



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

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

**Dydd Iau, 19 Tachwedd 2009
Thursday, 19 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
Michael German	Democratiaid Rhyddfrydol Cymru (Cadeirydd y Pwyllgor) Welsh Liberal Democrats (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

Ann Keane	Cyfarwyddwr Strategol, Estyn Strategic Director, Estyn
Dr Chris Llewelyn	Cyfarwyddwr Dysgu Gydol Oes a Hamdden, Cymdeithas Llywodraeth Leol Cymru Director of Lifelong Learning and Leisure, Welsh Local Government Association
Mike Maguire	Arolygwr Ei Mawrhydi, Estyn Her Majesty's Inspector, Estyn
Karl Napieralla	Cyfarwyddwr Addysg, Cyngor Bwrdeistref Sirol Castell Nedd Port Talbot Director of Education, Neath Port Talbot County Borough Council
Daisy Seabourne	Swyddog Polisi, Cymdeithas Llywodraeth Leol Cymru Policy Officer, Welsh Local Government Association

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 9.29 a.m.
The meeting began at 9.29 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Michael German:** Good morning and welcome to Legislation Committee No. 4, which is looking at the proposed National Assembly for Wales (Legislative Competence) (Education) Order 2010. I have received apologies from Kirsty Williams, who will be late for the meeting. The National Assembly for Wales operates through the medium of English and Welsh. You have headphones through which simultaneous interpretation can be received. If

you are hard of hearing, you can also use them to amplify sound; interpretation is on channel 1 and amplification is on channel 0. We are not planning on having any fire drills, so if the alarm sounds, Members should leave the room by the marked fire exits and follow instructions from the ushers and staff. You should also switch off all electronic devices, mobile phones and pagers because they interfere with the broadcasting equipment. The worst offenders are normally Members, but it would be dreadful for witnesses to be caught out.

9.30 a.m.

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

[2] **Michael German:** Today, we are taking oral evidence in connection with this proposed Order, and I welcome Dr Chris Llewelyn, director of lifelong learning, leisure and information for the Welsh Local Government Association, Daisy Seabourne, who is the policy officer for the WLGA and Karl Napieralla who is the director of education for Neath Port Talbot County Borough Council, and who is representing the Association of Directors of Education in Wales. Unless you wish to make any opening remarks, I start today by asking why you did not provide us with any comments, as you normally do, on the drafting and detail of the proposed Order in your written evidence.

[3] **Dr Llewelyn:** Thank you for your opening remarks and for your welcome to the session, Chair. We are pleased, as ever, to be able to participate in this process. It is the timescale and notice that we were given to produce the evidence. It is a relatively busy time for local government, and the WLGA in particular, with conferences and events being organised. So, it was the timescale that prevented us from providing the kind of written response that we would ordinarily provide. Also, there was the recognition that we were coming to give oral evidence as well, and in the realm of the role of school governors, the WLGA has a relatively public position on these matters.

[4] **Michael German:** Thank you. We share the timescale issue. We have raised it as a committee—

[5] **Dr Llewelyn:** I add my apologies. I should have said at the outset that, ordinarily, we would endeavour to provide written evidence, but it has not been possible.

[6] **Michael German:** So you can expect harder questioning. [*Laughter.*]

[7] **Ms Seabourne:** In addition, we provided supplementary evidence, which we gained after a meeting with the governor support officers' group, but that did not happen until Friday last week, so it was slightly delayed.

[8] **Michael German:** We understand about the shortage of time, and we share that issue. We will start with the broadest possible question. Do we need legislation in the area of school governance issues?

[9] **Dr Llewelyn:** I will come in with some opening remarks and Karl will follow those up. The association welcomes the thrust of what is behind the proposed LCO. Given how the education agenda in Wales has changed over the 10 years since the advent of devolution, circumstances have changed significantly. Indeed, the policy agenda and implementation is very different to England. Initiatives such as the foundation phase, the 14-19 learning pathways, the school effectiveness framework, the twenty-first century schools programme

and so on mean that the circumstances are fairly different and, in responding to those different circumstances, we can see why the Assembly Government would want the power to legislate in these areas. Having looked at the Minister's evidence to this committee, there is support for the generality of the Minister's approach.

[10] **Michael German:** I suppose the general question before Karl responds is whether we need primary legislation in this area, or whether we could do it in another way.

[11] **Dr Llewelyn:** Again, if I turn the question around as has happened in the past, I am not sure whether it would be appropriate for local government to oppose the Government or Minister seeking these powers in this area, for the reasons that I have indicated.

[12] **Michael German:** Karl, did you want to add anything? I am sorry, I should have said that you should not touch the buttons on the microphones. There is a man behind me who gets very upset by that—he will do it all for you.

