



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

**Pwyllgor Deddfwriaeth Rhif 4
Legislation Committee No. 4**

**Dydd Iau, 26 Tachwedd 2009
Thursday, 26 November 2009**

Cynnwys
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Deddfwriaethol) (Addysg) 2010
The Proposed National Assembly for Wales (Legislative Competence) (Education)
Order 2010

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Lorraine Barrett	Llafur Labour
Peter Black	Democratiaid Rhyddfrydol Cymru (Cadeirydd y Pwyllgor dros dro) Welsh Liberal Democrats (Temporary Committee Chair)
Bethan Jenkins	Plaid Cymru The Party of Wales
Jonathan Morgan	Ceidwadwyr Cymreig Welsh Conservatives
Joyce Watson	Llafur Labour
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Mike Barker	Swyddog Datblygu, Llywodraethwyr Cymru Development Officer, Governors Wales
Anna Brychan	Cyfarwyddydd, Cymdeithas Genedlaethol y Prifathrawon Cymru Director, National Association of Head Teachers Cymru
Frank Ciccotti	Cadeirydd, Pwyllgor Ysgolion Uwchradd, Cymdeithas Genedlaethol y Prifathrawon Cymru Chair, Secondary Schools Committee, National Association of Head Teachers Cymru
Ellis Griffiths	Is-arlywydd, Cymdeithas Arweinwyr Ysgolion a Cholegau Cymru Vice President, Association of School and College Leaders Cymru
Gareth Jones	Ysgrifennydd, Cymdeithas Arweinwyr Ysgolion a Cholegau Cymru Secretary, Association of School and College Leaders Cymru
Ray Wells	Swyddog Datblygu, Llywodraethwyr Cymru Development Officer, Governors Wales

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

Stephen Davies	Cynghorydd Cyfreithiol Legal Adviser
Owain Roberts	Dirprwy Glerc Deputy Clerk
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.

Ethol Cadeirydd Dros Dro Election of a Temporary Chair

[1] **Mr Williams:** Good morning, everyone, and welcome to Legislation Committee No. 4. In the absence of Mike German, the committee Chair, the first item on today's agenda is the election of a temporary Chair. Therefore, under Standing Order No. 10.19, I call for nominations for a temporary Chair.

[2] **Jonathan Morgan:** I nominate Peter Black.

[3] **Lorraine Barrett:** I second that nomination.

[4] **Mr Williams:** Thank you. I see that there are no other nominations. I therefore declare that Peter Black has been elected the committee's temporary Chair.

*Penodwyd Peter Black yn gadeirydd dros dro.
Peter Black was appointed temporary chair.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[5] **Peter Black:** Thank you. Apologies have been received from Mike German, and Kirsty Williams has apologised that she will be slightly late. We hope that she will be here within the next few minutes.

[6] I will make the usual introductory remarks. The National Assembly for Wales operates through the media of English and Welsh. Headphones are provided, through which instantaneous translation may be received. For anyone who is hard of hearing, these may also be used to amplify sound. Interpretation is available on channel 1 and verbatim proceedings can be heard on channel 0. Should the fire alarm sound, Members should leave the room via the marked fire exits and follow instructions from the ushers and staff. There is no test planned for today; if the alarm goes off, it is for real, so please leave in an orderly fashion. I ask everyone to switch off all mobile phones, pagers and BlackBerrys, as they will interfere with the broadcasting equipment, which uses wireless technology. They should be switched off, rather than put on 'silent'.

9.31 a.m.

Gorchymyn Arfaethedig Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol) (Addysg) 2010 The Proposed National Assembly for Wales (Legislative Competence) (Education) Order 2010

[7] **Peter Black:** The purpose of today's meeting is to take further oral evidence in connection with the Welsh Government's proposed National Assembly for Wales (Legislative Competence) (Education) Order 2010. I welcome, from the National Association of Head Teachers, Anna Brychan, the director, and Frank Ciccotti, chair of the secondary schools committee. We also welcome Ellis Griffiths, the vice president of the Association of School and College Leaders Cymru, and Gareth Jones, its secretary. Welcome to the committee.

[8] If it is okay with you, we will take all of your evidence as read, so we will move directly to questions. I will ask the first question, which is for both organisations. In your written evidence, you say that it is anomalous that the National Assembly for Wales does not

have powers over school governance. However, you also raise concerns about devoting more funding to administration and governance rather than the delivery of high-quality education and training for the students of Wales. Can you explain what you mean by this and confirm whether or not you are in favour of the proposed Order? Anna, would you like to start?

[9] **Ms Brychan:** Yes. The reason for our saying that the present situation is anomalous is that we can see that it is perfectly logical and sensible that the power to make laws or Measures in this area resides with the National Assembly for Wales, particularly since education policy in Wales is diverging significantly and there may be situations in which it will be sensible and desirable to be able to make Measures. So, in principle, we support the devolution and, in that respect, we are in favour of the proposed legislative competence Order. The only caution is that, in taking it to the next stage of devising the Measures, we should take proper stock of the existing situation to see the extent to which there are weaknesses in that and also to see what evolving practice in 14-19 education, in terms of collaboration, looks like and whether introducing Measures to substantially change the governance arrangements is necessary. So, we caution against rushing to do something too quickly.

