



**SOCIAL AFFAIRS POLICY
REVIEW COMMITTEE
FIRST REPORT
FOR THE SESSION 2019-20
THE DRAFT EDUCATION BILL
Volume 1**

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THE DRAFT EDUCATION BILL

There shall be three Policy Review Committees which shall be Standing Committees of the Court. They may scrutinise the established (but not emergent) policies, as deemed necessary by each Committee, of the Departments and Offices indicated in this paragraph together with the associated Statutory Boards and other bodies:

- *Social Affairs Committee: Department of Education and Children; Department of Health and Social Care; and Department of Home Affairs.*

Each Policy Review Committee shall in addition be entitled to take evidence from witnesses, whether representing a Department, Office, Statutory Board or other organisation within its remit or not, in cases where the subject matter cuts across different areas of responsibility of different Departments, Offices, Statutory Boards or other organisations. The Policy Review Committees may also hold joint sittings for deliberative purposes or to take evidence. The Chairmen of the Policy Review Committees shall agree on the scope of a Policy Review Committee's inquiry where the subject cuts across the respective boundaries of the Policy Review Committees' remits.

Each Policy Review Committee shall have –

(a) a Chairman elected by Tynwald,

(b) two other Members.

Members of Tynwald shall not be eligible for membership of the Committee, if, for the time being, they hold any of the following offices: President of Tynwald, member of the Council of Ministers, member of the Treasury Department referred to in section 1(2)(b) of the Government Departments Act 1987.

The Policy Review Committees shall be authorised in terms of sections 3 and 4 of the Tynwald Proceedings Act 1876 as amended and of Standing Orders to take evidence and to summon the attendance of witnesses and further to require the attendance of Ministers for the purpose of assisting the Committee (or Committees, if sitting jointly).

Resolved on 17th July 2018 –

That Committees should be encouraged to inquire into the Programme for Government, including published draft legislation and value for money inquiries.

The powers, privileges and immunities relating to the work of a committee of Tynwald are those conferred by sections 3 and 4 of the Tynwald Proceedings Act 1876, sections 1 to 4 of the Privileges of Tynwald (Publications) Act 1973 and sections 2 to 4 of the Tynwald Proceedings Act 1984.

Committee Membership

Mr David Cretney MLC (Chairman)

Mr Martyn Perkins MHK (Garff)

Ms Julie Edge MHK (Onchan)

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All correspondence with regard to this Report should be addressed to the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas, Isle of Man, IM1 3PW.

Table of Contents

VOLUME 1

I. INTRODUCTION.....	1
THE DEVELOPMENT OF THE DRAFT BILL	1
THE WORK OF THIS COMMITTEE	2
II. CONSULTATION PROCESSES.....	4
III. GOVERNANCE OF STATE SCHOOLS.....	7
IV. HOME EDUCATION	10
V. DRAFTING	15
VI. LIST OF CONCLUSIONS.....	16
ANNEX 1: TIMELINE	19
ANNEX 2: DRAFTING	21
ORAL EVIDENCE	25
15TH APRIL 2019 EVIDENCE OF HON. GRAHAM CREGEEN MHK, MINISTER; PROF. RONALD BARR, CHIEF EXECUTIVE; AND MR LAWRIE HOOPER MHK, POLITICAL MEMBER, DEPARTMENT OF EDUCATION, SPORT AND CULTURE	27
14TH JUNE 2019 EVIDENCE OF MR DARREN NORTHCOTT AND MS GERALDINE O'NEILL, NASUWT; AND MRS DAVID TRACE, MR RICHARD TANTON AND MS SUE MOORE, ASCL AND MR DAMON WARR AND MRS DIANNE WARR, AND MR DEREK SEWELL AND MRS DAWN SEWELL, MANX HOME EDUCATION ASSOCIATION REPRESENTATIVES AND MR TRISTRAM LLEWELLYN JONES	85
WRITTEN EVIDENCE - DEPARTMENT OF EDUCATION, SPORT AND CULTURE.....	133
APPENDIX 1: 11TH OCTOBER 2017 – CONSULTATION: 'MAJOR CHANGES IN THE NEW EDUCATION BILL'	135
APPENDIX 2: 1ST JANUARY 2018 – SUMMARY ANALYSIS OF RESPONSES OF THE PUBLIC CONSULTATION ON THE PRINCIPLES OF THE EDUCATION BILL	161
APPENDIX 3: 23RD JANUARY 2018 – CONSULTATION FEEDBACK	171
APPENDIX 4: 29TH JANUARY 2019 – CONSULTATION QUESTIONS	179
APPENDIX 5: 29TH JANUARY 2019 – DRAFT EDUCATION BILL	211
APPENDIX 6: 19TH MARCH 2019 – HANSARD QUESTION 17 – ANSWER BY MINISTER OF THE DEPARTMENT OF EDUCATION, SPORT AND CULTURE	291
APPENDIX 7: 19TH MARCH 2019 – HANSARD QUESTION 18 – ANSWER BY MINISTER OF THE DEPARTMENT OF EDUCATION, SPORT AND CULTURE	295

APPENDIX 8: 1ST JUNE 2019 – REPORT ON THE RESPONSES TO THE CONSULTATION	301
APPENDIX 9: 28TH JUNE 2019 – CONSULTATION FEEDBACK	317
APPENDIX 10: 8TH JULY 2019 – CORRESPONDENCE WITH ANDREW SHIPLEY, LEGAL AND ADMINISTRATION MANAGER, DEPARTMENT OF EDUCATION SPORT AND CULTURE REGARDING FIRST DRAFT BILL WITH AMENDMENTS	325
APPENDIX 11: 7TH AUGUST 2019 – CORRESPONDENCE WITH YVETTE MELLOR, DIRECTOR STRATEGY AND CORPORATE SERVICES, DEPARTMENT OF EDUCATION SPORT AND CULTURE REGARDING DRAFT BILL	331

WRITTEN EVIDENCE – TEACHERS, FORMER TEACHERS AND TEACHING UNIONS..335

APPENDIX 12: 21ST MARCH 2019 – SUBMISSION FROM RICHARD TANTON, ASSOCIATION OF SCHOOL AND COLLEGE LEADERS	337
APPENDIX 13: 25TH MARCH 2019 – SUBMISSION FROM PETER MURCOTT	345
APPENDIX 14: 1ST APRIL 2019 – SUBMISSION FROM DARREN NORTHCOTT, NASUWT	361

VOLUME 2

WRITTEN EVIDENCE – HOME EDUCATORS AND OTHERS395

APPENDIX 15: 27TH MARCH 2019 – SUBMISSION FROM ANONYMOUS	397
APPENDIX 16: 22ND APRIL 2019 – SUBMISSION FROM ANONYMOUS	403
APPENDIX 17: 22ND APRIL 2019 – SUBMISSION FROM VOIRREY BAUGH	409
APPENDIX 18: 14TH MARCH 2019 – SUBMISSION FROM CHRIS AND CAITRIONA ELLIS	415
APPENDIX 19: 2ND APRIL 2019 – SUBMISSION FROM CAITRIONA ELLIS	421
APPENDIX 20: 12TH MARCH 2018 – SUBMISSION FROM TRISTRAM LLEWELLYN JONES	427
APPENDIX 21: 7TH MARCH 2019 – SUBMISSION FROM TRISTRAM LLEWELLYN JONES	473
APPENDIX 22: 22ND MARCH 2019 – SUBMISSION FROM TRISTRAM LLEWELLYN JONES	479
APPENDIX 23: 13TH JUNE 2019 – SUBMISSION FROM TRISTRAM LLEWELLYN JONES	511
APPENDIX 24: 11TH APRIL 2019 – SUBMISSION FROM DAWN SEWELL	519
APPENDIX 25: 15TH APRIL 2019 – SUBMISSION FROM DEREK SEWELL	525
APPENDIX 26: 17TH JUNE 2019 – SUBMISSION FROM DEREK SEWELL	533
APPENDIX 27: 7TH MARCH 2019 – SUBMISSION FROM DAMON WARR	555
APPENDIX 28: 1ST MARCH 2019 – SUBMISSION FROM DAMON WARR	573
APPENDIX 29: 14TH MARCH 2019 – SUBMISSION FROM DAMON AND DIANNE WARR	577
APPENDIX 30: 11TH APRIL 2019 – SUBMISSION FROM D WARR	583
APPENDIX 31: 1ST MAY 2019 – SUBMISSION FROM DIANNE WARR	625

APPENDIX 32: 6TH JUNE 2019 – SUBMISSION FROM DAMON WARR	671
APPENDIX 33: 12TH JUNE 2019 – SUBMISSION FROM DAMON WARR	703
APPENDIX 34: 3RD APRIL 2019 – SUBMISSION FROM DAPHNE CAINE MHK	707
APPENDIX 35: 28TH MARCH 2019 – SUBMISSION FROM CHAMBER OF COMMERCE TO THE NEW EDUCATION BILL CONSULTATION	751
APPENDIX 36: 28TH MARCH 2019 – SUBMISSION FROM EMPLOYMENT AND SKILLS COMMITTEE, CHAMBER OF COMMERCE, IN RESPECT OF THE NEW EDUCATION BILL	757
APPENDIX 37: 30TH MARCH 2019 – SUBMISSION FROM CHRIS HALL	761



To: The Hon Stephen Rodan OBE MLC, President of Tynwald, and the
Hon Council and Keys in Tynwald assembled

SOCIAL AFFAIRS POLICY REVIEW COMMITTEE

FIRST REPORT FOR THE SESSION 2019-20: THE DRAFT EDUCATION BILL

I. INTRODUCTION

The development of the Draft Bill

1. The Programme for Government published on 10th January 2017 stated under the heading “Enterprise and Opportunity Island” that as a matter of policy the Government would:

Improve standards and availability of pre-school education

Ensure we’re getting value for money for higher and further education

Ensure that our young people have the skills and knowledge to be ready to enter the workplace

Ensure our education system is responsive to future employment needs

2. The document went on to identify as actions:

Introduce a regulatory framework for pre-school services. Harmonise our further and higher education to ensure we achieve a more effective and value for money service.

Update the 2001 Education Act to refresh existing legislation and address gaps that exist in our current legislative framework.

It included at the head of a list of “Bills expected within the next 12 months”:

*Education Bill: to update and refresh existing legislation.*¹

3. In October 2017 the Department of Education, Sport and Culture issued a public consultation entitled “Major changes in the the Education Bill”, inviting responses by 22nd November 2017. The number of responses received was 535 and a summary analysis of those responses was published by the Department on 23rd January 2018.²
4. In January 2019 the Department issued a draft Bill for public consultation, inviting responses from the public by 20th March 2019. The number of responses received was 588 and a report on the responses was published by the Department on 28th June 2019.³
5. The Minister told us on 15th April 2019 that:

*we had hoped that we would get to the Branches in April or May, but we have had over 580 responses to the consultation and we would now look to bring the legislation to the Branches after the summer recess.*⁴

6. In July 2019 the Department’s Legal and Administration Manager sent to us an “amended first draft” Bill, indicating that it was the outcome of meetings with head teachers and unions but that it had not been discussed with the legislative drafter.⁵ In August the Department asked us not to publish the “amended first draft”:

*as the final version that will hopefully enter the branches in October will in some parts be significantly different to this version.*⁶

We have decided to accede to this request by the Department for the time being.

The work of this Committee

7. In March 2018 we received and noted a written submission commenting on the Department’s summary of responses to its first public consultation, with reference to home education.⁷

¹ GD 2017/0002, pages 8, 9, 22

² Appendices 1, 2 and 3

³ Appendices 4, 5, 6 and 7

⁴ Q5

⁵ Appendix 10

⁶ Appendix 11

⁷ Appendix 20

8. In March 2019, while the Department's second public consultation was still live, we received further written representations about the home education proposals in the Bill.⁸ We decided to issue a public call for evidence of our own, overlapping slightly with the Government consultation period. Our media release was issued on 19th March 2019. In it we encouraged members of the public to respond to the Government consultation, but invited them to write to us as well. We received written evidence from 16 individuals, families or organisations. Three individuals wrote to us in confidence and their written evidence has not been published. We published the other written evidence on the Tynwald website when we received it, and we have also included it within this Report.
9. We heard oral evidence in public on two occasions:
 - on 15th April 2019 from the Department's Minister and Chief Executive, together with Mr Hooper as a Member of the Department; and
 - on 14th June 2019 from representatives of teaching unions and from home educators.
10. Our expectation at the time of writing (September 2019) is that the Department will introduce into the House of Keys in October a Bill based on that published in January 2019 but taking into account developments since then including the public consultation and the evidence presented to us. The main purpose of the present Report is to put that evidence before all Tynwald Members in order to assist them when they are called upon to deliberate on the Bill when it reaches their Branch.
11. It would not be appropriate for us to make specific legislative recommendations, given that we are a Committee of Tynwald Court; that the Bill is expected to come before the Branches soon; and that Tynwald Standing Order 3.11(3) prohibits the debate in Tynwald of any matter which is before a Branch. Instead we have drawn attention through our conclusions to certain matters to which we would expect the Branches to pay particular attention.
12. The draft Bill issued in January 2019 proposes to repeal the Education Act 2001 in its entirety and re-enact it, removing some old provisions, adding some new provisions, and altering some other provisions. By taking this approach the Department has placed under review the entire statutory framework underpinning education in both the public and private sectors. This is by contrast with the approach taken in 2009 when an Education (Miscellaneous Provision) Bill was enacted reforming a small number of areas.

⁸ Appendices 18, 21, 27 and 28

13. We would emphasise that the issues we have selected for comment in this Report are by no means the only ones which merit thorough examination by the Branches. Other issues raised in our evidence include:

- order-making powers, for example with reference to the curriculum and the question of which of its elements should be specified on the face of the Bill;
- offences and penalties
- the role of the proposed Education Tribunal

If the Department proceeds to introduce into the Branches a Bill with the same scope as the draft published in January 2019, then the Branches will need to go much further than we have done in this Report.

14. This is the first time a Policy Review Committee has undertaken an inquiry into a published draft Bill since the Tynwald resolution of July 2018 that Committees should be encouraged to do this.

II. CONSULTATION PROCESSES

15. As noted above, the Department has run two public consultations on its proposals, the first launched in October 2017 and the second in January 2019.⁹ In addition the Minister and officers working in the Department centrally have, on various occasions, met their colleagues working in maintained schools, either through meetings with primary and secondary head teachers, or through meetings with representatives of teaching unions. Meetings have also been held with home educators, members of the Education Council, members of the Religious Education Advisory Council, and the Lord Bishop.¹⁰ Some key dates are listed in an Annex to this Report.¹¹

16. The Association of School and College Leaders told us in its written evidence:

It is ASCL's position that the consultation period is far too short. Seven weeks does not allow for genuine consultation and dialogue with lead professionals charged with delivering education on the island, or with ASCL as a professional association.¹²

⁹ Appendices 1 to 9

¹⁰ Appendix 7

¹¹ Annex 1

¹² Appendix 12

17. In oral evidence, Mr Tanton from that organisation commented further that:

*the process by which we have been involved, or not involved, in the consultation seems to be stuttering and quite Byzantine... The lack of detail or the lack of sophisticated discussion around some of the issues within the Bill to date would suggest that it is going to be a stuttering process.*¹³

18. The NASUWT teachers' union said in its written evidence:

*Effective policy development and implementation require meaningful consultation with the school workforce. For this reason, the NASUWT must continue to insist that DESC moves to establish arrangements for engagement with the Union through the implementation of an effective recognition agreement.*¹⁴

19. In oral evidence Mr Darren Northcott from that organisation explained:

*in our experience good policy is developed through wide stakeholder engagement with parents, with learners and certainly with representatives of the workforce. That is why for us one of the key issues that we want to see taken forward is making sure we have better arrangements for workforce engagement in the development of policy around consultation. That certainly involves for us a long standing issue around union recognition you would expect us to make that point, it is very important to us. But not just in the pay and conditions sphere, also broadly in terms of educational policy, because we want the best for the Isle of Man's children and young people and we think if you engage the workforce, have their ownership and have their participation you have got a better chance of getting good policy in place.*¹⁵

20. Mrs Moore, head teacher of QEII High School in Peel, said:

David [Trace] and I have been here long enough that we have experienced the 2001 Education Act and the 2009 Education (Miscellaneous Provisions) Act. For both of those there was far more prior involvement with sections of the Bill, not the whole thing, but 'We are looking at this bit, so here is a draft of that section', and we were able to have a look at it and give our information before it then went to public consultation.

Part of my dilemma now is that I was not able to do that. We asked, as secondary heads, to see and we were told no. We were given timescales that

¹³ QQ 251, 268

¹⁴ Appendix 14

¹⁵ Q 249

*moved each time but we were never given anything in writing, and so when the actual draft Bill arrived a couple of days before the public consultation I was not able to give it public support. That put me in a really difficult position because obviously I want to be loyal to the Department, but equally I have a moral duty to do what is right for the education of children and young people on the Isle of Man, and I have really serious concerns about the Bill in its current form.*¹⁶

21. Mr Tristram Llewellyn Jones, a home educator, wrote:

The Isle of Man Government Code of Practice on Consultation specifically states:

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy.

The DESC have ignored this requirement and generated proposed legislation on home education using qualitative not quantitative information. There were a number of informed consultation submissions from home educators including a legal opinion on the Human Rights considerations of their proposals and these were comprehensively ignored.

*Furthermore the consultation question on home education was deliberately leading, implying, falsely, that there was an obligation on Government to obtain information from home educating parents.*¹⁷

Other home educators have also been highly critical of the consultation process followed by the Department.¹⁸

We conclude that the Department of Education, Sport and Culture has been working at least since early 2017 on the development of new primary legislation to repeal and replace the Education Act 2001. With hindsight the ambition of the January 2017 Programme for Government to introduce this legislation within 12 months was unrealistic. In setting this timescale the Department underestimated the scale and complexity of the task.

We conclude that despite having run two public consultations and held numerous meetings over two and a half years, the Minister and Members had, by mid-2019, failed to gain the confidence of the staff working in the

¹⁶ Q 252

¹⁷ Appendix 21

¹⁸ See for example Appendices 15, 25, 27 and Q 275

Department's own schools, whether as senior leaders or frontline staff. At the same time the Department had antagonised home educators.

We conclude that in considering any future legislative proposals which may be brought forward by the Department, the Branches should ascertain for themselves the extent to which the views of key stakeholders inside and outside the teaching profession have been taken into account by the Department.

We conclude that the Department's approach to public consultation lacked sophistication. Some of the questions posed in both the public consultations were leading, and the quantitative approach adopted by the Department in analysing the public responses was ill suited to the complexity of the subject matter. The Branches must consider every proposal on its merits and must examine very closely any justification the Department puts forward for its proposals based on the public consultation exercises.

III. GOVERNANCE OF STATE SCHOOLS

22. The Education Act 2001 as amended by the Education (Miscellaneous Provisions) Act 2009 sets out the existing framework for the governance of state schools. Under section 5, each provided school must have an instrument of government setting up a governing body, at least a third of whose members must be appointed otherwise than by the Department. Each provided school must also have an "articles of government" setting out the functions of the governors and the head teacher. Under section 5A, the Department can give directions to the governors or the head teacher, and it is the duty of the governors or head teacher to comply with such a direction.
23. Under section 4A of the 2001 Act there is established an Education Council which the Department may consult. If the Department consults the Education Council about the exercise of the Department's functions under the Education Act, then the Department must have regard to any advice given to it by the Education Council.
24. Section 3 of the Government Departments Act 1987 provides that the functions of each Department shall be exercised by the Minister in the name of and on behalf of the Department. In other words, the Minister is the Department. Therefore under the law as it stands, a Minister can give directions to a governor or head teacher of a provided school, and the head teacher must comply; before doing so the Minister may consult the Education Council and must have regard to their advice.
25. The proposals in the draft Bill published in January 2019 are different. The Education Council would no longer exist. Instead, as the October 2017 consultation document explained:

it is proposed that the new Bill will remove the Education Council and replace it with Department Appointed Governors, so that a Department representative will continue to be on school governing bodies.¹⁹

26. Under Clause 21 of the January 2019 draft Bill, each governing body of a maintained school would have a maximum of seven individuals, four of whom are teachers, parents or pupils from the school and the remainder of whom are appointed by the Department.
27. Under Clause 22 of the January 2019 draft Bill, the Department could give directions to the governors or the head teacher of a maintained school, and it is the duty of the governors or head teacher to comply with such a direction. This is similar to the existing provision in section 5A of the 2001 Act. However, Clause 22 goes on to make express provision for the removal or dismissal of governors or head teachers who appear to be unable or unwilling to perform functions under the Bill, the articles of government, or a direction. The Clause is headed “Failures by governors and head teachers”.
28. The Association of School and College Leaders wrote of this Clause:

In too many instances the language and tone appear to be constraining rather than enabling, with the guidance feeling unnecessarily topdown. The most striking example of this is Section 22, headed ‘Failures by governors and head teachers’. The implication here that governors and/or head teachers will fail is unhelpful.

The undermining of head teachers

While this dismissive tone is concerning, even more worrying are a number of proposals which would explicitly undermine the professionalism and autonomy of head teachers. Section 22.6 states that ‘an order under this section may dismiss a governor or head teacher who appears to the Department to be unable or unwilling to perform functions under or in accordance with this Act, the articles of government or a direction under this section’. This clause is extremely subjective. What criteria would the Department use to determine whether a head teacher ‘appears’ unable or unwilling to perform certain functions? We cannot see how these accords with existing capability and disciplinary policies, let alone the statutory employment law that applies to both employers and employees.

¹⁹ Appendix 1

*It is ASCL's view that Section 22 should be omitted. Head teachers are all too aware of their responsibilities and accountabilities. There should be clear and transparent policies in place that allow for head teacher performance to be professionally and objectively appraised on a regular basis. This would, in our view, render Clause 22 redundant.*²⁰

29. In his oral evidence, the Minister told us that “we have agreed we are going to start redrafting the title, the ‘Failures’”. He went on to justify the proposal by saying:

One of the areas that was raised was a possibility where you are going through a process if a head teacher has implemented something in a school that the Department is not happy with, how would you manage that apart from if you went through the disciplinary process?

*If they were to start teaching something that the Department was not happy with, you would have to go through a disciplinary process, but at the end of that process it would only be how they behaved. The change of the policy they were bringing in would still be in place during that time. So if, for instance, it was say part of the religious side of their curriculum, they could continue to teach that because you are going through a disciplinary process; that would not stop what the Department had felt was incorrect.*²¹

30. In the “amended first draft Bill” which was sent to us in July 2019, and which we have agreed not to publish, the title of Clause 22 had been redrafted as “Power of the Department to give directions” and Clause 22(6) had been omitted.²²

We conclude that the proposals in the January 2019 draft Bill on the governance of state schools would significantly alter the balance of power between the Department, governors, head teachers and the community. The Branches should consider carefully the proposed replacement of the Education Council with a network of Department Appointed Governors and any proposed arrangements to remove governors or dismiss head teachers, to ensure that the balance is not shifted too heavily in favour of the Department, always bearing in mind the provision of the Government Departments Act 1987 under which the Minister is the Department.

²⁰ Appendix 12

²¹ QQ 47 to 50

²² See Appendices 10 and 11

IV. HOME EDUCATION

31. Under section 24 of the Education Act 2001 it is the duty of the parent of every child of compulsory school age to cause him (or her) to receive suitable education, either by regular attendance at school or otherwise. Under section 25, if it appears to the Department that a child is not receiving a suitable education, the Department can ask the parent to satisfy it that the child is receiving a suitable education. If not satisfied, the Department can ultimately force the parent to send the child to school.
32. Under section 24A of the Education Act 2001, which was added by the Education (Miscellaneous Provision) Act 2009, where a child of compulsory school age is not registered at a state school, a parent must notify the Department of the arrangements made for the child's education. This has enabled the Department to compile a register of home educated children. In a Written Answer on 29th January 2019 the Minister for Education, Sport and Culture informed the House of Keys that 141 children were then being home educated.²³
33. In its October 2017 consultation, the Department wrote:

At present the Department has no way of ensuring that parents who choose to home educate meet the suitable education provision in section 24 of the Education Act 2001.

Home education is not, in itself, a risk factor for abuse or neglect. However, there is potential that these children can become 'invisible' and in these cases there is a safeguarding risk of isolation from professionals. The aim is to establish an appropriate scope of duties for the Department to ensure that children do not go unseen.

The Department is seeking to add another subsection to the existing clause 24 to allow the Department to introduce regulations which may require parents to provide evidence to the Department of Education of the educational provision their children are receiving.²⁴

34. The October 2017 consultation asked respondents "Should the Department seek evidence from home educators on the education they are giving their children?" In January 2018 the Department reported the answers to this question as:

²³ <http://www.tynwald.org.im/business/OPHansardIndex1821/2991.pdf>

²⁴ Appendix 1

<i>Yes</i>	<i>359</i>
<i>No</i>	<i>128</i>
<i>Unsure</i>	<i>45</i>
<i>Not answered</i>	<i>24</i>

and commented:

*The new Bill will contain enabling clauses to allow us to determine what will be required from parents who choose to home educate. It is envisaged that we will work with these parents to form the guidelines we and the Home Educators will work within.*²⁵

35. The Department held a series of meetings with home educating families. On 9th March 2019 an officer of the Department wrote to home educating families that:

The Minister of DESC has agreed, subject to developing a workable procedure, which will resolve difficulties experienced by the Department, to remove any proposal for changes to Section 24 through to 30 (Education Acts) in relation to home education. The procedure will be developed further by the Department of Education Sport, and Culture and home educators working together to achieve this objective.

The email provided a link to a draft home education procedure document based upon the current Manx legislation (the Education Act 2001) and best practice from England, which had been discussed at a meeting on 26th February 2019. Comments were invited on the draft procedure document.²⁶

36. On 12th March 2018 Mr Tristram Llewellyn Jones, a home educator, sent us a written submission in which he argued that the proposal referred to in the public consultation was:

not necessary or proportionate under the Human Rights Act

discriminatory

prejudiced

unequal

²⁵ Appendix 2

²⁶ Appendix 33. At the time of writing (September 2019) the link on the Government website to the draft procedure document dated 5th March 2018 was still live. The draft can also be found within Appendix 22.

counter to the intention of the Education Act 2001 to provide a level playing field for all children

not based on evidence; and

counter to the law in the United Kingdom.²⁷

37. Although Mr Llewellyn Jones was aware of the Department's email of a few days earlier, he remained concerned, writing:

There is a threat that if home educators do not sign up to the procedures that legislation will ensue. This places home educators in the invidious position of having to accept something that causes real concern just to defray legislation that might be just as problematic for them.²⁸

38. Speaking to us on 16th March 2018 as part of an annual oral evidence session, the Minister said:

There are numerous issues that the home education system raises. The vast majority of them do not cause a concern. I think there may be a number of cases in other jurisdictions which raise the issue about the quality of the home education, and also safeguarding has been raised as an issue. But I think as our part for our Education Bill, the safeguarding issue of it will probably go into maybe the Safeguarding Board to deal with, rather than as part of the education.²⁹

39. Commenting on the work with home educators on the draft procedures, the Minister said:

We have put out a bit of a draft for all the home educators to have a work through to see how we can actually do it...

What we are doing at the moment is working with the home educators which I believe is the right way to go about it; we are not fighting we are working with them to see how we can address those issues without going, as you said, to get the sledgehammer to crack the nut. By working with them, we have come up with this draft policy that we are consulting with them on to see how we can move along.³⁰

²⁷ Appendix 20

²⁸ Appendix 20

²⁹ <http://www.tynwald.org.im/business/hansard/20002020/saprcesc180316.pdf> lines 951 to 956

³⁰ <http://www.tynwald.org.im/business/hansard/20002020/saprcesc180316.pdf> lines 950 to 1014

40. The Chief Executive said:

*The Minister has been very clear that he wants to work collaboratively with home educators... We are not looking at weekly checks or anything that is meant to be onerous. It is meant to give, if anything happens at all, some assurance of the quality of what is being delivered, but not in some way that is meant to be in any way intrusive.*³¹

41. Speaking to us in April 2019 and referring to the draft home education procedures which had been submitted to us, the Minister said:

*that was a draft of what was being proposed through discussion, so there is no departmental sign off on that because it was only a draft of the discussions; and how, between ourselves and home educators, that was being put together. So there is no approval of that; it was just as a draft.*³²

42. Giving evidence in June 2019 another home educator, Mr Derek Sewell, told us that after the draft procedures had been circulated to home educators in March 2018:

Home educators responded, but we have never actually heard what the outcome of that consultation was.

There were then no further communications with the Department, other than we met up with some of their safeguarding representatives who, after we had met them, said they were also happy with the procedures, so safeguarding did not seem to be an issue either.

*I then received a phone call on 25th January to tell me there was a consultation document coming out on the Monday and the Minister who contacted me then started to read out the section that related to the home education section and you can understand my concern that we had gone from basically that we were going to publicise a consultation document, to a situation where there had been no communications and then suddenly we were bringing in a massive amount of legislation.*³³

43. The draft Bill which was then published in January 2019 did indeed include provision for home education. Under Clauses 77 and 78, it proposed that the Department would be required to maintain a register of home educated children and to carry out assessments from time to time of such children's educational development. The assessments would take place in the child's home with the consent of the parent, or

³¹ <http://www.tynwald.org.im/business/hansard/20002020/saprcsc180316.pdf> lines 1041 to 1049

³² Q 205

³³ Q 275

in any other place agreed between the Department and the parent. The parent would be required to comply with any request by the Department to provide information for the purpose of the assessment. It asked the following question of respondents:

*Are the assessment proposals sufficient for the Department to ensure that a suitable education is being provided to Home Educated children?*³⁴

44. When we issued our public call for evidence in March 2019 we received extensive written evidence from home educators including a legal opinion arguing that the proposals were incompatible with the European Convention on Human Rights.³⁵ We also heard oral evidence from home educators.³⁶ This evidence raises numerous objections to the Department's proposals.
45. In its June 2019 analysis of its second public consultation, the Department reported the answers to this question as:

<i>Yes</i>	<i>377</i>
<i>No</i>	<i>168</i>
<i>Unsure</i>	<i>80</i>
<i>Not answered</i>	<i>24</i>

and commented:

*Even though the majority of you agreed that the Department should be able to assess the education being provided to home educated children, we will be reviewing the wording in clause 78 to make the assessment criteria less onerous and by some considered too invasive, to a process determined in regulations that can meet the requirements of the Department to ensure a suitable education is received by all children wherever they are educated.*³⁷

46. In the "amended first draft Bill" which was sent to us in July 2019, and which we have agreed not to publish, the only change to the home education provisions was the addition of a new possible location for assessments: "at a Departmental educational facility". Under the "amended first draft" Bill, the agreement or consent

³⁴ Appendix 9, Question 20

³⁵ Appendices 15 to 33. The legal opinion is part of Appendix 22.

³⁶ QQ 271 to 317

³⁷ Appendix 9, Question 20

of a parent would not be needed for the Department to carry out an assessment at such a facility.³⁸

We conclude that the proposals relating to home education made by the Department in its initial consultation, in 2017, met with objections from home educators. The Department engaged positively with home educators in early 2018 but relations then appear to have broken down. The proposals in the Department’s second public consultation, in 2019, have caused shock, dismay and outrage among home educators.

We conclude that there is a case for reform of the law regarding home education. There is a risk at present that a case could arise where a child was not receiving a suitable education and yet this was not apparent to the Department, in which case the existing procedures under the Education Act 2001 would not be triggered. In considering any future proposals in this area, the Branches must assess the risk carefully in order to satisfy themselves that any intrusion into family life is necessary and proportionate.

V. DRAFTING

47. During our examination of the 2019 draft Bill we came across a number of drafting issues. We put some of these to the Department during its oral evidence session in April 2019. Some of them have been addressed in the “amended first draft Bill” which was sent to us in July 2019, and which we have agreed not to publish.³⁹ However, for completeness and in order to assist the Branches we have listed all our drafting observations on the January 2019 text within this report.⁴⁰

48. We were surprised to read in July 2019 that:

*The first draft was prepared by the Legislative Drafting Division and then there were various meetings with the Heads and Unions which led to changes. These changes have not been discussed with the Drafter and instructions will need to be drafted to account for the suggestions for changes that have been put forward.*⁴¹

We would normally expect any amendment to a draft Bill to be made by the Legislative Drafting Division on the instructions of a Department, rather than the

³⁸ See Appendices 10 and 11

³⁹ See Appendices 10 and 11

⁴⁰ Annex 2

⁴¹ Appendix 10

other way around. There is considerable risk attached to negotiating a form of words with head teachers or unions, without the early involvement of the drafters.

49. Some of the observations we put to the Department in April 2019 were to do with differences between English and Manx law. In a Written Answer in March 2019 the Minister had advised the House of Keys that the preparation of this draft Bill had been outsourced to a UK drafter at a cost of £15,883.⁴² In oral evidence to us in April 2019 the Chief Executive of the Department commented:

the external drafter was somebody we were pleased to secure, in the sense that they were very knowledgeable about UK educational policy and legislation. This was done in agreement with the Attorney General's Chambers. They were under significant drafting pressure and the Department was very keen, actually, to have somebody who was an acknowledged UK expert in drafting UK education legislation. Indeed, the drafter was somebody who was also involved in the equality legislation in the UK and we felt that brought something else to the table as well.

Having said that, of course the legislative landscape in the UK is not the same as the Isle of Man and some of the terminology in the Bill I think has been unfortunate, in the sense that it has been misinterpreted because it has been based upon a UK understanding of things rather than a Manx understanding of things. So, on that level I think it has added a degree of confusion and complexity, which is unfortunate.⁴³

We conclude that while outsourcing can relieve immediate pressures on drafting resources within HM Attorney General's Chambers, in house drafting remains preferable where possible.

VI. LIST OF CONCLUSIONS

The conclusions of our Report are listed here for ease of reference.

We conclude that the Department of Education, Sport and Culture has been working at least since early 2017 on the development of new primary legislation to repeal and replace the Education Act 2001. With hindsight the ambition of the January 2017 Programme for Government to introduce this legislation within 12 months was unrealistic. In setting this timescale the Department underestimated the scale and complexity of the task.

⁴² Appendix 6

⁴³ Q 27

We conclude that despite having run two public consultations and held numerous meetings over two and a half years, the Minister and Members had, by mid-2019, failed to gain the confidence of the staff working in the Department's own schools, whether as senior leaders or frontline staff. At the same time the Department had antagonised home educators.

We conclude that in considering any future legislative proposals which may be brought forward by the Department, the Branches should ascertain for themselves the extent to which the views of key stakeholders inside and outside the teaching profession have been taken into account by the Department.

We conclude that the Department's approach to public consultation lacked sophistication. Some of the questions posed in both the public consultations were leading, and the quantitative approach adopted by the Department in analysing the public responses was ill suited to the complexity of the subject matter. The Branches must consider every proposal on its merits and must examine very closely any justification the Department puts forward for its proposals based on the public consultation exercises.

We conclude that the proposals in the January 2019 draft Bill on the governance of state schools would significantly alter the balance of power between the Department, governors, head teachers and the community. The Branches should consider carefully the proposed replacement of the Education Council with a network of Department Appointed Governors and any proposed arrangements to remove governors or dismiss head teachers, to ensure that the balance is not shifted too heavily in favour of the Department, always bearing in mind the provision of the Government Departments Act 1987 under which the Minister is the Department.

We conclude that the proposals relating to home education made by the Department in its initial consultation, in 2017, met with objections from home educators. The Department engaged positively with home educators in early 2018 but relations then appear to have broken down. The proposals in the Department's second public consultation, in 2019, have caused shock, dismay and outrage among home educators.

We conclude that there is a case for reform of the law regarding home education. There is a risk at present that a case could arise where a child was not receiving a suitable education and yet this was not apparent to the Department, in which case the existing procedures under the Education Act 2001 would not be triggered. In considering any future proposals in this area,

the Branches must assess the risk carefully in order to satisfy themselves that any intrusion into family life is necessary and proportionate.

We conclude that while outsourcing can relieve immediate pressures on drafting resources within HM Attorney General's Chambers, in house drafting remains preferable where possible.

D C Cretney (Chairman)

M J Perkins

J M Edge

September 2019

ANNEX 1: TIMELINE

6 Sept 2017	Presentation to Tynwald Members	Appendix 7
11 Oct 2017	DESC launches public consultation entitled 'Major changes in the new Education Bill'	Appendix 1
22 Nov 2017	2017 public consultation closes	Appendix 1
8 Jan 2018	DESC Minister and officer meets home educators	Q275
29 Jan 2018	DESC publishes feedback on 2017 consultation	Appendices 2, 3
26 Feb 2018	DESC Minister and officer meets home educators	Appendices 7, 33
9 Mar 2018	DESC publishes draft elective home education procedures on its website and invites comments from home educators	Appendix 33
22 Nov 2018	DESC meeting with primary head teachers	Appendix 7
29 Nov 2018	DESC meeting with secondary head teachers	Appendix 7
29 Jan 2019	DESC publishes draft Bill and consultation questions	Appendices 4, 5
4 Feb 2019	DESC Minister, political member and officer meet two home educating families	Appendix 7
13 Feb 2019	DESC CEO and officers meet NASUWT representatives	Appendix 7
27 Feb 2019	DESC CEO and officers meet ASCL staff and head teachers of QE2 and CRHS	Appendix 7

7 Mar 2019	DESC Minister and officers meet a home educating family	Appendix 7
20 March 2019	2019 public consultation closes	Appendix 7
15 April 2019	Oral evidence of DESC Minister, Member and Chief Executive	QQ 1 to 248
14 June 2019	Oral evidence of teaching unions and home educators	QQ 249 to 317
28 June 2019	DESC publishes feedback on January 2019 public consultation	Appendices 6, 7

ANNEX 2: DRAFTING

These observations relate to the draft Bill published in January 2019.⁴⁴ An asterisk indicates that a point appears to have been addressed in the “amended first draft Bill” which was sent to us in July 2019, and which we have agreed not to publish.⁴⁵

Clause (Jan 2019)	Topic	Observation	
3	Overview	Is this Clause necessary? It duplicates the Table of Contents.	
3(4)	Overview	No reference to Division 7 of Part 3	
4(1)	Interpretation	Add cross-reference to definition of life-long learning under Clause 6(4)?	
5(1)	Consultation with school governors	Is “each school in the Island” intended to include each independent school in the Island?	
6(2)	Principles of education	After “any other function” the word “in” is missing.	
8(2)(a)	Consultation, cooperation and review	Replace “its” with “DHSC’s” to avoid ambiguity, since DESC also has some responsibilities under CYPA 2001?	
9(4)(c)	Dispute resolution	Replace “judicial review” with “doleance”.	*
27	Information for government	Is this intended to apply to an independent school? How does it interact with Clause 56?	
31(2)	Suspension and exclusion	The articles must provide for an appeal to the Department – but what if the Department is the decision-maker under Clause 30(6)(a)?	
35(1)	Damage	Should “taking action” be “the taking of action”, by analogy with the syntax in 34(1)?	
36(3)-(4)	Offensive weapons	Why is it that the gender identity of the pupil is subjective but the gender identity of the searcher is not?	
37(3)	Behaviour outside school premises	What is meant to be in the square brackets?	*
43(1)	Registers of pupils	Is “each school” intended to include each independent school?	*
43(7)	Registers of pupils	Is the word “colleges” intended to include private sector colleges?	

⁴⁴ Appendix 5

⁴⁵ See Appendices 10 and 11

Clause (Jan 2019)	Topic	Observation	
44(1)	Admission to schools	Is “a school” intended to include an independent school?	*
49(4)	Enforcement	“The department” should be “the Department”.	*
52(3)(c)	Registration	Remove extra “if”.	
52(4)(d)	Registration	If (a), (b) and (c) are satisfied, then what are the circumstances contemplated by (d) in which an application <i>would</i> be necessary? In other words, what does (d) add?	
61(1)	Compulsory school age	Need to update cross references in other enactments e.g. Civil Partnership Act	
69(9)	Civil penalty	The term “official of the Department” occurs just once in the Manx statute book. The usual term in Manx law is “officer of the Department”.	
73(9)	School attendance order	Should “the school attendance order” be “a school attendance order”, by analogy with subsection (10)?	
75	Education supervision orders	Remove the words “of Education, Sport and Culture” and rely on Clause 4 instead.	
76(3)	Return of truants	“Official of the Department” – same comment as Clause 69(9).	
85	Post-assessment report	Should “what provision to make” be “what provision it intends to make” or “what provision it proposes to make”?	
90(1)	Off-Island provision	– should be ,	
91(4)	Colleges	Comma missing after “(subject to the provisions of this Act)” and before —	
93	Further education	“otherwise than in accordance with section 31” should be “otherwise than in accordance with section 91”.	
94(5)	Higher education	Delete <i>either</i> “an institution in the Island or elsewhere” or “any university, college or other educational establishment or institution in the Island or elsewhere”?	
98(1)	Inspection (early years)	“Officials of the Department” – same comment as Clause 69(9).	

Clause (Jan 2019)	Topic	Observation
104(1)	Youth and community services	Are the words “youth and” missing from subsection (1)?
104(4)	Youth and community services	What is meant by an “institution”?
105(1)	Financial assistance	Should “who are, or wish to, take” be “who take, or wish to take”?
105(4)(c)	Financial assistance	Should “guaranties” be “guarantees”?
108	Register (educational institution)	Why no requirement to make the register available by analogy with Clause 51(2)?
109(3)(a)	Entry in register (educational institution)	What about safeguarding arrangements for vulnerable adults?
112(2)	Provision of information (educational institution)	Why are 56(2)(a) and 56(2)(h) not replicated here?
112(2)(b)	Provision of information (educational institution)	Welfare and safeguarding – same comment as 109(3)(a).
113(4)(a)	Inspections (educational institution)	“Officials of the Department” – same comment as Clause 69(9).
113(7)(b)	Inspections (educational institution)	Is the word “of” missing before “an action plan”?
114(1)(d)	Complaints about educational institutions	Welfare and safeguarding – same comment as 109(3)(a).
114(5)	Complaints about educational institutions	To whom can the institution appeal? *
115(1)–(3)	Determination of complaints	Add definition of “the Tribunal” either here or in Clause 4.
115(3)(d)	Determination of complaints	Welfare and safeguarding – same comment as 109(3)(a).
116(3)(b)	Enforcement	“The Tribunal” – same comment as 115(1)–(3)
119(2)	The register (private tutors)	Why no requirement to make the register available online, by analogy with Clause 51(2)(a)?
120(2)(a)	Registration (private tutors)	After “Safeguarding Vulnerable Groups Act 2006” add “(of Parliament)”.
120(3)	Registration (private tutors)	What happens when the DBS certificate submitted under 120(2)(a) expires? Should express provision be made to require a check each year that a current DBS certificate is in place?
125(2)	Evidence of age	“The person may apply” ... but what if the person is under 18?

Clause (Jan 2019)	Topic	Observation
125(2)	Evidence of age	Should “apply to the relevant register” be “apply to the relevant registrar”?
127	Notices	What is this Clause for? The expression “public notice” does not appear anywhere else in the draft Bill.
Sch2 para 10	Establishment, closure and alteration of schools	“take effect” should be “takes effect”
Sch3 para 2(1)(a)	Schemes relating to educational trusts	Begin this list item with “to”, by analogy with the other items in the list
Sch3 para 4(3)	Schemes relating to educational trusts	<p>£2000 was the figure in the Education Act 2001 as originally enacted.</p> <p>The amount in section 2(1)(b) of the Charities Act 1986 is now £5000 but it was put there not by an order under section 3(5) of that Act but by the Audit Act 2006.</p> <p>Consider updating the figure in this paragraph to £5000 and omitting the words “by virtue of an order under section 3(5) of that Act”.</p>

ORAL EVIDENCE

15th April 2019

**Evidence of Hon. Graham Cregeen MHK,
Minister; Prof. Ronald Barr, Chief
Executive; and Mr Lawrie Hooper MHK,
Political Member, Department of
Education, Sport and Culture**



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING VEAYN TINVAAL**

**PROCEEDINGS
DAALTYN**

**SOCIAL AFFAIRS POLICY REVIEW
COMMITTEE**

Draft Education Bill

HANSARD

Douglas, Monday, 15th April 2019

PP2019/0076

SAPRC-EB, No. 1/18-19

All published Official Reports can be found on the Tynwald website:

www.tynwald.org.im/business/hansard

Members Present:

Chairman: Mr D C Cretney MLC

Ms J M Edge MHK

Mr M J Perkins MHK

Clerk:

Mr J D C King

Assistant Clerk:

Mr B Awkal

Contents

Procedural.....	3
EVIDENCE OF Hon. Graham Cregeen MHK, Minister, Prof. Ronald Barr, Chief Executive, and Mr Lawrie Hooper MHK, Political Member, Department of Education, Sport and Culture	3
<i>The Committee adjourned at 1.14 p.m.</i>	55

Standing Committee of Tynwald on Social Affairs Policy Review

Draft Education Bill

*The Committee sat in public at 10.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR CRETNEY *in the Chair*]

Procedural

The Chairman (Mr Cretney): Good morning and welcome to this public meeting of the Social Affairs Policy Review Committee, a Standing Committee of Tynwald. I am David Cretney MLC and
5 I chair the Committee. With me are Mr Martyn Perkins MHK and Ms Julie Edge MHK.

If we can all ensure our mobile phones are off or on silent so that we do not have any interruptions; and for the purposes of *Hansard* I will be ensuring that we do not have two people speaking at once.

The remit of the Social Affairs Policy Review Committee is to scrutinise the established but
10 not emergent policies, as deemed necessary by the Committee, of the Department of Health and Social Care, the Department of Education, Sport and Culture, and the Department of Home Affairs.

Today is a first in terms of proposed legislation, inasmuch as Tynwald resolved on 17th July 2018 that the Committee should be encouraged to inquire into the Programme for Government,
15 including published draft legislation and value for money inquiries. Today, we welcome the Minister and the Chief Executive of Education, Sport and Culture and Mr Lawrie Hooper MHK, a political Member of the Department.

EVIDENCE OF

**Hon. Graham Cregeen MHK, Minister,
Prof. Ronald Barr, Chief Executive,
and Mr Lawrie Hooper MHK, Political Member,
Department of Education, Sport and Culture**

Q1. The Chairman: Perhaps, before we start, could we clarify why Mr Hooper is here?

The Minister (Mr Cregeen): We were asked if we wanted to bring somebody else along as
20 part of the Education Bill. The Department has been working very closely together on how we would bring the Bill forward and Mr Hooper has been involved in that part of the process.

Q2. The Chairman: So, when it actually comes to the Keys, you will be taking it?

25 **The Minister:** Yes.

Q3. The Chairman: Okay, thank you.

Could you please tell us who the Department consulted on the principles of the draft Education Bill?

The Minister: The Department went out through the Consultation Hub and involved whoever wished to respond to it.

Q4. The Chairman: And what evidence informed the formulation of the policy contained in the draft Bill?

The Minister: The Department went out for policy principles last year, so those were the changes that we were looking forward to. We went out for policy principles and then that took part of the drafting instructions.

Q5. The Chairman: Do you believe that public consultation on the draft Bill allowed respondents ample opportunity to have their views heard?

The Minister: Yes. We gave the teaching unions advance notice of this and we also spoke to them during that process. During the discussions and through the responses that we have had so far we had hoped that we would get to the Branches in April or May, but we have had over 580 responses to the consultation and we would now look to bring the legislation to the Branches after the summer recess.

The Chairman: Thank you.

Q6. Ms Edge: In response to a Written Question on 19th March it states that you went out to the unions on 17th February 2019, which I assume is correct, but you have just said that the policy principles ... Did you go out to the unions on the policy principles?

The Minister: The policy principles went out to everyone, so the unions had opportunity then if they wished to respond to those.

Q7. Ms Edge: And did you receive any responses?

The Minister: I have not got that data.

Prof. Barr: There were a couple of responses, certain individual schools, as I recall. It was some months ago now, but I think we had responses from St Ninian's and from one of the other high schools.

Q8. Ms Edge: Was that from the head teachers, the policy principle idea?

Prof. Barr: I think the different head teachers adopted different strategies. As I remember, at St Ninian's I think the head teacher had a workshop which involved the teaching staff in the school around this, and certainly when we meet the senior leaders – we meet with them three or four times a year, and certainly back in the autumn I do remember standing up and encouraging head teachers to convene meetings in schools with staff and with young people to make them aware that this legislation would be coming forward, so that they had some ideas about what they would then want to submit when it came to the formal consultation process.

Q9. Ms Edge: So, are you confident that enough consultation happened with the teaching professionals, the teaching unions, prior to going out to public consultation?

80 **Prof. Barr:** What I am saying is that we flagged up that the legislation would be going to consultation and that we made teaching staff, through their head teachers, aware of this back in the autumn.

The Minister: There is always opportunity that you could consult more. You say, 'Well, you could have consulted more,' but the process was there. Subsequently we have had meetings with all the teaching unions and we have got another meeting coming up in the near future.

Q10. The Clerk: Just to be clear then, the consultation you have just been speaking about with the head teachers in the different schools is separate and distinct from the exercise in October 2017, which was a public consultation also on the principles of the proposals?

The Minister: Policy principles, yes.

Q11. The Clerk: So, you did a public consultation in October 2017 – was that preceded by consultation with teaching staff also?

The Minister: The Bill which was due to be replaced was possibly back in 2014. There were initial discussions about ... I understand the Department previously had been looking to replace the Education Bill and that had gone partway through the process. So there have been bits and pieces of consultation since, I would say, possibly 2014-15, about 'This is where we are looking to renew the Bill.'

Prof. Barr: And then there was a presentation to Tynwald Members on the policies and principles, which took place last year.

105 Did we actually have a formal mechanism by which we consulted with teachers? No, there was not in the autumn, not on that basis. What we did do is tell head teachers that the Bill was coming forward and that they should engage with their staff and give some serious thought to what they would like to see in the Bill.

110 **Q12. The Clerk:** That was in 2018, or in 2017?

Prof. Barr: That was in the autumn, last year.

Q13. The Clerk: In 2018. So, we have the public consultation of October 2017, then we have an exercise with teachers in the autumn, at the end of 2018, and then we have the public consultation which we know has just closed at the beginning of 2019.

Prof. Barr: Yes.

120 **The Clerk:** Thank you.

Q14. Mr Perkins: One of the questions I would like to ask is: in the public consultation a criticism seems to be from the public that the questions are extremely leading. For example, it almost sounds like a fait accompli has been decided before the consultation, and anybody reading that would be thinking of responding that the principal proposed changes are wholly in place even beforehand. Would you comment on that?

The Minister: Can you give us a direct area where you are saying that this has come from?

130 **Q15. Mr Perkins:** It is generally the language that the questions are posed in. Rather than asking a straightforward question – should there be any change in the current legislation? – the

Department offers the changes as a fait accompli and asks if the proposals are sufficient, i.e. 'You accepted the proposals: do we go any farther?'

135 **Mr Hooper:** The gravity could be more specific. It is quite a large Bill and the consultation was quite comprehensive, so I would be grateful if you could just clarify exactly which section you are talking about, just so we all know what we are talking about here. Would that be possible?

140 **Q16. Mr Perkins:** Yes. What I am leading at is: did you use feedback from the head teachers to influence the public consultation?

Mr Hooper: I think it is fair to say that feedback from the principles consultation was used. Some of the questions in the principles consultation asked should something be done. The response to that was then yes or no, and then the detailed consultation would have fed back off that. So that would not have been a second question in the second consultation, saying 'Should we do this?' If the first consultation already said yes we should, then the next step is to say, 'Well, we have established that something should happen, so now we are going to talk in detail and put something on the table that says this is how it might happen, how it might look.'

150 That might be what you are talking about, but without more specifics it is hard to qualify.

Q17. Ms Edge: With regard to the draft Bill and prior to it going out to consultation, did any of the professional bodies or head teachers see that?

155 **Prof. Barr:** It was released a few days before, Minister, if you recall.

The Minister: Yes. As the consultation it went out to them a few days ahead; but not on the drafting of it, no.

160 **Q18. Ms Edge:** So the professional bodies were not involved in the final draft that went out to consultation, the professionals in the field?

The Minister: Yes, we have professionals in our Department, so we have educators in the Department anyway.

165 **Q19. Ms Edge:** So the Department decided that the draft was appropriate to go out to public consultation but you did not feed back to ensure that anything that the professional bodies or the head teachers had fed back to you saying they had concerns about ... They did not get that opportunity to check that their concerns were raised and added into the Act prior to it going out to consultation?

170 **The Minister:** That is why it is a consultation.

Q20. Mr Perkins: Okay, so what changes are you going to make to the Bill, then, since the consultation has come back?

175 **The Minister:** We have not finished going through the responses yet.

Q21. The Chairman: Do you know when you will have that opportunity? Obviously it is important for us in our consideration.

180 **Prof. Barr:** It is a work in progress. Obviously the consultation process has only just recently finished. We have 588 submissions. We have a meeting scheduled with the Chamber of Commerce, which is going to take place I think in the next two or three weeks. We have already

185 had a meeting with the Bishop. We have already had a meeting with all of the teaching unions and associations and there is another meeting scheduled on that.

At the moment we are in the process of grouping the responses in terms of what are the issues that have been identified through the 588 responses we have had. We have had a major meeting with the teaching unions. We also met separately with the secondary head teachers and we also offered to meet the primary head teachers, although they indicated that they 190 wished to be represented by their associations, which is right and proper.

So there is a range of meetings that have already taken place and there is a range of meetings that are still scheduled and have yet to take place.

Q22. The Chairman: But when you have had your consultation you will afford the Committee 195 the opportunity to let us know what changes are proposed?

Prof. Barr: Yes.

The Chairman: Thank you.

200 **Q23. Ms Edge:** You said there are meetings scheduled on that. Is this only since the consultation has been launched that these meetings have been arranged and they were arranged at short notice?

205 **The Minister:** No. When we had a meeting with the unions there were suggestions that came forward from them. We then take that away. We need to then start working on how that is going to be put into legislation and then we are going to have a further meeting with them to see how they feel that goes forward. So it has been part of the process because we needed some evidence to have those discussions on.

210 **Q24. Ms Edge:** When were the meetings held with the secondary head teachers and when were the primaries negotiated with?

The Minister: It was a number of weeks ago with the secondary heads and it was about 215 10 days ago with the unions.

Prof. Barr: Yes, a week last Friday, I think it was. We had a full day of scheduled meetings with all the unions and associations, and there is another meeting which is now scheduled in May, I think, as the next one.

220 Obviously we have been making it very clear to all of the key stakeholders on this that all this is at the moment is a draft piece of proposed legislation which of course is subject to further amendment and change. We are trying to make sure that we get as much common agreement with educational professionals and with others, and we are very much looking forward to having a meeting with the Chamber of Commerce because employers have a role in this. I have been 225 very keen as well to try and get certainly high school head teachers to get some of our young people engaged in this because it is an important piece of policy for them.

Q25. The Chairman: And are you going to engage further the home educators as well?

230 **Prof. Barr:** To my knowledge we have not ever not said we would meet with home educators. I cannot speak in detail for the Minister but I know that I have met several home educators and I know that other senior officers have met home educators and the Minister has as well.

Q26. The Chairman: Sorry, did you say you are not going to meet them again?

The Minister: No, I did not say that. I said nothing has been ruled out.

The Chairman: Okay, thank you.

Q27. Mr Perkins: Just coming back to the drafting of the Bill, you obviously went out to external draftsmen. Do you think they got it reasonably right? It sounds to me like there are going to be an awful lot of changes.

Prof. Barr: Well, I think the external drafter was somebody we were pleased to secure, in the sense that they were very knowledgeable about UK educational policy and legislation. This was done in agreement with the Attorney General's Chambers. They were under significant drafting pressure and the Department was very keen, actually, to have somebody who was an acknowledged UK expert in drafting UK education legislation. Indeed, the drafter was somebody who was also involved in the equality legislation in the UK and we felt that brought something else to the table as well.

Having said that, of course the legislative landscape in the UK is not the same as the Isle of Man and some of the terminology in the Bill I think has been unfortunate, in the sense that it has been misinterpreted because it has been based upon a UK understanding of things rather than a Manx understanding of things. So, on that level, Mr Perkins, I think it has added a degree of confusion and complexity, which is unfortunate.

The Minister: And during our discussions there are large areas of the Bill that have not been of concern or challenged because, the way that it is, there is a certain area on the Bill that we have had discussions over which has had a theme in there, and that is the area that we are going to be looking at.

Q28. Mr Perkins: In summary then, you reckon that the £15,883 was worthwhile?

The Minister: Yes, because what you had was a situation where there was no capacity in the Attorney General's Chambers to do the legislation. We were requested to see if we could get somebody, so we needed to go forward.

Mr Perkins: Thank you.

Q29. Ms Edge: With regard to the amount of budget that is being spent currently, is that purely for the UK legislative drafters or does that include all of your Department members' time as well, or is that purely the bill to them?

Also, who has been the main link from the Department for the UK legislative drafter?

The Minister: The drafting cost has been through the UK drafter; and Andrew Shipley, our Legal and Admin, has been the link with our drafter.

Q30. The Assistant Clerk: Can I ask what that relationship looks like between Mr Shipley and the English drafter? Is he reviewing the English drafter's work perhaps for errors that might arise through that lack of knowledge of the local landscape?

The Minister: Corporate Services – which is headed by Yvette Mellor – and Andrew Shipley, who works in Corporate Services, put together the initial drafting instructions. There was a large folder created of drafting instructions. That was then presented to the UK drafter and there has

285 been ongoing dialogue, sometimes on a daily basis, between primarily Andrew Shipley, who is
our Legal and Admin officer, and the drafter in the UK, sometimes involving Yvette Mellor.