[13] **Mr Napieralla:** As a group of directors, the context I would like to lay out to you is that we have a great track record of working in partnership with the Welsh Assembly Government and the structure of ADEW in relation to the working groups that we have, including a proactive governor support officers' group, enables us, perhaps, to progress more quickly than in other parts of the UK. This proposed legislative competence Order would give us the confidence in carrying forward the Welsh agenda. If you have legislation behind you, then you are more likely to move forward more quickly. In relation to a number of the points that Chris outlined, particularly with regard to school effectiveness and raising standards, and the governors' participative role in that, which is very important, it gives us the confidence if we have the legislation to back us up.

[14] **Michael German:** Thank you. Jonathan, you wanted to ask a question.

[15] **Jonathan Morgan:** Thank you, Chair. I would like to raise a point for clarification. You said that you would not oppose the Government's request for this proposed LCO; is that the general policy position of the WLGA with regard to all LCOs, or just this one?

[16] **Dr Llewelyn:** I can speak only in relation to this proposed LCO today, although I recognise that, in other discussions, we have adopted a similar position. In relation to school governors, there is a frustration among authorities that, for many of the changes that need to be put in place—such as addressing surplus places, school reorganisation, the possible merger of governing bodies, or confederal arrangements—the current processes are too cumbersome. A solution that was more sensitive to the changing circumstances in Wales would be desirable. So, anything that streamlines the current arrangements would be seen as being advantageous.

[17] **Bethan Jenkins:** Do you think that this particular proposed LCO is broad enough to enable future Measures to strengthen the role of school governors? Would it allow for the role that you see for school governors in the future?

[18] **Dr Llewelyn:** I will start and perhaps Karl will comment in more detail. With regard to the generality of the proposed LCO, it would fulfil the expectations of local government. Again, the thrust of the Minister's evidence confirms that. However, as with other similar situations, the detail of the Measures that will emerge from this proposed Order would need to be scrutinised. The answer to some of your questions would be clearer at that point.

[19] **Bethan Jenkins:** You mentioned the Minister's evidence; do you think that there is clarity when we are talking about the staffing and finance issues relating to school governors, or would you see that as something that would not come into this particular proposed LCO?

[20] **Dr Llewelyn:** I agree with your point and I think that others have commented that there is lack of clarity around that particular issue. Again, if any Measures were drawn down, then it would require further discussion and a better understanding of those issues.

[21] **Bethan Jenkins:** I guess that I am trying to ascertain whether you would want it to include matters such as looking at staffing and finance, or whether you think that it should focus purely on governance, which is the principle of the proposed LCO that has been presented to us.

[22] **Dr Llewelyn:** We would need further discussion at that point. On the consultation that we have undertaken with authorities, we have had a relatively short space of time in which to consult prior to today and our views are based on the consultation that has taken place and existing policy. If that situation changes, then we would need time to consider the implications, to reflect on them and to consult more widely.

9.40 a.m.

[23] **Michael German:** I think that Jonathan will return to that matter later, because it is an issue that concerns us. I just want to flag up the fact that if those words are not included, we would not have the competence to legislate in those areas. This is what we are trying to find out about. Our terms of reference include asking whether this proposed LCO is broad enough to achieve all the ambitions that you might want to achieve in all legislative areas. Could you ask your next question, Bethan?

[24] **Bethan Jenkins:** I just wanted to know whether you could explain how the proposed Order could assist in making the governing body a more professional unit for managing schools. Could you explain how that could be done?

[25] **Mr Napieralla:** On your point, Chair, the ADEW governors' support group and the representatives of Welsh Assembly Government who work with us, as well as Governors Wales, felt that the breadth of the proposed LCO does provide the opportunity for developmental scope. However, whatever we do together and whatever we take forward, I think that we have realised that it can only be successfully achieved within a consultative framework. That is the Welsh way. There was general consensus that the proposed LCO would assist with making the governing body a more professional unit for managing schools. I could perhaps give a couple of examples of places in Wales where we have been talking about the fact that we would like to develop the situation so that all governors receive compulsory induction and that there would be a compulsory training programme for chairs of governors. There was a lot of support for that, which I think that the proposed LCO could strengthen.

[26] Obviously, the exact detail would have to be worked out in consultation with the various groups. Only this morning, however, we heard that, across the border, there is to be a focus on individual pupils through catch-up work. The Welsh way would be to ensure that level of interaction and support for pupils much earlier, through the foundation phase. The governors have an input to that. Governors can only really understand how effective their school can be and carry out these things if the training that they have received is up to the mark in breadth and scope. As I said, there is a general consensus that the proposed LCO would enable us to develop a different way of doing things in Wales, which may give a little more direction than is the case at the moment.

