



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Pwyllgor Deddfwriaeth Rhif 5
Legislation Committee No. 5

Dydd Mercher, 2 Mawrth 2011
Wednesday, 2 March 2011

Cynnwys Contents

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions
- 4 Mesur Arfaethedig ynghylch Addysg (Cymru)—Cyfnod 2: Ystyried Gwelliannau
Proposed Education (Wales) Measure—Stage 2: Consideration of Amendments
- 4 Grŵp 1: Amcan y Cydlafurio (Gwelliant 16)
Group 1: Collaboration Objective (Amendment 16)
- 5 Grŵp 2: Dehongli (Gwelliannau 1, 14 a 15)
Group 2: Interpretation (Amendments 1, 14 and 15)
- 6 Grŵp 3: Cynigion gan Awdurdodau Lleol i Ffedereiddio Ysgolion—Cyhoeddi ac
Ymgynghori (Gwelliannau 17, 2, 3, 4, 5, 6, 7 ac 8)
Group 3: Proposals by Local Authorities to Federate Schools—Publication and
Consultation (Amendments 17, 2, 3, 4, 5, 6, 7 and 8)
- 11 Grŵp 4: Hawl Ysgol i Adal Ffederasiwn (Gwelliannau 27 a 28)
Group 4: Rights of a School to Leave a Federation (Amendments 27 and 28)
- 13 Grŵp 5: Ffedereiddio dan Gyfarwyddyd Gweinidogion Cymru (Gwelliannau 9 a 10)
Group 5: Federation by Direction of the Welsh Ministers (Amendments 9 and 10)
- 15 Grŵp 6: Mân-ddiwygiadau a Diwygiadau Canlyniadol (Gwelliannau 11, 12 a 13)
Group 6: Minor and Consequential Amendments (Amendments 11, 12 and 13)
- 17 Grŵp 7: Ysgolion Sefydledig (Gwelliannau 21, 22, 23, 24, 25 a 26)
Group 7: Foundation Schools (Amendments 21, 22, 23, 24, 25 and 26)
- 20 Grŵp 8: Gorchmynion a Rheoliadau—Gweithdrefn (Gwelliannau 19, 30, 20 a 31)
Group 8: Orders and Regulations—Procedure (Amendments 19, 30, 20 and 31)
- 22 Grŵp 9: Rheoliadau—Cynlluniau Peilot (Gwelliant 29)
Group 9: Regulations—Pilot Schemes (Amendment 29)
- 24 Grŵp 10: Apelio yn erbyn Cynigion Awdurdod Lleol i Ffedereiddio (Gwelliant 18)
Group 10: Appeals against Proposals by a Local Authority to Federate (Amendment
18)

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi 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

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Lorraine Barrett	Llafur (yn dirprwyo ar ran Alun Davies) Labour (substitute on behalf of Alun Davies)
Mark Isherwood	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Ann Jones	Llafur (yn dirprwyo ar ran Andrew Davies) Labour (substitute for Andrew Davies)
David Melding	Ceidwadwyr Cymreig Welsh Conservatives
Leanne Wood	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Leighton Andrews	Aelod y Cynulliad, Llafur (Y Gweinidog dros Blant, Addysg a Dysgu Gydol Oes) Assembly Member, Labour (The Minister for Children, Education and Lifelong Learning)
David Lloyd Thomas	Pennaeth, Is-adran Llywodraethu a Chyllid Refeniw Ysgolion, Llywodraeth Cynulliad Cymru Head of School Governance and Revenue Funding Branch, Welsh Assembly Government

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

Claire Griffiths	Deputy Clerc Dirprwy Glerc
Bethan Roberts	Cynghorydd Cyfreithiol Legal Adviser
Liz Wilkinson	Clerc Clerk

Dechreuodd y cyfarfod am 9.15 a.m.
The meeting began at 9.15 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Mark Isherwood:** Bore da, good morning, and welcome to Legislation Committee No. 5. Today's meeting is to undertake Stage 2 proceedings on the Proposed Education (Wales) Measure, and I welcome to the meeting Leighton Andrews, Minister for Children, Education and Lifelong Learning, and David Lloyd Thomas, head of the school governance and revenue funding branch of the Welsh Government.

[2] Members should have before them a copy of the proposed Measure, the marshalled list of amendments and the groupings of the amendments for debate. The marshalled list is the list of all amendments tabled, marshalled into the order in which the sections appear in the

proposed Measure. This morning, the order in which we will be considering amendments is sections 1 to 33, followed by new sections. You will see from the groupings list that amendments have been grouped to facilitate debate, but the order in which they are called and moved for a decision is dictated by the marshalled list. Members will need to follow the two papers.

[3] It is my intention that all votes be recorded, so that the names of those voting for, against or abstaining are recorded. Any other amendments in the group will be called at the appropriate time during proceedings, in accordance with the marshalled list. For the record, only committee members can move amendments. For the purpose of today's proceedings, and in line with Business Committee convention, I will move amendments on behalf of the Minister. Members will be aware that the only way to debate a section of the proposed Measure is to have tabled an amendment to it. Any sections that do not have amendments tabled to them will be deemed agreed, as will any sections where tabled amendments are not agreed to. I will announce which sections have been agreed at the end of the meeting.

[4] We have received apologies from Alun Davies and Andrew Davies, and we welcome Lorraine Barrett and Ann Jones, who are substituting for them.

9.17 a.m.

Mesur Arfaethedig ynghylch Addysg (Cymru)—Cyfnod 2: Ystyried Gwelliannau Proposed Education (Wales) Measure—Stage 2: Consideration of Amendments

Grŵp 1: Amcan y Cydlafurio (Gwelliant 16) Group 1: Collaboration Objective (Amendment 16)

[5] **Mark Isherwood:** The only amendment in the group is amendment 16. David Melding, would you like to move amendment 16?

[6] **David Melding:** I move amendment 16 in my name.

[7] This is a simple, but very important, amendment to place the improvement of education standards and outcomes for learners as an explicit part of the collaboration objective. It seems strange—indeed, the committee thought that it was strange, and said so in its report—that this was not one of the principal objectives. I know that the Minister will try to convince us that the improvement of outcomes and standards is already implicit in a commitment to efficiency and effectiveness. In a convoluted way, that is true, but lots of other things would also be implicit in efficiency and effectiveness. It seems that it is better legislation if we say that one of the main purposes of these reforms is to improve education standards and outcomes. I think that the committee was right and I am sorry that the Minister has not accepted the committee's argument, but we would like to press this point.

[8] **Mark Isherwood:** Do any other Members wish to speak to this amendment? I see that no-one does. I invite the Minister to speak.

[9] **The Minister for Children, Education and Lifelong Learning (Leighton Andrews):** I will start by saying that I was pleased to note in the committee's report the broad support for making collaboration in the education system commonplace, which is very much our intention. We have considered the point that the collaboration objective does not go far enough and that it should, as the committee recommended, specifically refer to education standards and outcomes. However, I oppose the amendment for the same reason I did not accept the committee's recommendation: I think that it is unnecessary, and I said as much in the debate on the proposed Measure's general principles.