Q31. The Clerk: So, to be clear, the description that you have just given does not include
anyone from the Attorney General's Chambers at all?

290 **The Minister:** Yes, there is dialogue with the Attorney General's Chambers.

Prof. Barr: Yes, there is.

295 **The Clerk:** Thank you.

The Minister: And the other thing is it also goes – the policies – through myself and the
political Members, so we review when the drafts come in and we reviewed it on a number of
occasions and made alterations.

300 **Prof. Barr:** Yes, and Andrew Shipley was in regular dialogue with the AG's Chambers with
regard to the legislation, so there was a kind of dialogue that took place between the AG's
Chambers, Andrew Shipley and the UK drafter.

305 **Q32. The Chairman:** In the present draft, or the latest draft that we have in front of us, there
are a number of errors. It does refer to how things would be conducted in the UK. Those have
been picked up already?

The Minister: We do not know what you have picked up, so if you let us know then we can –

310 **The Chairman:** In relation to appeals and things.

The Assistant Clerk: Clause 9(4) makes reference to 'judicial review', for example.

315 **Q33. The Clerk:** Has this draft actually been read in full by a drafter from the Isle of Man
Chambers?

The Minister: I am not sure. I could not comment on that, no. I know they have looked at it,
but I do not know how much in depth.

320 **Mr Hooper:** But if the Committee has identified things they think are issues, it would be really
helpful if you could share those with the Department just to make sure that we have covered
everything off.

325 **The Chairman:** Absolutely, but we would hope that they would have been picked up in terms
of your dialogue with the Attorney General's Chambers.

Q34. Ms Edge: Do you know what the terminology 'judicial review' is relating to and what it
will mean? Obviously it has been before the Department and the Department Members. Do you
understand what 'judicial review' is getting and planned for?

330 **Mr Hooper:** You are talking about the dispute resolution principles.

Q35. Ms Edge: It is under clause 9(4), about judicial review.

335 **Mr Hooper:** Yes, so dispute resolution principles are ... Obviously they go into a lot more
detail as you go throughout the Bill with the specific dispute resolution processes, but the
intention of that is to set out that any dispute in relation to education matters that are covered
by the Bill would go through a three-stage process, which would be an internal review, a
mediation – so, a second-stage review – and then a third-stage review, which may be a tribunal
340 or a court or an independent arbitrator, or whatever it is at that third level. Again, the specifics
are detailed as you go throughout the Bill with various different processes that exist.

Q36. Ms Edge: So, is that UK terminology that is being used; and is that going to be UK
process that you are going to follow for that?

345 **Mr Hooper:** From my perspective, I am not a lawyer but I am not aware that 'judicial review'
is particularly UK terminology.

The Clerk: Well, it is. It is an English law term. There is a Manx equivalent, which is normally
350 referred to as 'petition of doleance'. It is easily fixed but it was just a detail, really.

Q37. The Chairman: Yes, we do not want to get completely hung up, as long as there is a
dialogue going on with the Attorney General's Chambers so you get it right.

We will go on to the principles now, I think. What is the source of the fundamental principles
355 of education contained in clause 6 of the draft Bill?

The Minister: What we have there are the principles of the Education Bill and what we are
looking at is ... This is an area where we are looking to make some of the changes in regard to
equality of opportunity and on ... We have changed over on additional educational needs, so
360 these are going to be the principles that we are going to go forward on, on the education.

Q38. The Chairman: What strategic goals is the Bill intended to achieve?

The Minister: I think it is updating a lot of the legislation that was in there. There were a
365 number of issues that had been raised regarding the previous legislation and what we are trying
to do is make it a bit more modern in the way that it is actually looking.

Part of the areas that we are looking at is, like I said earlier, a change from special needs to
additional educational needs ... as we were discussing earlier about say the home educators,
about giving them the ability to utilise schools as part of home education, but also –
370

Prof. Barr: Obviously we have got the Equality Act that has now come in. There have been
changes in employment legislation since the Act was originally passed and indeed with regard to
safeguarding and various other issues, Chair, that all need to be now incorporated in terms of
primary legislation with regard to education. So, part of the strategic aim of the Bill is to ensure
375 that those other changes in other pieces of important legislation are now reflected in the
education policy for the Island.

The Minister: And we have also had to look at summer-born children because those age
limits will then change. We have also had a look at post-16 and there are areas that are a bit of a
380 concern where, post-16, people could drop out of the care between us and say Health and Social
Care. And so there are those areas that we were looking at as well.

Q39. Mr Perkins: Do you feel the Bill pulls the authority back into the Department by stifling
some of the head teachers?

385 **The Minister:** No. I know it is one of the comments that –

Mr Perkins: It keeps coming back in all my emails.

390 **The Minister:** Yes, and part of the thing is that what we are trying to do is make it clear where the lines are.

Q40. Mr Perkins: Therefore, for example, if a head teacher wants to allow his teaching staff to go down a particular route in the curriculum you would be quite happy with that?

395 **The Minister:** Well, that is why we are going to do the Curriculum Orders.

Q41. Ms Edge: You mentioned the Equality Act and the Safeguarding Act. Prior to going out with the draft Bill, did nobody cross check all of the other legislation? Because it is not new. You were aware of this legislation coming through. Did anybody cross check to ensure that this Act in front of us has made sure it has covered all the references in there so there are no errors with regard to the Equality Act, human rights, anything like that? Has anybody done that cross check?

400 **The Minister:** Well, as we said earlier, the drafter had expertise in the Equality Act and so you have got somebody with expertise in that area, and legislation when it does come forward, as you will know, has to be human rights compliant.

Prof. Barr: We have certainly had engagement with the lead officer for the new Equality Act and she has had the opportunity to look at the legislation and comment upon it. Obviously, again, Andrew Shipley has been in dialogue with others in relation to important issues like safeguarding to make sure that these things are fully aligned. But obviously we are still picking up things. We need to tweak it or change it based upon where we are, but we are very mindful that the legislation has to sit in that space and has to reflect where we currently are, which is one of the reasons why we are changing the legislation.

410 **The Minister:** And the other area is that through the consultation and any changes that are going to be made we will have to ensure that they are compliant as well.

Q42. Ms Edge: Just to follow on what Mr Perkins commented on with regard to head teachers and whether you are taking responsibility and autonomy away from head teachers, under section 32, under 'Behaviour', it states that only the Department may exclude a pupil, so clearly that is –

Mr Hooper: That is exactly the situation as it is currently. That is no change.

415 **Q43. Ms Edge:** Is that what has been happening in practice – the Department has excluded every child from every school?

The Minister: No, what we are saying there is that for those children you cannot have a position where they are just excluded and no thought is given about where they are going to go. Surely you would agree that we have got to ensure that these children have an education and we cannot just exclude them from school without having thought about where they are going to go.

430 **The Chairman:** I think we will be coming on to that part in more detail.

435 **Q44. Mr Perkins:** One of the things that worries me about the autonomy going back to the Department is, for example, in Laxey they have got a really good plastic policy and the children have really embraced this – and in fact they are coming to Tynwald to have a day session with

440 politicians and it has really got the imagination. Would that sort of thing be vetoed by the Department? I know you are shaking your head now, but with all this power coming back to the Department –

445 **Mr Hooper:** If I may, Minister, from my perspective, if you want to talk about detail in the Bill, if you could point to the section of the Bill that gives this supposed power, that would be really useful, because otherwise you are talking in very general, vague terms, which it is very difficult to comment on as a Department, I think. The view of the Department, as the Minister has already expressed, is that the Bill does not do the things that you are asserting it does; and so, if there are specific sections of the Bill that you think actually do go contrary to that view, it would be really useful to be able to discuss them and to try and help the Committee understand better perhaps and to assuage some of your concerns.

Mr Perkins: Okay.

455 **The Chairman:** Any comment on that?

Q45. The Assistant Clerk: I do not know the clause number, but I think in this context we were talking about the authority of the Department over the head teachers, the inclusion of a legal provision allowing the Department to dismiss a head teacher who appears unwilling or unable to perform their functions in accordance with the draft Bill, which is something that maybe would normally be covered in a contract of employment in those terms, and I think –

Mr Hooper: If I can help, actually –

465 **The Assistant Clerk:** – evidence we have received is people are concerned as to why that needs to be a legal provision, because they feel like it might be conditioning them to fail.

470 **Mr Hooper:** I will give you an example of where that has come from. Currently built into the articles of association of all the schools is the suspension and dismissal of head teachers provisions: ‘The Department may of its own motion suspend a head teacher from duty for misconduct or other adequate or urgent cause pending consideration by the government body.’ That power, in essence, already exists within the articles of the schools, so putting it in law does not change the landscape in any way; it just places it on a slightly different footing.

475 **Q46. The Clerk:** What is the ‘articles of the schools’? What was the status of that, that you have just read out from?

480 **Mr Hooper:** They are the articles under which a school is constituted and under which it must be governed. They set out the roles of the governors, how you appoint governors, head teachers’ responsibilities, departmental responsibilities. And then there are also the instruments as well. If you have a look on the Department website, these are all freely available and downloadable.

Q47. The Chairman: Are they regulations or something that is placed before Tynwald?

485 **Mr Hooper:** From memory, the Department issues model articles which are applied across the board, and I may be wrong here but I think they are laid before Tynwald.

490 **The Minister:** I think you are referring to clause 22, (**The Assistant Clerk:** Yes.) and that is one of the areas where we had discussions with the head teachers and also with the unions, and that is one of the clauses we have agreed we are going to start redrafting the title, the ‘Failures’.

Q48. The Clerk: Well, the guts of it is that the Department has to authorise the articles of government of the school and the Department can enforce those articles of government – I think that is what it proposes, is that right? – and ultimately a head teacher must comply with a direction and the Department can dismiss a head teacher or a governor for not complying.
495 Would you like to explain why that is useful? Have there been any instances where you have wished to have this power and found you were not able to act because the power was not there?

The Minister: I think during our discussions what we have said is that it is all covered by employment law and, through the drafting of this, that we needed to equal it out with the employment law side of it.
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Q49. The Clerk: Do you mean that the scales were balanced in favour of the head teacher and against the Department?
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The Minister: No. One of the areas that was raised was a possibility where you are going through a process if a head teacher has implemented something in a school that the Department is not happy with, how would you manage that – apart from if you went through the disciplinary process?
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Q50. The Clerk: What would be an example?

The Minister: If they were to start teaching something that the Department was not happy with, you would have to go through a disciplinary process, but at the end of that process it would only be how they behaved. The change of the policy they were bringing in would still be in place during that time. So if, for instance, it was say part of the religious side of their curriculum, they could continue to teach that because you are going through a disciplinary process; that would not stop what the Department had felt was incorrect.
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Q51. Ms Edge: Has the Department had experience where they have felt they have had to do that in the past with regard to a head teacher?
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The Minister: It is a provision, just in case.

Q52. Ms Edge: You have school advisers who go around your schools. Are you saying that head teachers do not discuss what they are implementing in their schools and what they are doing for the best for their pupils with the advisers and it does not get fed back to the Department, and you feel you are going to have to do disciplinary if they do not?
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The Minister: I am not saying that. This is just a provision.
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Q53. Ms Edge: Because it sounds like it is something that is in there but you have not actually had any reason to put it in there. You have here advisers going around, the schools get externally checked, so it just seems ...
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Mr Hooper: But again, coming back to what I said originally, the powers already exist in the articles of school, so this is not something the Department is ... all of a sudden we need a new operational plan. It exists, so it is just a case of moving it around. And that is – I think Ronald said this earlier – because of the way some of the Bill has been drafted. There is a lot of language in there perhaps that we are not used to seeing and there are lots of things in there that you look at and think, on the face of it, 'Why is that there?' But when you look at it in the context of both
540

the earlier consultations or the way that education is structured on the Island, a lot of it is not new; it is just putting things in slightly different places.

545 **Prof. Barr:** Yes, and some of the language in that section in particular has been overly loose and we recognised very early on that it would have to be altered and changed. But, as Mr Hooper has said, the Department has not had any additional powers through this. It is simply appearing in the primary legislation, where before it was actually in the articles and instruments.

550 **Q54. Mr Perkins:** So, at the moment, the articles of government for each school – how are they arrived at that. Has it just evolved? In clause 19 it obliges the Department to make articles of government for each school. Is that a change?

Prof. Barr: No, not a change.

555 **Mr Hooper:** No, it is in the current as standard.

Q55. Mr Perkins: Is the Department going to make articles for independent schools?

560 **The Minister:** No.

Prof. Barr: Not at all. Independent schools – do you mean like King William's College?

Mr Perkins: Well, I would imagine so, yes.

565 **Prof. Barr:** No, because they sit outside the Department.

Q56. The Assistant Clerk: It is just that this is something that has arisen when the Committee has met. Clause 19 obliges the Department to make articles of governance for each school – the term 'school'. Would 'school' not capture an independent school?

Prof. Barr: If you look at the definitions you will find that there is no defined –

575 **Q57. The Clerk:** I think we have looked at the definitions and the division of the draft Bill which includes this provision is under the heading of 'Maintained schools'. Most of the time where the word 'school' appears in that division it is preceded by the word 'maintained', which is your state schools, but in this particular clause the word 'maintained' appears to be missing. I think it just needs to be put in, if that is your intention.

580 **Mr Hooper:** If I may read from the current Education Bill: 'The Department shall make an instrument for each secondary school.' It does not specify maintained secondary school. The existing Act has exactly the same provision, and so if it needs to be tightened up in the revised draft ...

585 That is a conversation that I have already had personally with a couple of private sector providers as well, concerning where do they fit, where will they fit, and I think tightening up some of the language is definitely on the cards. But just for clarity, that provision is already in the existing Education Bill – at section 5, if that helps.

Q58. Ms Edge: Can I ask when the last time the articles of association and governance of the schools were updated, and are they individual for each school or are they across the board?

The Minister: I do not have that information.

Ms Edge: Obviously there is quite a bit of transformation with regard to school governors –

The Minister: Sorry, Castle Rushen is October 2016.

Q59. Ms Edge: Is that because there was a change in head teacher and was it just for Castle Rushen, or are all secondary schools under the same articles of association and governance?

The Minister: Sorry, I have not got that.

Q60. Ms Edge: Okay, could you provide that to the Committee?

The Minister: We can have a look at it, yes.

Q61. The Chairman: Thank you. We will try and keep going through in numerical order, if we can. It is clear that we are going to bounce backwards and forwards.

The next bit is about age: clauses 4 and 10. Why is the definition of secondary education in the Bill limited to education for 11- to 16-year-olds?

Mr Hooper: If you want, Minister – I have explained this at pretty much every single meeting that I have sat in, in respect of this Bill.

The current Education Act defines secondary education as 11 to 19 except for any education that is provided under sections 31 and 32 of the current Bill. Sections 31 and 32 deal with higher education and what they call continuing education. Continuing education is education for persons over compulsory school age. So the current definition of secondary education excludes post-16 education.

As far as I can tell, the reason it has been structured in the way it has is to account for children or young people with special or additional educational needs. That is why the age of 19 is in there. So, if you are still in compulsory education up to the age of 19, that is still classed as secondary education. Post-16 education provided for people who are above compulsory school age is classed in the existing Act as continuing education, which is specifically excluded from the definition of secondary education.

So, all that has changed in the new draft is the layout, essentially, and the age has gone up from 19 to 21. So the only real difference is it is laid out differently. The old Act covers primary, secondary and continuing education. The new draft covers primary, secondary and further education, but in essence it is the same process; there is no difference.

The Minister: And this is from the responses that we have ... You have probably had the same letter that we had from the teaching unions and these are points that we have covered ...

Q62. Ms Edge: You gave quite a good explanation there. You are going to be stating that a secondary educated person can only go up to 16 – so once I reach 16, if I am in a secondary school are you going to make me move to say the UCM?

The Minister: No, because that further education is covered later on in the Bill. Post 16 is covered later.

Q63. Ms Edge: So, further education can be carried out at any school on the Island?

The Minister: Yes, any secondary school.

645 **Mr Hooper:** The way it is worded in the current Act is that the Department may make arrangements with schools and colleges, and that language has been copied, essentially, to the new Bill, so nothing will change from a legal perspective.

650 **Q64. The Clerk:** Well, a 'secondary school' in clause 10 of the draft Bill means 'an institution providing education mostly for children between the ages of 11 and 16'. What does the word 'mostly' mean?

655 **The Minister:** That accounts for if you have got summer-born children who have entered into education. It would give them the ability, rather than cut it off at 16 ... If they started primary school a year later because they were summer born, it means that it will include them rather than saying 16 is the cut off.

Q65. Ms Edge: So why does it need 16 in there at all?

660 **Mr Hooper:** That is compulsory school age.

Q66. Ms Edge: Has that been looked at with regard to this Bill? Bearing in mind we are bringing a brand new Bill forward, has anybody thought to look at why we have to have that age in there? It should be lifelong learning for everybody.

665 **Mr Hooper:** That is proposing that we change the definition of compulsory school age to be away from –

Q67. Ms Edge: I am just asking was it considered.

670 **The Minister:** One of the issues is if you change it then you are making it compulsory to what age – what age would you consider it be compulsory?

Q68. Ms Edge: Do you need to use the word 'compulsory'? I am just asking.

675 **The Minister:** Well, if you do not use 'compulsory', what terminology would you mean when children attend school? That they can?

680 **Q69. Mr Perkins:** If you have a 15-year-old lad who really does not want to be in school and is not interested, is this flexible enough to allow him to go out into industry to get some sort of pre-apprentice training or work experience or something, rather than keeping him in school, disrupting everybody?

685 **The Minister:** It covers that because what it means is that we are not forcing people into IGCSEs. We have got BTECs, other vocational qualifications, and there is also the opportunity to go to UCM to carry on some vocational qualification there.

Q70. Mr Perkins: So you are not actually doing a cut off at 16? A 15-year-old, you could actually –?

690 **The Minister:** If that suited.

Mr Perkins: Yes, okay, thank you.

The Minister: Because there are cases already, aren't there?

695 **Prof. Barr:** Yes.

Q71. The Chairman: Okay, moving on: appeals, clauses 9 and 121. We have already referred to the bit about judicial review, so you are going to clarify that.

700 Could you outline the role and jurisdiction of the proposed Education Tribunal? Would it have inherent jurisdiction over all matters education?

The Clerk: It is in clause 121.

705 **Prof. Barr:** Clause 121 and not –?

Q72. The Clerk: Well, that is where the Education Tribunal is mentioned, is established, but it is mentioned here and there throughout the Bill. But there are some potential areas of dispute where the Education Tribunal is not mentioned explicitly, so really the question is: what is the Education Tribunal for? Is it limited to the places where it is mentioned explicitly, or can it be involved in all disputes under the legislation?

Prof. Barr: Do you have a specific example?

715 **The Clerk:** Well, yes. May I give an example?

The Chairman: Yes, please do.

Q73. The Clerk: A school attendance order. In clause 73(3), if there has been a school attendance order:

A parent [of the child] may apply to the Department for the revocation [of the school attendance order] on the grounds that arrangements have been made for the child to receive suitable education otherwise than at school.

720 And then, in subsection (4):

The Department must revoke the school attendance order [on an application under subsection (3)] unless not satisfied that the arrangements are satisfactory.

So this contemplates a dispute between the Department and a home educator. The child is not at school, you do a school attendance order, the parent says no the child should not be forced to go to school because they are getting a suitable education at home, and then it is up to the Department to make an assessment as to whether the arrangements are satisfactory.

725 This seems to me the sort of area where a dispute could arise, so the question is: could that dispute be referred to the Education Tribunal?

730 **Mr Hooper:** My understanding is that, in respect of school attendance orders, overturning rests with the court.

Q74. The Clerk: Despite what you have written in clause 9 of the proposed Bill, which we spoke about a minute ago?

735 **Mr Hooper:** The third level of the appeal would be a judicial review, which obviously in pure Manx terms would be a petition of doleance, but I think the intention with clause 9, as I have already stated, was to have that three-stage process where the third stage would be a completely independent, outside the Department, review by a judicial body, which may be a tribunal or may be a court. In this instance it would be a court, as the reference here in (8)(e)

refers to: a court confirming the Department's decision or overturning it and granting applications for revocation of the school attendance orders.

Q75. The Clerk: Okay, so in clause 9, where it says 'finally (subject to judicial review ...), by referral to an independent tribunal', you are saying the Education Tribunal is not an independent tribunal?

Mr Hooper: No, that is not what I am saying.

Q76. The Clerk: Are you saying it goes to a court of summary jurisdiction in clause 73(8)(d)?

Mr Hooper: That is the reference. As the Minister said, we are in an engagement and consultation process. If the Committee has views on that and feel that maybe it should go to the Tribunal instead, the Department, I suggest, is open to all suggestions at this point.

Q77. The Clerk: This is another one on which it might be useful to involve the drafting team in the Attorney General's Chambers. I am not sure that 'a court of summary jurisdiction' is a particularly useful term in the Isle of Man.

The Minister: That is a discussion that we can have with the AG's Chambers.

Q78. Ms Edge: What is your envisaged constitution of your Tribunal?

The Minister: It consists of a chair and two other members appointed in accordance with the Tribunals Act.

Ms Edge: Under the Tribunals Act, thank you.

Q79. The Chairman: Okay. Contracted schools, clause 13. The draft Bill refers to contracted schools. What contracted schools does the Department foresee might be established?

The Minister: We already have one, which is the Bunscoill, the Manx language school. That is a contracted school.

Prof. Barr: And that is something, again, which we have had discussions with unions and associations on because there were some concerns that this might be a way of the Department trying to acquire some powers to create academy chains on the Island, because of course they are contracted schools. We have made it very clear that that is not the intention in this. It was really to reference the Bunscoill at St John's. That is why that reference is there.

Q80. The Chairman: Okay, it might not be the intention of yourself as Chief Executive, or of the present Minister, but this facility could facilitate that?

Prof. Barr: It could, and indeed we have had some very interesting discussions in our last meeting with the teaching unions around this, so again that is something that we need to go away and reflect on because we need to find a mechanism that allows us, obviously, to continue potentially to have that capacity for the Manx language school, but it is not the intention of the Department to set up academy chains.

The Minister: And one of the things is, as we have seen through England, it does not always mean that they have been successful.

790 **Mr Hooper:** The Bill also covers if the Department in the future were to decide to set up a new school of any type ... Schedule 2 actually covers the whole process, whereby there is a public consultation and engagement and everything else, so there is a very detailed legal process if the Department in the future would decide to set up a contracted school of any nature.

795 **The Minister:** These are the discussions that we had with the unions.

The Chairman: Right, okay.

800 **Q81. Ms Edge:** Does the Department have the same powers over curriculum in a contracted school as it does in a maintained school?

Prof. Barr: Well, that would be set out in the contract.

805 **Q82. Ms Edge:** So it could be different, depending on the contract?

Prof. Barr: It depends on the contract, obviously. The Bunscoil, for example, if we stick with that, which is our only contracted school – that contract is actually up for renewal and it will have to go through the normal process. My expectation would be that there is unlikely to be another provider that can provide that provision, so it is then a question of looking at the contract and then revising it in terms of other elements that we would like to include in it or things that we would like to remove from it. That process is about to get underway.

Q83. Ms Edge: And how does a contracted school get its funding?

815 **Prof. Barr:** The funding is provided by the Department under the contract.

Q84. Ms Edge: In the same mechanism as our maintained schools?

820 **Prof. Barr:** No, not necessarily, because again it would depend on the contract in terms of what the provision is that you have contracted out and you have agreed to pay for.

Q85. The Chairman: We will move on to clauses 19 to 27, which cover, amongst other things, government. What is the role of school governors?

825 **The Minister:** What, now or in the future?

The Chairman: Well, we are talking about the proposed Bill.

830 **The Minister:** They will be there to help lead the school. It will be to have that discussion and dialogue with the Department. What we are proposing now with the new Bill is that there is more emphasis on the Department and for the Minister to go to the governors and explain what we are looking to do in that forthcoming year.

835 **Prof. Barr:** Governors have a key role in terms of support and challenge, so they are there to support the school but they are also there to challenge the school, or indeed the College, in terms of management decisions that are made within the school or College. So they have a twin role.

840 **Q86. The Chairman:** But you do not think that this proposed change could be perceived to restrict the challenge? I agree with you that challenge is an important feature, but because of the closer link with the Department you do not think that is going to be the case?

The Minister: No, I do not think it is, because when you look at the people who will be put on it, it is actually a minority that the Department will actually be appointing.

845 **Q87. The Assistant Clerk:** Do you envisage any change in the role of governors? When the original question was put to you, you said ‘the role of governors now or the role of governors in future?’

The Minister: Well, as in the Education Council, because they form part of the governing
850 body of the school.

Q88. Mr Perkins: And what about pupils becoming governors?

The Minister: That is a discussion that we had with the unions, that there is a concern that
855 maybe having a pupil voice on there, if it became a disciplinary matter ... and that is what we are going to cover off in the articles about their age and about what the roles will be.

Q89. Mr Perkins: I think we would be interested in all that sort of stuff.

860 **Prof. Barr:** I think we actually are very interested in this, and actually when I was Principal of the College at Homefield Road I brought in a student governor. I think having a student voice is really important, but there are certain issues that, as the Minister alluded to, with regard to promotions of staff, disciplining staff, pay increments, all kinds of things ... And then, of course, there are also disciplinary issues with regard to young people. So, it is how you would manage
865 that.

We actually have asked unions and associations to go back and think in terms of what might be best practice in some of the other jurisdictions, but certainly something that I think we would like to see is young people represented on governing bodies. Whether you set a tariff that they have got to be over 16 or whether you have a part one and part two to the meeting, there are
870 various mechanisms that you could utilise in that space.

Q90. Ms Edge: You have just mentioned that you are looking at other jurisdictions. Bearing in mind that this Bill has been drafted in the UK, it is quite significant the difference, the role of a school governor in a UK school and what you are proposing in a Manx school. There appears to
875 be more autonomy in the UK system.

The Minister: It is a UK drafter and what we have done is the Department has led in what we are looking for, so he has drafted to what we were asking.

880 **Q91. Ms Edge:** So why do we think it is appropriate to have a different mechanism for the governance of our schools from a school governor’s point of view on the Island in comparison to other jurisdictions?

The Minister: I think it fits better to what we are doing rather than through –
885

Q92. Ms Edge: What the Department is doing, or what we want, the best for our schools and our people on the Island?

The Minister: The whole thing about the Education Bill is actually for what is best for the
890 children in our education system, and that is what we are looking at. What we have seen is that people come over and have a look at our education system and are very complimentary about it, so we do not want to come across and say just because they do that in England ...

League tables are a fine example. Ofsted have now criticised the use of league tables, saying that it has not actually driven good results, it has narrowed the curriculum. When you talk to teachers in the school, because we are not narrowed on that curriculum it is actually a better education and the stress that we have had ... And we have discussed this with the unions. The stress that this has put on them to have a very narrow curriculum, just because of league tables ... They do not agree with it and now Ofsted have actually agreed this.

Prof. Barr: And just going back to governance, which is where you started, I think there are obviously different governance models and you have to remember that roughly half of all high schools in England are in academy chains, so they are autonomous of Government and indeed of local authorities in that space. So the role of governors in that scenario is quite different.

In many senses there is a kind of a menu of choices in terms of governance models. Scotland has always had its own independent education system. Wales, in a sense, does its own thing, as do Jersey and Guernsey, so it is where the Island's governance model wants to sit in that – but there is not one size fits all.

Q93. The Chairman: Can I just go back to what the Minister said a moment ago – and I have heard this – that people in education come to the Island and praise what is going on, but they are praising what is going on under the existing legislation, aren't they? So, if it is good under the existing legislation you need to have a good reason to do something differently.

The Minister: But this is in the curriculum and the Curriculum Orders will be in discussions with the education professionals. That is what we have said as part of this we are going to ensure, and it does with consultation.

Q94. Ms Edge: So why do you feel there is a need to get rid of the Education Council, which has not really been there that long in comparison to the previous system of school governors? Why do you feel there is a need to change that?

Prof. Barr: My personal view would be that the Education Council is not independent. The members are appointed by the Department and the Education Council meeting itself is chaired by the Minister. One could argue that that is not really an independent organisation. This is not a reflection of the people who serve on the Education Council, who actually do an exceptionally good job and are very good people, but from my perspective I would just say it is not really an independent challenge to the Department.

Q95. Ms Edge: And that is what you hope to achieve from the new ...?

Prof. Barr: I think it is a step in the right direction. One could have taken it even in a further direction if one had wanted to, but this is where we have landed. There were other elements of that where you could have reviewed it and looked at it and said set up an independent ombudsman and do something completely different. At the end of the day what we are looking at is something which would be a bit more independent than where we currently are with the current Education Council.

Q96. Ms Edge: And do you think you will be able to get enough people? It is quite a high amount that you would require, isn't it?

The Minister: Well, it is up to a certain number, but one of the things is that we have tried to put some flexibility in it and one of the issues previously was you could get someone as a governor on a school for 18 years. You need a different bit of challenge in there, so what we have done is we have restricted the number of years, but if there is a difficulty recruiting there is

945 a clause in where we can actually give an extension so that at least you can have governors on the schools.

Prof. Barr: And there is an intended mechanism that would allow the chairs of governing bodies to meet with the Minister a couple of times a year, and of course the chairs do not necessarily have to be members of the current Education Council, so in many ways you would get, hopefully, a more independent cross-section of people who would then be meeting the Minister and indeed in some cases would not have been appointed by the Department or the Minister, so therefore should be more independent in their challenge. That is the hope.

955 **The Minister:** And of course there is a clause in there that actually the Minister cannot appoint a Tynwald Member to it, so that we are getting away from the situation where I can go and say, 'Mr Cretney, would you like to go on the governors?' It is clearing that away from it. We are keeping that independence out there so the Minister cannot stack the deck.

960 **Q97. The Chairman:** I have been around for a long time, so I remember the old Board of Education stuff. Things – (**Ms Edge:** Come back.) yes – go around about, don't they? Also I was the chairman of the management committee of a youth club for 18 years and in the end it was determined that the young people would be the right people to manage it, but sadly that did not last for all that long. Anyway, let's move on because we have got quite a bit still to look at.

965 Curricular and common learning entitlement, clause 21: where the draft Bill obliges the Department to prescribe a curriculum for maintained schools, why is specific reference made only to religious education, education in Manx culture, physical education and education about sex and relationships, health and lifestyle and economic and other well-being? Clause 29, sorry.

970 **The Minister:** There are areas on that that you want to protect in there – like the Manx that you want to protect, so you put that in there. As we have discussed with the unions, we cannot see a day where we are not going to be teaching English, maths or science, so these are the ones ... The ones that we know we are going to cover are outwith this because this is just protecting some of the ones that we need to make sure that, if in the future somebody decides that we do not want to teach Manx anymore, it is actually in the Bill that we do have to do Manx.

Q98. Ms Edge: Outside of that, do the head teachers have complete freedom around the curriculum?

980 **The Minister:** No.

Q99. Ms Edge: So you are restricting the freedom of the head teachers within their own schools as to what ...?

985 **The Minister:** No, we are not.

Mr Hooper: The current Act has a Curriculum Order that sits underneath it that specifies what is mandatory in every school. It is exactly the same proposal; there is no change.

990 **Q100. The Clerk:** So the Department, under the existing framework, has wide discretion to prescribe the curriculum, but under the existing Act there are these four headings which it must include. I think that is right, that –

995 **Mr Hooper:** No, the existing legislation does have a number of sections that must be included: religious education, the teaching of Manx Gaelic and the culture and history of the

Island; an assessment of progress made by pupils; preparation for public examinations; and physical education. They are the ones that are mandatory, that must be included in the Curriculum Order. The Curriculum Order is a statutory document that is laid before Tynwald and it is much larger and has a much longer list of things that must be included in the school curriculum.

Q101. The Clerk: Well, indeed. The point about putting things in the primary legislation as opposed to the Order under the Act is that the things in the primary legislation you cannot get away from without another Act, and so this is your opportunity to review this and see whether it is still ... This is about future proofing and making sure that your successors keep doing the things which you regard today as being of permanent importance, and in that context don't you think there is a symbolic value in putting things in here which you have just said yourself you cannot envisage a day that you would not want to do?

It is a bit weird to a layperson coming along to this and seeing that these are the four things which are listed in the Act, because even though it may not be the case technically it comes across as these are the four most important things.

Mr Hooper: No, I think –

Q102. Ms Edge: Why wouldn't you list what is in the Curriculum Order? Why wouldn't you list maths, English, sciences and arts?

Mr Hooper: I suppose there is nothing that would prevent you from doing so, but the logic behind having everything in a Curriculum Order is so that it can be flexible, so that if things do need to change you can change them.

The only reason, from my perspective, you would enshrine something in primary law is to say actually we want to make sure that politicians in the future cannot mess with this, whereas things like maths, science and English are not going to change, they will always be taught, so there is no need to enshrine them in the primary law.

I do not see there being a downside in doing it, but I cannot see a need for it, whereas on things like sex and relationship education, religious education and Manx language a future Government might decide, 'These are not important to us, and so we do not need to teach them.' They could then easily change it with a Tynwald Order. I think it would be a particularly bold politician who decides to remove maths, English or science from the curriculum.

The Minister: I see your point, but one of the areas where it was trying to protect it rather than exclude it ... so that is the area we were trying to protect, rather than excluding things from it.

Q103. The Clerk: Your existing Order starts by saying that the school must provide a broad and balanced curriculum: isn't that, as a brief statement, the sort of thing which might belong in the primary legislation?

Mr Hooper: We have already had that conversation, actually, about possibly including the phrase 'a balanced curriculum', actually enshrining that concept in the primary law, and that is for exactly the reasons you have outlined – that you want to make sure that whatever education system is being provided, it does include a broad range of different educational activities.

Prof. Barr: Certainly with regard to things like music and the arts and some of those areas we have no intention of losing them, so we have had a dialogue and I think there may well be some further amendments to that phraseology in that section.

1050 It is almost like exception reporting. As Mr Hooper said, the view taken was that nobody was going to remove maths and English from the curriculum, but there is always an outside chance that somebody might want to, in the future, do something different with regard to Manx language or culture or some of the expressed statements. It was not meant to skew the Bill in the way which you said, so certainly something that changes the language or the intent of that ... The broad intent is to make sure we have a broad and balanced curriculum that includes those things.

1055 **Q104. The Clerk:** Thank you. I think the point about locking things in primary legislation is to protect things against future policy decisions, but there are also future resource decisions, and if you have got constraints on resources, then all Departments will say, 'We must, above all, fulfil the primary legislation.'

1060 **The Minister:** And the notes that we have made at these meetings generally go down the balanced curriculum. One of the areas that we have agreed to do is, when we do the explanatory memorandum about the Bill, to put the positives about what we are hoping for as the core areas that we are looking at and a bit more positive stuff about what the education is. 1065 This is just a legal document to go with it. We want to set out a clear ... how we engage and what we are looking for – it is about employability, about our students – so we have got another piece of work to do on that as well.

1070 **Q105. Ms Edge:** But funding could become a question, as has just been highlighted, and if it is in the primary legislation that this is actually what you have to do and nothing else ... Do you fund these separately from the rest of the curriculum at the present time? (**Mr Hooper:** Sorry?) Manx separately from the rest of the curriculum?

1075 **Mr Hooper:** The Curriculum Order is still law. It is still a document laid before Tynwald.

Q106. The Clerk: It is, but the Treasury can say to Departments –

Ms Edge: Choices could be taken.

1080 **The Clerk:** – 'You may wish to provide a broad and balanced curriculum, but you could change that by Order and we have only got enough money to provide the things that are in the primary legislation.'

1085 **Mr Hooper:** But the backstop there is that Tynwald would see that, and if Tynwald decides that that is the right thing to do for the education system on the Isle of Man, then it is Tynwald's prerogative to decide that. If Tynwald decides, 'No, you are stripping science out of the curriculum and we think that is quite a daft thing to do,' Tynwald will act.

1090 **Q107. The Clerk:** When was the last time ...? Well, yes, it is true that constitutionally there is a safeguard there in the sense that the Curriculum Orders do lay before Tynwald, but I think the purpose of this discussion is to ask the question: is a laid before procedure sufficient safeguard, or shouldn't this be in the primary legislation, where not only the Department can see it but the Treasury can see it and cannot easily work around it?

1095 **The Minister:** It is not an issue whether we put it in or not. When we have had these discussions ourselves we are very clear that we cannot see a position where the Department would stop teaching English, maths and science. Quite frankly, if it goes in ... It can go in. It is not going to make much of an issue for us.

1100 **Q108. Ms Edge:** For example, with some of the budget cuts that have happened in the UK
and schools have decided to close on a Friday afternoon, that might be the maths afternoon in a
secondary school. That is happening in the UK currently because of budgets. So, if you have not
got something in the legislation, the autonomy with something ... I know, obviously, they would
1105 have to go through discussions to close the school, but it is happening. What if that was your
maths slot, your English slot, your science slot, your art slot?

The Minister: Well then, that would be a timetabling adjustment. You would timetable it
differently.

1110 **Q109. Ms Edge:** But if it is not in the legislation, there would be actually nothing to currently
stop that happening.

The Minister: What I have said is –

1115 **Ms Edge:** It needs looking at.

The Minister: There is not an issue with us because we cannot see it not being in there, so if
we put it in I do not really have an issue with it.

1120 **Ms Edge:** I hope we do not get to that position in the Isle of Man and we are always going to
have enough funding for our education system.

Q110. Mr Perkins: That brings us neatly on to clause 24, which provides the power for the
Department to make regulations providing for the making of charges for specific services,
1125 including classes and teaching that form part of the regular curriculum. Why was that in the Bill?

Prof. Barr: That refers primarily to something that we already do, because of course we
charge for music, so that is why that is there.

1130 **Mr Hooper:** For clarity, the wording is identical to the current. It is exactly worded. That is the
situation we have today.

Q111. Ms Edge: That is the peripatetic music service, which is currently funded by the
Department but students have to pay to utilise instruments?
1135

The Minister: Yes.

Q112. The Assistant Clerk: May I ask: is that considered curricular or extracurricular?

1140 **Prof. Barr:** Music is part of the curriculum, part of a broad and balanced curriculum.

Q113. Mr Perkins: And who would make this decision: the head teacher or the Department?

Mr Hooper: It must be specified in regulations, so the Department.
1145

Q114. The Chairman: Clause 35 allows the Department to recover costs or damages in
respect of damage caused by a pupil at a maintained school. Why is this not limited to damage
caused intentionally or recklessly?
Something to think about?
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The Minister: Yes.

Q115. The Chairman: Contributions to maintained faith schools: clause 25 allows the Department to seek capital contributions to the costs expected to be incurred in the maintenance of faith schools. How did the Department arrive at, as a starting point for negotiations, a contribution of 50% from the relevant faith institution?

The Minister: That is a starting point and the contribution will be discussed. When we had the move of St Thomas's up to Scoill Vallajeelt we had discussions with them and they said that they would give us a contribution towards that once the sale of the property goes through.

Prof. Barr: Yes, I think it came out of the whole move of St Thomas's to Vallajeelt and indeed the additional investment in St Mary's, and then of course, rightly, Tynwald started to query the whole question of whether we should even have schools that are faith based and indeed on what basis they are funded.

Up until very recently there has been nothing that has really indicated that there should be any contribution made by the Anglican Church, the Catholic Church or any other religious organisation should they choose to set up a school in this space, so I think the Department is simply trying to bring forward something that is a starting point that says if we have a faith school, whatever the sponsoring church or other religious body might be, there is an expectation that they would actually contribute.

Q116. The Assistant Clerk: Why have you opted for the figure of 50%, if I might ask? I feel like when you go in negotiating and they know that 50% is your starting point, you might be somewhat limited in what you can ask for.

The Minister: It was just a figure that, when we were in discussions, was come up with as part of the process.

Q117. Ms Edge: The most recent school that you have done any improvements to is St Mary's – was it £3.2 million or £3.4 million? – so you will be expecting one-point-whatever. But what about a school that may want to come along and set up? There could be in the future – we are a diverse community.

Mr Hooper: I think that is the rationale for including the provision in there.

Q118. Ms Edge: So why put a percentage in there? Why not just say 'a contribution', or why not say, for any new religious or faith schools, that they have to fund everything themselves? I am just wondering why 50%. Why put a figure in there?

Mr Hooper: I think, as the Chairman mentioned, it is about messaging sometimes and putting the message in the Bill that actually we would expect to be in a partnership with organisations that would like to run faith schools on the Isle of Man. As I said, that is exactly the way that the Department operates at the moment with the current faith schools, and I suppose if someone wanted to set up a new faith school it is only reasonable to say that we would enter into that in a partnership kind of framework, and so putting a percentage in there is simply about messaging that we would anticipate an ongoing level of support or contribution.

Q119. Ms Edge: We are frequently hearing that 'that is the way the Department acts now', 'there is nothing different in this Bill than that', but surely this is a new piece of legislation coming forward and we should be making it the best that we can at the present time and envisaging what may happen or emerge in the future, not 'that's what's currently in it'. We should be –

1205 **Mr Hooper:** Sorry, that is not what I was saying. I am struggling to see what the issue is with placing a percentage in there. You asked why we put a percentage in and it was simply that messaging, that we would expect a contribution, and 50% is a starting point there.

Q120. Ms Edge: And the AG's were comfortable with that wording?

1210 **The Minister:** What we have is in the maintenance.

Q121. Ms Edge: So they are only going to pay for maintenance on anything?

1215 **The Minister:** Yes, but we are not going to be building new schools for somebody who comes along and says, 'Right, I've got a new faith, I want a new school.' We are not going to be doing that because –

Q122. Ms Edge: You might have to.

1220 **The Minister:** No, we do not, because any capital funding has to come through Tynwald, so we are not going to suddenly go and say, 'Oh, yes, we're going to build a new school.'

1225 **Q123. Ms Edge:** So you put safeguards in there to ensure that that activity could not happen in the future?

The Minister: They are already there through Tynwald because any capital project would have to have Tynwald approval, so it does not need to be in this legislation.

1230 **Q124. Ms Edge:** So why have you just put for the maintenance, then? Why put maintenance? Why put 50%? It is something that is worth looking at, isn't it? Obviously it is –

The Minister: Well, it is because of the maintenance of that school, so a contribution towards refurbishment and that sort of stuff being in one of our schools.

1235 **Q125. Ms Edge:** And the budget for that is not held with Education, so how is that going to work with this legislation?

1240 **The Minister:** It all depends on what the scheme is. On the move of St Thomas's up to Vallajeelt there was that contribution towards the expenditure on that, so I would suspect that will go into the Treasury pot.

Q126. Ms Edge: So that was done as a capital rather than a maintenance?

1245 **The Minister:** Any moneys that we receive through sale of properties or anything like that goes into Treasury, as with all Departments.

Q127. Ms Edge: But the maintenance is done by the Department of Infrastructure, so this is clearly stating the maintenance.

1250 **The Minister:** But the Department of Infrastructure gets its funds from Treasury.

Q128. Mr Perkins: On the catchment area of faith schools, is that the same as normal schools or does it depend on the parents' religion?

1255 **Prof. Barr:** No, the catchment area for faith schools is all Island, so basically anybody on Island actually has a choice at the moment of four primary schools: their catchment area school, St Mary's, St Thomas's and the Bunscoill, because the Bunscoill also is an all-Island catchment. So we have three schools that are all Island in terms of their catchment, and then you have your local catchment area school. That is how it works.

1260 **Mr Perkins:** Thank you.

1265 **Q129. The Chairman:** Clauses 30 to 41 talk about behaviour and discipline. Why doesn't the draft Bill include a provision empowering teachers to discipline pupils' behaviour that occurs away from school and outside the control of school staff which nevertheless has implications for the maintenance of good order in schools?

1270 **Prof. Barr:** This has been a fairly involved issue that has gone on for some time and I think it is fair to say that people have welcomed the fact that we have made it explicitly clear that the writ of the school extends out to off-site visits and school trips. Certainly the current legislation was not sufficiently robust in that space and I think people have welcomed that.

1275 The issue beyond that is then what happens to young people's behaviour when they are not in school, and we are having, I would say fairly positive, dialogue with unions and associations on that. In our view it has to be done with a joined-up approach and indeed I have asked about some of the best practice in the UK that perhaps could be shared with us in this space, because clearly when it happens outside the school it needs a multi-agency approach in terms of perhaps youth in the community, perhaps Social Care, perhaps policing, as well as Education in that space. So there is a definite piece of work that sits around that which has to protect our staff, but it involves more than just simply the writ of the school.

1280 **Mr Hooper:** I think it is fair to say as well that in the original principles consultation the last question did ask about who should be responsible for pupils' behaviour outside the school environment and the response from the public from that consultation was that actually it should be the parents' responsibility, not necessarily that of the school, so that also fed into the thinking.

1285 I personally have had conversations with the Home Affairs Department. They are bringing in, as you may be aware, legislation around public order, harassment, that kind of thing, and that probably is a better place for some of this legislation to sit rather than within the Education Bill.

1290 **The Minister:** And this is some of the discussion that we had with the unions, because we made them aware of those changes that we are looking at.

1295 **Q130. Ms Edge:** The Education and Inspections Act in the UK does have elements of protection in it for teachers when they are operating outside of the education setting. Why do you not feel it appropriate? If we are trying to attract teachers to the Island, which we have to do, why are we not trying to mirror some of the protections and the help and support the teachers get?

1300 **Mr Hooper:** I think what Mr Hooper said is that it is more appropriate if it sits with the Department of Home Affairs because that is the correct place. Behaviour outside a school best sits with them.

1305 **Q131. Ms Edge:** I am quite shocked to hear the Minister for Education say that he would want to criminalise the student possibly in that way, when there could be mechanisms that can help support a child in an education setting to work with the teachers.

The Minister: I am not sure that you were at the meeting with the Department of Home Affairs the other day when they were talking about the Police Early Action Team (PEAT), that they are looking at ways of intervention which are not going to be about criminalising them. So there are those procedures that they are looking to bring in now. It is being brought up through the Social Policy Committee of Council of Ministers.

Q132. The Chairman: I thought I understood from Prof. Barr that you were still looking at this and you were comparing the legislation elsewhere.

Prof. Barr: Yes, and we have given that undertaking. We have got another meeting with unions and associations coming up in May and I fully anticipate this will be another area where we will want to have further discussion.

Q133. The Assistant Clerk: When Mr Hooper spoke about the consultation on this matter you said the question was should schools have responsibility, or who should have responsibility for pupils outside of schools. I think this cuts to what the Committee was saying about the way the consultation has been constructed, that to say the school has responsibility for the actions of the pupil outside of the school is quite different to saying should a school be able to discipline a pupil for their behaviour outside of the school. So perhaps that question does not really fit this question.

Mr Hooper: No, like I said, that was just one of the things that fed into the thinking – that is all – when that question was asked about inappropriate behaviour outside of the school. I think it is fair to say that with both this consultation that has just closed and the earlier one there was a lot of space for people to submit detailed comments, and if you read some of the comments that have come back from those consultation responses you can actually see that there is a wide range of views on it but broadly I think people were addressing both aspects of that, and when they are answering these questions.

But it is a sensible question to put to us and I think yes, it was only that that formed part of the thinking and that was not the sole reason for it – if that makes sense.

Q134. Ms Edge: So has there been consideration for a student misbehaving when they are in school uniform and could be bringing school into disrepute outside of school hours and outside the remit of this? Has consideration been taken around that? If you are in your school uniform you are part of that school and you are part of the rules of the school, but I could be in my uniform at eight o'clock at night.

Mr Hooper: And this comes back to exactly that point. That was specifically the question that was asked in the first consultation and the response was that whilst many people felt that schools and parents should have some level of responsibility jointly for pupils outside of school when they are acting, the decision was taken actually off the back of the responses to that and the other things that have already been discussed here – that really this kind of issue is an issue on the Island, we know that there are problems, but it is better dealt with as part of the broader work that is going on within Home Affairs rather than trying to shoehorn something into the Education Bill.

Q135. Ms Edge: We are a small community and restorative justice already occurs within our schools. I just wonder why you are relying on the Department of Home Affairs for –

The Minister: Unfortunately, I do not think you were at the meeting last week when we had the Chief Constable's discussion about what they are looking to do regarding these teams. What they are saying is a cross-Government working group and it will have –

1360 **Q136. Ms Edge:** So there will be somebody responsible in the Department to be working with them to ensure that the same mechanisms go throughout and there will be no silos around it?

The Minister: That is what the whole presentation was about, trying to break down those silos.

1365 **Q137. The Clerk:** Is there any prospect that the work you have referred to with Home Affairs and other Departments may at some point in the foreseeable future require primary legislation? And if so, is there a risk of missing the boat by not putting it in this Bill?

1370 **Mr Hooper:** I do not think so. With one of my other hats I sit on the Justice Committee and this is an area that we are looking at, the Criminal Justice Strategy and how Government can work much closer together when it comes to dealing with things like early interventions and young people. So it is part of a workstream that is already going on within one of the other Scrutiny Committees. It also links in with the Education Bill but, like I said before, there is a much broader piece of work already going on within Home Affairs around some of these kinds of
1375 issues, and so whether it would be right to try and shoehorn something in here that is going to be coming forward as part of Government's stated legislative programme is a broader question perhaps for the Committee to think about; it is not really ...

1380 **Q138. The Clerk:** Short of shoehorning, would it be conceivable, for example, in the future that some Home Affairs led legislation might make provision for teachers?

The Minister: Possibly, and this is one where we will be working with the Department of Home Affairs regarding how we are going to move this forward as part of these PEAT teams.

1385 **Q139. The Chairman:** Will it be possible under the draft Bill for a pupil to become expelled from all the Island's schools, and what would happen in such instance?

Mr Hooper: No.

1390 **The Minister:** No, because I think it says there that we will be looking that the child will be educated in some form. You have got the secondary schools, you have also got UCM and there is also assistance that is given to pupils, when they are, for them to be given work to do.

1395 **Prof. Barr:** There is use of the College, there is use of the Education Support Centre and then there is the ability to transfer or move a child or a young person, should perhaps a different educational environment be appropriate. So there is no intention to exclude any child from education. That would be in breach of I do not know how many different pieces of legislation if we did so.

1400 **Q140. The Clerk:** What is the Education Support Centre? Is that referred to in the Bill, or is that just something everybody knows about?

1405 **Prof. Barr:** The Education Support Centre is a facility that we have up near UCM and they have dedicated staff there. What we do with children who have sometimes challenging behaviour is that they are given bespoke packages of education, so that they would spend sometimes part of their time with the Education Support Centre, sometimes with specialist staff on a one-to-one basis, and they would then spend the rest of their education in mainstream education. So they would typically spend x amount of time in their parent school and then x amount of time in the Education Support Centre.

1410 **Q141. The Chairman:** At the start of today's proceedings – I always miss this – I should have declared that I have two daughters who work for the Department of Education, one in the special needs area and one in the drama area.

Ms Edge.

1415 **Q142. Ms Edge:** Just with regard to expelled students or students who are accessing the Education Support Centre, is there a restriction on the hours of education provided to these students?

1420 **Prof. Barr:** To my knowledge we do not utilise that facility for a child to go there full time, but I could not tell you what the 'hourages' are. I think, as far as I am aware, those tend to be agreed on an individual basis, based upon the needs of the child. There has never been a case where I think somebody has all of their education completed within the Education Support Centre, but I would hate to mislead the Committee – I would need to just check on that.

1425 **Q143. Ms Edge:** But if a student is expelled from a school and they are accessing the Education Support Centre, they cannot go into school because they are not getting educated. My understanding is the Education Support Centre cannot take you full time because it takes numerous students. So I might only get two hours of education a day because I am not allowed back into school. What happens in those situations? Is that covered adequately?

1430 **The Minister:** I think there is part of that where they are given work to do independently, but I think one of the concerns that the Department had was that when you see some of the models on the adjacent island, where they have got pupil referral units, it is basically being seen as a training ground for prison, and we are not minded to go towards that because we do not think that is in the best interests of the child.

1435 **Q144. Ms Edge:** Physical education is clearly pointed out, that a student has to have it. If I am expelled from school and I only get two hours a day or two hours a week, where do I get my physical education?

1440 **The Minister:** I think it all depends on what areas they cover with those students up at the support centre. Specific issues on the curriculum we just have not got with us. It is a valid point, though.

1445 **Q145. The Chairman:** Clause 41 places a duty on head teachers of maintained schools to take all reasonable steps to prevent the use of social media where it is being used by a pupil, a former pupil, or a parent or associate of a pupil in a way appearing to be intended to cause distress or offence to pupils or school staff. Why is it necessary to create a legal duty in this context?

1450 **The Minister:** I think some feedback we had was that it was positive that we have actually started to look at putting something in this area. One of the areas with the social media is I do not think it is 'social' as it puts it namely; it should be more 'anti-social' media. Some of the people on there are anonymous and, quite frankly, I think sometimes there should be something to make sure that names and addresses should be supplied because it really does get to a point where it can be vexatious, vindictive and inappropriate.

1455 What we are trying to do here is move somewhere along to try and protect people in the schools and the teachers. But one of the issues that you have is, because of social media, phones and mobile devices have all got 4G, so the restrictions on the schools' Wi-Fi can be worked around outside school hours.

1460 **Prof. Barr:** This is about protecting staff and young people, and some of the exposure our
 young people have had through cyber bullying has been quite (**The Chairman:** Absolutely.)
 appalling, and deeply disturbing in some cases, and staff also have had ... We have lost staff who
 have felt the need to leave the Island because of the level of abuse that they have had on social
 1465 media, so I think this is something that ... A lot of the feedback we have had so far has been very
 supportive of this and we are trying to play catch-up in terms of where the technology has gone.

We have been talking about protecting staff outside the school gates. This is clearly part of
 that and it is an important part of that and we are really keen to have this particular piece of the
 legislation put through.

1470 **Q146. Mr Perkins:** So the legal duty is actually with the head teacher rather than the
 Department, as it is worded in the Bill?

Mr Hooper: Yes, it has come up recently as well in I think it was Keys Questions about the
 health and safety responsibility, and it is the head teacher who is the person who is responsible,
 1475 really, for the well-being of students and staff on their premises. So this is just an extension of
 that. You want the people on the ground being the ones, I think, dealing with these kinds of
 issues and enforcing school rules and enforcing behaviour rules. I do not think you would want
 the Department interfering at that level of operational detail, really, with the schools.

1480 **Mr Perkins:** One of the problems with social media is it is very difficult to prove cause of
 distress or offence. What distresses some people is different – different levels – and it is
 notoriously difficult to prove that. And then of course you get the other side of the coin, where it
 is unsuccessful and you get the parents taking the head, saying, ‘You didn’t actually do anything
 about that.’ So it is a very difficult situation all round.

1485 **Q147. Ms Edge:** Just to follow on that, if the head teacher does deal with it and then, as
 Mr Perkins says, a parent does not agree with it, under clause 22 can the Department step in
 and dismiss the head teacher or discipline the head teacher because you do not feel they have
 acted appropriately? Clause 22 is giving quite a bit of power to the Department. It is ‘certain
 1490 circumstances’: could certain circumstances be ...? I am going to the extreme here, but certainly
 through that language it could be depending on who looks at it.

Prof. Barr: I think, to be fair, I have already said that we are looking at the language with
 regard to clause 22. Some of the comments around clause 22 I think are a little bit ill-judged, in
 1495 the sense that a lot of what is in clause 22 already exists in the existing legislation – maybe in
 different places, but it exists already. But we have already accepted as a Department that clause
 needs to be edited and rewritten, so we have taken that on board and we are looking to engage
 positively with unions and associations around that particular clause.

1500 **Q148. Ms Edge:** And we need to make sure that all the other clauses are tied back to ensure
 that it has been cross checked.

Q149. The Clerk: In clause 41(2) it says the head teacher ‘must’ take all reasonable steps to
 prevent inappropriate use of social media, and by saying ‘must’ take those steps it means it is a
 1505 duty on the head teacher and not a discretion. Why is it a duty proposed, and have you assessed
 the risk of a legal challenge by someone who is aggrieved by social media who says, ‘Head
 teacher, you didn’t do this, this would have been a reasonable step – you haven’t complied with
 the law’?

1510 **Mr Hooper:** It is a fair comment. I think from my perspective it is about protecting pupils in
 school, it is about protecting staff and their welfare, and so you do want to place, I think, an

obligation on people to actually ... The legislation there is quite broad – you must take reasonable steps – so, as long as what their teacher has done is reasonable, then I think that is their protection. If they were to go through the dispute resolution process – which we have already talked about, that three-stage process – then if they have got a parent saying, ‘Well, actually, I don’t think you’ve taken reasonable steps to protect my child,’ that might be a fair challenge. And then of course you do have that internal process, the mediation.

I can understand where the concern is coming from, but I think someone has to be responsible at the end of the day and it is the same whether it is bullying in school or bullying online: someone has to say, ‘I have a legal obligation, a legal duty, to protect the welfare of these children and protect the welfare of these staff,’ and that has to sit somewhere.

Q150. Ms Edge: So do you not think there is going to be an easy answer to that if as a head teacher I say I am not going to accept any mobile devices in school? That is the ultimate, isn’t it? If I was the head teacher having to take responsibility for that, that is the ultimate. And is that what you really want from this?

The Minister: Is it a reasonable step? That is the discussion that we have had with the unions about the terminology: a reasonable step, so you can reasonably say, ‘We have looked at this and we consider this as being a reason for doing that.’

Q151. Ms Edge: So is the Department going to consider any policy behind that if a head teacher does do that, because you are leaving it down to the individual head teachers of all of our schools to make that decision?