[27] **Lorraine Barrett:** Will you say something about the evidence that supports the view that the clerk should be a statutory, paid professional? How would you envisage that working? There is a legal aspect to the job, but I know many clerks who are only there—I

should not say ‘only’—to offer secretariat support. How would you see this statutory role developing?

[28] **Mr Napieralla:** There is a very mixed picture in Wales at the moment, as you are probably aware. In my authority, we do not provide a clerking service, although we do have volunteers who come forward who are members of staff. In those authorities where a clerking service is provided, it is extremely professional and it is backed up by training. Also, the breadth of the role of the clerk does have an impact on professional discussions within the governing body and takes them in a particular direction. I think that there is enough good practice coming through that we could develop a system in Wales that would benefit governing bodies. Again, the devil is in the detail.

[29] **Lorraine Barrett:** Do you think that the proposed Order is broad enough to allow a Measure to make it possible?

[30] **Mr Napieralla:** My first comment would be that if you introduced legislation, we would have to have discussions with the Welsh Assembly Government on how that would be funded and developed. To me, an LCO would give us that direction. There would be no hiding place and we would have to have that discussion, whereas, at the moment, you have—well, it is not 22 ways of doing things, because we are collaborating more effectively in a regional sense, but there is scope to develop much more consistency across Wales.

[31] **Michael German:** If I could just press you a little more on that, Karl, what we are looking at are the actual words in matters 5.2A, 5.2B and 5.2C. You have advocated a paid, professional clerking service as a good thing. Is the wording in those three matters sufficient for you to cover that point? In other words, with those words, could you introduce legislation to cover the very area that you are talking about?

[32] **Mr Napieralla:** My personal feeling is that the breadth is there, because the Welsh way is through consultation, is it not? It seems to me broad enough in its scope to allow us to enter into discussions with the Assembly Government on how that could be delivered. Personally, I did not feel that it was restrictive; it was just about right, I think.

[33] **Michael German:** However, you are talking about staffing in governing bodies; that is the issue that we are talking about. If you feel, on reflection, that the wording is not broad enough, I am sure that we could accept a short note from you on that.

[34] **Joyce Watson:** Good morning. You state that a national induction programme on the role of school governors and some compulsory training for governors would be welcome. Can you clarify why you think legislation is needed to tackle these issues in relation to training?

[35] **Karl Napieralla:** There is a tremendous amount of good practice out there at the moment, and we in ADEW have a structure, in partnership with WAG, whereby we can share best practice. There is some tremendously good practice as far as training governors is concerned, but it does lack consistency. Perhaps it is about consistency of application rather than consistency of will. An LCO would allow us to develop a much more consistent approach across Wales to some of these matters. We would have enough good practice to establish a high-quality induction programme. Were we in a position to make training for chairs compulsory, that would be of a high quality, too.

[36] The other thing about the proposed Order, as I mentioned earlier, is the confidence that having that legislation behind you gives you. That is not to say that we would be insular, because Governors Wales is doing a lot of research looking at other areas of the UK and further afield and bringing that back into the Welsh context.

[37] **Joyce Watson:** The next question is the same as one asked earlier. Having said all you have said, do you think that the proposed Order, as drafted, is wide enough? Does it give you enough? It is a similar question to one asked earlier. It is in a similar vein.

[38] **Michael German:** These are the crucial issues.

[39] **Mr Napieralla:** From the consultation that we undertook, the view among authorities is that it is wide enough. On the other point, there is a funding implication, which would mean some discussion further down the line. It is also worth adding that this approach fits in with the tri-level working approach being developed by the Assembly Government, so that the various stakeholders in the education process are aligned in their approach—I know that you have colleagues from Estyn coming to speak to you later. The closer the alignment between the work of Estyn, the Assembly Government, local authorities, schools and school governors, the better the outcomes for children and young people. There is a lot of evidence to support that.

9.50 a.m.

[40] Similarly, the more professional governors are in their approach, the more effectively we can tackle issues of under-achievement and under-attainment, and issues that relate to the impact of poverty on attainment. Much research has been done in Wales, the UK, and more broadly, looking at how attainment levels in schools can be increased, including work done in partnership between the Assembly Government and local government on narrowing the gap. A key element in that work is the leadership role of governors. All of this is enhanced by having strong, professional and focused school governors with strong elements of leadership.