[10] The collaboration objective is an objective for education bodies. These organisations exist for the sole purpose of providing learning, directly or indirectly. The purpose of those organisations, why they exist and the nature of what they do, is central to considering the objective's wording. The objective is defined in terms of effective and efficient use of public resources. The term 'effective', with respect to resource use, needs to be thought of in the context of what education bodies do. It means that they need to achieve an effective educational outcome. I can see no other meaning that it could have. In other words, the collaboration objective is aimed at achieving better use of public finances by education bodies by sharing resources and expertise. In so doing, we would expect there to be a knock-on effect in improving educational standards. Therefore, I do not think that we need to underline this in the proposed Measure. It is very clear what the obligations are, in respect of education bodies. I do not believe that we need to pad this out, or that a law should use more words than is necessary. Indeed, if we were to go further and provide more detail, it could be counter-productive. While I understand the spirit of the amendment, I oppose it because it is unnecessary.

[11] **Mark Isherwood:** David, would you like to reply?

[12] **David Melding:** Yes. I hope that my colleagues have the strength of their original convictions, because this is about improving standards and outcomes. Frankly, we have heard some horrible technical gobbledegook from the Minister, and I hope that my colleagues stand up to it and say that it is silly and that these things should be made explicit. What on earth are education bodies there for, if not to improve standards and outcomes?

[13] **Mark Isherwood:** Do you wish to proceed to a vote on amendment 16? I see that you do. The question is that amendment 16 be agreed to. I call for a vote.

*Gwelliant 16: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 16: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

*Gwrthodwyd gwelliant 16.
Amendment 16 not agreed.*

Grŵp 2: Dehongli (Gwelliannau 1, 14 a 15) Group 2: Interpretation (Amendments 1, 14 and 15)

[14] **Mark Isherwood:** The lead amendment in the group is amendment 1. Minister, would you like amendment 1 in your name to be moved?

[15] **Leighton Andrews:** I would.

[16] **Mark Isherwood:** I move amendment 1 in the name of the Minister, and call on the Minister to speak to amendment 1 and to the other amendments in the group.

[17] **Leighton Andrews:** These are minor technical amendments and they are all related. Amendments 1 and 14 remove references to 'enactments' from sections 8 and 20 of the proposed Measure. Amendment 15 reinserts the definition of 'enactments' into section 30 of the proposed Measure. The wording is different in order to make it completely clear that the

phrase ‘an enactment’ referred to in the proposed Measure includes subordinate legislation made under any Measure or Act of the National Assembly for Wales. These are purely technical amendments, and I ask the committee to accept them.

[18] **Mark Isherwood:** Do any Members wish to speak? I see that they do not. Minister, would you like to add any comments? I see that you would not. In that case, do you wish to proceed to a vote on amendment 1? I see that you do. The question is that amendment 1 be agreed to. I call for a vote.

*Gwelliant 1: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 1: For 5, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Burnham, Eleanor
Jones, Ann
Melding, David
Wood, Leanne

*Derbyniwyd gwelliant 1.
Amendment 1 agreed.*

**Grŵp 3: Cynigion gan Awdurdodau Lleol i Ffedereiddio Ysgolion—Cyhoeddi ac
Ymgynghori (Gwelliannau 17, 2, 3, 4, 5, 6, 7 ac 8)
Group 3: Proposals by Local Authorities to Federate Schools—Publication and
Consultation (Amendments 17, 2, 3, 4, 5, 6, 7 and 8)**

[19] **Mark Isherwood:** The lead amendment in this group is amendment 17. I call on David Melding to move amendment 17 and to speak to the other amendments in the group.

[20] **David Melding:** I move amendment 17 in my name and with the name of Eleanor Burnham in support.

[21] Consultation must be thorough. A full consultation process is part of what I would call the checks and balances that are needed in a policy that gives local authorities the power of initiation to propose federations. That is the big reform in this proposed Measure—a reform that I believe is acceptable to all sides represented at the Assembly and in this committee. However, we need to make clear the nature of the consultation that is required, and particularly the groups that are to be consulted. This amendment specifies the groups that have to be consulted, and it also permits the consultation of other groups where a local authority feels that that may be necessary. We want specific reference to the following groups: parents and guardians, pupils, staff and trade unions that have members in any affected school.

[22] This would strengthen the proposed Measure, and it would give people confidence that proposals are thorough and being taken forward in a transparent way. The amendment is intended to be constructive and helpful, and I hope that the committee will see fit to support it.

[23] **Mark Isherwood:** I call on Eleanor Burnham, as a supporter of the amendment, to speak.

[24] **Eleanor Burnham:** I do not have anything further to say than what David has said. The amendment is absolutely essential.

[25] **Mark Isherwood:** Do any other Members wish to speak? I see that no-one does. I call on the Minister to respond.

[26] **Leighton Andrews:** I acknowledged the concerns about consultation on federation proposals in my opening remarks in the debate on the general principles of the proposed Measure. I promised then to consider tabling a Government amendment about consultation, and that is amendment 2, accompanied by amendments 3 to 8, which make consequential changes.

[27] Let me explain first why amendment 17 should not be agreed. Amendment 17 and amendment 2 are broadly similar, in that they both require a local authority to consult various persons on a federation proposal. The aim is the same: to give stakeholders an opportunity to comment. There are minor differences in the wording: for instance, amendment 17 includes provision to consult other persons as the local authority considers appropriate. In my view, there is no need for that, because a local authority can do that if it wishes in any case. The substantive reason why I want the committee to support amendments 2 to 8 rather than amendment 17 is that much of the potential for federation is probably among small schools. I have explained previously that I want there to be a streamlined process for federating small schools, triggered by Orders made under section 15, which would define the size of small schools. I want a local authority to be able to progress the proposal and implement the federation of small schools efficiently.

[28] The question of what is efficient is directly relevant to the goal that we want to achieve. If every local authority had to publish and consult on a proposal for every small school, in the same way as it would for other schools, it would result in a large amount of administrative work and would cause a disproportionate amount of resource to be used in consulting on something that had an effect on relatively few people. When a federation takes place, it will directly affect governing bodies and perhaps the leadership team, but few others. There may be concerns from pupils, parents and the wider school community, but the crux of the issue is that federation is about governance, not school organisation. It is not school closure, and it will not remove schools from communities. So, there are differences in this regard. We have been mindful in drawing up the proposed Measure that we do not want to place an unfair consultation burden on local authorities. Our concerns about amendment 17 are that it would put in place the same consultation requirements irrespective of whether a school is small or not. For that reason, I ask the committee to resist that amendment.

[29] In respect of our amendments, amendment 2 addresses concerns raised previously by Legislation Committee No. 5 that local authorities should consult stakeholders about their proposals for federations. Amendments 3, 4, 5 and 6 make consequential changes to section 11, and amendments 7 and 8 make consequential changes to section 12 if amendment 2 is passed. The substance of amendment 2 is to place a duty on local authorities to consult governing bodies of the schools to be federated, the staff of those schools and anyone who represents them, such as a union, and the pupils and their parents. The amendment removes any doubt that there would have to be consultation, and it includes all the persons mentioned in earlier stages of this proposed Measure as statutory consultees. I hope that that reassures members of the committee. The regulation-making power can still be used to specify the details of consultation, and amendments 3 and 4 provide for that.

[30] As I have said, the main difference in respect of amendment 17 is the requirement in respect of small schools. Amendment 2 makes it clear that that the requirement to consult stakeholders will not apply to local authority proposals for small-school federations. I draw your attention to subsection 4 of amendment 2, which rules out consultation in the case of small schools.

[31] So, we have gone some way to meeting the concerns that the committee has raised previously in respect of consultation, and we are doing so in a way that provides us with a process that allows for consultation across the piece, but allows us to have a streamlined process in place in respect of smaller schools.

