



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

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

**Dydd Iau, 10 Rhagfyr 2009
Thursday, 10 December 2009**

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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

Jane Hutt	Aelod Cynulliad, Llafur (y Gweinidog dros Blant, Addysg, Dysgu Gydol Oes a Sgiliau) Assembly Member, Labour (the Minister for Children, Education, Lifelong Learning and Skills)
Dr David Lloyd-Thomas	Pennaeth, Is-adran Llywodraethu Ysgolion a Refeniw Ysgolion, Llywodraeth Cynulliad Cymru Head, School Governance and School Revenue Branch, Welsh Assembly Government
Simon Morea	Cyfreithiwr, Llywodraeth Cynulliad Cymru Lawyer, Welsh Assembly Government

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 this meeting of Legislation Committee No. 4, at which we are looking at the Proposed National Assembly for Wales (Legislative Competence) (Education) Order 2010. Before I begin, the usual housekeeping rules apply in their totality; I am sure that we all know them by heart.

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

[2] **Michael German:** I welcome Jane Hutt, the Minister for Children, Education, Lifelong Learning and Skills, and her officials, to committee this morning. Thank you for coming. As you know, our purpose is to take further evidence from you regarding the proposed school governance LCO. Before us we have Dr David Lloyd-Thomas, who is the head of the school governance and school revenue branch—is that correct?

[3] **Dr Lloyd-Thomas:** Yes, currently.

[4] **Michael German:** Good. I also welcome Simon Morea. You are a lawyer, I understand—one of that wonderful breed of people.

[5] We are going to go straight into questions, unless there is anything that you want to say, Jane, before we start. You will probably have read some of the evidence that we have received. Would you like to make any introductory remarks? If not, we can move directly to the questions.

9.30 a.m.

[6] **The Minister for Children, Education, Lifelong Learning and Skills (Jane Hutt):** I would like to say a few words, if that is all right, Chair. I would like to start by thanking this legislation committee for inviting me once again to discuss the Proposed National Assembly for Wales (Legislative Competence) (Education) Order 2010 and say how useful I have found the written and verbal evidence that you have received. I am pleased that there is general consensus that the acquisition of these powers by the Assembly is the right way forward. There has also been a good level of understanding about the timeliness and rationale behind the proposed transfer of powers.

[7] It is always difficult not to stray into policy intent—that is always the difficulty with LCOs—or speculating on future Measures, but the evidence has shown quite clearly some of the issues discussed during my first appearance. It has been interesting to read the evidence on the powers that we are not seeking in relation to teachers' pay and conditions. I hope that the letter of clarification that I have provided, which is dated 25 November, helped to facilitate understanding. I recognise that some of the bodies that have responded have indicated that they are interested in the possibility of our acquiring the powers in relation to pay and conditions, but said that this proposed LCO is not the vehicle for doing that. Clarity with regard to what governance means is clearly emerging. This is an opportunity to clarify that point further.

[8] **Michael German:** Thank you. Jonathan, would you like to start off?

[9] **Jonathan Morgan:** Thank you, Chair. Good morning, Minister. The committee took evidence from the NASUWT, and we had quite an interesting discussion with regard to whether the proposed Order is too broad or too narrow. One witness said that, I suppose from the point of view of not liking the potential consequence of what the proposed Order could do, they thought that it was too narrow. The other witness then said that it is not a question of it being too narrow or too broad, but a question of whether it is transparent and whether there is enough focus.

[10] During the session, they also said that they thought that the proposed Order could

lead to the dismantling of the state education system in Wales. In essence, it would allow you to introduce competition in a way that does not occur at the minute. What are your views on the evidence that they provided to us?

