

National Assembly for Wales
Legislation Committee No. 5

Proposed Education (Wales) Measure

Stage 1 Committee Report
January 2011



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Legislation Committee No.5

Legislation Committee No. 5 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

Powers

The Committee was established on 4 February 2009 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 10, 22 and 23. These are available at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Mark Isherwood	Welsh Conservatives	North Wales
Lorraine Barrett ¹	Labour	Cardiff South and Penarth
Eleanor Burnham	Welsh Liberal Democrats	North Wales
Ann Jones ²	Labour	Vale of Clwyd
David Melding	Welsh Conservatives	South Wales Central
Leanne Wood	Plaid Cymru	South Wales Central

¹ Substitute for Alun Davies AM

² Substitute for Andrew Davies AM

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The Committee's conclusions and recommendations

The Committee's conclusions, and recommendations to the Welsh government, are listed below, in the order that they appear in this Report. Please refer to the relevant paragraphs of the report to see the supporting evidence and conclusions:

Timetable for scrutiny

We are disappointed that the Business Committee provided us with such a short period of time within which to scrutinise the proposed Measure. [Paragraph 17]

We feel strongly that each piece of legislation should be afforded sufficient time for detailed consideration. [Paragraph 18]

We recommend that the Business Committee provides sufficient time for Stage 1 consideration to enable thorough and effective scrutiny of proposed Measures by legislation committees. This includes making time available to allow meaningful consultation with stakeholders; the testing of evidence received through oral evidence sessions; and full consideration of key issues before the report drafting stage. [Paragraph 18]

General principles and the need for legislation

In view of the evidence received from respondents and the arguments put forward by the Minister for the need for further legislation in the areas of collaboration, school governance and foundation schools, we support the general principles of the proposed Measure.

Notwithstanding this, one Member remained unconvinced that the general principles had been fully tested in relation to foundation schools. [Paragraph 50]

Part 1: Collaboration by education bodies

We recommend that "the collaboration objective" set out in section 2 be broadened to include a reference to improving education standards and outcomes for learners. We further recommend that the Minister brings forward an amendment at Stage 2 to give effect to this. [Paragraph 79]

We are generally content with section 3. [Paragraph 80]

We remain concerned that under the provisions of section 3, an education body would not need to provide evidence that exercising its power of collaboration would be beneficial for other education bodies involved in that collaboration. We believe the Minister should provide a more detailed explanation of the reasoning behind this and we urge him to do so ahead of Stage 2 proceedings. [Paragraph 81]

Part 2: School Governance

Chapter 1 – Federation of maintained schools

We recommend the Minister takes account of the outcomes of federation pilot schemes before bringing forward regulations under Chapter 1. [Paragraph 136]

We recommend that the proposed Measure is amended to include a requirement on local authorities to consult relevant stakeholders before bringing forward proposals to federate schools under section 11. We further recommend that consultees should include, but not be limited to pupils of maintained schools to which the proposals apply, their parents and guardians, and school governors. [Paragraph 137]

We acknowledge the evidence from the Minister that he would not expect the provisions of the proposed Measure to affect existing provision of Welsh-medium education. We believe this is something that should be reflected on the face of the proposed Measure and, as such we recommend the Minister brings forward the necessary amendments at Stage 2 to give effect to this. [Paragraph 138]

We believe it is reasonable and desirable for the proposed Measure to include an appeals mechanism, and we recommend the Minister brings forward the necessary amendments at Stage 2 to give effect to this. [Paragraph 139]

We believe it is important that Orders made under section 15 should be subject to the affirmative resolution procedure in order to provide for a more detailed level of scrutiny. As such, we recommend that the Minister brings forward an amendment at Stage 2 to give effect to this. [Paragraph 141]

We are content with section 16. [Paragraph 142]

Part 2: School Governance

Chapter 2 - Training for governors and clerks and provision of clerks

We are content with the provisions set out section 21. [Paragraph 173]

We remain concerned about the potential negative impact of mandatory training on the recruitment and retention of governors. We seek assurances from the Minister that steps will be taken to safeguard against this, for example by encouraging local authorities to be flexible in their approach to training, and by ensuring that they take account of practical considerations when planning and delivering training. [Paragraph 174]

We are content with sections 22 to 24 of the proposed Measure. [Paragraph 176]

Part 3: Foundation schools

One Member remained concerned that the proposals in relations to federation could, in effect, result in the eventual abolition of foundation schools in Wales. [Paragraph 193]

We are content with sections 25 to 29 in relation to foundation schools. [Paragraph 194]

Powers provided to the Welsh Ministers to make regulations

We believe it would be reasonable for those regulations making substantive provision to be the subject of the affirmative resolution procedure in order to ensure they attract the appropriate level of scrutiny. To this end, we recommend the Minister brings forward the necessary amendment at Stage 2 to give effect to this. [Paragraph 208]

1. Introduction

Background

1. On 6 December 2010, the Minister for Children, Education and Lifelong Learning, laid before the Assembly the proposed Education (Wales) Measure³ ('the proposed Measure') and accompanying Explanatory Memorandum.⁴
2. At its meeting on 1 December 2010, the Business Committee agreed to refer the proposed Measure to Legislation Committee No.5 ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 23.21.⁵ The Business Committee agreed that the Committee must report on the proposed Measure no later than 21 January 2011.

Terms of scrutiny

3. The Committee agreed the following framework within to work in scrutinising the proposed Measure:

To consider –

- (i) the need for a proposed Measure to make collaboration commonplace in the education system, to improve school governance and to simplify the planning of school places in Wales;
- (ii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its aims;
- (iii) the practical and financial implications of the proposed Measure; and
- (iv) the appropriateness of the balance of powers on the face of the proposed Measure and those to be contained in Regulations to be made by the Welsh Ministers.

³ Proposed Education (Wales) Measure.

⁴ Explanatory Memorandum to the proposed Education (Wales) Measure.

⁵ National Assembly for Wales, Business Committee, Minutes BC(3)32-10, 1 December 2010.

Committee's approach

4. Due to time constraints, we were unable to carry out a standard written consultation or take oral evidence from external stakeholders. Instead, we issued an on-line survey, which was notified to key stakeholders within the field of education. A list of respondents is available at Annex 1. Unfortunately, due to the limited time available, we were unable to test the views of respondents further through oral evidence sessions. Similarly, while we did take oral evidence from the Minister for Children, Education and Lifelong Learning we were unable to test his evidence with stakeholders.

5. The reporting deadline of 21 January 2011 set by the Business Committee provided three working weeks (including the week in which the proposed Measure was introduced) within which to complete our work.

6. As stated above, the reporting deadline set by the Business Committee provided a limited opportunity for consultation on the proposed Measure and meant that, in practice, we were only able offer a 4 week consultation period, over the Christmas recess. In view of the limited time available to us, we were only able to hear oral evidence from the Minister. Further detail in relation to the timetable for scrutiny is set out in paragraphs 13 to 18.

7. The Constitutional Affairs Committee and the Finance Committee have also reported on the proposed Measure. Their reports are available separately, on the Assembly's website.

8. The following report details the conclusions we have reached based on the limited evidence received during the course of our work.

2. Policy and legislative background

Legislative Competence

9. The Assembly's legislative competence in relation to collaboration between local authorities, school governing bodies and governing bodies of FEIs; school governance; repealing section 347 of the Education Act 1996, and preventing maintained schools changing category to become foundation schools and preventing the establishment of new foundation schools, derives from Matters 5.2B, 5.2C, 5.12, 5.13, 5.2A, 5.1, and 5.2 of Schedule 5 to the Government of Wales Act 2006. These Matters are set out in Schedule 5 as follows:

Matter 5.2B

Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities.

Matter 5.2C

The following activities by persons or bodies with functions relating to schools maintained by local authorities—

- (a) establishment of bodies to do all or any of the following—
 - (i) carry out activities relating to education or training,
 - (ii) exercise education functions on behalf of local authorities;
- (b) involvement with bodies mentioned in paragraph (a).

Matter 5.12

Provision for and in connection with the establishment and dissolution of –

- (a) institutions concerned with the provision of further education, and
- (b) bodies that conduct such institutions, including the circumstances in which an educational institution becomes or ceases to be an institution concerned with the provision of further education.

Provision about –

- (a) the conduct and function of such institutions;
- (b) the property, rights and liabilities of such institutions and bodies that conduct such institutions;

(c) property held by any person for the provision of such an institution;

(d) the governance and staff of such institutions.

Matter 5.13

Provision for and in connection with securing collaboration –

(a) between bodies that conduct institutions concerned with the provision of further education, or

(b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales, including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.

Matter 5.2A

Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.

Matter 5.1

Provision about the categories of school that may be maintained by local education authorities.

Matter 5.2

Provision about the establishment and discontinuance of schools maintained by local education authorities, their change from one category to another and their alteration in other respects.

Policy objectives of the proposed Measure

10. The Explanatory Memorandum sets out the policy objectives of the proposed Measure:

“The proposed Measure will put in place powers and duties to make collaboration commonplace in the education system, to improve school governance and to simplify the planning of school places in Wales...

It complements and supports the work currently being undertaken within the Department for Children, Education, Lifelong Learning and Skills on the Front Line Resources Review, in that it will help to embed collaborative models of service planning and delivery and support performance improvement within the education system in Wales.”⁶

11. The Explanatory Memorandum goes on to state that the proposed Measure will improve school performance and addresses the recommendations made by the Enterprise and Learning Committee’s 2009 report on the role of school governors.⁷

12. The Explanatory Memorandum notes that the proposed Measure makes provision to:

- drive collaboration between local authorities, governing bodies of maintained schools and Further Education Institutions (“FEIs”);
- give local authorities a power to establish a federation of schools;
- train school governors and to improve clerking of governing bodies;
- prevent schools in the future from changing category so as to become foundation schools and to prevent new foundation schools being established.⁸

⁶ Explanatory Memorandum to the proposed Education (Wales) Measure, para 1.1-1.2.