Prof. Barr: We can have that discussion with the head teachers. They may well decide that it is much better to have something that is from a central position. We have talked already about individual schools’ autonomy in this space. We know already that there are one or two schools on the Island that have already made policy decisions in that area.

My view would be to let the individual schools decide what they think is in the best interests of the children and staff in those schools, then if the heads decide collectively they would prefer to have a departmental policy we can go in that direction. I think that is something where I would rather have an engaged conversation, with head teachers and with unions and associations who represent staff, about what they think would be in their best interests in that space.

The Minister: I think the other one is that the schools had been having that dialogue with the pupils and the parents when they were making decisions on mobile devices, so they have that discussion earlier on. They know their students, they know how they are going to be dealt with, and by having that direct discussion with the pupils and with the parents there is a bit of ownership in that.

Prof. Barr: We definitely need something in the Bill that is robust in this space to reflect the changes in the technology and the challenges that both young people and staff are facing in this space, and so it is just a question of getting something that will work in that space and not cause additional issues for head teachers but provide the protection that young people and staff need, based upon what we now face with social media.

Q152. Mr Perkins: I think there are two clear distinctions: one is using social media and equipment in the schools; and then what happens outside of schools, which is not necessarily the pupils but the parents and associate people who can cause havoc on social media to the teachers involved – and also the pupil bullying, cyber bullying, all that type of thing.

1565 The thing that worries me about this particular clause is if there is a challenge that is unsuccessful, then the other side will chip in and go for the head teacher. It is the litigated society in which we live.

1570 **The Assistant Clerk:** I think it is quite risky, things like this, because when you have the benefit of hindsight a lot looks like a reasonable step that the head teacher may not have contemplated at that time, and to expose them to a risk of legal challenges ...

Q153. Mr Perkins: Have you consulted with the AG on this at all?

Prof. Barr: The whole Bill has been through.

1575 **The Minister:** It has been through a legislative process, our drafter will be aware, but one of the issues that you have there is that yes, there is always going to be a test case on something. Somebody has got to make a decision on whether ... If it came back to the Department we would be criticised that we have enforced something, so somewhere down the line a decision has to be made.

1580 **Q154. The Clerk:** If you said 'may' take reasonable steps the only difference would be ... Well, first of all, do you think the teacher would not do it? And if you think the head teacher would do it, what would you lose?

1585 **Mr Hooper:** I can understand where the Committee's concern is coming from but head teachers already have a duty and an obligation to protect the welfare and well-being of their students and staff, so they are already subject to potential legal challenge if they do not do that – if you have got a parent who says, 'You're not adequately protecting my child from bullying,' for example. So I am struggling to see where the extra risk would come in if we are simply specifying that, actually, in this one particular area there is an obligation, a duty, on you.

1590 We have already had conversations with several parties around how to make this clearer, I think, because there was some concern that it might be going too far, placing too much of a duty on head teachers – which is the concern you are expressing as well – and I can see there being some changes, tweaks to this section, to actually make it more workable, a bit more flexible. It may be that you make it a 'may' rather than a must, but ...

1595 **Q155. The Clerk:** Well, you could say that there is a presumption that a head teacher has acted reasonably if they have gone in line with guidance issued by the Department, or something like that.

1600 **The Minister:** As you said, this has been out for the consultation. The whole process is that we gather all these views in and we hope that we can iron it out. As colleagues will know, when legislation is coming through there are alterations made further along the line, so we are hoping to work through that process.

1605 **Q156. Ms Edge:** I am just curious as to how you are going to tie it in, because you talked about protecting teachers who perhaps deal with issues outside of school hours and you have said it is the Department of Home Affairs that are looking at that, and a lot of social media abuse of both teachers and young children happens outside of schools – so how are you going to ensure that that is captured?

Mr Hooper: Well, we have recently passed amendments to the Communications Bill in the House of Keys that talk about preventing harm caused by the use of public communications networks – so, social media primarily. That Bill is currently sitting with the Legislative Council, I

1615 believe, so there are already being changes made by the House of Keys and other places to try
and address these issues that we are talking about around social media. So, really, that is in the
hands of the Legislative Council right now, that particular clause.

1620 **Q157. Ms Edge:** I think we need to be making sure we are linking, because that is quite a
critical part for the head teacher to be responsible for, but then other areas of the Bill are saying
that the discipline of students is not going to be in the head teachers' remit after hours, it could
be with Home Affairs, so it does need looking at.

The Minister: Yes.

1625

The Chairman: Okay –

The Clerk: Can I just make one quick comment on behaviour?

1630

The Chairman: Please do.

1635 **Q158. The Clerk:** In clause 31, under 'Suspension and exclusion', there is another reference
to an appeal to a court of summary jurisdiction. I think it would be really helpful to explain –
maybe not today – how that is linked to the dispute resolution principles in clause 9 and the
Education Tribunal established under clause 121.

The Chairman: Okay, well, let's move on. I have got another meeting at three, so ...
(Laughter)

1640 We will talk about catchment areas: what rules is the Department planning on making in
relation to the operation of catchment areas? Clause 42, sorry.

Mr Hooper: Do you mean in addition to what is already in the draft Bill – as in further to what
is in the Bill?

1645

The Chairman: Yes.

Mr Hooper: You mean further to what is in the Bill, okay.

1650 **The Minister:** As was said in I think it was the House of Keys regarding a Question on one of
the Douglas schools, we are going to be carrying out a piece of work with the schools about how
we deal with the catchment areas because the general area of what they were previously may
not be currently fit for how the school population has grown in certain areas. If I give you an
example, I think it is Braddan School goes virtually from the Quarterbridge out to Abbeylands
and their catchment school for secondary is actually Ballakermeen. If you are living out in
1655 Abbeylands you have to drive past Bemahague and St Ninian's virtually to get to Ballakermeen.

I think we really need to start looking at the primary school catchment areas and the
secondary school catchment areas, so our first piece of work is going to progress shortly about
looking at the schools.

1660

Q159. Ms Edge: When do you expect to have that complete?

1665 **The Minister:** I think you asked me that question in the Keys and it is a piece of work that is
going to be progressed. I cannot give you a date because it is one of those things – if I say it is
going to be done by September, I very much doubt we are going to have that piece all ready for
September.

Q160. Ms Edge: Is it officer led, or is it politically led?

The Minister: Both. It is politically led.

Q161. The Chairman: We are going to move on now to offences and penalties, clauses 48 to 120.

Without reading out each individual clause, a number of the offences carry maximum penalties of £10,000 or six months' imprisonment. Do you consider such penalties to be necessary and proportionate? If you do want me to read out the individual clauses, I will.

Mr Hooper: No. I think some of the offences are very similar to what they have in the UK. In the UK, for example, operating an unregistered independent educational institution, the offence for that is 50 to 51 weeks or six months and then a level 5 fine on their standard scale. So the offences are broadly comparable with what exists in the UK.

I think there has been a conversation around whether or not some of those we need and to that level on the Island, and I think that is part of the review process that the Department will go through as we respond to the consultation responses and as we continue to engage with professional bodies on this.

The Minister: And one of the points is that if it is going to the court it is not ... People going to prison or the fine is not imposed by the Department, it is a court action, and I think that is where some of the confusion has been, that this has to go to court. And we have agreed that we are going to look at the level of fining.

Q162. Mr Perkins: The one that worries me is 74(1), which creates an offence for failing to comply with a school attendance order. If you have got a 16-year-old lad who really does not want to be in school, it is very difficult for his parents or his guardian to get him to attend school – they could be fined £10,000, if they have got it, or they could go to jail for six months. That, to me, seems a bit draconian.

The Minister: And like we said, this is an area that we are looking at. One of the things is that it has to go to court and we would have to be able to prove it to the court.

Mr Hooper: I would just clarify something there: the new Bill does not create that offence; that is already an offence. Failing to comply with a school attendance order is already an existing offence. I think the penalties are different but it is an existing offence.

Q163. The Chairman: It is right that it should be an offence. I think is the extent to which ...

The Minister: Yes, that is what we have ...

Q164. Ms Edge: I am glad you are reviewing it, because you said this had been through the Department Members before it went out to the public, so I am surprised you did not pick up on it before it went out to the public.

Mr Hooper: If I can clarify that, that is the purpose of a wide consultation process: you take the Bill as a starting point and then say, 'Right, let's get as much feedback as we can' – a broad church of feedback, really – 'as to what needs to change.'

Q165. Ms Edge: So did the Department approve it before it went out at those penalty levels? It must have been approved before it went out.

Mr Hooper: As a draft, yes.

1720

Q166. Ms Edge: So the Department Members were in agreement with that at that time?

Mr Hooper: Yes.

1725

Ms Edge: Okay.

Mr Hooper: Sorry –

1730

Q167. The Chairman: Okay, good. How did you arrive at criminal penalties of such severity? Could these issues not have been dealt with through civil penalties?

Mr Hooper: Again, it is mirroring provisions in the UK legislation. I think that was the starting point and if, as a result of the consultation process, it is determined that they are not appropriate for the Isle of Man, then ...

1735

Prof. Barr: Yes, the starting process obviously was the UK drafter. That is what he has put in and I expect some of these will be probably toned down a bit.

1740

Q168. The Chairman: Okay, a final one on these, I think. Clause 124 – I will talk about this one – creates an offence where an individual provides false information in connection with the proposed register of private tutors, punishable with a fine of up to £10,000 or six months' imprisonment. This appears to be an offence of strict liability. Why did you opt not to include the caveat for it if someone mistakenly or unknowingly provides false information?

1745

The Clerk: That is in clause 120(4).

The Chairman: Clause 120, I am sorry – I said 124. Sorry, I should have said 120(4). How long have I been doing legislation and I cannot even ...! (*Laughter*)

1750

The Minister: I think you have got a valid point there.

Q169. The Chairman: Okay.

1755

Next: proof of identity and authority. Clauses 48, 60, 96, 98 and 113 all create powers of entry in different contexts. However, only clause 60 places a requirement on the person entering the premises of an educational institution to produce proof of identity and authority on request. Is there any particular reason for that?

Mr Hooper: Sorry, can you repeat that question?

1760

The Chairman: It is clause 60 and it is the only one out of all the ones I quoted that places a requirement on the person entering the premises of an educational institution to produce proof of identity and authority on request, and I was just asking why that particular one was the only one framed in such a way.

1765

Mr Hooper: As opposed to ...? Which one does not, would be my question – if you can repeat the list of provisions which do not refer.

The Chairman: Okay, the further ones are 48, 96, 98 and 113.

1770

Q170. Ms Edge: Are you are defining home educators?

The Minister: It is the welfare of the children, isn't it?

Q171. Ms Edge: Are you defining an educational institution as a home educator in that context?

Mr Hooper: No, an educational institution is a private institution providing education. I think it defines it as in the course of a business as well. I think it is a valid point. It is one that we have already had a conversation about with the unions.

Section 60 deals specifically with independent schools, whereas some of the other sections you have mentioned ... Section 48, for example, is inspections of the state school system. Some of these come with further regulation-making powers. I think it is quite a good thing to highlight because most of this Bill is just frameworks with further regulations to follow, and I think in a lot of these regulations is where we will be specifying that if you are going to turn up at a school they are entitled to ask for ID. I think the Gambling Supervision Commission have the same provisions, that if you are going to enter a premises ... if they do not show you ID you can refuse them entry –

The Minister: This has that as well.

Mr Hooper: Yes, it is an issue that has already been raised and it is going to be dealt with probably throughout the regulations rather than in the primary Bill.

The Minister: And we have had that discussion about obstruction.

Q172. The Clerk: Just quickly, on independent schools I have noticed that in clause 43, which is about the register of pupils, there is another of these mentions of all schools and I think it means maintained schools. You do not have a register of students at King William's College within the Department, so that might be one to look at.

The Minister: Can you quote that? We can pick it up from *Hansard*.

Q173. The Chairman: Okay, despite what I said about my three o'clock meeting, I would like us to try and conclude by about one, if we can. It is an important matter, so we will not cut short on any questions but let's try and move on.

The next one is about truancy – clauses 66 to 68. Clauses 66 and 68 create offences relating to truancy that would be punishable with substantial penalties. What is the Department doing to reduce truancy?

The Minister: Currently, in the last six to eight months we have increased the level from 70%. It used to be attendance of 70%. We have now increased that to 80% before officers are getting involved in children not attending. So we have already started on that piece of work.

Q174. The Chairman: Do you still have officers who check up when people are seen about town, or whatever, when they should be –?

Prof. Barr: Yes, they are called education liaison officers. We do not call them truancy officers. We have a group of individuals who work in the Department on that, and then their job is to basically do that – create a liaison with the education establishment and the individual concerned and often create a – bespoke, sometimes – educational package which they would then monitor with regard to that individual.

The Minister: And we have also got a piece in there regarding if a police officer sees somebody out and about – who they contact. So it is already part of that.

1825 **Q175. Ms Edge:** Who do you class ...? Under clause 69 you have just mentioned about police constables and other authorised people to issue. Who can be captured in 'other authorised people'? Do they have to be an employee of the Department of Education, or of Government?

1830 **Mr Hooper:** There is nothing in the Bill that specifies that.

Q176. The Chairman: So it could be somebody who is doing traffic discs one moment ...?

Ms Edge: Safeguarding? Or a postman?

1835 **Mr Hooper:** They have to be authorised by the Department.

Q177. Ms Edge: How are you going to...?

1840 **The Minister:** Yes, but what it says is through an officer we will contact ... for a place for them to go.

1845 **Q178. Mr Perkins:** While we are on that, the Department can vary the value of the fixed penalty notices. Why do you need that power, do you think? It says an unrestrained power to increase the value of fixed penalty notice made under clause 69.

The Assistant Clerk: That is you can change the value of the penalty notices which may be issued under the clause, rather than once they have previously issued penalty notices.

1850 **The Chairman:** Which section is that?

The Clerk: Clause 69(5).

1855 **Mr Hooper:** Yes, that is pretty straightforward in Manx legislation, where if you are setting a level of a fine in primary law it can be varied by order by laying in front of Tynwald – because if this Act is still on the books in 25 years, £60 may be a very low amount.

Q179. Mr Perkins: It has got to be a laid before? Right, okay.

1860 **The Minister:** Yes, so that is what it means.

Mr Hooper: It is pretty straightforward.

1865 **The Minister:** It means that the level that we put forward is not 'Oh, and we're going to change it in the middle of it.'

Q180. The Assistant Clerk: Yes, I think the Committee understands that. I think they are just worried that the procedure is actually laid before rather than, let's say, approval or negative resolution.

1870 **Mr Hooper:** From memory, most of these increases are – I think we have just passed a Charities Regulation Bill that gives the AG the same powers in order to change things without Tynwald approval – but it is a valid point. I think when this Bill finally does come before the Branches, if that gets changed or if it is changed before then I personally do not see a problem

1875 with providing a greater level of Tynwald oversight. That is never going to be an issue for me personally.

The Minister: DoI have just increased bus fares and that did not go for approval.

1880 **Q181. Ms Edge:** Is the Department going to keep a list of the authorised people? Is it going to be a published register of authorised people?

1885 **The Minister:** It is something that we can put in the regulations, that we are going to publish who the authorised ... I do not envisage it will be anything outside possibly Home Affairs or Education. It may be a health worker if they are under supervision of the health worker. That might be another issue.

The Clerk: The term 'an official of the Department' in 69(9) I think is a little bit of English terminology that has crept in.

1890 **Q182. The Chairman:** As Mr Hooper described, a number of these are straightforward, so we will move on to home education, clauses 77 and 78. Do you believe the draft Bill, with particular regard to the provisions relating to home education, is compliant with the Human Rights Act?

1895 **The Minister:** There have been a number of cases of it. As I have previously said, anything that will be brought forward will be human rights compliant.

Q183. Mr Perkins: So, in the context of home education, have the powers contained in the Education Act 2001 ever been inadequate to allow the Department to confirm that a child is receiving a suitable education?

1900 **The Minister:** I think this has been a source of discussions from your colleague from Garff as well, and people who have probably spoken to you, Mr Perkins, that –

1905 **Mr Perkins:** I could not possibly comment on that!

The Minister: The same people we have had the same discussions with.

It is surprising that when I answered the Question the other week regarding the register, we have had incidents where people have registered and said, 'Right, well, we've registered once and that's it.'

1910 The other one is how do we update it with their age. We have got GDPR that we have to be compliant with, so the schools have all the registers and it is not held centrally. Sometimes they do not inform us. Like I said, one person had moved off Island and had not informed us.

1915 How do you judge whether they are getting a suitable home education? We have had an instance where a child has approached the Department and said, 'Yes, it was great, when I was at home I could do what I wanted; but, now I am past that, I haven't got a qualification.'

1920 There is the United Nations' right of a child to an education, so I think this is going to be, for the home educators, a contentious part, but when I have discussed this with home educators some of them say, 'We are already doing this, this and this, we have already got a curriculum, we have already got that,' and all we are saying is, 'Well, that is the sort of stuff that we just need you to provide.'

Q184. Ms Edge: Doesn't the Department have a book that gives guidance to home educators when, either through issues at school or ... they decide to put ...? Would that not be an easier option?

1925 **The Minister:** And that is what we are looking at.

Mr Hooper: There is no provision in the law to enable the Department to do that. The Committee may be aware that the UK –

1930 **The Minister:** Setting one up.

Mr Hooper: Yes. Our legislation is based on the UK's education provisions in this space and the UK themselves are now consulting on basically doing ... What the Isle of Man is proposing in this Bill is to step up to the level of statutory regulation. In the UK they have a lot of non-statutory regulation and inspections of home educators – which has mixed success, I think it is fair to say, depending on which part of the UK that is in. Scotland have a slightly more robust model which seems to have a slightly higher degree of effectiveness, but again our Act and current powers are based on the UK powers, which even the UK have turned around and said are inadequate and insufficient.

1940 **Q185. Ms Edge:** How much research have you done into it? Have you looked beyond the UK and Ireland?

The Minister: Yes, we were saying about in Germany. In other jurisdictions it is illegal to home educate and that is the situation. So, when you are saying about whether it is human rights compliant, in some jurisdictions you are not allowed to do it. And so where do you sit on that?

In Scotland they have a little booklet trying to advise. I think we have moved our legislation on by giving them the ability to access the schools. As part of that I think we made a positive move by saying that if you require some assistance on this ... And there is a discretionary part in it because schools are working to a curriculum throughout the year, and then you have also got other issues regarding health and safety and all these things. What we need to do, if a home educated child is to access our education system, is to try and work it in with the curriculum that we have got – so, in week 22, if you are doing a certain topic, they know that if they wish to access that they can do so at that point.

Prof. Barr: I think the issue is we have got approximately 100 families, approximately 150 children. The current situation is that although those families are required to register with the Department, the Department has no means by which we can reassure ourselves of what educational provision those 150-odd children are accessing, and it is the mechanism by which we go about doing that.

Nobody wants to be heavy handed in this space. We have had people who have thought we would arrive at their house and almost kick their door down, and if they do not we are going to send them to prison for six months. Nobody is talking about that kind of emotive response, really.

The other thing as well is that those 100 families contain a range of individuals who are home educating for a range of different reasons. This is not one homogeneous group. From the Department's point of view we want to work constructively with home educators, but what we are saying is there should be a need for home educators to demonstrate the quality and type of education they are providing, and then, through some regulation or by other means, for us to periodically reassure ourselves that that education is taking place. That is really the nub of what we are talking about here.

Q186. Ms Edge: So, you have worked with the home educators and a policy and procedures document was produced in conjunction with them?

The Minister: It was a draft; it was not an actual policy. There was a draft that we –

1980 **Q187. Ms Edge:** A draft, but you have taken into consideration everything that the home educators placed in that, have you?

The Minister: We have had a look at that and we have discussed it in the Department. One of the issues that you have is trying to find that balance of ensuring that the child has that right to be educated.

1985 We have seen cases throughout other jurisdictions where children are off-rolled from the schools because they thought it would affect their level where they are achieving. This is the league tables. They were off-rolling them because they were not going to be achieving, so they would have been lower down in the league table.

1990 There are other issues. You said about the issue about a child who does not want to go to school, who is difficult to go to school. We have seen cases in the adjacent islands where the parents, rather than forcing them off to school ... 'Well, I'll home educate.' Well, what are you doing? What part of education? If that child is being difficult, as a parent what are you doing to give them that education, if you possibly can?

1995 **Q188. Ms Edge:** Does the Department ever recommend home education to anybody, or not? Have they ever?

The Minister: Not to my knowledge.

2000 **Prof. Barr:** No, we have never ... Nobody has ever asked us! *(Laughter)*

Q189. Ms Edge: Just one further question from me: why would you externally assess home educators when even the Department does not get externally assessed?

2005 **Mr Hooper:** Sorry, there are no proposals to externally assess home educators.

The Minister: Where did you see that?

2010 **Q190. Ms Edge:** It is in there that home educators ... Or are you talking about the school improvement advisers?

The Minister: It does not say external.

2015 **Q191. Ms Edge:** So, it would be somebody from the Department assessing them?

Mr Hooper: The draft Bill states quite clearly the Department must assess the educational development of children in the Island.

2020 **The Minister:** And we have seen the duplication in there, so as part of that we are going to change ... because it says one thing and then, further down, I think in (5), it says from time to time. So we need to change –

2025 **Q192. Ms Edge:** So it is just somebody internally employed by the Department that will be doing the assessment of home educators?

The Minister: Yes.

Q193. The Chairman: How often will those assessments be carried out?

2030 **The Minister:** It says from time to time, but that is going to be part of what we bring forward in the regulations.

Prof. Barr: We have had some interesting discussions, Chair, about that with some home educators in terms of ... People could bring forward something and then, if you were satisfied, you could have a light-touch approach where you might not need to then actually see an individual for another year, two years, three years, whatever.

2035 I think that is something that is still up for negotiation, depending upon where this piece of legislation ultimately lands. I think what we are clear on is that we are not looking at some punitive system where every six months or every year somebody is going to appear at your house and demand all of this information. It is what sits behind that. What we are saying is there is, at the moment, no mechanism at all by which we can verify what 150-odd children are doing on this Island aged between five and 16.

The Minister: Some of the discussions that we have had with home educators are, as part of that assessment, do we bring in somebody who is a representative of a body of home educators to say that they see that being sufficient – so that is going to be part of what we will be doing, looking into that regulation behind it. It may be like a Scottish model, that we produce a booklet about all the ways that you can access it and move on. It is a piece of work that, for the small numbers, is taking a considerable amount of time to try and see where we are.

2050 **Q194. Mr Perkins:** I think that the main worry for home educators is the phrase ‘routine assessments’, and I think there is a lot of work to be done to try and alleviate the concerns of the home educators.

2055 **The Minister:** I think some of them do not want any and I think that is the issue that you have got, that ... They say ‘routine’ or whatever – I think some of them do not want any assessment at all, and that is going to be the balance that we have to find.

2060 **Q195. Mr Perkins:** I think, from all the emails that I have had, they understand there has got to be some sort of inspection or assessment, but it is how frequent it is, how intrusive it is, whether the Department understands it is a Montessori plan they are on, or whatever it is, and some of these unusual –

2065 **Mr Hooper:** There are some places in the UK that have, I have already said, non-statutory inspection regimes and they seem to be working quite well, and they are done because they do not have the statutory backing; they have to be done with the consent of the home educators. There are home educators who engage in that process and there are some who do not, but from conversations I have had with some of these local authorities, actually they are working quite well with some of their arrangements. And so I would expect the Department to be producing a set of regulations that take into account a lot of the concerns and a lot of the very nature of home education on the Isle of Man. But it can work and it does work elsewhere is the point I am trying to make.

Mr Perkins: Okay, thank you.

2075 **Q196. The Chairman:** Some home educators are highly concerned about having to educate their children to standards prescribed by the Department. Who do you intend to consult when developing those standards, and what do you expect the standards to address?

Mr Hooper: Sorry, Chair, can you just identify where there is a reference to standards?

2080 **Q197. The Assistant Clerk:** There is no specific reference to standard, but you must be assessing the educational development of a child, and this is also in the context of the duty to ensure that a child receives a suitable education. So, when you are assessing the child's work you are going to have to be benchmarking that against something.

2085 **The Minister:** But it all depends whether it is vocational, whether it is academic or whether it is a different type, so that is going to be the flexibility that we need to put in the regulations, where we are actually going with that.

I think one of the issues that they raise is that some of them will say, 'Oh, well, we do have a curriculum that we follow', and for others having a day trip on the bus and having a look around the countryside is deemed as part of their learning experience. But the other one that you have got is finding, even as a group of home educators, somebody who will give you a view which could actually cover all types of home education, because some of the home educators that we have spoken to who have been keen to engage will have some sort of curriculum, will have some idea, but there are other people out there who disagree with them. We have got a hundred-odd families, so it is going to have to have that flexibility in there.

2090 **Mr Hooper:** Again, it is worth reiterating that the Department's duty to ensure a child is receiving a suitable education is already existing. All these changes are doing is trying to provide the Department with a mechanism by which they can actually enforce that duty that already exists in law. That is the aim of this section, to say the Department has a pre-existing duty which is being replicated in the new Bill to ensure that every child on the Isle of Man is receiving a suitable education, and this section is purely about the mechanism by which the Department can do that.

2105 **Prof. Barr:** Yes, and I think within that 100 families we have seen some very good examples of education and some of the conversations we have had have been very positive, actually, in terms of people who are home educating who want to work with us as a Department.

2110 So there needs to be some policy work here, where you would look at officers of the Department hopefully engaging positively with those families to come up with some mechanism by which this would work and how you would benchmark the educational standards. It is how that mechanism works, really, and I think the Minister would expect that that would be an engaged dialogue with those families.

Having said that, there is a group of families who I do not think are particularly interested in working with us at all on this, but they do not speak for all home educators.

2115 **Q198. The Chairman:** Under what circumstances would home-educated children be allowed access to facilities or services provided by the Department? I think you have briefly –

2120 **The Minister:** Yes, I think we have covered that.

Q199. The Clerk: Sorry, Mr Cretney, I know you are conscious of time, but could I just ask a couple of questions related to this?

2125 You said that any use made of these powers will be compatible with the Human Rights Act. Do you accept that, in the case of home education, Article 8 of the European Convention on Human Rights is engaged? The clue is in the name, really: it is home, and you are trying to find out about what is happening in people's homes.

2130 **Mr Hooper:** I think it is fair to say that we are waiting on a full response from the Attorney General's Chambers to make sure that all the boxes are ticked, but actually where you see these cases come up at the European Court itself, regularly they take the side of the state and say that actually the state does have not only a duty but also a responsibility to the child as well as to the

parents. And so I think a number of Articles can be engaged by these provisions: Articles 6, 8 and 9 – there are a few.

2135 **The Minister:** Under one recent judgment in the European Court of Human Rights it said officials from near Frankfurt said that the parents had endangered their children by not sending them to school. So there has already been a case under Article 8 of the Human Rights Act which deemed that parents in Germany had endangered their children by not sending them to school.

2140 **Q200. The Clerk:** Okay, well, if we say, for sake of argument, that Article 8 is engaged, I think it follows that the use made of the provisions have to be necessary and proportionate, and the Committee has received representations, which I think you have seen, arguing that in order to be proportionate there has to be a pressing social need. Would you like to take the opportunity to explain what the pressing social need is for these provisions?

2145 **The Minister:** We have received the same letter that you have received and we are currently getting a rebuttal put forward to that; so, rather than make a point now, we will wait until we get the legal point on that. You are more legally trained than the rest of us here, Mr King, so we will wait until we get that advice before ...

2150 **Q201. The Clerk:** Okay, well – sorry, Mr Cretney – just finally on that, you have given reassurances here on the public record about the use that would be made of the powers, and I think I have heard you give those reassurances to this Committee before and doubtless you will give those reassurances while the Bill is going through the House of Keys, but will you be
2155 considering putting some of those reassurances on the face of the Bill when it comes through?

Mr Hooper: Sorry, you think it is necessary to write into the law that the law will be compliant with human rights legislation? I am slightly confused here.

2160 **Q202. The Clerk:** No, I do not think that is necessary, because clearly that has to happen anyway because of the way the Human Rights Act works. I think this is a slightly different point, which is that we have also been told ... For example, this Committee has been sent a document, dated 5th March 2018, which is ‘A Draft Policy and Procedure for Home Education’, and in it the Department says: ‘It is recognised that home-educating parents are not required to teach a
2165 national curriculum, provide a broad and balanced curriculum, have a timetable, have premises equipped to any particular standard, set hours during which education will take place, have any specific qualifications, make detailed plans in advance, observe school hours or days or terms, give formal lessons, mark work done by their child, formally assess progress or set developed objectives, reproduce school-type peer group social’ –

2170 **Mr Hooper:** Who is the author of that document?

Q203. The Clerk: Well, it come comes from the Department of Education, I think.

2175 **Mr Hooper:** No, sorry, I think you will find it is on Department heading, but that is why I am asking the question: who was the author of that document?

Q204. The Clerk: Okay, well, if I finish my question, my question was going to be: would you consider putting those points, things that home educators are not required to do, on the face of
2180 the Bill?

The Minister: Part of that was in discussions with home educators, who went away and drafted part of that and they just put it as part a document, as part of that discussion. That is why it is in that draft proposal that you see there.

Ms Edge: It has got a ministerial foreword in it.

Q205. The Clerk: So, this document, which has got on the front of it an Isle of Man Government crest and is in an Isle of Man Government typeface – are you saying it is a forgery?

The Minister: No, I am just saying that that was a draft of what was being proposed through discussion, so there is no departmental sign-off on that because it was only a draft of the discussions; and how, between ourselves and home educators, that was being put together. So there is no approval of that; it was just as a draft, as it says on the paper.

The Clerk: Okay, thank you.

Q206. Mr Perkins: Are home-educated children allowed free swimming lessons?

The Minister: No, because they do not go to schools.

Mr Hooper: But again, this was the purpose of including that in here, subsection 78(3), to allow them access to facilities, because at the moment there is a concern that they are being inadvertently excluded from facilities that are provided. Just because you choose to home educate, surely your children should have the same opportunities and the same access as people in the state system.

Q207. Ms Edge: It is access to any education facility – so, they could go to Ardwhallan, anything like that?

The Minister: That is where it is at the discretion, because it all depends on what grounds. This is one of the things that we discussed with them: ‘What happens if we want to do it next weekend?’ or whatever – well, that may not be appropriate and it may not fit in with the programme, so there has to be that discretion for the Department to say ‘at certain times’.

Q208. Ms Edge: So, subject to availability, they have access to everything educational?

The Minister: And that is why I thought we were doing a positive move by actually giving them that access as a positive move.

Q209. The Chairman: Can I just go back a step for a moment to where Dr King referred to a document which you have subsequently said was a draft and you were working ... Is it the intention that you will get together again with the home educators to form such a document in agreement?

The Minister: We possibly will get together. It all depends which home educators there are, because as a group there are numerous groups within home education and you have to be ... It is a whole set of a hundred families which are not just in one group. One of the thoughts was that maybe they should be registered as a home educating group. Some of the home educators we spoke to said they will get people contacting them asking them for advice, so it is ...

Q210. The Clerk: It just would be helpful, from my point of view, I think, if there were such a formal document that assists, and the guidelines you spoke about – perhaps the book you have spoken about as well – clearly would seem to help.

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The Minister: That is what we are looking at. When you are in discussions with people and you are trying to put a document together like that, if it gets out into the broader arena it may be taken out of the context that it was discussed in. You will have seen that thinking this is what the Department has approved and this is what they are doing. No, that was only a possibility, as a draft, to see how we can move forward. So it has no legal standing.

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Q211. Ms Edge: Do you have a registration form for home educators? Do you have some form of ...?

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The Minister: Yes, we do.

The Chairman: Okay, are we done on home educating, for now?

Q212. Ms Edge: I am just wondering how somebody vanished off to England, or wherever, and you did not know. Is there no mechanism within that registration form to terminate registration?

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The Minister: This is what we are saying, that the new Bill gives that clarity in there that you register; and if it is a register every year, then it gives you that sort ... because how many times do you sign a document – say, terms and conditions on an app – and you forget what those were at the start? You could be eight years down and then you forget that maybe you should tell them that you have moved across.

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Prof. Barr: That is why, when we have said how many children are being home educated, that number keeps fluctuating, because we never really have a clear, definitive view – because you are relying on people to tell you this and they may have left the Island or their circumstances may have changed. So, what we have is something which is a number, and that number I quoted this morning is the one that I checked just before I left the Department. That is what we understand is the current case, but in a few months it will be something completely different.

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The Minister: And part of that will be that when answering the questions some people will say, 'Oh, I haven't said that I've taken my child out of home educating and they are now in school,' so it could change in the next week or so. I think what we have got in the Bill is going to make it a lot clearer. And if we do the booklet like we have seen they have done in the Scottish model, I think that is more assistance that we will be giving.

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Q213. The Chairman: And one of the concerns obviously the Department will have – and I am trying not to put words in your mouth, but one of the concerns presumably is the possibility of a child and the family leaving the Island and then not having the best intentions in terms of home education, and then them disappearing and something horrible happening sometime in the future.

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The Minister: Yes, and part of it is if families from other jurisdictions move over here, how do we know what sort education they are getting, and how do you know that there have not been circumstances why they have moved?

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Q214. Mr Perkins: Moving on to clauses 79 and 90, how are children with learning difficulties and disabilities additionally supported?

The Minister: What we have done is a positive piece of work through our Safeguarding and Inclusion team and there is going to be another set of regulations that will sit at the front of these. What we are looking at is having that additional educational need recognised. Also, it is going to be looking at the provision in primary schools, about how they deal with children with additional needs and the funding of that.

Prof. Barr: Yes, we have renamed it from 'special' educational needs to 'additional' educational needs, which updates the language and the approach.

The Bill is meant to basically be less prescriptive, really, with regulations and codes of practice that are going to sit behind this.

We have taken this as an opportunity to engage with all of those who are involved with inclusion and safeguarding and it is something where we have tried to update the legislation and make it clearer what the roles and responsibilities of the Department are and what the roles and responsibilities of parents and others are within the legislation. That has not always been clear, I think, and there is a bigger piece of policy legislation around the clarity of what people are entitled to with regard to special needs. We have been doing some work outside the Bill in regard to producing a booklet that shows what people are entitled to. Often, young people who come to the Island are not clear what level of entitlement we have, what we can provide. We are a small jurisdiction, we are an Island community – there are things that people want which we would not be able to provide.

I think, in terms of just fairness and clarity, we have been trying to try and move all that forward. Some of it will sit in codes of practice and other bits of policy that sit behind this. It is a major piece of work for the Department because I do not think that we are clear enough on this.

Q215. Mr Perkins: Has autism been removed from the special educational needs?

Prof. Barr: Not that I am aware of, no.

The Minister: As I said previously at our last meeting, what the Department is doing in the secondary schools is by the end of July secondary schools will have had autism training.

Mr Perkins: Thank you.

Q216. Ms Edge: There previously was a document available in schools for special educational support with five stages – stage 1 to stage 4+. Why was that removed? I think it changed when the previous head of that sector was removed, but I am sure that leaflet is still available. It was very clear as to what support you would get at level 1, level 2 and the additional support that you got, so I am surprised that you are reinventing something that has previously been in the system.

The Minister: I think what we are doing is modernising what we are doing. We are making it more appropriate, so anything that we are doing in those areas we are hoping to move on. We are not trying to restrict the service; we are just trying to make sure it is clear, the areas that we are looking at.

Q217. The Chairman: When we talk about what was special needs and is now additional needs, what extra provision does the Department make to support children who excel academically, and why are so-called gifted children not included in the definition of additional educational needs found in the draft Bill?

2335 **The Minister:** It is not an area that had been raised regarding this, but I take on board your point.

Q218. The Chairman: So you think that the existing system to accommodate such young people is adequately covered?

2340 **The Minister:** No, I think it is something that we can have a review on after discussion.

Prof. Barr: Yes, I think so. That is an interesting point, Chair, but that is not something that in the discussions I have been privy to somebody has looked at it in terms of gifted children; the focus has been on children with Asperger's and autism. But you are quite right to raise that point and it is something we can certainly look at.

Q219. The Assistant Clerk: The Committee has received evidence from the parent of such a child, who has been concerned that there have not really been adequate resources to support their child. However, I am unsure as to whether that was submitted in confidence, so I will check and see if that is available for you on our webpage.

Prof. Barr: You have made the general point, anyway, so it is something we can think about.

2355 **The Chairman:** Thank you.

Q220. Ms Edge: With regard to gifted and talented students and how they progress through the system, do you feel it is adequate at the present time that they could take exams at year 7, or do you feel that it is restricted?

2360 **The Minister:** I am aware that we have students who have taken exams when it has been appropriate for them. I am not aware that we have said that anybody who wishes to take the exam early ...

2365 **Q221. Ms Edge:** So, with regard to restricting secondary education for 11 to 16, if a student in year 6 is capable of doing qualifications do they have access to that through a primary setting?

Mr Hooper: As was mentioned I think earlier by the Committee, the definition is now that secondary schools provide education mostly for children 11 to 16, specifically to allow for some flexibility there to allow that children who are both younger and older than that –

2370 **Q222. Ms Edge:** There is no age restriction if they have the ability, these people who excel? Good.

2375 **Q223. The Chairman:** Okay, so we are on the final straight. Whether we will make the one o'clock three-minute deadline is another matter. We have got about four or five questions – they might need a one-word answer.

Why has the Department opted to abolish the Religious Education Advisory Committee with the draft Bill?

2380 **The Minister:** Part of the thing is that, in discussions that we have had with the Bishop, what we are looking to do is to make that part of subject meetings, so it will be actually a broader area.

2385 **Prof. Barr:** Yes, all the other areas have subject network meetings, so all the heads of history will get together, all the heads of maths. The question really is why did there need to be a

2390 separate quango in terms of religious education, and so we had a very interesting and positive discussion, I think, with the Bishop, which basically said we can make this like a subject network meeting, except we can tweak in such a way to allow people who are not actually subject leaders in high schools to attend that subject network meeting. It would bring it more in line with the other academic disciplines in the schools.

Q224. The Chairman: Thank you.

2395 Why does the draft Bill not require teachers to hold any specific qualifications or be registered with a professional body?

The Minister: That is in the recruitment, isn't it?

2400 **Prof. Barr:** Yes, well, that is in the recruitment, isn't it? They are required to have ...

The Minister: As part of the recruitment it would be under the job descriptions.

2405 **Q225. The Clerk:** So it is your policy that they should have these qualifications and registrations; you just decided not to put it in the primary legislation?

Mr Hooper: I think that is probably fair comment, yes. Broadly, it is an employment issue as to whom you employ.

2410 **Q226. Ms Edge:** So, is there a risk that the Department could employ somebody without a teaching qualification?

2415 **The Minister:** We have had this discussion with the unions because they had raised the same issue, and some of it is about the employability, that there may be times where it is quite relevant that we bring somebody from industry into a secondary school or a UCM area who may not have a teaching qualification but they can work alongside a teacher.

I think it is a positive way forward, in that we are actually giving our students the opportunity to have people who may be specialists in certain areas and have relevant experience to actually teach alongside the ...

2420 **Q227. Ms Edge:** That has always been the case because there have always been support staff who work alongside teachers, but a teacher has to have a teaching professional qualification.

2425 **The Minister:** But there may be times when, between industry and the Department, you think that somebody who is going to go in ... that the Department may assist in saying this person can come in and work alongside them with some sort of payment.

Q228. Ms Edge: And I assume that payment would not be at the same level as a teacher, which would be the concern, I would imagine, of the teacher unions.

2430 **Prof. Barr:** Well, there is an unqualified teacher rate, and we do use unqualified teachers – rarely, but they are used in schools on reduced timetables and mentored by somebody who already has a teaching qualification. We would do that for the reasons the Minister has suggested, but also there are occasions where we have people who have wanted to change career, who do not have a PGCE or a CertEd, so you would employ them as an unqualified
2435 teacher on a lower rate of pay and being mentored by somebody. Indeed, a number of our high schools operate that kind of policy and we usually have a small handful of individuals who are currently working in our schools on that basis.

2440 **Q229. Ms Edge:** So, with regard to registration of teachers and the system that is in place in other areas with regard to recording of disciplinary instances etc. that have to be recorded – safeguarding issues have to be recorded on this register – why do we not have that in the Island? Why is that not deemed necessary to include for protection and safeguarding of our students?

2445 **The Minister:** Well, it is under the Safeguarding Act. Everybody is responsible for safeguarding.

2450 **Q230. Ms Edge:** Yes, that is safeguarding, but teachers who are professionally ... in their career, if they have a disciplinary action against them it gets recorded on a register, and that is part and parcel of your teacher registration number. It used to be called the General Teaching Council but there is another register now – I am not sure what it is called, but we have never adopted it on the Island and I am just curious as to why we would not adopt it.

2455 **The Minister:** I am sure we have had this previously, that the General Teaching Council does not exist anymore.

2460 **Q231. Ms Edge:** No, that is what I am saying, but there is a body that keeps a register for disciplinary. I suppose what I am asking is how do you access that for a teacher coming to the Island – how do you check their DFE qualification number and any disciplinary or any issues relating to an individual?

Prof. Barr: All those employment checks are done through OHR.

2465 **The Minister:** Yes, and it would be through references and through their previous employers.

Q232. Ms Edge: But anybody could write a reference. I am just wondering how do you actually bona fide check that there is no –?

2470 **The Minister:** Sorry, but not everybody can write a reference for them because it will be a check through their previous employer.

Q233. Ms Edge: Have you ever found any issues with anybody who has perhaps ...? I think perhaps when the CEO was at the College – have you ever had any issues where, because of this registration ...?

2475 Teachers pay a registration fee to be part of a professional body every year and that is where it gets recorded in the UK. I am just wondering why we would not want that on the Island.

2480 **Mr Hooper:** Not all teachers do. In England, for example, QTS status – which is, I think, what you are talking about –

Q234. Ms Edge: No, QTS is your qualified teacher status.

2485 **Mr Hooper:** Yes, but it is only required for state schools, so if you are an independent school in the UK there is no requirement. So, if you were to put in law that you needed to have a certain level of registration, you would be excluding a big chunk of potential employees and, as the Chief Exec has already said, OHR perform all the standard employment checks that you would expect to perform before the Government employs someone. I am just trying to –

Prof. Barr: And there would be a DBS check as well.

2490 **Q235. Mr Perkins:** It seems a bit risky to me, though, to rely on a previous employer to have done the checks for you. Surely there is some sort of central registration in the UK for a trained teacher.

2495 **Mr Hooper:** There is not; that is the point I am trying to get across. Teaching is not like being a doctor, where you have to be registered with the GMC. It is not that.

Q236. Mr Perkins: I would beg to differ with that because I think there is a central reservation somewhere.

2500 **The Minister:** Can you advise where?

Mr Perkins: Yes, I will do; I will have a look at it and I will come back to you.

2505 **The Assistant Clerk:** There is an online portal maintained by the Department for Education which allows schools to review a teacher's ... check they have qualified teacher status, check if there are any disciplinary issues on the record and a third thing. That was following the abolition of the GTC. This was something that was established in the UK to allow maintained schools to check the status of their teachers.

2510 **Q237. Ms Edge:** I just think it is safeguarding for you, as a Department, to ensure that you have got access to that and that people ... I believe it used to be something like £25 to register with the GTC, but people said, 'Well, teachers won't do that.' Perhaps it would be worth a one-off exercise for the Department to do that.

2515 **The Minister:** What we can do is review that site to see whether it is a comprehensive list, because one of the things we are very much aware of is that some educational establishments where people have been teaching do not require them to have a teaching qualification as such.

2520 **Ms Edge:** It is the Department for Education's Teacher Services Portal.

Q238. The Chairman: The draft Bill proposes that the Department is going to make a great number of regulations, so I presume that there will be proper consultation and the standard consultation on such regulations.

2525 **The Minister:** What we have said to the unions is that on the Curriculum Orders and stuff like that – and it is in the Bill – there will that consultation.

2530 **Prof. Barr:** We have made that absolutely clear to the unions and associations. We are actually looking forward to working with them on some of the Curriculum Orders and some of the secondary legislation and other things that will hang off this primary legislation, and really interested to hear again what is best practice, what has worked really well in some other jurisdictions, and we can then include it in that part of the process.

2535 **Q239. The Chairman:** Thank you.

A final one from me. I am not speaking on behalf of my colleagues here. I am sure they might have ... but we will see. Does the Department intend to make any additional financial provision for schools with a higher proportion of pupils from poorer families?

2540 **The Minister:** I think it was at our previous meeting ... it is an area that we will be looking into. We have had previous discussions regarding pupil premium. There may be a different

mechanism of actually moving that forward, but it is something that the Department has sort of committed to, that it is going to have a review of it.

The Chairman: Thank you.

2545 Anything from you?

Mr Perkins: No, that is fine.

Ms Edge: Can I just ask one more?

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The Chairman: She's like Oliver Twist!

Q240. Ms Edge: In the draft Bill there is no provision for the Department to be subjected to external scrutiny, but there is for schools. Can I ask why that has been omitted?

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The Minister: I think we have had that from your Questions in Keys and Tynwald regarding the external, and ours is externally validated. We gave that information to the Keys. It was circulated to all Tynwald Members that companies externally validate.

Q241. Ms Edge: Validate the Department?

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The Minister: No, as I have said to you before ... What part of the Department are you saying about external validation? Which part of the Department?

Q242. Ms Edge: The centre of the Department, to ensure that the Department is operating correctly. We have had external reviews of our Health Service, we have external reviews of our other services, but there has not been one of the Department of Education and I am just wondering as to why that should not be covered in the legislation to ensure that we are complying with ...

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Mr Hooper: With the greatest of respect, that is your Committee's job to make sure that the Department is doing its job. That is why we have parliamentary Scrutiny Committees. I believe that the Scrutiny Committee has also got the ability to instigate its own independent external validation process of a Government Department if it should choose to do so. That is the way our system is set up.

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The Minister: And part of the discussions we have had is that we do have external validations of different parts of the Department. We have Quest, we have all these other bits and pieces that go ahead. I do struggle to find what you are trying to identify, which part of –

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Q243. Ms Edge: The central function –

The Minister: Well, which part of the central function?

Ms Edge: – which would previously have been classed, in David's day, as the old Education Board – (**The Chairman:** David's day?) Sorry! I am writing you off there!

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The Minister: The thing is you need to give us an area.

Ms Edge: Head office is what it gets described as.

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The Minister: The thing is we do have scrutiny of the Department. Finances are done through Treasury. It can be done through the Public Accounts Committee; it could be done through yourself. You really have to be more specific about what area you want us ... Could you please advise what area, rather than just 'central', because –

Q244. Ms Edge: The function of the Department and the services it is providing to the other services that are getting offered, which would be are you providing the correct and adequate support for your schools, for your special educational needs, for your NSC – that type of area. At the moment, everybody assumes that you are, but has that ever been externally validated to ensure that schools are happy with the services they are provide with etc. to ensure the support is there?

Prof. Barr: They have an annual review of that, which is done every year.

The Minister: Yes, so the schools do give feedback to the Department on their external reviews.

Q245. Ms Edge: *Their* external reviews?

The Minister: And the support –

Q246. Ms Edge: The schools are externally reviewed?

The Minister: – that the Department gives them.

Q247. Ms Edge: Is that published? That would be useful to share with the Committee, if it is published.

Prof. Barr: I do not see any reason why you should not see that, but there is an annual review done of what the schools think of the support that has been provided by the Department. That is done on an annual basis; it is done in May/June time and there is a pie chart and all kinds of things that are attached to it. Certainly I do not see any reason why that cannot be shared with you.

But going back to your point, an inspection of the Department obviously would not sit within a Bill which is about educational provision. That would be an external review of the Department, as you rightly say, something along the lines of what has been done in Health. Then, really, that is a matter for you, as a Scrutiny Committee, whether you want to commission such a review. I would be interested to know who would conduct such a review, what you would be looking to achieve by such a review, the timeframes of it and how it might operate. If we are to go through such a process, that is within your gift.

The Minister: And ultimately, through the political Members of the Department, through your Committee, through the Public Accounts Committee and Treasury audit, I would have thought that there is quite a significant amount of external scrutiny of what the Department is doing. Unlike Health, the Department is within budget, we are providing the services, we have had external reports on how our NSC is working, so I do fail to understand what sort of external scrutiny you are looking at.

Q248. The Chairman: Okay, I think we will draw that one to a conclusion for now.

What I would say is I do not believe this Social Affairs Policy Review Committee has access to the funds that Tynwald has in relation to the Department of Health review. Very nice if we had, but we manage much more frugally in terms ...

2645 Anyway, this is a first. I hope that this has been a useful exercise. We have tried throughout to stick to the proposed draft legislation because that is the purpose of today's meeting. I think we might have wandered off once or twice – I apologise for that – but thank you very much for your frank responses. Our endeavour at the end of the day is to make sure that the Bill presented to the House of Keys is as good as it can be.

Thank you very much.

The Committee adjourned at 1.14 p.m.

14th June 2019

**Evidence of Mr Darren Northcott and Ms
Geraldine O'Neill, NASUWT; and Mrs
David Trace, Mr Richard Tanton and Ms
Sue Moore, ASCL**

and

**Mr Damon Warr and Mrs Dianne Warr,
and Mr Derek Sewell and Mrs Dawn
Sewell, Manx Home Education
Association representatives**

and

Mr Tristram Llewellyn Jones



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING VEAYN TINVAAL**

**PROCEEDINGS
DAALTYN**

**SOCIAL AFFAIRS POLICY REVIEW
COMMITTEE**

Draft Education Bill

HANSARD

Douglas, Friday, 14th June 2019

PP2019/0100

SAPRC-EB, No. 2/18-19

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Members Present:

Chairman: Mr D C Cretney MLC
Ms J M Edge MHK
Mr M J Perkins MHK

Clerk:
Mr J D C King

Assistant Clerk:
Mr B Awkal

Contents

Procedural.....	59
EVIDENCE OF Mr Darren Northcott and Ms Geraldine O'Neill, NASUWT; and Mr David Trace, Mr Richard Tanton and Ms Sue Moore, ASCL.....	59
<i>The Committee adjourned at 2.33 p.m. and resumed its sitting at 2.36 p.m.</i>	<i>74</i>
Procedural.....	75
EVIDENCE OF Mr Damon Warr and Mrs Dianne Warr, and Mr Derek Sewell and Mrs Dawn Sewell, Manx Home Education Association representatives	75
<i>The Committee adjourned at 3.35 p.m. and resumed its sitting at 3.39 p.m.</i>	<i>92</i>
Procedural.....	92
EVIDENCE OF Mr Tristram Llewellyn Jones.....	92
<i>The Committee adjourned at 4.22 p.m.</i>	<i>101</i>

Standing Committee of Tynwald on Social Affairs Policy Review

Draft Education Bill

*The Committee sat in public at 1.33 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[Mr CRETNEY *in the Chair*]

Procedural

The Chairman (Mr Cretney): Good afternoon and welcome to this public meeting of the Social Affairs Policy Review Committee, a Standing Committee of Tynwald. I am David Cretney MLC and I chair the Committee. With me are Mr Martyn Perkins MHK and Ms Julie Edge MHK. If we can all ensure our mobile phones are off, or on silent, so that we do not have any interruptions. For the purposes of *Hansard*, I will be ensuring that we do not have two people speaking at once.

The remit of the Social Affairs Policy Review Committee is to scrutinise the established but not emergent policies as deemed necessary by the Committee, of the Department of Health and Social Care, the Department of Education, Sport and Culture and the Department of Home Affairs.

Today's exercise is to examine the draft legislation presently being considered by the Department.

Today, we welcome Darren Northcott and Geraldine O'Neill, who are representatives of the National Association of Schoolmasters Union of Women Teachers (NASUWT); and David Trace, Richard Tanton and Sue Moore who are representatives of the Association of School and College Leaders (ASCL).

EVIDENCE OF

**Mr Darren Northcott and Ms Geraldine O'Neill, NASUWT; and
Mr David Trace, Mr Richard Tanton and Ms Sue Moore, ASCL**

Q249. The Chairman: The formalities are that you have the opportunity to introduce yourselves formally and to make any opening statement. So if we do it in groups – if you would like to start?

Mr Northcott: Do you want to start, Geraldine?

Ms O'Neill: Good afternoon. I am Geraldine O'Neil and I am the local branch secretary of the NASUWT. This is my colleague from our headquarters, Darren Northcott; and he is our National Official for Education.

Along with Darren and our members here and with our union organisation, we are responsible for the consultation submission that you have seen.

30 Our opening statements really would be first of all to say we are very pleased to be here and we welcome the opportunity to meet with you, and also the opportunity for a Committee such as this to oversee or to look at any prospective legislation. We hope that this Committee and this type of work will continue with other legislation as well. We think that is extremely important.

35 So we would like to give an overview; and my colleague can give you an overview of where we stand with the Education Act.

The Chairman: That is fine. I perhaps should have thanked everybody for their written submissions. They have been very helpful and I think they are both online for the general public to examine as well. But yes, please do. Thank you.

40 **Mr Northcott:** I was just going to add to what Geraldine said, Chair, that obviously you will have seen in our submission there are obviously some positive elements of the Bill in our view but there are also some elements that we think need further thought and need to be addressed further, and perhaps we can touch on those this afternoon.

45 I think the one overarching point we would make, and I think we picked this up in our response, is that legislation is important but it is not sufficient in terms of addressing some of the issues that we have, that we have identified in respect to the education system in the Isle of Man. So the role of Ministers in the development of policy is important and, once you have got the legislation, what are you going to do with the powers that you have? That is really important.

50 Members of Tynwald obviously have a critical role to play in that but also in our experience good policy is developed through wide stakeholder engagement with parents, with learners and certainly with representatives of the workforce. That is why for us one of the key issues that we want to see taken forward is making sure we have better arrangements for workforce engagement in the development of policy around consultation. That certainly involves for us a long-standing issue around union recognition – you would expect us to make that point, it is very important to us. But not just in the pay and conditions sphere, also broadly in terms of educational policy, because we want the best for the Isle of Man's children and young people and we think if you engage the workforce, have their ownership and have their participation you have got a better chance of getting good policy in place.

Q250. The Chairman: Thank you.

Just on that point, are you saying that the union is not presently recognised by the Department?

65 **Mr Northcott:** We currently do not have what we would describe as a formal recognition machinery or agreement with the Department. They certainly consult us and they engage with us, but the 'rules of the game' are not as clear as they might be. So if you put that engagement on a firmer, clearer, more substantive footing I think you develop confidence on behalf of the trade unions and the people they represent, and I think you benefit from a more consistent, clearer set of opportunities for the workforce to share its view in the development of policy.

70 We understand Ministers have the responsibility ultimately, it is a democracy and we understand how policy is made; but if you can get good workforce engagement we would say through a recognition agreement we think, and our experience – long experience, I think – shows you actually end up with better policy to which everyone is committed.

80 **Ms O'Neill:** It also works in with working with the approach that the Department has highlighted there, interested in developing in the draft Education Bill. We feel that is an integral part of that multi-agency approach, that all stakeholders are involved, and we see that really as a fundamental to future engagement we would have with the Department. It is one of the major issues we have at the moment in this lack of consultative mechanism being there.

Q251. The Chairman: Thank you.
Now, on the other side?

85 **Ms Edge:** Chairman, can I just declare that I am still an associate member of ASCL. I just want to put that on record. *(Laughter)*

The Chairman: Right, yes. I always feel that I should declare in such meetings that I have two daughters who work within the education system.

90

Mr Tanton: I will be brief and some of it will repeat and reinforce some of the messaging of my colleagues to my right.

I think there were four major themes that we have been exploring through our official response to the Education Bill. One is about the opportunity you have at this point in time to shape the educational landscape for a generation or more of children, but also of the profession on the Isle of Man for the lead professionals. We are an association that represents over
95 nineteen and a half thousand school leaders and all our members on the Isle of Man are school leaders in the secondary phase. So you are talking about a Bill that should shape the life chances of young people and that, I would think, should be at the forefront of the way the Bill is worded.

100 I do not actually see that and it disappoints me that that is the case: that children do not seem to be right in the middle of it.

We would also as an association look for coherence in that vision for the next generation of school leaders or the school teachers as well as the vision for the children, and a sense of creating the infrastructures and capacity for the profession going forward. So we see it as an opportunity. That links to my second point, which is the disappointment and frustration that the process by which we have been involved, or not involved, in the consultation seems to be
105 stuttering and quite Byzantine. I am a historian, or I was ...

I would suggest from our point of view you have to involve the major stakeholders: identify the major stakeholders, bring them on board and involve them in the process of creating an Education Bill that the profession itself, at any level within the profession, can speak for with integrity and authority.
110

I responded on behalf of the Association and I am sure you have read the paper, and that was back in early March. We are now in mid-June and I have not had the opportunity and not been invited as ASCL to speak with anybody around my response – or *our* response; I will keep saying
115 *our* response. Sue and David will speak more about what is happening in terms of head teacher meetings but that to me is an extraordinary situation, where we were against a very tight timeframe to respond and we did our level best to respond in a coherent manner. We spoke with our members, so we believe that is what our membership is saying to us. We have a huge amount of experience in responding to government legislation wherever that may be and yet I have had nothing but an acknowledgement – which to me is extraordinary.
120

So I think it is almost a missed opportunity and we are now in a situation – just to labour the point, apologies – where we have been invited to a meeting on 1st July, we *believe*, but I have not been told officially, to see the second drafting of the Bill. So one would hope we would see that draft before we meet. We have yet to see a draft. We have requested a draft – I believe, David? – and we have been told we may get it within five days of the meeting itself.
125

Again, if you look at the timeframes we have got to then respond to something with a very swift turnaround. The schools then go on holiday and our colleagues will be on holiday. We are then, I believe – if I am wrong, please tell me – back into the cycle of it goes to Tynwald in October. So those constraints almost amplify the frustrations that we have expressed to date.