[41] **Jonathan Morgan:** I have a question for Stephen, rather than the witnesses. I am a little unclear as to whether or not the Assembly Government already has the competence to pass regulations governing the training arrangements for school governors. Under the Education Act 1996—although this might have been amended by the Education Act 2002—section 63 and Schedules 9, 10 and 11 give Welsh Ministers the power to make regulations over membership proceedings, expenses, training and support of governors. Therefore, would that allow Assembly Ministers by regulation to provide for compulsory training within the existing legislative framework? Perhaps we could return to that. I know that the Government is specifically looking within the context of the proposed LCO, but does the power already exist?

[42] **Michael German:** I will ask Stephen whether he can prepare a note on that.

[43] **Mr Davies:** I will certainly prepare a note for you. I do not know at the moment—I will have to look at that for you, Jonathan.

[44] **Jonathan Morgan:** Okay.

[45] **Michael German:** We also need to be clear about the distinction between functions by regulation and primary legislation, which is why Joyce asked the same question as I asked earlier, and why we will keep coming back to you on it. It is why we ask you to keep your finger on the page, as it were, because you are describing a policy ambition that you both share. Are the words provided sufficiently broad for those ambitions to be achieved? That is the question that we are asking. If you say that they are, then that is your position, but if they are not, this is your opportunity to get those words expanded upon. That is the crucial issue that we are trying to address. Joyce, do you want to carry on with your questions?

[46] **Joyce Watson:** Yes. I have a question about employment law and governing bodies. You say that

[47] 'Certain aspects of employment law operate differently when the regulatory role of school governance is applied.'

[48] Can you explain what you mean by that?

[49] **Dr Llewelyn:** I will come in first, and Karl can probably add something that relates to Neath Port Talbot. The issue is the way in which authorities are under pressure to squeeze efficiencies out of the system and to centralise functions wherever they can to get those efficiencies out of the back office functions to put into front-line services. More and more authorities are centralising human resources functions. One of the consequences of that is that some of the specialist dimensions can, on occasion, be lost. There is some discussion around the fact that in centralising HR functions there is a possibility in some instances that some expertise relating to schools and school governance may be lost. As an association, we are in discussion with some of the teacher unions in relation to this, because they have raised the matter with us, and an ongoing dialogue is taking place. It reflects the pressure that authorities face in trying to get economies of scale out of the system, but at the same time responding to the service level pressures and the sensitivity of particular services. That is the issue at the core of that question. I do not know whether Karl can explain how they deal with that in Neath Port Talbot.

[50] **Mr Napieralla:** Governors are under increasing pressure to understand the nature of schools and the way that they develop. Schools are vastly different places from what they were, even five years ago, given the different types of professionals who work in schools and who all bring their own conditions of service with them. My authority is no exception to the situation that Chris has just outlined. There was pressure from the governors' association locally and the chairs of governors who said, 'Okay, if you're going to do this, what about the level of support for us in schools?'. We managed to agree and ensure that we had discrete human resources professionals with an educational background and an understanding of the conditions of service in schools, and in the education sector, which is wider than schools. More importantly, should any of those people in any way move out of the system, they would be replaced like for like, or, at the very least, there would be a commitment to train people in those conditions of service. Generally, our governors were happy with that, but the proof of the pudding will be which services are delivered.

[51] **Joyce Watson:** Does what you have just said have any bearing on the terms of the proposed Order?

[52] **Michael German:** This goes back to the same question, in other words.

[53] **Mr Napieralla:** The governor support officers felt that the breadth of the proposed LCO was such that these areas could be discussed and developed.

[54] **Lorraine Barrett:** Matter 5.2C provides powers enabling the establishment of bodies to carry out functions relating to local authority maintained schools. In her evidence last week, the Minister said that it was not possible to comment on the type of bodies that could be established, as this would be a matter for a Measure, although she suggested that the Education and School Improvement Service is an example of such a body that already exists. Do you have any views on this aspect of the proposed Order?

[55] **Mr Napieralla:** On bodies, a number of developments could take place in Wales, building on our current work in partnership with Governors Wales and the Welsh Assembly Government, with our support officers from local authorities. We could establish much greater consistency of support; I am not sure whether or not a separate support agency for governors could emerge from that. The proposed LCO would give you the breadth to be able

to do that. We were more focused on the nature of what is happening in Wales on the rationalisation of the 14-19 agenda and transformation, where, particularly post 16, you would get the traditional sixth-form institutions coming together with FE colleges, and even training providers. I looked at that in light of the establishment of a body to oversee that development. That will be necessary, and there needs to be clarity on the roles and where it fits with the individual institutions. The breadth gives us the opportunity to pursue that further with WAG.

[56] **Dr Llewelyn:** May I also comment on that? As I mentioned earlier, there has been frustration among local authorities that the current arrangement is cumbersome in trying to merge governing bodies or set up confederal arrangements. So, anything that could ease that process would be welcome. Similarly, there is recognition from all stakeholders in the education community that further collaboration is required. It is probably required over the next few years because of financial circumstances, but it is also needed for quality and breadth of provision.