⁷ Explanatory Memorandum to the proposed Education (Wales) Measure, para 1.3.

⁸ Explanatory Memorandum to the proposed Education (Wales) Measure, para 1.4.

3. Timetable for scrutiny

13. As mentioned earlier, the proposed Measure was laid before the Assembly by the Minister on 6 December 2010 and the Business Committee required that we report on the general principles no later than 21 January 2011. This timeline provided us with three working weeks (including the week within which the proposed Measure was introduced) to carry out our work.

14. In view of the above, we had little option other than to consult over the Christmas period - a time when interested parties were likely to have limited capacity to respond; and to provide a four week deadline which, we understand, was particularly tight. Despite these unfavourable circumstances, we were pleased to receive 26 responses to our on-line consultation. It is understandable that a number of respondents commented on the issue of the timing of, and deadline for responses to the consultation when providing evidence to us.

15. Unfortunately, due to the limited time available we were unable to test the views of respondents further through oral evidence sessions. However, we were able to hold an oral evidence session with the Minister, during which we sought to question him on the key issues and concerns raised by respondents in evidence.

16. We would like to thank all those organisations and individuals who took the time to provide evidence, which proved invaluable in assisting us in our work.

Our view

17. We are disappointed that the Business Committee provided us with such a short period of time within which to scrutinise the proposed Measure. However, we acknowledge that the Welsh government would have been keen to ensure that sufficient time was available to allow the proposed Measure to complete all stages of the legislative process before dissolution of the Assembly in March ahead of the May 2011 election. We appreciate that this would also have been an issue the Business Committee would have been aware of when agreeing the timetable for Stage 1 scrutiny.

18. Notwithstanding this, it is our view that the timetable set by the Business Committee for Stage 1 scrutiny of this proposed Measure was

less than acceptable. We feel strongly that each piece of legislation should be afforded sufficient time for detailed consideration. To this end, we would not expect the completion of our work within this timeframe to set a precedent for, or influence the timetabling of future legislation in the fourth Assembly. As such, **we recommend that the Business Committee provides sufficient time for Stage 1 consideration to enable thorough and effective scrutiny of proposed Measures by legislation committees. This includes making time available to allow meaningful consultation with stakeholders; the testing of evidence received through oral evidence sessions; and full consideration of key issues before the report drafting stage.**

4. General principles of the proposed Measure and the need for legislation

Overview

19. Within the limited time available, we sought to identify whether there was a definite and identified need for the legislation before us. In doing so, we considered a range of issues including –

- existing duties on and powers available to local authorities in relation to collaboration; and current regulations, which enable school governing bodies to work collaboratively with other school bodies, and school governing bodies to collaborate with Further Education Institutions;
- the extent to which education bodies have made use of the powers outlined above;
- potential benefits of collaboration;
- existing powers available to schools to federate under a single governing body and the extent to which those powers have been exercised to date;
- potential barriers to school federation under existing arrangements;
- the appropriateness of the extent of the powers provided to local authorities and the Welsh Ministers in relation to school federation, in particular federation of small maintained schools;
- potential benefits of prescribed training for school governors;
- practical considerations in the delivery of training for school governors;
- the potential impact of mandatory training on the recruitment and retention of school governors;
- the extent to which foundation schools complicate the school admissions system and make it difficult for local authorities to plan school places;
- the extent to which the prohibition of establishment of new foundation schools and of change of category to foundation schools will meet the stated aim of simplifying the planning of school places by local authorities.

Evidence from respondents

20. Of the 26 respondents, the majority were generally supportive of the proposed Measure, although support varied in relation to its specific Parts and Chapters. There was broad support for Part 1 in relation to collaboration by education bodies and Part 2, Chapter 2 in relation to training for governors and clerks and provision of clerks. However, views were more varied on Part 2, Chapter 1 in relation to federation of maintained schools and Part 3 in relation to foundation schools, with views on the latter being particularly polarised.

21. Those representing local government were broadly supportive of the proposed Measure. The power for local authorities to propose and create federations of maintained schools provided in sections 10 and 11 was particularly welcomed, along with the prohibition of the establishment of new foundation schools and of change of category to foundation schools. While local authorities supported the aim of making collaboration more commonplace, some concern was raised about compulsory collaboration.

22. The Welsh Local Government Association (WLGA) and the Association of Directors of Education in Wales (ADEW) made clear that they “support the broad aims of the Measure”. In doing so, they stated:

“The WLGA and ADEW recognise that collaboration can contribute to improving governance within schools, that there are potential advantages to the federation of schools and their governing bodies.”⁹

23. UCAC believed the proposed Measure was necessary to improve school governance and simplify the work of planning school places, and that “legislation is the best means of achieving these aims.”¹⁰ However, in commenting on Part 1 in relation to collaboration by education bodies, UCAC stated:

“The current legislation allows schools and further education institutions’ governing bodies to collaborate by establishing joint committees, if they wish to do so. The advent of the Learning and Skills (Wales) Measure 2009, Learning Pathways 14-19 and the Transformation Agenda has meant that there is

⁹ Written evidence, EM26A.

¹⁰ Written evidence, EM18.

much more collaboration between schools; and between schools and further education institutions, and that trend is increasing.”¹¹

24. In view of the above, it felt strongly that further legislation in the area of collaboration was not required.

25. In supporting the need for the proposed Measure, the Association of Teachers and Lecturers (ATL) “commend[ed] the [Welsh government’s] intention to raise the standards of school governance”. It went on to suggest it would be “impossible to disagree with [the] principle [of increased collaboration]”, and stated that the provisions in relation to foundation schools would enable local authorities to “plan more strategically and ensure that no institution in an area tries to achieve privileged status at the expense of its neighbours.”¹²

26. Governors Wales welcomed the proposed Measure, which it believed would “assist in raising standards of school governance”. Notwithstanding this, it acknowledged that “federation is in its very early stages of establishment and development in Wales”, and as such sought information on “the successes and problems encountered before further legislation is made in this respect.”¹³

27. In expressing its support for the proposed Measure, Newport Association of School Governors said it felt the proposed Measure was necessary in order to improve collaboration in the education system. It suggested that the federation of schools would “ensure the interests of learners are paramount”, and supported the training of governors and clerks.¹⁴

28. In questioning the need for the proposed Measure, Mrs Slack, Governor, Whitchurch High School stated “some of the powers of the proposed Measure are not required, or not required at this time.” She went on to state:

“Collaboration between schools and local authorities already exists; federation proposals would be more successful if they came through existing regulation in partnership with local authority; and providing mandatory training may not result in

¹¹ Written evidence, EM18.

¹² Written evidence, EM8.

¹³ Written evidence, EM19.

¹⁴ Written evidence, EM22.

training of governors. These proposals could be promoted by good practice guidance in the first instance.”¹⁵

29. A minority of respondents felt that the proposed Measure was unnecessary in its entirety.

30. Wales Council for the Deaf opposed the proposed Measure on the basis that “there is too much interference in citizens lives.” It implied that those directly involved in education were best placed to make decisions about the issues provided for in the proposed Measure.¹⁶

31. In generally opposing the proposed Measure, Dr David Rowson, grandparent and retired university lecturer, said he felt it was unclear how pupils would benefit from the proposals.¹⁷

32. Four respondents provided no direct comment on the need for the proposed Measure, but provided detail in relation to specific aspects of the legislation.

Evidence from the Minister

33. In setting out the specific objectives of Part 1 of the proposed Measure in relation to collaboration, the Explanatory Memorandum states:

“It aims to make collaborative working much more commonplace be that amongst school governing bodies and/or between them and FEI governing bodies; or between any governing body and local authorities. Rather than be exceptional, the expectation is that collaboration will become a natural and more frequent feature of the education system.”¹⁸

34. It goes on to suggest that, while some school/school and school/FEI collaboration was taking place, “more must be done by local authorities, schools and FEIs to ensure that collaboration is more widespread, and is focused not only on delivering curriculum provision but on achieving a more efficient and effective use of resources.”¹⁹

¹⁵ Written evidence, EM5.

¹⁶ Written evidence, EM6.

¹⁷ Written evidence, EM12.

¹⁸ Explanatory Memorandum to the proposed Education (Wales) Measure, para 3.11.

¹⁹ Explanatory Memorandum to the proposed Education (Wales) Measure, para 7.6.

35. The Explanatory Memorandum outlines the rationale for further legislation in relation to federation of maintained schools (Part 2, Chapter 1). It states:

“The Assembly Government thinks that school federation has much potential. But this is unlikely to be realised unless the process is improved by allowing local authorities to play a role. It is complicated, potentially burdensome and so-off putting for governing bodies alone to make all the running...The Assembly Government has concluded that the current law is too restrictive. Local authorities need to have the power to propose and make federations. Otherwise it is unlikely to become a common feature of the education system.”²⁰

36. In explaining why he believed it was important to make federation a more common feature in the education system, the Minister asserted:

“Federation will put in place unified governance for a number of schools, and will be beneficial in terms of improving quality of governance of schools, and, I hope, the quality of leadership.”²¹

37. In addition, according to the Explanatory Memorandum:

“Governing body federation could also strengthen school governor recruitment and retention, where governing bodies to struggle to attract or retain sufficient governors, or where governors lack the skills to be effective. Federation could also encourage networking between schools and could be beneficial for clusters of schools with shared interests...”²²

38. The Explanatory Memorandum explains that the proposed Measure aims to further the Welsh government’s key policy objective of “making improvements to school governance, prompted by the Enterprise and Learning Committee’s 2009 report.” Specifically, Part 2, Chapter 2 of the Measure aims:

²⁰ Explanatory Memorandum to the proposed Education (Wales) Measure, para 3.29.

²¹ RoP, para 78, Legislation Committee No.5, 12 January 2011 – Please note that all quotes used in this report have been taken from the uncorrected version of the transcript as the final version was not available at the time of publication.