130 The other two points I would make just to finish off, is around the tone and language of some of the first drafting of the Bill, particularly around clause 22, which I am sure NAS colleagues will support. It does not seem to inspire or motivate. It seems almost to be a sort of top-down, 'This

will happen to you if you do not'. I am not sure that is how legislation should be formulated to bring all the stakeholders along!

135 The fourth concern we have is around the lack of detail around some of the key areas that are mentioned within the Bill, whether that be curriculum – and you cannot get more vital than curriculum, that is what you are teaching the students on a daily basis, you know; around the definition of what 11-16 education is; around social media; around exclusion; additional needs; and physical restraint. They are all mentioned.

140 The first and only time we have met with the Minister and the CEO we were promised secondary legislation which would maybe help us to understand the detail behind some of those headlines. We have yet to see that; and nor have we had the chance to discuss what that detail might be.

145 We pride ourselves on being a very positive, professional association trade union. We pride ourselves on being seen by most employers as people who bring solutions and a dynamic to the conversation. I think we are frustrated at this point in time that we have not had the opportunity to do so, or to discuss in detail our concerns around the first drafting of the Bill.

Thank you.

150 **Ms Edge:** Is it okay to just ask?

The Chairman: Please do, yes, of course.

155 **Q252. Ms Edge:** With regard to anywhere else, either the UK or any other jurisdiction that you work in, at what point would you see some draft legislation? You were saying you might get it five days before, but at what point would that ... What is the practice elsewhere?

160 **Mr Northcott:** That is a very good question. Just to give you an example, the Bill contains some quite important provisions around children with additional educational needs. I think we have made the point in the past that the lack of a clear legislative framework is not as an omission. I think in the provision that is made for children with additional needs – and it is helpful that some legislative architecture has been put in place, but to make sense of that in practice you need a code of practice. How will this legislation be delivered on the ground day in, day out by practitioners? To do that, you need the code of practice.

165 So you can have an example of the position in England where legislative change was put forward through the Children and Families Act, that made changes to the statutory underpinning for special and additional needs; but in order for parliamentarians and the wider public to try and understand more what difference this will make in practice, a draft code of practice was published alongside the Bill, so you could see how the Bill was supposed to be implemented in practice. I think that is an example of what I think Richard was talking about wherein, yes, you see the broad high-level legislative structures, which we have commented on positively and negatively where appropriate, but it is difficult for parents, for pupils and for teachers to see what this will mean to our lives in practice without that draft code of practice.

175 So that, I think, is an example of how you might consult in a way that is more meaningful than perhaps has been the case in this instance.

180 **Mr Tanton:** Sorry, just to come in from ACSL's point of view. We would certainly expect in most instances there to be a very clear timetable and a very tight, very clear expectation on all parties when you submit papers and when you receive drafts so you can properly interrogate what is coming back at you; and as a stakeholder ourselves that would be our perception of our role in that process.

Ms Moore: I think even on the Isle of Man – and David and I have been here long enough that we have experienced the 2001 Education Act and the 2009 Education (Miscellaneous

185 Provisions) Act. For both of those there was far more prior involvement with *sections* of the Bill, not the whole thing, but 'We are looking at this bit, so here is a draft of that section', and we were able to have a look at it and give our information before it then went to public consultation.

Part of my dilemma now is that I was not able to do that. We asked, as secondary heads, to see and we were told no. We were given timescales that moved each time but we were never given anything in writing, and so when the actual draft Bill arrived a couple of days before the public consultation I was not able to give it public support. That put me in a really difficult position because obviously I want to be loyal to the Department, but equally I have a moral duty (The Chairman: Yes, yes.) to do what is right for the education of children and young people on the Isle of Man, and I have really serious concerns about the Bill in its current form.

Ms O'Neill: Can I reiterate as well the same from the Teaching Union's point of view, not the head teachers. We were also told on many occasions prior to the draft appearing that we would have the chance at our Teaching Union meetings with the heads that we would have an opportunity to look at anything, any documentation that went before the draft Bill. That never materialised at all and again we have had all of the delays that have been indicated here.

Q253. The Chairman: Right, I think that is enough!

We had the Minister and the Chief Executive in on 8th March. I do not know whether you have had the opportunity to look at what they said?

Have you any comments you would like to make about what they said? Again if we do it –

Mr Northcott: They said a lot, so it is difficult to know to some extent where to start, really. But I think some of our concerns echo what has just been said in terms of certainly the process around which the Bill has been taken forward, and we do not think that has been everything it could be in respect of consultation engagement. I think the points have been well made.

My overriding impression from the evidence that was shared with you is that there are quite a lot of gaps, I think, in what you are being told. So in a sense you do not necessarily, as legislators, have all the information that *you* need to make informed decisions about whether this Bill should progress in its current form or whether it needs amendments. I think that is part of the issue that we face here. Certainly you do as legislators, but we do as stakeholders as well, in that I think we need more information, more discussion and – dare one say? – more *time* to get this right.

I mean, as was mentioned, it has been said to us this is a once-in-a-generation opportunity to get legislation around education in the Isle of Man right, and we can only do that if we have the information that we need in order to make good decisions. And from the evidence that was shared with you there are still some questions I would have, and I dare say that *you* have, about what will this mean in practice? What impact will it have on children and young people? What impact will it have on our schools? What impact will it have on those we task with educating our children and young people?

There is more information and there is more analysis required before I think anyone can make really informed choices about whether what we have in front of us is right, or whether we need to think about a different approach.

Ms O'Neill: We still have major concerns, though, on the management of student behaviour outside of school and we are currently still in dispute with the Department over this. We recognise that the Department is showing a more willing approach to looking at what we have proposed than they have in the past. However, we feel that what is being proposed, and even in relation to the Home Affairs Department, is not specific enough and it will not really deal with the issues and problems we have here, if we are going down harassment routes, etc.

I mean, again, they have spoken about it in this really nice terminology, ‘the multi-disciplinary approach’; however, we need to see a backbone to that. We need to see, as my colleague has said, a code of practice structure that will show exactly each stakeholder – whether it is Youth Service, whether it is Social Affairs, or the Police, or whatever it is – that we all have a part there. All we are trying to actually do there, and we have pointed it out on quite a number of occasions, is follow best practice – the best practice that exists in *all* the surrounding jurisdictions, and we do not see any reason why the Isle of Man should not follow that best practice.

What we also notice, which I find slightly contradictory, is that the Department now seems to be very keen to pursue protection in relation to social media abuse – however, they have not put a protocol in place for how that would happen – and then not see that that correlates to protecting teachers in the physical world as well. Social media abuse is, we know, a very serious matter at the moment but so is physical abuse in the street in a small community that we live in here in the Isle of Man. So if you are going to be very diligent about that, we need equal diligence in the physical presence of teachers in school.

We really feel that is a major part of this Bill and we are not confident that the checks and balances that are being considered are really going to take place. We are a bit worried about the fact of enabling legislation, ‘Oh, well, we’ll put it into enabling legislation’. But, again, how do we know that is going to take place?

So that is one of our major issues.

Q254. Ms Edge: So there are elements within the Bill as it is put forward where you feel there are major gaps that would be preferable in the primary legislation, and you have been promised secondary legislation but you have not seen it? But there are elements that might be in the secondary that you would prefer in primary?

Mr Northcott: It is an important point. I mean, in all jurisdictions – and you asked earlier about our evidence from other jurisdictions – having a combination of primary and secondary legislation and codes of practice is perfectly normal and in a way there are good arguments for organising things on that basis. I think our issue is we talk about behaviour and we talk about multi-agency working, and in our evidence we have said these things are incredibly important. What we lack is the detail of what that secondary legislation will look like, as Richard said, and what the codes of practice will look like so we can make a judgement as to whether it is going to make a difference on the ground.

It is that lack of wider information in respect of secondary legislation and codes of practice that makes it difficult for us to judge – to give the example that Geraldine has just raised: are the provisions in respect of behaviour really going to work? Are the provisions in respect of additional educational needs going to work?

That does not mean you shoehorn things into primary legislation that should not necessarily be there, but you certainly make sure that people deciding whether the primary legislation is fit for purpose or not have all the information they need to make the right decision.

Ms Moore: Can I pick up on that?

Q255. The Chairman: Yes, please do.

Ms Moore: One of my concerns is that there seems to be a lack of consistency and a lack of clarity and coherence about what in the Bill is intended to be primary legislation and what is intended to be left to secondary.

We were told it was an enabling Bill – and I wholeheartedly agree with the concept of an enabling Bill – but when you look at this draft Bill there are some aspects of secondary legislation which would come to Tynwald for approval; others that would come towards

Tynwald to be laid before Tynwald; and others where there is no mention of Tynwald. For me, there is a really fundamental question about who is responsible for education on the Isle of Man? Where is that delegated, with what autonomy and to whom? And who checks that what is happening is right? I have huge concerns.

I mean, I had huge concerns when we removed the Board of Education and replaced it with an education council. This goes a step further: it removes an education council. It leaves unclear where the Department could have complete powers without any check from Tynwald, without any check from an education council. It has the power to dismiss governors, having appointed them in the first place.

So who is going to ask the difficult questions? Who is actually deciding what the curriculum is? And that is just an example, because throughout the Bill there is a lack of clarity about where the responsibility lies and where the checks and balances are. And in the hands of the wrong person I think it gives rather frightening powers to a Minister of Education in the future who might not do things the way the rest of us would appreciate.

Mr Tanton: You asked the question as to our thoughts on the Minister's and the CEO's responses. I thought their responses raised more questions than answers actually, and gave the impression there was more consensus than there was agreement about things. And I think the response you have had from my colleagues probably amplifies that as well.

If you look at clause 22, which is I think at the heart of major concerns about the Bill in terms of how that may be interpreted and how that may run out in practice, it seems to suggest that if a head teacher is, or appears to be, unable or unwilling to do as they are told – and I do not know how anyone would ... I mean, my children, when they were young, appeared to be unwilling or unable to do a lot of things! But where would that leave you in terms of employment law and employment practice? The codes of conduct, the disciplinary policies and the capability policies you have? All those things should underpin any appraisal of a head teacher's performance. But it seems to suggest that if a head teacher *appears* – and I am sure you may have cross-checked that with legal friends? I have, and they are all saying to me, 'That's a minefield! How can someone *appear* to be unwilling or unable to do something?

So that was one of our major things when we did meet with the Minister and the CEO, and I did not see any sort of sense in the responses to this Committee that that clause, or that part of the clause, was going to be taken out or amended in any shape or form.

I think that is reinforced by the points that Sue is making because it seems to apply to governance of schools as well. Now, head teachers and school teachers, we are all governed by policy and practice and you have contracts of employment. Governors do not do that and that same phrase that if a governor appears to be 'unwilling or unable' to do something, they could be asked to step down. I always thought the best practice model, which you should be refining and developing across the education landscape was where you want governors to be not only a critical friend to the head teacher and the school leaders – so they are questioning, they are forensically going through the data, they are legitimately the mirror by which you judge yourself. But they are also there, aren't they, to interrogate and to make sense of government legislation wherever that government may be – or local authority legislation, or whatever?

If you almost disenfranchise both governors and possibly head teachers at the outset through this clause, it does not seem to me to be a particularly – I will be careful of the words I use because I guess people are writing it down – it does not seem to empower the profession or those who volunteer to be governors, and who take that role very seriously, to manage and lead the schools forward. I hope that makes sense.

Ms O'Neill: We have equal concerns about the proposals in relation to governors. And again we go back to what we have said before, we believe that we need an overseeing body that is the Education Council; or if it is made up of multi-disciplinary stakeholders, or whatever it is going to be, that no Department or Minister should be able to act without any overall scrutiny and we

would consider it to be extremely dangerous. But we believe a code of practice needs to be there, with due respect to my head teacher colleagues, for both head teachers and governors to be ... You asked in the Scrutiny Committee session, I was here for it, when were the articles of governance updated, and to my recollection – and I could be incorrect in this, and you can correct me if I am – you did not get a straight answer on that.

Our view would be that articles of governance and the whole structure of governors and how they are appointed, etc. and who oversees what, should all be part of that structure Island-wide. Individual schools may have individual aspects of the articles of governance, but there should be an overarching system and protocol that is there for everybody that they have to follow. Otherwise we are in the situation where it could be down to whatever a particular Minister or the Department decide to do, without consultation with any outside body.

Q256. Ms Edge: There are two questions now from what Geraldine has just said.

Do you feel that the new proposals coming forward are actually giving you less autonomy and responsibility, as the professionals?

The other question is: you have made your submission and you have had no response. You were expecting to be able to challenge some of the clauses if you were afforded the opportunity to actually meet face to face following your submission, but you have not been given that opportunity. So you are making representation against clause 22 and what you really feel, as professionals, should be in there?

Mr Trace: When you spoke to the Minister about that on 15th April I think his, or Lawrie Hooper's, response was 'Well, it is in the current legislation'.

The current legislation is being replaced because it is not fit for purpose. So if it is there it probably should not be in this legislation.

Secondly, it made its way into the current legislation following the consultation in 2008 that became the 2009 Miscellaneous Provisions Act. It made its way in without any consultation with anybody. It sneaked into the final Bill and we knew nothing about it at all. So we do not think it is suitable.

And in answer to the first part of your question, I think there is a complete ... This Bill proposes a huge shift of power away from head teachers and governors into the hands of the Department and the Minister.

Mr Northcott: Just to add to that. I mean, every jurisdiction has to strike a balance between system-level responsibility and local-level autonomy. I think one way you could characterise what is proposed here is that it is not entirely clear even sometimes where that line is being drawn. So there seems to be, for example, if you go back to clause 22, a misunderstanding of the distinctive role of a governor of a school and a school leader. The governors are responsible for governance and the leaders are responsible for leadership and management. The school leaders are employees, they are not office holders in the same way that governors are.

So I think we do not answer those questions as well as we could until we are very clear that we understand what good governance looks like, and what good leadership and management looks like. And, in a jurisdiction like the Isle of Man, where do we draw the line between central control and local school autonomy that meets the particular circumstances of this jurisdiction?

So there seems to be, in the development of this policy, still some lack of clarity about where that line should be drawn and perhaps to some extent taking powers in centrally that may be better determined at school level, but perhaps also conversely having powers at school level that might better be exercised centrally. What is the distribution of the different functions between the centre and the local setting? Where do we draw that line? I am not sure we have the best answers to those questions yet.

390 **Mr Tanton:** And I am not sure we have had the opportunity to discuss those in the way that we would normally perhaps expect to do so.

Ms Moore: We did have one meeting, didn't we? ASCL had one meeting with the political Members in the offices of the Department as part of the consultation. And then there has been one subsequent joint union meeting. So that is the opportunity we have had. But we have not had what we would regard as sufficient opportunity to talk through some of the more serious issues.

We went through it clause by clause and sometimes the response was, 'Well, it is in existing legislation', as if that meant it was okay. But actually, even though the idea of it was in existing legislation, certain words had been altered, and we all know that when you are talking about the law each word matters. So that actually changing one word changes the whole way of working. So even though it might have been in existing legislation it was not in the same format and that is quite significant.

We were also told we did not understand! I may not be an expert in the law but I do know quite a lot about secondary education and we have people we can call upon who know a lot about how things work with legislation and policy, which is why we bring our people from our organisations. And that is why we *want* to be able to have the opportunity to have proper and full consultation. We all want to have a good Education Act because we are going to be working with it every day and that is where we are coming from here. We want it to work for young people, for children and for the community of the Isle of Man; as well as the profession, because that is why we are in the profession.

The Chairman: Just to make it clear, in relation to your proposed meeting and your five-day advance viewing of a second draft, whatever that may be. The Committee has not seen anything different since we met with the Department representatives.

Q257. Mr Perkins: Have you approached the Department for further meetings?

Mr Trace: There was a further meeting proposed on 24th May and a few days before that took place they cancelled it.

Q258. Mr Perkins: Right, and the reason? No?

Mr Trace: They were not ready.

Ms O'Neill: So the next further meeting is 1st July –

Mr Trace: But we cannot see the papers. We asked for them at least two weeks in advance but they will not be ready.

Mr Perkins: Right.

Mr Tanton: I am just a bit – to put that into context and I mean it goes back to what we have all been saying that a date suddenly appears out of nowhere and we are all suddenly looking in our diaries – can we make that date? Often that date appears without any clarity as to what the function of the meeting will be or who should attend.

Ms O'Neill: Yes, it was quite confusing.

Mr Tanton: And to go back to what Sue was saying, at that meeting we had – the only meeting we have had – there were ASCL employees both of which, with myself, have between

us over 25 years of headship; and Sue, who has got ... ? (*Ms Moore*: Twenty-one years.) Twenty-one years of headship. So that is quite a lot of headship in the room and we are told we did not understand elements of the Bill, which was difficult to accept!

445 **Q259. The Clerk:** Could you let us know the date of the meeting, either now or later, please?

Mr Tanton: Say that again, sorry?

450 **The Clerk:** When was the meeting?

Ms Moore: There is one planned for 1st July.

The Clerk: The one you have just described.

455 *Mr Tanton:* That was – late February? Early March?

Ms Moore: No, it was March.

460 *Mr Tanton:* March 6th, I think it was?

Ms O'Neill: We have also had one preliminary meeting which we sought and had an hour's meeting with our UK reps and one of our national executive members, and that was in February, wasn't it?

465 *Mr Northcott:* Yes, it was in February.

Ms O'Neill: So we have had one meeting. But it was really only a preliminary meeting.

I think what you are really hearing here is we are all singing from the same hymn sheet insofar as consultation has not been the depth of consultation that we feel would be most beneficial to this Bill and the future of education on the Island. And as much as we are all representing different parts of education we are all staff employees of the Department, whether we are heads or senior leadership, or whether we are frontline teachers. We are all employees, but we all want to see a positive Bill going forward.

475 **Q260. The Chairman:** Sue, you mentioned how things have changed from what used to be the Board of Education and that used to be elected in a certain way, and then we came on to the current Education Council. Would you like to say what the benefits of the current Education Council are as you see them? As opposed to what may come in a proposed – ?

480 *Ms Moore:* I think it falls into two parts really. One part is a very pragmatic part. At the moment for a secondary school we have two appointed governors who are appointed from the Education Council. And then the governors can co-opt. In addition, we have an elected parent governor and an elected teacher governor, and elected support staff governor.

485 Now, if it comes to a disciplinary hearing, for example, of a member of staff – we hope they do not happen very often, but they do happen – that is a panel of three governors. You cannot have your parent governor or your staff governors on that panel. So you have got two left. If you co-opt, you are okay, assuming that they are all available.

490 With the Education Council, we can call upon other members of the Education Council to take that role; if we have got directly appointed governors just to the schools that is their very specific role, so you have lost that flexibility. So that is a very pragmatic reason.

On a more political reason, it comes back to what I said earlier about a critical friend to the Department. (**The Chairman:** Yes.) The way our political system works, and you know this better

than I do, people do not vote for a Minister, they vote for their local MHK. So one would hope that the Minister is going to do a good job. But if they do not, there is nobody to hold them to account particularly in the way this legislation is structured.

With the Education Council – and a cynic might say that is why the Department of Education does not want an Education Council, because the Education Council can do that – they can ask the difficult questions. They are not employed and they can say, as a body, ‘We have concerns about the direction that Education is going on the Island’. And they can be the critical friend – just as governors are to the leadership within a school, a council can oversee the Department of Education. And I think we would lose that.

Q261. The Chairman: Okay. Is there any evidence that the limited employment of unqualified teachers has a detrimental effect on provision of high quality education? From either side?

Mr Northcott: I think our evidence makes clear we think that in all circumstances what should happen is that qualified teachers are employed. There can be circumstances where you need to employ an unqualified teacher, but in a jurisdiction like the Isle of Man that is pretty much only where you cannot find a qualified teacher.

You will see from our evidence one of the points we have made in our submission is that teachers in the Isle of Man should have some form of accreditation of what in England is called their ‘qualified teacher status’. We know in the Isle of Man that teachers do not just come from England but there are equivalent statuses in most of the jurisdictions from where the Isle of Man draws teachers externally.

So we think one of the missed opportunities in the Bill is to underpin that and have some provisions in place that give children, young people and their parents the certainty that they will be taught by a suitably qualified teacher and practitioner. I think that is a very important provision in any education system and we would certainly advocate amending the Bill to that effect.

Ms Moore: I might beg to differ slightly. I absolutely agree that you would go for the qualified teacher and if you can get a good qualified teacher that is what you should be doing. However, recruitment is *extremely* difficult and I know that we have employed people who are unqualified, but are really good, and we have trained them up and then we have got them teacher accredited status.

I think some of the confusion perhaps for parents has been that we have had trainee teachers who have been regarded as unqualified – because they *are* – but they are going to be qualified. No head teacher in their right mind would employ somebody who is not qualified if they have got a good qualified alternative. But we have employed good, unqualified people because actually we need – particularly in the areas of maths and science – good people in the classroom. Sometimes we have got people coming from industry who actually are *brilliant* and they need to be given that opportunity and be trained up and then accredited. I would be *very* worried if that flexibility were taken away because you would have non-specialists teaching areas like maths and science.

Mr Northcott: I think actually we are probably in the same place. I think the position should be that you employ qualified teachers but that absolutely is not to say there is a recruitment crisis. So in a sense in those circumstances if a school makes every effort to employ someone who is suitably qualified and cannot, then often they do not have an option. Sue’s point also about people who have good skills in a particular area, working as unqualified teachers *en route* to let’s call ‘qualified teacher status’, that can be incredibly powerful. If routes to that end can be established in the Isle of Man there are some, but if they can be expanded there is nothing wrong with that at all.

545 So someone who is working as an unqualified teacher but as part of a coherent structured
programme to qualified teacher status, that is not an issue. But I think the current legislative
provisions are too vague and too open around when teachers can and cannot be deployed and
what qualified status they should have. I think our proposals are clear that there are ways in
550 which you could strengthen that so that the use of unqualified teachers is permitted in the
circumstances that Sue describes. But it is also about making sure you have got the best person,
the best *qualified* person teaching children in that classroom.

Q262. The Chairman: Why is it important that a system-wide curricular framework be
introduced?

555 **Mr Northcott:** That is something we called for in our evidence. I think we set out a pretty
clear rationale in writing, but just to summarise it. We think one of the shortcomings in the Isle
of Man education system is that while you have a Curriculum Order from 2011 that sets out
heads of different areas of study, it does not set out detailed programmes of study and give
560 more detail about what should be taught. From our point of view, one of the ways in which you
see that as being problematic is on the transition from primary to secondary education. So our
colleagues in the secondary sector tell us that children's education experiences, when they come
to secondary school, are so varied that it is sometimes difficult to move on and to support that
transition.

565 We think a curricular framework would have a number of advantages. A curriculum should
represent the common minimum entitlement that all children have regardless of where they live
in the Island and what school they attend. That is an important function a curriculum fulfils. It
also makes sure that there are certain standards that are applied across the piece so that in
transition, for example, you know that there is going to be some degree of continuity there.

570 That absolutely is not to say that there should not be local flexibility in the implementation of
that curriculum. Most other jurisdictions that have a more detailed curricular framework
absolutely allow for that. The curriculum you might specify is not the entirety of the curriculum,
it is a proportion of that curriculum, but it does provide some continuity and some certainty and
some commonality of entitlement across the Island which we think is a core responsibility of the
575 Government.

Q263. Mr Perkins: With the return of power to the Department, where do you feel that this
should come from?

580 **Mr Northcott:** One of things we suggest in our evidence is that a curriculum, for it to be
effective, has to I suppose reflect the reality of circumstances in the jurisdiction where it applies
but it should also reflect the views of different legitimate stakeholders in that curriculum. So one
way in which we felt that the Isle of Man could develop a curricular framework is through the
establishment of some form of curricular council. So one of the provisions in the Bill is around
585 removing the special status, if you like, of religious education and moving it to within the body of
the broader curriculum. That is a matter for the people of the Isle of Man and for Members of
Tynwald to determine. But one thing you have with RE at the moment is you have an advisory
committee around religious education that draws in different stakeholders and means that
curriculum reflects the different views, the different perspectives, the needs of the Island, the
590 culture and the social context of the Island in a way that makes it meaningful.

So a curriculum should be established. The Department ultimately, the Minister ultimately,
has responsibility for that curriculum. But you can develop it through some form of curriculum
council that would bring in a range of different stakeholders including, dare I say,
representatives of the workforce, the teachers and school leaders who have to make that
595 curriculum happen in schools. At the moment I think the problem that our members report is
that there is not enough certainty about that curriculum so that transfers between schools are

not as straightforward as they should be and that there is not a common expectation that no matter where I go to school in the Isle of Man there are certain rights and entitlements in respect of what I will learn that are guaranteed regardless of my location or the school I happen to attend.

Q264. The Chairman: Anything you wanted to add to that? No?

Do you have any comments on the proposed legislative changes relating to home education?

Mr Northcott: Again, I think we set out our views pretty clearly in our response, but just to set out where we would come from in brief terms. Whether or not you allow home education is a policy choice that the Government can make. The Government here has made the choice that it wants to permit home education. We respect that choice. It does not have to make that choice but it has chosen to do that and they are democratically accountable for the choice that they make. In our view, in respect of home education, it is perfectly reasonable for the Government to seek to put in place provisions to ensure that every child has his or her entitlement to a good quality education and is kept safe. In our view, the provisions that are set out in the Bill are reasonable and they are proportionate and they make sure that we can be absolutely certain that if children are home educated they are safe, and they are getting their entitlement to educational provision. So if the Government wishes to retain the right to home educate that is its choice, but we think if it does so it has to have provisions and safeguards in place. In our judgement the proposals in the Bill in that respect are proportionate and appropriate.

Mr Tanton: We would echo that.

Q265. Mr Perkins: How do you feel that it should be monitored, that the children are getting good education?

Mr Northcott: I think if you look at some of the provisions that are set out in the Bill there are again some high-level proposals in that respect. I think we have set out some provisions in our submission that could perhaps be incorporated through secondary legislation or a code of practice around how the Department might monitor that education. So, for example, one thing you can do, and that has been proposed elsewhere, is set out 'a statement of intent'. So if a parent home educates they set out a statement of intent that says, 'This is what we are going to provide for our child in terms of their educational experience'. Then that statement of intent can become a way in which the Department can monitor whether that child is getting that educational entitlement.

So there are ways in which you can establish agreements when people are committed to acting reasonably. You can establish agreements to say this is what this child will receive through their educational provision. The Department says, 'That's absolutely fine, you can do that, that's perfectly lawful. We just want to make sure that provision is actually in place'. And I think that strikes a reasonable balance between the rights of parents to home educate, which will be provided, and the responsibility of the Isle of Man Government to make sure that every child is getting their fundamental entitlement to a high quality education.

Q266. The Chairman: Okay, thank you.

We have had the benefit of comprehensive written presentations from you both. Are there any other issues that, prior to your further dialogue hopefully with the Department which will take place in early July, you would like to raise at this stage?

Mr Trace: One of the things that comes through the whole of this Bill is sort of a punitive nature. It is very negative in almost everything. Section 22, to go back to it, is entitled 'Failures by governors and head teachers'. Is that the right sort of expression to use in primary

650 legislation? I do not believe it is, but that sort of feeling of a punitive nature runs through very many of the sections.

I know when you spoke with the Minister you picked up on the fact that quite a lot of it seems to be drawn possibly from UK legislation rather than part of Manx legislation. I think that is because they have used an English draftsman to draft the Bill who knows nothing about Manx law at all, and has built into it. But that is totally inappropriate and does not fit with the Isle of Man.

The Chairman: Yes, there were certain terms of legal expression which were wrong ...

660 **Q267. Ms Edge:** With regard to, if you are prepared to comment on this – what would you like to see happen? Obviously you have only got six weeks left of school term, you are coming into the school holidays and it is going to be very difficult for you to get meetings etc. before you return to school on 4th September. What would you like to see happen? Is there anything you would like to see happen?

665 **Mr Trace:** We have asked that the Department withdraw this Bill and go through a proper consultation with the members of the profession and the unions. The Minister's response was that it cannot be withdrawn when it has not been laid in the first place.

670 **Mr Northcott:** Just to be clear we did not ask for the Bill to be withdrawn. We think there are positive elements in the Bill and we have set those out in our evidence. But there are profound issues that need to be addressed. I think what we need is, as we have heard, a meaningful process of consultation. We need everyone involved in the process to have the information they need to engage in that consultation. And in your case to make decisions about whether the Bill progresses or not, or whether it needs to be amended. That may require consideration of a longer proposed timescale for implementation.

675 As we have said, it is a once-in-a-generation opportunity. We need to make sure there is enough time made available for proper engagement and to get this right, so that everyone feels they have had their say in its development and everyone feels they have got a sense of ownership of it and commitment to it. In that way, the objectives of the Bill which in many respects are laudable have a better chance of becoming a practical reality in schools across the Island.

685 **Ms Moore:** Can I just put a point of clarification: you asked the date of the meeting that we had – ASCL members with the Department. It was the end of February. I am trying to read my own writing here, I think it was 27th or 29th February.

And there was one other thing that we did not put in our original response which was about the dispute resolution. We are not clear where that sits with the existing dispute resolution with other legislation and the scope of it as it sits in the Education Bill at the moment. This is a just a question we are not clear about.

690 **Ms O'Neill:** Can I just say in relation to the consultation, even in this consultation process meeting we did as representatives from different organisations, we had a lot of difficulty with clarity from the Department in dealing with us as a body. This goes back to our original statement to you about recognition, that this is not simply recognition of us as a teaching union, we have tacit recognition by the fact that we meet with them, it is about the mechanism for consultation and negotiation. And in the light of this Education Bill, and in fact other matters – of which you may or may not be aware, with which we are in dispute with the Department at the moment – we need consultation and negotiation mechanisms and processes whereby we can be involved in local negotiations and in collective negotiations.

I think that is what is missing from the way they have interacted with us, in that we do not have that there as a process and that is *really* important because if you have consultation and negotiation mechanism you have a timescale. When you receive documents you have a timescale to read the documents and to respond appropriately. I mean, we have had issues where we have been presented with documents with three and a half working days to proposed new documentation. This is the kind of thing that we would like to see really clarified and put in a systematic approach.

Q268. Ms Edge: Do you feel that the consultation for this particular Bill/Act has been totally different from your previous experiences?

Mr Trace: Yes. For the 2001 Act we started discussing it two years before it became a Bill and long before it went out to public consultation. The same happened for the 2009 Miscellaneous Provisions Act, there were lots and lots of opportunities to discuss it, to discuss different parts of it and to put our changes forward. None of that has taken place this time.

Ms Moore: It did start about four or five years ago.

Mr Trace: In 2013 it started.

Ms Moore: We did have some discussions then, we had little working groups that met once and then I think there was a change of personnel in the Department and it all went quiet, and that was the end of it. That was the end of our opportunity to have a *genuine* input into anything.

Mr Tanton: Just thinking, in terms of you asked about going forward. The lack of detail or the lack of sophisticated discussion around some of the issues within the Bill to date would suggest that it is going to be a stuttering process to ... We cannot approve stuff, but to get us buying into it. And let's just take one example: social media.

Now, most employers, whether you are in education or not, they are spending an awful lot of time getting their social media policies spot on. They are trying to look into crystal balls to see where social media may take them. They are looking at it from all sorts of accountabilities – and for dinosaurs like myself it is a brand new game as to what social media means. But to me the way to approach that would be to sit the professionals in a room to look at what that means, to look at the challenges and be very clear as to what the heads can agree to do.

You have a duty of care as an employer as well to all employees to ensure that. So there are layers within – it is like peeling an onion. Without that sort of groundwork you are going to come up with phrases that do not necessarily mean anything, perhaps. I think you are also going to put school leaders in a situation where they are held to be reasonably accountable. A phrase that comes through this Bill, 'You are reasonably accountable'. What does that mean?

Are you reasonably accountable for social media on a Saturday or Sunday that your students or teachers are using? These are far-reaching things and I am not being as eloquent as I would like to be. But do you know what I mean? It is not a one-hit – bang, there is the answer. You have to really talk that through and try and understand the protocols, the codes of conduct – as you have said – how you protect the profession, but how you also protect the school community as you move that forward.

I think there needs to be a more sophisticated approach and thinking behind this, as you take this forward.

There is no suggestion that we are not trying to buy into this and want to be part of that process, but I think there is an awful lot of expertise not just around this side of the desk, myself excluded, out there in the profession and in the schools that could offer a huge amount to that dialogue and getting this Bill absolutely spot on.

Q269. The Clerk: I do not want to open a can of worms at this late stage but maybe everyone else ... It may be that there is a straightforward answer to this, in which case, great; if not, we can leave it for another day. But you said when you were talking about collective arrangements, collective recognition and I think you used the word 'negotiation': do such arrangements exist for the purposes of pay in relation to teachers in the Isle of Man? Or is that done at a UK-wide level?

Ms O'Neill: Well, that is a current issue – which we are trying to discuss.

Mr Trace: It is a current issue.

The Department encouraged all of the unions to work together to discuss the pension situation on the Isle of Man. We did that and reached agreement with PSPA. We then decided as a group of unions that we should want to negotiate pay in much the same sort of way with the Department. The Department is not prepared to do that.

The Clerk: Okay. Sounds like it is –

Q270. The Chairman: So it is a hot potato. (*Interjections*)

Ms O'Neill: Can we, from our point of view just say, and I am sure my colleagues here would also agree, if there are any further questions or matters that arise for you following this, we are aware that MHKs are going to be discussing the draft next Wednesday, I believe. We are very willing to provide any further information in written form to you to clarify any points we have made today because we feel this is really important.

MHKs are the law-makers and so therefore you need as much detail as possible from all of the professional stakeholders and we very much want to ensure that you understand where we are coming from.

We all want to see a professional education system here. We want to welcome fully qualified teachers to the Isle of Man to live and work here but we want to have what is fit for purpose. We believe as an association, as well as a union, that highlighting issues and concerns is not a *personal* criticism, it is a policy criticism in the sense of let's make this better for all concerned. We would like to get away from personality and criticisms, and feelings that we are attacking various people or whatever. That is not what we are about and it is what none of us have been about in this whole process.

We would like that to be very much noted by the Committee and by Tynwald Members.

The Chairman: Anything else? Then I think we have probably gone as far as we can today. Good luck with the next stage. I was not aware we were getting a presentation on Wednesday – obviously I have not picked that up in my diary. So I will look forward to that as well.

I think the general points you make about consultation and inclusivity, those are the key things that have come over to me today.

So good luck in your ongoing dialogue, or your *prospective* ongoing dialogue; and thank you very much for coming along today and being so constructive and helpful.

We will now have a break.

*The Committee adjourned at 2.33 p.m.
and resumed its sitting at 2.36 p.m.*

Procedural

The Chairman (Mr Cretney): Welcome to this public meeting of the Social Affairs Policy Review Committee, a Standing Committee of Tynwald. I am David Cretney MLC and I chair the Committee. With me are Mr Martyn Perkins MHK and Ms Julie Edge MHK. If we can all ensure our mobile phones are off, or on silent, so that we do not have any interruptions. For the purposes of *Hansard*, I will be ensuring that we do not have two people speaking at once.

The remit of the Social Affairs Policy Review Committee is to scrutinise the established but not emergent policies, as deemed necessary by the Committee, of the Department of Health and Social Care, the Department of Education, Sport and Culture and the Department of Home Affairs.

In this particular aspect we are looking at the Education Bill which has been around and about for a little while and it was considered necessary to have further discussion about.

Today, we welcome Mr Damon Warr, Mrs Dianne Warr, Mr Derek Sewell and Mrs Dawn Sewell, who are representatives of the Manx Home Education Association.

EVIDENCE OF

**Mr Damon Warr and Mrs Dianne Warr, and
Mr Derek Sewell and Mrs Dawn Sewell,
Manx Home Education Association representatives**

Q271. The Chairman: Welcome, everybody; I think we are just about on the time we were planning to be. I was conscious I did not want to keep you waiting too long.

Would you like to make any opening statements? And thank you very much for your written submissions.

Mrs Warr: We started MHEA when the Bill came out which was reporting assessments, etc., because home education on the Isle of Man is made up of autonomous home educators who have only ever done it from the ground up; and then there are people that have come out of school because the system has not worked for one reason or another, and those people tend to not be sure of how to represent themselves legally. We have a better understanding of those things so we decided to set up MHEA to help those people.

Mr Warr: Yes, and it is better for us to write one letter (**Mrs Warr:** Yes.) on behalf of 50 people than for 50 people to write single letters themselves.

Mrs Warr: Yes, that is kind of helpful.

The Chairman: Yes.

Mr Warr: And following on from the previous people giving evidence, we are the amateur stakeholders here. When I say 'amateur' I mean because we do this for love and not for money, or for glory, or for anything else.

Mrs Warr: No.

Mr Sewell: It is also worth just adding that the association was set up in part so we could deal with the Department of Education, which we successfully achieved after the first consultation – and, as you will have seen from our submission, we had similar problems to the unions that we did not seem to be able to get any traction with the Department of Education.

Some of the information going to Tynwald was, in my view, inaccurate – and deliberately inaccurate – and again that is in my statement. On top of that we thought it would be useful to draw a line under that and see how we could build going forward co-operatively, because that is what our MHKs were advising us to do. Unfortunately that did not work out as planned, but that will be part of our evidence today as well.

Thank you.

Q272. The Chairman: Thank you. Would you like to give a brief overview of the organisation? I think you have covered this, but do you think the Manx Home Education Association represents all home educators?

Mrs Warr: No, we do not; we only represent our members. I mean, the association is open to home educators who no longer home educate, but they have got experience in it or they have gone back into the system or gone into private education. So you do have fluctuation and movement in how members are established within it. But its mainframe is basically to support the entity of the small microcosm of home educators that are there, and who want help with representation. That is basically our soul aim.

But we do not represent the entire community; we only represent our members.

Q273. The Clerk: Can you say how many members you have?

Mrs Warr: We have 62 members, 18 families in home education now. There have been about five or six who have dropped off and gone back into home education. The numbers have been skewed, I believe – the total number of home educators we had from a Freedom of Information (FOI) said there were 152 people home educating, 98 families. I am not convinced, but anyway that is another argument. In August 2017 the Department released a statement to say there were 57 of us and in that time there has been a massive growth which we know nothing of.

I have a page called Isle of Man Home Education where people tend to come and reach out or connect if they are struggling, or if they have any problems in school – specifically people who are at school and who do not know what to do but want to access education. Their child wants to access education and they are struggling, and they just need some guidance on how that works, whether that be curriculum or whether that be liaising with the Department, etc.

Mr Sewell: If I can just add to the numbers, please, in respect of the information we have got. You will have seen from the evidence we provided that the numbers of home educators were fairly consistent through information supplied by the Department of Education and through Freedom of Information, and there were around about 40 to 50. I think in the previous evidence that has probably been given to this Committee and other committees that seemed to be the number.

Q274. The Clerk: The number of children, or the number of families?

Mr Sewell: The number of children who are educated. Then around about 2019 they suddenly jumped up 150-odd.

The difficulty with that is obviously GDPR came in on the Island in May last year. I know from my personal experience with my family. I happened to go into the Department of Education and there had been some reference to giving out medals for the First World War coins and I was given three originally, and I have only got two children currently being home educated, because my other one is over 16. So even that data was wrong; and they knew the age of my children. So under GDPR – I work under GDPR in the job that I do – you have actually got to keep your records up to date and there is an onus on you to make sure your data is accurate. I do not think that has gone on over the last 12 months.

I think the Department needs to have a look at that in relation to this figure of 150-odd, just to make sure it is accurate, because that is not the information we have got on the ground. And from our personal experience in dealing with the Department there seems to be a bit of inaccuracy there.

Thank you.

Q275. The Chairman: Okay. Mr Sewell has already made some comment on this but I will invite Mr and Mrs Warr. Do you have any comments on the consultation process? And to what extent did the Department consult with your organisation on its legislative proposals?

Mr Sewell: Yes, I will deal with that if I may? Thank you.

It has been a very long road. The first time we had dealings with the Minister in particular for Education, Mr Cregeen – who I know on a personal level and I used to be a civil servant, I should say – was when he did a response to a Tynwald Question and there was something in the written response that concerned me. It seemed to imply – well, it stated – that the Department had a responsibility to ensure a child received an education and the parent had a duty to ensure it as well. It was in August 2017 that was done.

I was that concerned about it I formally wrote to him to highlight this before the first consultation went out, and I said, ‘Look, this is misinformation; you do have enforcement powers’ – which was another thing they were saying they did not have – and that, ‘We only have a duty to *cause* our children to get to get an education’, because it is about provision of the education, it is not about outcomes. So, on that basis, I wrote a very long letter to him explaining all this to him. I even highlighted where the Department’s current guidance for truancy, which is covered in the same bit of legislation, and their own legal interpretation of that was actually firmly and squarely in line with our interpretation of it, and the interpretation that my wife and I had received when the Miscellaneous Provisions went through in 2008, because there were changes to the Department’s approach to home education within that.

So it had been fairly consistent how all this was interpreted and then suddenly the Department was saying that they could not do that. It then came as a real shock when the consultation document came out and they were repeating exactly what I had pointed out was inaccurate.

So my consultation response generally dealt with that and it said, firstly, that you were misinforming the public, you were not actually truly representing what was in the Education Act; and, on top of that, you were not actually saying there were not any duties to enforce. There is a whole section called ‘Enforcement of parents’ duty’ within the document and none of that was referenced within the consultation document at all.

There was also a spurious paragraph in relation to safeguarding that had been put in which concerned a lot of home educators, and me in particular, in that I thought it was irrelevant to what they are trying to achieve. It said although ... I am trying to think of the wording actually, can I just borrow that? Where are we?

Home education is not, in itself, a risk factor for abuse or neglect. However, there is potential that these children can become ‘invisible’ and in these cases there is a safeguarding risk of isolation from professionals. The aim is to establish an appropriate scope of duties for the Department to ensure that children do not go unseen.

So although they were saying there was not any evidence of any of this happening they obviously had highlighted it within the consultation document just before the ‘Do you think we need more powers? Yes or No’ response. We believe that to be leading and we also believe that to potentially prejudice the consultation.

Also at that time, you will probably be aware that the consultation document, the Code of Practice the Isle of Man Government signed up for primary legislation, was the June 2008 consultation document, and it was just about to be revised actually because the Council of Ministers revised it in October 2017. That code of practice requires you do all sorts of things if

you are a Government Department, as you are aware, including early stakeholder identification and early stakeholder analysis. In the 2009 (Miscellaneous Provisions) Bill the one thing that did get brought forward was that the home educators have to notify on the Island, so the Department has a full list of home educators including who is doing it and the addresses, so they could actually get in touch with stakeholders at a very early stage and say, 'Look, we have got these problems. What do you think about this, that and the other?' None of that took place at all and it should have done in this particular instance, I believe.

The other thing is the consultation document should be open and clear on what you are actually trying to achieve, so it should give both sides and it should give the people responding the opportunity to provide alternatives. None of that was provided within the document, which was unfortunate.

So we raised all these in our consultation responses and we said to the Department, 'Look, we would like to meet you' – and that is partly why the association was set up, so we could meet with the Minister. The Minister I think had had conversations with Gill Gillings who was an old home educator whose kids have all grown up now, but nonetheless a meeting was set up and we met with them and the Department expressed an eagerness to work with us. The notes from that meeting clearly showed that not only we thought the consultation could be read in a particular way, they accepted that and that was noted at the time, and the Minister made a commitment to the people at the meeting that he was happy – I will just get the piece of documentation – that he wanted to work with home educators to find an alternative to legislation, and if we could set up procedures or guidance or something like that, then that would relieve the need to bring in further legislation.

We met with the Department again on 8th January and we formalised that and the Minister eventually sent me a letter, and this letter is dated 15th January 2018 and it says: 'Thank you for meeting up with myself and Mr Shipley last Monday evening. The Minister has agreed, subject to developing a workable policy which will resolve the difficulties experienced by the Department to remove any proposals for changes to sections 24 through to 30 in relation to home education, the policy will be developed by the Department of Education, Sport and Culture and home educators working together to achieve this objective'.

So I thought we are now back into stakeholder engagement and trying to formulate an alternative to legislative provision. And that was circulated around all our members.

We then met with him on a number of other occasions and the Department was then happy enough with a procedure that had been built up based on the Manx legislation and best practice from the UK, to do a public consultation with those – sorry, to do a legislation with stakeholders on the notification list – and that was all sent out. Home educators responded, but we have never actually heard what the outcome of that consultation was.

There were then no further communications with the Department, other than we met up with some of their safeguarding representatives who, after we had met them, said they were also happy with the procedures, so safeguarding did not seem to be an issue either.

I then received a phone call on 25th January to tell me there was a consultation document coming out on the Monday and the Minister who contacted me then started to read out the section that related to the home education section – and you can understand my concern that we had gone from basically that we were going to publicise a consultation document, to a situation where there had been no communications and then suddenly (*Mrs Warr*: We were building –) we were bringing in a massive amount of legislation.

Mrs Warr: We were building as well, weren't we? We were building a relationship that has been so long overdue it is unreal and the fact that we had it – and for whatever reason, we have no idea why, we do not have it at all now. It has gone actually from the elective home education procedures to just complete and utter madness, in my opinion.

Mr Sewell: In fact the Department of Education had expressed an interest in home educators assisting them at the presentation to Tynwald Members of the procedures. We had got that far; so we were very far down the line.

Anyway, the procedures were read out to me and it was not until I saw the consultation document that I realised the actual question on home education in the second consultation document was even more leading than last time and repeated a lot of the information, including the 'ensure' duty of parents in this second consultation. It was a tick box and you could either say basically the legislation was sufficient or you required more legislation, and any comments you wanted to put in was reserved to the end of the section of the consultation document where you could actually say, 'Well, I don't agree with this and the alternatives are this, that and the other'.

So I personally decided not to fill in the consultation document. I decided to write to the Department. I thought that was the best way of dealing with it because the consultation document did not afford me the opportunity to express the view that I wished to express.

Mr Warr: One of the issues with the previous consultation as well was that they took no notice whatsoever of any comments that were made to them, and the outcome was basically how many people were in favour and how many people were against. Home educators being a small community, a minority in the Isle of Man, we are never going to win a popularity contest – we are going to get bulldozed by the majority every single time; and not to take into account the people directly affected by something, versus somebody who has no effect on them whatsoever, is perverse in some sense.

Mr Sewell: It is also worth saying in the code of practice that existed at the time that you are meant to do a qualitative analysis not a quantitative analysis, but the consultation response was actually a quantitative analysis only that had been done. In addition it said it gave evidence to promote enabling clauses – but you can see from the legislation they were doing the second consultation on that it was not enabling clauses, it was a whole raft of new legislation *including* provisions that were actually related to the fundamental part of the parents' duties for education. So they had been saying all along that the parents had a duty to 'ensure' and we were saying, 'No, it is to "cause"'; and then suddenly within the final document that came out that had been changed to the parents had a duty to *ensure* – which all seemed a little underhand and it all seemed to have been predisposed a long, long time ago. So it was a bit *déjà vu*-ish.

So if they were going to do all that and they were going to change the parents' provisions and the parents' duties, and also change the requirements for appearance to 'suspect' and also changed 'being educated in accordance to your parents' wishes', they were all fundamental education issues that changed the 2001 Act. They should have been in the preliminary consultation on the principles, I believe; and they were not.

Mr Warr: And those affect all parents on the Isle of Man, not just home educators.

Mrs Warr: Not just us, yes, everyone.

Q276. The Chairman: The previous group consisting of two staff organisations said that they had been contacted recently by the Department in relation to consultation on a second draft.

Have you been contacted further?

Mr Sewell: No, the last communications I had over the procedures was in May 2018. We were invited to a meeting with the Minister and three of us turned up to that –

Mrs Warr: That was in February.

1040 **Mr Sewell:** – in February, but we have heard nothing since. We were promised feedback from that meeting, which we have never had.

Q277. The Clerk: Sorry, can we just go through that again?
You had a communication in May 2018 about procedures – ?

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Mr Sewell: Yes, the last discussion I had with a member of the Department was in May 2018 saying they were going to release the consultation document where they did a stakeholder consultation with all home educators who had notified them that they were home educating.

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Q278. The Clerk: And did they do what they said they would do?

Mr Sewell: No, they did not.

Q279. The Clerk: And what happened in February?

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Mr Sewell: In February the second consultation document was released.

Q280. The Clerk: The one we are looking at now?

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Mr Sewell: The one you are looking at now, yes.
We were invited into a meeting to meet with the Minister and representatives of the Department.

Mrs Warr: That was on the back of this.

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Mr Sewell: We were expressing our concerns on how we had got from where we were in May, to February 2019. We did not really get a response but he said we would get further information and some of it related to safeguarding, but we have heard nothing since.

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Q281. The Clerk: We have got a document here and it says, 'New Education Bill consultation open 29th January 2019'. So that is the second consultation and they got in touch with you at that time and invited you in, and you did not go in?

Mr Sewell: I did go in, yes.

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Q282. The Clerk: You did go in?

Mr Sewell: We did go in, but there were outstanding issues from that meeting that we have never heard anything from, so there has been no communication since then. *[Technical interference]*

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The Clerk: Thank you.

Q283. The Chairman: Given what you have just said, what legal provisions relating to home education do you think would be acceptable?

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Mr Warr: Well, firstly the provisions that they have put in section 78 have been copied from Lord Soley's Bill for elective home educators in England, and that Bill was withdrawn because it had no realistic chances of passing. It was not being supported by the UK government.

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So, first of all, we wanted that whole section 78 taken out completely because England is not going to have it, Scotland is not going to have it, Northern Ireland is not going to have it and

Wales is not going to have it, so we should not have it either because it is not our legislation – it is not ours.

1095 We want the ‘suspicion’ to go back to ‘if it appears’; and we want education to be done ‘in accordance with the parents’ wishes’. So we want to return back to how the 2001 Act, as amended by the 2009 Act, currently works, which is almost exactly the same as the legislation in England, Wales, Scotland and Northern Ireland.

1100 **Q284. The Clerk:** Can we follow up on that just for a moment, because you mentioned before about this section of the 2001 Act – section 25, ‘Enforcement of parents’ duty’:

If it appears to the Department that a child of compulsory school age in the Island is not receiving suitable education ...

– the Department will serve a notice and ask the parent what is going on, I suppose is what it means. (**Mr Warr:** Yes.) How in practice is that supposed to work?

1105 **Mr Sewell:** That is all within the procedures, you have not had a copy of it. It is all explained within there. That legislation is identical to other jurisdictions and the procedures exist all round the United Kingdom and British Isles in relation to that. So if you have got a copy of the procedures that the Department developed that is all explained within there. Yes, absolutely.

1110 **Q285. The Clerk:** But I mean, it is intelligence-based, presumably. (**Mr Sewell:** It is –) ‘If it appears to the Department ...’. On what basis could it appear to the Department?

Mr Sewell: It is the same as any other legislation, isn’t it? You are presumed innocent until you are found guilty! There are all sorts of appearances that could occur.

1115 The Department knows quite a lot of the kids who are coming into home education because a lot of them have come out of the school system anyway. So the Department actually already holds quite a lot of information. So the appearances –

1120 **Q286. The Clerk:** Do you recognise the concern the Department could have that a child could be unseen?

Mr Sewell: No, I do not recognise that. The reason I do not recognise that is because you have got to register first, or notify, so we are not unseen; we are actually known to the – (**Mr Warr:** Invisible.)

1125 On top of that, our kids do not just live in isolation. The Island is a very small community and on that basis they have got to mix with all sorts of other people. My kids do loads of sport and loads of other stuff – they go swimming, they swim for the Island; so they are met by loads of other people like club leaders and the likes, who are trained in safeguarding as well.

1130 **Mrs Sewell:** A lot of them are actually teachers as well. A lot of the sports coaches are teachers.

Mr Sewell: Indeed. And on top of that they obviously regularly see medical professionals. So they are not unseen, they are *seen*.

1135 **Mrs Warr:** You go to a doctor, you use a dentist, you walk down the street, you have the local Constabulary and people pass you. I mean, it is everywhere; you cannot go far on the Isle of Man without being seen – and I am Manx!

Mr Sewell: That is the good thing about the Isle of Man. It is a very small community and everybody ... Well, let's put it this way: I am the Clerk for Peel Town Commissioners and on a regular basis people come into my office and know that I home educate my children. I have not told them, they just *know* that I do. It is because my kids are visible and if people want to get some information on home education I am somebody they might ask. So they ask me and that happens on a fairly regular basis. And our kids are asked questions on a fairly regular basis as you can imagine, when they are out at clubs – the kids asking about home education and all that sort of stuff.

So it is not a clandestine or closed society. We are well known in the community and our kids are well known in the community and they do their best to answer people's questions as and when they are asked, by adults or by other children.

Mrs Warr: There is also a list on the open page for Isle of Man Home Education of all of the activities available to children who home educate. It is a designated list, whether you do forest school, whether you do sports, whether you do music – those things are there for children to access. It does not give dates and times because we are entitled to anonymity, but if you want to contact the page and you want to join those activities all of those activities are available to people or children who home educate. And not only that, like Dawn and Derek have said, those clubs are run by people who are safeguarding – they have all got it. But that is all in the public domain – you can go to the open page and it is there.

Mr Warr: But there was one recent incident where home-educated children were about to participate in a public event and an employee of the Department of Education refused to name them as home educators, even though this was an event for children in schools. They refused to call them out as home educators –

Mrs Warr: Even though there were over 30 children there.

Mr Warr: And that is an example of where the Department has made us invisible; and we are not sure why.

Q287. The Chairman: This is one of the things that I put to the Chief Executive and you would pick up on a concern where he said words to the effect that, 'people may be invisible'. But from what you are saying, that clearly is not the – ?

Mrs Sewell: It is highly unlikely.

Mr Sewell: It would be very difficult to be invisible in the Isle of Man.

The other thing that the Department does have the power to do in case law, and they can use this as and how they like, is they can make informal inquiries and the procedures did include that – so they do not have to necessarily use the legislation, they can write to home educators on their notification list and say, 'You are home educating, can we have a little bit of information on this, that and the other?'

As I say, you do not *have* to respond, but if you do not respond then the Department may legitimately ask for further information. However, it does not allow routine monitoring. It does not allow people to harass you and it does not allow people to come and try and seek information off you on a periodic basis. It has got to be evidence-led, as you would expect. You are just fulfilling a statutory duty and as a member of the public you have got a statutory duty to educate your children and on that basis you are just fulfilling it. So why should you be thought to be guilty of an offence just because of the provision that you are providing?

Q288. Mr Perkins: Do any of you home educators bring in tutors from outside?

1190 **Mrs Sewell:** Some people do, I do not personally, but yes.

Q289. Mr Perkins: So how do you feel about the part of the Bill that says all tutors should be approved by the Department?

1195 **Mrs Warr:** I do not have a problem with that, *per se*, I do not.
I think that is speaking for me personally.

Mr Warr: I would not rely on the Department to do any checking for anybody else because some people come up all the time as problematic after they have gone through and been employed by all sorts of different people, so we would do our own checks.

Mrs Sewell: There can be a problem and it was raised in my local area, where they wanted to do a register of tutors. In some cases, tutoring can be provided by sixth-form students, for example. Very useful tutoring can be provided by them – they hold no qualifications, they are just friends of the family. On that basis, you would vet the person yourself and make a judgement as a parent whether that person was suitable to educate your child or not. And I would expect, whether the kids are in school or out of school, getting educated or otherwise, to carry out that duty of care as a parent.

1210 **Q290. Ms Edge:** Can I ask, when it comes to actually taking examinations what relationship do you have and what examination centre do you utilise? Do you automatically go to the University College or do you utilise our schools? What do you do in that situation?

Mrs Sewell: You could ask the schools but I think most home educators would use the College because there are certain advantages of using the College over schools. The College has a much wider range of students and, also, on the days that you actually go and take the exams if you can imagine a home-educated child going into a school where all the school pupils will know each other and they are all in uniform and so on, that would be a very intimidating situation. Whereas in the College, you do not have to wear the uniform and there is a much broader range of people there.

1220 So I would imagine if you are a child that has come out of school and you have got a relationship with that school and you have kept the relationship, you might go back and sit your GCSEs there. But on the whole I would expect that the College would be where you would go. It is certainly where we are making our arrangements.

1225 **Mr Sewell:** And it is worth saying, as well, that the College has been very helpful. But they do not *have* to help us – it is down to the individual examination centre whether they help us or not.

1230 **Mrs Sewell:** I mean, that is one of the points: as home educators you do not actually have a right to take your examinations, you have actually got to ask permission and you have got to ask if they will take you on as an independent candidate and of course they can refuse to do that. You do not automatically have that right to go and do it; and of course all the examinations you take you have to pay for.

1235 The College has given me a ballpark figure of about £200 for a GCSE. So if you can imagine the number you might take – we have got three children and you are talking about rather a lot of money. And if you want to look at breaking down barriers for home-educated children taking GCSEs then there are quite a lot of barriers in place – money and the cost of it being one of them, and that is just the cost of actually taking the exams.

1240 So if you do it, the cheapest way you can take GCSEs is just by using the textbooks and working through the textbooks. One of my daughter's history text books, just for history,

was £60. Quite a lot of home educators will use tutors or online providers if they feel that they have not got that expertise. You are talking about £350, that kind of price range. So you can see that all adds up. Most home educators will take them over a period and they will not take them like schoolchildren take them as a huge number in one go, they tend to take them over a period of years, a few at a time, for one of those reasons.