[11] **Jane Hutt:** Good morning, Jonathan. It is a chance for me to correct a fundamental misunderstanding that seems to have emerged from the NASUWT. I am happy to reassure both the NASUWT and the committee that this is a fundamental misunderstanding about the purpose of the proposed Order. The proposed Order clearly states that it relates only to schools maintained by local education authorities. It is only and all about the governance of our state schools. Maintenance by local education authorities clearly shows that the context is about state education. I cannot see how it could be interpreted as a route to the possible dismantling of state education. I also made it very clear in my first appearance that this proposed LCO would not permit the passing of Measures, for example, to establish academies. So, hopefully, we can move on from that misunderstanding. You may want to move on in further questions to the issue of how this can facilitate collaboration.

[12] **Jonathan Morgan:** To return to the point, they were comfortable in their understanding that this proposed Order related to schools maintained by local education authorities. What they were arguing with us is that they did not agree with the local management of schools, because they thought that it had been a disaster—I have to say that I disagree with them—and that it led to teachers being made redundant, governing bodies making their own decisions, going out of local authority control for services and so on and they thought that the proposed Order would allow the Assembly Government to take that local management of schools further. I do not think that they were necessarily suggesting that local education authorities in Wales would suddenly all disappear, but they thought that this was an agenda to move control further beyond what the local management of schools already does. Their argument was principally about the local management of schools in that sense, not so much about whether or not we want to privatise the education system.

[13] **Jane Hutt:** I think that, also, something emerged on that point from the Governors Wales evidence as well. So, hopefully, we can again clarify that point. We should look at the issue in relation to what could result from this proposed LCO in terms of Measures, because, obviously, this is about the transfer of powers and getting the competence. There is clearly an issue at the moment about the involvement of the private sector, for example. Schools already have some contracts, such as those for cleaning services. We have to try to convey the fact that the proposed LCO only provides competence in relation to schools maintained by LEAs.

[14] We could go back to discuss the issue about the local management of schools, which they do not agree with, but you do agree with, Jonathan. In fact, I believe that this, from our policy perspective, will enable us to overcome some of the restrictions of LMS to have more collaboration and less competition between schools. If you look at the opportunities that could emerge in proposed Measures, it is about progress towards collaboration and a more strategic approach by schools, in terms of their governance—we must not stray from the word ‘governance’. Let us go back to the committee’s report on improving support for governors themselves. I think that the opportunities that we will have to ensure greater collaboration so that school governing bodies can be more effective will overcome some of the difficulties of schools having a narrow focus on their own budget, their own pupil numbers and their own arrangements. I am sure that when we come on to other points in this morning’s committee, we will see that there will be an opportunity for collaboration that could be very valuable. Governor training is obviously one area of that, but it will provide the collaboration rather than the competition that this Government has been supporting.

[15] **Jonathan Morgan:** I want to turn to the issue of staffing and finance. I thank you for the letter that you sent to the Chair on 25 November. For the record, could you clarify what aspects of staffing and finance are covered by the proposed LCO?

[16] **Jane Hutt:** My letter of 25 November sets out the scope of the proposed LCO. It has been drafted to encompass the school governance framework. It clarifies which aspects of school governance are included in the proposed LCO. For the record, the school governance framework, within which school governors currently operate, includes the processes, systems and roles of governing bodies and the manner in which they conduct themselves and discharge their functions, duties and responsibilities. The proposed LCO would not be able to change the staffing and finance functions that governing bodies currently have responsibility for, but the manner in which they conduct and discharge those functions is obviously within the framework. The proposed LCO would give the National Assembly competence to agree Measures that reallocate functions for staffing or finance from one person or body to another person or body, but not change the law in respect of the funding or staffing of maintained schools.

[17] **Jonathan Morgan:** Thank you, Minister. You have already said that the proposed LCO does not propose to change the functions in any way. You have outlined the fact that the proposed LCO deals with the responsibility to form committees dealing with the appointment and dismissal of staff, staff capacity and grievance matters. I accept that devolving pay and conditions is not something that the Assembly Government would wish to see—I think that you and I would probably agree on that—and, in a sense, the proposed LCO is drafted in a way that reflects that. Why is it that the Assembly Government does not wish to see a situation where any other kinds of functions could be altered within the current responsibilities of governing bodies? I am not suggesting the inclusion of pay and conditions, but why have you been so prescriptive in saying that the proposed LCO will not allow the Assembly Government to alter those functions? Surely, that flexibility could be quite useful, except for devolving pay and conditions.