²² Explanatory Memorandum to the proposed Education (Wales) Measure, para 7.13.

“To contribute to increasing the effectiveness of maintained school governing bodies by effecting improvements in governor training and the clerking of governing bodies.”²³

39. In outlining the need for further legislation in this area, the Explanatory Memorandum explains that, while section 22 of the Education Act 2002 requires local authorities to provide information and training to governors, it does not cover what the content of that training should be, nor does it require governors to undertake training as part of their role.²⁴

40. In addition, according to the Explanatory Memorandum, there is no provision in current legislation to cover training for clerks to governing bodies. Despite this, research has shown that many local authorities do provide training. However, “there does not seem to be a coherent approach to the content and quality of training provision.”²⁵

41. Finally, the Explanatory Memorandum states that, one of the specific objectives of the proposed Measure is:

“To avoid further complexity in the school admission system in Wales and to maintain local authorities’ control on planning school places by preventing schools from changing category so as to become foundation schools, and to prevent further foundation schools being established.”²⁶

42. Notwithstanding the above, in arguing the need for legislation to prohibit the establishment of, and change of category to foundation schools, the Minister made clear:

“I do not want to rest the case for preventing the change of category to foundation schools simply on the admissions issues. It is my view that we have a comprehensive system in Wales and that that should be the system that drives our educational work at secondary level. The issue that I am trying to grapple with is about how we ensure a secondary system that is focused on issues of quality and opportunities for

²³ Explanatory Memorandum to the proposed Education (Wales) Measure, para 3.13.

²⁴ Explanatory Memorandum to the proposed Education (Wales) Measure, para 7.35.

²⁵ Explanatory Memorandum to the proposed Education (Wales) Measure, para 7.19.

²⁶ Explanatory Memorandum to the proposed Education (Wales) Measure, para 3.14.

learners, rather than the outmoded market arguments around choice.”²⁷

43. And

“In our approach to education, we are seeking to eliminate unnecessary competition. The existence of foundation schools creates an element of competition that is unhelpful to our education objectives.”²⁸

Our view

44. We acknowledge the general support expressed in evidence for the proposed Measure and the fact that collaboration by education bodies, and training for governors and clerks and provision of clerks was particularly welcomed. We note that the principle of federation of maintained schools was supported by the majority of respondents, although some concern was raised about the implementation of provisions. We recognise that views on provisions in relation to foundation schools varied more widely. While those representing local authorities were broadly supportive of the provisions, other respondents, including those affiliated to existing foundation schools, opposed the move to prohibit further foundation schools.

45. Further to the above, we acknowledge that the majority of respondents agreed that the proposed Measure was needed in order to meet the stated aims of making collaboration commonplace in the education system, improving school governance and simplifying the planning of school places in Wales.

46. We note the existing legislation in relation to collaboration and the steps taken by the Welsh government to encourage collaborative working. We recognise the potential benefits of collaboration and, as such, we believe that more could and should be done in this area.

47. We support the Minister’s intention to strengthen school governance. We note that existing legislation enables federation of maintained schools but that the impetus for this must come from governing bodies. We acknowledge the Minister’s evidence in relation to the complexities of the existing process of federation, and accept

²⁷ RoP, para 56, Legislation Committee No.5, 12 January 2011.

²⁸ RoP, para 61, Legislation Committee No.5, 12 January 2011.

there may be potential benefits to enabling local authorities to play a more central role.

48. We agree with the Minister that competent governors and well-trained clerks are a prerequisite for good governance. We note that the proposed Measure seeks to address many of the concerns raised by the Enterprise and Learning Committee in its work on the role of school governors and we welcome this.

49. We note that the justification put forward in the Explanatory Memorandum for preventing the future establishment of foundation schools, or changing a school's category to a foundation school is the apparent difficulties this causes for local authorities when planning school places. However, in evidence to us, the Minister made clear that the provisions in relation to foundation schools were partly motivated by his desire to "eliminate competition" within the education system, which he suggested was created by foundation schools. As such, we recommend that, for the sake of clarity, the Explanatory Memorandum be amended to include reference to this.

50. In view of the evidence received from respondents and the arguments put forward by the Minister for the need for further legislation in the areas of collaboration, school governance and foundation schools, we support the general principles of the proposed Measure. Notwithstanding this, one Member remained unconvinced that the general principles had been fully tested in relation to foundation schools.

5. Part 1: Collaboration by education bodies

Overview

Evidence from respondents

51. There was broad support in evidence for making collaboration more commonplace in the education system. It was suggested that increased collaboration could:

- bring about cost savings and lead to more effective use of resources;
- improve services available to schools through pooled resources, e.g. in Human Resources;
- raise education standards;
- improve outcomes for children and young people;
- increase curriculum choice; and
- improve the impact of the Welsh government's Transformation Agenda.

52. In commenting generally on collaboration, the WLGA and ADEW stated:

“The WLGA and ADEW support collaboration between education bodies within the education system and recognises that effective collaboration can improve school governance and simplify the planning of schools in Wales. The WLGA has always supported collaboration where it adds value whether through improvements in the quality of service provision or through more effective and efficient use of resources.”²⁹

53. They went on to point out that “a considerable and growing amount of collaboration” was already taking place both in the education sector and wider local government and that “there is every reason to believe that the momentum generated in recent years will continue.”³⁰

54. In supporting Part 1 of the proposed Measure in relation to collaboration, Caerphilly County Borough Council stated:

²⁹ Written evidence, EM26A.

³⁰ *Ibid.*

“The new measure will help to formalise the process and strengthen the relationship between schools, governing bodies, local authorities and further education institutions. The benefits of collaboration are recognised and there have been real gains where this has taken place with a positive impact on learners.”³¹

55. Dr David Rowson raised concern that, while increased collaboration “may well be good in urban areas” it would not necessarily be viable in rural areas in Wales, e.g. where a single school covers a wide catchment area.³²

56. Linked to this, Gwynedd Council stated:

“In rural areas where pupil numbers are low and where demographic projections are problematic, co-operative working is even more imperative in order to enable institutions to meet their statutory obligations.”³³

57. It was suggested by the All Wales Centre for Governor Training and Research that collaboration, “while very useful”, would only be likely “between schools far apart and who do not see each other as competitors”.³⁴

58. The National Deaf Children’s Society (NDCS) Cymru emphasised the need “to ensure that [when working collaboratively] governing bodies are aware of the specific needs of pupils with SEN and/or disabilities”.³⁵

Evidence from the Minister

59. The Minister explained that he had previously commissioned a review of the cost of administering education across Wales, which had been carried out by PricewaterhouseCoopers (PwC). He went on to state:

“The report looked in detail at the opportunities for savings within the education system and ways of making the education system more efficient and more effective. Throughout that

³¹ Written evidence, EM23.

³² Written evidence, EM12.

³³ Written evidence, EM24.

³⁴ Written evidence, EM13.

³⁵ Written evidence, EM1.

extensive report, which has been well received in the Assembly, there was a strong emphasis on collaboration. We believe that it is important that we have an approach within education in Wales of institutions being prepared to work together where they are delivering education objectives. That is the reason why we are putting collaboration at the heart of the proposed Measure.”³⁶

60. The Minister explained that that the proposed Measure “brings together existing legislation and reinforces it” and “places a common duty on all education bodies [in relation to collaboration]”. He stated that, without the Measure “different laws would apply to local authorities, FE institutions and schools.”³⁷

61. Again, in emphasising the need for a legislative approach to achieve the stated aim of making collaboration more commonplace, the Minister stated that “extensive steps”³⁸ had already been undertaken to promote and encourage collaboration under existing arrangements. It was clear that the Minister was content that all avenues had been exhausted before further legislation, in the form of the proposed Measure had been brought forward. He stated:

“We have sought to drive collaboration through a number of measures that we have implemented as an Assembly Government over the last three and a half years, and what we are ensuring here is that we have a full suite of legislative powers, so that if collaboration is not being properly considered, we have the tools to require education bodies to consider it.”³⁹

Section 2 – the collaboration objective

Evidence from respondents

62. There were no specific comments received on “the collaboration objective” provided in section 2. However, a number of respondents made clear that collaboration should primarily be about raising standards and improving outcomes for learners. Governors Wales stated that collaboration “should be tightly focused on raising

³⁶ RoP, para 7, Legislation Committee No.5, 12 January 2011.

³⁷ RoP, para 13, Legislation Committee No.5, 12 January 2011.

³⁸ RoP, para 19, Legislation Committee No.5, 12 January 2011.

³⁹ RoP, para 27, Legislation Committee No.5, 12 January 2011.

standards in the performance of pupils”. It went on to suggest that there was a need for the Welsh government to assess the overall impact of existing collaboration arrangements on school performance and learner outcomes.⁴⁰

63. Likewise, Wrexham County Borough Council stated:

“Collaboration between education bodies should be encouraged if it is primarily about the need to remove variation in outcomes and to drive up the standard of teaching and learning...”⁴¹

64. In addition, it raised concern that “if [collaboration] is merely seen as a cost saving measure then it will not have the desired impact.”⁴² On a similar note, although supportive of collaboration, Phil McTague, Eirias High School made clear it “should not mean rationalisation based on ‘bottom-line’ accountancy principles.”⁴³

65. Linked to the issue of raising education standards, Dr David Rowson felt it was “not obvious from the proposed Measure how collaboration will improve the educational experience of young people in Wales”.⁴⁴

Evidence from the Minister

66. The Minister explained that “the collaboration objective” derived “very much from the work that was undertaken by PwC”.⁴⁵ He stated:

“It is clear to us that we can deliver more efficiently for learners if institutions collaborate rather than compete, and that is our objective.”⁴⁶

67. When questioned about whether “the collaboration objective” adequately takes account of the need to raise standards and improve outcomes for learners, the Minister asserted:

“...there are general duties on the Minister for education and education bodies to work to improve standards for learners,

⁴⁰ Written evidence, EM19.

⁴¹ Written evidence, EM7.