[10] **Mr Jones:** May I come in on that point? Given that we believe strongly in the principle of local autonomy for schools as being in the best interests of students, it would be rather hypocritical to then argue against the devolution of power to Wales. The same principle applies to both. Our concerns are what might follow with regard to the way in which devolution works in Wales. We want to see a focus on outcomes and the means of achieving them, rather than a centralised approach.

[11] **Peter Black:** So, do you think that legislation is necessary, or could action be taken by other means?

[12] **Mr Ciccotti:** The education policy agenda in Wales is diverging significantly from that of England. Currently, we are bound by English legislation in relation to governance. So, we believe that governance tools will be a necessary part of the Welsh Assembly Government's toolkit for dealing with school issues. It is probably better to have powers available, hence our support for the proposed legislative competence Order, rather than to have to act in haste when situations develop. We are in a situation where collaborative working is emerging as the favoured way of making things happen, but we do not yet have the tools to allow that to proceed, we are told. We will return to that sometime later. In general, then, we support the proposed Order so that Measures can be prepared.

[13] **Jonathan Morgan:** You said that the law relating to governance is part of the framework of England and Wales legislation. The first part of the question is: does that cause us any particular problems? The second part is: what do you think needs to change if the powers are devolved?

[14] **Mr Ciccotti:** A simple question then. We are told that it creates problems as part of the further education governance review. That is being powered by the thinking that there are issues in certain parts of the country that cannot put in place formal structures to deliver the 14-19 agenda without taking on additional governance powers. We are told that, although I have to say that I do not have precise examples of it yet. I can see that it is difficult to see a way through that at present, and I am not personally convinced that legislation will sort that out. There is also the possibility that we will rush headlong to make legislation that will actually make things more difficult in the long run, because the situation in terms of school governance is complex. There are stringent divisions of responsibilities between governing bodies and headteachers, as some can act alone while others can be devolved to committees and so on. We would have to be most careful to ensure that that is written into legislation in precise terms so that we are not diverted into a complex new set of rules that nobody fully

understands and which will have unforeseen consequences. I am not sure that that has answered both of your questions, but that is the current thinking.

[15] **Jonathan Morgan:** That is fine.

[16] **Joyce Watson:** You have already touched on what I was going to ask. You say in your evidence that research and evaluation of the collaborative working should be carried out before the introduction of new legislation, and you suggest that there are alternatives to structural reform in this context. Do you have concerns about the timing of the proposed Order—I suspect that you do, from what you have said—or are the issues that you raise more to do with a subsequent Measure? Which is it?

[17] **Mr Ciccotti:** It is very much the latter. The proposed Order is an enabling thing, and neither association has any difficulty with that. The danger is that we will pass the proposed Order and then rush to legislation to try to sort out a problem that is not yet fully understood and not fully researched.

[18] **Ms Brychan:** Our concern is that we should not rush to do anything that would be too rigid to enable the new ways of working that are developing but which still need to be flexible as the situation changes. That is our concern, and it will centre on the Measures that flow from the eventual legislative competence Order rather than the principle of having it.

[19] **Mr Jones:** As Frank has said, there is not a problem with the proposed LCO, as that is more to do with enabling powers. We feel that it is perhaps too early to legislate by means of Measures. We do not yet have a clear picture. The feedback that I am getting from members is that headteachers and governors are making collaboration work. It is evolving. No, it is not 100 per cent, but then all curricular developments take five years to work through. We would not want to see a rush to legislation simply because the powers make it possible to legislate.

[20] **Mr Griffiths:** I will add a practical example of that issue. Tonight, we have a joint meeting between the governing bodies of two schools that are working in partnership—that is, Ysgol Gyfun Gwynllyw and Ysgol Gyfun Cwm Rhymini. This will be the second joint meeting of these governing bodies. We have made significant progress in the partnership, and it is working well within the current rules. What we are emphasising is that there is a lot of good practice developing in the 14-19 partnerships, between schools, and between schools and FE colleges. We want to build on that good practice and, hopefully, when the powers are devolved to Wales, that good practice will be taken into account and built upon, not spoilt or restricted in any way.

9.40 a.m.

[21] **Joyce Watson:** We have talked about what you might do with a Measure. My question is do you think that the proposed Order is broad enough to enable future Measures to address all the issues—and you have raised many of them this morning—relating to school governance?

[22] **Mr Jones:** As far as we are able to judge, because the four of us are not legal experts, although we have legal advisers elsewhere, we would think that it is broad enough.

[23] **Mr Ciccotti:** The wording of the proposed Order is concise and very general, and it would seem to me that you could operate any sort of legislation on the basis of the statements included. I have concerns about the statement, or third matter, relating to the establishment of bodies to service school governors and collaborations. The wording of that is evidently legal, but it is not clear to me.

[24] **Jonathan Morgan:** If we move to the wording of the proposed Order, matter 5.2A relating to the conduct and governance of schools maintained by local authorities includes the allocation of functions, property rights and liabilities relating to such schools. Do you have any views on that aspect of that particular part of the proposed Order?

[25] **Mr Jones:** From reading the minutes of the committee in previous meetings, you have had quite some discussion about the difference between conduct and governance. Again, I will not go into that area of legal definitions. The key point is that the principle of subsidiarity must remain central, in our view, to the education of Wales. The local management of schools by stakeholders must mean much more than just a consultative group, which could lead to the delegation of the disagreeable part of governance to the school governing body and the taking away of local autonomy. It is difficult for us to give any other response on the wording and the difference between conduct and governance.