9.30 a.m.

[32] **David Melding:** Again, I am disappointed. Frankly, I do not think that it is good enough for the Minister to slip and slide in this way. The proposed Measure will potentially apply to all schools if federation is proposed. He is now introducing a smaller test for small schools, which, of course, would apply to all schools, with the decision about who needs to be consulted being shifted into regulations, and there could then be some trimming in the system.

[33] I deplore his reference to consultation as a burden. It is essential to have proper consultation in small schools, often because of the intensity of feeling around them. We are saying that it would be parents and guardians, pupils, staff and trade unions who would be consulted. Which of those categories, Minister, is a burden that you think should be removed? Why can you not accept that this needs to be on the face of the proposed Measure to give people the confidence that we are not going to see schools merged to the point of closure and that federation is an appropriate policy to strengthen the presence and capacities of local schools that is accepted across political parties? When you propose a big shift in thinking—and the power of initiation for local authorities for proposed federation is a big shift from the status quo—you have to provide checks and balances, and that means putting things on the face of the proposed Measure so that we know where we are and so that you are not allowed to slip and slide via regulations. Really, you should have responded more effectively, and I ask you to moderate some of your language on the burden of consultation.

[34] **Mark Isherwood:** Do you wish to move to a vote on amendment 17?

[35] **David Melding:** Yes.

[36] **Mark Isherwood:** The question is that amendment 17 be agreed to. I call for a vote.

Gwelliant 17: O blaid 2, Ymatal 0, Yn erbyn 3.

Amendment 17: For 2, Abstain 0, Against 3.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Gwrthodwyd gwelliant 17.

Amendment 17 not agreed.

[37] **Mark Isherwood:** We now come to dispose of amendments 2, 3, 4, 5, 6, 7 and 8 in accordance with the marshalled list. Minister, would you like amendment 2 in your name to be moved?

[38] **Leighton Andrews:** Yes, please.

[39] **Mark Isherwood:** I move amendment 2 in the name of Leighton Andrews. The question is that amendment 2 be agreed to. I call for a vote.

Gwelliant 2: O blaid 3, Ymatal 0, Yn erbyn 2.
Amendment 2: For 3, Abstain 0, Against 2.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Burnham, Eleanor
Melding, David

Derbyniwyd gwelliant 2.
Amendment 2 agreed.

[40] **Mark Isherwood:** Minister, would you like amendment 3 in your name to be moved?

[41] **Leighton Andrews:** Yes.

[42] **Mark Isherwood:** I move amendment 3 in the name of Leighton Andrews. The question is that amendment 3 be agreed to. I call for a vote.

Gwelliant 3: O blaid 3, Ymatal 2, Yn erbyn 0.
Amendment 3: For 3, Abstain 2, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Burnham, Eleanor
Melding, David

Derbyniwyd gwelliant 3.
Amendment 3 agreed.

[43] **Mark Isherwood:** Minister, would you like amendment 4 in your name to be moved?

[44] **Leighton Andrews:** Yes, please.

[45] **Mark Isherwood:** I move amendment 4 in the name of Leighton Andrews. The question is that amendment 4 be agreed to. I call for a vote.

Gwelliant 4: O blaid 3, Ymatal 2, Yn erbyn 0.
Amendment 4: For 3, Abstain 2, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Burnham, Eleanor
Melding, David

Derbyniwyd gwelliant 4.
Amendment 4 agreed.

[46] **Mark Isherwood:** Minister, would you like amendment 5 in your name to be moved?

[47] **Leighton Andrews:** Yes.

[48] **Mark Isherwood:** I move amendment 5 in the name of Leighton Andrews. The question is that amendment 5 be agreed to. I call for a vote.

Gwelliant 5: O blaid 3, Ymatal 2, Yn erbyn 0.
Amendment 5: For 3, Abstain 2, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
 The following Members voted for:

Barrett, Lorraine
 Jones, Ann
 Wood, Leanne

Ymataliodd yr Aelodau canlynol:
 The following Members abstained:

Burnham, Eleanor
 Melding, David

Derbyniwyd gwelliant 5.
Amendment 5 agreed.

[49] **Mark Isherwood:** Minister, would you like amendment 6 in your name to be moved?

[50] **Leighton Andrews:** Yes, please.

[51] **Mark Isherwood:** I move amendment 6 in the name of Leighton Andrews. The question is that amendment 6 be agreed to. I call for a vote.

Gwelliant 6: O blaid 3, Ymatal 2, Yn erbyn 0.
Amendment 6: For 3, Abstain 2, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
 The following Members voted for:

Barrett, Lorraine
 Jones, Ann
 Wood, Leanne

Ymataliodd yr Aelodau canlynol:
 The following Members abstained:

Burnham, Eleanor
 Melding, David

Derbyniwyd gwelliant 6.
Amendment 6 agreed.

[52] **Mark Isherwood:** Minister, would you like amendment 7 in your name to be moved?

[53] **Leighton Andrews:** Yes, please.

[54] **Mark Isherwood:** I move amendment 7 in the name of Leighton Andrews. The question is that amendment 7 be agreed to. I call for a vote.

Gwelliant 7: O blaid 3, Ymatal 2, Yn erbyn 0.
Amendment 7: For 3, Abstain 2, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
 The following Members voted for:

Barrett, Lorraine
 Jones, Ann
 Wood, Leanne

Ymataliodd yr Aelodau canlynol:
 The following Members abstained:

Burnham, Eleanor
 Melding, David

Derbyniwyd gwelliant 7.

Amendment 7 agreed.

[55] **Mark Isherwood:** Minister, would you like amendment 8 in your name to be moved?

[56] **Leighton Andrews:** Yes, please.

[57] **Mark Isherwood:** I move amendment 8 in the name of Leighton Andrews. The question is that amendment 8 be agreed to. I call for a vote.

Gwelliant 8: O blaid 3, Ymatal 2, Yn erbyn 0.

Amendment 8: For 3, Abstain 2, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Burnham, Eleanor
Melding, David

*Derbyniwyd gwelliant 8.
Amendment 8 agreed.*

Grŵp 4: Hawl Ysgol i Adal Ffederasiwn (Gwelliannau 27 a 28) Group 4: Rights of a School to Leave a Federation (Amendments 27 and 28)

[58] **Mark Isherwood:** The lead amendment in this group is amendment 27. I call on David Melding to move amendment 27 and to speak to the other amendment in the group.

[59] **David Melding:** I move amendment 27 in my name.

[60] I have emphasised this morning that I desire to strengthen this proposed Measure, in particular by looking at the checks and balances required to balance the power that will now go to local authorities in terms of their powers of initiation in proposing federations. It is important to have some mechanism to allow a school to seek to leave a federation, but I do not believe that this should be an absolute right, as the amendment demonstrates. It is not a wrecking amendment, so I hope that the Minister will not try to play that particular card. The final say in this process would be with the Welsh Assembly Government and its Ministers; therefore, federations would not be stopped ultimately or broken up by a school seeking to leave them.

[61] However, I feel that the Welsh Assembly Government should be held accountable if it ignores the result of a ballot of parents in favour of a school withdrawing from a federation. That is why we have set out this process, which would allow, under certain circumstances, for a ballot of parents and guardians. As I said, that ballot would not be binding, although, obviously, a Welsh Assembly Government Minister would have to be careful to reject such a ballot and be assured that the grounds for rejection are that the federation continues to serve the best interests of all the people and pupils in the various schools.