10.00 a.m.

[57] Anything that would enhance or enable that to happen smoothly and easily would be welcomed. At the same time we would not want to see any additional bureaucracy or any needless administrative burdens created. Therefore, if Measures were drawn down, we would want to have a discussion about the detail and I think that there would need to be significant consultation on those points.

[58] **Lorraine Barrett:** Are you content with how matter 5.2C is drafted?

[59] **Dr Llewelyn:** Yes.

[60] **Michael German:** I now call on Jonathan.

[61] **Jonathan Morgan:** I would like to go back to the issue of staffing and finance. The explanatory memorandum that accompanies the Order, which you have seen, states in a rather foggy sort of fashion—and I thought that it was rather funny to put the word ‘clarity’ in this paragraph—

[62] ‘For clarity, substantive changes to school finance and school staffing are not within the competence which would be created by this proposed LCO. If new governance arrangements were created under the proposed LCO, some linked changes to the persons or bodies with functions relating to staffing and finance would be required and so, to that extent, staffing and finance matters are within competence.’

[63] As you might imagine, this caused a fair degree of confusion when it was published. Therefore, as a starting point, in the light of the work that your authorities do and your understanding, what is your understanding of the current responsibility that governors have with regard to staffing and finance?

[64] **Mr Napieralla:** My view is that governors currently oversee arrangements for staffing and finance; the authority employs staff but the responsibility for hiring and firing is obviously with the governing bodies. We are more concerned about the finance side of things. The lack of clarity and understanding relates to governors’ remit and their role in ensuring that the school is solvent and is using resources adequately for the purposes that have been delegated to them by the local authority, and long may that continue in Wales because it does force the partnership approach. So, I think that there is a need for a greater understanding with governors. For example, we currently have a situation where no school within my authority should set a deficit budget unless there is an agreed course of action over a time-limited period—usually two, possibly three years—where a recovery programme will be enacted by

the school. It is very important to have clarity about the governors' responsibility to make sure that that happens. I believe that there is a lack of clarity in that respect at present.

[65] **Jonathan Morgan:** If you were to make an honest assessment of the role and responsibilities of school governing bodies, how much time do you think is spent dealing with staffing and finance issues? Would it be 50 per cent, 60 per cent, or 70 per cent of their time?

[66] **Mr Napieralla:** You cannot generalise, but it would be a large proportion of their time, depending on the issues that face the school and on the time of year. Probably, when budgets are finalised and the impacts on schools are then articulated, the amount of time that governors, or a sub-section of a governing body, such as finance or staff dismissal committees, spend on that is out of proportion with the amount of time that they would spend looking at standards and the outcomes of pupils, and so forth. Going back to the earlier point about training and support from authorities, this is crucial, as is clarity on governor roles, in ensuring that these things are taken forward in a much more professional manner.

[67] **Jonathan Morgan:** Do you think that the proposed Order as drafted is somewhat weak in that it does not allow us to get to a position of clarity around the roles and responsibilities of staffing and finance?

[68] **Mr Napieralla:** The consensus around our table is that it is broad enough to include those issues and that there is no need for definitive terms within it, but the proposed Order would naturally bring you to consider those issues.

[69] **Michael German:** May I press you on that point? You have asked for clarity in the area of finance. Clarity can be provided by statutory provision—making it clear what you should be doing and what the laws are about. Could you point, in matters 5.2A, 5.2B and 5.2C, to where you feel the Government would then have the power to be able to clarify what you have just asked to be clarified in relation to governors' roles in respect of finance? I would like to hear your response for the record.

[70] **Mr Napieralla:** Are you talking about matter 5.2C?

[71] **Michael German:** We are looking at the whole proposed Order and at all three matters. You have just raised the issue with us that we need clarity on the role of governors in respect of finance. To a layman, clarity means legislation, and, given that that is the case, we are trying to find out where in this proposed Order you would be able to make a Measure in respect of that issue.

[72] **Mr Napieralla:** In an earlier point, I gave you a flavour of what happens in my authority. Matter 5.2A, on the allocation of functions, property, rights and liabilities relating to such schools, would cover that.

[73] **Michael German:** Do you think that finance is included in functions?

[74] **Mr Napieralla:** Yes.

[75] **Michael German:** We will clarify that with our lawyers.

[76] **Mr Napieralla:** The word 'functions' takes you into the whole breadth of functions that a governing body must already oversee and undertake, so we felt that that was perhaps covered.