[26] **Jonathan Morgan:** When you look at what is happening around Wales at the moment, do you see any particular issues in relation to the allocation of functions and the way in which rights over properties and how liabilities are approached by governing bodies need to be altered?

[27] **Mr Jones:** There is an issue in collaboration about the commercial negotiations between various institutions, such as schools paying for courses being run by work-based learning providers or a further education institute: there are commercial negotiations that must take place. Sometimes, as with any commercial negotiation, that can be difficult, but it can be resolved by contractual terms. Therefore, this is perhaps the area that we have yet to get to grips with in Wales—establishing contractual relationships between different providers.

[28] **Jonathan Morgan:** You also say in your evidence that you welcome the commitment to maintain the current arrangements over staffing and finance, such as pay and conditions. I wonder whether you could expand on that and explain why you state that in your written evidence.

[29] **Mr Jones:** The issue of pay and conditions has been raised in a Plenary debate, and the question was asked of the Minister whether this involves pay and conditions being devolved. What we have to remember is that we operate with a cross-boundary labour market, particularly for eastern parts of Wales, where the labour market is England and Wales. In those situations, the prediction is that if the issue of pay and conditions were devolved, there would be a considerable risk to the ability to recruit the best-quality staff. In a sense, therefore, there would be a choice; do we want the best or do we want the best of what is available? There is a lot of nervousness and all the teaching unions, bar one, are very cautious and have strong reservations about the devolution of pay and conditions.

[30] **Mr Ciccotti:** I will just say a bit about staffing and finance. What is emerging in collaborative working is that decision making is taken out of the hands of a school governing body and passed to another body already. There are no formal structures to set that up, but schools, between themselves and with local further education institutions, have agreed, in many parts of Wales, the structures to make that happen. There is a sign-up on behalf of school governing bodies to lose some of their powers because in establishing a curriculum for an area, you have to decide which subjects will run and which will not run. Traditionally, that would be done by the school's headteacher, who would sometimes advise the governing body to believe in taking that decision and sometimes to just pass it through. However, now, that right or duty is taken elsewhere—to the collaborative body, a commissioning body or to a local authority. So, there is already a transfer of power. That has a direct impact on the school's finance and on its staffing, because if you decide to run or not run a course, you will be allocating money from that school's budget and will be allocating staffing from that

school. So, there is no doubt that this has a direct impact on the power and operation of school governing bodies at present.

[31] **Jonathan Morgan:** Linked to the issue of pay and conditions and of staffing generally, the evidence says that we cannot afford to establish new committees with powers over the curriculum of a school and, implicitly, over its staffing and finance, when staffing and finance is not a responsibility. So, can you explain what you mean by that and the reason for the view that has been expressed?

[32] **Mr Ciccotti:** I have already touched on that in that whoever takes the decision will affect the operation of a school's finances and staffing. If we establish a divorced group that does not have direct responsibility for staffing and finance, then it can take decisions without bearing any responsibility for the consequences. That is why we are nervous. Where this is done through collaboration and agreement, everyone works together to try to ensure maximum benefit for all. If we established a separate, formal independent body without responsibility at school level, then we could have fairytale governance, where action and consequence were divorced.

[33] **Jonathan Morgan:** So, this is ultimately about the level of accountability that could exist in the system afterwards.

[34] **Mr Ciccotti:** Currently, the accountability seems to remain with a school's governing body.

[35] **Mr Jones:** It is the governors' representatives who are involved in taking the decision.

[36] **Jonathan Morgan:** Setting aside the devolution of pay and conditions, and I share a great deal of sympathy with the view expressed about pay and conditions, and where the responsibility for that should rest, is the proposed Order with regard to the functions of governing bodies around staff and finance—because they do have functions around staff and finance that go beyond pay and conditions—broad enough to encompass those issues where governing bodies currently have functions?

[37] **Mr Jones:** The matters are very broad in the way that they are worded. It depends on how that is interpreted and translated into action in terms of any future Measures. Our concern about establishing bodies that have governance responsibilities—above and beyond the individual institutions and their collection of students—is that if the process is more distant, it is more inclined to make headteachers mere functionaries. Therefore, in a sense, the headteacher's job becomes one of simply implementing policy and procedures that have been handed down from on high rather than having first in mind the welfare and interests of the students in the school. That is the real concern. It is not just professional protectiveness that explains our caution about group governance; being a professional means using your knowledge and experience to serve the individual children and to know what to do and when and how to do it. We are cautious about decisions being made in a distant office by what some call 'grey functionaries', who do not necessarily understand the consequences of those decisions.

[38] **Mr Ciccotti:** My only comment is that the wording of the proposed LCO includes,

[39] 'the allocation of functions, property, rights and liabilities'.

[40] If that is considered to include staffing and finance, then it is broad enough.

9.50 a.m.

[41] **Lorraine Barrett:** You have already touched on this, but I want to raise a point on matter 5.2B on collaboration. In your written evidence you state that

[42] ‘detailed consideration should be given to the development of collegiate, cooperative and collaborative models where institutions agree mutually beneficial systems of operation’

[43] to meet curriculum demands, and so on.