9.40 a.m.

[18] **Jane Hutt:** We may need to bring in my lawyer on this aspect, but the question goes back to my opening remarks and the recognition that this is not the eventual LCO. It would be an entirely different matter that we would have to pursue in terms of an LCO that would give us those powers. In essence, we cannot deviate from the fact that those functions that relate to teachers' pay and conditions are not part of school governance. So, it would widen out the matter hugely.

[19] Simon, do you want to clarify the point?

[20] **Jonathan Morgan:** Before you bring Simon in, the point that I was making is that, accepting that you do not want to devolve pay and conditions—I think you are right not to—have you examined what the functions currently are and whether additional functions could be undertaken by school governing bodies, except for the extreme, which would be the devolution of pay and conditions? Are there additional functions? I was wondering about the level of flexibility. If you are looking to have legislative competence in relation to responsibility for setting up committees, dealing with staff grievances, capacity, appointments, dismissal, and so on, and you are not seeking to vary the functions, then I am not entirely sure what it is you intend to do with this. I would have thought that having a bit of flexibility on functions would be quite useful.

[21] **Jane Hutt:** It is a policy issue. I will bring Simon in next. It is a policy issue that we do not want, with this proposed LCO—I do not think it would be possible anyway—to extend the functions and the flexibilities, as you say. It would be helpful, Jonathan, if you could give me an example, apart from—

[22] **Jonathan Morgan:** I am not the Minister for education, Minister. [*Laughter.*]

[23] **Jane Hutt:** We do not see that there is a route to travel down on this proposed LCO. Simon, do you want to add anything?

[24] **Mr Morea:** Governors have many functions ascribed to them that are not part of governance. We already have competence for most of those in relation to schools maintained by local education authorities. These include admissions, the curriculum, and special educational needs. So, when we were drafting this legislation, we had to consider, with policy colleagues and the Minister, what school governance was. In so doing, we concluded that staffing and finance do not form part of governance. They are very important functions that governors do, but they are not part of school governance itself with regard to the system and the manner of controlling a school. They did not therefore form a part of school governance. In the same way, when the Office of Parliamentary Counsel was drafting matter 5.12, which relates to further education institutions, the draftsman put in ‘conduct and governance’, while ‘staffing’ was a separate word, which indicates that he or she did not think that staffing was part of school governance, and we agreed.

[25] **Michael German:** Will you just clarify for the record what you have just said? You said that you already have the power in respect of the functions in these areas, because you have conducted a checking exercise. Is that competence of functions? In other words, do we have executive authority, or do we have primary authority in those matters?

[26] **Mr Morea:** The National Assembly for Wales has power to pass Measures in relation to a whole suite of education areas, such as admissions. If you were making a Measure in relation to admissions or categories, the chances are that you would ascribe this to a governor, a governing body, or somebody within the school governance framework. So, you would be giving them functions.

[27] **Michael German:** Yes, but, to return to the phrase you used, you said that you already have power over those functions—we have to be careful with the word ‘functions’, as it now has a double meaning—of governors. We often refer to this as being an executive power of the Welsh Assembly Government or a legislative power of the National Assembly, for clarity’s sake. Are the powers that we already have executive powers, or are they legislative powers?

[28] **Mr Morea:** We have legislative powers in those topic areas, and if we were making a Measure, what you would be wanting governors to do would relate to admissions or to the curriculum, and so you would be able to give them functions in relation to those areas.