⁴² *Ibid.*

⁴³ Written evidence, EM16.

⁴⁴ Written evidence, EM12.

⁴⁵ RoP, para 11, Legislation Committee No.5, 12 January 2011.

⁴⁶ *Ibid.*

and as they are set out in other legislation, we did not feel the need to reiterate them within the proposed Measure.”⁴⁷

Sections 3, 4 and 5 – Duty of education body to collaborate, Meaning of “powers of collaboration”; and Powers to collaborate

68. It was clear from their evidence that the WLGA and ADEW supported the section 3 (1) duty insofar as it related to “educational establishments, including Further Education Institutions”. It suggested that this could “improve radically the impact of the Transformation policy and would speed up the pace of change.” However, it would seem that the WLGA and ADEW were less supportive of the extension of the section 3 duty to local authorities. On this point, they stated:

“The position with regard to collaboration within local government is less clear and it is important that the proposed Measure does not replicate the duties imposed on local government through the existing Local Government Measure.”

69. And

“...it remains unclear why a supplementary duty relating to local authorities specifically as an ‘education body’ is necessary.”⁴⁸

70. The WLGA and ADEW outlined ways in which local authorities were already working collaboratively. In questioning the appropriateness of compulsory collaboration, they stated:

“Voluntary collaboration can be an effective way to ensure that local authorities work together in a way that meets the collaboration objective...The WLGA and ADEW does not think it is always necessary to make it compulsory to collaborate and is concerned that this may impact on the essential working relationship in collaborative arrangements.”⁴⁹

71. Linked to the above, while recognising the importance of collaboration, Governors Wales highlighted the need for it to “be based on true partnership working and a willingness to work together in the

⁴⁷ RoP, para 11, Legislation Committee No.5, 12 January 2011.

⁴⁸ Written evidence, EM26A.

⁴⁹ *Ibid.*

first instance, rather than being mandated”.⁵⁰ Similarly, the Association of School and College Leaders (ASCL) Cymru stated:

“...our experience is that collaboration is most successful when all parties are volunteers rather than conscripts.”⁵¹

72. ASCL Cymru went on to suggest that if a duty was placed on education bodies to collaborate, “there must be a requirement for clear evidence that cost savings will be generated before enforcement of collaboration can proceed.”⁵²

73. While the ATL supported the duty on an education body to consider collaboration provided for in section 3(1), it was unclear whether ATL supported the requirement on an education body to exercise the power of collaboration, as set out in section 3(2).⁵³

74. Blaenau Gwent County Borough Council implied that powers of collaboration should be discretionary to be used in instances “where parties agree that there is a mutual benefit to all concerned, as opposed to being a mandatory requirement.”⁵⁴ Similar views were shared by Wrexham County Borough Council.⁵⁵

75. Concern was raised by Rhieni dros Addysg Gymraeg (RhAG) [Parents for Welsh Medium Education] that placing “a statutory requirement on Welsh-medium schools to collaborate with institutions that are diametrically opposed in terms of language and ethos could be a very harmful step to take.” It went on to explain that partnerships between Welsh-medium schools had already been established under the Learning and Skills (Wales) Measure 2009, and emphasised the need “to safeguard” the work of these.⁵⁶

Evidence from the Minister

76. The Minister accepted it would be “preferable” for collaboration to take place on a voluntary basis. Notwithstanding this, he emphasised the importance of taking seriously the results of the PwC report.⁵⁷

⁵⁰ Written evidence, EM19.

⁵¹ Written evidence, EM14.

⁵² *Ibid.*

⁵³ Written evidence, EM8.

⁵⁴ Written evidence, EM2.

⁵⁵ Written evidence, EM7.

⁵⁶ Written evidence, EM4.

⁵⁷ RoP, para 25, Legislation Committee No.5, 12 January 2011.

77. In addressing concerns raised in evidence about “compulsory collaboration”, the Minister made clear that “the proposed Measure does not force collaboration.”⁵⁸ He went on to explain:

“What it does is require education bodies to consider collaboration, with an expectation that that will lead them to identify opportunities to work together that will mean a more efficient and effective use of public resources. We are not seeking to oblige people unnecessarily...”⁵⁹

78. The Minister emphasised that, before the duty on an education body to exercise a power of collaboration provided for in section 3(2) would apply “the evidence would have to be there that that was the most effective and efficient use of public resources.”⁶⁰ However, when questioned about whether an education body would be expected to demonstrate that collaborative arrangements would be mutually beneficial, the Minister made clear that it would not.⁶¹

Our view

79. It was clear from the evidence we received that many respondents felt collaboration principally should be about raising standards and improving outcomes for learners. While we accept it is entirely appropriate that one of the main drivers for collaboration should be “the efficient and effective use of resources”, particularly in the current economic climate, we believe that appropriate emphasis should be placed on improving education standards and outcomes for learners. In view of this, **we recommend that “the collaboration objective” set out in section 2 be broadened to include a reference to improving education standards and outcomes for learners. We further recommend that the Minister brings forward an amendment at Stage 2 to give effect to this.**

80. We welcome the clarification provided by the Minister that section 3 is not intended to enforce collaboration. We acknowledge that, in the first instance, the duty on education bodies would be to consider collaboration and that the subsequent duty to exercise powers to collaborate would only take effect in instances where there is evidence that collaboration would lead to the effective and efficient use of

⁵⁸ RoP, para 25, Legislation Committee No.5, 12 January 2011.

⁵⁹ *Ibid.*

⁶⁰ RoP, para 43, Legislation Committee No.5, 12 January 2011.

⁶¹ RoP, para 44-45, Legislation Committee No.5, 12 January 2011.

resources. In view of this, and taking account of our previous recommendation to broaden “the collaboration objective”, we are generally content with section 3.

81. Notwithstanding the above, we remain concerned that under the provisions of section 3, an education body would not need to provide evidence that exercising its power of collaboration would be beneficial for other education bodies involved in that collaboration. We regret that, due to time constraints we were unable to pursue this issue further with the Minister. In view of this, we believe the Minister should provide a more detailed explanation of the reasoning behind this and we urge him to do so ahead of Stage 2 proceedings.

6. Part 2: School Governance

Chapter 1 - Federation of Maintained Schools

Overview

82. Part 2, Chapter 1 of the proposed Measure replaces sections 25 and 26 of the Education Act 2002 in respect of Wales. It makes new provision for federating maintained schools. Federation allows for two or more schools to group together under a single body. Local authorities are empowered to make proposals for federation but section 16 gives a power to Welsh Ministers to direct small schools to federate. The definition of a small school will be defined by Order under section 15.

Evidence from respondents

83. Generally the principle of federation of maintained schools was supported by respondents, particularly those representing local government. Despite this, some respondents made particular points in relation to how the proposals would be implemented.

84. In supporting the federation of schools in Wales, the WLGA and ADEW explained that “many local authorities are currently undertaking work to ensure effective federations in their area.”⁶²

85. Linked to this, a number of local authorities reported on current federation arrangements. In doing so, Caerphilly County Borough Council said it felt that “federation has proved to be successful when applied in certain circumstances”. It also recognised the potential for federation to “facilitate improved recruitment [of governors]”.⁶³

86. Conwy Council said it felt that federation “allows the schools to share and utilise skills and resources to a more purposeful and efficient degree”.⁶⁴

87. While Blaenau Gwent County Borough Council welcomed the provisions of the proposed Measure and explained it had undertaken

⁶² Written evidence, EM26A.

⁶³ Written evidence, EM23.

⁶⁴ Written evidence, EM25.

federation under the 2010 regulations, it stated that “federation is only one possible solution for dealing with a range of issues”.⁶⁵

88. Finally, Wrexham County Borough Council explained it was in the process of working up proposals to federate three schools under the 2010 regulations. It said it would “find the power of being able to promote a federation useful, particularly for smaller schools.”⁶⁶

89. In relation to small schools, RhAG recognised the benefits of federation and stated:

“...the model of federalising maintained schools is an effective tool in safeguarding the future and continued survival of smaller schools in rural areas where the only other realistic option would be closure.”⁶⁷

90. Similarly, Governors Wales acknowledged the potential advantages of federation in “preserving small schools which may not be financially viable.”⁶⁸

91. In evidence, ATL asserted it would be “impossible to disagree with [the principle of federation].” However, it went on to highlight potential “structural problems, such as employer status and disciplinary functions”, which could “inhibit” implementation.⁶⁹

92. Linked to this, ASCL Cymru stated:

“There are a number of issues to be resolved concerning the pay and conditions of school leaders within federated arrangements.”⁷⁰

93. A number of respondents raised questions about the implications of federation for faith and Welsh Medium schools.

94. In relation to Welsh Medium schools, UCAC stated:

“It is noted that it is possible to form a federation between schools that belong to different categories. We take it that this includes schools that belong to linguistic categories. In these

⁶⁵ Written evidence, EM2.

⁶⁶ Written evidence, EM7.

⁶⁷ Written evidence, EM4.

⁶⁸ Written evidence, EM19.

⁶⁹ Written evidence, EM8.

⁷⁰ Written evidence, EM14.

circumstances, we request an assurance that there would be no dilution of the use of the Welsh language in the classroom (if arrangements were made to share staff), in the school as a whole (in terms of ethos, including school trips and sporting or cultural activities if done in conjunction with another school) or in the administration of the school (for example, meetings of the governing body).⁷¹

95. On a similar note, Mr Mike Harrison, Chair of Governors, sought clarification on the position of church schools in relation to proposals by local authorities to federate school governing bodies.⁷²

96. More generally, NDCS Cymru sought assurances that, “when working together as a federation, every effort is made to ensure that governing bodies are aware of the specific needs and requirements of pupils with SEN and/or disabilities at each of the relevant schools/colleges.”⁷³

97. Some respondents, while not opposing federation, questioned the timing of further legislation in this area. Others seemed sceptical about what federation might achieve in practice.