[77] **Jonathan Morgan:** That is an interesting point; I think that we need clarification as to what 'functions' includes and whether staffing and finance is regarded in law as a function

and, if it is, whether the Minister intends ‘functions’ as a definition to include staffing and finance. She was very clear in her evidence to us as to the scope of this proposed Order.

[78] Is the proposed Order broad enough to enable a Measure to implement, if required, all 21 recommendations of the Enterprise and Learning Committee report on the role of the school governor? I will not ask you to list them one by one—a ‘yes’ or ‘no’ will suffice.

[79] **Dr Llewelyn:** Without having gone through them in detail and then cross-referencing, our impression is that the proposed Order would cover most of these recommendations.

[80] **Mr Napieralla:** The important point for us is what would be the Welsh way of designing nationally, co-ordinating regionally and delivering locally, to make governing bodies as effective as we want them to be in Wales.

[81] **Jonathan Morgan:** The supplementary evidence that we have received states that

[82] ‘The transference of Legislative Competence Orders will be an integral part in achieving this’.

[83] That refers to the implementation of the 21 recommendations. Do you therefore assume that the competence will allow for the 21 recommendations to be implemented?

[84] **Dr Llewelyn:** The wording of some of the recommendations is rather vague, so there is the element of interpretation to the recommendations themselves and then to the wording of any subsequent Measures that would enable the application of the recommendations.

10.10 a.m.

[85] **Ms Seabourne:** Some of these recommendations would not require legislative competence, but others would. For example, sharing best practice and communication is already going on to a degree and would not require legislation. However, the recommendations that do require legislation would be covered by the proposed LCO.

[86] **Michael German:** That is the clarity that we are looking for. We are short of time, and we have been asking you specific questions about whether the wording of these three sentences covers the issues. You probably realise that there are issues to do with the definition of the word ‘function’, to cover the points that you just made, and you are perfectly entitled to use your own legal advice service to get an interpretation of that wording. However, if there is anything that you wish to add to the evidence that you have given this morning, if you could do that fairly rapidly, in the form of a short note, that would be helpful to us. We need to hear from people like you, who deliver the policy objectives that we are trying to achieve, to ensure that this proposed Order is transferring the tools that are needed to do the job. That is all that we are interested in at this stage. At the Measure stage, we would be dealing with the detail, and how to do it, and so on. The current investigation is looking at whether this gives you the powers that you need to do the things that you want to do.

[87] I thank you for your evidence this morning. If you wish to add anything, please do so in the form of a short note. A record of the proceedings will be sent to you, and you will have an opportunity to correct any inaccuracies.

[88] **Dr Llewelyn:** Thank you.

[89] **Michael German:** I now welcome Ann Keane, the strategic director for Estyn, and Mike Maguire, one of Her Majesty’s inspectors for Estyn. You will have heard the evidence

that has just been given by the Welsh Local Government Association and the Association of Directors of Education in Wales, so it is reasonably fair to say that you understand the thrust of this committee's work in reference to the breadth and purpose of this proposed Order. I will begin with a question that I also put to the previous witnesses. Why did you not give us any evidence on the drafting and the detail of the proposed Order in your written evidence?

[90] **Ms Keane:** Initially, we took the view that it was our first job to offer evidence of what we know about governing bodies that seemed relevant to the policy making in the proposed LCO. It seems to us to make sense generally for school governors to come within the legislative competence of the National Assembly for Wales, and, in a way, given that it already has powers to legislate on education and inspection, it was a bit of a surprise to me that its powers did not include those relating to governors.

[91] The detail of the drafting, as we have already heard, seems to be fairly general. We read the explanatory memorandum, which seemed to clarify, to some extent, what was meant. However, we assumed that fairly broad powers are being requested here, and we realise that, at a later stage, when Measures are brought forward, there will be an opportunity to discuss the detail when the situation is clearer. In principle, therefore, we are in favour of the proposed LCO.

[92] **Michael German:** As you know, our purpose today is to see whether it is broad enough to cover all potential policy objectives now or in the future. You just touched on this, but it is a primary question in these matters: do we need legislation in the area of school governance?

[93] **Ms Keane:** We have evidence from Estyn inspections to show that the current arrangements for governing bodies are not addressing the issues of patchiness in quality, and are not necessarily operating in support of important initiatives, particularly the 14-19 agenda and the transformation agenda. So, I would say that the school environment is changing rapidly. The environment in which we live is changing rapidly, and schools need to be responsive. Governors have a very important role to play in that, and I can see a need for Measures to be brought forward that would help governors to be more effective in their roles.

[94] **Joyce Watson:** Good morning. My question follows on from that issue of scope. In your evidence, you list the roles of school governing bodies, and it is a fairly comprehensive list. Do you think that the proposed Order is broad enough to enable a Measure to be made that fully addresses school governance issues?