[29] **Jane Hutt:** If you go back to my letter of 25 November, it explains this quite clearly in terms of existing competence that the proposed LCO complements, and the powers that we are not seeking in relation to staffing issues and funding issues. Going back to Jonathan’s question, I say in my letter that governing bodies, as anyone who has been a governor will know, have some flexibility and discretion to determine specific pay ranges for their school and headteacher within the agreed framework. However, governing bodies cannot amend or alter the framework, or work outside it. It is important to put on record the points that I made in that letter, which will hopefully answer the questions that have been put.

[30] **Kirsty Williams:** We heard in evidence from Governors Wales that there was an opportunity to look at finance arrangements, and that the current local management of schools system created competition, whereas the proposed Order would concentrate on the collaboration agenda. Does the proposed Order, as drafted, enable Measures to be made to address these issues, however they are resolved?

[31] **Jane Hutt:** I touched on this in response to Jonathan’s earlier question about the

evidence from the NASUWT. For the record, we need to clarify that the funding of schools and the formula used by local authorities to determine a school's delegated budget is outside the competence of the proposed Order. However, as I have already mentioned, the Assembly already has competence on school organisation admissions arrangements. The proposed Order is about obtaining competence in respect of school governance issues, which is a missing piece of the jigsaw, and that is why we are promoting it in terms of the powers that we have.

[32] On the issue of collaboration, a Measure made as a result of the proposed LCO could require persons or bodies to collaborate or to consider collaboration. As it goes back to our policy direction in terms of promoting collaboration between schools, it could be a useful tool in addressing the concerns that Governors Wales raised in relation to competition between schools. However, that would have to be considered within a Measure.

[33] I mentioned policy direction, and you will know that we have already moved forward on the draft federation of maintained schools regulations, which would enable governing bodies to federate under a single governing body. So, this fits alongside the other policy directions and regulations that we are seeking to enable that collaboration, rather than competition.

[34] **Kirsty Williams:** The point that Governors Wales was making was that it foresaw the collaboration agenda being advanced via Measures that would emerge from the proposed Order. However, in seeking that collaboration, the local management of schools and the arrangements for budgets would be a barrier to collaboration, because schools that are currently funded in the way that they are would be fighting over pupils because of the moneys attached to a single pupil. Therefore, issues around collaboration could be undermined. Governors Wales's point was whether the proposed LCO is broad enough to look at those budget arrangements, because in order to advance your collaboration, you may want to change some of the financial arrangements as well. So, you need a proposed LCO that could do collaboration, but could also do funding.

[35] **Jane Hutt:** Yes. I will bring David in to comment on the current arrangements. There is a question about that tension with the local management of schools, because people think, 'This is my budget, I am going to look after it and I want more pupils'. We must see it in the wider policy context of having a more strategic approach to elements such as school reorganisation and planning places. I have talked about the federation possibilities for governing bodies, but this would also enable schools through the schools effectiveness framework, which is a key route, and the 14-19 learning pathways, to collaborate much more in terms of how they deliver education in an area, and, certainly in terms of 14-19 provision, schools are already breaking down all sorts of barriers in how they share pupils and curriculum opportunities. So, we are trying to reassure Governors Wales on this. Do you want to come in and add anything, David?

9.50 a.m.

[36] **Dr Lloyd-Thomas:** Governors Wales has hit on a real issue, because headteachers and governing bodies naturally think about their own school foremost. Subconsciously, they see a pound sign above every pupil who is in the school and, for the sake of kudos, they would rather see a full school than a part-empty school. So, there is an imperative to bring pupils in and to keep them there. That can militate against a push for collaboration. So, there is a tension. However, it is important to remember that you need to consider the context of the school with regard to the wider picture that it is a school in a network of schools under the maintenance of an authority. On the funding architecture, a school has an individual budget, but it is one pot of money among many comparable pots of money that other schools have, all of which come under a local authority umbrella, which is decided by a local authority formula. So, there is a pulling together of strands in that manner.