[62] A ballot of parents and guardians is an appropriate test. These provisions should also strengthen federations because, in terms of the governing bodies of these federations, a governing body of around five large secondary schools, which could happen, would be a very different type of governance to the current arrangements of one governing body per maintained school. I think that these new governing bodies that have responsibilities over several schools will be encouraged to allow for as large a measure of autonomy in each individual member school as possible. Otherwise, if they do ride roughshod ultimately, they

would risk provoking a ballot from a particular school that felt poorly served by the new governing arrangements. That itself will act as a very useful deterrent and it should strengthen the whole concept of schools working in federations.

[63] Again, we are not against federations; we are not against federations for small schools, or even for secondary schools, if that is found to be an appropriate model, but we want this check and balance to be included, and we think that the best way to do that is to permit a school to seek to leave a federation, although that right, even if endorsed by ballot, would not be ultimate, because the ultimate power would rest with the Welsh Assembly Government. We think that this strikes a good compromise, and I urge committee members to support it.

[64] **Mark Isherwood:** Do any other Members wish to speak? I see that no-one does. I therefore call on the Minister.

[65] **Leighton Andrews:** We are in agreement with David Melding that there should be regulations that provide for a process for a school or schools to leave a federation. That is important, because circumstances change over time. There may be any number of reasons why a school or schools may want to leave a federation, so it is right that the process allows for it. Without such a mechanism, schools could be locked into a federation that is not working or is not advantageous for them. There may also be circumstances where a federation would have to be dissolved if there were no longer more than two schools remaining in the federation.

[66] The substantial issues in this group of amendments are contained in subsections (b) and (c) of amendment 28. Subsection (b) requires regulations to be made so that a ballot of parents, guardians and other persons legally responsible for registered pupils must agree to a school leaving a federation. I do not see a need for regulations to be made detailing such a requirement, nor do I think that the drafting necessarily makes sense. Successful federation will depend on schools working well together and there may need to be compromises. It is conceivable that one or more schools may want to leave a federation, so there needs to be an orderly mechanism for that. I would argue that section 14 as drafted provides the means to regulate for the withdrawal of schools from a federation or their complete dissolution. Nothing else is needed.

[67] Subsection (b) of amendment 28 is founded on the idea that a school could leave a federation without the agreement of the governing body. We think that that idea is wrong. What we have in mind is that regulations made under section 14(c) would be the same or similar to those currently in force for federations. Under those, a school may leave a federation only if the governing body of the federation agrees. The simple justification for that is that leaving a federation should be decided by the governors. If there are good reasons for a school to leave, any reasonable governing body will accept them and agree to it. It would make no sense for a governing body to force a school to stay in a federation. We cannot have schools leaving on a whim, because that would be destructive and a distraction for governors and staff. So, I would always regulate that the governing body must agree to a school leaving a federation. With that procedure in place, the issue of the ballot of parents is unnecessary, because no school could leave a federation without the governing body's agreement. So, in those terms, Chair, I oppose the amendment.

[68] **Mark Isherwood:** I call on David Melding to reply.

[69] **David Melding:** I am grateful that the Minister is not accusing me of proposing a wrecking amendment, which is helpful, and that he has acknowledged the need for a mechanism in regulations to allow federations to be dissolved or for some schools to leave federations. I welcome that, but there is still the obstacle of the power of the new governing

bodies. We all want them to act rationally and for the benefit of all their member schools, and although I am sure that that is a reasonable expectation of most of them, it may not be the case for all of them.

[70] These are powerful governing arrangements, which mean that these new governing bodies will be in a very different position to current governing bodies, which are specific to the school that they govern. The new governing bodies will be responsible for several schools, so an element of discipline needs to be included in the arrangements, which encourages them to really work at ensuring that collaboration is real and effective and that they are up to speed on the needs and requirements of each member school and their individual character. If they do not do that, and things get very dysfunctional, they are unlikely to allow a school to seek different arrangements. I therefore feel that the right to hold a ballot among parents and guardians is appropriate at that stage. If it is frivolous, the ultimate power rests with the Welsh Assembly Government and the Minister.

9.45 a.m.

[71] We have deliberately put that in, because we acknowledge that there is a danger that, just as governing bodies may not always act rationally for the best interest, it unfortunately may be the case that a group of angry parents could persuade others, in a disproportionate way, about a situation leading to a vote that does not necessarily reflect the reality of the situation. If that happens, and it is a fairly vexatious issue, the ultimate power rests with the Minister. So, we have crafted this in a way that balances the various interests. I believe that our amendment is a better way forward and, in particular, gets around this issue of providing some balance in the new governing bodies and a right for parents, ultimately, to be able to have a ballot under certain circumstances.

[72] **Mark Isherwood:** Do you wish to proceed to a vote on amendment 27?

[73] **David Melding:** I do.

[74] **Mark Isherwood:** The question is that amendment 27 be agreed to. I call for a vote.

Gwelliant 27: O blaid 2, Ymatal 0, Yn erbyn 3.

Amendment 27: For 2, Abstain 0, Against 3.

Pleidleisiodd yr Aelod canlynol o blaid:
The following Member voted for:

Burnham, Eleanor
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Gwrthodwyd gwelliant 27.

Amendment 27 not agreed.

[75] **Mark Isherwood:** As amendment 27 is not agreed, amendment 28 in the name of David Melding falls.

Methodd gwelliant 28.

Amendment 28 fell.

Grŵp 5: Ffedereiddio dan Gyfarwyddyd Gweinidogion Cymru (Gwelliannau 9 a 10)
Group 5: Federation by Direction of the Welsh Ministers (Amendments 9 and 10)

[76] **Mark Isherwood:** The lead amendment in the group is amendment 9. Minister,

would you like amendment 9 in your name to be moved?

[77] **Leighton Andrews:** Yes, please.

[78] **Mark Isherwood:** I move amendment 9 in the name of Leighton Andrews. I call on the Minister to speak to amendment 9 and the other amendment in the group.

[79] **Leighton Andrews:** These amendments relate to section 16 of the proposed Measure. We are proposing significant amendments to replace that section, because that section stimulated significant debate in this committee and the Constitutional Affairs Committee during Stage 1. There were concerns that it provided us with unfettered power with regard to the directions that we would issue and we were asked for clarification on the basis on which we would use those powers. I explained at the time that I envisaged them being used rarely and offered to consider whether wording along the lines of the phrase ‘in exceptional circumstances’ should be inserted into section 16.

[80] In fact, the amendments that we are bringing forward are different, and I want to explain why. On further consideration, we felt that the phrase ‘in exceptional circumstances’ was problematic, because it raises the question of what constitute exceptional circumstances, which might be open to different interpretations. So, we have instead tried to propose wordings that limit the use of the ministerial powers. In other words, they would be limited to situations in which schools were causing concern. Everyone should be concerned about a school in which standards are too low, where there is a breakdown in management, governance and pupil discipline or where the safety of staff or pupils was at risk. So, although the phrase ‘in exceptional circumstances’ is not used in the text of the amendment, those are the sorts of situations that I think people would agree are exceptional and circumstances that demand action.

