 16 September 2014

<sup>35</sup> *Ibid*

<sup>36</sup> CLA Committee, RoP paragraph [60], 6 October 2014

57. The Minister wrote to the Committee on 16 October 2014 providing further information on the practical difficulties of commencement orders subject to Assembly procedure.<sup>37</sup>

58. In relation to section 14(4) when questioned, an official accompanying the Minister said:

“It is a matter for the committee to decide whether it is appropriate and whether there is justification for having a sunrise clause.”<sup>38</sup>

### ***Evidence from the Member in Charge***

59. Considering section 14(4) of the Bill, Bethan Jenkins AM explained:

“It relates to the fact that we want to ensure that this actually does happen, and, regardless of the colour of Government, if this is enshrined in legislation, we can ensure that it is enforced. Unfortunately, Dai Lloyd’s legislation on playing fields, which was passed a fair while ago, in 2010, still has not been implemented. It is only now that the Government is consulting on the regulations, and we still do not know when that will be implemented. It is important, when backbench Members have the opportunity to bring forward legislation, that that is implemented. We have not seen this mechanism used in the past, but I think that it is right for us to actually set the agenda for the future in ensuring that our Bills are given just as much prominence in the eyes of the people of Wales as Government Bills.”<sup>39</sup>

60. Explaining the rationale of the provision in section 14 (2)(b), Bethan Jenkins AM said:

“... we wanted to ensure that the Assembly would decide what happens, but I have also heard the Minister’s comments, in terms of the negative and affirmative procedures, and I am happy to look at changing that, if the Minister feels that it is not appropriate to have it through the negative procedure.

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<sup>37</sup> Annexe 3, Letter from the Minister to the Chair of the Constitutional and Legislative Affairs Committee, 8 October 2014

<sup>38</sup> CLA Committee, RoP paragraph [68], 6 October 2014

<sup>39</sup> CLA Committee, RoP paragraph [70], 22 September 2014

However, as you say, we are endeavouring to ensure that these things come back to the Assembly for scrutiny rather than simply going to Ministers.”<sup>40</sup>

“We have committees here for a good reason, and we want to learn from them, and that is why I was trying to be proactive in putting these things through.”<sup>41</sup>

61. In her letter to the Committee she explained that she would seek to amend section 14(3) to make explicit the intention of the provision.

### ***Our view***

62. We note the points raised in the Minister’s letter of 16 October 2014 regarding the practicalities of a revocation of an order made under section 14(2)(b) of the Bill. However, in line with our views on the making of commencement orders, we believe that such orders that make incidental, supplementary, consequential, transitional or saving provisions in connection with the coming into force of a provision should be subject to scrutiny though the negative procedure. We commend the Member in charge for the approach she has taken.

63. We note the clarification from the Member in charge, that she will bring forward an amendment to make explicit that only an order made under section 14(2)(b) will be subject to a resolution of the Assembly.

64. We are content with the provision in section 14(4) (a “sunrise clause”) that states that any provisions that have not been brought into force by 1 January 2018 will be commenced on that day. We believe that this approach ensures that the intentions and provisions within backbench Members’ legislation approved by the Assembly are enacted in a reasonable amount of time.

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<sup>40</sup> CLA Committee, RoP paragraph [74], 22 September 2014