[37] With regard to admissions, we already have the competence to make Measures on admissions, and that may be a way of tackling some of the issues around the magnetism that a school has in terms of wanting to bring in and keep pupils. We also have competence with regard to 14-19 type matters. When you consider those things alongside the competence that matter 5.2B would bring in terms of securing collaboration, you see that a powerful set of tools will be available to address these things. We have to be mindful that that might not be the complete answer, because headteachers and governing bodies, under the locally managed school model, might wish to continue to attract and keep pupils and some of them might not wish to collaborate as much as we would like. That will be for another day. Broadly speaking, the proposed LCO, alongside what already exists, would provide a powerful means of addressing the concerns raised.

[38] **Bethan Jenkins:** We have heard from some bodies that they do not believe that legislation is the way forward in terms of collaboration. The NAHT and the NASUWT hinted at this in stating that collaboration is already happening and noted that, potentially, the process of passing the proposed LCO could take so long that the 14-19 agenda would have already overtaken what the proposed LCO could achieve in relation to collaboration. For the record, why do you believe that legislation is the way forward for collaboration?

[39] **Jane Hutt:** We have to recognise that, if we want to meet emerging policy changes, the Assembly has to have the competence to accommodate any changes to school governance arrangements that may be required. If school governance changes or if the current mechanisms are not working, while we are progressing on collaboration in the ways described, we do not have the competence to enforce it. A voluntary route towards collaboration might be too limited, therefore, a new law would provide us with an opportunity—I am sure that we will go on to this—to secure collaboration. I have talked about FE governance in the past, and it is also useful to recognise that we do not have the competence that we have over FE governance. In FE, under the Further Education and Training Act 2007, there is already legislation to enforce collaboration.

[40] **Bethan Jenkins:** I will go on to securing collaboration, as you just mentioned. UCAC raised this issue, suggesting that an element of ensuring or enforcing could restrict other areas of collaboration. We note your previous comments on that, but do you have anything to add in light of the worries that UCAC has around the enforcement agenda?

[41] **Jane Hutt:** The opportunities to secure collaboration are already in matter 5.13. It is important to have a legislative base, and it means that a Measure promoting collaboration could be possible. In a sense, we need to have this in the proposed LCO so that it is consistent, but a Measure could refer to promoting collaboration.

[42] **Bethan Jenkins:** Is there any way that the use of the word ‘securing’ could narrow the competence? For example, would promoting collaboration in a Measure be permitted?

[43] **Jane Hutt:** I think that my point just now covered that. The word ‘securing’ is used because Parliamentary Counsel said that it would be consistent with the terminology within Schedule 5 to the Government of Wales Act 2006. However, a Measure could emanate from this LCO that could use the words ‘promoting collaboration’.

[44] **Bethan Jenkins:** In its oral evidence, CYDAG told us of its concern that compulsory collaboration could have an effect on Welsh-medium education, if decisions are taken that are against the ethos of an individual school. How would the proposed Order ensure that there is no negative effect on individual Welsh-medium schools? I believe that CYDAG was talking about the possibility of being told to work with second-language schools, or with schools that teach through the medium of English. There would be concerns then about the retention of the

school ethos.

[45] **Jane Hutt:** I am glad to have the opportunity to reassure the committee that the proposed Order would not have a negative effect on Welsh-medium provision, or the Welsh language in schools. As you say, CYDAG's main concerns relate to the categories used to define schools, such as Welsh-medium, bilingual or English-medium, and whether the proposed Order could affect that. Again, I assure you on the record that the proposed LCO will not affect the existing categorisation of schools or Welsh-medium provision. In many ways, you could say that it could lead to a Measure to enable Welsh-medium school governors to be better supported with training opportunities, or for Welsh-language provision within bilingual and English-medium schools.

[46] **Bethan Jenkins:** The other point that I believe that CYDAG had—just to ask a supplementary question—was that Welsh-medium schools tend to be further apart geographically, and so it may be harder for them to collaborate in the way that the proposed LCO, or a future Measure, might require. Might that be a difficulty in the future?