98. In commenting on the need for the provisions in relation to federation, Governors Wales stated:

“...federation is in its very early stages of establishment and development in Wales and [we] would like to know more about the successes and problems encountered before further legislation is made in this respect.”⁷⁴

99. Similarly, Mrs Slack, suggested that the current *Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations* (2010 Regulation) “need slightly longer to embed”⁷⁵.

100. The Wales Centre for Deaf People implied that, while schools with an interest in federating could be “encouraged” to do so, ultimately the decision “should be left to the schools.”⁷⁶

⁷¹ Written evidence, EM18.

⁷² Written evidence, EM21.

⁷³ Written evidence, EM1.

⁷⁴ Written evidence, EM19.

⁷⁵ Written evidence, EM5.

⁷⁶ Written evidence, EM6.

Evidence from the Minister

101. In explaining why he believed it was important to make federation more commonplace in the education system in Wales, the Minister stated:

“Federation will put in place unified governance for a number of schools, and will be beneficial in terms of improving the quality of governance of schools, and, I hope, the quality of leadership as well.”⁷⁷

102. The Minister went on to explain that the existing regulations, which enabled federation of governing bodies, had only been in effect since April 2010. He suggested that governors were reluctant to federate under existing regulations because “we have historically had a situation where governors are closely aligned with a particular institution” and that, as such, “federation requires a different mode of thinking”.⁷⁸ Another reason put forward by the Minister for governing bodies’ reluctance to federate was “the work involved in putting together a federation proposal and consulting on it.”⁷⁹

103. The Minister advised that the Welsh government was working in partnership with the WLGA to establish several federation pilots across Wales, namely in Gwynedd, Wrexham, Blaenau Gwent, Rhondda Cynon Taff and Carmarthenshire. He anticipated that the federations would be established by September 2011.⁸⁰

104. In responding to the suggestion that, in the absence of any evidence about how successful federation would be in Wales, it might have been more prudent to await the outcome of the pilots before bringing further legislation, the Minister stated:

“We have been working on this process for some time now. As you will be aware, a large part of our proposal is in this proposed Measure is the result of an LCO that has been through the Assembly and Parliament. Therefore, we have been thinking about these issues for some time, but we have not had the full range of powers that we needed to undertake the changes that we wanted...As a Government, we have to ensure

⁷⁷ RoP, para 78, Legislation Committee No.5, 12 January 2011.

⁷⁸ RoP, para 86, Legislation Committee No.5, 12 January 2011.

⁷⁹ RoP, para 95, Legislation Committee No.5, 12 January 2011.

⁸⁰ RoP, para 86, Legislation Committee No.5, 12 January 2011.

that the bodies responsible for the local planning of education have the requisite range of powers to undertake developments that we believe will be for the improvement of the system.”⁸¹

105. In explaining why existing regulations had not been brought forward earlier, which had been the case in England where equivalent regulations came into effect in 2007 the Minister stated:

“The approach that we adopted in Wales at that point had been not to pursue federation in the same way as it had been pursued in England. Therefore, we looked at evidence, as it was starting to emerge from England, as to what had been happening in terms of federation, and we brought forward regulations when we felt that there was some evidence of the value of federation...Perhaps my emphasis, particularly since the receipt of the PwC report, is that I need to drive change faster; therefore I want to see the full suite of powers.”⁸²

106. In responding to concerns raised in evidence about the potential effect of federation on provision of Welsh-medium education, the Minister stated:

“...I issued a statement last year making it clear that we did not expect any proposals for transformation to affect existing provision of Welsh-medium education, and I would certainly expect the same to apply in the context of federation. The point is that the proposals for federation do not change the law in any respect regarding the language base in schools. So, I do not really see that there are any dangers inherent in what we are proposing. However, if the Committee itself were to feel that there were particular dangers, we would obviously be interested to hear about them.”⁸³

Sections 11 and 12 – Proposals by local authorities to federate schools; and Implementation of proposals made under section 11

107. As touched upon in paragraphs 83 to 88 above, those representing local authorities were generally supportive of the provision of powers to local authorities to propose and create federation provided in section 11.

⁸¹ RoP, para 101, Legislation Committee No.1, 12 January 2011.

⁸² RoP, para 108, Legislation Committee No.5, 12 January 2011.

⁸³ RoP, para 139, Legislation Committee No.5, 12 January 2011.

108. A number of respondents were concerned about the lack of opportunity for consultation in respect of federation provided for in the proposed Measure. It was unclear whether this concern was specifically in relation to instances where proposals for federation were instigated by local authorities.

109. Although generally supportive of federation, RhAG raised concern that:

“...a compulsory system enforced by the local authority, without taking into account the voice of the schools, could lead to a dangerous situation. We must ensure that schools have a clear function in the process and that they can contribute to it. The linguistic nature of a school would need to be established as one of the central criteria as local authorities consider what schools would be suitable for federalisation.”⁸⁴

110. Linked to the above, while accepting in principle the power for local authorities to propose and create federations, UCAC raised concern that provisions in relation to consultation on proposals would be a matter for future regulations made under section 11(6). As such it stated:

“...we have not been reassured that the process of consultation with stakeholders is sufficiently enshrined in the Measure...

We feel strongly that there is a need to place a duty on the face of the Measure that would ensure that consultation with relevant stakeholders is an indispensable part of the process of making proposals by local authorities. Regulations could then expand on the exact details of the consultation process.”⁸⁵

111. The Children’s Commissioner for Wales emphasised the need to ensure children and young people were consulted about proposals to federate under the proposed Measure. It stated:

“Federating schools will have an impact on children’s lives and it is important that the regulations introduced as part of this

⁸⁴ Written evidence, EM4.

⁸⁵ Written evidence, EM18.

Measure will allow children to participate in the consultation process.”⁸⁶

Evidence from the Minister

112. Many of the arguments provided by the Minister for the provision of power to local authorities to propose and create a federation of school governing bodies are set out in paragraphs 101 to 106 above.

113. In responding to the suggestion that the power provided to local authorities under section 11 was significant and represented a fundamental change in approach to federation, the Minister explained that he would expect local authorities to exercise their powers rationally.⁸⁷ Additionally, he clarified that regulations made under section 11 would specify how local authorities may propose to federate, and would include the types of indicators that would need to be provided to demonstrate there was a need and desire for federation. In commenting further on this point, the Minister stated:

“...we might also need to provide statutory guidance so that local authorities would need to have a proper dialogue with the schools that they are proposing to federate and with other relevant bodies locally...As far as I can see, we would expect a process to take place locally in which there was a real dialogue between local authorities and schools in the lead up to this.”⁸⁸

114. On the wider issue of consultation provision, the Minister acknowledged there was “a need to ensure that the interests of learners are taken into account in the context of the regulations.”⁸⁹ He emphasised the Welsh government’s “commitment to the voice of young people being enabled in the organisation and planning of their education.”⁹⁰

115. The Minister explained that the existing regulations contained specific provision in relation to consultation with stakeholders, and implied that this might be used as a basis for consultation arrangements under future regulations.⁹¹

⁸⁶ Written evidence, EM3.

⁸⁷ RoP, para 110, Legislation Committee No.5, 12 January 2011.

⁸⁸ RoP, para 119, Legislation Committee No.5, 12 January 2011.

⁸⁹ RoP, para 123, Legislation Committee No.5, 12 January 2011.

⁹⁰ RoP, para 125, Legislation Committee No.5, 12 January 2011.

⁹¹ RoP, para 131, Legislation Committee, No.5, 12 January 2011.

116. In responding to a question about the right of a school governing body to object to, or appeal against a decision by a local authority to federate, the Minister stated:

“...I would expect local authorities to talk to the schools and governing bodies and to work with local schools to achieve a consensus on this. I would not expect [local authorities] to act irrationally.”⁹²

117. The Minister went on to explain that section 11(5) provided additional safeguards for faith schools and any other foundation or voluntary school, by requiring a local authority to gain consent from the relevant diocesan authority or, in the case of the latter, persons who were responsible for appointing the governors.⁹³

118. However, he made clear that a governing body could not delay or veto a federation once it had been confirmed. Notwithstanding this, the Minister went on to state:

“...there would of course be means open to [a governing body], through judicial review or indeed by coming to Welsh Ministers, to take up the matter of the way in which the local authority had behaved. So, there are those kinds of get-outs.”⁹⁴

Section 13 – Single governing body for federations

119. In evidence, Governors Wales sought clarification on the inclusion of provision to enable Welsh Minister to prescribe in regulations circumstances within which schools within a federation could be treated as a single school. It went on to raise concern that this “would be difficult when different categories of schools federate, especially in relation to maintaining the religious ethos of the school when faith schools federate with community schools etc.”⁹⁵

Evidence from the Minister

120. In providing clarification on section 13(b), the Minister explained it would enable a school “to be considered as a single school other than for school admissions or school organisation proposals”, for

⁹² RoP, para 133, Legislation Committee No.5, 12 January 2011.

⁹³ RoP, para 145, Legislation Committee No.5, 12 January 2011.

⁹⁴ RoP, para 147, Legislation Committee No.5, 12 January 2011.

⁹⁵ Written evidence, EM19.

example, to enable the provision of a single budget across all schools.⁹⁶

Section 14 – Regulations in relation to federation of schools federated under this Chapter

Evidence from the Minister

121. In responding to a question about the circumstances within which a school would be permitted to leave a federation established under the proposed Measure, or a federation being dissolved, the Minister stated:

“We would set out regulations to define that, and we would envisage following the current regulations, which would allow a school to leave a federation if it chose to do so. If it wanted to leave a federation that had been implemented by the local authority, we might need to establish a minimum period of time in which the school had to stay in the federation or we might say that the local authority had to agree to the request.”⁹⁷

Section 15 – Identification of small maintained schools in Wales

122. Few comments were received from respondents in relation to the power provided to the Welsh Ministers to make an order defining a “small maintained school” in section 15.