<sup>41</sup> CLA Committee, RoP paragraph [81], 22 September 2014

# Annexe 1

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



Llywodraeth Cymru  
Welsh Government

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

16 September 2014

*Dear David*

## **Financial Education and Inclusion (Wales) Bill**

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

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

*Regards  
Lesley*

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

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

### **Introduction**

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

### **Existing legislation**

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

6. There is a power in section 108 of the 2002 Act for the Welsh Ministers to set out by way of subordinate legislation areas of learning, desirable outcomes, educational programmes assessment arrangements for the foundation phase. That section also provides a power for the Welsh Ministers to set out in subordinate legislation programmes of learning, attainment targets and assessment arrangements for the foundation and core subjects in the key stages. In essence, this allows the Welsh Ministers to specify what must be taught and how it must be assessed. It is a means of being able to set out a complete National Curriculum for Wales. It is worth noting the power in section 108 of the 2002 Act was used to make the literacy and numeracy framework a statutory part of the National Curriculum.
7. Therefore, the Welsh Ministers already have extensive powers in existing education legislation to set out curriculum and assessment arrangements for the foundation phase and the key stages for the subjects required to be taught in those phases of education. The Welsh Ministers also have powers in existing education legislation to add new areas of learning to the foundation phase and new foundation subjects to the national curriculum for the key stages by way of subordinate legislation. Therefore, I consider sections 4 and 5 of the Bill to be an unnecessary duplication.
8. The Bill prescribes that financial inclusion strategy should include facilitating free access to online financial education and management services (whether through libraries or otherwise). However, Section 7 of the Public Libraries and Museums Act 1964 (“the 1964 Act”) imposes a duty on each library authority (which in practice is each Local Authority by virtue of section 4 of that Act) to provide a comprehensive and efficient library service; section 8 of the 1964 Act provides no charge shall be made by a library authority for library facilities made available by the authority, unless specified in regulations made by the Welsh Ministers<sup>1</sup> - currently the Library Charges (England and Wales) Regulations 1991 (“Library Charges Regulations”) make such provision.
9. 1964 Act and the Library Charges Regulations provide that libraries currently are able to charge for internet access. However, that position could change, given the Welsh Ministers have the executive powers to amend these Regulations which could be exercised so as to prevent libraries from charging for internet access.
10. The Fifth Framework of the Welsh Library Public Standards, issued by the Welsh Ministers, outlines the core entitlements public library services should provide. This includes “*free use of computers and the internet, including Wi-Fi.*”
11. Finally, there are existing legislative functions which have a similar effect as sections 7 and 11 of the Bill, namely provisions under the Children Act 1989 and the Children (Leaving Care) (Wales) Regulations 2001. There are also powers that will be able to be utilised under the Social Services and Well-Being (Wales) Act 2014 once that Act comes into force in respect of looked after children.

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

## Detail of the Bill

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

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

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

#### **Powers to make subordinate legislation**

18. As outlined above, financial education and inclusion can already be addressed in existing legislation. For example, there are detailed skills relating to managing money and financial education within the literacy and numeracy framework which has been in force since September 2013. These were developed in partnership with the Welsh Financial Education Unit, and through open consultation.

19. Also we have recently consulted on revisions to be made to the existing programmes of study which are given legal effect by way of subordinate legislation. In particular the mathematics programme of study, which embeds the literacy and numeracy framework into it, and again, has a detailed set of skills statements relating to financial education within the 'Manage money' element. By way of example, this element contains statements regarding using cash, comparing costs from different retailers, discounts, budgeting, planning and tracking savings accounts, profit and loss, bank accounts, bank cards, VAT, saving, borrowing, interest rates, exchange rates and insurance. This will be published in October 2014, and made statutory from September 2015.

20. In the interest of thoroughness, I would like to comment on the provisions for subordinate legislation within the Bill:

- a. *Section 6(2) and (3)*: Section 6 appears to duplicate what is effectively already provided for in legislation. Section 20 of the Education Act 2005 places a duty on Estyn to keep the Welsh Ministers informed about the quality of education provided by schools, how far the education provided meets the needs of the pupils in those schools and the educational standards achieved by those schools. In addition, Estyn has a duty to provide the Welsh Ministers with advice on such matters as they specify.