[47] **Jane Hutt:** It could be an opportunity rather than a difficulty. The competence will be about school governance, and that does not hold any boundaries as regards the collaboration that could be achieved across local authority areas, for example. There is an opportunity for a Measure in that respect.

[48] **Lorraine Barrett:** Governors Wales in particular was concerned about the lack of clarity over the types of bodies that could be created in relation to matter 5.2C, given that so few words are used in the definition. Could you expand on that?

[49] **Jane Hutt:** It is difficult to be specific, because that detail will emerge with any future Measure, which would, of course, be subject to scrutiny. I have been thinking about how to clarify this, and when we are talking about types of bodies, that could be a not-for-profit body, or a charitable body; it would have a legal entity, but let us think about these bodies in terms of collaboration and sharing services. Governor support is one opportunity, for example.

10.00 a.m.

[50] We have already mentioned the fact that lots of schools have contracts for different aspects of their provision. There could be a body that encompassed several schools, or even shared services across a wider sub-regional area. The major point to get over—perhaps it helps with all of the earlier questions—is that this is only in order to facilitate and improve the governance arrangements for a school and give schools and governing bodies more opportunities in terms of perhaps creating a body that can serve their needs.

[51] **Lorraine Barrett:** As we have heard previously, the NASUWT has even bigger concerns and it feels that the establishment of these bodies could lead to the removal of delivery of education from local authorities and the private sector could be asked to deliver public sector services. One of the things that it suggested was that the matter should ensure that any private sector bodies subscribe to public sector principles, but that would be accepting that private sector bodies would be set up. Perhaps you could say something in reaction to those concerns.

[52] **Jane Hutt:** I think that this goes back to my earlier response to Jonathan: I think that there has been a misunderstanding about the purpose and the scope of this proposed Order, because it is about only providing competence—I state it again for the record—in relation to schools maintained by local education authorities, placing any changes firmly under the local education authority, which is under the public sector umbrella, of course. However, there are

contracts that schools already have with some private sector organisations in terms of cleaning, catering or waste disposal. This proposed legislative competence Order would not change the opportunities and the freedom for schools to contract in that way. Again, I suppose that there could be a Measure emanating from this that addressed those contracting arrangements for school governors. The most important thing is to say that this is not about creating an opportunity for local education authorities or for the Government or anyone else to create a private sector in education.

[53] There can be economies of scale, of course, which takes us back to the earlier questions that Bethan put about the ways in which schools can contract to provide some of their services. Equally, you could have a co-operative set up, since you are a member of the co-operative party.

[54] **Lorraine Barrett:** I do not think that I can pursue the matter any further until we get the Measure, Chair.

[55] **Michael German:** No. Absolutely. Thank you. Kirsty is next.

[56] **Kirsty Williams:** In oral evidence we heard from a range of witnesses that there have been issues relating to the centralisation of human resources within local authorities and the loss of specialist education advice on human resource issues; that is, there are generic human resource management functions within local authorities when previously there would perhaps have been education specialists providing specific tailor-made advice to governing bodies. Would the proposed Order be broad enough to address those particular issues and concerns?

[57] **Jane Hutt:** Coming back to the proposed Order being about school governance matters in respect of schools maintained by local authorities, it is broad enough to address the concerns raised on this and may indeed tackle some of the issues of concern that have been raised about our human resources, because it is very important specialist advice. I recognise that members of the Enterprise and Learning Committee also raised this issue about possible dilution of expertise in human resources, but we know that local authorities have a responsibility for trying to make sure that there is adequate provision. Any specific details about human resources in terms of improving provision would come in a Measure.

[58] **Joyce Watson:** I will move on to the issue of clerks to governing bodies. We have heard evidence that there is variability in clerking arrangements across Wales. Would the proposed Order allow for the role of the clerk to be standardised through future Measures?