[81] So, we are inserting new sections into the powers that we have under the School Standards and Framework Act 1998 to direct the federation of schools in circumstances in which the school is in special measures or requires significant improvement; where the standards of performance of the pupils at the school are unacceptably low and likely to remain so; where there has been a serious breakdown in the way that the school is managed or governed, which is prejudicing, or likely to prejudice, standards of performance; where the safety of pupils and staff is threatened; where the governing body has failed to comply with orders made concerning teachers’ pay and conditions; or where it has failed to ensure that the headteacher of the school has complied with such orders. Those are very clear circumstances in which we would seek to intervene.

[82] The last point that I want to make is that the scope of the direction power now encompasses all schools, not just small schools. We first proposed an intervention power when thinking through the federation of small schools alone, and, when considering the issue of exceptional circumstances, it was obvious that any school, irrespective of its size, could be a cause of concern. It seemed to us that it made no sense to limit section 16 to small schools.

[83] **Mark Isherwood:** Do any Members wish to speak?

[84] **David Melding:** I intend to abstain on amendment 9 and oppose amendment 10. I am not implacably opposed to the Minister’s approach. I think that there is some merit in the category of schools causing concern, and although it is perhaps regrettable that the new section has been introduced at this stage, there is certainly method in what is being proposed. I am concerned that amendment 10 will not secure the level of consultation that we desire, and which is provided for in our various amendments. Therefore, I oppose amendment 10 because I feel that, even when schools are failing—if they are failing—there should still be effective consultation. That is surely part of the renewal process for schools. I just do not

understand why the Minister is introducing the potential for this latitude. I know that he may well come forward with excellent regulations—I hope that that is what happens if we do not win these votes—but I am still concerned that it allows for a slacker system of consultation, which will in effect centralise power over direction, giving less influence to those directly affected in schools, particularly parents, guardians, pupils, staff and trade unions. So, for those reasons I oppose amendment 10.

[85] **Leighton Andrews:** The reason that these amendments have been brought forward at this stage is in response to issues that were raised by committees at previous stages. So we are trying to be helpful to this committee and to the Constitutional Affairs Committee in responding to their concerns. We have thought very carefully about the objectives that the Constitutional Affairs Committee, in particular, was seeking to achieve by limiting this power to exceptional circumstances and we have simply found an alternative way of doing that. The point that David Melding raises on consultation is a bit of a red herring, to be honest. There comes a point at which Members have to determine whether we are serious about the issue of addressing poor performance in schools. Either we are or we are not. If schools are performing poorly or have special circumstances, and the only way to turn them round is by instigating some form of federation, we should be prepared to do that and do it swiftly.

[86] **Mark Isherwood:** Minister, do you wish to proceed to a vote? I see that you do. The question is that amendment 9 be agreed to. I call for a vote.

*Gwelliant 9: O blaid 3, Ymatal 2, Yn erbyn 0.
Amendment 9: For 3, Abstain 2, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Melding, David
Burnham, Eleanor

*Derbyniwyd gwelliant 9.
Amendment 9 agreed.*

Grŵp 6: Mân-ddiwygiadau a Diwygiadau Canlyniadol (Gwelliannau 11, 12 a 13) Group 6: Minor and Consequential Amendments (Amendments 11, 12 and 13)

[87] **Mark Isherwood:** The lead amendment in this group is amendment 11. Minister, would you like amendment 11 to be moved in your name?

[88] **Leighton Andrews:** Yes, please.

[89] **Mark Isherwood:** I move amendment 11 in the name of the Minister and call on the Minister to speak to amendment 11 and the other amendments in the group.

[90] **Leighton Andrews:** These are technical, minor and consequential amendments, Chair. Amendment 11 proposes a new subsection 4A to section 20 of the Education Act 2002. That concerns governing bodies' instruments of government, and both sections of the Act need to take account of the changes to federation made by the proposed Measure. Amendment 12 has several effects. First, it will amend section 19 of the Education Act 2002 so that that law takes account of Part 2 of this proposed Measure. Section 19 of that Act is the primary law for the constitution of governing bodies and the enabling power for the many regulations about the make-up of governing bodies. Section 12 also has the effect of amending Schedule 1 to the Education Act 2002. Schedule 1 is about the incorporation and powers of governing bodies, and the amendment in question clarifies an oversight in the Act that has come to light

with the drafting of provisions for the UK Government Department of Education's new Education Bill. This change makes clear that, where one or more schools in a federation close, the governing body of the federation does not automatically dissolve if one or more schools are left. This is sensible, because it avoids the need to set up new governing bodies and it makes the change in governance much more straightforward and common-sense. The remainder of amendment 12 makes consequential changes to the Education Act 2002, so that, with respect to federation, those apply only to England.

[91] **Amendment 13** amends the Education Act 2005 with respect to the reference it makes to federations in the Education Act 2002, substituting it with a reference to the new law that will apply to Wales under the proposed Measure. These are clarifying and technical amendments.

[92] **Mark Isherwood:** Do any Members wish to speak? I see that no-one does. In that case, Minister, do you wish to proceed to a vote on amendment 11?

[93] **Leighton Andrews:** Yes, please.

[94] **Mark Isherwood:** The question is that amendment 11 be agreed to. I call for a vote.

*Gwelliant 11: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 11: For 5, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Barrett, Lorraine
Jones, Ann
Melding, David
Wood, Leanne

*Derbyniwyd gwelliant 11.
Amendment 11 agreed.*

[95] **Mark Isherwood:** We now move to dispose of amendment 12 in accordance with the marshalled list. Minister, would you like amendment 12 in your name to be moved?

[96] **Leighton Andrews:** I would.

[97] **Mark Isherwood:** I move amendment 12 in the name of Leighton Andrews. The question is that amendment 12 be agreed to. I call for a vote.

*Gwelliant 12: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 12: For 5, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Barrett, Lorraine
Jones, Ann
Melding, David
Wood, Leanne

*Derbyniwyd gwelliant 12.
Amendment 12 agreed.*

[98] **Mark Isherwood:** We now move to dispose of amendment 14. Minister, would you like amendment 14 in your name to be moved?

[99] **Leighton Andrews:** Os gwelwch yn **Leighton Andrews:** Please.
dda.

[100] **Mark Isherwood:** I move amendment 14 in the name of Leighton Andrews. The question is that amendment 14 be agreed to. I call for a vote.

Gwelliant 14: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 14: For 5, Abstain 0, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Barrett, Lorraine
Jones, Ann
Melding, David
Wood, Leanne

Derbyniwyd gwelliant 14.
Amendment 14 agreed.

Grŵp 7: Ysgolion Sefydledig (Gwelliannau 21, 22, 23, 24, 25 a 26)
Group 7: Foundation Schools (Amendments 21, 22, 23, 24, 25 and 26)

[101] **Mark Isherwood:** The lead amendment in this group is amendment 21. I call on David Melding to move amendment 21 and to speak to it and the other amendments in the group.

[102] **David Melding:** I move amendment 21 in my name.

[103] With your indulgence, Chair, I will speak first to all the amendments in the group apart from amendment 26. After that I will briefly outline what amendment 26 seeks to do. I will not detain the committee for long on this, because I know that my party is probably the exception in finding foundation school status very useful and therefore something that should be available for the future should schools want to seek it. As it stands, the proposed Measure would remove the possibility of any further foundation schools being established. We seek to address that point so that further foundation schools could be established. I will not go into a long argument about why foundation schools are a good thing; I am sure that it can all be inferred.

[104] I would just point out that, should the amendments be agreed, subsequent technical amendments would be required at Stage 3, which I understand is an acceptable procedure, so I do not need to go into detail about how that would be implemented.