123. However, in opposing this provision UCAC stated:

“We do not see any reason to create the additional administrative category of ‘small schools’. On an entirely practical level, that which may be classified as a ‘small school’ varies according to the geographical and social context and therefore creating a national definition could be problematic.”⁹⁸

124. It further explained:

“UCAC’s opposition is based on principle rather than practicality alone. We do not feel that it is appropriate to create a separate regime to deal with small schools.”⁹⁹

⁹⁶ RoP, para 157, Legislation Committee No.5, 12 January 2011.

⁹⁷ RoP, para 159, Legislation Committee No.5, 12 January 2011.

⁹⁸ Written evidence, EM18.

⁹⁹ *Ibid.*

125. UCAC felt strongly that both sections 15 and 16 “should be removed in their entirety”.¹⁰⁰

126. In commenting more generally on the section 15 provision, the WLGA and ADEW suggested there was “a need for clarity around the definition of small schools”.¹⁰¹

Evidence from the Minister

127. In explaining the rationale for section 15, the Minister stated:

“There are some local authorities with a large number of very small schools...what we are seeking to do is to reduce the burden for local authorities...in designing federations.”¹⁰²

Section 16 - Federation of small maintained schools by direction of the Welsh Ministers

128. Of the few respondents who commented specifically on the power of Welsh Ministers to direct federation of small maintained schools provided in section 16, the majority opposed it.

129. UCAC argued strongly that the section 16 provisions were unnecessary and inappropriate. In doing so, it suggested that, “there is already a clear incentive for small schools to form federations.” UCAC further suggested that local authorities “already put pressure on small schools to form federations”. It believed that these factors, combined with the additional powers provided to local authorities to propose and create federations under the proposed Measure were sufficient drivers and that, as such, the power for the Welsh Ministers to direct federation was not required.¹⁰³

130. Finally, UCAC pointed out that the section 16 provisions “directly contradict the wider policy of the Assembly Government” as outlined in its consultation document School organisation – potential change to the process, which states “The Welsh Ministers consider that any change should help to streamline the process and ensure that most decisions about school organisation are made in the local area.”¹⁰⁴

¹⁰⁰ Written evidence, EM18.

¹⁰¹ Written evidence, EM26A.

¹⁰² RoP, para 161, Legislation Committee No.5, 12 January 2011.

¹⁰³ Written evidence, EM18.

¹⁰⁴ *Ibid.*

131. Linked to the above, the WLGA and ADEW expressed concern about the power for the Welsh Ministers to direct federation. They stated:

“Whilst the WLGA and ADEW welcome the power to federate contained within the Measure, it also advocates strongly the principle of the application of local discretion in decision making. As a consequence, it believes that local authorities should retain sovereignty to decide when to federate. To that end, WLGA is currently working with officials in [the Department of Education, Lifelong Learning and Skills] on pilot schemes for federating schools, and sees that joint approach and co-construction policy as a preferred way forward...

In that context, the WLGA has some concerns that the Measure contains power for Welsh Ministers to direct a local authority, governing body or a federation to provide for a federation of small maintained schools.”¹⁰⁵

132. Similarly, in opposing the section 16 provision, Governors Wales explained it believed that local authorities “are better placed and informed to make a responsible decision working in conjunction with the relevant governing bodies.”¹⁰⁶

Evidence from the Minister

133. In providing a rationale for the power for Welsh Ministers to direct federation under section 16, the Minister stated:

“It is clear to us that federation is likely to be advantageous to small schools and we are keen for it to be progressed. Federation can offer opportunities to make savings, share expertise and raise standards. I would expect local authorities to use the powers that we are giving them in this proposed Measure to achieve that for small schools, but if they do not, in a very limited number of circumstances, it is important that Ministers retain the right to direct if we feel that a local authority is not fulfilling its responsibilities.”¹⁰⁷

¹⁰⁵ Written evidence, EM26A.

¹⁰⁶ Written evidence, EM19.

¹⁰⁷ RoP, para 174, Legislation Committee No.5, 12 January 2011.

134. He further explained that the power to direct federation was “a backstop power”¹⁰⁸, which he anticipated would only be exercised as a “last resort”.¹⁰⁹

Our view

135. We note the general support in evidence for the principle of federation of schools. We acknowledge the Minister’s aim of making federation more commonplace and his views on the potential resultant benefits.

136. We welcome the work being undertaken on pilot schemes across Wales to encourage federation and note that federations under these schemes are likely to be established in September 2011. Notwithstanding this, in view of the lack of direct experience of federation in Wales to date under existing legislation, we believe it would have been more beneficial for the schemes to have been completed before the introduction of the proposed Measure. We note that the proposed Measure provides for the commencement of provisions in relation to federation by order made by the Welsh Minister. We also note that, according to the Explanatory Memorandum, the expected coming into force dates of any regulations made under Part 2, Chapter 1 is September 2012. As such, **we recommend the Minister takes account of the outcomes of federation pilot schemes before bringing forward regulations under Chapter 1.**

137. We note that the provisions in relation to federation provide local authorities with substantial power to instigate and secure school federation. In view of this and in recognition of evidence received about the importance of consultation with relevant stakeholders, **we recommend that the proposed Measure is amended to include a requirement on local authorities to consult relevant stakeholders before bringing forward proposals to federate schools under section 11. We further recommend that consultees should include, but not be limited to pupils of maintained schools to which the proposals apply, their parents and guardians, and school governors.**

¹⁰⁸ RoP, para 174, Legislation Committee No.5, 12 January 2011.

¹⁰⁹ RoP, para 176, Legislation Committee No.5, 12 January 2011.

138. We note the evidence received about federation of schools within different categories. We further note that the safeguards provided in section 11(5) for faith schools and any other foundation or voluntary schools do not extend to Welsh-medium schools. **We acknowledge the evidence from the Minister that he would not expect the provisions of the proposed Measure to affect existing provision of Welsh-medium education. We believe this is something that should be reflected on the face of the proposed Measure and, as such we recommend the Minister brings forward the necessary amendments at Stage 2 to give effect to this.**

139. We note that Part 2, Chapter 1 contains no provision for an appeals process in instances where a governing body may have just cause to appeal against a decision to federate. We note the Minister's view that it would not be appropriate for a school to veto such a decision. While we would not wish to enable the frustration of federation in cases where there is general consensus in favour of such federation, **we believe it is reasonable and desirable for the proposed Measure to include an appeals mechanism, and we recommend the Minister brings forward the necessary amendments at Stage 2 to give effect to this.**

140. We note that section 15 of the proposed Measure provides for the Welsh Ministers to define "small schools" by Order, with no requirement to consult any person or body in doing so. We also note that the making of this Order will be subject to the negative resolution procedure. We further note that, once such an Order has been made, the Minister will be able to exercise the power of direction in section 16 to compel federation of small schools.

141. In view of the above, **we believe it is important that Orders made under section 15 should be subject to the affirmative resolution procedure in order to provide for a more detailed level of scrutiny. As such, we recommend that the Minister brings forward an amendment at Stage 2 to give effect to this.**

142. We note the objections in evidence about the power of the Welsh Ministers to direct federation of small maintained schools provided in section 16. We accept the rationale put forward by the Minister for inclusion of this provision and we note his intention to use the power in limited circumstances and as a last resort. To this end, we are content with section 16.

7. Part 2: School governance

Chapter 2: Training for governors and clerks and provision of clerks

Overview

Evidence from respondents

143. There was widespread support in evidence for the provisions in Part 2, Chapter 2 of the proposed Measure in relation to training for governors and clerks and the duty for local authorities to offer maintained schools a suitably qualified and trained clerk.

144. The reasons given in support of these provisions centred on the need to ensure optimum support for governors, given their level of responsibility and influence on school performance and standards, and the role of the clerk in ensuring the effectiveness and efficiency of governing bodies.

Evidence from the Minister

145. In his oral evidence, the Minister explained that the provisions in Part 2, Chapter 2 of the proposed Measure sought to address issues raised by the Enterprise and Learning Committee in its report on school governance.¹¹⁰ These included improving the standard of training for governors and introducing minimum standards for clerks in recognition of “the importance of high-quality clerking for governing body performance.”

Section 21 – Information and training for governors of maintained schools

146. There was broad support for section 21, which would, amongst other things place a duty on local authorities to provide prescribed training to governors. It was generally felt that, as a minimum, training for chairs and induction training for all governors should be made mandatory.

147. On this issue, UCAC stated:

“We believe that mandatory induction training and mandatory training for chairs would make a difference to the standards of

¹¹⁰ RoP, para 203, Legislation Committee No.5, 12 January 2011.

governing bodies, and in a way that would be more powerful and effective than the other measure taken by the Welsh Assembly (e.g. publish or commission comprehensive handbooks, guides and newsletters, and organising or funding seminars and training sessions)."¹¹¹

148. Similarly, Governors Wales emphasised the “crucial” role of chairs “in ensuring that a governing body fulfils its duties effectively.” It also advocated mandatory induction training for all governors “bearing in mind the huge responsibilities that governors undertake.”¹¹²

149. Other suggestions received from respondents for prescribed training included deaf awareness and Special Educational Needs/Disability legislation; sexual orientation issues; and the use of governors’ statutory powers of intervention, including the issuing of warning notice.

150. On a related note, RhAG stated:

“We must ensure that Welsh-medium schools receive the support they need to ensure that their governors, who more often than not are non-Welsh-speaking parents, receive support, training and specialist advice that recognise the particular nature of the provision.”¹¹³

151. Notwithstanding the broad support for the provisions in relation to training for governors, a number of respondents expressed concern that mandatory training may have a negative impact on recruitment and retention, which according to the WLGA “is already a problem in many local authorities.”¹¹⁴

152. On this point, ASCL Cymru emphasised the need to strike an appropriate balance “between ensuring that chairs and clerks are prepared for the responsibilities of the roles and deterring parents, in particular, from becoming governors.”

153. In commenting more generally on the recruitment of governors, ATL stated:

¹¹¹ Written evidence, EM18.