[59] **Jane Hutt:** As we all know from being governors, the current arrangements are that the appointment of a clerk is a function of the governing body. It therefore falls within the framework for governance, functions and responsibilities, and is clearly within the scope of the proposed Order. The acquisition of this competence would allow the Assembly to consider, for example, whether there is a need for standardisation of clerking roles and services. An example of that could be the provision of training for a clerk, standardised terms, conditions and arrangements, or even collaboration on the appointment of clerks.

[60] **Joyce Watson:** In its evidence, the WLGA said that those recommendations in the Enterprise and Learning Committee's report on the role of school governors that require legislation to deliver them would be covered by the proposed Order. Do you agree with that?

[61] **Jane Hutt:** Yes.

[62] **Michael German:** That is very kind. Good. I want to move on to some of the drafting issues relating to the proposed Order, if I may. Minister, when you gave evidence to the committee on 12 November you said—and you have said this again today—that matters

5.2A, 5.2B and 5.2C have been drafted by Parliamentary Counsel with matters 5.12 and 5.13 in mind. I think that Mr Morea said that as well. Matter 5.12 refers specifically to staff, although this proposed Order does not. Could you explain why?

[63] **Jane Hutt:** During the evidence, as you said, we said that Parliamentary Counsel, which drafted matter 5.12, drew a distinction—Simon elaborated on it this morning—between conduct and governance. As a body of law, field 5 would be interpreted as a whole, so the drafting has to be treated in the same way. As Simon said, Parliamentary Counsel made explicit reference to staffing in matter 5.12, indicating that, on their own, governance and conduct are not intended to embrace staffing. As the proposed Order is concerned with school governance and not with staffing, the word ‘staffing’ was not included.

[64] **Michael German:** So, governance is not included in matter 5.12. Is that right?

[65] **Mr Morea:** Parliamentary Counsel drafted matter 5.12 and concluded that issues relating to staff were not part of governance, which is why it spelt that out on the face of that field, as it were. When we were considering what governance was, we agreed with that conclusion, and because we did not think that staffing was part of governance, we did not include the word ‘staffing’. If we had included it, it would have opened up the proposed LCO to staffing issues such as terms, pay and conditions and so on—that other area of law.

[66] **Michael German:** Can you explain why the term ‘local education authority’ is used in the proposed Order rather than the words ‘local authority’?

[67] **Jane Hutt:** This goes back to consistency with our law. Schedule 5 to the Government of Wales Act 2006 provides expressions in field 5 that have the same meaning in the Education Act 1996. Section 12 of the Education Act 1996 defines a local education authority in Wales as being a county council or a county borough council. Section 162 of the Education and Inspections Act 2006 provides the power to repeal by Order references to a local education authority and to replace them with references to a local authority. The fact that the proposed Order has not been made yet is important, and that is why it refers to a local education authority.

[68] **Michael German:** So, one thing means the other anyway.

[69] **Mr Morea:** One thing means the other, but ‘local authorities’, in respect of education law, does not mean what we all know it to mean. That is why we have to use the words that are in the Act. Once the proposed Order is made, all the references to local education authorities will become references to local authorities. So, it will be clear across the board.

[70] **Michael German:** This committee is always pleased to have clarity and simplicity in our law. This has been one of our bugbears. As you know, Minister, we have also had some difficulty explaining to witnesses—and we continue to have to explain to witnesses—that we are discussing the proposed Order and not any future Measure. However, that is part of the process.

[71] I thank you very much for giving of your time this morning. Unless there is anything else that you want to say, we have concluded the questions that we have. Thank you very much for giving us your evidence.

[72] **Jane Hutt:** Thank you very much.

10.10 a.m.

**Cynnig Trefniadol
Procedural Motion**

[73] **Michael German:** I move that

the committee resolves to exclude the public from this meeting to consider the content, conclusions and recommendations of the report that we propose to publish in accordance with Standing Order No. 10.37(vi).

[74] I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.11 a.m.
The public part of the meeting ended at 10.11 a.m.*