[44] Can you expand on whether you believe the Assembly needs more powers to legislate in this area, and whether matter 5.2B is drafted appropriately?

[45] **Mr Ciccotti:** I would say that it is as broad as it could be. The power to secure is pretty wide, is it not? As for need, I come from a part of Pembrokeshire where we have a collaborative system at present; it is working and has been expanded to cover all secondary schools. Other areas, I know, have set up collaborative collegiate systems, which are functional. I am told that other areas find it difficult, therefore if someone does not want to play, how do you make them? That perhaps shows the need for background legislation.

[46] Personally, I would like to see systems evolve and be given a chance to become successful before we force everyone’s hand with legislation that will prescribe certain ways of working. I use the word ‘fossilise’ in my written evidence.

[47] **Mr Jones:** Following on from what Frank has just said, one of the dangers with legislation is that we try to legislate for a minority problem and, as a result, penalise the majority. If we find over time—and, as I said, it can take four or five years for curriculum developments to work through and for structures to bed in—that the vast majority of collaboration arrangements are working, then perhaps we need legislation to deal just with the areas where it is not working, rather than constraining all governing bodies in all schools.

[48] **Lorraine Barrett:** Your evidence also highlights research in England that has shown that the 14-19 groupings disempower school governors. Would you like to expand on that? Does that mean that you have some concerns about the powers in the proposed Order?

[49] **Mr Jones:** The research that ASCL Cymru in particular was referring to was done at the University of Warwick. I can give you the weblink to the report, if you like. It is an interesting report, featuring a series of case studies on collaborative arrangements in various contexts in England—so yes, it is a different context, and a different environment, but it makes a general recommendation, which may or may not apply to Wales. The recommendation is that there should be a multilayered model of governance that recognises the role of each layer. Yes, there is a need for an overarching body, which was the local education authority traditionally, but there is also a need for a group to look after the interests of the local community. That can be defined by the geographical area; vested interests work powerfully. That is where the University of Warwick research was leading.

[50] The second set of research, from the Isle of Man, is unpublished. What is perhaps significant is the reason why it is unpublished. The Isle of Man does not have devolved governing body arrangements as we do in Wales. The research was not published because members of ASCL feared that there might be retribution of a personal nature affecting their careers. That is one of the dangers of centralised arrangements—professionals are fearful of speaking out because of the consequences. That is what the report tells us: that we should not undermine local autonomy and the benefits that school governing bodies can bring and do bring.

[51] **Peter Black:** Would you like to comment on that, Frank?

[52] **Mr Ciccotti:** That was ASCL research, so I cannot really comment.

[53] **Lorraine Barrett:** I have one other point. You mentioned the Isle of Man, and that was a useful bit of background information. What about the experience of headteachers in Scotland, where there is an absence of school governors? Could you comment on that?

[54] **Mr Jones:** I was with headteachers in Scotland last week at the conference of secondary school principals and deputies, and there is general frustration at the lack of flexibility at school level to adapt what is happening in school to changing circumstances. In other words, they have to go through a Byzantine bureaucracy to get changes to simple things such as minor maintenance improvements. If you want to do some property work, such as repainting a room, you have to get authority to do it, and that can be slow. So, there were frustrations about the lack of flexibility that their governance arrangements allowed at school level.

[55] **Lorraine Barrett:** That is interesting, Chair.

[56] **Peter Black:** It is interesting, yes.

[57] **Lorraine Barrett:** Scotland is usually held up as an exemplar.

[58] **Mr Jones:** Scotland has advantages, and it has strengths and weaknesses. I am just reporting the frustration of the senior leaders about some of the inflexibilities. Perhaps what they are after is a happy balance.

[59] **Bethan Jenkins:** I want to ask about the powers of delegation. In your evidence, you say:

[60] ‘We remain unconvinced of the need for or efficacy of new powers of delegation.’

[61] Can you explain what you mean by this, and would you like to see any changes to the proposed Order to reflect your concerns in this regard?

[62] **Ms Brychan:** I think that we are in danger of repeating points made earlier. Essentially, what we were after here was a caution against too hasty a move to create new systems of governance that may be too rigid to support the successful developments that we have identified so far. One point that we have not yet made is that, when it comes to delegating power over certain aspects of how you organise 14-19 education to a body at some distance from schools—schools are obviously our concern—decisions can be made on staffing and governance issues that we touched on earlier that have a wider effect than that intended. The decisions you make on staffing and curriculum for 14 to 19-year-olds have an effect on what happens to 11 to 14-year-olds in a school, so it was those considerations that we were thinking of in trying to decide whether we were entirely convinced of the need for greater delegation.

[63] I found this process rather difficult to respond to in detail, because the legislative competence Order is, as several people have said, widely drafted. It is difficult to know what we are dealing with without reference to a Measure or without trying to imagine a Measure in which this might be manifested. Those were the kind of concerns that came up when we were considering that point.

[64] **Bethan Jenkins:** The other question that I have is on matter 5.2C, relating to the establishment of bodies to carry out activities relating to education and training or to exercise functions on behalf of local authorities. What are your views on this part of the proposed

Order?