¹¹² Written evidence, EM19.

¹¹³ Written evidence, EM4.

¹¹⁴ Written evidence, EM26A.

“We believe that governors are still too narrowly drawn from what might be referred to as ‘the usual suspects’. Evidence shows that governing bodies still lack gender and racial balance, and we believe the same is true of their age profile and social status. Anecdotally we hear that it is becoming increasingly difficult particularly in rural areas and disadvantaged urban communities, to recruit and retain governors with the expertise to carry out the most important functions that relate to governance. As governors’ duties increase, it becomes increasingly difficult to find governors with the time or the commitment to engage in the meetings, the training, the debate and the paperwork.”¹¹⁵

154. UCAC acknowledged the view that mandatory training could be a further disincentive for individuals to volunteer as governors. However, in contrast, it suggested that mandatory training could have a positive impact on recruitment and stated:

“It is also possible that some individuals would be more willing to volunteer to be a school governor if they knew that thorough training would be provided to prepare them for this important role.”¹¹⁶

155. In suggesting an alternative to mandatory training, the WLGA stated:

“It may be more effective to bring forward legislation which would, in certain circumstances, bind governors to have regard to professional advice and provide a compulsion to conform with direction when given.”¹¹⁷

156. In commenting more generally on the work of governors, the All Wales Centre for Governor Training and Research said it felt that “the time has come to evaluate honestly the work of governors”. It went on to explain:

“Research and anecdotal evidence indicates that the vast majority of governing bodies have minimal impact on schools’

¹¹⁵ Written evidence, EM8.

¹¹⁶ Written evidence, EM18.

¹¹⁷ Written evidence, EM26A.

performance so, if we are serious, the position needs radical reform.”¹¹⁸

157. The All Wales Centre for Governor Training and Research made clear that, regardless of whether more fundamental changes to the existing system of school governance were made, “some types of training should be mandatory”, particularly induction training and training for chairs.¹¹⁹

158. A few respondents, including Governors Wales emphasised the need to ensure that training should be funded and resourced appropriately.¹²⁰ On this point, the WLGA raised concern about how any resultant costs would be met.¹²¹

Evidence from the Minister

159. In commenting on the types of training that were likely to be made mandatory under section 21, the Minister explained it was his intention to introduce mandatory induction training for all governors and training for chairs in the first instance. He went on to explain that, in order to ensure high-quality training, he would “seek to set out clear training standards” and “would expect Estyn to have a role in inspecting local authorities’ support for governors, including governor training”.¹²²

160. The Minister made clear there was an expectation that governors would undertake and complete prescribed training and that, if they failed to do so he would “expect them to stand down.” He stated:

“What we expect to do is place an obligation on governors by amending the current [Government of Maintained Schools (Wales) Regulations 2005]. We would do that to coincide with the commencement date for this part of the proposed Measure, which will be September 2012.”¹²³

161. The Minister acknowledged the concerns raised in evidence about the potential impact of mandatory training on recruitment and

¹¹⁸ Written evidence, EM13.

¹¹⁹ *Ibid.*

¹²⁰ Written evidence, EM19.

¹²¹ Written evidence, EM26A.

¹²² RoP, para 213, Legislation Committee No.5, 12 January 2011.

¹²³ RoP, para 226, Legislation Committee No.5, 12 January 2011.

retention of governors and stated “it is problematic and it is a challenge”.¹²⁴ However, he went on to assert:

“...being a school governor is a responsible role. If people are not prepared to undertake training, they should not do it.”¹²⁵

162. While the Minister admitted he was unable to determine whether mandatory training would have a negative effect on the number of governors, he explained that the provisions in relation to federation of maintained schools could help to address the issue of recruitment and retention as, in the event that a number of schools federated under a single governing body, a smaller pool of governors would be required overall.¹²⁶

163. In responding to the WLGA’s suggestion to an alternative to mandatory training, the Minister explained that local authorities were already able to provide advice to governors. He explained further:

“...if a governing body does not heed advice, local authorities already have quite extensive intervention powers if they think that the standards of governance and management of the school are poor. My concern is that they do not always use them.”¹²⁷

164. The Minister explained that current regulations would be amended to coincide with the commencement date for this part of the proposed Measure which would place an obligation on governors to undertake prescribed mandatory training or step down from their role.¹²⁸

165. In commenting on the suggestion that more “radical reform” was required in relation to school governance, the Minister stated:

“There are further issues that I might want to look at, but we are conscious that there are limits to the timing of the proposed Measure, and we have therefore not necessarily gone through the full range of every aspect of governance.”¹²⁹

¹²⁴ RoP, para 209, Legislation Committee No.5, 12 January 2011.

¹²⁵ RoP, para 211, Legislation Committee No.5, 12 January 2011.

¹²⁶ RoP, para 220, Legislation Committee No.5, 12 January 2011.

¹²⁷ RoP, para 224, Legislation Committee No.5, 12 January 2011.

¹²⁸ RoP, para 226, Legislation Committee No.5, 12 January 2011.

¹²⁹ RoP, para 229, Legislation Committee No.5, 12 January 2011.

166. Notwithstanding the above, he asserted that the provisions in Part 2 of the proposed Measure in relation to school governance were “a start”.¹³⁰

Sections 22, 23 and 24 – Duty of local authorities to provide clerks to the governing bodies of maintained schools; Training for clerks of governing bodies of maintained schools; and Duty of local authorities to secure availability of training for clerks

Evidence from respondents

167. There was general support in evidence for the provisions relating to the training and provision of clerks.

168. A number of respondents, including ATL expressed a preference for clerking services to be carried out by local authorities.

169. Wrexham County Borough Council suggested it may be difficult to ensure that clerks had completed mandatory training to the required standard “unless the Measure strengthens the role LAs have in providing a Clerking Service.” It went on to question the power of local authorities to intervene in instances where clerks were appointed directly by the school as opposed to being local authority employees. As such, Wrexham County Borough Council advocated “a universal Clerking Service” provided by local authorities.¹³¹

170. The Children’s Commissioner for Wales supported the provision of clerks by local authorities and stated it would:

“...ensure that clerks to governing bodies have a robust and up to date knowledge of education law and guidance, as well as other relevant law and guidance such as Equalities and Health and Safety, so as to provide the most effective support to governing bodies.”¹³²

171. Other, more general comments received in relation to training and provision of clerks included a need for “consistency in job descriptions for clerks of governors” and for “a common all-Wales training programme”.

¹³⁰ RoP, para 229, Legislation Committee No.5, 12 January 2011.

¹³¹ Written evidence, EM7.

¹³² Written evidence, EM3.

172. The Minister welcomed the suggestion of a “universal Clerking Service” provided by local authorities on a collaborative basis. Rather than view this as an alternative to the provisions contained in the proposed Measure he implied that the Measure could provide “an opportunity” for this to be realised.¹³³

Our view

173. We note the widespread support in evidence for the training of governors and, in particular, mandatory induction training for governors and mandatory training for chairs. We agree with the Minister that competent governors are a prerequisite for good governance. We recognise the need to ensure that governors, in particular chairs, are equipped with the necessary skills to carry out their role and responsibilities effectively, and we believe improved training opportunities are essential to achieve this. We further recognise the need to ensure that training for governors is provided through the medium of English or Welsh as appropriate. We are content with the provisions set out in section 21.

174. Notwithstanding this, and in view of the evidence received, we remain concerned about the potential negative impact of mandatory training on the recruitment and retention of governors. We seek assurances from the Minister that steps will be taken to safeguard against this, for example by encouraging local authorities to be flexible in their approach to training, and by ensuring that they take account of practical considerations when planning and delivering training. We would like to see the provision by local authorities of high-quality training to act as an incentive both for existing governors to continue in their roles and to help attract future candidates to this role.

175. In addition, for those governors who are in employment, we believe local authorities should seek ways to engage with their employers to encourage them to release individuals for training purposes in relation to their role as governors.

176. We note the broad support in evidence for the duty of local authorities to provide clerks to governing bodies of maintained schools upon request. We also note that, many respondents felt that the provision of clerks by the local authority would be the preferred

¹³³ RoP, para 228. Legislation Committee No.5, 12 January 2011.

option. We agree with the Minister and others, that a well-trained clerk is crucial in providing support to governing bodies. As such, we are content with sections 22 to 24 of the proposed Measure.

8. Part 3: Foundation schools

Overview

177. Sections 25 to 29 provide for the creation of foundation schools to be prohibited.

178. As mentioned in paragraph 44, views on Part 3 in relation to foundation schools, were particularly polarised. While those representing local government were broadly supportive of the provisions, others opposed the move to prohibit further foundation schools.

179. The WLGA and ADEW expressed strong support for the proposals and stated:

“The WLGA believes in local democratic accountability for all local authority services, including education. The notion of Foundation Schools is at odds with that fundamental principle and the aims of the Measure in preventing the creation of more schools of this type is wholly supported.”¹³⁴

180. Other local authority respondents, and other bodies including the All Wales Centre for Governors Research¹³⁵ and UCAC¹³⁶, referred to the difficulties caused by foundation schools in planning for the provision of school places.

181. In highlighting these difficulties, Blaenau Gwent County Borough Council stated:

“...there is one foundation school that has repeatedly exceeded its admission number which then causes difficulties in other schools in the area. However, the local authority has no powers to manage the situation at a local level other than recourse to the Assembly for intervention.”¹³⁷

182. Conwy Council reported it had “a very good and productive working relationship” with the four foundation schools in its area. However, it added:

¹³⁴ Written evidence, EM26A.

¹³⁵ Written evidence, EM13.

¹³⁶ Written evidence, EM18.

¹³⁷ Written evidence, EM2.

