Written evidence submitted by Undeb Cenedlaethol Athrawon Cymru (UCAC) (DWB 16)

1.1 Undeb Cenedlaethol Athrawon Cymru (UCAC) [the National Union of Teachers of Wales] has great pleasure in responding to the Welsh Affairs Committee’s investigation into this vitally important matter.

1.2 UCAC is one of the main education unions in Wales. It represents 5,000 teachers, head teachers and lecturers in all education sectors in Wales.

1.3 We emphasise that we are not responding to this investigation as legal or constitutional experts. Rather, we are responding as an organisation that deals regularly with the National Assembly, with the Welsh Government and indeed with Parliament and the Westminster Government, in relation to legislative matters affecting the area of education in Wales. We therefore regard ourselves as one of those stakeholders to which the settlement needs to be clear and intelligible, in order to be able to deal with the legislative process in an informed and conscientious way on behalf of our members.

1.4 We have travelled far since setting out on the road to devolution at the end of the twentieth century. So far, each new settlement has strengthened our national institutions, and has brought us closer to one of UCAC’s core objectives, namely an independent education system for Wales. But it is obvious - and disappointing - to us that the draft Wales Bill is not a substantial and positive step towards ‘a lasting devolution settlement for Wales’, in the words of the St David’s Day Agreement.

1.5 Below, we tackle some of the main matters of concern.

2 The extent to which the proposed reserved powers model of legislative competence is clear, coherent and workable, and will provide a durable framework within which the Assembly can legislate.

2.1 UCAC strongly supports the model of reserved powers, modelled on the Scotland Act 1998. The fundamental principle of such a model is that everything is devolved save for a list of specific matters for which there is clear logic and strong arguments for their retention in Westminster. This fundamental principle could be summarised as ‘subsidiarity’.

2.2 By operating on the basis of such a principle, a settlement can be created which has clear boundaries, is easy to understand, and where it is possible to implement legislation and policies confidently and in a coordinated way. Such a settlement, as it is clear, should put an end to the conflict between Cardiff and London and lead to a much more effective system. It should therefore be a resilient and long-lasting system “that will stand the test of time”, as the Secretary of State desires. Certainly, it appears that the system in Scotland operates in such a way.

2.3 However, we are not of the opinion that the draft Bill provides such a clear and effective framework, as it does not respect the fundamental principle or ‘spirit’ of the reserved powers model. The lengthy list of reserved matters as well as the complex competence tests make it a nightmare for an organisation like UCAC, or any voluntary/third sector organisation, to understand the ins and outs of the powers. We foresee with considerable certainty and concern
that the proposed new system would be more difficult to understand and navigate than the present system.

3 The extent to which the proposed new framework changes the breadth of the Assembly’s competence to make laws

3.1 ‘Education and Training’ is listed in Schedule 7 Part 1 of the Government of Wales Act 2006 as one of the areas in which the National Assembly has Legislative Competence - with one exception, namely ‘Research Councils’.

3.2 However, although it is not an exception named under the ‘Education and Training’ heading, the general interpretation has been that the power to decide on the pay and working conditions of teachers has not be devolved, as it comes under the heading of ‘Employment and industrial relations’, a reserved matter. This was challenged, indirectly, by a judgement of the Supreme Court in the case of the Agricultural Sector (Wales) Act regarding the power to decide on the salaries of agricultural workers.

3.3 We note in the draft Bill that ‘School teachers’ pay and conditions’ is one of the categories proposed, on the face of the Bill, to be reserved in Westminster. It could be argued, by making the ‘reserved’ explicit, that this reduces the potential competence of the Assembly to legislate. Furthermore, reserving such powers, and without a clear logic for doing so, means that the Welsh Government’s ability to implement co-ordinated policies is hampered.

3.4 We are concerned that the draft Bill could cut back the legislative powers of the National Assembly. That would be totally inconsistent with the unmistakeable opinion of the people of Wales in the 2011 referendum - that is the desire to see legislative powers, without the need for permission from Westminster - and on that basis, totally unacceptable.

4 The proposed legislative powers available in specific subject areas as a consequence of Schedules 1 and 2 to the draft Bill

4.1 In principle, we welcome the fact that powers in additional areas have been devolved to the National Assembly.

5 The proposals for the Assembly to gain powers over its functioning (for example, in relation to its name. number of Assembly members and electoral powers for the Assembly)

5.1 We welcome these powers; we believe strongly that these powers should be in the hands of the Assembly. We especially welcome the fact that the Assembly may decide on the number of members and the electoral system and arrangements.

6 The proposals included in relation to the permanence of the Assembly and Welsh Government

6.1 We welcome the effort to ensure a permanent place for the National Assembly for Wales and the Welsh Government in the constitutional arrangements of the United Kingdom; doing so is a vitally important matter in UCAC’s opinion.

6.2 However, we have not been entirely persuaded regarding the exact wording. As the United Kingdom Parliament has sovereignty, any ‘permanence’ depends on convention to a large extent as Westminster would have the power to abolish the Assemblies and ‘Parliaments’ if it really wanted to. For that reason, we believe stronger provisions are needed.
6.3 The wording should be the same for all the Parliaments and Assemblies within the United Kingdom.

7 The proposals included in relation to the convention about the UK Parliament legislating on devolved matters.

7.1 Again, we welcome the intention of the proposals; but again, we have doubts regarding the exact wording. The basis for our concern is that the wording is still too dependent on convention. We are also concerned about the word ‘normally’ and the fact that there is no effort to define such ‘normal’ circumstances, or exceptions to them.

7.2 Again, we believe that there should be appropriate correspondence in terms of the wording of the clauses dealing with this matter in relation to the National Assembly, the Scottish Parliament and the Northern Ireland Assembly.

8 The implications of the draft Bill for the constitution of the United Kingdom

8.1 We agree with the analysis of the Assembly’s Presiding Officer, and others, that a holistic approach should be taken towards constitutional changes to the United Kingdom as a result of devolution. It is not acceptable for parallel, or unconnected processes to be operational to alter the settlements in the individual nations and regions. That leads to unfairness and lack of clarity - an uncoordinated settlement which, ultimately, is detrimental to the whole. A vision and plan are needed.

9 Conclusion

9.1 UCAC is highly concerned that the Draft Wales Bill, as it stands at present, could worsen the devolution settlement in terms of:

- creating even less clarity regarding the ins and outs of the settlement
- limiting the Assembly’s range of legislating powers, and creating a greater gulf between the powers of the Assembly and those of the Scottish Parliament
- continuing, and possibly increasing the conflict between Cardiff and Westminster

9.2 The inevitable result of all this would be the need for more legislation in the near future.

9.3 We therefore urge improvements to the Bill to ensure a step towards the next positive and effective period in the development of our National Assembly.

23 November 2015