[95] **Ms Keane:** On reading the definitions of the matters, I noted the generality of the terminology, so I was not fully confident that I had understood the full range of powers involved. However, when I read the Minister's memorandum, I was reassured that some of the specific concerns that our inspection evidence tells us need to be addressed do come within the ambit of any Measures to be brought forward under the general powers sought under the proposed Order.

[96] **Bethan Jenkins:** In your written evidence, in relation to learning pathways and the school effectiveness framework, you say:

[97] 'The proposed legislative changes would provide opportunities for the NAW to legislate and respond to the above initiatives in a targeted way.'

[98] Can you expand on that? Is that not already happening within the current structures?

[99] **Ms Keane:** At the moment, governors do not have to undertake compulsory training. We see that as a key failure to deliver consistency in the quality of governance and the

professionalisation of the service that governors offer. The emphasis that the Minister puts on the training of governors in paragraph 26 of the memorandum seems to indicate that the structures for decision making and the quality of that decision making could be addressed in Measures. That reassures us about the role that governors play in addressing issues of underachievement in schools and understanding how to measure the performance of schools in the round, and not just with regard to attainment outcomes. That would mean that they would become sharper and more professional in doing that.

[100] I also understood matter 5.2C to be about the Webb agenda, opening up the possibility of newly constituted governing bodies that would enable that agenda to be taken forward. We gave evidence to the Webb inquiry, and we were very much of the view that choice for pupils in Wales should be widened to help pupil achievement to move forward and to be responsive to pupil need. New arrangements could be introduced that would be more responsive, giving flexibility in the 14 to 19 age range. Governors are set up to service single institutions. They sometimes take a defensive view of quality, standards and provision, which is understandable, as they serve a community. As we say in our reports, generally, they do a very good job. However, we believe that changing circumstances require a change in our expectations of governing bodies.

[101] **Mr Maguire:** I would add that compulsory induction training for governors and chairs of governing bodies would be most helpful to enable them to grapple with the wealth of initiatives that affect schools at the moment. As the WLGA just mentioned, schools are changing rapidly. They are complex institutions and governors need to be highly professionalised to aid the management and leadership of their institutions.

[102] **Bethan Jenkins:** You also state that governors should continue to be able to hold individual providers to account in respect of standards and quality. Is the proposed Order broad enough to enable Measures to be brought forward to tackle this issue, too?

10.20 a.m.

[103] **Ms Keane:** Governors are supposed to do that already. It is central to their responsibility for standards. We are concerned that governors do not know enough about how to challenge schools, which links to the governor training issue. We see the emphasis in the memorandum on that being brought forward in a Measure as a sign that training will be compulsory, which would address the skills gaps and professionalise the governing bodies to the extent that they could take a more challenging stance on standards.

[104] **Mr Maguire:** It will be important. We inspect schools every six years and, in between that cycle of inspections, it is the governors who are holding the school to account on standards and quality. We have to make sure that that important role is continued and, hopefully, enhanced.

[105] **Kirsty Williams:** In your written evidence, and again this morning, your emphasis has been on the training of governors and allowing them to do the job of being supportive of schools, but also to be a critical friend to the school to drive up standards and achievement. Like you, I am surprised that we are not already investing heavily in this area, given the strategically important role of those individuals. Could you clarify that legislation is necessary to move forward on this training agenda for governors? Could it not be achieved through a different mechanism?

[106] **Ms Keane:** From what we heard earlier in the meeting, it may be possible to make training compulsory for governors through regulation, although I am not quite clear on that. All that I can say is that, at the moment, we see an unacceptable level of variation in the standard of the training that governors receive and in the impact of training on governors. If

that is as a result of a lack of legislative power, I presume that legislative power would indeed remedy that, according to the Minister's definition of what it would give us.

[107] **Kirsty Williams:** Could legislation provide for standardisation?

[108] **Mr Maguire:** Yes. There is too much variation. We pointed out in our evidence that, over the last academic year, there were shortcomings in the work of the governing bodies of about a third of primary schools and about a quarter of secondary schools. The standardisation of training would have an impact on that, hopefully.

[109] Karl Napieralla mentioned the variability of school clerking arrangements, and we do see huge variability across Wales. In one local authority that we inspected recently, the clerking system is professionalised, which adds great value to the work of the governing body. The clerk knows who she or he can contact within the local authority to give immediate advice to the governing body. In others that we see, that support is not forthcoming, and therefore governors in some areas of Wales struggle tremendously with their clerking arrangements and do not have access to the professional services provided by the local authority.