“...should the authority be minded to change the provision across the county then foundation schools do provide a particular dimension that adds to the burden of administrative and bureaucratic processes that would need to be followed.”¹³⁸

183. ATL suggested that the prohibition of establishment of, and change of category to foundation schools would “ensure that local authorities could plan more strategically, and ensure that no institution in an area tries to achieve privileged status at the expense of its neighbours.” Moreover, it believed that provisions in relation to foundation schools should be strengthened to require existing foundation schools to change category, in effect, abolishing foundation schools altogether.¹³⁹

184. In contrast to the above, a number of respondents opposed the provisions in relation to foundation schools.

185. In evidence, Mrs Slack, refuted the suggestion by the Minister and others that foundation schools complicate the schools admission process and make it difficult for local authorities to plan school places. She stated:

“...the current admission processes mean that any foundation school has to consult with the local authority regarding its admissions policy; and as a maintained school the local authority can ensure close collaboration and exchange of information with all of their foundation schools.”¹⁴⁰

186. Other support for foundation schools tended to be based on more ideological grounds. Dr David Rowson suggested that foundation schools “often show the way that things can be improved when free from some of the constraints put on them by LEAs” and, as such, “should be encouraged rather than restrained in number”.¹⁴¹ On a similar point, J Jones, Parent, felt strongly that foundation schools “have given choice to parents where none was offered by the LEA”.¹⁴² Finally, Phil McTague, believed foundation schools “are a recognition

¹³⁸ Written evidence, EM25.

¹³⁹ Written evidence. EM8.

¹⁴⁰ Written evidence, EM5.

¹⁴¹ Written evidence, EM12.

¹⁴² Written evidence, EM9.

that the school belongs to its stakeholders and is operated in their interests”.¹⁴³

Evidence from the Minister

187. In addition to the need to avoid further complexity in the school admission system in Wales and to maintain local authorities’ control on planning school places, the Minister made clear his objections to foundation schools more generally. Further details in relation to this are set out in paragraphs 42 to 44.

188. In responding to the suggestion in evidence that the provisions in relation to foundation schools should be strengthened to require existing foundation schools to change category, the Minister stated:

“I reflected on this before drawing up the proposed Measure, and we also looked at the evidence that was submitted in the course of the consultation. I felt that ultimately given that we only have a small number of foundation schools at this stage...to undertake forced changes of category was probably more trouble than it was worth...”¹⁴⁴

189. When questioned on whether it would be possible for a foundation school within a federation to change category following a proposal by the federated governing body for such a change to take place, the Minister stated:

“If schools are federated under a single body, then a federated governing body could put forward a proposal to change the category of the school once it has federated. They would have the power to make proposals to change the category and that would include a foundation school within the federation.”¹⁴⁵

190. However, the Minister made clear “we are not seeking to use federation as a means of changing the category of existing schools.”¹⁴⁶

Our view

191. We note that views on the provisions in relation to foundation schools varied among respondents.

¹⁴³ Written evidence, EM16.

¹⁴⁴ RoP, para 70, Legislation Committee No.5, 12 January 2011.

¹⁴⁵ RoP, para 63, Legislation Committee No.5, 12 January 2011.

¹⁴⁶ *Ibid.*

192. As previously mentioned in paragraph 41, we note the rationale provided in the Explanatory Memorandum for the proposals in relation to foundation schools. We also note the Minister's objections to foundation schools on more ideological grounds.

193. We note there is potential for the federation of schools to lead to a reduction in the number of existing foundation schools, insofar as a federated governing body could propose a change of category of a foundation school within that federation. However, we note the Minister's evidence that this is not the intention of the incumbent Welsh government. On this issue, one Member remained concerned that the proposals in relations to federation could, in effect, result in the eventual abolition of foundation schools in Wales.

194. Taking account of the above, we are content with sections 25 to 29 in relation to foundation schools.

9. Powers provided to the Welsh Ministers to make regulations

Overview

195. Section 31 provides for any regulations made under the proposed Measure to be “subject to annulment in pursuance of a resolution of the National Assembly for Wales”, i.e. subject to the negative resolution procedure.

196. Also of note is that the proposed Measure contains no provision for the Welsh Ministers to consult relevant stakeholders before making regulations under the Measure.

Evidence from respondents

197. Few specific comments were received from respondents about the powers provided for Welsh Ministers to make regulations under the proposed Measure. Of those who did respond on this issue, the majority were generally content that an appropriate balance between had been struck between the powers provided on the face of the proposed Measure and those that would be the subject of future regulations.

198. However, the WLGA and ADEW raised specific concern “that the proposed Measure provides for much of the detail around exercising the proposed duty of collaboration on education bodies to be specified by subsequent Regulations.” It went on to express a preference “to see this detailed contained on the face of the Measure.”¹⁴⁷

199. While UCAC was generally content that the balance of powers was “correct”, in relation to regulations made under sections 11 and 12 concerning the power to collaborate, it stated:

“...we firmly believe that a commitment to undertake a consultation process with stakeholders should be included on the face of the Measure, leaving the practical details of the consultation to be specified in Regulations.”¹⁴⁸

¹⁴⁷ Written evidence, EM26A.

¹⁴⁸ Written evidence, EM18.

200. Both the Children’s Commissioner for Wales¹⁴⁹ and ATL¹⁵⁰ emphasised the need for the Welsh Ministers to consult stakeholders prior to making regulations under the proposed Measure. Linked to this, it was clear in evidence from NDCS Cymru there was an expectation that regulations made under section 21 in relation to mandatory training would be consulted on before being made.¹⁵¹

201. In respect of Part 2, Chapter 1 in relation to Federation of maintained schools, the Children’s Commissioner for Wales stated:

“Federating schools will have an impact on children’s lives and it is important that the regulations introduced as part of this Measure will allow children to participate in the consultation process.”¹⁵²

202. While ASCL Cymru made no direct comment on the balance of powers, it suggested it would be “helpful” if regulations made under the proposed Measure were subject to the affirmative resolution procedure.¹⁵³ On a similar note, the Children’s Commissioner for Wales sought assurances “that appropriate levels of democratic scrutiny are applied to important decisions which will substantially impact on children’s lives.”¹⁵⁴

Evidence from the Minister

203. In evidence the Minister referred to a number of issues that he believed would be, or could potentially be addressed in regulations made under the proposed Measure, including how a local authority would demonstrate that there was a need or desire to federate under a single school governing body; and consultation arrangements in relation to federation.

204. In commenting further on consultation arrangements under section 11 of the proposed Measure in relation to proposals by local authorities to federate schools, the Minister stated:

“Clearly, any sensible approach is going to need to look at ensuring that local authorities...behave in a rational manner.

¹⁴⁹ Written evidence, EM3.

¹⁵⁰ Written evidence, EM8.

¹⁵¹ Written evidence, EM1.

¹⁵² Written evidence, EM3.

¹⁵³ Written evidence, EM14.

¹⁵⁴ Written evidence, EM3.

That means that they look at proper dialogue with schools. There will then be an issue about other stakeholders, and we can look at how we deal with that in regulations.”¹⁵⁵

205. As previously mentioned in paragraph 115, the Minister explained that the current *Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010* contained specific provision in relation to consultation with stakeholders, and implied that this might be used as a basis for future regulations.

206. In responding to consultation arrangements in relation to regulations on training for governors made under section 21, the Minister stated:

“We have had widespread and extensive discussion around school governance as a result of the work done by the Enterprise and Learning Committee. We have worked with stakeholders over many years, we support Governors Wales, and it has carried out a stakeholder working party this year, which has looked at model staff disciplinary procedure and guidance, and we will continue to engage with all stakeholders as we develop our training and clerking provisions. We know that we need to consult them to get it right.”¹⁵⁶

Our view

207. Our conclusions and recommendations in relation to consultation provisions are included under the specific sections of the proposed Measure to which they relate.

208. We note that the majority of respondents were generally content that an appropriate balance had been struck between the powers provided on the face of the proposed Measure and those that would be the subject of future regulations. However, much of the policy to be delivered under the proposed Measure will be a matter for future regulations and, as such, has not been available for consideration. In view of this, and in recognition of the limited time made available to us to undertake Stage 1 scrutiny of the proposed Measure, **we believe it would be reasonable for those regulations making substantive provision to be the subject of the affirmative resolution procedure**

¹⁵⁵ RoP, para 131, Legislation Committee No.5, 12 January 2011.

¹⁵⁶ RoP, para 207, Legislation Committee No.5, 12 January 2011.

in order to ensure they attract the appropriate level of scrutiny. To this end, we recommend the Minister brings forward the necessary amendment at Stage 2 to give effect to this.

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/proposed_education_wales_measure_2011.htm

12 January 2011

Leighton Andrews AM	Minister for Children, Education and Lifelong Learning, Welsh Assembly Government
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List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at: http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/proposed_education_wales_measure_2011/education_responses.htm

<i>Organisation</i>	<i>Reference</i>
National Deaf Children's Society Wales/Cymru	EM1
Blaenau Gwent County Borough Council	EM2
Children's Commissioner for Wales	EM3
Parents for Welsh Medium Education (RhAG)	EM4
Mrs J Slack, Governor, Whitchurch High School	EM5
Wales Council for Deaf People	EM6
Wrexham County Borough Council	EM7
Association of Teachers and Lecturers (ATL)	EM8
J Jones, Parent	EM9
Simon Pirotte, Coleg Powys	EM10
Chris Britten, Ashgrove School, Penarth	EM11
Dr David M Rowson, Individual Response	EM12
All Wales Centre for Governor Training and Research	EM13
Association of School and College Leaders (ASCL) Cymru	EM14
Bryn Davies, Ystrad Mynach College	EM15
Phil McTague, Eirias High School	EM16
Sara Williams, Individual Response	EM17
National Union of the Teachers of Wales (UCAC)	EM18
Governors' Wales	EM19
Stonewall Cymru	EM20
Mr Mike Harrison, Chair of Governors	EM21

Newport Association of School Governors	EM22
Caerphilly County Borough Council	EM23
Gwynedd Council	EM24
Conwy LA Education Services	EM25
Welsh Local Government Association and the Association of Directors of Education in Wales (ADEW)	EM26, EM26A