Q291. The Clerk: What was the £350 figure?

Mrs Sewell: Oh that, for example, would be an online course provider or a distance-learning provider if you wanted that kind of support.

Q292. The Clerk: Over the course of a year? (**Mrs Sewell:** Yes, that is kind of –) Or £350 a week; or what?

Mrs Sewell: No, the total cost for the course is about £350.

Q293. The Clerk: Which would typically be a year's course?

Mrs Sewell: Yes.

Q294. Ms Edge: With regard to subjects like science, what access do you have? Do you have the opportunity to use Department of Education facilities, or is that again on request and whether it is agreed?

Mrs Sewell: Yes, we do not have any right to use the Department facilities; you would have to request that.

Q295. Ms Edge: And have you found any barriers there with regard to access?

Mr Sewell: I will answer that one!

My youngest child is particularly keen on sports and he plays for most of the Ramsey teams, mostly with Ramsey coaches, school teachers from Ramsey Grammar. So, yes ... *[Technical interference]*

We approached the Department about the possibility of ... sport, because he might want to do a GCSE in physical education or something like that, which is hard to do if you have got to do the practical side of it. The Department was very supportive of it. We have been in touch with the Department about it and have heard nothing since, so there obviously is a barrier locally to that and I do not know why.

Mrs Sewell: We provided information to the Department and the Department asked if they could forward it to the school with a request, and we have not heard anything back. As far as we are concerned we did not want to push for that because we do not really want to be forcing the school into taking our son into that situation where they really do not want him. It is not fair to put him in that situation so we have just left that as it is.

Q296. The Chairman: Twice now, I think, during our discussion today you have mentioned that you have not had responses from the Department. I mean, there are – and Mr Sewell will be aware from his role in DOI – requirements for a Department to respond within a reasonable time. I am very disappointed that appears not to be the case here.

Mr Sewell: Yes, if I could probably just clarify that, they were not written communications, the response we are waiting for was from a meeting and we expected to get the response to

1295 facilitate our response to the consultation. So I have not written to them, so there was no requirement on them to respond within 10 days. But they did not respond before the consultation finished, so the door is closed and there is no point pushing at it from that perspective.

1300 The other one is, we saw the Department has no statutory duty or no requirement. We realise when we are home educating we are opting out and therefore we are not expecting the state to pay for anything. We will pay for everything ourselves and provide it as best we can for ourselves. However, it was offered to us by the Department at one of our meetings and we said, 'Oh well, okay, we will have a look at that and see if that is feasible'. But you can understand from what my wife has just said that you would not want to be pushing your children into that situation if there is a bit of resistance to it, and we do not know what the background is and we did not think it was appropriate to ask, so we just left it to run.

1310 **Q297. Ms Edge:** There is a bit of a contradiction there though that they are worried about the visibility of the child but then when you say can they come and join activities in a school you do not get a response.

Mrs Warr: It does say in the Bill though, that it is offered, like a carrot and stick, where we can have access but it is discretionary.

1315 **Mrs Sewell:** I think it is unlikely to happen.

1320 **Mrs Warr:** So when you want it you might actually have that cake and eat it, but maybe not now. And so you are up against it when your child may need access to something specific, if you are in the middle of doing physics curriculum, for example, and you might need access to somebody who is a physics teacher, or a lab or something like that, and you were to request it, there is no guarantee you can get it.

And obviously that is also taking into consideration how schools operate, you cannot just allow somebody to wander in off the street; and I am a rational human being with reference to that, but it is one of those things that are offered but then in essence you have it removed.

1325 **Q298. Ms Edge:** Are you aware of anybody that has accessed any facilities?

1330 **Mrs Sewell:** We have heard of children doing art lessons. But again I think they are probably likely to be people who have come out of that school and already got a relationship with the school, rather than just a home educator asking for that.

Q299. The Chairman: Is there any form of assessment of home-educated children that you would find acceptable?

1335 **Mrs Warr:** Benchmarking – how? Are you going to benchmark it against a school? If you are home educated, the essence of home education is you educate at home. If you go to school everything is benchmarked on the curriculum, so unless you are going to enforce a curriculum in school, how do benchmark it? What use is an assessment to the Department when you educate your child at home?

1340 **Mr Warr:** There is another issue there, that the assessment of children in school is currently done for the benefit of the child – it is done so that teachers can see where a child is doing well, and where not so well, and where they can target resources to help that child achieve his potential. The proposals that the Department wants to put through are not for that purpose at all, they are there to allow parents to continue to home educate and not to help the child

1345 develop. For example, the assessments in school are carried out by the child's teachers which would mean that in the case of our children it would be Diane doing the assessment.

I am sure the Department would not take that on board at all and they would bring in a stranger who does not know any of the children, or how well they do, or what they like or do not like, to make an assessment in the space of – what? Hours? Minutes, even? And then sort of stand on the back of that and that is unrealistic.

Mr Sewell: I think also if you are going to apply that sort of assessment to home-educated children you would have to do the same to school-educated children as well, so they would have to be tested externally. And that would not be reasonable for them either, I would suggest.

Mrs Sewell: No. I used to be a teacher in the UK and I have been through an OFSTED inspection as a head of department, and even in that situation where you have got someone coming from outside the school they do not assess individual children's education, they are assessing the school as a whole. They do interview some children but they do it in a group and they are not looking at that individual child's work and development and so on. They actually just take the responses of the children.

So you are talking about applying something to home-educated children that just does not happen; and you are talking about a very high-stakes assessment. What would be the result of maybe getting the person thinking that they have performed poorly? You are talking about the child perhaps getting a school attendance order; a huge change in their lifestyle – maybe they have come at school through bullying or anxiety problems, and then having to be put back into school. You are talking about a very high stakes, very stressful situation.

And the Department often says, 'Well, what's wrong with an assessment, because kids in school get assessed all the time?' But you are just not talking about the same thing.

Q300. The Chairman: We as a Committee met, as I said to the previous group, with representatives from the Department of Education, Sport and Culture on 8th March. I do not know whether you have had an opportunity to either listen to or read any of those? (**Mrs Warr:** Yes.)

Are there any comments you would like to make about what was said on that day?

Mr Warr: Yes.

The Chairman: From Mr and Mrs Warr, I think we have received further written representation.

Mr Warr: Yes, most of it is in written form.

Mrs Warr: I do not know if you need – ?

Mr Warr: No, I do not think I have got it with me.

The Chairman: That is all right, if there is nothing you need to add to what you have –

Mr Sewell: There is something from a consultation perspective that I would like to add which is obviously the Department, from questioning, was saying that the procedures had been written by home educators. I can advise you that was *not* the case; it absolutely was not the case!

Mrs Sewell: The procedures were written by Andrew Shipley in the Department.

1395 **Mr Sewell:** By Andrew Shipley, and that is why it has got a Government logo on as you would expect. We would not be able to write something with a Government logo on it.

So yes, it was done willingly and with the knowledge of the Department and they compiled the documentation. They even did the consultation. We, obviously, would not have a list of all home educators on the Island – they would, through the notification procedure and they did the consultation ... we do not know the outcome from it, other than they have consulted, but that was it.

1405 **Mrs Warr:** Yes, and we did not hear anything back then until the February, and that is when we heard that the elective home education procedures that we put had together had just been thrown out of the window; and any kind of stepping stones we had towards building a relationship between us and the Department seemed to just be thrown out of the window. It would be really nice to know what happened in between that – and we have tried to find out, with no event whatsoever.

1410 **Mr Warr:** No-one has been able to give us a clear answer of what exactly happened, which is very frustrating.

Mrs Warr: Because we *would* like to work with the Department, it is not that we do not want to.

1415 **Q301. The Chairman:** Again, I think that is what the previous representatives who were in front of us said as well, which is unfortunately worrying.

1420 **Mrs Sewell:** I think we have been home educating here for 12 or 13 years and during that time – now we are coming towards the end of it, so in a lot of cases what we are discussing now will not affect us a great deal. But one of my overriding things is that ever since we have been home educating – especially in 2008 with the Miscellaneous Provisions Bill which we campaigned against – we have always felt that the Department is hostile to home education. And although we have not had conflict with them personally, home educating is a very difficult thing to do, it is a huge responsibility – very enjoyable; but home educating in the context of feeling that the Department is actually hostile towards you is very stressful. That is kind of the context of your everyday life.

1430 What I really wanted to do was to build a better relationship with the Department so that home educators do not feel that, but that if they need support or help or anything they can contact the Department and it is not going to be a conflict situation. I think that is really important because one of the changes I have seen during that time is that actually more and more home educators now are people where children have had difficulties in school and have *had* to leave, and they are home educating not through choice, really, because it is like they feel they have got to for the sake of the children. So I think it is really important that those home educators who really would like a better relationship with the Department, and maybe some support, can actually have that choice; and those home educators who do not want that, do not have to have it. But I think at the moment there is such a feeling between home educators and the Department that they would not ever go and approach them.

1440 I think actually Prof. Barr said, in answer to a question if he had ever been asked ... [*Technical interference*] and I did think that that is not the relationship that is good for the children, and we would like a much more conducive, (**The Chairman:** Inclusive.) helpful relationship than that. That is really what we are trying to achieve.

1445 **Mrs Warr:** You suggested we put the elective home educator procedures in place, and it was suggested that maybe a hub could be created – and that it would be non-statutory, it would not be legal – so that people could go once a year and they could actually touch base with the

Department. That was actually thrown out there and it could have been sent out with the elective home education procedures to all of the home educators when that email went out for feedback on it. I know some people are open to it; some people are not – which is absolutely fine. But with it not being statutory if you do not want to do it, you do not have to do it; but the ones who do, can.

Mrs Sewell: I think as time went on you could build that relationship and then more and more people would want to get involved.

Mrs Warr: Yes, and it needs to be built –

Mrs Sewell: But at the moment the Department just seems to want to deal with us through punitive legislation, and of course that is not really helpful in building a positive relationship.

Mr Sewell: Yes, that is similar to what the group before us said when they came in.

I think if I may, just one other thing that is probably worth saying, because it is unique here compared to the other jurisdictions people were talking about. The Department of Education is the lawmaker, it is the enforcer, it is the local authority making a provision. It is also the appeals body as well. It does not leave you a lot – (*Interjection*) and there is nothing in the legislation to safeguard any of that; and once you get yourself in a dispute with the Department – and fortunately we never have done so far – but if you were to, there is really no way of getting yourself out of the procedures or out of the legislation once it has started.

So that is why we wanted to develop a more friendly conducive relationship with them.

Mr Warr: I think the lady earlier mentioned something similar, that there is no kind of separation between the Department and everything; and I think similarly in the recent report on the Hospital they also found that the closeness of the policy and the delivery was harmful to its efficiency, and potentially it is the same situation we have got with Education.

Mrs Warr: Also, if you have got children who are coming out of school and choose home education, it keeps the door of communication open. If you have got that structure there it means that they are not completely alienated and they are not hidden; they have that dialogue there and it is not hostile. It is not, 'We're going to fine you; we're going to force you to do this and force you to do that; we are going to assess you, assess you, assess you'. All of that is removed and you get clear dialogue to build on, which is positive for a child – not an *adult*, a child.

Mr Warr: But for that you need trust, (**Mrs Warr and Mrs Sewell:** Yes.) and as we saw last year, all the trust that we built up suddenly vanished and we do not know why.

Q302. Mr Perkins: Have you any evidence of the school pushing children out to home education that they are finding difficult? (*Interjections*)

Mr Warr: It happens in England. I am not aware of any formal investigation by the Department to find out whether it happens over here, but I know it happened in England and there have reports on that. But Diane is approached regularly by people –

Mrs Warr: Yes, I am aware of situations where that has happened.

Mr Warr: – whose children in school are suffering with anxiety or depression, or whatever it is, and they are desperate for a solution and they cannot seem to sort of –

Mrs Warr: They are desperate for education and they are desperate for stability and those two things are not compatible in one system if it is not diverse enough to accommodate it.

1500 So essentially they have to either pick psychological stability or education, and one will fail. You cannot have psychological stability and education unless the two things work holistically together. You have to be psychologically stable to access the education because if that is not there, the education part of it is a waste of time.

1505 **Mr Warr:** And hence you get behaviour problems and so forth, and then they wonder why.

Mrs Warr: Yes, it just escalates.

The Clerk: Excuse me, Mr Cretney, I am sorry. I have just had a note: is somebody sitting very
1510 close to a microphone? If so, can you sit back please because it is interfering with the sound.

Mrs Sewell: Is that me?

The Chairman: It could well be me!
1515 Anything else?

Q303. The Assistant Clerk: Our previous witnesses who were in the chairs before you, suggested the idea of a statement of intent where home-educating families would set out their intentions for how they were going to educate their child in the coming year and what attainment they might expect of them, might be a quite a reasonable way of measuring the
1520 educational attainment of a child.

Would that not be a reasonable way of doing that?

Mrs Warr: You are back into curriculum and benchmarking again. You are back into that
1525 process where if you use autonomous learning and you follow the child, and as they get older you can then put in a more rigid structure like a curriculum and you can do more specific tailored subjects like geography – or if you really love history, if you love art, if you love music you can really hone those skills.

Benchmarking over a period of time when they are so young just seems kind of pointless as a
1530 home educator. Not in a school, I can see the point of it. But as we are, it is like getting up in the morning and setting out the structure of our entire day and then handing it over and having people determine whether I structured my day appropriately, and my child's day appropriately. I do not think most people really understand the holistic approach to home education, because it is about education but it is about how children access education autonomously and with the use
1535 of the curriculum. So to actually benchmark it with only the use of the curriculum kind of narrows that playing field with which a child can actually access education as a whole – because at school you have only got the curriculum.

Mr Warr: One thing as well is that you would not necessarily know what you were going to
1540 do right over the year for everybody, because during the course of a year you might decide to do one thing ... committing yourself ... Not being able to change that would be constrictive.

Mrs Warr: I think it would depend on how flexible that was because again ... *[Technical interference]*

1545 But before this, I would have described how we did things was mainly curricular. So at the beginning of the year I would start with some ... *[Technical interference]*

For example, a few years ago I wanted to focus on writing – one of the first things I did – and I had this idea of doing a notebooking project ... notebooks and diaries ... and it was not really sparking the children's interest. So we looked at Scott of the Antarctic's diary and they found

1550 that really interesting, and then we went to Shackleton from there, which we did not plan; and then we started looking at Antarctica.

Then at the same time the school's Royal Shakespeare broadcast did *Henry V* and, again, at the beginning of the year I did not know what their programme was going to be so I did not know we were going to end up doing that. So then we ended up comparing the leadership
1555 qualities of Henry V and Shackleton – and it worked out and it was brilliant.

Then we did really good projects on Brexit, examining all the different papers and how they covered it. But you do not know at the beginning of the year that these sorts of things are going to happen.

So in terms of a teacher it is like your dream and you can go off on these rabbit trails of whatever sparks your interest, with still having that overview that you want to improve skills in
1560 this area. But I could not have written down at the beginning of the year that was what I was going to do. And if I had committed myself to the plans that I had at the beginning of the year that I then ended up abandoning because something better came along ... Sorry! Would I have had the flexibility to go with all those different projects that we actually ended up doing?

1565 So it is things like, you will go to the library and they will have a really great book in and you go, 'Oh that's brilliant, we can do a lot with that'. But you do not know what sorts of things are going to come up. So at the beginning of the year I had a kind of plan of things I wanted to do, or skills I wanted to improve on, but how that actually ended up happening would probably be something quite different. So you have got a huge amount of flexibility that schools just do not
1570 have and people just tend to look at it through a school lens.

Mr Sewell: I think that is the key, what you have just said at the end. When you asked the unions before, they are looking at it from a school or home perspective – that is what they think it is.

1575 My wife will tell you when she started that is probably what she envisaged to start with, but there are so many different ways of teaching and engaging your kids and you have got to go with what they are interested in as well as teaching them the basics.

Mrs Warr: And the strength of the child – you have got to go with the strength of the child, not necessarily just scripted stuff.
1580

Mr Sewell: Yes, absolutely.

I regularly tell people about how I went to an all-boys public school and they forced me to do French right up to O-level in those days. I was the biggest nuisance in that class because I knew I
1585 was not going to do it but they forced me to do it, and I had to do it because that was part of the curriculum. It probably wasted everybody else's time in the class, trying to keep me under control, where they would probably have been better letting me go and do something more like maths, for example, which was something that I really loved doing.

So home education does allow you that flexibility that school education does not.

1590

Q304. The Chairman: So did they find a solution for Brexit and have they passed it on?
(*Laughter*)

1595 **Mrs Warr:** Well, we are still following it obviously, but yes we did a really good thing. I bought every newspaper I could find and we laid it out in what we thought the political spectrum was and they each made notes on who they thought that newspaper was aimed at.

There is a company called Future Learn – I do not know if you have heard of it? They provide free-to-do courses from universities – and there was a University of Leeds course they were doing that we followed.

1600 There is just so much out there, so many different options that, yes, I can see where they are coming from in saying at the beginning of the year what are you planning to do? But it just kind of – (*Interjections*)

1605 **Mr Sewell:** But you have got to remember you are put in a workplace in there and, for example, teachers are being paid to do a job, so ultimately they are going to get an appraisal at the end of the year like I am, and like probably most people in this room are who hold a job. You get measured against your targets that your manager has set you ... Obviously in the Department of Education there is a curriculum sat on top of it –

1610 **Mrs Sewell:** The other thing as well is if you get your targets set, that you just focus on the targets and then lots of other things go by the wayside while you focus on the targets.

Q305. Ms Edge: Do you find – both of you – that you are not restricted by your child's age?

1615 **Mrs Warr:** You are actually developing them by their developmental ability separately. That is preferential, but that is how I choose to do it and that is how they choose to have it, so that is only how I do it.

1620 **Mr Warr:** But yes, they do it at their own pace –

Mrs Warr: They do work to their own ability and aptitude – they do work out where they are at and where they are meant to be at that time and you do know. Obviously, I do look at the curriculum and to a certain extent I do use it as a benchmark, but it is having the flexibility to move in and out of it which for me has been invaluable.

1625 My son was at school – our second one, not so much – but he came out of the system because the system did not work for him. So obviously we took on full responsibility for his education which I really do not regret. But it is actually being able to see the difference between prescriptive and non-prescriptive, and the difference in a child between prescriptive and non-prescriptive which has been *massive* for me. I had no intentions of home educating, unlike
1630 Dawn, and once it picks *you* and you do not have a choice because your child is entitled to an education, but it is also entitled to be psychologically stable at the same time, and you have to make a choice. They are entitled to both; they are not entitled to one! So you have to make a choice and you make the choice, and then once you get them to where they need to be then you start hammering all the academic stuff home and you start working on it bit by bit, and you do
1635 not give up.

Mr Warr: And even worse than the fines, or even the threat of imprisonment, the thought of forcing our children back into school is the worst thing you could do to them – if they were not happy there to start with.

1640 **Mrs Sewell:** I think as well you find that communities will police themselves. So the kind of suggestions that have been in the Bill – those assessments – you are then going to have home educators thinking, 'Right, I have got to pass this assessment; how am I going to pass this assessment?' And then they will perceive what the Department wants and what is going to please them. Then you will end up with a community that will home educate that way, because
1645 they need to pass their assessment so that they do not end up with the horrible consequences of not passing this assessment. You will just end up in a situation where people home educate according to how they think that the Department is going to approve; and that is obviously going to be detrimental to the children in a lot of cases and cause a lot of stress then, that there just
1650 does not need to be.

The Chairman: I think we are probably getting towards the end. We have gone into much more depth than perhaps strictly only applies to the Bill but I think it has been a very interesting session, and we would like to thank you, not only for your written submissions but also for your contribution today. *(Interjection)* That's fine!

1655 Thank you very much indeed. We will now break until the next session.

*The Committee adjourned at 3.35 p.m.
and resumed its sitting at 3.39 p.m.*

Procedural

The Chairman (Mr Cretney): Welcome to this public meeting of the Social Affairs Policy Review Committee, a Standing Committee of Tynwald. I am David Cretney MLC and I chair the Committee. With me are Mr Martyn Perkins MHK and Ms Julie Edge MHK. If we can all ensure our mobile phones are off, or on silent, so that we do not have any interruptions and, for the purposes of *Hansard*, I will be ensuring that we do not have two people speaking at once.

1660

The remit of the Social Affairs Policy Review Committee is principally to scrutinise the established but not emergent policies, as deemed necessary by the Committee, of the Department of Health and Social Care, the Department of Education, Sport and Culture and the Department of Home Affairs.

1665

Today, we are looking at the Education Bill, which has been much discussed.
Our final speaker today is Mr Tristram Llewellyn Jones.

EVIDENCE OF Mr Tristram Llewellyn Jones

Q306. The Chairman: Good afternoon. Would you like to make an opening statement?

1670

Mr Llewellyn Jones: Good afternoon, Chairman, lady and gentleman of the Committee, and the Clerks. Thank you very much for having me here. I am aware that I rather invited myself at the last minute and you squeezed me in, and I am very grateful.

1675

My submission and my evidence today are really about the legal technicalities of the legislation, how it is supposed to work and the human rights opinion from Quinn Legal Advocates. So what I would like to do is briefly introduce myself and then – I have given you a copy of the submission I sent through yesterday – I would like to walk you through the various legal references and make the coherent argument, if that is acceptable?

Q307. The Chairman: That is fine, thank you.

1680

Mr Llewellyn Jones: I was a home-educated child in the 1970s and went straight from home education into the Royal Air Force, trained as a pilot and fetched up as an airline captain. I have been home educating our two children for the past eight years. So that is my experience.

1685

The new Education Bill is a straight breach of the Isle of Man Human Rights Act and that needed to be articulated by a local Manx advocate. So after a crowdfunding appeal successfully raising £3,000, Quinn Legal were paid and instructed by myself and another home-educating parent to produce a human rights opinion on the new Education Bill.

Now, to go back to the original legislation that we currently operate under – this is the Education Act 2001 – and in that the home education provisions were introduced by the then

1690 Minister into the House of Keys, stating quite clearly it is the parent's job to educate children,
not the Department's. The Department's job is to provide the schools. The Minister said clause
17 provides for education 'otherwise than at school' by the Department. Again it is the duty of
parents to educate children, not the Department. The Department has a statutory duty to
provide schools or other places of education for children. That was reiterated by Dr Mann in the
Legislative Council: again, it is not the Department's job to educate; it is the parent's job to
1695 educate the children.

The responsibility, Dr Mann said, for the child to be educated rests *wholly* with the parents,
not with the Department. Now, that legislation is extant and effective. It also complies with
Article 26 of the United Nations Convention on the Rights of the Child which says that:

Parents have a prior right to choose the kind of education that shall be given to their children

So it is quite clear that education is a parental duty and that is as simple as that.

1700 Now, the way the 2001 Act works is very similar to the 1944 Education Act in England.
Section 24 says:

It is duty of the parent of every child of compulsory school age to cause him to receive suitable education, either
by regular attendance at school or otherwise.

'Otherwise' being what it says: anything otherwise than at school.

The next section says:

The Department shall enforce the duty imposed by subsection (1).

And the next clause, 25, describes how this is done and it says, as you previously discussed:

If it appears to the Department that a child of compulsory school age in the Island is not receiving suitable
education, either by regular attendance at school or otherwise, it shall serve a notice ... etc.

1705 Now, this is based on, as the previous witnesses said, the fundamental principle of innocent
until proven guilty. If it appears, it is a standard enforcement clause in law requiring evidence of
something to present in the normal way, as it would with anything else that there is a
programme before the legal powers kick in. It does not require pre-monitoring. You cannot
regulate a home. Home education is just that, the clue is in the name: 'home'. It is a private
1710 activity under the autonomy of the parents. That is what the law is written to do.

There is another human rights report which you have, written by Mr Allan Norman, a social
worker and human rights lawyer in England, and he described how 'if it appears' works in
practice. It is a compromise between the rights of the parents on the one hand and the wishes
of the state, that is the Department, on the other hand. For parents it is uncomfortable, because
1715 it embodies the principle that their right to home educate is not unfettered and there may come
a point at which the state steps in. For the state, that is the Department here, it is
uncomfortable because it embodies the principle that the right of the state to step in is not
unfettered and there may be a point at which it has no right to step in. So there is a line in the
sand. Okay?

1720 The Human Rights Act requires a threshold, so that is a trigger before something happens.
You do not automatically suspect every car is speeding, the car presents with the information,
appears to be going too fast and then the law intervenes. But you do not automatically issue
every car with a speed monitor and have it monitored live. So that is your freedom.

1725 The Human Rights Act says that interference in the family life must not be arbitrary or
unnecessary or disproportionate, because the right to direct and choose a child's education is a
parental right, because the primary role of the state is to support parents rather than impose
upon them. For all of these reasons the right of the state to interfere has to be limited.

Now, that is the condition that home education operates under. It creates a certain amount of tension because you know that if your child does not present as educated, the law might kick in, so you could argue that is useful. It gives the Department the power to step in if a problem presents, but it does not allow policing or monitoring or regulating what goes on in the home. It cannot. That is what the Human Rights Act is there to protect.

The Human Rights Act was written at the end of World War II according to the social teaching, the Catholic Church in the first part of the last century. It was introduced by the Tory government and it was designed to protect the family as a unit from public authorities – fundamentally from bullying by public authorities. And it is necessary in this world for that right to be upheld.

Now, here I come to the bit about the law. We have got the Education Act 2001 and nothing has happened since that legislation came on the statute books to trigger any change in the law whatsoever. Freedom of Information requests found that since then the Department has written four letters to home educators asking about what is going on with their children. Satisfactorily answered. Not one school attendance order. Zero. In a typical English local authority with *circa* 300 children being home educated, they might have a school attendance order once every year, or even less. This is a very, very small problem when the state has to kick in; it is minuscule. But the suspicion has been created.

Now, you could say the British attitude is that home education is legal but you are treated with suspicion. In America it is mainstream. It is as simple as that. But again, the statistics show there is not a problem.

There is a research paper which I have highlighted to you, by Wendy Charles-Warner – quite recent, 2019 – and it quite clearly explains that home-educated children are statistically over-referred to Social Services. Over-referred, okay? But there is no higher rate of incidence of child protection plans. So they are no more at risk than children in school. There is just more suspicion.

So we already live under this more suspicious atmosphere. But when you drill down to statistics the courts are not finding a problem. So it raises the first question: is monitoring justified? And quite simply it is not, because there is no evidence.

The Department has not produced any evidence of a change in the law. It has not produced any study. It has not produced any research. So, on that basis, I am struggling to ask the question: why are we sitting here? Because it is such an obvious point and it is the point that Quinn Legal have drilled down to.

Now, coming on to what ‘if it appears’ means, the baseline is that the Magistrates’ Court will assess if they have a child before it, or a parent before it, with a school attendance order. Home education law works on the balance of probabilities and the evidence the court requires to satisfy itself that an adequate education is taking place, is such as would convince a reasonable person on the balance of probabilities. So if you can convince your neighbour or your cousin that you are providing an education, then – never mind what is in guidance, guidance is non-statutory and is an opinion – that is what the courts will assess.

So my advice to a parent who is worried about interference from the Department or a local authority in England would be to ignore the interference and, if you are comfortable, just present the information to the Magistrates’ Court and get it discharged, because they will be three ordinary people asking an ordinary question: are the parents educating? It does not matter what form, just is an education of some sort being provided?

Now, that is the baseline. In the Quinn Legal opinion they picked up very quickly that the Department said home education is not in itself a risk factor for abuse or neglect. So they have cleared the decks, but they created this argument that children can become invisible. Well, since parents are responsible for their children, they are not invisible because they are with their parents. So where does the argument come in that we necessarily have to be checked out by somebody who works for a public authority for the children to be safe? It is a *non sequitur*. It does not follow because, as I have indicated, the statistics show there is no greater risk rate of

1780 child-protection plans for home-educated children in the UK. And the Isle of Man statistically mirrors the UK in these matters. But the Department has sought to fundamentally change the relationship. They want to remove 'otherwise' and we are now to have 'a reasonable degree of influence' over the education. They said it is, 'whether or not by regular attendance at a school'. So it is school, or not. What is not?

1785 Then, under clause 78 of the Bill we 'must comply with any request for information' – a provision that I think was attempted about 10 years ago in the Education (Miscellaneous Provisions) Bill, which again was negated by a Quinn Legal human rights opinion. But the Department goes further and they want 'regulations about the methodology of assessments'. So that is the trigger for them providing a curriculum; so they are then in the position of control; so it changes.

1790 The question is: why? And how does the Human Rights Act protect us? The Human Rights Act says 'an interference' will be considered 'necessary' in a democratic society if it answers a 'pressing social need'. Clue: pressing social need. Case law: where is the 'pressing social need'? They have not answered it. They have a point of view, fine; but that does not mean to say that that overrules or trumps the Convention on Human Rights.

1795 They already have a wide range of statutory powers – wider, I think, than in the jurisdictions in the UK – but they have never used them. Again, they have not commissioned a study and Quinn Legal have said:

... the Bill primarily appears to seek to impose, via primary legislation, a particular philosophy or approach towards the provision of home education on the Isle of Man (i.e. that *[it]* is only, and exceptionally, to be permitted if subject to prescriptive, and potentially open-ended, regulation and enforcement). Such approach fails to recognise the significant level of legal protection afforded ...

1800 under the Isle of Man Human Rights Act – Article 8, the Right to Respect for Private and Family Life; Article 9, Freedom of Thought, Conscience and Religion; Article 14, Discrimination. Linked together, they protect home education.

Now, to come back to one final point, we to an extent I think in the Isle of Man are under the gaze of the United Kingdom on human rights. It is an international treaty. I think it was the Kilbrandon Report that said if there is a fundamental difference in policy between the United Kingdom and the Isle of Man, then the UK authorities will seek to resolve that. The United Kingdom is looking at home education legislation, but it is *extremely* limited. It is a register contained by a local authority with no extra powers and it is already proving contentious. So I think we are going to attract attention in the Isle of Man with this controlling regime and it is going to come to people's attention.

1810 Lady Hale gave a talk to the Advocate's Association last year and she spoke of:

The spectre of the totalitarian state *[trying]* to separate children from the subversive influence of their families

And she said this is absolutely key.

There is an inextricable link between the protection of the family and the protection of fundamental freedoms in liberal democracies. The ... concept in Article 1 of the Universal Declaration *[of Human Rights]*. . . is premised on difference. If we were all the same, we would not need to guarantee that individual differences should be respected. Individual differences are the product of the interplay between the individual person and his upbringing and environment. Different upbringings produce different people. The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers' view of the world. Within limits, families must be left to bring up their children in their own way.

1815 So to wrap up, we are moving from a world where 'it is education or otherwise' has never been a problem, to a world where the Department has got enough cleverly devised, linked, legal triggers that they will be able to direct and control the education of the children. And that, simply, is a clear breach of the Human Rights Act. And that, essentially, is my argument.

The Chairman: Okay, thank you very much for putting it so cogently.

Q308. The Assistant Clerk: May I ask a question?

1820 Is there any precedent you are aware of holding that the freedom to home educate actually forms a protected element of family life under the Human Rights Act?

Mr Llewellyn Jones: Precedent? Well, yes, because it has been in primary legislation in Britain since 1944 as education 'otherwise'.

1825 **Q309. The Assistant Clerk:** But no decision of the court? So this is a novel area of law?

Mr Llewellyn Jones: It is primary legislation. It has not been countermanded by case law. Now, the Department for Education in Whitehall issued a very contentious public consultation on non-statutory guidance and to have these legislative proposals to register. They are designed to trigger and test case law. But I do not think they are going to get very far with it because, as I have said, when these matters go before the courts it is usually clear-cut – either the parent is providing an education or not. If not: a school attendance order.

1830 The legislation works, so there is no precedent, no. This is primary legislation. But it has always been the case in Britain that education is a parental responsibility.

1835 School is not compulsory; education *is* compulsory – parental responsibility. The law has always been that way and even in the current times, the UK government is not planning to change that. They are not changing 'if it appears' and education 'otherwise'.

So, no, there is no precedent. I mean, it is primary legislation, nothing has occurred in case law to stop it.

1840

Q310. The Chairman: Do you have any comments on the consultation process for the draft Education Bill?

1845 **Mr Llewellyn Jones:** My only comment is that I totally agree with the previous witnesses. It was leading questions. It was basically a referendum and there will be lots of uninformed opinions on that. There was not a proper consultation with families. I do not think there was ever any intention to listen. So, no, it was not done in the spirit of the Council of Ministers' Code of Practice on Public Consultations – as simple as that.

1850 **Q311. The Chairman:** If Tynwald in its wisdom were to enact the draft Education Bill in its current form, what would you do next?

1855 **Mr Llewellyn Jones:** Tynwald, like the United Kingdom Parliament, is at liberty to pass a law which breaches the Human Rights Act. The UK Parliament regularly does that and then it is subject to challenge. Somebody gets compromised by it and it goes back before the courts and gets corrected. It regularly happens in the United Kingdom, it is called a common law jurisdiction where we get the law changed according to what is actually going on in society, not what government perceives.

1860 If you look at the last page that the Quinn Legal opinion, what he has said is that this opinion could be used, basically, by someone who is a victim of the legislation as evidence in court that the legislation is excessive. So my prediction is that if they enact the legislation, a family will get compromised and it will end up in court.

1865 The point about Tynwald is that you passed the Human Rights Act; we did not. So surely the best thing is to make sure the legislation complies with the spirit of it and protects the family. You have not got evidence that there is a problem. So the current law is extant, it works. My pitch is: leave it as it is.

Q312. The Chairman: Following on the same kind of line, really.

Obviously the Attorney General will advise the Council of Ministers or the Department of Education, or whoever, whether or not a piece of legislation is human rights compliant and obviously each piece of legislation has a note on it that it is determined that it is human rights compliant. If the Bill was to be enacted as drafted and then, following a legal challenge, it was determined by a court to be human rights compliant, would you no longer be opposed to it?

Mr Llewellyn Jones: Would I no longer be opposed to it? Well, one has to respect the opinion of the courts. But I cannot see that the court would find it human rights compliant.

If I could draw your attention to the 'Named Person' case in Scotland? Scotland decided to allocate a named person or state guardian to every single child with responsibility for the child's wellbeing. They came up with another pointless argument that a risk to the child's wellbeing could be a risk to the child's safety. So they needed to get lots of information on children with low-level problems – really low-level problems. That obviously affected home educators who got quite heavily involved. That went all the way to the Supreme Court, who are the same bench who chair the Judicial Committee, the Privy Council, who are the final arbiters for the Isle of Man, and they threw it out. The Scottish Government had to pay quarter of a million costs to the Christian Institute who brought the case because quite simply it was excessive. They had not made the case that it was proportionate or necessary.

Now, the problem in having done it is that public authorities in Scotland have just been ignoring it. So it is going back before committees in the Scottish Parliament as well, and it is rumbling on. So there you go. I am quite convinced that if it came to that challenge the courts would uphold the rights of the parent. As I say, the trick is to avoid that.

Fundamentally, we are talking about quite abstract things but you are talking about giving arbitrary powers, very controlling powers, to a Department which has nailed its colours to the mast – it quite clearly does not like home education. It does not like it; it does not approve of it. The establishment does not like it – generally, civil servants do not. They are seeking to put in a regime and that means that some poor families are going to get interfered with. It is very, very easy to go into a family for half an hour and assess the children, get them on a bad day and *completely* get it wrong and set the hares running, and drag a law-abiding family doing their level best for their children, through the mill. That can cause huge distress.

Now, it is your job to stop that in the first place. It is as simple as that.

Q313. The Chairman: I have asked this question of the others who have been here this afternoon. I do not know if you managed to either catch up or hear real time, the Minister and Chief Executive when they were in speaking to us on 8th March, and was there anything you wanted to pick up on from the conversation that day?

Mr Llewellyn Jones: I just found it hard to listen to, to be perfectly honest, sitting in my home listening to somebody who just does not know what they are talking about.

No. I mean, I followed the comments of the Chief Executive all the way through from, I think it was three years ago, when they referred to home education with the pronoun 'that' in a dismissive way. And, okay, here we go again. Here it is cyclically, every ten years, the civil servants dust off home education; 'Oh, how are these people getting away with it? That must be wrong.' And we go all the way round through the cycle. It seems to come round every 10 years, but it gets a bit more feisty and harder each time, and every time it gets knocked back.

I fundamentally think the Department is overstepping their remit. And again, if you want to make a case for changing the law, not on the political opinion of a minority of civil servants, please produce some evidence. Where is the evidence? No school attendance orders; no research report; nothing. Nothing has changed.

Maybe there are more people home educating now but then that is the direction of travel. It is going mainstream. It is mainstream in America. It will go mainstream here. And Governments,

1920 Departments and local authorities have just got to accept that. They may not like it, but that is what is going to happen and they are not going to improve things by creating interfering powers.

1925 **Q314. The Clerk:** May I pick up on the point about no school attendance orders? How could there have been any school attendance orders when the current system is triggered by whatever we talked about before – if the Department suspects – (*Mr Llewellyn Jones: Appears.*) if it ‘appears’ to the Department, and the Department has no proactive methods for finding out? So I do not –

1930 **Mr Llewellyn Jones:** But it does not need a proactive method because the primary responsibility lies with the parents. As we have indicated Departments, local authorities and civil servants do not like that, but that is the protected position in law. Nobody has explained why public authorities and Departments here have cause to be suspicious of home educators.

1935 Why? Because the parents are educating their children at home. Why is that a cause for suspicion? We choose the form of education; we choose to send our child to a state school, a public school, a boarding school. The Department is not engaged in that. You cannot have a situation where, because you do not know, you suspect. Absence of information is not evidence of a problem in itself.

1940 Now, as the previous witnesses very lucidly explained, we exist in the community. So the baseline test the Magistrates’ Courts will assess is: on the balance of probabilities, is this child being educated? Children mix around the community and that is fine; and if somebody thought something was not right or not going on, then there would be a comment or a complaint – and that is what triggers school attendance orders in the UK. But they are very, very rare.

1945 We are looking at a tiny problem evidenced in the normal course of events just like any other legal matter. We do not go around policing every single issue. There are other issues we could police – we could police fire safety. Why do we not have checks in every single house? One crime that is intensely damaging to families is incest – it hugely disrupts families through generations. If it is that serious – and it is – why do we not police it? There has to be a line in the sand.

1950 Now, we are talking about risk. My background is airline safety management so risk is of interest to me. You cannot eliminate risk. Okay? We could get road accidents down to zero by keeping the speed set at 1920 level; we could all creep round at 10 miles an hour and nobody would crash. We accept a certain level of risk in order to conduct our lives.

1955 When we look at home education what the courts find is a *minuscule* problem. As I said, there are *circa* 300 local home-educated children in your typical local authority – Shropshire, Worcester, what have you – and one or two school attendance orders a year. Because the legislation currently works.

1960 As I have indicated, there is a tension that, if it appears ... There is a tension and you know as a parent that your child is going to be looked at, noticed, and you do not want to engage the authorities. You live a normal life, you educate; and in a common-law jurisdiction that is a reasonable balance. Now, if you can produce evidence that there is a systemic change and that home education needs monitoring, there is really a big problem ...

A research report would be a different matter, but there is nothing. We are just dealing with an opinion and I think the opinion is based on prejudice and suspicion. What they do not know, they do not like.

1965 But you cannot go in and pre-police. You just cannot do it. That is where the Human Rights Act will kick in. The clue is in ‘home’ – education is carried out in the home. You are allowed to draw your curtains and shut your front door and watch the telly.

The Chairman: Is there anything else you would like to add?

1970 **Mr Llewellyn Jones:** Yes, the guidance.

I did not agree with the Department's guidance. I did not see that it was necessary and I did not think that all the indicators they came up with – 'if it appears' – were justiciable. Because as I have indicated, what the Magistrates' Court will look at – you are talking about three ordinary people standing up and saying, 'Well, is it likely, on the balance of probabilities, that this child is being educated? Yes or no?'

1975

I did not think the indicators were really reflective of that.

Home Education is used as a 'threat';

Well, what does that mean? I do not know. Too subjective; and actually they do not really apply to the law. So I do not think it is the right approach.

The best approach is in Ulster. They have recently launched a public consultation on home education after extensive interaction with their local community. And it says:

1980

In aiming to foster good relationships with home educating parents, the EHE [*Elective Home Education*] Team will ... offer advice and support to parents on any relevant matter if requested ...

Okay? But they are not going to intrude or require information. Now, that makes the relationship work.

If we need to take a child to a GP, we trust the GP; we go to the GP and the GP solves the problem. The GP does not do a medical check every year but we trust the GP to do the right thing. They are educated, articulate people; they solve all our problems – up to a point, says he! I am approaching the big 6-0, so I am starting to think about these things a bit more. They do not solve everything.

1985

The Chairman: Wait until you get to my age! (*Laughter*)

1990

Mr Llewellyn Jones: Well, exactly! Not much older than me, Mr Chairman, I am sure.

So that is an example of a relationship with a public servant that works. Now, if the Department really wants to do something useful they have got to drop this policing attitude because all they have got to offer is surveillance – which is unpleasant; checking; and legal threats. Who wants to get involved with that?

1995

I mean, they have got a register of home educators. Not every parent registers, so they do not really know. People do not want the attention of the Department, because we know what they are like. It is as simple as that: they have already got a view formed of home education. But if they change it round the other way and offer a service ...

2000

So if a parent is home educating and finds they are struggling, and I am sure everybody will go through ups and downs – it is a hard task. If there is somebody there who understands home education and is a sympathetic ear and can point somebody in the direction of resources, or whatever; if there is a relationship of trust that will be used and that will help nip problems in the bud – if indeed any exist. So the way to tackle this type of sensitive issue is to be trusting and supportive. As I say, it is like the GP relationship. They are there to help. They are there to help to nip a problem in the bud before it becomes a problem that might require the attention of other people.

2005

Home-educating parents these days can get advice and support from all over the place, so there probably would not be much need to call on the Department. But the Department is welcome to pitch in and be there as a support and that would work fine. Some local authorities in England work that way: they are non-invasive, 'We are here to help you'. Fine. But the local authorities that act as policemen end up burying the problem that they might one day want to find. It is the wrong thing to do. You have got to get trust and support back in the system and get rid of this suspicion.

2010

I mean, look at the amount of activity there has been on home education, and these are generated by parents who are doing their level best, their damndest for their children often in

2015

the absence of, frankly, an adequate education in the schools. They are fixing problems. They are providing the suitable education in the absence of the state.

I want to say one more thing about education, which is that you cannot have a child and not educate them, because education, learning, is instinctive. You try and stop a child learning – it is impossible. It will happen all by itself even if nothing happens. It is instinctive. So they are coming at it from the wrong tack. They really, really are. They need to relax and be more human about it and provide that supportive service. And there is work to be done there, but it has not happened.

Q315. The Clerk: May I just pick up on something Mr Llewellyn Jones said, Mr Chairman?

You said, I think, I do not agree with the Department's guidance; and you quoted some words. Are you talking about the document dated 5th March 2018, (**Mr Llewellyn Jones:** Yes.) entitled Isle of Man Elective Home Education Procedures?

So could you explain why ... I know it has got the Department's name on it but the Committee was told in the last hearing, which you listened to, that the Department had not signed this document off. (**Mr Llewellyn Jones:** No.) Can you tell us anything about the gestation or history of this document?

Mr Llewellyn Jones: Well, it appeared on the Department's website, as I recall. So as I understand it is based on the elective home education procedures of Lancashire Council. I had submitted a Freedom of Information to Lancashire Council and found actually they act quite intrusively; there is a lot of activity there – more than other local authorities. So I wonder if that is why they were interested in doing it.

It is essentially that, but then they have added an Appendix 1 the 'If it appears' indicators and then there is a flowchart at Appendix 2, and basically once you come to the Department's attention you are then under their gaze until the child is 16, and that is quite simply an unfettered power. That is a very good reason for not wanting to engage with the Department, because you will never get shot of them.

The Assistant Clerk: I believe, to my knowledge, that flowchart was actually removed from a subsequent iteration of the draft.

The Clerk: Right.

Ms Edge: That is what is available today –

The Assistant Clerk: From April 2018, I think at that stage it had been removed.

Q316. The Clerk: But anyway, the Committee was told that the Department did not endorse the document at all.

Mr Llewellyn Jones: Okay, so they published it, they did not endorse it; I did not agree with it. I do not think the 'if it appears' indicators are justiciable because that is not what the court would look for.

So that is my point of view. Not everyone would agree with me; I respect that and that is fine. But as I said, if they want to get this right it is Ulster, with the co-operation of the home education community and essentially, basically, the home education community working with the Department and saying, 'Look, you really do not understand this; do it this way'.

Q317. Ms Edge: Can I just ask: did I hear you right?

You think this is a copy of the Lancashire – ?

2070 **Mr Llewellyn Jones:** As far as I am aware, yes. *(Interjection)* But the local authority Elective
Home Education Procedures have actually just changed from the Department for Education, but
they have not been changed by all the local authorities – they have still got quite old guidance
going in. Whether they will change with the Department, I do not know, but these procedures
are pretty generic to local authorities in the UK.

2075 The modern procedures are the same but simply more litigious. The UK government is
seeking for local authorities to act more litigiously without giving them the money to hire the
lawyers in the first place.

The Chairman: Thank you very much for your written evidence which has been very useful in
terms of the Committee looking at this matter, and for your substantial and cogent
representation today which will obviously be taken into account in our future consideration.

2080 Thank you very much, Mr Llewellyn Jones.

Mr Llewellyn Jones: Thank you, Mr Chairman and Committee, it has been a pleasure.

The Chairman: That brings today's proceedings to a close.

The Committee adjourned at 4.22 p.m.

**WRITTEN EVIDENCE - DEPARTMENT
OF EDUCATION, SPORT AND CULTURE**

APPENDIX 1:

**11th October 2017 – Consultation: ‘Major
changes in the new Education Bill’**

Major changes in the new Education Bill

Overview

The Education Act 2001 has been the primary legislation in education for the past 13 years. It was necessary to make changes in 2009 [Education (Miscellaneous Provisions) Act 2009] and now the Department of Education and Children believes the time is right to look at new legislation in some key areas. By considering a new Education Bill all areas of the present legislation will be considered.

This consultation is about the policy principles that may be used as the basis for drafting the new Education Bill. The Department of Education and Children is looking to bring the Island's legislation up to date to reflect changes in education practice both in the UK and other jurisdictions.

We are looking for views from members of the public on:

- the major changes being proposed for inclusion in the new Bill
- the proposed changes to amend or add to existing legislative provisions

Our proposal

We want to ensure that education legislation:

- is up to date
- covers education provision for lifelong learning
- enables the Department to deliver an education provision that meets the needs of Isle of Man residents and businesses

- complies with safeguarding legislation

Why we are consulting

The consultation will help the Department of Education and Children understand views from members of the public on the changes to some of the policy principles on which the new Education Bill will be based.

Introduction

Our proposal

We want to ensure that education legislation:

- is up to date
- covers education provision for lifelong learning
- complies with safeguarding requirements
- enables the Department to deliver an education provision that meets the needs of Isle of Man residents and businesses

What is your name?

Name

What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response. Your email address will not be used for any other purpose.

Email

Are you responding on behalf of an organisation?

Please select only one item

☐ Yes ☐ No

If yes, what is the name of your organisation?

Do you live on the Isle of Man?

Please select only one item

☐ Yes ☐ No

Please state the first 3 digits of your post code. For example: IM0

May we publish your response?

More information

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published (your email will **not** be published)
- Publish anonymously – only your responses **will** be published (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

(Required)

Please select only one item

- ☐ Yes, you can publish my response in full
- ☐ Yes, you may publish my response anonymously
- ☐ No, please do not publish my response

Proposed areas no longer included in the Education Act 2001

It is proposed that the following areas in the Education Act 2001 are **not included** in the new Education Bill:

- Religious Education – This is a specific section in the present Act specifying what has to be done and what exemptions exist for both religious education and assemblies
- Religious Education Advisory Committee (REAC) – Discusses religious education issues and decides on a religious education curriculum
- Education Council – The Education Council came into existence after changes in 2009 and members sit on various bodies such as governing bodies or hearing panels, as well as discussing education issues and advising the Department of Education and Children.

Religious Education

The Department feels Religious Education is a subject like any other one in the school curriculum and therefore should be treated in the same manner by inclusion in the **curriculum regulations**, rather than in primary legislation. The nature and content of assemblies has changed and it is necessary to reflect this in legislation.

The present Education Act 2001 determines:

- what can and cannot be done in terms of religious education and assemblies
- when children can be excused and what should happen for such education

Specific subjects studied in school are determined in regulations rather than being specified in the Education Act 2001. This means that as a subject the material to be studied will be determined by lead professionals in schools in collaboration with the Department of Education and Children.

Parents who opt to send their children to a Faith School have already opted into religious worship, so it is **proposed** that there will be no need to include clauses 13 and 14 of the 2001 Act in the new Bill.

The sections of the current Act that put in place the Religious Education Advisory Committee (REAC) are also **proposed** be removed and the role of this Committee to be reviewed by the Department.

Religious Education Advisory Committee

REAC Membership includes:

- leaders from across several Christian denominations
- religious youth groups
- the Bishop (who chairs)
- IOM Freethinkers
- primary and secondary phase RE subject leads
- members of the Education Council
- a senior representative from the Department of Education and Children

Responsibilities of REAC include:

- preparing a Religious Education syllabus for pupils on the Isle of Man
- advising the Department of Education and Children on matters relating to Religious Education

1 Do you agree that Religious Education should be treated the same as any other curriculum subject through the curriculum regulations?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

2 Do you agree that the role of the Religious Education Advisory Committee is no longer required?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

Education Council

The 2009 Education (Miscellaneous Provisions) Act replaced the former Board of Education with the Education Council, whose role is to act as a body that advises the Department as necessary and members sit on various panels and hearings. Education Council members also act as Department representatives on each school governing body.

Education Council members are appointed after interview and must display knowledge of the education system. The Council has a maximum of 10 members.

The role and value of the Education Council has been questioned by:

- schools
- parents
- the Department

It is proposed that the new Bill will **remove** the Education Council and **replace** it with Department Appointed Governors, so that a Department representative will continue to be on school governing bodies.

The Department Appointed Governors will also sit on appeal and hearing panels, but will not have an advisory role.

3 Do you think that the Education Council has a role in providing advice to the Department?

Please select only one item

☐ Yes ☐ No ☐ Unsure

If yes, what do you think the role would include?

Proposed new areas in the Education Bill

Areas proposed to be included in the Education Bill:

- Inspection and quality assurance of the educational provision of pre-school settings (currently they are only inspected by the Registration and Inspections Unit of DHSC in regard to their compliance with the Regulation of Care Act and Regulations)
- Regulation and registration of private tutors, training and educational establishments as currently there is no statutory role in ensuring checks are undertaken

Inspection and quality assurance of pre-school settings

The Pre-School Credit Scheme currently provides:

- 10 hours universal credit per week
- 12.5 hours credit per week for lower income families

The Scheme was introduced **without** the Department having the legal authority to carry out inspection and quality assurance of the pre-school education being provided and paid for by IOM Government.

The Department of Health and Social Care have the ability to inspect nursery and pre-school settings for the care they provide for children but this does not extend to the education element being provided for preschool children.

The proposal in the new Bill is to give the Department of Education and Children the **legal authority** to inspect the quality of the pre-school education being provided using a quality assurance framework.

4 Do you agree that pre-school education should be quality assured?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

Regulation and registration

Regulation and registration of private tutors, training and educational establishments

At present there is **no regulation** around private tutors or educational / training establishments. At present anyone can establish themselves as a tutor or educational/training establishment.

Private tutors are **presently not checked**:

- with the Disclosure Barring Service (DBS) for whether there are safeguarding issues
- to confirm that they can deliver the subjects they say they can

Currently the Department of Education and Children **does not** have a statutory obligation to ensure tutors or educational/training establishments are checked. The Department of Education and Children is seeking to ensure safeguarding procedures are implemented.

Private tutors

The Department is proposing to ask **all** tutors:

- to be voluntarily registered
- to ensure that they have a DBS check
- to confirm they are qualified to teach the subjects they are offering
- to confirm they have received safeguarding training.

It is proposed that a **list** of registered tutors would be on the government website.

Training and educational establishments

Currently anyone can set up an educational establishment on the Isle of Man and there is currently **no governance** in place to **regulate the activities** of

such an establishment, with the exception of sections 52 and 53 of the current Act which controls awards and degrees that can be offered.

In the past the Island has already experienced the negative effect of an unauthorised provider.

The Department is proposing that educational establishments **voluntarily register** in the same way as tutors.

5 Should the Department provide a list of registered tutors and educational establishments?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

6 Should all providers of education, particularly to children, be suitably qualified to teach the subject on offer and police checked?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

Proposed areas to be strengthened or amended

Areas in the current Act that are proposed to be strengthened or changed:

- Governing bodies
- Home education
- School attendance
- Special Educational Needs
- Catchment areas
- Behaviour

Governing Bodies

The roles of governing bodies in our school and at University College Isle of Man (UCM) need:

- to be more robust
- to provide rigour
- to challenge decisions
- to play a more significant role in the life of the schools

In the new Act, it is intended that governing bodies will have **more** clearly defined role and responsibilities.

It is proposed to tighten the rules around:

- co-opted governors
- length of tenure of governors
- the number of governors (currently a minimum of 3 and maximum of 6)
- the inclusion of a Department appointed governor rather than an Education Council one

7 Is the role of Governors in schools clearly understood and recognised by parents?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

8 Do you have a recommendation on the number of governors and how long they should serve on the governing body?

Please select only one item

☐ Yes ☐ No

If so, how many governors and for how long should they serve.

Home education

It is a **duty of parents** of children of compulsory school age to ensure that they receive a suitable education.

A suitable education is defined in the current Act as 'efficient full time education suitable to their age, ability and aptitude taking into account any special educational needs.'

This parental duty applies whether the education is provided in schools or at home. The Department has a **duty to enforce** this requirement so that a suitable education is given.

At present the Department has no way of ensuring that parents who choose to home educate meet the suitable education provision in Section 24 of the Education Act 2001.

Home education is not, in itself, a risk factor for abuse or neglect. However, there is potential that these children can become 'invisible' and in these cases there is a safeguarding risk of isolation from professionals. The **aim** is to establish an **appropriate scope of duties** for the Department to ensure that children do not go unseen.

The Department is seeking to add another subsection to the existing clause 24 to allow the Department to introduce regulations which **may require parents to provide evidence** to the Department of the Education of the educational provision their children are receiving.

9 Should the Department seek evidence from home educators on the education they are giving to their children?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Please state your reasons.

School Attendance

The 2009 Act gives the Department powers to impose fixed penalties on parents or guardians for poor attendance at school and it has been successful in reducing long term attendance issues.

There have been a growing number of incidents taking place in public places during school hours that are due to children who are suspended from school. This may arise as they are not supervised by their parents at home during this time.

The Department is looking to extend the provisions further to fine parents whose children are out in a public place **during school hours when they are suspended**. It is proposed that this fine can be imposed by the Department or possibly the Police.

10 Do you agree with this proposal?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

Special Educational Needs

This is one area that has changed significantly since the 2001 Act was introduced.

Special Education Needs (SEN) legislation **needs to be updated** to ensure that there is clarity in what is available for the parents of children with SEN in the Isle of Man. In particular regarding:

- information
- access and guidance
- redress
- appeals
- mediation
- dispute resolution

Clarity is needed around entitlement to additional services for children with SEN and the procedures to qualify for provisions. This needs to be an **Isle of Man specific approach**.

We **need** the ability in the new Bill to be able to put in place **regulations** to:

- detail the role of the Department in carrying out assessments
- determine level of need and support for children with additional needs
- cover all children from an early years setting to the time they leave full time education.

It will also clearly define the roles of educational psychologists in the terms of state and private education.

11 Is clarity around access to services for children with SEN needed?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

12 Does the role of educational psychologists need further clarification?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

Catchment Areas

In order for the Department to run its schools efficiently it is proposed that a child **will attend** their catchment area school **unless** they meet more **specific exception criteria** than is currently the case, which will be defined in regulations.

Regulations will define reasons why an out of catchment request can be submitted for the Department's consideration.

13 Should children always attend their catchment area school unless their needs cannot be met by the school?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

Behaviour

Inappropriate behaviour ‘at the school’ is an aspect of school life which needs to be considered particularly how it is dealt with.

Headteachers cannot police what happens outside the school gate, but there may be circumstances where inappropriate behaviour outside of the school grounds can affect and be detrimental to the effective running of the school.

The current Education Act 2001 is silent on **school activities** that take place elsewhere such as school trips. The current sections of the 2001 Act **need to be expanded** to cover these instances.

We are **not** proposing to put in any changes to address pupil behaviour **outside** the school environment.

14 Should the same behaviour standards for students that apply while ‘at the school’ be applicable when they are attending school-based events such as trips?

Please select only one item

☐ Yes ☐ No ☐ Unsure

Your comments

15 Who do you feel is responsible for dealing with inappropriate behaviour of students outside the school environment?

Please select only one item

☐ Parents / guardians ☐ Teachers ☐ Both ☐ Other

If other, please state who should be responsible:

Please state your reasons.

Final thoughts

Please state any additional comments you have regarding this consultation.