[105] Amendment 26 addresses something that all Members ought to think about seriously, because it looks at this issue of the foundation schools that currently exist, which the Minister has said he is not seeking to abolish, and how it may be possible for the status of the current foundation schools to be changed against their will, should they be in a federation. It is possible that, in future, the governing body of a federation will decide that one of its members, as a foundation school, will have its status changed. Currently, that foundation school would not have any rights to try to prevent that from happening, other than to make representations to the governing body. However, as the governing body would be a federal, collective body, it would no longer be the governing body of the individual school, because

the Government's arrangements are changing in this proposed Measure, which is an issue that I think requires appropriate checks and balances. It is not an issue that I fundamentally oppose; indeed, I welcome it. However, it requires what are potentially much stronger organisations—these governing bodies—which will have looser or more distant connections to each individual school, to be subject to new powers that would be brought in to balance the new status and power of federations' governing bodies. Therefore, any proposal to remove the foundation status of an individual school would require full consultation, and, if triggered after that consultation, a ballot of parents and guardians. I think that this is an appropriate safeguard. It would ensure that any governing body that thought that there was merit in changing the status of one of its members would proceed on a basis of consensus to achieve that outcome, and not ride roughshod. Therefore, I ask Members, even if they cannot support the other amendments in this group, to seriously consider adding that check and balance to this power and vote for amendment 26.

10.00 a.m.

[106] **Mark Isherwood:** Do any other Members wish to speak? I see that no-one does. I therefore invite the Minister to reply.

[107] **Leighton Andrews:** There is a very clear difference of opinion on this issue; there is a clear ideological divide between the Government and the position adopted by David Melding and his party. We are making a deliberate move through the proposed Measure to prevent the foundation of any further foundation schools. That is a policy choice that we are offering to the Assembly. We have set out our arguments for it at earlier stages. The effect of the bulk of David Melding's amendments would be to prevent us from exercising that policy objective. I do not intend to spend any more time in addressing that—the differences between us are agreed and have been acknowledged at previous stages, and Members are well aware of the arguments.

[108] In respect of non-Government amendment 26, this simply introduces processes that are unnecessary in practice. I do not think that we would see circumstances in which an existing foundation school would be likely to see a challenge to its status from a widening governing body. In any case, there are sufficient checks and balances within the system, therefore I urge Members to resist that amendment also.

[109] **Mark Isherwood:** David, do you wish to reply?

[110] **David Melding:** I think that I have stated the case clearly. I respect the Minister's candour in terms of what he is doing with foundation schools, and there is obviously an ideological difference between us. Therefore, I will not trouble the committee any longer with explanations of that; I think that we all know our views, and it is important that they are put on the record. However, I think that there is great merit in amendment 26 for the reasons that I have outlined. I will not repeat them, but I feel that they are stronger arguments than those that have been advanced by the Minister.

[111] **Mark Isherwood:** Do you wish to proceed to a vote on amendment 21?

[112] **David Melding:** I do.

[113] **Mark Isherwood:** The question is that amendment 21 be agreed to. I call for a vote.

Gwelliant 21: O blaid 1, Ymatal 0, Yn erbyn 4.

Amendment 21: For 1, Abstain 0, Against 4.

Pleidleisiodd yr Aelodau canlynol o blaid:

Pleidleisiodd yr Aelodau canlynol yn erbyn:

The following Members voted for:

Melding, David

The following Members voted against:

Burnham, Eleanor
Barrett, Lorraine
Jones, Ann
Wood, Leanne

*Gwrthodwyd gwelliant 21.
Amendment 21 not agreed.*

[114] **Mark Isherwood:** As amendment 21 is not agreed, amendment 23 in the name of David Melding falls.

[115] We now move to dispose of amendment 22. I invite David to move amendment 22.

[116] **David Melding:** I move amendment 22 in my name.

[117] **Mark Isherwood:** The question is that amendment 22 be agreed to. I call for a vote.

*Gwelliant 22: O blaid 1, Ymatal 0, Yn erbyn 4.
Amendment 22: For 1, Abstain 0, Against 4.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Burnham, Eleanor
Barrett, Lorraine
Jones, Ann
Wood, Leanne

*Gwrthodwyd gwelliant 22.
Amendment 22 not agreed.*

*Methodd gwelliant 23.
Amendment 23 fell.*

[118] **Mark Isherwood:** As amendments 21 and 22 are not agreed, amendments 24 and 25 in the name of David Melding fall.

*Methodd gwelliannau 24 a 25.
Amendments 24 and 25 fell.*

[119] **Mark Isherwood:** We now move to dispose of amendment 15. Minister, would you like amendment 15 in your name to be moved?

[120] **Leighton Andrews:** Yes.

[121] **Mark Isherwood:** I move amendment 15 in the name of Leighton Andrews. The question is that amendment 15 be agreed to. I call for a vote.

*Gwelliant 15: O blaid 5, Ymatal 0, Yn erbyn 0.
Amendment 15: For 5, Abstain 0, Against 0.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Barrett, Lorraine

Jones, Ann
Melding, David
Wood, Leanne

Derbyniwyd gwelliant 15.
Amendment 15 agreed.

Grŵp 8: Gorchmynion a Rheoliadau—Gweithdrefn (Gwelliannau 19, 30, 20 a 31)
Group 8: Orders and Regulations—Procedure (Amendments 19, 30, 20 and 31)

[122] **Mark Isherwood:** The lead amendment in the group is amendment 19. I call on David Melding to move amendment 19 and to speak to it and the other amendments in the group.

[123] **David Melding:** Chair, may I just check what has happened to amendment 26?

[124] **Mark Isherwood:** It is later in the marshalled list; we will get to it.

[125] **David Melding:** I beg your pardon; it is right at the end.

[126] **Mark Isherwood:** Trust me, I have clerks to tell me these things.

[127] **David Melding:** I am a rookie to this procedure, so I crave your indulgence. I move amendment 19 in my name.

[128] These amendments would require use of the affirmative resolution procedure in Orders made under section 15 on small schools and section 29 on supplementary powers. Again, I think that the fuller process should be used. It has been consistently recommended that it is appropriate to use the affirmative resolution procedure by the Constitutional Affairs Committee and also in the committee's report.

[129] **Eleanor Burnham:** Our amendments 30 and 31 change procedure for making Orders under section 15 from the negative to the affirmative procedure. Quite often, we talk about the procedure for making regulations and Orders, and, in this case, the Minister can decide upon the definition of a small school. Therefore, without reaching agreement from the Assembly, the Minister can arbitrarily set what constitutes a small school and what does not. Let us remind ourselves that this Minister might be willing and able to help us in this matter, but that there could be future Ministers who might take quite a different view. Given that the Government has tabled amendments today that mean that small schools can be federated without the same level of consultation as other schools—we have discussed this previously—in our opinion, this, in effect, means that Ministers can determine which schools can be federated easily and which cannot. We can all identify situations—in fact, I had an e-mail yesterday about the closure of a small school in the north Wales region—where small schools in our areas are under consideration for federation or closure.