[65] **Mr Jones:** The first point that I would make on this is that the Minister is not entirely clear about the intention behind all this. So, my answer is going to be somewhat circumspect, because we do not know what the long-term intention is. From the record of previous meetings, I notice that the committee has made every effort to get the Minister to be clearer; it perhaps did not succeed.

[66] **Bethan Jenkins:** No comment.

[67] **Mr Jones:** No comment; that is fine. [*Laughter.*] Discretion is the name of the game. In the general context, a concern that has existed for a long time is the number of local education authorities that we have in Wales compared with the size of our population and the cost that that involves in terms of governance above school level. That diverts funds away from the front line. If this particular matter is intended to provide an opportunity to start to resolve that, it would have some benefit. I noticed that the WLGA raised the issue of human resource support for schools in its evidence last week. The feedback that both associations is getting directly from members and from casework is that there is a growing concern about the quality of human resource support available to governors and schools in Wales.

10.00 a.m.

[68] We have lost a lot of the specialist knowledge about educational law and the procedures that apply to schools. If this matter enables the local education authorities to delegate certain functions to a regional body, which allows the re-establishment of a more cost-effective but high-quality support service, there will be some benefit in it. We would have concerns if this is about creating yet another tier of governance. When you pour the funding in at the top, each layer of management or governance that it goes through takes out its stake for administration, which means that less and less gets to the bottom—that is, to the schools. That is where our concern would be.

[69] **Bethan Jenkins:** Would you like to see more clarity in matter 5.2C? When we are talking about the establishment of bodies, are you uncomfortable with the fact that they could potentially create those tiers of bureaucracy?

[70] **Mr Jones:** On behalf of the association, I am comfortable with the wording; the wording is just enabling. What matters is what use is made of those powers, which is a matter for further discussion and debate, perhaps, as and when such legislation is brought forward.

[71] **Kirsty Williams:** Gareth, you have anticipated my question quite nicely in referring to the evidence that the Welsh Local Government Association gave regarding this loss of expertise and the concerns and discussions that it has had with the unions about that. You have given us some examples of where that causes particular difficulties for your members in terms of education law and procedure. Are there any other areas in which you are witnessing a loss of expertise, and are you convinced that, as this legislative competence Order is drafted, we would be in a position to address any of those concerns in future legislation?

[72] **Mr Jones:** The human resources issue is not just a question of the time and energy that it takes, but a question of the potential financial consequences for governing bodies of bad advice. For example, grievance and dispute procedures were updated in regulations earlier this year. There are still a number of local authorities in Wales whose grievance and dispute policies pre-date the previous regulations, and schools are recommended to follow LEA guidance. That is the kind of thing that we are talking about. Also, in the context of the commercial negotiations that I referred to earlier—I am sorry, Kirsty; you were not here at the time—collaboration often involves commercial negotiations in the rate for putting on a

course. A factor that can complicate those negotiations is the independence of some of the learning providers, for example, further education institutions, which are incorporated. That is where there are some concerns. There have been odd reports in the past of cases where there has been an agreement to put on a course—certainly in the medium of Welsh, for example—in September, but in late August the college suddenly turns around and says, ‘We are not doing it’. It is in those circumstances, perhaps, that some kind of regional body could assist. To repeat what I said earlier, we do not want rules and regulations that penalise and constrain everyone simply because of the problems caused by one or two. There is another avenue, and that is contractual agreement.

[73] **Ms Brychan:** To go back to the human resources aspect of the question, I was very interested to read in the WLGA evidence to this committee that a group of human resources experts has now been convened in response to some of these concerns about the level of expertise available. I do not think that that has come to the attention of our members just yet. As far as the legislative competence Order is concerned, it is difficult to tell whether this will allow the making of Measures that can get to grips with some of these issues; there is no reason why it should not, I suppose. There is a specific concern in respect of human resources, given the difficulties that we are already experiencing and some of the cases that Gareth pointed out, that if we move to create new governing entities, some of them may perhaps not have a day-to-day familiarity with schools, and difficulties could arise because of an improper or incomplete understanding of the school teachers’ pay and conditions document, for example, which is technical, legal stuff, and it is crucial that your advice on it is solid, sound and can be depended on, because the consequences of its not being so can be drastic. Therefore, in considering what Measures are made, there should be a solid understanding of that, and of the need, when decisions are made by a proposed new governing entity, for it to be aware and to have access to support that will enable it not to get itself into too much trouble.

[74] **Kirsty Williams:** May I clarify what you said at the beginning of that response? You are unable at this time to make an informed decision as to whether the proposed LCO, as currently drafted, is broad enough to address this aspect. Is that right?

[75] **Ms Brychan:** We do not know really; we do not have sufficient expertise to be able to judge.

[76] **Mr Jones:** We are not legal experts, Kirsty.

[77] **Ms Brychan:** We can identify the problem. Whether we can solve it, I do not know.

[78] **Kirsty Williams:** Luckily for us, we have Stephen.

[79] **Ms Brychan:** You are in a fortunate position in that respect.

[80] **Peter Black:** I see that Members do not have any further questions. Do the witnesses want to raise any other issues relating to the drafting of the proposed Order? Is there anything else that you want to bring to our attention?

[81] **Mr Jones:** In conclusion, as we have said several times, we are not legal experts; we have access to legal advice, which, so far, has not raised any issues with regard to the drafting, but rather with regard to the possible consequences of any legislation that would follow.