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

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

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

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

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

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

### ***Commencement provisions***

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

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

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

### **Matters of legislative competence**

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

**Bethan Jenkins**

Aelod Cynulliad dros  
Orllewin De Cymru

Assembly Member for  
South Wales West



Cynulliad National  
Cenedlaethol Assembly for  
Cymru Wales

David Melding AM  
Chair  
Constitutional & Legislative Affairs Committee  
National Assembly for Wales  
Ty Hywel  
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Thursday, September 25, 2014

REF: BJDH-DM-CLAC-25-09-14

Dear David,

**Financial Education and Inclusion (Wales) Bill – evidence to the Constitutional and Legislative Affairs Committee**

Thank you for your letter and for calling me to give evidence before your committee on Monday, September 22, 2014. If I may take your points as you list them:

***Section 12 (Information about sources of advice)***

Section 12(2) is a power for local authorities to provide advice to individuals about financial management.

I recognise that the Assembly has no legislative competence in the area of "financial services" as this is specifically excluded under Heading 4 in Schedule 7 to the Government of Wales Act 2006 ("GOWA").

However, I am advised and satisfied that the power set out in Section 12(2) relates to the powers and duties of local authorities and their members and officers and is therefore within competence in accordance with Heading 12 in Schedule 7 to GOWA.

I emphasise that this is a power. No local authority will be compelled to exercise this power.

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### **Section 14 (Commencement)**

This is provided for in Section 14.

Section 14(1) provides that an order is necessary to commence the Bill. Section 14(3) provides that, where an order includes incidental, consequential or transitional provisions, it will be subject to Assembly scrutiny.

It is my intention that only those commencement orders which include incidental, consequential or transitional provisions will be subject to scrutiny. In all other cases, there will be no Assembly scrutiny of commencement orders.

I am advised that the wording of section 14(1) is sufficient to meet this objective. However, in an effort to ensure that all doubt is removed, I am willing to bring forward an amendment, at Stage Two, so that section 14(3) will read as follows (or words to the following effect):

*“A statutory instrument **under section 14(1)** containing an order under section 14(2)(b) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”*

On further reflection, I have also come to the view that the proper form of scrutiny of an order including incidental (etc) provisions, would be by affirmative procedure. I am, therefore, willing to bring forward an amendment to the Bill, to this effect, at Stage Two.

It may assist the Committee if I make a few additional points which were discussed during our meeting.

### **Section 9(1)**

The Minister has made the point that local authorities have “well-being” powers under Section 2 of the Local Government Act 2000 (“the 2000 Act”). The Minister asserts that local authorities could use those powers to promote financial inclusion.

While this may be true, provision across Wales is patchy. My intention is to make it a requirement for local authorities to promote financial inclusion. For this reason, the Bill imposes a duty on local authorities. I do not propose to take away the existing powers of local authorities. I welcome the steps taken by those councils which have

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**Bethan Jenkins**

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Assembly Member for  
South Wales West



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already "signed up" to the principles of the Bill. But I want to ensure that all communities in Wales benefit from the same pro-active approach.

The Committee may be interested in the circumstances in which the ministerial power in section 9(2) might be used at some future point. This is the power to add to or remove from the list of areas (set out in section 9(1)) which local authorities must include in a financial inclusion strategy.

I want local authorities to tackle the issues which I believe most acutely affect our communities in 2014. For instance, cold-calling, especially when practised against vulnerable groups, is a major concern. Equally, I believe that credit unions are of significant benefit, especially to those in deprived communities. In future, we may see (and I hope we will) a greater take-up of membership of credit unions. We may also see the UK Parliament tackling cold-calling (which the Assembly cannot do because it falls into the non-devolved area of "consumer protection").

So, in future, the financial pressures faced by our communities may be different than they are now. In that case, the content of Section 9(1) may need to be updated to list new areas of concern and perhaps even to delete those where the harm has been significantly alleviated.

I want this Bill to become law and to endure long into the future. So, it is not realistic for me to predict in 2014 what financial pressures our communities may face (or what other legal or technological changes there may be) in 10, 20 or 30 years. That is why I propose to give Ministers the flexibility to update section 9(1), but with full Assembly scrutiny.