APPENDIX 2:

**1st January 2018 – Summary analysis of
responses of the public Consultation on
the principles of the Education Bill**



Department of Education Sport and Culture

Rheynn Ynsee, Spoyrt as Cultoor

Summary analysis of responses of the public consultation on the principles of the Education Bill 11/10/17 to 22/11/17 including Department response – January 2018

General questions

Responding on behalf of an organisation?			Do you live on the IoM?		May we publish your response?		Name provided?	
Yes	17		Yes	469	Yes - in full	80	Yes	469
No	512		No	61	Yes - anonymously	319	No	66
Not answered	6		Not answered	5	No	136		
					Not answered	0		

Consultation Questions and Responses	Department of Education, Sport and Culture response
Question 1 - Do you agree that Religious Education should be treated the same as any other curriculum subject through the curriculum regulations? Yes 316 59.1% No 143 26.7% Unsure 69 12.9% Not answered 7 1.3% 535	The majority of you said that Religious Education should be treated in the same way as any other curriculum subject. We will therefore not include sections 12 ,13 and 14 of Education Act 2001 in the New Bill. It will however continue to exist as a subject in the curriculum regulations.

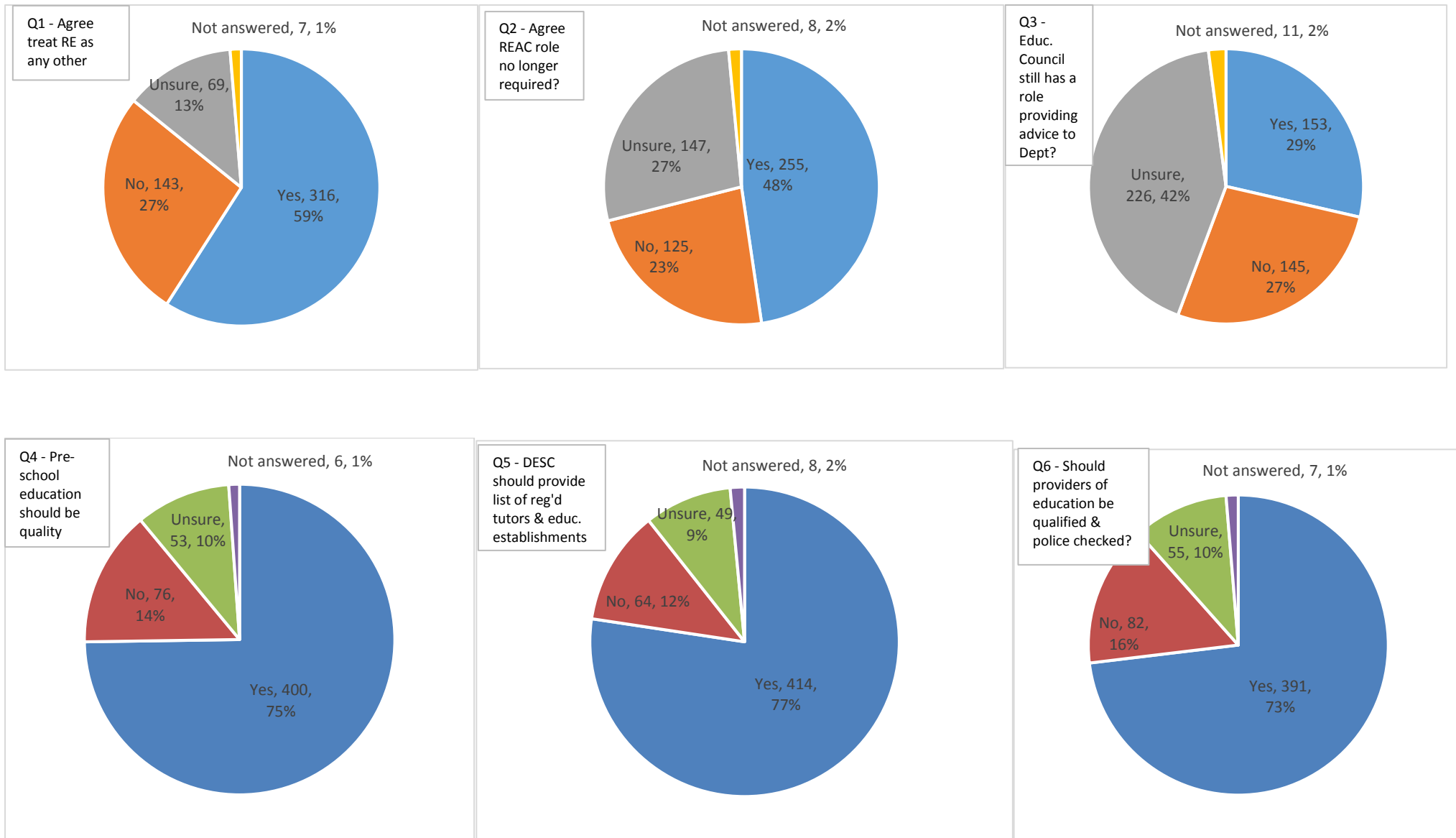
<p>Question 2 - Do you agree that the role of the Religious Education Advisory Committee is no longer required?</p> <p>Yes 255 47.7%</p> <p>No 125 23.4%</p> <p>Unsure 147 27.5%</p> <p>Not answered 8 1.5%</p> <p>535</p>	<p>On reviewing your comments attached to the responses the majority of you felt that advice on Religious Education as a subject should not be restricted to a committee, the majority of members of which are from Christian denominations. If the subject is wide ranging covering all religions and beliefs and to be treated the same as other curriculum subject then the Religious Education Advisory Committee is no longer needed. Therefore we will not include Section 12 clauses 3-6 of the 2001 Act in the new Bill.</p>
<p>Question 3 - Do you think that the Education Council has a role in providing advice to the Department?</p> <p>Yes 153 28.6%</p> <p>No 145 27.1%</p> <p>Unsure 226 42.2%</p> <p>Not answered 11 2.1%</p> <p>535</p>	<p>As the majority of you were unsure of the role the Education Council and another 27.1% of you felt that the Education Council did not have a role to play in providing advice, we will go forward with our original plan to remove the Education Council from the new Bill and include provision for Department appointed Governors.</p>
<p>Question 4 - Do you agree that pre-school education should be quality assured?</p> <p>Yes 400 74.8%</p> <p>No 76 14.2%</p> <p>Unsure 53 9.9%</p> <p>Not answered 6 1.1%</p> <p>535</p>	<p>A significant majority of you feel that pre-school education was important to development of young children.</p> <p>We will ensure that the new Bill contains provisions allowing us to inspect and quality assure all pre-school provision.</p>
<p>Question 5 - Should the Department provide a list of registered tutors and educational establishments?</p> <p>Yes 414 77.4%</p> <p>No 64 12.0%</p> <p>Unsure 49 9.2%</p> <p>Not answered 8 1.5%</p> <p>535</p>	<p>The new Bill will contain provision for us to ask all private tutors and educational establishments to be registered on a voluntary basis.</p>
<p>Question 6 - Should all providers of education, particularly to children, be suitably qualified to teach on the subject on offer and police checked?</p> <p>Yes 391 73.1%</p>	<p>As part of the registration provisions we will be able to ensure that all DBS checks are in place, all providers are qualified to teach the</p>

<p>No 82 15.3%</p> <p>Unsure 55 10.3%</p> <p>Not answered 7 1.3%</p> <p>535</p>	<p>subjects or qualifications on offer and have undertaken safeguarding training. Appropriate provision will be included in the new Bill.</p>
<p>Question 7 - Is the role of Governors in schools clearly understood and recognised by parents?</p> <p>Yes 46 8.6%</p> <p>No 337 63.0%</p> <p>Unsure 144 26.9%</p> <p>Not answered 8 1.5%</p> <p>535</p>	<p>In the new Bill the role and responsibilities of Governors will be more clearly defined as proposed in the consultation document.</p>
<p>Question 8 - Do you have a recommendation on the number of governors and how long they should serve on the governing body?</p> <p>Yes 131 24.5%</p> <p>No 380 71.0%</p> <p>Not answered 24 4.5%</p> <p>535</p>	<p>As a large percentage of you did not understand the role of school governors. This is reflected in the number of people who did not have any views on the length of tenure or number of governors that there should be. Of those of you that did respond the majority felt that the current minimum number of 3 and maximum of 6 was right and that the tenure should be a maximum of 3 years. Both of these will be included in the new Bill</p>
<p>Question 9 - Should the Department seek evidence from home educators on the education they are giving to their children?</p> <p>Yes 359 67.1%</p> <p>No 129 24.1%</p> <p>Unsure 45 8.4%</p> <p>Not answered 2 0.4%</p> <p>535</p>	<p>The new Bill will contain enabling clauses to allow us to determine what will be required from parents who choose to home educate. It is envisaged that we will work with these parents to form the guidelines we and the Home Educators will work within.</p>
<p>Question 10 - Do you agree to extending of the current fines for not attending school to include provisions to further fine parents whose children are out in a public place during school hours when they are suspended?</p> <p>Yes 241 45.0%</p> <p>No 202 37.8%</p> <p>Unsure 85 15.9%</p> <p>Not answered 7 1.3%</p> <p>535</p>	<p>We will re-consider this proposal as, overall, the comments made within your responses favoured revisiting whether suspension is the right way of dealing with bad behaviour in class/school. Many of you also thought it would be difficult to enforce, that the proposal was draconian and for the number of times this would be needed it would be "a hammer to crack a nut".</p>

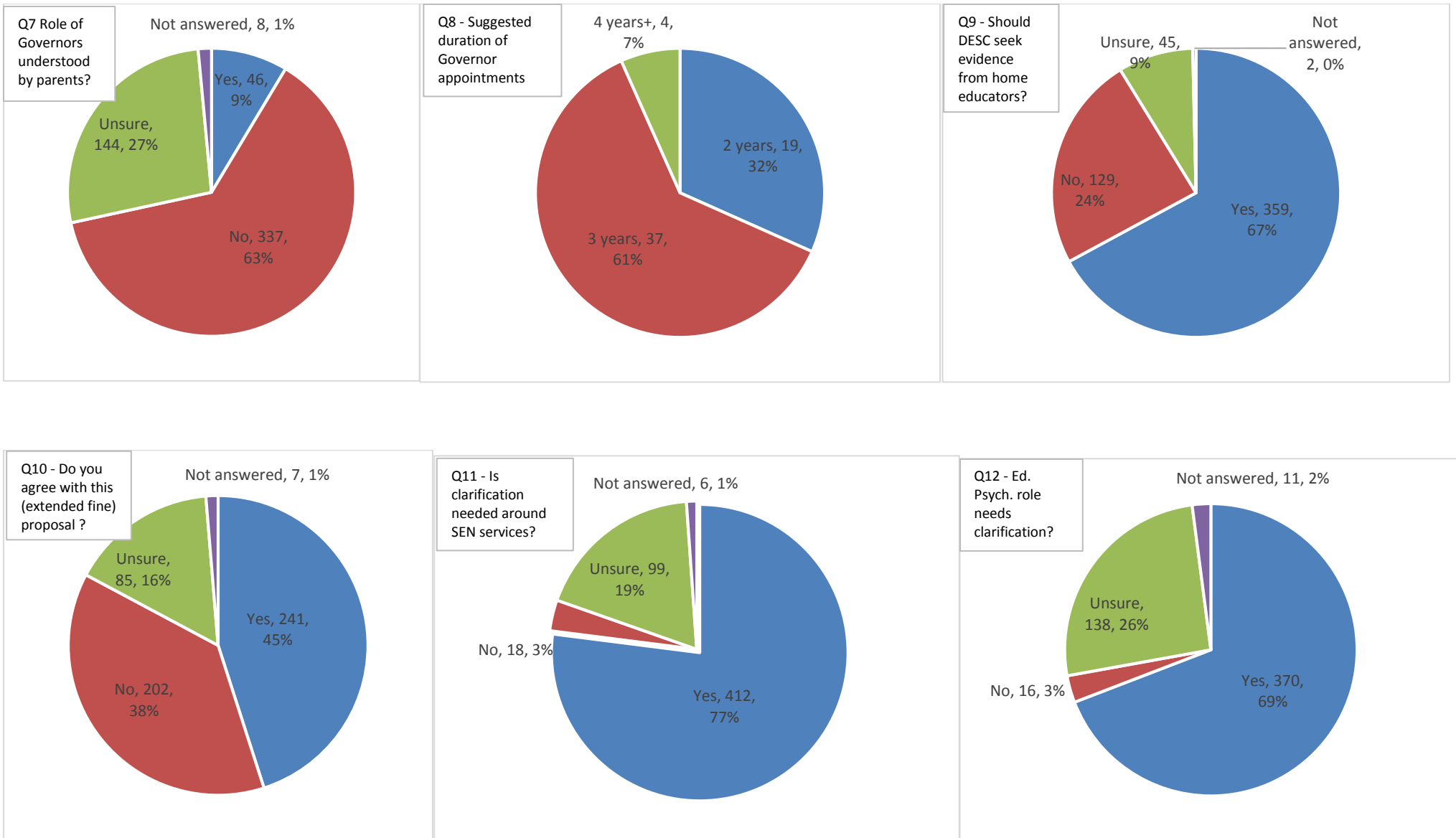
<p>Question 11 - Is clarity needed around access to services for children with SEN needed?</p> <p>Yes 412 77.0%</p> <p>No 18 3.4%</p> <p>Unsure 99 18.5%</p> <p>Not answered 6 1.1%</p> <p>535</p>	<p>The current SEN sections in the 2001 Act will be updated in the new Bill and provisions will be included to allow us to put in place regulations to detail our role in assessments, to determine the need and support for children with additional needs and to ensure the provisions cover all children from early years to the time they leave full time education.</p>
<p>Question 12 - Does the role of educational psychologists need further clarification?</p> <p>Yes 370 69.2%</p> <p>No 16 3.0%</p> <p>Unsure 138 25.8%</p> <p>Not answered 11 2.1%</p> <p>535</p>	<p>We will ensure that the role of Educational Psychologists is clearly defined in the new Bill.</p>
<p>Question 13 - Should children always attend their catchment area school unless their needs cannot be met by the current school?</p> <p>Yes 196 36.6%</p> <p>No 257 48.0%</p> <p>Unsure 75 14.0%</p> <p>Not answered 7 1.3%</p> <p>535</p>	<p>This subject elicited a range of varying responses, however we do not intend to amend our proposal outlined in the consultation document i.e. that a child will attend their catchment school unless they meet specific exception criteria.</p> <p>Whilst we acknowledge such issues as logistical convenience based on parents places of work or after school care arrangements, we consider that this will have far reaching implications for school facilities and infrastructure in the major towns where people work. This would also have corresponding impacts upon the viability schools in other smaller towns and villages. It is our view that that schools across all areas of the island add to community focus within their local areas and these should be protected as much as Possible.</p>
<p>Question 14 - Should the same behaviour standards for students that apply while 'at the school' be applicable when they are attending school-based events such as trips?</p> <p>Yes 478 89.3%</p> <p>No 9 1.7%</p> <p>Unsure 40 7.5%</p>	<p>The conduct, behaviour and discipline clauses in the new Bill will include specific reference to being applicable to all school activities where pupils are the responsibility of their teachers.</p>

Not answered	8	1.5%	
	535		
Question 15 - Who do you feel is responsible for dealing with inappropriate behaviour of students outside the school environment?			<p>The current provisions in the Education Act 2001 states that teachers are only responsible for dealing with inappropriate behaviour when it happens within the school grounds. Many of the you said that both parents and teachers should be both be responsible for behaviour outside the school grounds did so, with the caveat, only if it had an impact on other pupils in school. If this was not the case you felt that it was for the parents or police to deal with when outside the school. Therefore we are not going to put in any changes to address pupil behaviour outside the school environment.</p>
Parents/guardians	274	51.2%	
Teachers	2	0.4%	
Both	206	38.5%	
Other	39	7.3%	
Not answered	14	2.6%	
	535		

Responses to Consultation on Education Bill principles – graphical summary

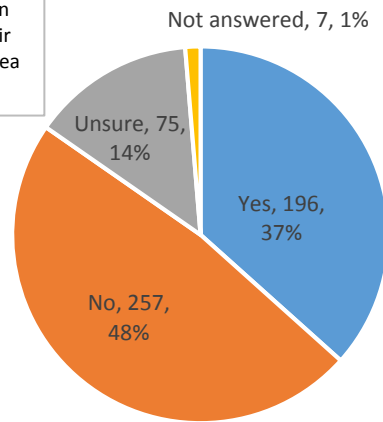


Responses to Consultation on Education Bill principles – graphical summary (cont'd....)

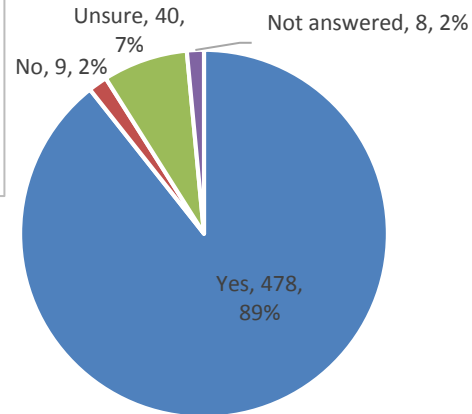


Responses to Consultation on Education Bill principles – graphical summary (cont'd....)

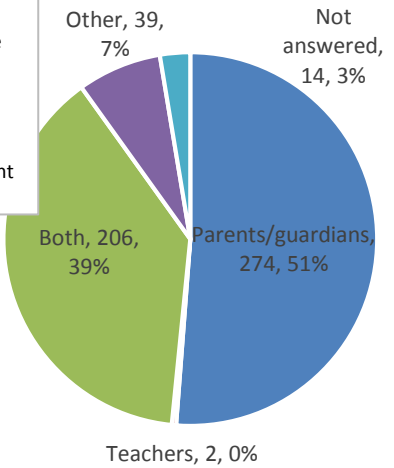
Q13 - Children to attend their catchment area school?



Q14 - Students - same behaviour standards at school & trips?



Q15 - Who responsible for behaviour outside school environment ?



APPENDIX 3:
23rd January 2018 – Consultation
Feedback

Major changes in the new Education Bill

Closed 22 Nov 2017

Opened 11 Oct 2017

Contact

Andrew Shipley

(Legislation and Admin Manager)

[Contact details redacted]

Feedback Updated 23 Jan 2018

We Asked

We asked for the views of the public on the policy principles on which the new Education Bill will be based, to reflect changes in education practice both in the UK and other jurisdictions.

You Said

A total of 535 responses were received to the consultation – 528 online responses as well as 7 responses by post and email. 87% of responses were made from respondents living on the Isle of Man.

The majority of the responses were supportive of the principles proposed by the Department and most agreed with the policy principles suggested. Only questions 10 (extension of fines) and 13 (school catchment areas) elicited a more varying range of responses:

- Q10 – 45% of respondents supported the proposal, with 53.7% either against or unsure
- Q13 – 48% of respondents were against the proposal, with 50.6% either in favour or unsure

We Did

The Department has considered all of the comments and suggestions received as part of this consultation analysis and has produced a short paper summarising its responses and intentions in each area of the consultation. This has been added to the consultation hub alongside the 399 (permitted) full or anonymised published responses.

In view of the support for the proposals, the Department intends to proceed with drafting instructions for the new Bill using the policy principles notified at the start of the consultation process.

This will include retention of school catchment areas in its current form for the reasons mentioned in the aforementioned responses report. However the proposal to extend the current fines provisions will be reconsidered in view of the comments made.

Results Updated 23 Jan 2018

Files:

- Report on consultation outcomes (<https://consult.gov.im/education-and-children/changes-new-education-bill->

[consultation/results/reportonconsultationoutcomes-january18summary_.pdf](#), 508.1 KB (PDF document)

Published Responses

View submitted responses (https://consult.gov.im/education-and-children/changes-new-education-bill-consultation/consultation/published_select_respondent) where consent has been given to publish the response.

Overview

The Education Act 2001 has been the primary legislation in education for the past 13 years. It was necessary to make changes in 2009 [Education (Miscellaneous Provisions) Act 2009] and now the Department of Education and Children believes the time is right to look at new legislation in some key areas. By considering a new Education Bill all areas of the present legislation will be considered.

This consultation is about the policy principles that may be used as the basis for drafting the new Education Bill. The Department of Education and Children is looking to bring the Island's legislation up to date to reflect changes in education practice both in the UK and other jurisdictions.

We are looking for views from members of the public on:

- the major changes being proposed for inclusion in the new Bill
- the proposed changes to amend or add to existing legislative provisions

Our proposal

We want to ensure that education legislation:

- is up to date
- covers education provision for lifelong learning
- enables the Department to deliver an education provision that meets the needs of Isle of Man residents and businesses
- complies with safeguarding legislation


Why We Are Consulting


The consultation will help the Department of Education and Children understand views from members of the public on the changes to some of the policy principles on which the new Education Bill will be based.

What Happens Next

Results will be processed by the Department and feedback will be given.

Related

 Consultation document - Major changes in the new Education Bill
(https://consult.gov.im/education-and-children/changes-new-education-bill-consultation/supporting_documents/Major%20changes%20to%20the%20Education%20Bill%20consultation%20document.pdf)
132.8 KB (PDF document)

 Report on Consultation Outcomes - 23 Jan 2018 (https://consult.gov.im/education-and-children/changes-new-education-bill-consultation/supporting_documents/Report%20on%20consultation%20outcomes%20%20January%2018%20summary_.pdf)
508.1 KB (PDF document)

Areas

All Areas

Audiences

Older people Homeowners Students Children & young people Parents, carers and & guardians

Interests

Education 16-19 Early years & primary education Secondary education Higher education

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[2F&text=Have+a+look+at+this+consultation+from+%23citizenspace%3A](https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fconsult.gov.im%2Feducation-and-children%2Fchanges-new-education-bill-consultation%2F) (<https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fconsult.gov.im%2Feducation-and-children%2Fchanges-new-education-bill-consultation%2F>)



[Accessibility \(/accessibility_policy/\)](/accessibility_policy/) [Terms of Use \(/terms_and_conditions/\)](/terms_and_conditions/)
[Cookies \(/cookie_policy/\)](/cookie_policy/) [Privacy \(/privacy_policy/\)](/privacy_policy/) [Help / Feedback \(/support/\)](/support/)

Citizen Space (<http://www.citizenspace.com>) from Delib (<http://www.delib.net>)

APPENDIX 4:
29th January 2019 – Consultation
questions

The New Education Bill

Overview

The Education Act 2001 has been the primary legislation governing what happens in education since it came into effect in 2004. It was necessary to make changes in 2009 and now the Department of Education, Sport and Culture believes the time is right to look at new legislation in some key areas. A consultation has occurred on principles and the Department is grateful for the feedback and comments of all who took part in that exercise.

In considering a new Education Bill, all areas of the present legislation have been considered and although some areas have seen significant changes proposed, there are areas which are unchanged. The primary focus of this consultation is on those aspects which have changed significantly although comments are most welcome on those aspects which have not changed.

This consultation is about the draft Education Bill which will update the Island's legislation to reflect changes in education practice both in the UK and other jurisdictions as well as seeking to be progressive where appropriate.

Following the consultation on principles, the Education Council will no longer exist along with the Religious Education Advisory Council. Religious Education will become a compulsory school subject and issues relating to assemblies will be dealt with in the Articles and Instruments of Government of schools.

We are looking for views from members of the public on:

- the major changes being proposed in the new Bill
- the proposed changes to amend or add to existing legislative provisions

Why we are consulting

The consultation will help the Department of Education, Sport and Culture understand views from members of the public on the changes that are being proposed in the new Education Bill.

Introduction

1 What is your name?

Name

2 What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response. By entering your email address you will be able to save your work and come back to it at a later stage. Your email address will not be used for any other purpose than those stated.

Email

3 Are you responding on behalf of an organisation?

Please select only one item

☐ Yes ☐ No

If yes, what is the name of your organisation?

Organisation

4 Do you live on the Isle of Man?

Please select only one item

☐ Yes ☐ No

5 Please state the first 3 digits of your postcode. For example, IM0

First 3 digits of your postcode...

6 May we publish your response?

Please read our **Privacy Policy** [</privacy_policy/>](/privacy_policy/) for more details and your rights.

More information

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

(Required)

Please select only one item

- ☐ Yes, you can publish my response in full
- ☐ Yes, you may publish my response anonymously
- ☐ No, please do not publish my response

Principles and duties

The Education Bill seeks to set out some fundamental principles of education in the Island which the Department must take account of. These are based on the feedback received from the previous consultation.

7 Do you agree that these principles are sufficient to underpin the education system of the Isle of Man now and in the future?

The principles

- a. that each child and young person should be enabled to receive an education that helps them to make appropriate progress and to become a fulfilled and valued member of society
- b. that the mainstream educational system should so far as possible reflect and implement the AEN principles (see section [AEN principles])
- c. that education in the Island should include provision for vocational and other practical training so far as possible
- d. that education in the Island should include provision for life-long learning so far as possible
- e. that children, young persons and their parents should have a reasonable degree of influence over the kind of education which is provided to them
- f. that the educational system should support the cultural integrity and identity of the Island
- g. that the educational system should support the development of a diverse society based on mutual respect
- h. that providers of education in or for the Island should make appropriate use of developing technology, including facilities for remote and virtual education
- i. that education in the Island should be provided economically, effectively and efficiently

Please select only one item

☐ agree ☐ neither agree or disagree ☐ disagree

Please briefly explain why you have given this answer in the text box below.

- 8** Are there any other principles that you feel are missing and why?
If so please answer in the text box below.

Premises

The Department has included a provision seeking a contribution from the church towards the costs of any significant developments or other capital costs incurred at maintained faith schools.

- 9** Do you agree with this proposal?

Please select only one item

☐ Yes ☐ No

If the answer is no please say why in the text box below.

Curriculum

It is proposed in the Bill that the curriculum will consist of compulsory elements for pupils including:

Related Information

- a. education in religion, ethics and values, avoiding proselytising for any particular religion or religious approach
- b. education in Manx culture (including history and language)
- c. age-appropriate education about sex and relationships, health and lifestyle, and economic and other wellbeing
- d. opportunities for physical education (including games and sports)

10 Do you agree with these areas being compulsory?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

Behaviour

There are sections which deal with school standards of behaviour – sections 30 through to section 41. These include some new areas of consideration including confiscation of psychoactive substances which are deemed inappropriate for school and likely to cause harm; recovering costs for damage which has been caused by a pupil at a school (section 35); behaviour outside of school (section 37); disorderly conduct (section 39) and inappropriate use of social media (section 41).

For damage in schools, it is proposed that the Department or governing body of a school may recover the costs of repairing damage or expenses from pupils or their parents

Social media has also become a feature of modern society and is widely used. It can be misused and so the Department would seek to try and address some issues that arise

Behaviour and Social Media

Behaviour and Social Media

For behaviour outside of school it is proposed in section 37 of the Education Bill that:

Behaviour outside school premises

1. A power under section 33, 34 or 36 may be exercised by a teacher at a school at any time when the teacher is responsible for the welfare or behaviour of the pupil in accordance with written rules of the school.
2. The articles of government of each maintained school must include provision about discipline in respect of behaviour taking place outside the school premises at any time when the teacher is responsible for the welfare or behaviour of the pupil in accordance with written rules of the school.
3. In this section and sections [...] a reference to a teacher at a school includes a reference to another member of staff at a school.

Innapropriate use of social media

4. This section applies where the head teacher of a maintained or contracted school becomes aware that, —
 - (a) a pupil at the school is using social media in a way that causes, or appears intended to cause, distress or offence to another pupil at the school or to a teacher or other member of staff at the school, or
 - (b) a relative, or present or former associate, of a pupil at the school is using social media in a way that causes, or appears intended to cause, distress or offence to a pupil at the school or to a teacher or other member of staff at the school.
5. The head teacher must take all reasonable steps to prevent the use specified in subsection (1); and those steps may include, —
 - (a) applying school rules to ensure that the use of social media does not take place during school hours, on school premises or through the use of school equipment;
 - (b) providing education and guidance to pupils about the use of social media and the potential for it to cause distress, offence and other damage;

- (c) drawing the use of social media to the attention of a police officer and inviting the officer to consider whether an offence has been committed;
- (d) issuing guidance to the person using social media as specified in subsection (1), or to anyone who appears to the head teacher to be a victim or potential victim of that use, as to the law of harassment, and the civil and criminal remedies available under it.

11 Is it right for the Department to seek to recover the cost of damages caused deliberately by pupils?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

12 Do you agree that section 37 addresses the issue of children behaving inappropriately while under the authority of a member of the school's staff?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

13 Do you agree that the measures suggested will allow schools to address the issue of inappropriate use of social media in schools?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

Catchment areas

Having catchment areas for pupils allows the Department to manage resources effectively and efficiently. The catchment area section of the new bill has changed from that in the 2001 Act with the emphasis now being on children attending their catchment area school except in very specific circumstances.

Section 42 contains the following:

1. the Department must make arrangements for each maintained school to have—
 - a. a catchment area for the acceptance of pupils, and
 - b. arrangements for the application of rules in relation to the catchment area.
2. the Department may make regulations about—
 - a. the extent or operation of catchment areas
 - b. rules in relation to catchment areas
 - c. exceptions to the catchment area rules

Laying only – approval required

3. the regulations may make provision for dealing with the application of the catchment area rules in cases where a child lives in more than one catchment area.

14 There are a number of exceptions as to why a pupil should go to a school in a different catchment area.

These are some of the exceptions that have been suggested:

- a. on the grounds of a child's additional educational needs
- b. specific curriculum issues
- c. specific circumstances relating to the child

Are there other aspects that should be considered?

Please select only one item

☐ Yes ☐ No

If yes please could you expand on your views in the box below.

Inspections

Schools currently undertake a process of self-review and evaluation which is externally verified and validated. It is proposed that the following is included to enable this to continue but also to be broad enough to cover other models and possible further developments.

It is the responsibility of the Headteacher to oversee self-review of the school and the governors hold the Headteacher to account, with externally validated assessments of schools every three years.

Inspections

45. Inspections

1. The Department must make arrangements for the inspection of maintained schools.
2. The Department must make regulations about the inspection of maintained schools.
Tynwald procedure – approval required.

46. Inspection arrangements

1. The arrangements under section [Inspections] must include a requirement for each maintained school to carry out a self-assessment at least once in each school year.
2. Regulations under section [Inspections] may, in particular, make provision about—
 1. the matters to be addressed in an inspection;
 2. criteria to be applied in the course of an inspection;
 3. records to be kept of an inspection;
 4. information to be supplied to the Department;
 5. information to be published;
 6. timings of an inspection; and
 7. actions to be taken for the purpose of remedying deficiencies identified in the course of inspections or self-assessments.

47. Interim and additional inspections

1. The Department must make arrangements for interim or additional inspections of maintained schools where the Department think it appropriate —

48. Inspections: supplementary

1. Inspections may be carried out—
 1. by officials of the Department, or
 2. by or on behalf of a person selected by the department.
2. The department may make regulations about inspections; and the regulations may, in particular—
 1. authorise persons to enter a school;
 2. authorise the inspection of premises;
 3. authorise the inspection and seizure of records.
3. Tynwald procedure – approval required.

A person who intentionally obstructs the performance of a function under this section commits an offence.

Maximum penalty (summary) 6 months' custody or a level 5 fine.

49. Enforcement

1. Where the Department is not satisfied with the progress being made in remedying any deficiencies identified it may, --
 1. vary requirements for action imposed in accordance with regulations under section 46;
 2. assign teaching or other staff to the school;
 3. assign staff to the school with management responsibilities.
2. A person who intentionally obstructs the performance of a function under this section commits an offence.
Maximum penalty (summary) 6 months' custody or a level 5 fine.
3. An assignment under subsection (1)(c) may modify the contractual responsibilities (but not other terms) of the head teacher or another member of staff at the school with management responsibilities.
4. Subsection is without prejudice to the right of the department to dismiss a head teacher or other member of school staff on grounds of performance failure.

15 Do you agree that actions required in respect of remedying any identified deficiencies should be the responsibility of the Head teacher and will improve the education provision within a school?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

Independent schools

As a regulator, the Department has a responsibility to consider what happens at Independent Schools, from registering the school as such, through to having information about the school and also considering complaints. In particular, the Department may consider:

- a. the suitability of the school premises or facilities
- b. the quality or suitability of the education being provided at the school
- c. the quality or suitability of the proprietor, a teacher or other member of staff at the school
- d. the welfare of pupils at the school.

16 Do these cover those specific areas which the Department should regulate?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

Compulsory school age (Section 61)

It is proposed that the Department will adopt a more flexible approach to the start of compulsory education. This will be by introducing regulations.

Compulsory School Age

61. Compulsory school age

1. This section defines “compulsory school age” for the purposes of this Act and (subject to any indication to the contrary) for the purposes of any other enactment.
2. A child—
 1. becomes a child of compulsory school age on becoming 5 years old (subject to regulations under subsections (3) and (4)), and
 2. stops being a child of compulsory school age on becoming 16 years old (subject to subsection (5)).
3. The Department may make regulations modifying the effect of subsection (2) in relation to children of a specified description or in specified circumstances.
Tynwald procedure – approval required
4. The Department may make regulations about school starting dates for children born at different times of the year; and the regulations may, in particular, —
5.
 1. make different provision for different schools;
 2. provide for a child not to be treated as being of compulsory school age between the moment when the child becomes 5 years old and the next starting date (or the next starting date that applies to the child).
 Tynwald procedure – approval required.
6. A person who is a registered pupil at a school, or has been within the previous 12 months, and who reaches the age of 16 during a school year, remains of compulsory school age until the end of that school year.
7. The Department may by regulations modify or disapply the effect of subsection (5) in relation to children of a specified description or in specified circumstances.
Tynwald procedure – approval required.

17 Regulations will be made to adapt ‘compulsory school age’ in specified circumstances. One instance will be for summer born children. Is it appropriate to have this flexibility about when children start or finish compulsory schooling?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

18 Are there any circumstances that you may wish to see covered by the regulations?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

School Attendance

A new section in the Bill proposes to introduce regulations about holidays during school terms.

If there are difficulties for a parent in getting their children to regularly attend school it is being suggested that as an alternative to a fine, that a guidance course requiring parents to attend could be an alternative approach.

Respondents to the principles consultation commented that an alternative to a fine should be considered for parents who struggle to get their children to attend school regularly. Section 68 is the Department's response to this.

19 Do you think that this approach will be a constructive alternative to a fine, helping parents to develop strategies?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

Home education

The Department is seeking to establish that all children have access to suitable education, including those who are home educated. It is, therefore, being proposed that the following provisions are introduced in sections 77 and 78.

Parents will still have the right to Home Educate. It will be necessary, as at present, to notify the Department of an intention to educate otherwise. There will be periodic assessments and this may include considering a child's work or by carrying out interviews. How assessments are carried out will be regulated.

Related Information

Definition: "home education"

In this Act “home education” means education provided to a child in accordance with a decision by the child’s parent to arrange for the child to be educated otherwise than at a school or college.

Departmental assessment

1. The Department must assess the educational development of children in the Island receiving home education.
2. The Department may provide advice and information on request to a parent of a child receiving home education.
3. The Department must make arrangements to allow children receiving home education to have access to school or college facilities to the extent the Department thinks appropriate.
4. The Department must maintain a register of children in respect of whom the Department is notified under section 64 that the child is being home educated.
5. The Department must carry out assessments from time to time of the educational development of each child receiving home education.
6. The assessment may include, —
 1. Assessing the child's work;
 2. Interviewing the child;
 3. Interviewing the child's parent.
7. The assessment may take place, —
 1. In the child's home with the consent of the child's parent; or
 2. at any other place agreed between the Department and the child’s parent.
8. A parent of a child receiving home education must comply with any request by the Department to provide information for the purposes of the assessment.
9. The Department must make regulations about the methodology of assessments under this section.

Tynwald procedure – approval required

20 Should the Department make arrangements for children receiving home education to have access to school or college facilities, for example, to be able to access laboratory facilities?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

21 Are the assessment proposals sufficient for the Department to ensure that a suitable education is being provided to Home Educated children?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

Additional educational needs (Section 79)

The Department is taking the opportunity to move away from the dated phrase of children with special educational needs, to a position where it considers young people with Additional Educational Needs, broadening the approach to those who need additional support.

To support young people and children with additional educational needs the Department is seeking to introduce an Additional Education Needs Code. This will lay down what people can expect and will cover areas such as guidance to be issued about the educational provision, support plans, assessments and reports.

The Department is also seeking to extend the age for access to education provision beyond the age of 18 for those with additional education needs by three years to age 21.

22 Do you agree that the Department should have an upper age of 21 to consider educational provision for those with additional educational needs?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

23 Is the definition of an individual with a learning difficulty or disability sufficiently clear or broad?

An individual has a learning difficulty or disability if they—

1. have significantly greater difficulty in learning than the majority of others of the same age
2. have a disability which prevents or hinders them from making use of facilities of a kind generally provided for others of the same age in mainstream institutions

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

AEN principles

There are a number of principles which underlie additional educational needs provision. These are found in section 80.

- a. the educational system should include and integrate children and young persons who present challenging behaviour or who have special needs as a result of their mental or physical conditions
- b. each child and young person has a right to have their needs assessed by people with appropriate expertise
- c. each child and young person has a right to have their needs addressed by the commitment of appropriate resources (including staff and technology) subject to overall considerations of efficiency and fairness
- d. parents, children and young persons have a right to expect a consistent allocation of resources across the Island
- e. parents, children and young persons have a right to have their views taken into account
- f. parents, children and young persons should be involved in the decision-making process
- g. parents, children and young persons have a right to be given full and prompt information at all stages of the process of assessing, reporting on and providing for additional educational needs
- h. parents, children and young persons have a right to expect decisions to be taken in a coherent way, with public authorities and other relevant agencies cooperating and communicating wherever possible

24 In some of the principles, there is the reference to assessment and the allocation of resources for those with additional educational needs; do you agree that these are appropriate?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

25 Other principles deal with parent and young person involvement in decision making; having full information and for co-operation and communication around decisions. Is there anything else which should be considered?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

26 It is proposed that additional educational needs assessments can be requested by the Department and by parents of children in maintained schools and the Department may assess other children such as those in Independent Schools or who are Home Educated. Is this appropriate?

Please select only one item

☐ Yes ☐ No

If yes, are there any conditions which should be attached?

Please briefly explain why you have given this answer in the text box below.

27 If a parent does want an assessment or alternatively does not want an assessment carrying out when proposed, then an appeal to a Tribunal is being suggested. Do you believe that this gives a parent sufficient remedy to challenge a decision being taken about their child, whether this is to have an assessment or not?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

Educational institutions

It is being proposed that a register maintained by the Department of educational institutions on the Island other than schools, individuals, early years providers or where CPD is provided by an organization. This register will contain information about:

- a. safeguarding arrangements for children's welfare
- b. the nature of courses being provided
- c. the nature of qualifications being awarded
- d. the amount of fees being charged

To ensure that institutions are operating as described, periodic inspections will be undertaken. Complaints about educational institutions will also be acted upon within a certain time frame. There will also be an appeal mechanism.

28 Are there any other criteria which should also be included?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

29 Do you believe that this will help to ensure that rogue educational institutions will be identified and if necessary closed down?

Please select only one item

☐ Yes ☐ No

If your answer is no, then please explain why below.

Private tutors

Private tutors often work one to one with young people. From the perspective of considering safeguarding issues, the Department intends to bring in a register of private tutors with annual confirmation of details. This does not mean that the Department confirms the accuracy of the information supplied or is an endorsement of the quality of services being provided by the tutor.

It will simply confirm that a current enhanced DBS certificate has been seen by the Department, information about the subjects the tutor intends to offer and information about the age range being taught.

30 Do you consider that this registration is sufficient for parents to get some basic information about tutors available on the Island?

Please select only one item

☐ Yes ☐ No

Please briefly explain why you have given this answer in the text box below.

31 A copy of the Education Bill is attached. The Department is interested to hear your views on any issue that has not been covered in the consultation questions. If there are any topics that you wish to raise and discuss please raise these in the space below.

APPENDIX 5:
29th January 2019 – Draft Education Bill



EDUCATION BILL 2019

Index

Section	Page
PART 1 – INTRODUCTORY	6
DIVISION 1 – TECHNICAL PROVISIONS	6
1 Short title	6
2 Commencement	6
3 Overview	6
4 Interpretation	7
5 Consultation with school governors	9
DIVISION 2 – PRINCIPLES AND DUTIES	10
6 Principles of education	10
7 General duty of Department	11
8 Consultation, cooperation and review	11
9 Dispute resolution	12
PART 2 – SCHOOLS	12
DIVISION 1 – DEFINITIONS	12
10 Classes of school: general	12
11 Maintained school	13
12 Maintained faith school	13
13 Contracted school	14
DIVISION 2 – MAINTAINED SCHOOLS	14
SUBDIVISION 1 – PROVISION AND MAINTENANCE OF SCHOOLS	14
14 Duty to ensure sufficient schools	14
15 Provision and maintenance	14
16 Term dates	15
SUBDIVISION 2 – OPENING, CLOSING AND ALTERING SCHOOLS	15
17 Establishment, closure and alteration of schools	15
SUBDIVISION 3 – PREMISES	16
18 Premises of maintained schools	16
SUBDIVISION 4 – GOVERNANCE AND FINANCE	16
19 Articles of government	16

20	Model instruments of government	17
21	Appointment of governors	17
22	Failures by governors and head teachers	18
23	Delegated financial management.....	19
24	Charges for certain services	19
25	Foundation contributions to maintained faith schools	19
26	Reports to parents	19
27	Information for government.....	20
SUBDIVISION 5 – TEACHING		20
28	Employment of teachers and educational support staff.....	20
29	The curriculum	21
SUBDIVISION 6 – BEHAVIOUR		22
30	School rules	22
31	Suspension and exclusion	22
32	Corporal punishment	23
33	Restraining pupils	23
34	Confiscation	23
35	Damage	24
36	Offensive weapons.....	25
37	Behaviour outside school premises	25
38	Members of public: exclusion from premises	26
39	Members of public: disorderly conduct	26
40	Assistance of constable	26
41	Inappropriate use of social media.....	26
SUBDIVISION 7 – ADMISSION OF PUPILS		27
42	Catchment areas	27
43	Registers of pupils.....	27
44	Admission to schools	28
SUBDIVISION 8 - INSPECTIONS		28
45	Inspections.....	28
46	Inspection arrangements.....	29
47	Interim and additional inspections.....	29
48	Inspections: supplementary	29
49	Enforcement	29
DIVISION 3 – INDEPENDENT SCHOOLS		30
50	Definition: “independent schools”	30
51	The Register.....	30
52	Registration	30
53	Provisional registration	31
54	Removal from register	31
55	Offence of conducting unregistered school.....	32
56	Provision of information	32
57	Complaints about independent schools.....	33
58	Determination of complaints	33

59	Enforcement.....	34
60	Welfare of children	35
PART 3 – COMPULSORY EDUCATION		35
DIVISION 1 – COMPULSORY SCHOOL AGE		35
61	Compulsory school age.....	35
DIVISION 2 – PARENTAL DUTY		36
62	Duty to arrange for education.....	36
63	Duty to register at school.....	36
64	Duty to notify Department of arrangements otherwise than at school	37
65	Enforcement: notice requiring information	38
DIVISION 3 – FAILURE TO SECURE ATTENDANCE		38
66	Parent failing to secure child’s regular attendance: offence	38
67	Regular attendance	39
68	Order to attend guidance course	40
69	Civil penalty	40
DIVISION 4 – SCHOOL ATTENDANCE ORDERS		41
70	School attendance order: pre-issue procedure	41
71	School attendance order: contents.....	42
72	School attendance order: process	42
73	School attendance order: duration and revocation.....	42
74	Contravention of school attendance order	44
DIVISION 5 – EDUCATION SUPERVISION ORDERS		44
75	Education supervision orders	44
DIVISION 6 - TRUANCY		45
76	Return of truants	45
DIVISION 7 – HOME EDUCATION		45
77	Definition: “home education”	45
78	Departmental assessment.....	45
PART 4 – ADDITIONAL EDUCATIONAL NEEDS		46
DIVISION 1 - INTERPRETATION		46
79	Definition: “Additional educational needs”	46
DIVISION 2 – PRINCIPLES		46
80	AEN principles.....	46
81	AEN Code	47
DIVISION 3 - ASSESSMENTS		47
82	Assessment at Department’s initiative	47
83	Assessment at request of parent	48
84	Procedure	49
DIVISION 4 – REPORTS AND PROVISION		50

85	Post-assessment report	50
86	Provision of education at secondary or all-through school	50
87	Provision of education at college	50
88	Provision of education at independent school	51
89	Provision of education outside school or college	51
90	Off-Island provision	51
PART 5 – EDUCATION OUTSIDE SCHOOLS		51
DIVISION 1 - COLLEGES		51
91	Colleges	51
92	Application of Act to colleges	52
DIVISION 2 – FURTHER AND HIGHER EDUCATION		53
93	Further education	53
94	Higher education	53
95	Unrecognised degrees and awards	54
96	Degrees and awards: enforcement	55
DIVISION 3 – PRE-SCHOOL EDUCATION		55
97	Early Years Providers	55
98	Inspection	56
99	Complaints about Early Years Providers	57
100	Determination of complaints	57
101	Enforcement	58
102	Appeal	59
103	Funding	59
DIVISION 4 – YOUTH, COMMUNITY AND ANCILLARY SERVICES		59
104	Youth and community services	59
105	Financial assistance	60
106	Transport	61
DIVISION 5 – EDUCATIONAL INSTITUTIONS		61
107	Definition: educational institution	61
108	Register	62
109	Entry in register	62
110	Determination of applications	62
111	Offence of conducting unregistered institution	63
112	Provision of information	63
113	Inspections	64
114	Complaints about educational institutions	65
115	Determination of complaints	65
116	Enforcement	66
DIVISION 6 – PRIVATE TUTORS		67
117	Definition: “private tutor”	67
118	Requirement to register	67
119	The register	67

120	Registration.....	67
PART 6 – GENERAL AND FINAL PROVISION		68
DIVISION 1 – GENERAL PROVISION		68
121	The Education Tribunal	68
122	Educational trusts	68
123	Provision about child employment.....	68
124	Offences by body corporate	69
125	Evidence of age	69
126	Other evidence	70
127	Notices.....	70
DIVISION 2 – FINAL PROVISION		71
128	Subordinate legislation	71
129	Repeals	71
SCHEDULE 1		72
LIST OF SCHOOLS		72
SCHEDULE 2		74
ESTABLISHMENT, CLOSURE AND ALTERATION OF SCHOOLS		74
SCHEDULE 3		76
SCHEMES RELATING TO EDUCATIONAL TRUSTS		76



EDUCATION BILL 2019

A BILL to make provision about education, and other provisions about children of school age.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

PART 1 – INTRODUCTORY

DIVISION 1 – TECHNICAL PROVISIONS

1 Short title

The short title of this Act is the Education Act 2019.

2 Commencement

- (1) This Act, other than section 1 and this section, comes into operation in accordance with an order to be made by the Department.

Tynwald procedure – laying only

- (2) An order, —
- (a) may appoint different days for different purposes; and
 - (b) may include consequential, incidental, supplementary and transitional provision.

3 Overview

- (1) This section outlines the provisions of this Act.
- (2) Division 2 of this Part makes provision about the principles of education and the duties of the Department.
- (3) Part 2 makes provision about schools, —
- (a) Division 1 defines classes of school;
 - (b) Division 2 makes provision about maintained schools, including, —



- (i) provision and maintenance of schools;
 - (ii) opening, closing and altering schools;
 - (iii) premises;
 - (iv) governance and finance;
 - (v) teaching;
 - (vi) school discipline;
 - (vii) religious and ethical education and assemblies;
 - (viii) admission of pupils; and
 - (ix) inspections; and
- (c) Division 3 makes provision about independent schools.
- (4) Part 3 makes provision about compulsory education, —
 - (a) Division 1 defines compulsory school age;
 - (b) Division 2 makes provision about parental duties;
 - (c) Division 3 makes provision about failure to secure attendance at school;
 - (d) Division 4 makes provision about school attendance orders;
 - (e) Division 5 makes provision about education supervision orders; and
 - (f) Division 6 makes provision about truancy.
- (5) Part 4 makes provision about additional educational needs.
- (6) Part 5 makes provision about education outside schools, —
 - (a) Division 1 makes provision about colleges;
 - (b) Division 2 makes provision about further and higher education;
 - (c) Division 3 makes provision about pre-school education;
 - (d) Division 4 makes provision about community and ancillary services;
 - (e) Division 5 makes provision about educational institutions; and
 - (f) Division 6 makes provision about private tutors.
- (7) Part 6 makes general and final provision.

4 Interpretation

- (1) In this Act, except where the context otherwise requires, —
 - “**AEN Code**” has the meaning given by section 81;
 - “**AEN principles**” has the meaning given by section 80;
 - “**the Tribunal**” means the tribunal established in accordance with section 121;
 - “**additional educational needs**” has the meaning given by section 79;

- “adult”** means an individual who is neither a child nor a young person;
- “article of government”** has the meaning given by section 19;
- “child”** means an individual who is not over compulsory school age (see Part 3, Division 1);
- “college”** means an institution primarily providing further and higher education, whether or not it also provides other education (which may include general education for pupils of compulsory school age and education for pupils with additional educational needs);
- “all-through school”** has the meaning given by section 10(1);
- “compulsory school age”** has the meaning given by section 61;
- “conduct”**, in relation to an independent school, has the meaning given by section 55;
- “DHSC”** means the Department of Health and Social Care;
- “the Department”** means the Department of Education, Sport and Culture;
- “early years education”** has the meaning given by section 97(2);
- “early years provider”** has the meaning given by section 97(1);
- “education”** includes practical instruction and training;
- “education supervision order”** has the meaning given by section 75;
- “educational institution”** has the meaning given by section 107;
- “federated school”** has the meaning given by section 10(1);
- “foundation governor”** has the meaning given by section 21(4);
- “further education”** has the meaning given by section 93(2);
- “governor”** means a member of the governing body of a school;
- “head teacher”** includes acting head teacher;
- “higher education”** has the meaning given by section 94(2);
- “home education”** has the meaning given by section 77;
- “independent school”** has the meaning given by section 50;
- “instrument of government”** has the meaning given by section 20;
- “maintain”**, in relation to a school or college, has the meaning given by section 15 or 91;
- “maintained school”** has the meaning given by section 11;
- “parent”** means a person with parental responsibility for a child;
- “prescribed”** means prescribed by regulations;
- “premises”**, in relation to a school, includes a reference to any part of the school’s premises;

“**primary education**” means education for children between the ages of 5 and 11 (inclusive);

“**primary school**” has the meaning given by section 10(1);

“**private tutor**” has the meaning given by section 117;

“**psychoactive substance**” has the meaning given by section 34;

“**public authority**” has the same meaning as in the *Freedom of Information Act 2015*;

“**school**” has the meaning given by section 10(1);

“**school attendance order**” has the meaning given by section 71;

“**school year**” means an academic year of a school or college, —

- (a) beginning with 1 September and ending with 31 August, or
- (b) in the case of a school or college which, with the approval of the Department, publishes arrangements for the beginning and ending of its academic years, an academic year as determined in accordance with those arrangements;

“**secondary education**” means education for children between the ages of 11 and 16 (inclusive);

“**secondary school**” has the meaning given by section 10(1);

“**young person**” means an individual who, —

- (a) is over compulsory school age, and
- (b) is not over the age of 18, or, in the case of an individual with additional educational needs, is not over the age of 21; and

“**youth and community services**” has the meaning given by section 104(2).

- (2) A reference to educational or other services or facilities being provided in the Island includes a reference to services or facilities provided remotely (from anywhere) and accessed in the Island.

5 Consultation with school governors

- (1) At least once in each calendar year the Minister for Education, Sport and Culture must convene a meeting which the Chair of Governors of each school in the Island may attend (personally, or by a representative who is also a governor of the relevant school).
- (2) At each meeting the Minister must, —
 - (a) outline the Department’s educational strategy;
 - (b) outline major achievements, challenges and events since the last meeting in relation to education in the Island; and
 - (c) give those attending an opportunity to express their views on matters relating to education in the Island.

- (3) The Minister may hold additional meetings if the Minister considers it appropriate.
- (4) The Minister must publish a report of the proceedings of each meeting.

DIVISION 2 – PRINCIPLES AND DUTIES

6 Principles of education

- (1) This section sets out the fundamental principles of education in the Island.
- (2) A public authority must have regard to the fundamental principles when exercising a function under this Act or any other function relation to education.
- (3) The principles are, —
 - (a) that each child and young person should be enabled to receive an education that helps them to make appropriate progress and to become a fulfilled and valued member of society;
 - (b) that the mainstream educational system should so far as possible reflect and implement the AEN principles (see section 80);
 - (c) that education in the Island should include provision for vocational and other practical training so far as possible;
 - (d) that education in the Island should include provision for life-long learning so far as possible;
 - (e) that children, young persons and their parents should have a reasonable degree of influence over the kind of education which is provided to them;
 - (f) that the educational system should support the cultural integrity and identity of the Island;
 - (g) that the educational system should support the development of a diverse society based on mutual respect;
 - (h) that providers of education in or for the Island should make appropriate use of developing technology, including facilities for remote and virtual education;
 - (i) that education in the Island should be provided economically, effectively and efficiently.
- (4) The Department may make regulations defining “life-long learning” for the purposes of this section.

Tynwald procedure – approval required

7 General duty of Department

- (1) The Department has a general duty to secure and promote the education of persons resident in the Island.
- (2) For the purpose of performing that duty the Department must make arrangements for the provision of educational services in the Island.
- (3) In the exercise of its functions under this Act the Department must aim to manage resources economically, efficiently and effectively.
- (4) In the exercise of its functions under this Act the Department must aim, —
 - (a) to provide facilities for education throughout people's lives (and not only for children and young persons);
 - (b) to provide facilities for education that use a range of learning and communication technology;
 - (c) to provide facilities (particularly for adults) for part-time and remote learning;
 - (d) to take account of the wishes of children, young persons and their parents;
 - (e) to make arrangements to safeguard the welfare of individuals attending educational establishments, and generally in connection with their education;
 - (f) in addition to providing or using facilities provided in the Island, to use facilities provided outside the Island where that is economical, efficient and effective;
 - (g) to provide appropriate support for children and young persons with medical conditions attending educational establishments.

8 Consultation, cooperation and review

- (1) In the exercise of its functions under and in accordance with section 7 the Department may consult any persons it considers appropriate.
- (2) The Department must, where appropriate, exercise its functions in cooperation with, —
 - (a) DHSC (particularly in relation to safeguarding and in relation to its responsibilities under the *Children and Young Persons Act 2001*),
 - (b) the Safeguarding Board in the exercise of its responsibilities under the *Safeguarding Act 2018*;
 - (c) the Department of Home Affairs, and
 - (d) other relevant public authorities.
- (3) The Department must from time to time, —
 - (a) review the facilities for the provision of education to persons resident in the Island; and

- (b) publish its findings.
- (4) The Department must from time to time, —
 - (a) issue guidance about the exercise of its functions under this Act; and
 - (b) publish the guidance.

9 Dispute resolution

- (1) This section sets out the dispute resolution principles for matters relating to education in the Island.
- (2) A public authority exercising functions in relation to education must apply the dispute resolution principles.
- (3) A court or tribunal considering matters relation to education must have regard to the dispute resolution principles.
- (4) The dispute resolution principles are that so far as possible disputes should be addressed, —
 - (a) first, by an internal review carried out by the decision-maker in respect of whose decision the dispute has arisen;
 - (b) next, by mediation; and
 - (c) finally (subject to judicial review or other judicial remedies), by referral to an independent tribunal.
- (5) A court or tribunal determining a matter which has not been addressed by internal review and mediation may, —
 - (a) require the parties to explain why internal review and mediation have not been used, and
 - (b) take such account of the explanation (whether in relation to the substantive outcome of the case, costs or otherwise) as the court or tribunal considers appropriate.

PART 2 – SCHOOLS

DIVISION 1 – DEFINITIONS

10 Classes of school: general

- (1) In this Act, —
 - (a) “**primary school**” means an institution providing education mostly for children between the ages of 5 and 11 (inclusive);
 - (b) “**secondary school**” means an institution providing education mostly for children between the ages of 11 and 16 (inclusive);

- (c) “**all-through school**” means a school that is both a primary school and a secondary school;
 - (d) “**federated school**” means a group of two or more schools sharing a single head teacher and a single governing body (which may have one or more sub-committees each of which focuses on the affairs of a particular school in the group);
 - (e) “**school**” means a primary school, secondary school, all-through school or federated school.
- (2) An all-through school is to be treated for the purposes of this Act and any other enactment as if it were both a primary school and a secondary school; and provisions of this Act and any other enactment apply to an all-through school with any necessary modifications.
- (3) The Department may arrange for two or more schools to share a single set of premises; and where schools are co-located, this Act and any other enactment about education applies to each school separately, subject to any necessary modifications.
- (4) The Department may make regulations providing for schools (“middle schools”) which cater for part of the age group served by primary schools and part of the age group served by secondary schools; and the regulations may make provision for the application of the provisions of this Act in relation to middle schools.
- Tynwald procedure – approval required
- (5) An institution falling within the definition of a college in section 91 is not a secondary school by reason of its also providing education for pupils of compulsory school age.

11 Maintained school

- (1) In this Act “**maintained school**” means a school provided and maintained by the Department.
- (2) In this Act, —
 - (a) a reference to providing a school is a reference to making premises owned by the Department available for the use of the school, and
 - (b) a reference to maintaining a school is a reference to the Department paying the expenses of the school.

12 Maintained faith school

In this Act “**maintained faith school**” means a maintained school the governing body of which includes foundation governors nominated by a church or other religious institution.

13 Contracted school

In this Act “**contracted school**” means a school in respect of which the curriculum is provided, or management functions are performed, in accordance with a contract entered into by the Department.