[110] **Kirsty Williams:** Given your concerns in this area and your stated need to drive this training agenda forward, and given that the Government has decided that legislation is the way forward, do you feel that the proposed Order as drafted is wide enough to enable Measures to be made by the National Assembly that would tackle all the training and clerking issues that you are now discussing with us?

[111] **Ms Keane:** We are reassured by the discussions that you have had previously with the WLGA in that respect, and by what the Minister says in her memorandum on the potential for Measures to be brought forward to address these issues.

[112] **Kirsty Williams:** Do you think that the legislation will be broad enough to cover all eventualities to do with the training and governing bodies?

[113] **Ms Keane:** The matters in the proposed LCO are fairly short, but they seem to be fairly general and therefore capable of delivering Measures that would be more detailed. That is when there would be greater scrutiny, by a committee and the Welsh Assembly Government.

[114] **Lorraine Barrett:** You have covered a lot of the issues that I wanted to ask you about governing body standards, and Mike has just talked about the level of variation in quality. Is there anything else you wanted to say about the significant shortcomings and that unacceptable level of variation, and whether the proposed Order is wide enough to deal with those shortcomings?

[115] **Mr Maguire:** In response to that, what I would say is that one of the issues that governors find most difficult is monitoring and evaluating the quality of provision. This comes back again to professional training and standardised training, because they find that role particularly hard; it is the one they fail on most often. If we indicate that governing bodies are failing, it is usually in monitoring provision. If that could be enhanced through a professional standard of training for all governing bodies, I am sure that we would make great headway.

[116] **Jonathan Morgan:** I return to this issue of staffing and finance, which I raised with the witnesses earlier on. There is obviously this slight fog as to whether or not staffing and finance are included within the term 'functions' as it is used in the proposed Order. In your

evidence, with regard to providing a full range of information for parents, you say that, in a few schools, governors fail to meet regulatory and legal requirements. Does that ever occur with regard to staffing and finance? Do you ever encounter particular problems that governors face in discharging their responsibilities over staffing and finance matters? If so, could that be addressed within the scope of the proposed Order?

[117] **Mr Maguire:** Finance and staffing issues do not come up very often. In fact, we do not find shortcomings very often as far as those issues are concerned. They are very complex issues, and governors face an immense range of staffing issues. I have been the headteacher of two schools and you asked earlier about the percentage of time—I would say too much. We set up committees to look at staffing, as do most schools with regard to staffing and finance, and those committees then report back to the main governing bodies. They are particularly complex issues for schools. Again, I feel that a level of expert training is needed to help governors deal with these issues. However, we do not find many shortcomings and they do a good job overall. It is more to do with the shortcomings that we identified, namely monitoring and evaluating and also some of those statutory requirements that relate to things like the annual report, the parent prospectus and so on.

[118] **Ms Keane:** Then there are the policies. Sometimes they do not complete those; there are many statutory requirements on governors to deliver policies and some of those are sometimes not delivered when they are statutorily obliged to deliver them.

[119] **Mr Maguire:** The other shortcomings relate to Welsh, religious education and the act of collective worship. Outside of that, very rarely do we have to pick governors up on finance and staffing issues.

[120] **Ms Keane:** Karl Napieralla mentioned HR advice. Obviously, they need professional advice on HR issues, and governors have a role to play in staffing and finance issues, delegated budgets, monitoring expenditure and so on and deciding on the pay policy for the school. They have responsibilities, but they deal with the delegated budget. I can see other issues of funding and finance coming in to the ambit of our discussions in relation to the costs of making training compulsory and making the clerks more professional. There are funding implications there, possibly in relation to powers that may be needed for governing bodies that have a wider constitution than at present in relation to a school or a further education college. There may be issues there and with regard to how budgets are delegated in such circumstances. However, taking it just from the governors' point of view, we do not see any big issues with staffing and finance.

[121] **Michael German:** That is very helpful. You have the sense of where we are heading with that issue of staffing and finance. You have obviously identified a policy issue and it is our job to ensure that that policy issue is covered by the wording in the proposed Order. While you may not be experts in constitutional law—I would not expect you to be—if you do have any subsequent views on this issue, please let us have them rapidly, particularly on the issues that have been raised this morning. That will help us reach a conclusion on what we recommend to the Minister, particularly if there are any additional words to be included in this proposed Order, or if we need to take some out.

10.30 a.m.

[122] Thank you for coming this morning and for giving your evidence to us and listening to the previous witnesses. It is very helpful for witnesses to hear what other witnesses are saying. That draws our meeting to a conclusion. The next meeting will be on 26 November, when we will receive evidence from Governors Wales, the National Association of Headteachers and the Association of School and College Leaders Cymru. Thank you, colleagues.

Daeth y cyfarfod i ben am 10.30 a.m.
The meeting ended at 10.30 a.m.