[82] **Ms Brychan:** Thank you for inviting us to give evidence. It has been an interesting process to try to work out how to respond as helpfully as possible to the proposed LCO.

[83] **Peter Black:** We are all in the same boat; we are all learning as we go along. Thank you for coming here to give evidence. A draft transcript will be sent to you for you to check for accuracy. I am afraid that you cannot take back anything that you said, but you may comment if you think that it is not correct. That will come to you shortly.

[84] **Mr Jones:** Thank you for your time.

[85] **Peter Black:** Our next witnesses are from Governors Wales. I welcome Mike Barker and Ray Wells, development officers for Governors Wales. As in the previous evidence session, we will take your written evidence as read, and will go straight into questions, if that is okay, so that we can plough on with our examination of the proposed legislative competence Order.

[86] To start, could you describe what school governance entails? Most of us have been a school governor at some stage or another. Could you explain in particular the various roles that might exist in a local authority maintained school?

[87] **Mr Wells:** I am a chair of governors at a high school in Flintshire, and I am a governor at Deeside College. Essentially, our role is to set the strategic direction of the school and to be a critical friend—it is a term that I do not like; I prefer ‘questioning friend’. We help to develop the school development plan, which is the strategic plan that prioritises what the school needs to do to achieve its objectives and to raise the attainment and achievement levels of the students. We are accountable to parents, the community, the LEA and to the Welsh Assembly Government with regard to how the school performs. That encompasses a whole range of duties, which you could call functions. Essentially, as governing bodies, we need to make sure that the pupils are reaching their potential.

[88] **Mr Barker:** To add to that, within that there is the issue of the delegated management of an allocated budget, which we will no doubt come on to in the discussion, and then also an element of the management of staff and setting targets for staff. However, as Ray has said, this would be done in consultation with the teaching staff in schools.

10.10 a.m.

[89] **Lorraine Barrett:** You have just started to touch on the subjects of school staffing and finance. Based on your knowledge of those governance issues, can you explain your understanding of the staffing and finance issues that relate to the governance role within this proposed LCO?

[90] **Mr Barker:** It covers the day-to-day management of the staff. This would involve the hiring of staff, staff discipline and grievances, which Gareth talked about. It would also involve, as I said earlier, the management of an individual, allocated budget. There are issues that I do not think are covered within it. Perhaps some thought might be given to some of the finance issues. Within the system of delegation, governing bodies are responsible for a wide range of issues regarding allocated functions that were once delivered within local authorities. It would be interesting to, perhaps, pick up some of the things that Gareth mentioned—whether now or later. He talked about the level to which LEAs can delegate. Many of the functions lie with governing bodies, as does the finance. So, there would be issues in relation to whether governing bodies are willing to buy some of these services back from the proposed bodies rather than LEAs providing the money. The money is already with the governors.

[91] The area of finance that is not covered by the proposed LCO is the individual budget. The governing body would not have control over it; it would be allocated according to a formula. The proposed LCO will not deal with that funding issue.

[92] In relation to the other staffing issues, I do not think that it is as important to start worrying about pay and conditions. They are better delivered on more than a Wales basis, mainly because of the movement of staff across the boundaries. However, as I said, some controls relating to staffing and finance are contained within this proposed Order, but there are others that are currently outside it that you might want to consider.

[93] **Lorraine Barrett:** Does the proposed Order enable the issues that you have just talked about to be dealt with by means of a Measure? If not, should the proposed Order be broadened to cover them?

[94] **Mr Barker:** There is an issue regarding the finance. The Assembly has recently looked at the funding of schools and I wonder whether there is an opportunity to bring those things together. It is dangerous, in my opinion, to look only at governance and not look at some of the other issues that were raised in the review by the scrutiny committee. There may be an issue, for example, in relation to the level of delegation to our very smallest schools. This is particularly true in the current system, where there are questions about the support that is available to them. I am concerned that, if you are going to ask people to do some complex tasks, they need the support—the legal support, the financial support and the personnel support that is provided. Perhaps, within this, there is an opportunity to improve that and to allow equity across the country. The system that was set up in the late 1980s was one of competition; you are now talking about collaboration. Perhaps you need to look at the individual funding and financing of schools.

[95] **Peter Black:** Could you be specific? What would you like to see in this proposed LCO? What additional powers would you like to see the Minister take through this proposed LCO to address those specific issues?

[96] **Mr Barker:** It has already been said that the issues of the funding of schools are not covered, or would not be covered, by this proposed LCO.

[97] **Peter Black:** Are you talking about the way in which local education authorities pass on the funding?

[98] **Mr Barker:** Partly, but I do not believe that the proposed LCO covers completely the way in which schools are funded. That is covered by other legislation. I am merely saying that a scrutiny committee of the Assembly has looked at the funding of schools and perhaps some of the issues that were considered in that review, such as support and the level of delegation, would impinge on this as well.

[99] **Peter Black:** Does the Government not already have powers in relation to that? For example, through Estyn, it inspects local education authorities and schools, it can issue directions to local education authorities and it can intervene and take over local education authorities. Are those powers not already available to the Government?

[100] **Mr Barker:** I was not looking at it in terms of people taking over functions; I was looking at the extent of the potential for delegation, which is a Government decision in that respect, rather than a local decision.