DIVISION 2 – MAINTAINED SCHOOLS

SUBDIVISION 1 – PROVISION AND MAINTENANCE OF SCHOOLS

14 Duty to ensure sufficient schools

- (1) The Department must ensure that there are available in the Island sufficient schools for the provision of primary education and secondary education.
- (2) In subsection (1) “sufficient schools” means schools that are sufficient in number and character, and have sufficient resources, to provide all children resident in the Island with education appropriate to their different, —
 - (a) ages,
 - (b) abilities,
 - (c) interests, and
 - (d) aptitudes.
- (3) In performing its duty under this section, the Department must in particular have regard to the need to ensure, —
 - (a) that suitable provision is made for pupils who have been assessed as having additional educational needs;
 - (b) that primary and secondary education are as a general rule to be provided in separate schools (subject to paragraph (a), and subject to the power to establish all-through schools where the Department thinks it appropriate in particular circumstances);
 - (c) that resources are used economically, efficiently and effectively, having regard to the number of pupils in each school.

15 Provision and maintenance

- (1) The Department must provide and maintain schools.
- (2) The Department must continue to maintain any school that is a maintained school immediately before this section comes into force (subject to closure or conversion under section 17).
- (3) The schools that are, immediately before this section comes into force, provided or maintained are listed in Schedule 1; and the Department may by order, —

- (a) amend the Schedule to reflect a change in the name of a school;
- (b) amend the Schedule to reflect anything done under, or of a kind described in, section 17.

Tynwald procedure – laying only

16 Term dates

- (1) The Department must set the term dates for maintained and contracted schools for each year.
- (2) The Department must publish the term dates for a school year as far in advance as is reasonably practicable.

SUBDIVISION 2 – OPENING, CLOSING AND ALTERING SCHOOLS

17 Establishment, closure and alteration of schools

- (1) The Department may by order make provision for or in connection with, –
 - (a) the establishment of a new maintained school;
 - (b) the adoption of an independent school as a maintained school;
 - (c) the closure of a maintained school, or its conversion into an independent school;
 - (d) the establishment of a new contracted school, or the conversion of an existing school into a contracted school;
 - (e) the division of a school into two or more separate schools;
 - (f) the amalgamation of two or more separate schools into a single school.

Tynwald procedure – laying only

- (2) The Department may by order provide for any of the following kinds of alteration in the character of a maintained school, –
 - (a) beginning or ceasing to provide education for pupils above or below a particular age; or
 - (b) significantly enlarging or altering the school premises;
 - (c) transferring the school to a new site.

Tynwald procedure – laying only

- (3) The Department may not make provision of a kind permitted by subsection (1) or (2) except by order under that subsection.
- (4) Schedule 2 makes supplementary provision about orders under this section.

SUBDIVISION 3 – PREMISES

18 Premises of maintained schools

- (1) The Department must make arrangements for the maintenance, and where necessary the development, of premises used for maintained schools.
- (2) Arrangements under subsection (1) may include, —
 - (a) cooperation or collaboration with other Departments or public authorities;
 - (b) entering into contracts.
- (3) In respect of a maintained faith school, the Department may require a contribution to maintenance or development costs from the church or other religions institution that nominates foundation governors to the governing body.
- (4) The Department may make regulations about contributions under subsection (3); and the regulations may make provision, in particular, —
 - (a) about rates of contribution (which may include provision for rates to be determined by reference to a formula, by reference to the judgment of a specified person, or in some other way);
 - (b) for arrangements for maintenance or development to be conditional on arrangements for contributions.

Tynwald procedure – approval required

SUBDIVISION 4 – GOVERNANCE AND FINANCE

19 Articles of government

- (1) For each school the Department must make an instrument (“**articles of government**”) in accordance with which the school is to be conducted.
- (2) The articles of government must include provision for, —
 - (a) the functions of the Department, the governing body (if any) and the head teacher in relation to the conduct of the school;
 - (b) the appointment of teachers;
 - (c) the determination of school sessions;
 - (d) the admission of pupils;
 - (e) the discipline, suspension, expulsion and reinstatement of pupils; and
 - (f) giving effect to any financial arrangements under section 22.
- (3) The Department must ensure that the articles of government clearly define the role and responsibilities of governors.

- (4) The articles of government must provide that, —
 - (a) an individual may not serve as governor of any one school for a period or periods amounting in total to more than 6 years; but
 - (b) the Department may permit a specified individual to serve for one or more specified periods beyond what would be permitted in accordance with paragraph (a) where the Department consider it expedient having regard to special circumstances.
 - (c) This section is subject to other provisions of this Act.

20 Model instruments of government

- (1) The Department must issue one or more model instruments (“**instrument of government**”) dealing with the constitution and proceedings of the governing body of primary and secondary schools.
- (2) The relevant model instrument of government applies automatically to each maintained primary or secondary school (including faith schools).
- (3) The Department may by written notice provide for specified modifications of a model instrument of government in its application by virtue of subsection (2) to a specified school or class of school.

21 Appointment of governors

- (1) An instrument of government, —
 - (a) must include provision about the arrangements for the appointment of governors (which may include provision for election or for selection, and may confer functions on specified persons);
 - (b) may include provision about arrangements for co-option of governors with the approval of the Department;
 - (c) may include provision about the delegation of functions to committees or sub-committees.
- (2) The instrument of government must provide for the governing body to consist of a maximum of 7 individuals of whom, —
 - (a) one is a teacher at the school, elected by the teachers at the school;
 - (b) one is a non-teaching member of staff of the school, elected by the non-teaching members of staff at the school;
 - (c) one is a parent of one or more children attending the school, elected by the parents of children attending the school;
 - (d) in the case of a secondary school or college, one may be a pupil at the school; and
 - (e) the remainder are appointed by the Department.
- (3) In appointing governors the Department, —

- (a) must aim to appoint individuals who in the Department's opinion will provide an independent and objective perspective and will act in the interests of securing an efficient, economic and effective education for children attending the school; and
 - (b) may not appoint an individual who is a Member of Tynwald or the holder of an office which is a public authority to which holders are elected by the public.
- (4) The instrument of government of a maintained faith school must provide that at least one third of the governors are to be individuals ("**foundation governors**") appointed otherwise than by the Department for the purpose of ensuring, —
 - (a) that the character of the school as a maintained faith school is preserved and developed, and
 - (b) in particular, that the school is conducted in accordance with the provisions of any trust deed relating to it.
- (5) In the case of a federated school, the instrument of government may make separate appointments under any of paragraphs (a) to (d) of subsection (2) in respect of each of the schools in the federation; and the maximum of 7 members set by subsection (2) is increased by one for each additional appointment under any of those paragraphs.

22 Failures by governors and head teachers

- (1) The Department may give directions to the governing body or head teacher of a maintained school about the exercise of a function in respect of which the Department is satisfied that the governing body or head teacher has acted or is proposing to act, —
 - (a) unreasonably, or
 - (b) contrary to the articles of government of the school.
- (2) If the Department is satisfied that the governing body or head teacher of a maintained school has failed to discharge a duty under the Act, the articles of government or directions under subsection (1) it may make an order, —
 - (a) declaring the governing body or head teacher to be in default in respect of that duty, and
 - (b) giving such directions for the purpose of enforcing the performance of the duty.
- (3) The Department may act under this section in respect of a function which consists of, or confers, a discretion.
- (4) A governing body or head teacher must comply with a direction or order under this section.

- (5) The articles of government must include provision for the removal of governors who appear to the Department to be unable or unwilling to perform their functions.
- (6) An order under this section may dismiss a governor or head teacher who appears to the Department to be unable or unwilling to perform functions under or in accordance with this Act, the articles of government or a direction under this section.

23 Delegated financial management

- (1) The Department may make arrangements for the head teacher of a maintained secondary school to manage a budget in respect of the actual or expected expenses incurred in connection with the operation of the school.
- (2) The Department may issue directions to be followed by head teachers, —
 - (a) in the preparation of draft budgets under this section;
 - (b) in managing budgets in accordance with arrangements under this section.

24 Charges for certain services

- (1) The Department may by regulations provide for the making of charges in respect of the provision at a maintained school of specified classes or descriptions of teaching or other activities for pupils (whether part of the normal curriculum or not).

Tynwald procedure – approval required
- (2) No charge may be made by or on behalf of the Department or the governing body of a maintained school for any teaching or other activity provided for pupils at the school except in accordance with regulations under subsection (1).

25 Foundation contributions to maintained faith schools

- (1) Where significant development or other capital costs are expected to be incurred in the maintenance of a school in a school year, the Department may aim to secure contributions from the church or other faith institution that nominates foundation governors to the governing body.
- (2) In applying this section the Department must use as a starting point for discussions the presumption that in the case of building works or other infrastructure development, a contribution of 50% is appropriate.

26 Reports to parents

- (1) The Department must make regulations about the provision of reports to parents of pupils at maintained schools.

Tynwald procedure – approval required

- (2) Reports must include information about, —
 - (a) the educational provision for pupils at the school (including the curriculum and syllabuses followed); and
 - (b) reports on the educational achievements of their children, including the results of examinations and assessments.
- (3) The Department, —
 - (a) may include in the regulations provision about the recording, maintenance and confidentiality of information; and
 - (b) may issue guidance for schools in relation to compliance with data protection law.

27 Information for government

- (1) The Department may require the head teacher or governing body of a school to provide information about pupils and activities at the school.
- (2) The Department may make regulations requiring the head teacher or governing body of a maintained school to keep records of a specified kind for the purposes of being able to comply with requirements under this section.

Tynwald procedure – approval required

- (3) The regulations must include provision about redaction and anonymisation and any other necessary safeguards to ensure compliance with data protection law.

SUBDIVISION 5 – TEACHING

28 Employment of teachers and educational support staff

- (1) The Department is responsible for employing (including determining remuneration and terms and conditions of service of) all teachers in maintained schools.
- (2) The reference to teachers in subsection (1) includes a reference to educational support staff.
- (3) Before appointing the head teacher of a maintained faith school the Department must, —
 - (a) notify the governors of the school of the person whom the Department proposes to appoint, and
 - (b) consider any representations made by the governors.
- (4) The Department must ensure that terms and conditions of service under this section, —

- (a) promote and facilitate equality of opportunity and the avoidance of discrimination, and
 - (b) in particular, reflect any relevant legislation, and Departmental guidance, in relation to equality.
- (5) In this section a reference to teachers includes a reference to all persons working in a school who, —
 - (a) are responsible for providing education or interacting directly with pupils, and
 - (b) who are not employed by, or in accordance with arrangements made or approved by, a public authority other than the Department;

and the Department may by regulations provide for a class of persons to be treated, or not to be treated, as falling within paragraphs (a) and (b).

Tynwald procedure – approval required
- (6) This section does not prevent a government department apart from the Department from employing staff in schools.

29 The curriculum

- (1) The Department must by order prescribe a curriculum which must be provided for all registered pupils of compulsory school age at maintained schools.

Tynwald procedure – laying only
- (2) The curriculum must, in particular, —
 - (a) include education in religion, ethics and values, avoiding proselytising for any particular religion or religious approach;
 - (b) include education in Manx culture (including history and language);
 - (c) include age-appropriate education about sex and relationships, health and lifestyle, and economic and other wellbeing; and
 - (d) include opportunities for physical education (including games and sports).
- (3) The curriculum may include arrangements for, —
 - (a) regular assessments, and
 - (b) access to public examinations, or participation in the attainment of qualifications, provided in the Island and elsewhere.
- (4) The curriculum may include modifications and exceptions for pupils with additional educational needs.
- (5) Before making an order under subsection (1) the Department may consult any persons it considers appropriate.

SUBDIVISION 6 – BEHAVIOUR

30 School rules

- (1) The articles of government of a maintained school must make provision about standards of behaviour in the school.
- (2) The articles must specify the person responsible for setting standards of behaviour for the school; and that person may be, —
 - (a) the Department,
 - (b) the governing body, or
 - (c) the head teacher.
- (3) The articles must specify, —
 - (a) the sanctions which may be imposed for misbehaviour;
 - (b) the criteria to be applied in determining which sanction to apply in a particular case; and
 - (c) the person responsible for administering penalties.
- (4) The sanctions specified under subsection (3)(a) may not include, —
 - (a) corporal punishment;
 - (b) fines or other financial penalties; or
 - (c) deprivation of property.
- (5) Subsection (4)(b) and (c) are subject to sections 34 and 35.
- (6) For the purposes of subsection (3)(c) any of the following may be specified, and different persons may be specified for different penalties, levels of penalty or circumstances, —
 - (a) the Department,
 - (b) the governing body,
 - (c) the head teacher,
 - (d) other teachers or members of staff.

31 Suspension and exclusion

- (1) The articles of government of each maintained school must include the provision required by this section.
- (2) The articles must provide for an appeal to the Department against any penalty involving suspension from the school.
- (3) The articles must provide that only the Department may exclude a pupil.
- (4) The articles must allow the Department to require the school to accept a pupil who has been excluded by the Department from another school.
- (5) A pupil who is excluded from a school may appeal to a court of summary jurisdiction.

- (6) The Department must maintain and publish a policy to be followed by the Department in relation to suspensions and exclusions.

32 Corporal punishment

- (1) No school may use corporal punishment.
- (2) Exercising functions as a head teacher, teacher or other member of staff of a school is not in itself a defence to a charge of assault.

33 Restraining pupils

- (1) A teacher may use reasonable force to prevent a pupil from, —
 - (a) committing an offence,
 - (b) injuring a person (including the pupil),
 - (c) damaging property, or
 - (d) behaving in any way that threatens good order and discipline at the school.
- (2) In subsection (1) the reference to an offence includes anything that would be an offence if done by an adult.

34 Confiscation

- (1) Section 30(4)(c) does not prohibit the confiscation of property in accordance with this section.
- (2) The articles of government of a maintained school may make provision allowing a teacher or other member of school staff to confiscate anything in a pupil's possession if, —
 - (a) it has been misused, or
 - (b) it is a class of property prohibited by the articles from being in the possession of pupils on the school premises.
- (3) Articles of government which make provision in accordance with subsection (2) must make provision about the return or collection of confiscated property.
- (4) A teacher or other member of staff at a school may confiscate from a pupil, —
 - (a) an offensive weapon (or anything which the teacher or other member of staff reasonably believes to be an offensive weapon or capable of being used as an offensive weapon),
 - (b) a controlled drug,
 - (c) a psychoactive substance;
 - (d) alcohol, or

- (e) any article, other than an item of clothing, which pupils are forbidden from possessing or using in accordance with written school rules.
- (5) Reasonable force may be used in confiscating property under or in accordance with this section.
- (6) Anything confiscated under this section must be delivered, within 24 hours, —
 - (a) in the case of offensive weapons or alcohol, to a parent of the pupil or to a constable;
 - (b) in the case of controlled drugs or psychoactive substances, to a constable;
 - (c) in any other case, to the pupil or to a parent of the pupil.
- (7) Instead of delivering an article to a parent of a pupil, —
 - (a) the head teacher of the school may notify the parent that the article has been confiscated and may be collected from the school within the period of 7 days beginning with the date on which the notice is received;
 - (b) if the parent does not arrange for the collection of the article within that period, it may be disposed of (in which case any directions about disposal given by the Department must be complied with).
- (8) Section 34 of the *Summary Jurisdiction Act 1989* (disposal of property) applies to anything delivered to a constable under this section.
- (9) In this section —

“controlled drug” has the same meaning as in the *Misuse of Drugs Act 1976*;

“alcohol” has the same meaning as “liquor” in the *Licensing Act 1995*;

“offensive weapon” means —

 - (a) an article to which section 27A of the *Criminal Justice Act 1991* (article with blade or point) applies;
 - (b) an article made or adapted for causing injury or damage; and
 - (c) any article in a person’s possession where the person appears to intend to use it to cause injury or damage; and

“psychoactive substance” has the same meaning as in the *Psychoactive Substances Act 2016* (as applied to the Island).

35 Damage

- (1) Section 30(4)(b) does not prohibit taking action in accordance with this section.
- (2) The Department, or the governing body of a school, may recover, —

- (a) the cost of repairing damage caused by a pupil at a maintained school;
 - (b) damages in respect of other expenses incurred or expected to be incurred in consequence of damage caused by a pupil at a maintained school.
- (3) In subsection (2) a reference to damage includes a reference to any action taken in contravention of school rules.
- (4) The right under subsection (2) may be enforced as if it were a debt owed to the Department or governing body by the pupil or a parent of the pupil.

36 Offensive weapons

- (1) A teacher or other member of staff at a school who has reasonable grounds for suspecting that a pupil is in possession of an offensive weapon may search the pupil or their possessions.
- (2) The power under subsection (1) may be exercised only by, —
 - (a) the head teacher, or
 - (b) a teacher, or other member of staff, authorised by the head teacher in writing to carry out the search.
- (3) A pupil who identifies as female may not be searched except by a woman.
- (4) A pupil who identifies as male may not be searched except by a man.
- (5) A person may not carry out a search of a pupil except in the presence of another teacher, or member of staff, of the school.
- (6) A person may not carry out a search of a pupil's possessions except in the presence of, —
 - (a) the pupil, and
 - (b) another teacher, or member of staff, of the school.

37 Behaviour outside school premises

- (1) A power under section 33, 34 or 36 may be exercised by a teacher at a school at any time when the teacher is responsible for the welfare or behaviour of the pupil in accordance with written rules of the school.
- (2) The articles of government of each maintained school must include provision about discipline in respect of behaviour taking place outside the school premises at any time when the teacher is responsible for the welfare or behaviour of the pupil in accordance with written rules of the school.
- (3) In this section and sections [...] a reference to a teacher at a school includes a reference to another member of staff at a school.

38 Members of public: exclusion from premises

- (1) It is an offence for a person to fail to comply with an order of the head teacher of a maintained or contracted school to leave the school premises.

Maximum penalty (summary) level 4 fine.

- (2) Subsection (1) does not apply to a person who is, —
- (a) a teacher or other member of staff at the school, or
 - (b) a registered pupil at the school (who is not suspended or excluded).

39 Members of public: disorderly conduct

It is an offence for any person on the premises of a maintained or contracted school to, —

- (a) behave in a violent or disorderly manner, or
- (b) use obscene, indecent or threatening language.

Maximum penalty (summary) level 4 fine.

40 Assistance of constable

- (1) This section applies if, —
- (a) the head teacher of a school, or someone acting on behalf of the head teacher, requests a constable to remove a person from the school premises, and
 - (b) the constable is satisfied that the person is committing or has committed an offence under section 38 or 39.
- (2) The constable must comply with the request and may use reasonable force.

41 Inappropriate use of social media

- (1) This section applies where the head teacher of a maintained or contracted school becomes aware that, —
- (a) a pupil at the school is using social media in a way that causes, or appears intended to cause, distress or offence to another pupil at the school or to a teacher or other member of staff at the school, or
 - (b) a relative, or present or former associate, of a pupil at the school is using social media in a way that causes, or appears intended to cause, distress or offence to a pupil at the school or to a teacher or other member of staff at the school.
- (2) The head teacher must take all reasonable steps to prevent the use specified in subsection (1); and those steps may include, —

- (a) applying school rules to ensure that the use of social media does not take place during school hours, on school premises or through the use of school equipment;
- (b) providing education and guidance to pupils about the use of social media and the potential for it to cause distress, offence and other damage;
- (c) drawing the use of social media to the attention of a police officer and inviting the officer to consider whether an offence has been committed;
- (d) issuing guidance to the person using social media as specified in subsection (1), or to anyone who appears to the head teacher to be a victim or potential victim of that use, as to the law of harassment, and the civil and criminal remedies available under it.

SUBDIVISION 7 – ADMISSION OF PUPILS

42 Catchment areas

- (1) The Department must make arrangements for each maintained school to have, —
 - (a) a catchment area for the acceptance of pupils, and
 - (b) arrangements for the application of rules in relation to the catchment area.
- (2) The Department may make regulations about, —
 - (a) the extent or operation of catchment areas;
 - (b) rules in relation to catchment areas;
 - (c) exceptions to the catchment area rules.

Tynwald procedure – laying only
- (3) The regulations may make provision for dealing with the application of the catchment area rules in cases where a child lives in more than one catchment area.

43 Registers of pupils

- (1) The Department must by regulations make provision for the maintenance of registers of pupils at each school.

Tynwald procedure – approval required
- (2) The regulations may impose duties on head teachers, governing bodies and the Department.
- (3) The regulations may include provision about, —
 - (a) the details to be recorded in registers;

- (b) inspection of registers;
 - (c) provision of information from the registers to the Department.
- (4) The regulations may, in particular, require head teachers or governing bodies, —
 - (a) to notify the Department where a pupil is withdrawn, or is about to be withdrawn, from a school's register, and
 - (b) to provide the Department with such information, of a kind specified in the regulations, as the Department may require for a purpose specified in the regulations.
- (5) The regulations may include provision about the maintenance of registers electronically or in hard copy (or both).
- (6) The regulations may create criminal offences, punishable on summary conviction by a fine not exceeding level 3 on the standard scale.
- (7) The Department may by regulations apply this section and regulations under it to colleges for children of compulsory school age who are at least 14 years old, with such modifications as the regulations may specify.

Tynwald procedure – approval required

44 Admission to schools

- (1) The Department must by regulations make provision for the procedure by which a child, —
 - (a) becomes a registered pupil at a school,
 - (b) may be withdrawn from the register of a school;
 - (c) may be removed from the register of a school by way of expulsion.

Tynwald procedure – approval required

- (2) The regulations must include provision prohibiting schools from using selection criteria for admissions that refer to ability or aptitude.
- (3) A child who is subject to a school attendance order may not be withdrawn from the register of a school named in the order.

SUBDIVISION 8 - INSPECTIONS

45 Inspections

- (1) The Department must make arrangements for the inspection of maintained schools.
- (2) The Department must make regulations about the inspection of maintained schools.

Tynwald procedure – approval required

46 Inspection arrangements

- (1) The arrangements under section 45 must include a requirement for each maintained school to carry out a self-assessment at least once in each school year.
- (2) Regulations under section 45 may, in particular, make provision about, —
 - (a) the matters to be addressed in an inspection;
 - (b) criteria to be applied in the course of an inspection;
 - (c) records to be kept of an inspection;
 - (d) information to be supplied to the Department;
 - (e) information to be published;
 - (f) timings of an inspection; and
 - (g) actions to be taken for the purpose of remedying deficiencies identified in the course of inspections or self-assessments.

47 Interim and additional inspections

The Department must make arrangements for interim or additional inspections of maintained schools where the Department think it appropriate —

48 Inspections: supplementary

- (1) Inspections may be carried out, —
 - (a) by officials of the Department, or
 - (b) by or on behalf of a person selected by the Department.
- (2) The Department may make regulations about inspections; and the regulations may, in particular, —
 - (a) authorise persons to enter a school;
 - (b) authorise the inspection of premises;
 - (c) authorise the inspection and seizure of records.

Tynwald procedure – approval required

- (3) A person who intentionally obstructs the performance of a function under this section commits an offence.

Maximum penalty (summary) 6 months' custody or a level 5 fine.

49 Enforcement

- (1) Where the Department is not satisfied with the progress being made in remedying any deficiencies identified it may, —

- (a) vary requirements for action imposed in accordance with regulations under section 46;
 - (b) assign teaching or other staff to the school;
 - (c) assign staff to the school with management responsibilities.
- (2) A person who intentionally obstructs the performance of a function under this section commits an offence.

Maximum penalty (summary) 6 months' custody or a level 5 fine.

- (3) An assignment under subsection (1)(c) may modify the contractual responsibilities (but not other terms) of the head teacher or another member of staff at the school with management responsibilities.
- (4) Subsection (3) is without prejudice to the right of the department to dismiss a head teacher or other member of school staff on grounds of performance failure.

DIVISION 3 – INDEPENDENT SCHOOLS

50 Definition: “independent schools”

For the purposes of this Act “**independent school**” means a school which is not a maintained school or a contracted school.

51 The Register

- (1) The Department must keep a register of all independent schools in the Island (“**the Register**”).
- (2) The Department must make the register available to public inspection free of charge, —
 - (a) online, and
 - (b) in hard copy, at all reasonable times.

52 Registration

- (1) The Department must enter in the Register any institution, —
 - (a) which appears to the Department to be an independent school, and
 - (b) in respect of which an application for registration is made to the Department by a person appearing to the Department to be the proprietor of the institution.
- (2) An application for registration, —
 - (a) must be made in writing,
 - (b) must be made in any manner prescribed,

- (c) must contain or be accompanied by any prescribed information or documents,
- (d) be accompanied by any prescribed fee, and
- (e) must comply with any other prescribed conditions.

Tynwald procedure – laying only

- (3) The duty in subsection (1) does not apply in respect of an independent school if, —
 - (a) the proprietor is disqualified from being the proprietor of an independent school by an order under this Part,
 - (b) the school premises are disqualified from being used as a school by an order under this Part, or
 - (c) if the school premises are used or proposed to be used for a purpose for which they are disqualified by an order under this Part.
- (4) The Department may register a specified independent school without an application by the proprietor if the Department is satisfied that, —
 - (a) the school has functioned for at least 20 years before the commencement of this section,
 - (b) the proprietor wishes to continue to conduct the school,
 - (c) the Department is already in possession of sufficient information of the kind that would be required on an application under this section, and
 - (d) it is not necessary for the proprietor to make an application under this section.

53 Provisional registration

- (1) The Department may make arrangements for the provisional registration of an institution which has applied, or proposes to apply, for registration.
- (2) A provisional registration lasts until, —
 - (a) the institution is registered,
 - (b) the application is withdrawn or discontinued, or
 - (c) the Department notifies the institution that the provisional registration has lapsed.
- (3) An institution which is the subject of a provisional registration is to be treated as a registered independent school for the purposes of this Act.

54 Removal from register

The Department must comply with, —

- (a) an order under this Part to remove a school from the register;

- (b) an order under this Part to restore a school to the register.

55 Offence of conducting unregistered school

- (1) It is an offence to conduct an unregistered independent school.
- (2) Where the conduct of an independent school fails to comply with any conditions attached to registration it is to be treated for the purposes of this section as an unregistered independent school.
- (3) For the purposes of this Act a reference to conducting an independent school includes a reference to playing any part in the management, conduct or arrangement of the affairs of the school (and more than one individual or other person may be conducting an independent school at the same time).
- (4) It is an offence to hold an institution out as being a registered independent school at a time when it is not registered.

Maximum penalty (summary) level 4 fine.

56 Provision of information

- (1) It is an automatic condition of registration (by virtue of this section) that the proprietor of the school complies with regulations under this section requiring the provision of information to the Department.

Tynwald procedure – approval required

- (2) The regulations may require the provision of information relating to, or required by the Department for monitoring, —
 - (a) the quality of the education provided in the school;
 - (b) the spiritual or ethical, social and cultural development of pupils at the school;
 - (c) the welfare (including safeguarding issues), health and safety of pupils at the school;
 - (d) the qualifications and suitability of the proprietor, teachers and other staff at the school;
 - (e) the quality of the leadership and management of the school;
 - (f) the premises and facilities used by the school;
 - (g) the procedures for the handling of complaints in respect of the school;
 - (h) other matters relating to the school specified by the Department.
- (3) The regulations may make provision about, —
 - (a) the timing and frequency of the provision of information (and information is to be required to be provided at least annually);
 - (b) the form and manner of the provision of information.

- (4) The regulations may require the proprietor of a school to notify the Department of changes in relation to information previously provided.
- (5) The regulations must include provision about redaction and anonymisation and any other necessary safeguards to ensure compliance with data protection law.

57 Complaints about independent schools

- (1) The Department may serve on the proprietor of an independent school a notice (“a complaint notice”) to the effect that the Department believes that there are likely to be issues in relation to, —
 - (a) the suitability of the school premises or facilities;
 - (b) the quality or suitability of the education being provided at the school;
 - (c) the quality or suitability of the proprietor, a teacher or other member of staff at the school;
 - (d) the welfare of pupils at the school.
- (2) A complaint notice must specify either, —
 - (a) that the Department believes that the issues complained of are capable of being addressed within a reasonable period of time, or
 - (b) that the Department believes that the issues complained of are not capable of being addressed within a reasonable period of time.
- (3) A notice under subsection (2)(a) must specify, —
 - (a) the measures necessary in the opinion of the Department to address the issues complained of, and
 - (b) a period within which the measures are to be taken (and the period must be not less than 6 months beginning with the date of service of the notice).
- (4) If a complaint notice specifies an issue in relation to the quality or suitability of a person, the notice must, —
 - (a) name the person;
 - (b) provide sufficient details of the issue to enable the person to understand the nature of the complaint; and
 - (c) be served on the person as well as on the proprietor.
- (5) A complaint notice must specify a period (not less than one month beginning with the date of service of the notice) during which the proprietor may refer the complaint to the Tribunal.

58 Determination of complaints

- (1) A complaint notice under section 57 is to be considered either, —

- (a) by the Tribunal, if a person on whom the notice was served refers it to the Tribunal within the time specified in the notice, or
 - (b) otherwise, by the Department or a person designated by the Department.
- (2) The Tribunal, Department or designated person must, —
 - (a) consider all evidence submitted to it, and
 - (b) give anyone appearing to be concerned an opportunity to make representations.
- (3) In determining the complaint the Tribunal, Department or designated person may, —
 - (a) dismiss the complaint;
 - (b) make an order for the school to be removed from the register;
 - (c) make an order prohibiting the use of the premises or a specified part of them to be used for the conduct of a school, or imposing conditions or limitations on the use of the premises or a specified part of them for the conduct of a school;
 - (d) make an order for the purposes of remedying deficiencies in relation to safeguarding the welfare of pupils at the school;
 - (e) make an order prohibiting a person from acting as the proprietor of an independent school;
 - (f) make an order prohibiting a person from teaching at an independent school.
- (4) An order for removal from the register may be absolute or conditional (and a condition may require the Department to be satisfied of specified matters within a specified period).

59 Enforcement

- (1) It is an offence to contravene a prohibition under section 58.
Maximum penalty (summary) level 4 fine.
- (2) A prosecution for an offence under this section may be brought only by or on behalf of the Department.
- (3) A person subject to a prohibition order under section 58 may apply to the Department for its removal or variation because of a change in circumstances; and, —
 - (a) the Department may remove, vary or confirm the prohibition order, and
 - (b) the person may appeal the Department's decision (or failure to make a decision within a prescribed period) to the Tribunal, which may remove, vary or confirm the prohibition order.

Tynwald procedure – laying only

60 Welfare of children

- (1) This section applies to an independent school which provides residential accommodation for one or more children.
- (2) The proprietor and each person involved in the conduct of the school has a duty to safeguard and promote the child's welfare.
- (3) DHSC must take reasonably practicable steps to monitor compliance with the duty under subsection (2); and, —
 - (a) a person authorised by DHSC may enter an independent school at any reasonable time for the purposes of this subsection;
 - (b) the person may inspect the premises, children and records;
 - (c) the person must produce on request identification and proof of authority;
 - (d) the Department must make regulations about entry and inspection under this subsection; and
 - (e) if DHSC believes (whether or not as a result of an inspection) that there has been or may have been a failure in compliance it must notify the Department.

Tynwald procedure – approval required

- (4) A person who intentionally obstructs the performance of a function under subsection (3) commits an offence.

Maximum penalty (summary) 6 months' custody or a level 5 fine.

- (5) This section does not limit the operation of any other enactment relating to children and young persons.

PART 3 – COMPULSORY EDUCATION**DIVISION 1 – COMPULSORY SCHOOL AGE****61 Compulsory school age**

- (1) This section defines “**compulsory school age**” for the purposes of this Act and (subject to any indication to the contrary) for the purposes of any other enactment.
- (2) A child, —
 - (a) becomes a child of compulsory school age on becoming 5 years old (subject to regulations under subsections (3) and (4)), and
 - (b) stops being a child of compulsory school age on becoming 16 years old (subject to subsection (5)).

- (3) The Department may make regulations modifying the effect of subsection (2) in relation to children of a specified description or in specified circumstances.

Tynwald procedure – approval required

- (4) The Department may make regulations about school starting dates for children born at different times of the year; and the regulations may, in particular, –

- (a) make different provision for different schools;
- (b) provide for a child not to be treated as being of compulsory school age between the moment when the child becomes 5 years old and the next starting date (or the next starting date that applies to the child).

Tynwald procedure – approval required

- (5) A person who is a registered pupil at a school, or has been within the previous 12 months, and who reaches the age of 16 during a school year, remains of compulsory school age until the end of that school year.
- (6) The Department may by regulations modify or disapply the effect of subsection (5) in relation to children of a specified description or in specified circumstances.

Tynwald procedure – approval required

DIVISION 2 – PARENTAL DUTY

62 Duty to arrange for education

- (1) Each parent of a child of compulsory school age must ensure that the child receives suitable education, whether or not by regular attendance at a school.
- (2) For the purposes of this Part “**suitable education**” for a child means efficient full-time education suitable to the child’s, –
- (i) age,
 - (ii) abilities and aptitude, and
 - (iii) additional educational needs (if any).
- (3) The Department must enforce the duty under subsection (1) in accordance with the provisions of this Act.

63 Duty to register at school

- (1) A parent who wishes to fulfil their duty under section 62 by arranging for a child to attend school must register the child at a school in the

academic year before the academic year in which the child reaches the age of 5.

- (2) Subsection (1) applies even if the child will not be of compulsory school age immediately on becoming 5 years old, by reason of the application of regulations under section 61.

64 Duty to notify Department of arrangements otherwise than at school

- (1) This section applies where a child of compulsory school age is not a registered pupil at a maintained school or a contracted school.
- (2) The child's parent must notify the Department in writing of the arrangements made for the child's education.
- (3) The notice must state, —
 - (a) the child's full name, address and date of birth;
 - (b) the parent's full name and address;
 - (c) if the child's education is to be provided by attendance at a school (whether in the Island or elsewhere), the name and address of the school;
 - (d) otherwise, the name and address of any person by whom the child's education is to be provided; and
 - (e) any other information requested by the Department.
- (4) A notice must be given, —
 - (a) during the period of 12 months before the child reaches compulsory school age;
 - (b) in the case of a child who ceases to be a registered pupil at a maintained school, during the period of 3 months before the date when the child ceases to be registered at the school;
 - (c) in the case of a child of compulsory school age who becomes resident in the Island, within the period of 3 months beginning with the day when the child becomes resident in the Island; or
 - (d) in the case of a child who on the day when this section comes into force is of compulsory school age and resident in the Island, within the period of 3 months beginning with the date of commencement.
- (5) A notice must also be given, —
 - (a) within the period of 21 days beginning with the parent's receipt of a written request from the Department; and
 - (b) within the period of 21 days beginning with the date on which any of the information included in a previous notice changes.
- (6) A parent who, without reasonable excuse, fails to give a notice in accordance with this section commits an offence.

Maximum penalty (summary) level 4 fine.

- (7) Proceedings for an offence under this section may be brought only by the Department.

65 Enforcement: notice requiring information

- (1) If the Department suspects that a child of compulsory school age in the Island who is not a registered pupil at a school or college is not receiving suitable education, it must serve a notice in writing on a parent of the child requiring the parent to provide information satisfying the Department that the child is receiving suitable education.
- (2) The Department may issue guidance as to the criteria to which it will have regard in determining the suitability of education for the purposes of subsection; and the guidance may, in particular, make provision by reference to, —
- (a) educational outcomes (including but not limited to examinations and qualifications);
 - (b) educational methods and processes;
 - (c) opportunities for social interaction and integration.
- (3) The notice must specify a period within which the parent must provide information under subsection (1); and the period must be not less than 15 days beginning with the day on which the notice is served.
- (4) The notice may require the parent to cooperate with arrangements for the child to be examined or assessed; and if a notice includes a requirement under this section it must specify, —
- (a) the arrangements that the Department proposes for the examination or assessment, and
 - (b) a period within which the examination or assessment is to take place, which must be not less than 15 days beginning with the day on which the notice is served.

DIVISION 3 – FAILURE TO SECURE ATTENDANCE

66 Parent failing to secure child's regular attendance: offence

- (1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, any parent of the child commits an offence.

Maximum penalty (summary) level 4 fine.

- (2) Proceedings for an offence under this section may be brought only by the Department.
- (3) This section is subject to the provisions of section 69.

67 Regular attendance

- (1) This section makes provision about when a registered pupil's attendance at a school is to be treated as being regular, or as not being regular, for the purposes of this section.
- (2) In determining whether a child's attendance has been regular the court, —
 - (a) must look at the pattern of the child's attendance overall,
 - (b) may not treat absence on any one day as being in itself sufficient evidence of irregular attendance;
 - (c) must have regard to the provisions of this section;
 - (d) must ignore days on which a child is absent with permission of the head teacher;
 - (e) may ignore days on which a child is absent with reasonable excuse, except that a total of 18 or more days absence in any one school year (including absences that are treated as being absences with reasonable excuse under regulations under this section) is to raise a presumption of irregular attendance.
- (3) Where a non-boarding pupil fails to arrive at the beginning of the school morning or afternoon session on any day, without permission or reasonable excuse, that session is to be treated as a half-day of absence from the school.
- (4) Where a boarding pupil is absent from the school on any morning or afternoon during the school term without permission or reasonable excuse, that morning or afternoon is to be treated as a half-day of absence from the school.
- (5) For the purposes of this section "permission" means permission given by or on behalf of, —
 - (a) in the case of a maintained school, the Department or the governing body; or
 - (b) in the case of a non-maintained school, the governing body or the proprietor of the school.
- (6) For the purposes of this section any of the following may (depending on the circumstances) be reasonable excuses for non-attendance, —
 - (a) illness;
 - (b) a matter beyond the child's control that prevents the child's attendance at the school;
 - (c) a day exclusively set apart for religious observance by a religious body to which a parent of the child belongs.
- (7) The Department must make regulations about absence during term time for the purposes of holidays; and the regulations, —

- (a) may make provision for circumstances in which a holiday is to be treated as a reasonable excuse for absence;
- (b) may make provision for circumstances in which a holiday is not to be treated as a reasonable excuse for absence;
- (c) may confer discretion on the Department, a proprietor of a school or the governing body of a school;
- (d) may make different provision for different circumstances (including provision by reference to an aggregate total of absences for holidays, the timing of holidays, the cost of holidays, the situation of siblings or other family members, or any other matter).

Tynwald procedure – approval required

68 Order to attend guidance course

- (1) A court convicting a person of an offence under section 66 may order the person to attend a course if satisfied that it would be desirable in order to prevent the commission of a further offence.
- (2) For the purposes of subsection (1) “course” means a course of counselling or guidance, —
 - (a) of a kind prescribed for the purposes of this subsection;
 - (b) requiring attendance not more than once in any week; and
 - (c) requiring attendance over a period not exceeding 3 months.

Tynwald procedure – approval required

- (3) A person who without reasonable excuse fails to comply with an order under this section commits an offence.

Maximum penalty (summary) 6 months’ custody or a level 5 fine.

69 Civil penalty

- (1) This section applies where a constable or an authorised person has reasonable cause to believe that a person (“the parent”) has committed or is committing an offence under section 66.
- (2) The constable or authorised person may give the parent a notice in writing in the prescribed form offering the opportunity of discharging any liability to be convicted of the offence by payment of a civil penalty.

Tynwald procedure – approval required

- (3) The notice must specify, —
 - (a) a period of at least 28 days beginning with the date of the notice, during which the penalty must be paid (“the payment period”); and

- (b) a period of at least 14 days beginning with the date of the notice, during which the penalty may be paid at a lower rate (“the discount period”).
 - (4) The amount of a penalty under this section is, —
 - (a) £60, if the penalty is paid during the discount period, or
 - (b) £120, if the penalty is not paid during the discount period.
 - (5) The Department may by order amend subsection (4)(a) or (b) (or both) to substitute a different amount.
- Tynwald procedure – laying only
- (6) Criminal proceedings may not be taken against the parent for the offence, —
 - (a) before the end of the payment period, or
 - (b) after the end of the payment period, if the penalty is paid during it.
 - (7) A penalty under this section is to be, —
 - (a) paid to the Chief Registrar, and
 - (b) applied as a fine imposed by a criminal court.
 - (8) A certificate purporting to be signed by or on behalf of the Chief Registrar that a penalty was, or was not, paid under this section on or before a date specified in the certificate is admissible as evidence of that fact.
 - (9) In this section “authorised person” means a person (whether or not an official of the Department) authorised by the Department in writing.

DIVISION 4 – SCHOOL ATTENDANCE ORDERS

70 School attendance order: pre-issue procedure

- (1) This section applies where a parent on whom a notice has been served in respect of a child under section 65 fails to satisfy the Department, in accordance with the notice, that the child is receiving suitable education.
- (2) If the Department believes that the child should attend school, it must serve on the parent a school attendance pre-issue notice.
- (3) A school attendance pre-issue notice is a notice in writing, —
 - (a) informing the parent that the Department intends to make a school attendance order in respect of the child;
 - (b) specifying a period of not less than 21 days after which the school attendance order may be made;
 - (c) naming a school which the Department intends to name in the order;

- (d) naming any other schools (if any) which the Department regards as suitable alternatives; and
 - (e) stating the effect of a school attendance order.
- (4) After the end of the period specified under subsection (3)(b) the Department may make a school attendance order in respect of the child and serve it on the parent.

71 School attendance order: contents

- (1) A school attendance order is an order requiring the parents of the child to arrange for him to become a registered pupil at a school named in the order.
- (2) A school attendance order must be in the prescribed form.
Tynwald procedure – approval required
- (3) If the school attendance pre-issue notice specifies one or more alternative schools and a parent of the child notifies the Department before the school attendance order is made that the parent has selected one of the schools, the order must name that school.
- (4) If before the school attendance order is made a parent of the child applies for the child to be admitted to a maintained school, the child is offered a place and the parent notifies the Department, the order must name that school.
- (5) If before the school attendance order is made a parent of the child applies for the child to be admitted to a non-maintained school, the child is offered a place, the parent notifies the Department and the Department is satisfied that the school is suitable to the child's age, abilities, aptitudes and any additional educational needs, the order must name that school.

72 School attendance order: process

- (1) Where a maintained school is named in a school attendance order, —
 - (a) the Department must inform the governing body and the head teacher, and
 - (b) the Department or governing body must admit the child to the school.
- (2) This section does not affect any power to expel or suspend a registered pupil from a school.

73 School attendance order: duration and revocation

- (1) This section applies where a school attendance order has been made in respect of a child.

- (2) The school attendance order continues to have effect while the child is of compulsory school age (subject to the following provisions of this section).
- (3) A parent of the child may apply to the Department for the revocation of the school attendance order on the grounds that arrangements have been made for the child to receive suitable education otherwise than at school.
- (4) The Department must revoke the school attendance order on an application under subsection (3) unless not satisfied that the arrangements are satisfactory.
- (5) A parent of the child may apply to the Department for the amendment of the school attendance order on the grounds that the child has been offered a place at, —
 - (a) a maintained school (“the new maintained school”) other than that named in the order, or
 - (b) a non-maintained school (“the new non-maintained school”) other than that named in the order.
- (6) On an application under subsection (5)(a) the Department must amend the school attendance order so as to name the new maintained school.
- (7) On an application under subsection (5)(b) the Department must amend the school attendance order so as to name the new non-maintained school unless not satisfied that it is suitable to the child’s age, abilities, aptitudes and any additional educational needs.
- (8) If the Department refuses an application for the revocation or amendment of the school attendance order, —
 - (a) the Department must give the parent written notice of its decision;
 - (b) the notice must give the Department’s reasons;
 - (c) the notice must specify an appeal period of at least 21 days beginning with the day on which the notice is served;
 - (d) a parent of the child may appeal to a court of summary jurisdiction against the refusal, on the ground that satisfactory arrangements have been made for the education of the child otherwise than at school or that the alternative school is suitable to the child’s age, ability and aptitude and to any additional educational needs;
 - (e) the court may confirm the Department’s decision or overturn it and grant the application for revocation or amendment (in which case the school attendance order is revoked or amended in accordance with the court’s order); and
 - (f) the overturning by the court of the Department’s decision does not prevent the making of a new school attendance order in respect of the child (or the revocation or amendment of the order by the Department).

- (9) The Department may amend the school attendance order with the consent of a parent of the child.
- (10) The Department may revoke a school attendance order.

74 Contravention of school attendance order

- (1) It is an offence for a parent of a child to fail to comply with a school attendance order.
Maximum penalty (summary) 6 months' custody or a level 5 fine.
- (2) In proceedings for an offence under this section it is a defence for the defendant to show, —
 - (a) that the school attendance order was not served on the defendant, or
 - (b) that the child is receiving suitable education otherwise than at school or at a school other than that named in the order.
- (3) If a person is acquitted in proceedings for an offence under this section, —
 - (a) the court may revoke the school attendance order;
 - (b) revocation by the court does not prevent the making of a new school attendance order in respect of the child.
- (4) Proceedings for an offence under this section may be brought only by the Department.

DIVISION 5 – EDUCATION SUPERVISION ORDERS

75 Education supervision orders

- (1) A juvenile court may make an order putting a child under the supervision of DHSC (an "education supervision order") if the court is satisfied, on the application of the Department of Education, Sport and Culture, that the child, —
 - (a) is of compulsory school age, and
 - (b) is not receiving efficient full-time education suitable to the child's age, abilities, aptitudes and any additional educational needs.
- (2) The court must presume that subsection (1)(b) is satisfied if, —
 - (a) a school attendance order in respect of the child is not being complied with, or
 - (b) the child is failing to attend regularly (within the meaning of section 67) at a school at which the child is a registered pupil.
- (3) The presumption in subsection (2) is rebuttable.

- (4) Before making an application for an education supervision order the Department must inform DHSC.

DIVISION 6 - TRUANCY

76 Return of truants

- (1) This section applies where a constable or an authorised person has reasonable cause to believe that a person found by the constable in a highway or other public place, —
 - (a) is a child of compulsory school age, and
 - (b) is absent from a school at which he or she is registered without permission or reasonable excuse.
- (2) The constable or authorised person may remove the child to, —
 - (a) the school at which the constable believes that the child is a registered pupil; or
 - (b) a place designated by the Department to the Isle of Man Constabulary.
- (3) In this section “authorised person” means a person (whether or not an official of the Department) authorised by the Department in writing.

DIVISION 7 – HOME EDUCATION

77 Definition: “home education”

In this Act “**home education**” means education provided to a child in accordance with a decision by the child’s parent to arrange for the child to be educated otherwise than at a school or college.

78 Departmental assessment

- (1) The Department must assess the educational development of children in the Island receiving home education.
- (2) The Department may provide advice and information on request to a parent of a child receiving home education.
- (3) The Department must make arrangements to allow children receiving home education to have access to school or college facilities to the extent the Department thinks appropriate.
- (4) The Department must maintain a register of children in respect of whom the Department is notified under section 64 that the child is being home educated.
- (5) The Department must carry out assessments from time to time of the educational development of each child receiving home education.

- (6) The assessment may include, —
 - (a) assessing the child's work;
 - (b) interviewing the child;
 - (c) interviewing the child's parent.
- (7) The assessment may take place, —
 - (a) in the child's home with the consent of the child's parent; or
 - (b) at any other place agreed between the Department and the child's parent.
- (8) A parent of a child receiving home education must comply with any request by the Department to provide information for the purposes of the assessment.
- (9) The Department must make regulations about the methodology of assessments under this section.

Tynwald procedure – approval required

PART 4 – ADDITIONAL EDUCATIONAL NEEDS

DIVISION 1 - INTERPRETATION

79 Definition: “Additional educational needs”

- (1) For the purposes of this Act an individual who is not over the age of 21 has additional educational needs if they have a learning difficulty or disability which calls for special educational provision to be made for them.
- (2) An individual has a learning difficulty or disability if they, —
 - (a) have a significantly greater difficulty in learning than the majority of others of the same age, or
 - (b) have a disability which prevents or hinders them from making use of facilities of a kind generally provided for others of the same age in mainstream institutions.

DIVISION 2 – PRINCIPLES

80 AEN principles

The principles of education in relation to those with additional educational needs (“**the AEN principles**”) are that, —

- (a) the educational system should include and integrate children and young persons who present challenging behaviour or who have special needs as a result of their mental or physical conditions;
- (b) each child and young person has a right to have their needs assessed by people with appropriate expertise;
- (c) each child and young person has a right to have their needs addressed by the commitment of appropriate resources (including staff and technology) subject to overall considerations of efficiency and fairness;
- (d) parents, children and young persons have a right to expect a consistent allocation of resources across the Island;
- (e) parents, children and young persons have a right to have their views taken into account;
- (f) parents, children and young persons should be involved in the decision-making process;
- (g) parents, children and young persons have a right to be given full and prompt information at all stages of the process of assessing, reporting on and providing for additional educational needs;
- (h) parents, children and young persons have a right to expect decisions to be taken in a coherent way, with public authorities and other relevant agencies cooperating and communicating wherever possible.

81 AEN Code

- (1) The Department must issue a code of practice about educational provision for persons with additional educational needs (“**the AEN Code**”).
- (2) The AEN Code must reflect the AEN principles.
- (3) A public authority exercising functions in relation to education, or relating to children or young persons, must have regard to the code of practice.

DIVISION 3 - ASSESSMENTS

82 Assessment at Department’s initiative

- (1) This section applies where the Department has reason to believe that a child has additional educational needs that should be assessed.
- (2) The Department must notify a parent of the child in writing and propose to make an assessment of the child’s needs.
- (3) The notice must inform the parent, —

- (a) that the parent may, within a period of at least 15 days specified in the notice (“the representation period”), make representations and submit evidence to the Department about the proposed assessment;
 - (b) about the procedure to be followed in relation to the assessment; and
 - (c) about any right of appeal under section 84.
- (4) At the end of the representation period the Department must either, —
 - (a) make an assessment of the child’s educational needs and provide a copy to the parents, or
 - (b) notify the parent in writing with reasons of its decision not to make an assessment.
- (5) The Department must not make an assessment unless satisfied that the child’s additional educational needs, —
 - (a) are likely to last for at least a year;
 - (b) are likely to have a significant effect on the child’s development; and
 - (c) cannot be addressed through standard provision already in place in the school which the child attends or is likely to attend.
- (6) The Department may not make an assessment of a child who, —
 - (a) is less than 3 years old, or
 - (b) is not registered at a maintained school and has not applied to be registered at a maintained school.

83 Assessment at request of parent

- (1) The Department must comply with a request from a parent of a child, who is a registered pupil at a maintained school, to assess the child’s educational needs.
- (2) The Department may comply with a request from a parent of a child to whom subsection (1) does not apply to assess the child’s educational needs.
- (3) Subsection (1) does not apply if the Department has previously made an assessment, or decided not to make an assessment, and is satisfied that there is no reason to believe that the child’s educational needs have since changed.
- (4) Before deciding that subsection (1) does not apply, by reason of subsection (3), the Department must give the parent an opportunity to make representations.
- (5) If complying with a request under subsection (1) or (2), the Department must serve a notice in writing on the parent informing the parent, —

- (a) that the parent may, within a period of at least 15 days specified in the notice (“the representation period”), make representations and submit evidence to the Department about the proposed assessment;
 - (b) about the procedure to be followed in relation to the assessment; and
 - (c) about any right of appeal under section 84.
- (6) At the end of the representation period the Department must either, —
 - (a) make an assessment of the child’s educational needs and provide a copy to the parents, or
 - (b) notify the parent in writing with reasons of its decision not to make an assessment.
- (7) The Department must not make an assessment unless satisfied that the child’s additional educational needs, —
 - (a) are likely to last for at least a year;
 - (b) are likely to have a significant effect on the child’s development; and
 - (c) cannot be addressed through standard provision already in place in the school which the child attends or is likely to attend.
- (8) The Department may not make an assessment of a child who, —
 - (a) is less than 3 years old, or
 - (b) is not registered at a maintained school and has not applied to be registered at a maintained school.

84 Procedure

- (1) The Department must make regulations about assessments under this Division.
Tynwald procedure – approval required
- (2) The regulations may, in particular, make provision, —
 - (a) about the procedure to be followed in making an assessment of a child’s additional educational needs;
 - (b) about the role to be played by educational psychologists;
 - (c) requiring a child to attend for examination;
 - (d) allowing parents of the child to attend an examination;
 - (e) creating an offence of failure to arrange for the child to attend for examination, punishable on summary conviction by a fine not exceeding level 3 on the standard scale;
 - (f) enabling a parent to appeal to the Tribunal against a decision to carry out or not to carry out an assessment;

- (g) enabling a parent to refer other specified matters relating to assessments to the Tribunal.

DIVISION 4 – REPORTS AND PROVISION

85 Post-assessment report

- (1) Following an assessment the Department must produce a report setting out what provision to make for the child's educational needs, having regard to, —
 - (a) the results of the assessment,
 - (b) the AEN Code, and
 - (c) the AEN principles.
- (2) The Department may by regulations make provision about the form and content of reports.

Tynwald procedure – approval required
- (3) The regulations may make provision about the role of educational psychologists (whether or not those who were involved in the assessment) in the preparation of reports.
- (4) The regulations may make provision about the process to be followed in amending or revoking reports; and the regulations must include provision for parental involvement similar to that in Division 3.

86 Provision of education at secondary or all-through school

The Department may provide education at a secondary school or all-through school for individuals with additional educational needs.

87 Provision of education at college

- (1) The Department may provide education at a college for a child of compulsory school age who is at least 14 years old.
- (2) The Department may provide education at a college for a child of compulsory school age who is under 14 years old, if the Department is satisfied that education at a school, —
 - (a) is not in the best interests of the child, or
 - (b) is not in the best interests of other pupils or school staff.
- (3) A child educated at a college in accordance with this section must be registered at a school and educated partly at the college by arrangement between the school and the college; but if the Department consider it appropriate by reason of the special circumstances of a child, the child may be registered at the college and need not be educated at a school at all.

88 Provision of education at independent school

If satisfied following a report that a child's educational needs can be met satisfactorily only by attendance at an independent school, the Department may, on such terms and conditions as the Department may specify, —

- (a) facilitate the child's admission to the school;
- (b) pay the school's fees in respect of the child; and
- (c) pay for other matters appearing to the Department to be necessarily incidental to the child's attendance at the school.

89 Provision of education outside school or college

The Department may make special arrangements for a child to be educated outside a school or college (whether or not at the child's home) if the Department is satisfied that education at a school or college, —

- (a) is not in the best interests of the child, or
- (b) is not in the best interests of other pupils or school staff.

90 Off-Island provision

- (1) The Department may make special arrangements for a child to be educated outside the Island at a school or other educational establishment if satisfied that—
 - (a) the school or other institution provides wholly or mainly for persons with additional educational needs similar to those of the child concerned, and
 - (b) appropriate education cannot be provided for the child in the Island.
- (2) Before making arrangements under this section the Department must consult other appropriate Departments.

PART 5 – EDUCATION OUTSIDE SCHOOLS**DIVISION 1 - COLLEGES****91 Colleges**

- (1) The Department may, —
 - (a) provide and maintain one or more colleges;
 - (b) provide financial or other assistance to a non-maintained college.
- (2) Section 15 applies to the interpretation of expressions used in this section, with any necessary modifications.
- (3) In respect of each maintained college the Department may provide, —

- (a) an instrument of government providing for the constitution and proceedings of the governing body of the college;
 - (b) articles of government for the conduct of the college.
- (4) Articles of government of a college may include provision (subject to the provisions of this Act)—
 - (a) conferring discretionary functions on the Department, the governing body or the principal of the college;
 - (b) requiring the preparation of an annual budget for the college;
 - (c) about the appointment of teachers and lecturers;
 - (d) for determining terms, holidays and sessions;
 - (e) about the admission of students; and
 - (f) about discipline, suspension, expulsion and reinstatement of students.
- (5) The Department may enter into an agreement with a university for the affiliation of a college to the university; and the agreement may, in particular, —
 - (a) include the provision of services to the college by or on behalf of the university;
 - (b) include the provision of staff (by secondment or otherwise) to the college by the university.
- (6) Section 22 applies to colleges with any necessary modifications.

92 Application of Act to colleges

- (1) In the provisions listed in subsection (2) a reference to a school includes a reference to a college in respect of a child, —
 - (a) who is at least 14 years old, and
 - (b) for whom education is being provided, or might be provided, at a college.
- (2) The provisions mentioned in subsection (1) are, —
 - (a) section 14;
 - (b) section 19(4);
 - (c) section 21;
 - (d) section 22;
 - (e) section 23;
 - (f) section 24;
 - (g) section 26, but only in relation to pupils of compulsory school age;
 - (h) section 27 (with references to the principal substituted for references to the head teacher);

- (i) section 28 (with references to lecturers substituted for references to teachers, and references to the principal substituted for references to the head teacher; and regulations under that section may make separate provision in relation to colleges);
 - (j) section 43;
 - (k) section 44;
 - (l) Subdivision 8 of this Division;
 - (m) Division 3 of Part 3;
 - (n) Division 4 of Part 3;
 - (o) Division 6 of Part 3.
- (3) Sections 30 to 41 apply to colleges and college premises as to schools and to school premises, but with provision being made by rules of the college made by the principal and not in the articles of government.
- (4) In the application of a provision to a college by virtue of this section a reference to the head teacher of a school is to be treated as a reference to the principal, or a teacher acting as the principal, of the college.

DIVISION 2 – FURTHER AND HIGHER EDUCATION

93 Further education

- (1) The Department must make such arrangements as it considers appropriate for continuing the education, otherwise than in accordance with section 31, of persons in the Island over compulsory school age who have completed their full-time education.
- (2) In this Act “**further education**” means education for persons in the Island over compulsory school age (other than higher education in accordance with section 94).
- (3) For the purposes of this section the Department may make arrangements with schools or colleges.