[130] The Minister could decide that those schools were not technically small schools; they could be federated without publishing their proposals or going through the same due consultation as other schools. The current Minister has said that he will not arbitrarily make decisions, but, as I said, he will not be a Minister for ever, and, at some point in future, some other Minister could abuse these powers. We have to legislate to cover all eventualities, and it is, as David Melding previously stated, our duty to ensure—particularly as we head for tomorrow's vote of 'yes' or 'no'—that scrutiny is really seen to be done, and that the process identifies all these particularly emotive issues. I also remind fellow Members that the cross-party Constitutional Affairs Committee supports this recommendation.

[131] **Mark Isherwood:** Do any other Members wish to speak? I see that no-one does. I therefore call on the Minister to speak.

[132] **Leighton Andrews:** Chair, I start by saying that I am very pleased that Eleanor Burnham does not think that I would abuse my powers, even if she has concerns about Ministers who might come after me. I must start by saying that these proposals are about federation, not the closure of small schools, so it is in that context that we need to talk about them. Essentially, we are simply putting into place here the procedure that already exists in respect of the existing regulations on collaboration and federation. There is therefore a precedent for this. We have addressed any contentious or new issues on the face of the proposed Measure. Indeed, we as a Government proposed an amendment so that more detail was placed on the face of the proposed Measure in respect of consultation for federation. So, we have responded to concerns that have been expressed in the committee; I do not think there is a need to change the basis of the procedure, which is the procedure that is currently in use.

[133] **Mark Isherwood:** I call on David Melding to reply.

[134] **David Melding:** The arguments have been set out. It is important that when regulations are used to give detail to the important things, such as what constitutes a small school, the fuller procedure is used. That is clearly something that the Constitutional Affairs Committee regards as important when you are dealing with fundamental matters. They are substantial matters; they are not technical matters for which we would not want to trouble the Assembly for its full attention. They are important regulations. So, as the committee accepted in its evidence, this is an important principle, and the affirmative procedure should be used for substantial issues in the proposed Measure.

[135] **Mark Isherwood:** David, do you wish to proceed to a vote on amendment 19?

[136] **David Melding:** Yes.

[137] **Mark Isherwood:** The question is that amendment 19 be agreed to. I call for a vote.

*Gwelliant 19: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 19: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

*Gwrthodwyd gwelliant 19.
Amendment 19 not agreed.*

[138] **Mark Isherwood:** As amendment 19 was not agreed to, amendment 20 in the name of David Melding also falls.

[139] In accordance with the marshalled list, we now move to dispose of amendment 30. Eleanor, do you wish to move amendment 30?

[140] **Eleanor Burnham:** Yes. I move amendment 30 in my name.

[141] **Mark Isherwood:** The question is that amendment 30 be agreed to. I call for a vote.

*Gwelliant 30: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 30: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

*Gwrthodwyd gwelliant 30.
Amendment 30 not agreed.*

*Methodd gwelliant 20.
Amendment 20 fell.*

[142] **Mark Isherwood:** As amendment 30 was not agreed to, amendment 31 in the name of Eleanor Burnham falls.

**Grŵp 9: Rheoliadau—Cynlluniau Peilot (Gwelliant 29)
Group 9: Regulations—Pilot Schemes (Amendment 29)**

[143] **Mark Isherwood:** I call on David Melding to move amendment 29 and to speak to the amendment.

[144] **David Melding:** I move amendment 29 in my name.

[145] This is a simple issue, in that the amendment states that the Minister, before making statutory instruments under powers in sections 10 to 20, should take account of the federation pilot schemes. That came up in the evidence to the committee, and we thought that it was strange to have pilot schemes but not to take the lessons fully into account before bringing in the various regulations. As it was a key recommendation of the committee, we felt that we should return to it now at Stage 2 and seek to amend the proposed Measure accordingly, so that the Minister does have to take into account that evidence before bringing forward statutory instruments. That seems to be very simple. Why have a pilot scheme if you are not going to act on its evidence? Why have the evidence after taking the decisions to which the pilot schemes refer? It is really quite nonsensical. We were surprised that the Minister did not respond to the recommendation, but we would urge him to do so now.

[146] **Mark Isherwood:** Do any other Members wish to speak? I see that no-one does. I therefore call on the Minister to speak.

[147] **Leighton Andrews:** This matter has been raised previously and was raised in the debate in Plenary on the general principles of the proposed Measure. In fact, you commented on the matter and I wrote to you about it on 16 February, explaining why I did not accept the arguments being put forward. The current federation pilot schemes are based on the governing bodies using existing regulations to federate voluntarily, and the schedule for the pilot schemes is that they are to be completed in the autumn. Those pilot schemes are on a totally different basis to what is being proposed in the proposed Measure. Therefore, I do not think that the implementation of those pilot schemes has a bearing on the implementation of the proposed Measure. I want to set the process in place to allow local authorities to move forward on the process of federation. If, in due course, there are lessons that are relevant, we can pass those on to local authorities, but, as I say, the current pilot schemes are being conducted on a completely different basis.

[148] **David Melding:** A rather fantastic distinction has now been introduced between

those federations that are voluntary and those that are coerced, presumably, and that there is therefore a fundamental difference. For heaven's sake, Minister, pilot schemes are pilot schemes. We have pilot schemes to establish evidence and test practice. You should act on them, and it is silly and it undermines your authority to bring forward statutory instruments that require that evidence before you have it. If they do not require the evidence, why on earth do you have pilot schemes in the first place? I fear that my powers of reason are now exhausted.

10.15 a.m.

[149] **Mark Isherwood:** I doubt that. However, David, do you wish to proceed to a vote on amendment 29?

[150] **David Melding:** I do.

[151] **Mark Isherwood:** The question is that amendment 29 be agreed to. I call for a vote.

Gwelliant 29: O blaid 2, Ymatal 0, Yn erbyn 3.

Amendment 29: For 2, Abstain 0, Against 3.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Gwrthodwyd gwelliant 29.

Amendment 29 not agreed.

Methodd gwelliant 31.

Amendment 31 fell.

[152] **Mark Isherwood:** We now move to dispose of amendment 10. Minister, would you like amendment 10 in your name to be moved?

[153] **Leighton Andrews:** Yes, please.

[154] **Mark Isherwood:** I move amendment 10 in the name of Leighton Andrews. The question is that amendment 10 be agreed to. I call for a vote.

Gwelliant 10: O blaid 3, Ymatal 0, Yn erbyn 2.

Amendment 10: For 3, Abstain 0, Against 2.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Burnham, Eleanor
Melding, David

Derbyniwyd gwelliant 10.

Amendment 10 agreed.

[155] **Mark Isherwood:** We now come to dispose of amendment 13. Minister, would you like amendment 13 in your name to be moved?

[156] **Leighton Andrews:** Yes, please.

[157] **Mark Isherwood:** I move amendment 13 in the name of Leighton Andrews. The question is that amendment 13 be agreed to. I call for a vote.

Gwelliant 13: O blaid 3, Ymatal 2, Yn erbyn 0.

Amendment 13: For 3, Abstain 2, Against 0.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

Ymataliodd yr Aelodau canlynol:
The following Members abstained:

Burnham, Eleanor
Melding, David

Derbyniwyd gwelliant 13.

Amendment 13 agreed.

Grŵp 10: Apelio yn erbyn Cynigion Awdurdod Lleol i Ffedereiddio (Gwelliant 18)
Group 10: Appeals against Proposals by a Local Authority to Federate (Amendment 18)

[158] **Mark Isherwood:** Amendment 18 is in a group on its own. I call David to move the amendment.

[159] **David Melding:** I move amendment 18 in my name.