[101] **Jonathan Morgan:** The two questions that I was going to ask, Chair, have broadly been answered on where responsibility for pay and conditions should rest. As a fellow governor, but also from talking to teachers' unions, I know that there is broad consensus that pay and conditions are best left at one level and that it might not be appropriate for them to be devolved. You have given us your view on that. You have also touched on the issue of finance and whether the proposed Order is broad enough to allow any changes to the way in which the issue of finance is dealt with. You have talked about delegation and the fact that

local education authorities use a formula that is, in essence, designed by the Government. Do you think that there is a particular role within finance that ought to be undertaken by governors that is not undertaken at the moment?

[102] **Mr Barker:** I was wondering whether it is an appropriate model to have individual school budgets when you are looking to federate and collaborate. That was the issue that I was thinking of in relation to the general issue of funding.

[103] **Mr Wells:** From the discussions that we have had with governors, the funding mechanisms have always been part of the debate. One of the reasons why the current mechanism does not encourage collaboration, but encourages competition, is that each child that comes to your school is funded and comes with a price tag and therefore there is competition to fill those seats. So, yes, I think that this is an opportunity to look at how our education institutions are funded in order to encourage collaboration as opposed to inhibiting collaboration as happens now.

[104] **Bethan Jenkins:** In your written evidence, you say that greater clarity is needed on the inclusion of the allocation of functions, property, rights and liabilities. Can you explain any concerns that you have about the lack of clarity of this element of the proposed Order?

[105] **Mr Wells:** Having read other people's evidence and the discussions that have gone on in this committee, I am much clearer now about what that means. Again, the discussions that we have had with governors show that there is no clarity—they have asked what we mean by functions, properties and rights. So, I think that an explanation of what we mean by that would be useful when we are asking governors to comment.

[106] **Bethan Jenkins:** I know that we have had a note on that and perhaps you can see that legal note afterwards.

[107] The other question that I have is on matter 5.2B of the proposed Order, relating to securing collaboration between persons or bodies with functions relating to schools maintained by local education authorities. In your written evidence, you note that the proposed Order aligns with the Learning and Skills (Wales) Measure 2009 that widens the curriculum and encourages collaboration. What are your precise views on matter 5.2B?

[108] **Mr Wells:** On collaboration, I would support what was said earlier about there being lots of good practice around Wales at the moment, but it is patchy. Again, I think that the current conditions in terms of the way that we are funded and the geographical location of different institutions can hinder collaboration—it is not for lack of will, but it is sometimes for lack of resource. Introducing legislation that might ease those difficulties would be a good thing. However, the important thing is what comes after that, as was said earlier. The intention is right, but it is about how we do things afterwards. We will need to have a debate on consultation to see how we can best manage that, but I think that we have to welcome anything that eases that collaboration process.

[109] **Bethan Jenkins:** Would you say, therefore, that legislation is needed to ease that process, as opposed to only working within the current system?

[110] **Mr Wells:** I think that it would be useful to have something that we could refer to that would encourage institutions to go down that road.

10.20 a.m.

[111] **Joyce Watson:** Good morning, and thank you for coming—it is a fair way from your neck of the woods. I have read your paper, and I wish to ask you for your comments on matter

5.2C. You say that you have some concerns as a body about what is meant by ‘bodies’ in relation to matter 5.2C. What are your concerns about the bodies that could be created?

[112] **Mr Barker:** As Ray said earlier, there are examples of collaboration between consortia of local authorities. If these bodies were to be publicly funded and non-profit-making democratic bodies, it would suit governors as a whole if they were to provide equitable support across the geographical area that they serve. Those are the types of concerns that we have. It is important that it improves the situation in that respect. However, it is very difficult, from looking at a few words, to know exactly what is envisaged, so we are second-guessing to a certain extent. As a body that represents governors, we are more concerned about the level of support and its accessibility.

[113] **Mr Wells:** In the discussions that I have had across the north in the last week—I have no doubt that Mike’s experience is the same in the south—governors are asking ‘What will these bodies look like? What will they do?’. There is some reticence to comment when they cannot envisage what those bodies might look like. The human resource support has been commented on, and that is an issue that came up time and again. We serve the helpline, and many of the issues that come up on our helpline are to do with HR issues. At times, governors have received bad advice from various sources, and they come to Governors Wales for the reference point. Many HR issues take up an awful lot of time, which detracts from the main purpose of the school, which is to deliver education.

[114] **Mr Barker:** That is true in a legal sense. One of the things that we think may be necessary is some type of mediation mechanism, because governors can sometimes be at loggerheads with the local authority. The local authority might say ‘We cannot represent you because you have taken an opposing view’, but the governors still need support. So, it is important that that support exists for them.

[115] **Joyce Watson:** That is an important point. You also say in your evidence that consideration needs to be given to an element of compulsory training for chairs of governing bodies, and mandatory induction training for new governors. Why is legislation necessary to introduce that compulsory element?