**Section 10**

The Committee may also be interested in hearing my further thoughts on Section 10, which is the power to issue ministerial guidance about financial inclusion strategies.

Ministers have existing powers to issue guidance to local authorities under Section 3(5) of the Local Government Act 2000 in respect of the exercise of their well-being powers. But I would make the point that the 2000 Act does not specifically refer to financial inclusion. So, I want to make it crystal clear, in legislation, that Ministers may issue guidance in this area.

I look forward to hearing back from you.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Bethan Jenkins', with a stylized flourish at the end.

PP Bethan Jenkins AM

## Annexe 3

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



Llywodraeth Cymru  
Welsh Government

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

16 October 2014

Dear David

### **Financial Education and Inclusion (Wales) Bill**

Thank you for inviting me to give evidence at your Committee on 6 October 2014. Following my oral evidence, I promised to write in relation to some of the practical difficulties which may arise if a commencement order is subject to Assembly procedure.

For the avoidance of doubt, I do not envisage any commencement orders made under this Act, if it is passed as drafted, would include any ancillary provisions which went further than necessary to ensure the smooth and effective commencement of the Act.

I have already set out my views in relation to why the commencement provision in section 14 of the Bill is not appropriate in principle, see paragraph 21.a of my written evidence to this committee. I am happy to take this opportunity to expand on the practical reasons why I do not consider this provision to be appropriate.

If the Assembly passed a resolution for annulment of a commencement order under section 14(3) of the Bill, section 5 of the Statutory Instruments Act 1946 would apply. Section 5(1) (as read with section 11A of that Act) gives the Welsh Ministers the power to revoke the instrument in question by order made by statutory instrument. An order made in reliance upon that power would have to be laid before the Assembly after it was made. Revocation would not affect the validity of anything done during the period whilst the instrument was in force.

In the case of a commencement order made under section 14 of the Bill, the legal effect of a revocation order made under the 1946 Act would depend on the day on which the commencement order appointed for commencement. If an order were made appointing a day for commencement which fell before the day the Assembly made its resolution, an order made under section 5 of the 1946 Act could only affect the ancillary provision included in the order. This is because commencement, by its very nature, is a one-off event. Once a section has been commenced it cannot be “switched off”. Although the validity of the act of bringing the section into force would not be undermined by the revocation of the relevant commencement order, the associated ancillary provision would fall, which could leave persons affected by the new legislation in an uncertain and undesirable position.

In such a case, it is difficult to see what a Minister could do to remedy any problems caused by the revocation of necessary ancillary provision. The power in subsection (2)(b) of section 14 can only be used to “include” ancillary provision as part of an order bringing provisions of the Bill into force. If a commencement order were made which brought all its provisions into force and made transitional provision, I do not consider any subsequent order could be made under section 14 of the Bill. The ancillary provision could not, therefore, be “included” with anything. Further, in a situation where an order partially commenced the Bill, there must be doubt that a subsequent order bringing other sections into force could include further ancillary provisions which were consequential etc. on the coming into force of a section which would have already been commenced.

If the appointed date was a date falling after a resolution was made by the Assembly (and depending on the time available for Ministers to act), an order under section 5 of the 1946 Act could revoke the commencement order and associated ancillary provision. This would prevent the section from coming into force.

The above points deal with the types of practical difficulties which may arise if a commencement order containing ancillary provisions is subject to further Assembly scrutiny and are in addition to the points in relation to principle which have already been made in my written evidence to this committee. Therefore, it is our position that the above, when taken with our arguments about the principle that the Act has already been scrutinised by the Assembly, and any ‘ancillary’ provisions will be inextricably linked to the smooth and effective commencement of that Act, that commencement orders made under section 14 of this Bill should not be subject to further Assembly scrutiny.

Yours sincerely

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in dark ink and is positioned above the typed name and title.

**Lesley Griffiths AC / AM**

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