[160] **Mark Isherwood:** Thank you. I therefore call on David and his powers of reason to speak to amendment 18. [*Laughter.*]

[161] **David Melding:** They are rejuvenated, as I am sure Members are relieved to hear. [*Laughter.*] As I have consistently argued throughout the meeting, I am not opposed in principle to the proposed Measure. However, there are areas where I think that it needs to be strengthened and improved and our amendments have sought to improve the proposed Measure accordingly. They are in no way intended to obstruct or wreck the proposed Measure. As part of a scheme of checks and balances to improve the proposed Measure I believe that an appeal mechanism is required.

[162] I could have proposed that any federation would require a ballot of each individual school, but I have not gone down that road. However, I am concerned that, in some cases, with the local authority having the power of initiation, some schools may feel that the consultation and issues are not being considered fully and in an appropriate way. Therefore, there should be some right of appeal that would trigger further consultation responses from those on the lists that I have consistently proposed during this morning's meeting—parents, guardians, pupils, staff and trade unions—to gauge the strength of feeling in that individual school. Those consultation responses should then be considered by the Minister before he or she decides whether the federation is to proceed. I am not saying that the Minister then has to stop the federation, but there would be a power of delay and pause in the procedure to allow further consideration. Again, I hope that it would deter local authorities from proceeding with such speed that they have not fully gauged local concerns. That should allow local authorities to engage in fuller, more proper and timely consultation and not rush the job.

[163] We have heard from the Minister occasionally that speed is rather of the essence. I think, Minister, that, although your stated intent never to sanction failure or inadequate performance is of course what we need—that rigour in the education system is very important—when structures change, it is crucial that we have full and proper consultation. Sometimes, with new schemes, you may be involving schools that are not failing and that are

very good schools indeed but that are suddenly in a new governance framework. So, I feel that it is appropriate to have checks and balances in any system that gives some central power—local authorities in this case—greater powers of initiation in the event of their using those powers inappropriately or in a roughshod manner. An improper use of those powers is always a possibility, even if it is not particularly malign and more a case of omission than commission of systems that are deliberately designed to enforce unpopular decisions. Whenever possible, we need to take people with us: schools, pupils, parents, guardians and all those involved in running schools. This right of appeal, which is a limited appeal, is an appropriate thing to have in this proposed Measure, which, as I have said before, fundamentally alters the power of initiation in terms of proposing federations. I support the amendment.

[164] **Mark Isherwood:** Do other Members wish to speak? I see that no-one does, so I invite the Minister to speak.

[165] **Leighton Andrews:** Bluntly, this is overkill. These proposals in the proposed Measure for federation are not the same as proposals for school closure. We are simply talking about change to governance. That may, in some circumstances, be accompanied by a change to leadership in schools. However, the process of federation does not threaten the future of schools or communities or mean that pupils will have to travel to different sites. In some areas, it may actually be an alternative to closure and might enable schools to carry on. I do not think that we need a system such as the one that we have had to address the issue of school reorganisation in the past.

[166] There are already safeguards in cases of local authorities acting unreasonably. The Education Act 1996 already provides Ministers with powers to direct authorities if they have acted unreasonably or failed to discharge their duties. I think that we have good enough protection against procedural failure already in place, and I think that these proposals are simply unnecessary.

[167] **Mark Isherwood:** Thank you. I call on David to reply.

[168] **David Melding:** I think that the Minister's difficulty is that, in his language, he almost implied that, somehow, federation was a moderate, gentle solution to problems that schools may be facing or, indeed, obstacles to efficiency and effectiveness. This is a fundamental proposed Measure, Minister. You should give yourself credit for coming up with it and for proposing a policy framework that really makes federation a viable policy. There have been no federations in the past, when the option was voluntary. In fact, we waited for years for the regulations to allow federations. They have been permissible since 2002, I think, but it was only in 2009 that the regulations were brought forward to even turn the tap on. We have not had any federations proposed on a voluntary basis.

[169] Therefore, this is a big shift in policy. It is not one to which I fundamentally object; indeed, I welcome most of it, frankly. I think that it is appropriate to have federation as part of a suite of policies that can determine future school governance. However, that change in governance is significant; it is potentially even fundamental at times. To say, 'Oh well, it does not really affect the schools; it will not affect where the pupils are going, and the terms and conditions of the staff', does not quite capture the expansion occurring in policy and the vision that you have for greater collaboration, efficiency and effectiveness. I do not think that amendment 18, or the powers that would follow from that, should be used vexatiously. If I really wanted overkill, I would have included a ballot procedure, a veto on what is being proposed. That is not the road that I want to travel, because, sometimes, it is appropriate that tough decisions are made. As long as consultation is acted upon, those tough decisions are justified and you are accountable for them when local people feel that extra examination of a particular proposal is required.

[170] I think that you are playing it both ways, and it is slightly frustrating. However, it is important, at least, that I highlight to the committee the full implications of some of the proposals and what checks and balances are required in my view for this to be an exciting development that will be used when fully appropriate and to ensure that the occasions when it is ill-advised are kept to a minimum.

[171] **Mark Isherwood:** Do you wish to proceed to a vote on amendment 18?

[172] **David Melding:** Yes, Chair.

[173] **Mark Isherwood:** The question is that amendment 18 be agreed to. I call for a vote.

*Gwelliant 18: O blaid 2, Ymatal 0, Yn erbyn 3.
Amendment 18: For 2, Abstain 0, Against 3.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Burnham, Eleanor
Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Jones, Ann
Wood, Leanne

*Gwrthodwyd gwelliant 18.
Amendment 18 not agreed.*

[174] **Mark Isherwood:** We now come to dispose of amendment 26. I invite David to move amendment 26.

[175] **David Melding:** I move amendment 26 in my name.

[176] **Mark Isherwood:** The question is that amendment 26 be agreed to. I call for a vote.

*Gwelliant 26: O blaid 1, Ymatal 0, Yn erbyn 4.
Amendment 26: For 1, Abstain 0, Against 4.*

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Melding, David

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Barrett, Lorraine
Burnham, Eleanor
Jones, Ann
Wood, Leanne

*Gwrthodwyd gwelliant 26.
Amendment 26 not agreed.*

[177] **Mark Isherwood:** For the record, all sections of the proposed Measure have been deemed agreed by the committee. Under Standing Order No. 23.40, if a proposed Measure is amended at Stage 2 proceedings so as to insert a section or Schedule or substantially alter any existing provision, the committee considering the Stage 2 proceedings may request that the Member in charge prepares a revised explanatory memorandum. I consider that amendments agreed by the committee have substantially altered some existing provision. As such, do Members agree that the Member in charge should prepare a revised explanatory memorandum? I see that you do. Therefore, in accordance with Standing Order No. 23.42, Stage 3 proceedings begin tomorrow, 3 March. The deadline for tabling amendments will be notified to Members in due course and will also be published in the business notice.

[178] I am advised that this is the last scheduled legislation committee meeting of the third Assembly, so this is quite a notable moment. I take the opportunity to thank all Members who have taken part, the clerking team, the legal team, the Record of Proceedings team and all the support staff who have worked so hard to make these committees function as they have. I thank all of you for your commitment, advice, patience and hard work. I am confident that you will be providing Members of the fourth Assembly with an equivalent service. So, thank you all, and I hope that you will be seeing some of us after 5 May.

Daeth y cyfarfod i ben am 10.28 a.m.
The meeting ended at 10.28 a.m.