[116] **Mr Wells:** It has been an ongoing debate for us for a number of years. I have worked recently with LEA governor support officers to look at benchmarking training across the patch. The figures that we have come up with vary from authority to authority, but about 20 per cent to 25 per cent of governors attend training. It means that slightly less than 6,000 governors attend training, and a little more than 17,000 governors do not. Why are these governors not attending training? It is an important role which has changed considerably over the last few years because a lot more is being asked of them. Perhaps we need an element of legislation that says ‘If you want to be a chair of governors, it is an important job, just like a magistrate, so you have to attend this training’. I have spoken to many chairs of governors, and they say ‘I have been a governor since Adam was a boy, and I have done all the training that I need’. It makes me cringe when I hear that because the situation is changing so quickly and many things are happening in schools.

[117] The school effectiveness framework is on our doorstep, yet the number of times that I have talked to governors who know little about it is scary. Anything that gives them a push by saying, ‘This is important, and you must do it’, will be useful. Induction training for us as chairs and vice-chairs is a good start. There will be a cost implication, which will have to be looked at, but I have been working with LEA governor support officers—they use me quite a lot to deliver the training. They use me because I am cheap; I do not cost anything. It is part of the Governors Wales partnership. That seems to be working well, so I think that we can manage it and that it is a case of stressing to governors how important it is to keep abreast of the changes that are happening.

[118] **Joyce Watson:** Thank you. You mentioned that there would be a cost element to the training, but you have also mentioned the issues about HR and how costly it can be to take the wrong advice. We have seen some of those cases played out in the public arena. So, should not a cost-benefit analysis be done? The cost of not having trained people could be significantly greater than the cost incurred by getting the training.

[119] **Mr Wells:** I have no doubt about that. It is a bit of a leap of faith as to how good that course is, but I have no doubt in my mind—I am always reminded of what Deming said: ‘If you think training is expensive, try ignorance’.

[120] **Mr Barker:** As Ray said, that is clearly an issue, but an amount of money is delegated to schools for human resources and they should be able to use it to buy appropriate advice. The other issue about training, in general terms, is that all that it says in current law is that LEAs are responsible for providing governor training. It says nothing about to what level or what sorts of things they should provide. I know that we do not want to be too prescriptive about that, but there needs to be some sort of general framework, so that we have equity and improve the governance of schools in that respect.

[121] **Kirsty Williams:** Given the concerns expressed about HR support to governing bodies, is there anything that you would like to see added to or taken out of matter 5.2C? Is there any merit in adding something to that that makes explicit the responsibility of any new body to provide specialist support?

[122] **Mr Wells:** The wording, as it stands, is broad enough to encompass that. We all agree that this is the right way to go. It is the detail that comes after that that—

[123] **Kirsty Williams:** So, you are confident that the way that matter 5.2C is currently drafted could encompass any issues of support that we have talked about.

[124] **Mr Wells:** It serves its purpose in terms of the breadth of what may or may not happen as a consequence of having this power. I am always reminded of what you need in communication, namely to be brief and clear. The more words that you add, the less clarity there is. The Lord’s Prayer is 67 words, the first part of the American constitution is 300 words and the EU directive on importing caramel is 22,000 words. It is the message that is received that is important. The message that we are receiving is: ‘This is important’. It is on what comes after it that we get to the real consultation and discussion about what it means to us on the ground.

[125] **Kirsty Williams:** I understand that you have had concerns about the short timescale by which we have asked you to respond to this piece of proposed legislation. Given that it will affect you and your members the most, can you elaborate on the difficulties that you have experienced in being able to submit evidence to the committee?

[126] **Mr Wells:** Getting groups of governors together to chat about what this means to us and getting into some of the detail can be difficult. I have been fortunate this last week, because I have attended meetings with several groups of governors, so I have been able to do that. However, it can be difficult to get people together to get general views so that we can represent them. The shorter the timescale, the less we are able to do that.

10.30 a.m.

[127] **Mr Barker:** Fortunately, we were all involved in a governor support conference in Builth Wells, so we were able to bring that together last week. Obviously, we have representatives on our committees from other areas, but in an ideal world, we would want to

discuss it more with the grass roots, explain what it is, and take on their views. Our particular concern, therefore, is that, as we get more into the detail, there is appropriate consultation and we have sufficient time to take on views and bring them back to you.

[128] **Kirsty Williams:** Your points are well made.

[129] **Peter Black:** The point to remember is that the timetable is not in the hands of this committee. However, when Measures start to appear following the making of this Order, your evidence will be useful for us to make points to the relevant Minister and committee about the time available for consultation. With schools, it is particularly difficult, because there are just so many of them.

[130] Do you want to add anything to your evidence?

[131] **Mr Barker:** There is one thing that I want to add. In the previous presentation, reference was made to policies that might be helpful to schools and governing bodies. I would just note that we have recently been commissioned to produce a model complaints procedure that can go out to all schools in Wales. We have now been commissioned to look at disciplinary guidance. There are good examples, and we would work with local authorities and with the teachers' associations and trade unions to produce those. That is in existence, and that sort of model could be further developed in this new, collaborative arena that we are moving in to.

[132] **Peter Black:** Thank you for coming to give evidence on this proposed LCO. As I told the previous witnesses, a draft transcript of today's proceedings will be sent to you in due course for comments. Thank you.

[133] **Mr Wells:** Thank you for the opportunity to give evidence.

[134] **Peter Black:** That is it for now. I declare the meeting over.

*Daeth y cyfarfod i ben am 10.32 a.m.
The meeting ended at 10.32 a.m.*