94 Higher education

- (1) The Department must make such arrangements as it considers appropriate for the provision of higher education.
- (2) In this Act “**higher education**” means education for persons in the Island over compulsory school age leading to the award of, —
- (a) a degree,
 - (b) a diploma of higher education, or
 - (c) any qualification or accreditation of a similar kind.
- (3) The Department may arrange for the provision of higher education at or under the supervision of, —

- (a) universities;
 - (b) colleges; and
 - (c) other educational establishments and institutions.
- (4) An institution for the purposes of subsection (3) may be located in the Island or elsewhere.
- (5) Arrangements under subsection (1) may include the provision of financial assistance to an institution in the Island or elsewhere any university, college or other educational establishment or institution in the Island or elsewhere for the purpose of improving the facilities for higher education available for persons in the Island.
- (6) The Department may by regulations provide that a specified qualification or accreditation, or specified class of qualification or accreditation, is to be, or not to be, treated as falling within subsection (2)(a), (b) or (c).

Tynwald procedure – approval required

95 Unrecognised degrees and awards

- (1) In this section “recognised award” means, —
 - (a) an award granted by a university, college or other body which is authorised in the United Kingdom or the Island by or under Royal Charter, Act of Parliament or Act of Tynwald;
 - (b) an award granted by a body acting on behalf of a body listed in paragraph (a); and
 - (c) any other award of a prescribed kind.

Tynwald procedure – approval required

- (2) It is an offence to do any of the actions listed in subsection (3) in relation to an unrecognised award which purports to be, or might reasonably be taken to be, —
 - (a) a recognised award, or
 - (b) a degree, diploma or similar qualification.

Maximum penalty (summary) 6 months’ custody or a level 5 fine.

- (3) The actions referred to in subsection (2) are, —
 - (a) granting an award;
 - (b) offering to grant an award;
 - (c) advertising an award or a course or scheme designed to lead to the grant of an award.
- (4) Actions fall within subsection (3) only if carried out, —
 - (a) by a person in the Island,
 - (b) to a person in the Island, or

- (c) from premises in the Island.

96 Degrees and awards: enforcement

- (1) A person authorised by the Department who believes that an offence is being or may have been committed under section 95 may, —
- (a) require a person to produce documents or information;
 - (b) seize and retain anything which may be evidence of the commission of the offence;
 - (c) enter any premises for the purpose of acting under paragraph (a) or (b).
- (2) Nothing in this section compels the production of, or permits the retention of, a communication subject to legal privilege.
- (3) Proceedings for an offence under section 95 may not be instituted except by or with the consent of the Attorney General.

DIVISION 3 – PRE-SCHOOL EDUCATION

97 Early Years Providers

- (1) In this Act “**early years provider**” means an institution providing early years education (with or without other services).
- (2) In this Act “**early years education**” means education for children who, —
- (a) are at least 3 years old, and
 - (b) are under compulsory school age.
- (3) An early years provider must be registered with the Department and with DHSC.
- (4) The Department may by regulations make provision about, —
- (a) the information to be provided on an application for registration; and
 - (b) any other requirements to be satisfied on an application for registration.

Tynwald procedure – approval required

- (5) It is an offence for a person to be involved in the management or conduct of an early years provider which, —
- (a) is not registered, or
 - (b) is failing to satisfy any conditions on the provider’s registration.

Maximum penalty (summary) level 4 fine.

- (6) In making regulations under this section the Department must aim to coordinate registration for the purposes of this section with registration under the *Regulation of Care Act 2013*, so as to, —

- (a) minimise duplication, and
- (b) avoid unnecessary administrative burdens.

98 Inspection

- (1) The Department must make arrangements for the inspection of early years providers by persons authorised by the Department (whether or not officials of the Department).
- (2) The arrangements must include provision for collaboration and cooperation with inspectors acting in accordance with the *Regulation of Care Act 2013*.
- (3) Inspectors must have regard to, —
 - (a) any document entitled Quality Assurance Framework which is issued or approved by the Department and which states that it addresses standards of early years providers for the purposes of this Act;
 - (b) any other document specified in regulations made by the Department.

Tynwald procedure – approval required

- (4) The inspection regime must include, —
 - (a) welfare and safeguarding conditions and arrangements;
 - (b) educational provision;
 - (c) any other matters that the Department thinks appropriate.
- (5) An inspection report to the Department must specify any matters in respect of which the performance or arrangements of the early years provider are unsatisfactory.
- (6) Where an inspection report specifies matters in respect of which an early years provider is unsatisfactory, the Department may, —
 - (a) impose conditions on the early years provider's registration;
 - (b) suspend the early years provider's registration (whether for a fixed period or pending satisfaction of specified conditions);
 - (c) cancel the early years provider's registration;
 - (d) make recommendations to the early years provider as to improvements to be made;
 - (e) arrange for the provision of support or guidance for the early years provider;
 - (f) take action of a kind specified in regulations under this paragraph for the purposes of improving provision made by the early years provider;

- (g) make determinations as to the suitability of the early years provider for receipt (directly or indirectly) of financial assistance under section 103.

Tynwald procedure – approval required

99 Complaints about Early Years Providers

- (1) The Department may serve on the proprietor of an early years provider a notice (“a complaint notice”) to the effect that the Department believes that there are likely to be issues in relation to, —
 - (a) the suitability of the provider’s premises or facilities;
 - (b) the quality or suitability of the education being provided by the provider;
 - (c) the quality or suitability of the proprietor, a teacher or other member of staff at the institution;
 - (d) the safeguarding and welfare of children to whom the early years provider is providing education.
- (2) A complaint notice must specify either, —
 - (a) that the Department believes that the issues complained of are capable of being addressed within a reasonable period of time, or
 - (b) that the Department believes that the issues complained of are not capable of being addressed within a reasonable period of time.
- (3) A notice under subsection (2)(a) must specify, —
 - (a) the measures necessary in the opinion of the Department to address the issues complained of, and
 - (b) a period within which the measures are to be taken (and the period must be not less than 6 months beginning with the date of service of the notice).
- (4) If a complaint notice specifies an issue in relation to the quality or suitability of a person, the notice must, —
 - (a) name the person;
 - (b) provide sufficient details of the issue to enable the person to understand the nature of the complaint; and
 - (c) be served on the person as well as on the proprietor.
- (5) A complaint notice must specify a period (not less than one month beginning with the date of service of the notice) during which the proprietor may refer the complaint to the Tribunal.

100 Determination of complaints

- (1) A complaint notice under section 99 is to be considered either, —

- (a) by the Tribunal, if a person on whom the notice was served refers it to the Tribunal within the time specified in the notice, or
 - (b) otherwise, by the Department or a person designated by the Department.
- (2) The Tribunal, Department or designated person must, —
 - (a) consider all evidence submitted to it, and
 - (b) give anyone appearing to be concerned an opportunity to make representations.
- (3) In determining the complaint the Tribunal, Department or designated person may, —
 - (a) dismiss the complaint;
 - (b) make an order for the early years provider to be removed from the register;
 - (c) make an order prohibiting the use of the premises or a specified part of them to be used for the conduct of an early years provider, or imposing conditions or limitations on the use of the premises or a specified part of them for the conduct of an early years provider;
 - (d) make an order for the purposes of remedying deficiencies in relation to safeguarding the welfare of children to whom the early years provider is providing education;
 - (e) make an order prohibiting a person from acting as the proprietor of an early years provider;
 - (f) make an order prohibiting a person from teaching at an early years provider.
- (4) An order for removal from the register may be absolute or conditional (and a condition may require the Department to be satisfied of specified matters within a specified period).

101 Enforcement

- (1) It is an offence to contravene a prohibition under section 100.
Maximum penalty (summary) level 4 fine.
- (2) A prosecution for an offence under this section may be brought only by or on behalf of the Department.
- (3) A person subject to a prohibition order under section 100 may apply to the Department for its removal or variation because of a change in circumstances; and, —
 - (a) the Department may remove, vary or confirm the prohibition order, and

- (b) the person may appeal the Department's decision (or failure to make a decision within a prescribed period) to the Tribunal, which may remove, vary or confirm the prohibition order.

Tynwald procedure – approval required

102 Appeal

- (1) An early years provider may appeal to the High Bailiff against a decision of the Department under this Division.
- (2) On an appeal the High Bailiff may confirm, vary or cancel the Department's decision.
- (3) The decision of the High Bailiff is final.
- (4) The Department must give effect to a decision of the High Bailiff.

103 Funding

- (1) The Department may provide financial assistance in respect of the provision of early years education.
- (2) Financial assistance may be given, —
 - (a) to parents of children under compulsory school age;
 - (b) to registered early years providers.
- (3) Financial assistance may be given on such terms and conditions (which may include provision for repayment with or without interest in specified circumstances) as the Department may specify.
- (4) The Department may specify early years providers, or classes of early years provider, to whom or in respect of whom financial assistance under this section may or may not be provided.

DIVISION 4 – YOUTH, COMMUNITY AND ANCILLARY SERVICES

104 Youth and community services

- (1) The Department may make arrangements for the provision of community services.
- (2) In this Act “**youth and community services**” means services designed to encourage and facilitate the personal and social welfare of children and young persons.
- (3) Services under subsection (1) may include, —
 - (a) recreational facilities;
 - (b) facilities for education and recreation outside normal school hours or terms (including vacation schools and classes, camps and play-centres);

- (c) careers guidance and services.
- (4) For the purposes of this section the Department may, —
 - (a) cooperate or collaborate with any local authority, voluntary organisation or other institution;
 - (b) provide financial or other assistance (including training or assistance with training) to any local authority, voluntary organisation or other institution;
 - (c) provide financial assistance to service-users;
 - (d) lease or licence premises or other facilities to any local authority, voluntary organisation or other institution;
 - (e) make accommodation and facilities at a maintained school available for use by voluntary organisations or other institutions.
- (5) In this section “voluntary organisation” means a company or other person which has a constitution which, —
 - (a) requires any surplus income or gains to be reinvested in company or other person, and
 - (b) does not allow the distribution of any of its profits or assets (in cash or in kind) to members or third parties.

105 Financial assistance

- (1) The Department must make regulations about the provision of financial assistance for or in respect of children and young persons who are, or wish to, take advantage of educational facilities.
Tynwald procedure – approval required
- (2) Regulations under this section may be made only with the consent of the Treasury.
- (3) For the purposes of subsection (1) educational facilities means, —
 - (a) maintained or contracted schools in the Island,
 - (b) further or higher education institutions in the Island or elsewhere, and
 - (c) other facilities for the provision in the Island of early years, primary, secondary, further or higher education.
- (4) For the purposes of this section “financial assistance” includes, —
 - (a) scholarships, exhibitions, bursaries and other awards and allowances;
 - (b) payments in respect of training schemes or apprenticeships;
 - (c) grants, loans, guaranties and indemnities;
 - (d) lump sums and annual or other periodic payments; and
 - (e) any other kind of financial assistance.

- (5) The regulations may permit or require financial assistance to be given on terms and conditions; and, in particular, the regulations may, —
 - (a) confer discretion on the Department or another specified person in relation to the terms and conditions;
 - (b) make eligibility for assistance dependant on means testing (whether of a student or prospective student, a parent or any other person specified in the regulations);
 - (c) refer to provision for repayment with or without interest in specified circumstances.
- (6) The Department may specify educational facilities, or classes of educational facility, in respect of whom financial assistance under this section may or may not be provided.

106 Transport

- (1) The Department may make arrangements for facilitating the attendance of pupils at schools and colleges.
- (2) The arrangements may, —
 - (a) involve the provision of transport by or on behalf of the Department;
 - (b) involve collaboration or cooperation with another person;
 - (c) include provision for charging for the use of facilities provided under the arrangements.
- (3) Arrangements for charges by the Department, —
 - (a) may be made only with the consent of the Treasury; and
 - (b) must be designed not to make a profit (allowing for reasonable levels of cross-subsidisation and of recovery of indirect costs).
- (4) The Department may pay travelling expenses to or in respect of a pupil registered at a school or college who is not reasonably able to take advantage of transport facilities provided in accordance with this section.

DIVISION 5 – EDUCATIONAL INSTITUTIONS

107 Definition: educational institution

In this Act “**educational institution**” means a person that provides education in the course of a business, other than, —

- (a) a school,
- (b) an individual,
- (c) an early years provider, and
- (d) an organisation that provides training for the purposes of continuing professional education in the exercise of the

organisation's supervisory or regulatory functions under an enactment.

108 Register

- (1) The Department must maintain a register of educational institutions operating in the Island.
- (2) For the purposes of this section an institution is operating in the Island if it, —
 - (a) offers services to persons resident in the Island; or
 - (b) is based (wholly or partly) in the Island.

109 Entry in register

- (1) The proprietor of an educational institution may apply to the Department for entry in the register.
- (2) An application must be accompanied by, —
 - (a) prescribed information, and
 - (b) the prescribed fee.

Tynwald procedure – approval required
- (3) The information prescribed under subsection (2) may include information about, in particular, —
 - (a) safeguarding arrangements for children's welfare;
 - (b) the nature of courses being provided;
 - (c) the nature of qualifications being awarded;
 - (d) the amount of fees being charged.

110 Determination of applications

- (1) On consideration of an application the Department may, —
 - (a) grant the application and register the institution; or
 - (b) refuse the application.
- (2) Registration may be granted —
 - (a) absolutely, or
 - (b) on specified terms or conditions.
- (3) The Department must provide a registered institution with a certificate of registration, specifying, —
 - (a) the date of registration, and
 - (b) any terms and conditions of registration.

111 Offence of conducting unregistered institution

- (1) It is an offence to conduct an unregistered educational institution.
Maximum penalty (summary) level 4 fine.
- (2) Where the conduct of an educational institution fails to comply with any conditions attached to registration it is to be treated for the purposes of this section as an unregistered educational institution.
- (3) For the purposes of this Act a reference to conducting an education institution includes a reference to playing any part in the management, conduct or arrangement of the affairs of the institution (and more than one individual or other person may be conducting an educational institution at the same time).
- (4) It is an offence to hold an institution out as being a registered educational institution at a time when it is not registered.
Maximum penalty (summary) level 4 fine.

112 Provision of information

- (1) It is an automatic condition of registration (by virtue of this section) that the proprietor of the educational institution complies with regulations under this section requiring the provision of information to the Department.
Tynwald procedure – approval required
- (2) The regulations may require the provision of information relating to, or required by the Department for monitoring, —
 - (a) the quality of the education provided by the institution;
 - (b) the welfare (including safeguarding issues), health and safety of children or young persons studying at the institution;
 - (c) the qualifications and suitability of the proprietor, teachers and other staff at the institution;
 - (d) the quality of the leadership and management of the institution;
 - (e) the premises and facilities used by the institution;
 - (f) the procedures for the handling of complaints in respect of the institution.
- (3) The regulations may make provision about, —
 - (a) the timing and frequency of the provision of information (and information is to be required to be provided at least annually);
 - (b) the form and manner of the provision of information.
- (4) The regulations may require the proprietor of an educational institution to notify the Department of changes in relation to information previously provided.

113 Inspections

- (1) The Department must make arrangements for the inspection of educational institutions for the purposes of monitoring the matters listed in section 112.
- (2) Inspections must be carried out at intervals determined by the Department.
- (3) The report of each inspection must be published.
- (4) Inspections may be carried out, —
 - (a) by officials of the Department, or
 - (b) by or on behalf of a person selected by the Department.
- (5) The Department may make regulations about inspections; and the regulations may, in particular, —
 - (a) authorise inspectors to enter an educational institution;
 - (b) authorise the inspection of premises;
 - (c) authorise the inspection and seizure of records.

Tynwald procedure – approval required

- (6) A person who intentionally obstructs the performance of a function under this section commits an offence.
Maximum penalty (summary) 6 months' custody or a level 5 fine.
- (7) Following an inspection the Department may notify the proprietor of the institution, —
 - (a) of any deficiencies identified in the report, and
 - (b) an action plan to be followed in remedying those deficiencies (including a timetable).
- (8) Where the Department is not satisfied with the progress being made in pursuing an action plan it may, —
 - (a) vary the action plan;
 - (b) order the registrar to remove the institution from the register.
- (9) The proprietor of the institution may appeal to the High Bailiff against an order under subsection (8)(b); and the High Bailiff may, —
 - (a) confirm the order;
 - (b) vary the order;
 - (c) quash the order;
 - (d) make supplementary or ancillary orders.
- (10) The decision of the High Bailiff is final.
- (11) The Department must give effect to a decision of the High Bailiff.

114 Complaints about educational institutions

- (1) The Department may serve on the proprietor of an educational institution a notice (“a complaint notice”) to the effect that the Department believes that there are likely to be issues in relation to, —
 - (a) the suitability of the institution’s premises or facilities;
 - (b) the quality or suitability of the education being provided at the institution;
 - (c) the quality or suitability of the proprietor, a teacher or other member of staff at the institution;
 - (d) the safeguarding and welfare of children and young persons studying at the institution.
- (2) A complaint notice must specify either, —
 - (a) that the Department believes that the issues complained of are capable of being addressed within a reasonable period of time, or
 - (b) that the Department believes that the issues complained of are not capable of being addressed within a reasonable period of time.
- (3) A notice under subsection (2)(a) must specify, —
 - (a) the measures necessary in the opinion of the Department to address the issues complained of, and
 - (b) a period within which the measures are to be taken (and the period must be not less than 6 months beginning with the date of service of the notice).
- (4) If a complaint notice specifies an issue in relation to the quality or suitability of a person, the notice must, —
 - (a) name the person;
 - (b) provide sufficient details of the issue to enable the person to understand the nature of the complaint; and
 - (c) be served on the person as well as on the proprietor.
- (5) A complaint notice must specify a period (not less than one month beginning with the date of service of the notice) during which the proprietor may refer the complaint to [...].

115 Determination of complaints

- (1) A complaint notice under section 114 is to be considered either, —
 - (a) by the Tribunal, if a person on whom the notice was served refers it to [...] within the time specified in the notice, or
 - (b) otherwise, by the Department or a person designated by the Department.
- (2) The Tribunal, Department or designated person must, —

- (a) consider all evidence submitted to it, and
 - (b) give anyone appearing to be concerned an opportunity to make representations.
- (3) In determining the complaint the Tribunal, Department or designated person may, —
 - (a) dismiss the complaint;
 - (b) make an order for the institution to be removed from the register;
 - (c) make an order prohibiting the use of the premises or a specified part of them to be used for the conduct of an educational institution, or imposing conditions or limitations on the use of the premises or a specified part of them for the conduct of an educational institution;
 - (d) make an order for the purposes of remedying deficiencies in relation to safeguarding the welfare of children and young persons studying at the school;
 - (e) make an order prohibiting a person from acting as the proprietor of an educational institution;
 - (f) make an order prohibiting a person from teaching at an educational institution.
- (4) An order for removal from the register may be absolute or conditional (and a condition may require the Department to be satisfied of specified matters within a specified period).

116 Enforcement

- (1) It is an offence to contravene a prohibition under section 115.
Maximum penalty (summary) level 4 fine.
- (2) A prosecution for an offence under this section may be brought only by or on behalf of the Department.
- (3) A person subject to a prohibition order under section 115 may apply to the Department for its removal or variation because of a change in circumstances; and, —
 - (a) the Department may remove, vary or confirm the prohibition order, and
 - (b) the person may appeal the Department's decision (or failure to make a decision within a prescribed period) to the Tribunal, which may remove, vary or confirm the prohibition order.

Tynwald procedure – approval required

DIVISION 6 – PRIVATE TUTORS

117 Definition: “private tutor”

In this Act “**private tutor**” means an individual who provides education in the course of a business.

118 Requirement to register

It is an offence to operate in the Island as a private tutor without being registered in accordance with this Part.

Maximum penalty (summary) level 4 fine.

119 The register

- (1) The Department must maintain a register of private tutors.
- (2) The Department must make the register open to public inspection at all reasonable times.
- (3) An entry on the register must include a statement that inclusion on the register does not amount to, —
 - (a) confirmation by the Department of the accuracy of any information provided by the private tutor, or
 - (b) an endorsement by the Department of the quality of the services provided by the private tutor.

120 Registration

- (1) An individual may apply to the Department for entry in the register.
- (2) An application must be accompanied by, —
 - (a) a current enhanced check certificate issued by the Disclosure and Barring Service in accordance with the Safeguarding Vulnerable Groups Act 2006;
 - (b) information about the subjects the tutor offers or intends to offer to teach;
 - (c) information about the age-range of students the tutor offers or intends to offer to teach; and
 - (d) any prescribed fee.Tynwald procedure – approval required
- (3) A registered private tutor must at intervals of not more than one year confirm their registration by notice in writing, —
 - (a) including any changes to the information supplied with the application for registration; and
 - (b) accompanied by any prescribed fee.

Tynwald procedure – approval required

- (4) An individual who provides false information in connection with an application or confirmation commits an offence.

Maximum penalty (summary) 6 months' custody or a level 5 fine.

PART 6 – GENERAL AND FINAL PROVISION

DIVISION 1 – GENERAL PROVISION

121 The Education Tribunal

- (1) The Education Tribunal consists of a chair and two other members appointed in accordance with the *Tribunals Act 2006*.

- (2) In Part 1 of Schedule 2 to that Act at the end add, —

12. The Education Tribunal.

122 Educational trusts

- (1) The Department may accept, hold and administer property on trust for purposes connected with education.
- (2) Schedule 3 makes additional provision about property held by the Department on trust for purposes connected with education.

123 Provision about child employment

- (1) For the purposes of any enactment relating to the prohibition or regulation of the employment of children or young persons, a person who is not over compulsory school age is to be treated as a child within the meaning of that enactment (but subject to any express or implied provision to the contrary in the enactment).
- (2) The Department may make regulations prohibiting, restricting or regulating, —
- (a) the employment of children;
 - (b) participation by children in performances;
 - (c) training children to participate in performances including dangerous activities;
 - (d) participation by children in travel out of the Island for the purpose of taking part in performances; and
 - (e) involvement of children in street trading.

Tynwald procedure – approval required

- (3) The regulations may, —

- (a) require the provision of information to the Department;
 - (b) prohibit activities except where authorised by, and in accordance with the terms and conditions of, a licence granted by an authority specified in the regulations;
 - (c) make provision about the licensing system (including grant, renewal, variation, transfer, suspension and revocation of licences);
 - (d) make provision for appeals to a court or tribunal (including a tribunal established pursuant to the regulations);
 - (e) create offences (including permitting maximum fines not exceeding level 5 on the standard scale, specifying defences, and allowing a court convicting a person of an offence to make an order in relation to a licence);
 - (f) confer power on constables or other specified persons to enter premises, make enquiries, demand information and seize items.
- (4) The regulations may make consequential or incidental provision repealing or amending provisions of an enactment relating to children or young persons.
- (5) The regulations may define employment for the purposes of this section and the regulations (including so as to include unpaid work in specified circumstances).

124 Offences by body corporate

- (1) This section applies where an offence under this Act is committed by a body corporate with the consent or connivance of, or as the result of neglect on the part of, an officer of the body.
- (2) The officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In this section a reference to an officer of a body is a reference to, —
- (a) a director of the body,
 - (b) a manager of the body,
 - (c) a secretary of the body,
 - (d) any other similar officer of the body, and
 - (e) any person purporting to act in a capacity listed in paragraphs (a) to (d).

125 Evidence of age

- (1) This section applies where a person's age needs to be proved for the purposes of, —
- (a) this Act, or

- (b) an enactment relating to the employment of children.
- (2) The person may apply to the relevant register of births for a certified copy of the entry relating to the person's birth.
- (3) An application must, —
 - (a) be made in writing;
 - (b) be made in the prescribed form (if any);
 - (c) contain prescribed information; and
 - (d) be accompanied by any fee prescribed under the *Civil Registration Act 1984*.

Tynwald procedure – approval required

- (4) A registrar must provide to the Department any information which it requests for purposes connected with this Act.
- (5) Expressions used in this section have the same meaning as in the *Civil Registration Act 1984*.
- (6) In the absence of evidence in accordance with this section, a court or tribunal may make findings about a person's presumed age.

126 Other evidence

- (1) The following may be admitted in evidence before a court or tribunal, —
 - (a) a document purporting to be issued by the Department and signed by an authorised officer of the Department;
 - (b) a document purporting to be an extract from the minutes of the proceedings of a governing body and signed by the chair or secretary;
 - (c) a document purporting to be a certificate giving details of a person's attendance at a school or college, and signed by the head teacher of the school or proprietor; or
 - (d) a document purporting to be a certificate issued by a registered medical practitioner on behalf of the Department.
- (2) Unless the contrary is proved, a document admitted under subsection (1) is to be taken to be, —
 - (a) valid, and
 - (b) evidence of its contents.

127 Notices

A requirement of this Act to give public notice is satisfied by publication, —

- (a) in a newspaper circulating in the Island, and
- (b) on an open-access website.

DIVISION 2 – FINAL PROVISION

128 Subordinate legislation

- (1) Regulations under this Act may, —
 - (a) make provision generally or for specified purposes only, and may make different provision for different purposes;
 - (b) confer functions on specified persons (which may include the Department);
 - (c) include transitional, consequential, incidental or supplemental provision.
- (2) A function of making regulations under this Act is exercisable by the Department.

129 Repeals

The following enactments are repealed, —

- (a) the *Education Act 2001*; and
- (b) the *Education (Miscellaneous Provisions) Act 2009*.

SCHEDULE 1**LIST OF SCHOOLS**

[Section 15]

MAINTAINED SCHOOLS**A – PRIMARY SCHOOLS**

Anagh Coar School
Andreas School
Arbory School
Ashley Hill School
Ballacottier School
Ballasalla School
Ballaugh School
Braddan School
Bunscoill Rhumsaa
Cronk y Berry School
Dhoon School
Foxdale School
Henry Bloom Noble School
Jurby School
Kewaique School
Laxey School
Manor Park School
Marown School
Michael School
Onchan School
Peel Clothworkers' School
Rushen Primary School
Scoil Phurt le Moirrey
Scoil Vallajeelt
Scoil yn Jubilee
St John's School
St Mary's Roman Catholic School
St Thomas' Church of England School
Sulby School

Victoria Road School

Willaston School

B – SECONDARY SCHOOLS

Ballakermeen High School

Castle Rushen High School

Queen Elizabeth II High School

Ramsey Grammar School

St Ninian's High School

SCHEDULE 2**ESTABLISHMENT, CLOSURE AND ALTERATION OF SCHOOLS**

[Section 17]

Proposals for action

1. Paragraph 2 applies where, —
 - (a) the Department proposes to take action under section 17, or
 - (b) any persons submit proposals to the Department for a school to become a maintained school.
2. The Department must publish the proposals.
3. The following may submit objections to the proposals in writing to the Department, —
 - (a) the governing body of a maintained school affected by the proposals;
 - (b) a group of 10 or more individuals who live in the actual or proposed catchment area for the school to which the proposals relate in accordance with section 42.
4. Objections must be submitted in writing within the period of 3 months beginning with the date of publication of the proposals (“the consultation period”).
5. After the expiry of the consultation period the Department may make an order under section 17 giving effect to the proposals made by or to the Department, with or without modifications of them.
6. The Department may not make an order giving effect to proposals for a school to become a maintained school unless it has entered into an agreement with the governing body of the school for the transfer to the Department of all necessary interests in the school premises.
7. Following an order providing for a school to become a maintained school, the Department must maintain it.
8. Following an order for the establishment of a new maintained school, the persons who submitted the proposals for its establishment (“the promoters”) must submit to the Department for approval, in such form and in such manner as it may direct, specifications and plans of the school premises.
9. Once the specifications and plans have been approved by the Department, —

- (a) the promoters must give effect to the proposals in accordance with the specifications and plans so approved;
- (b) the Department must provide the school premises; and
- (c) the Department must maintain the school.

10. If the Department makes an order to close a maintained school or to convert it into an independent school, once the order take effect the Department is no longer required to maintain the school.

Governors closing school

11. A governing body of a maintained school proposing to discontinue the school must give the Department at least 2 years' written notice ("closure notice").

12. A closure notice may not be withdrawn except with the consent of the Department.

13. A closure notice may not be given without the consent of the Department if the Department has incurred capital expenditure in respect of the school premises.

14. Consent under this Schedule may be absolute or on terms or conditions (which may include provision for repayment of expenditure incurred, conveyance of property to the Department, or other payments).

15. The Department may conduct a school while a closure notice is pending if the governing body, —

- (a) are unable or unwilling to conduct it, and
- (b) enter into arrangements with the Department for the transfer of property.

SCHEDULE 3**SCHEMES RELATING TO EDUCATIONAL TRUSTS**

[Section 122]

Interpretation

1. In this Schedule “educational charity” means any trust of property established for charitable purposes which are or include any educational purpose, but excludes, —

- (a) an ecclesiastical charity within the meaning of Schedule 3 to the *Church Act 1992*, and
- (b) a hospital trust within the meaning of Schedule 1 to the *National Health Service Act 2001*.

Contents of schemes

2. (1) The Department may make a scheme to do all or any of the following in relation to any educational charity, —

- (a) appoint trustees of the charity;
- (b) to amalgamate the trusts of the charity with the trusts of any other such charity;
- (c) where the benefits of the charity are restricted to any parish or other district, to extend those benefits to any area or any other parish or district;
- (d) to make provision for the better administration of the charity;
- (e) to vest any property of the charity in the Department;
- (f) to authorise the disposal of any property of the charity, or of any interest therein;
- (g) to authorise any part of the income of the charity to be added to the capital thereof, or the capital of the charity or any part thereof to be applied as income;
- (h) subject to paragraph 3, to alter the purposes of the charity so as to allow the property thereof or part of it to be applied cy-près;
- (i) to modify, amend or repeal any enactment so far as it relates to the charity.

(2) A scheme under this Schedule may make such incidental, consequential, transitional and supplementary provisions as appear to the Department to be necessary or expedient for the purposes of the scheme.

Occasions for applying property cy-près

3. (1) The purposes for which property may be applied may not be altered under paragraph 2(1)(h) unless it appears to the Department, —
- (a) that the original purposes of the gift were that the property should be wholly applied for educational purposes; and
 - (b) that the circumstances are as set out in sub-paragraph (2).
- (2) The circumstances in which those purposes may be so altered are as follows —
- (a) where the original purposes, in whole or in part —
 - (i) have been fulfilled, as far as may be, or
 - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
 - (b) where the original purposes provide a use for part only of the property; or
 - (c) where the property and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably be made applicable to common purposes, regard being had to the spirit of the gift; or
 - (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for educational or other purposes, or by reference to a class of persons or to an area which has for any reason ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the charity; or
 - (e) where the original purposes, in whole or in part, have since they were laid down, —
 - (i) been adequately provided for by other means;
 - (ii) ceased for any reason to be in law charitable; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift.
- (3) In relation to property the application of which is regulated by a statutory provision (including a provision repealed by this Act or the *Charities Act 1986*), references in this paragraph to the original purposes of a gift are to the purposes for which the property is for the time being applicable.

Consents and approvals

4. (1) A scheme under this Schedule does not have effect, —
- (a) in any case, unless it is approved by the High Court; and

- (b) where it makes any provision under paragraph 2(1)(i), unless it is approved by Tynwald.
- (2) In the case of a scheme which does not affect a charity other than one, —
 - (a) the endowment of which does not include any land, and
 - (b) the gross income of which in the last preceding accounting year was the prescribed amount or less,the approval of the Attorney General is substituted for the approval of the High Court under sub-paragraph (1)(a).
- (3) In this paragraph "the prescribed amount" means £2,000 or such larger amount as may for the time being be specified in section 2(1)(b) of the *Charities Act 1986* by virtue of an order under section 3(5) of that Act.

Registration of schemes

5. Every scheme under this Schedule must be filed in the General Registry.

Savings

6. Nothing done in pursuance of a scheme under this Schedule requires the approval or authorisation of the High Court or the Attorney General, but this Schedule is otherwise without prejudice to the powers of the High Court or the Attorney General in relation to charities.

APPENDIX 6:

**19th March 2019 – Hansard Question 17
– Answer by Minister of the Department
of Education, Sport and Culture**

EDUCATION, SPORT AND CULTURE

**17. Draft Education Bill –
Drafters, contributors and cost to date**

The Hon. Member for Garff (Mrs Caine) to ask the Minister for Education, Sport and Culture:

Who drafted the Education Bill; which Island individuals or organisations, outside the Department, contributed to the proposed legislation; and how much it has cost to date?

The Minister for Education, Sport and Culture (Mr Cregeen): A new Education Bill was considered to be one of the highest priorities for this Government and was included in the Programme for Government when it was first published in 2016.

Drafting instructions were commenced in early 2017 and it has been a regular item on meetings with headteachers and senior leaders. At these meetings, all headteachers were encouraged to make their staff and young people aware of this proposed legislation and to make school submissions as part of the consultation process.

The Legislation sub-committee of Council of Ministers has scrutinised its preparation from the start and in September 2017 asked the Department to carry out a consultation on the principles that should underpin the new Bill. The consultation on the principles ran from 11th October 2017 to 22nd November 2017 and we received responses from 535 individuals and organisations. A presentation on the principles was also given to Tynwald Members in September 2017.

Following the consultation the Department was given permission to draft the Bill. The Attorney General's office did not have sufficient drafting capacity to do a Bill of this size at that juncture, so with the Department secured the services of a very experienced UK draftsman Daniel Greenberg, a barrister specialising in legislation, who is Parliamentary Counsel for domestic legislation in the UK, drafts primary and secondary legislation in the UK and has previously drafted legislation for the Isle of Man. The costs of drafting the Bill to date are £15,883.

APPENDIX 7:

**19th March 2019 – Hansard Question 18
– Answer by Minister of the Department
of Education, Sport and Culture**

**18. Education Bill –
Details of consultation meetings and attendees**

The Hon. Member for Onchan (Ms Edge) to ask the Minister for Education, Sport and Culture:

If he will provide a breakdown of all meetings, and attendees, about the Education Bill with a) headteachers; b) unions; c) teachers and teaching professionals d) UK legislative drafters; e) Manx legislative drafters; and f) political members?

The Minister for Education, Sport and Culture (Mr Cregeen): The Department is assuming that the Hon. Member is referring to meetings that DESC has had with the requested groups.

a) Headteachers:

22/11/18 – Primary Headteachers

29/11/19 – Secondary Headteachers

b) Unions:

27/2/19 – ASCL staff; Head teachers of QE2 and CRHS; CEO; Legal and Administration Manager.

13/2/19 – NASUWT representatives; CEO. Director of Strategy and Corporate Services; Legal and Administration Manager.

c) Teachers and teaching professionals:

None

d) UK Legislative drafter:

27/11/18 – Skype call. Political members. Members of DESC SLT. Legal and Administration Manager.

27/10/18 – Skype call. Political members. Members of DESC SLT. Legal and Administration Manager.

24/10/18 – Skype call. Director of Strategy and Corporate Services; Legal and Administration Manager.

16/7/18 – 17/7/18. Various including SLT from Department; Officers from Chambers;

15/6/18 – Skype call. Director of Strategy and Corporate Services; Legal and Administration Manager.

16/3/18 – Director of Strategy and Corporate Services; Legal and Administration Manager.

e) Manx Legislative drafters:

19/1/18 until 23/3/18 Various Fridays when calendars allowed for 30 minutes – Legal Drafter and Legal and Administration Manager.

17/7/19 – Legal Drafter and Legal and Administration Manager. Advocate from Chambers.

f) Political members (including Minister of Education):

16/11/18 – CEO. Director of Strategy and Corporate Services; Legal and Administration Manager.

31/10/18 – Director of Strategy and Corporate Services; Legal and Administration Manager.

There have been additional meetings with:

g) Tynwald Members:

6/9/17 – Presentation to Tynwald Members

h)

CoMin Legislation Sub Committee	Council
<i>Membership</i> <i>Ministers PR, DOI, DHA + HMAG + Chief Drafter + Cabo representation</i>	<i>Membership</i> <i>All Ministers + HMAG + CFO + CS</i>
19 June 2017	
17 July 2017	
23 August 2017 In attendance Minister DESC, Member for DESC Mr L Hooper MHK, DESC Director for Strategy and Corporate Services	
	28 September 2017
	18 January 2018
29 February 2018	
23 March 2018	
	3 May 2018

i) Inclusion and Safeguarding Division – DESC

21/1/19 Senior Managers from IS; Director of Strategy and Corporate Services; Legal and Administration Manager.

j) Home Educator parents:

7/3/19 A family; Minister; CEO; Legal and Administration Manager.

4/2/19 Minister and a political member; Director of Strategy and Corporate Services and two families.

26/2/18 – Minister; Legal and Administration Manager.

8/1/18 – Minister; Legal and Administration Manager.

13/11/17 – Minister; CEO; Legal and Administration Manager.

k) DESC Senior Leadership Team

19/9/18 – CEO; Director of Education; Director of Inclusion and Safeguarding; Legal and Administration Manager.

3/9/18 – CEO; Director of Education; Director of Inclusion and Safeguarding; Legal and Administration Manager.

l) Bishop

16/7/18 – UK Legislative Drafter; Legal and Administration Manager

m) Education Council

3/5/17 – Various Education Council Members, some of whom were ex teachers/lecturers

n) REAC (Religious Education Advisory Council Committee meetings – as part of the agenda)

1/7/14 – REAC members including teachers.

5/11/14 – REAC members including teachers.

8/3/16 – REAC members including teachers.

7/7/16 – REAC members including teachers.

9/3/17 – REAC members including teachers.

7/7/17 – REAC members including teachers.

15/11/17 – REAC members including teachers.

14/3/18 – REAC members including teachers.

11/7/18 – REAC members including teachers.

14/11/18 – REAC members including teachers.

Information from key stakeholders, including Headteachers, Unions, Department Officers was requested from December 2016 through to February 2017. As Headteachers are the conduit for DESC to school staff, some schools held staff meetings to consult with teachers and subsequently supplied information relating to the Education Bill.

APPENDIX 8:
1st June 2019 – Report on the Responses
to the Consultation



Department of Education Sport and Culture

Rheynn Ynsee, Spoyrt as Cultoor

Responding on behalf of an organisation?	
Yes	41
No	530
Not answered	17

Do you live on the IoM?	
Yes	523
No	44
Not answered	21

May we publish your response?	
Yes - in full	119
Yes - anonymously	361
No	108
Not answered	0

Name provided?	
Yes	540
No	48

Consultation Question and Responses			Department of Education, Sport and Culture	
Questions 7: Do you agree that these principles are sufficient to underpin the education system of the Isle of Man now and in the future			The section of the consultation on Principles, questions 7 and 8, produced a range of individual responses.	
Agree	293	49.8%	The majority of comments were in relation to clarifying wording, particular principle 'e'. We have decided to change this so that children, young people and their parents should where practicable be involved in determining the form of education to be provided.	
Disagree	148	19.2%		
Neither	113	25.2%		
Not answered	34	5.8%		
TOTAL	588			

Consultation Question and Responses		Department of Education, Sport and Culture
Question 8 – Are there any other principles that you feel are missing and why?		The main focus of comments raised concerned the well-being of students and staff. We will amend a point in the section 'general duty of Department' to recognise this. There were a group who wanted the inclusion of a reference to the Christian heritage of the Isle of Man and made reference to faith based assemblies. This will be incorporated into secondary legislation and the Articles of Government of schools.
241 responses to this		

Consultation Question and Responses		Department of Education, Sport and Culture
Question 9 - Do you agree with the proposal of the Department seeking a financial contribution from the church towards any significant developments or other capital costs incurred in maintained faith schools?		<p>The majority of you agreed with the proposal and the reasons for answering no were varied from 100% Department funded, 100% church funded, shouldn't allow faith school and others .</p> <p>To seek to reflect the views expressed we will amend section 25 to remove 25(2) and alter the wording of 25(1) to say the Department will seek contributions from the church or other faith institution that nominates foundation governors to the governing body.</p>
Yes	349	59.4%
No	187	31.8%
Not answered	52	8.8%
TOTAL	588	

Consultation Question and Responses		Department of Education, Sport and Culture
Question 10 – Do you agree with the compulsory curriculum subjects proposed in the draft bill?		<p>The majority of you agreed with this. Comments about the curriculum being 'compulsory' covered a wide range of views and ideas, from some of you saying that subjects should not be compulsory through to agreeing that the suggested, or a number of them, should be taught as compulsory subjects.</p> <p>The Manx language and religion many people said that these should be compulsory, but the numbers did not support any changes to the provisions, apart from saying the language should be stated as Manx Gaelic. Aspects regarding religion will be included in secondary legislation and the Articles of Government of Schools.</p>
Yes	374	63.7%
No	182	31.0%
Not answered	32	5.4%
TOTAL	588	

Consultation Question and Responses			Department of Education, Sport and Culture
Question 11 –Is it right for the Department to seek to recover the costs of damages caused deliberately by pupils?			<p>81.3% of you agreed that it is right to seek recovering damage caused deliberately by pupils, with 115 comments saying that it will encourage consideration of consequences. There were comments about parents and pupils taking responsibility and about restorative action and working with the pupil.</p> <p>Seeking to recover costs will be part of the options available to schools when damage is caused deliberately by pupils.</p> <p>We will not be changing Clause 35.</p>
Yes	478	81.3%	
No	60	10.2%	
Not answered	50	8.5%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 12 – Do you agree that section 37 addresses the issues of children behaving inappropriately while under the authority of a member of the school's staff?			<p>The majority of you, 67.5% felt that this addressed the issue of children behaving inappropriately while under the authority of a member of the school's staff. The Articles of Government for a school will expand on the detail about this.</p> <p>We will not be changing Clause 37.</p>
Yes	397	67.5%	
No	99	16.8%	
Not answered	92	15.7%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 13 – Do you agree that the measures suggested will allow schools to address the issues of inappropriate use of social media in schools?			<p>Many of you who answered yes to this question felt that it was an improvement on nothing being in the Act but felt it may be difficult for the Headteacher to police, which was a point also made by all the headteachers who responded.</p> <p>We will keep section 41 largely as drafted but ensure policies which will underpin this section are robust and allow headteachers to implement the section appropriately within their schools.</p>
Yes	339	57.7%	
No	172	39.3%	
Not answered	77	13.1%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 14 – There are a number of exceptions as to why a pupil should go to a school in a different area detailed in the bill should there be any others?			<p>Although there were a similar number of yes and no responses there were no definitive ideas put forward and the comments can be taken into account when drafting regulations and in formulating policies and procedures.</p> <p>We will therefore leave the provisions in Clause 42 as drafted.</p>
Yes	257	43.7%	
No	260	44.2%	
Not answered	71	12.1%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 15 – Do you agree that actions required in respect of remedying and identified deficiencies should be the responsibility of the Head Teacher and will improve the education provision in the school?			<p>The majority of you said that it should be solely the headteachers responsibility. Of the 168 who responded No to this question, 39 felt it should be the Headteacher and he Department who should be jointly responsible, 41 felt that someone independent should put in place the actions required to remedy the deficiencies, the remainder who answered no did not give a reason for this response.</p> <p>We have considered the feedback and we will leave section 49 largely as drafted.</p>
Yes	345	58.7%	
No	168	28.6%	
Not answered	75	12.7%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 16 – Do you agree with the proposed areas in Independent schools which will be regulated by the Department?			<p>The majority of you (69.1%) agreed with the proposals and some of you commented about the possibility of children being at risk with self-regulating schools.</p> <p>We have considered the feedback and will leave these Clauses as drafted.</p> <p>A section has been inserted to inspect those independent schools that are not already inspected by another professional body.</p>
Yes	406	69.1%	
No	99	16.8%	
Not answered	83	14.1%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Questions 17 - Regulations will be made to adapt “compulsory school age” in specified circumstances. One instance will be for summer born children. Is it appropriate to have this flexibility bout when children start and finish compulsory schooling?			<p>There was overwhelming support for being able to adapt the ‘compulsory school age’ in specified circumstances.</p> <p>We will keep these provisions as largely as drafted.</p>
Yes	440	74.8%	
No	90	15.3%	
Not answered	58	9.9%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 18 – are there any circumstances that you may wish to see covered by the regulations on compulsory school age?			<p>A range of ideas were suggested which placed children at the centre, with themes including ‘children should progress at their own pace’ and ‘flexibility for [the] child’s needs’.</p> <p>The approach being proposed will allow for parental choice.</p> <p>We will leave these clauses as drafted.</p>
Yes	158	26.9%	
No	305	51.9%	
Not answered	125	21.2%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 19 –Do you think that this approach (to attendance) will be a constructive alternative to a fine, helping parents to develop strategies?			<p>57.7% of you answered yes to this and many felt this was a less punitive approach but that it could be resource intensive.</p> <p>Of the 31.6% of you who said No, the majority gave no reason why they answered no and the remainder thought that is was a waste of resources and if the fine system was operated properly this would be sufficient.</p> <p>We will retain clause 68 as drafted.</p>
Yes	339	57.7%	
No	186	31.6%	
Not answered	63	10.7%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 20 - Should the Department make arrangements for children receiving home education to have access to school or college facilities for example, to be able to access laboratory facilities?			<p>The majority of you felt that this should be allowed as parents of home educated children are taxpayers and as such they contribute to government funds that maintain and run the schools on the island. However many who answered yes also felt that this may be difficult to arrange and would have to be in close co-operation with the schools and fit in with school timetables.</p> <p>80 of us who answered 'No' felt that as home educators have opted for their children not be educated at school, then they should provide everything to educate their children, with the remainder feeling that it would be logistically impossible to do.</p> <p>We have agreed to leave this clause in the new Bill.</p>
Yes	362	61.6%	
No	167	28.4%	
Not answered	59	10.0%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 21 – Are the assessment proposals sufficient for the Department to ensure that a suitable education is being provided to Home Educated children?			<p>Even though the majority of you agreed that the Department should be able to assess the education being provided to home educated children, we will be reviewing the wording in clause 78 to make the assessment criteria less onerous and by some considered too invasive, to a process determined in regulations that can meet the requirements of the Department to ensure a suitable education is received by all children wherever they are educated.</p>
Yes	377	57.3%	
No	168	28.6%	
Not answered	80	14.1%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 22 - Do you agree that the Department should have an upper age of 21 to consider educational provision for those with additional educational needs?			<p>Most of you agreed with an age of 21 but we intend to introduce a provision to allow the Department to change this age by Order.</p>
Yes	399	67.9%	
No	109	18.5%	
Not answered	80	13.6%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 23 - Is the definition of an individual with a learning difficulty or disability sufficiently clear and broad?			<p>The majority of you (66.8%) expressed the view that this was sufficiently clear and broad.</p> <p>There were references to mental health and also the levels of need that individuals have and also the support that is needed.</p> <p>We will keep this provision as is.</p>
Yes	393	66.8%	
No	107	18.2%	
Not answered	88	15.0%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 24 - In some of the principles there is a reference to assessment and allocation of resources for those with additional educational needs; do you agree that these are appropriate?			<p>Some responses suggested that principle (a) should not put those presenting challenging behaviour with those who have special needs as a result of their mental or physical conditions.</p> <p>Principle (a) will be split up to reflect the comments made about challenging behaviour and those who have special needs as a result of their mental or physical conditions.</p>
Yes	381	64.8%	
No	118	20.1%	
Not answered	89	15.1%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 25 – Other principles deal with parent and young person involvement in decision making; having full information and co-operation and communication around decisions. Is there anything else that should be considered?			<p>There was no single idea that stood out significantly above any other, although there were lots of different ideas presented. On the whole, you felt that a parent and young person should be involved in decision making, along with educational professionals.</p> <p>We will amend principle (f) to reflect this.</p>
Yes	188	32.0%	
No	280	47.6%	
Not answered	120	20.4%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 26 – It is proposed that additional educational needs assessments can be requested by the Department and by parents of children in maintained schools and the Department may assess children such as those in Independent Schools or are Home Educated. Is this appropriate?			<p>The majority of you agreed with this proposal and there were a range of comments, with the greatest number, although less than 4% of respondents, saying that assessments should be requested by parents.</p> <p>Of those who said 'no' there was no consensus about other changes so we will not make any changes in this area.</p>
Yes	391	66.5%	
No	96	16.3%	
Not answered	101	17.2%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 27 – If a parent does want an assessment or alternatively does not want an assessment carrying out when proposed, then an appeal to a Tribunal is being suggested. Do you believe that this gives a parent sufficient remedy to challenge a decision being taken about their child, whether this is for an assessment or not?			<p>The majority of you agreed with the suggestion in the draft Bill of an appeal to a Tribunal as being a possibility.</p> <p>We will leave this clause as it is.</p>
Yes	371	63.1%	
No	108	18.4%	
Not answered	109	18.5%	
TOTAL	588		

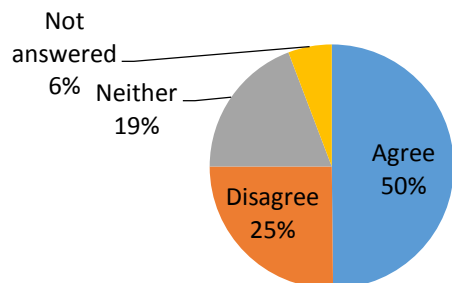
Consultation Question and Responses			Department of Education, Sport and Culture
Question 28 – Are there any other criteria that should be used?			The majority of you said that no other criteria should be used.
Yes	113	19.2%	We will leave this as it is.
No	362	61.6%	
Not answered	113	19.2%	
TOTAL	588		

Consultation Question and Responses			Department of Education, Sport and Culture
Question 29 – Do you believe that this will help to ensure rogue education institutions will be identified and if necessary closed down?			We will include these sections as drafted as 61.4% of you felt that the provision were adequate and of the 121 that answered No, no reason was given as to why they were not adequate, although we are reviewing the need for inspections at clause 113 as registered bodies will also be recognised by awarding bodies.
Yes	361	61.4%	
No	121	20.6%	
Not answered	106	18.0%	
TOTAL	588		

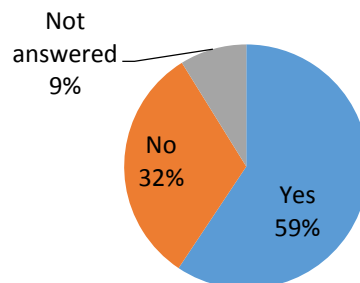
Consultation Question and Responses			Department of Education, Sport and Culture
Question 30 - Do you consider that this registration is sufficient for parents to get some basic information about tutors available on the island?			The majority of you considered that registration is sufficient for parents to get some basic information, with some of you saying that registration is needed in the current social climate and others saying that registration supports freedom of choice. Against this, there were comments which said that word of mouth works without the need for registration, although a similar number of comments said that DBS would provide reassurance to parents.
Yes	382	65.0%	
No	127	21.6%	
Not answered	29	13.4%	
TOTAL	588		

Consultation Question and Responses	Department of Education, Sport and Culture
<p>Question 31 – A copy of the Education Bill is attached. The Department is interested to hear views on any issue that has not been covered in the consultation questions. If there are any topics that you wish to raise and discuss please raise these in the space below.</p>	<p>The majority of the comments reiterated or expanded on comments made in response to consultation questions. However we will be</p> <ul style="list-style-type: none"> • Reviewing the section on Governors, particularly in relation to primary schools • Changing the wording in clause 90 from “appropriate” education to “suitable” education • Amending clause 33 to include other school staff such as Education Support Officers
243 raised in this section	

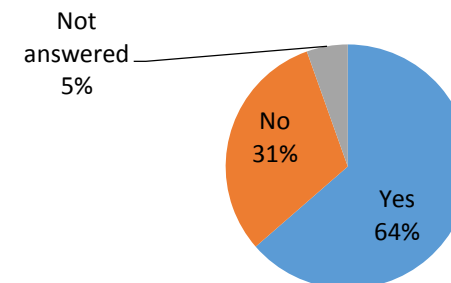
Questions 7 - Do you agree that these principles are sufficient to underpin the education system of the Isle of Man now and in the future



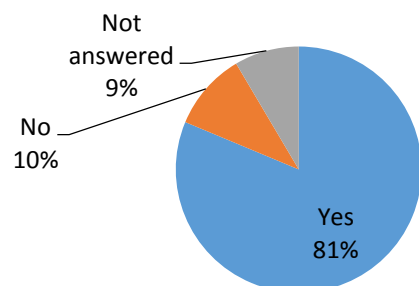
Question 9 - Do you agree with the proposal of the Department seeking a financial contribution from the church towards any significant developments or other capital costs incurred in maintained faith schools?



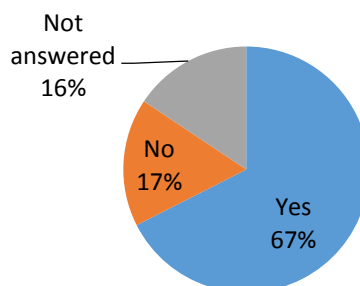
Question 10 – Do you agree with the compulsory curriculum subjects proposed in the draft bill?



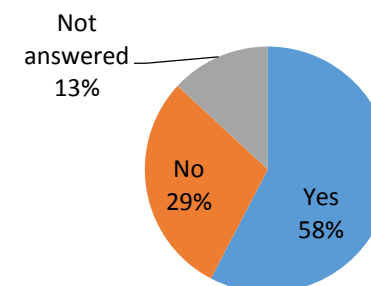
Question 11 –Is it right for the Department to seek to recover the costs of damages caused deliberately by pupils?



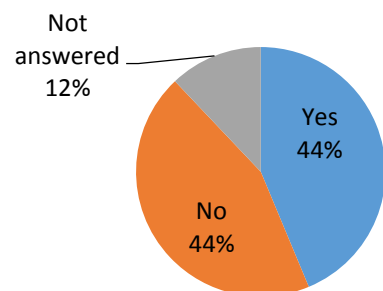
Question 12 – Do you agree that section 37 addresses the issues of children behaving inappropriately while under the authority of a member of the school's staff?



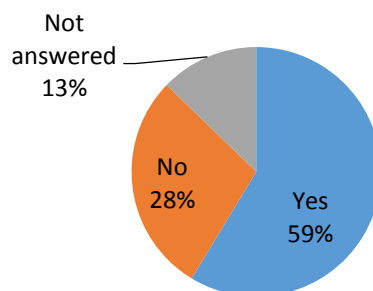
Question 13 – Do you agree that the measures suggested will allow schools to address the issues of inappropriate use of social media in schools?



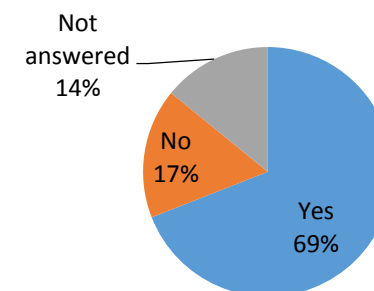
Question 14 – There are a number of exceptions as to why a pupil should go to a school in a different area detailed in the bill should there be any others?



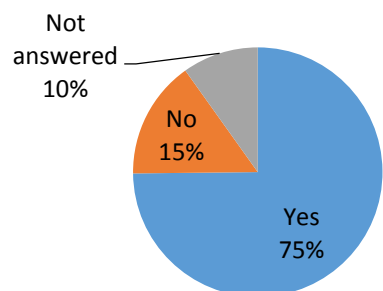
Question 15 – Do you agree that actions required in respect of remedying and identified deficiencies should be the responsibility of the Head Teacher and will improve the education provision in the school?



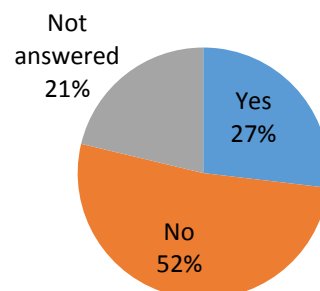
Question 16 – Do you agree with the proposed areas in Independent schools which will be regulated by the Department?



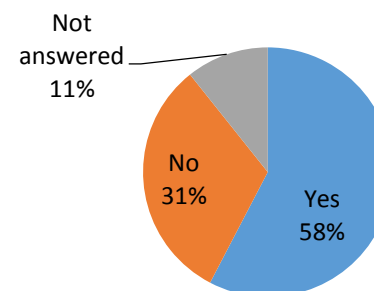
Questions 17 - Regulations will be made to adapt “compulsory school age” in specified circumstances. One instance will be for summer born children. Is it appropriate to have this flexibility bout when children start and finish compulsory schooling?



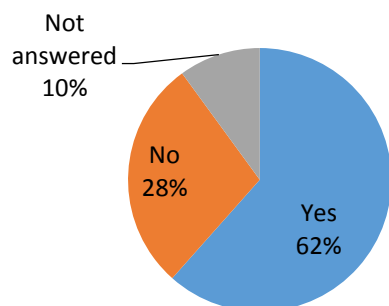
Question 18 – are there any circumstances that you may wish to see covered by the regulations on compulsory school age?



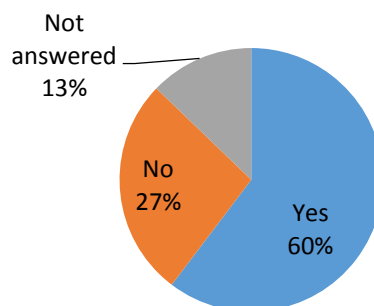
Question 19 –Do you think that this approach (to attendance) will be a constructive alternative to a fine, helping parents to develop strategies?



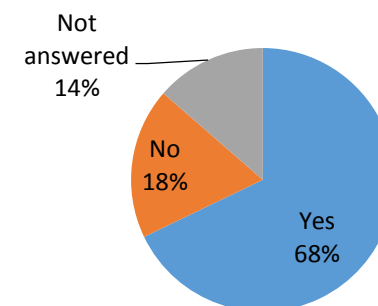
Question 20 - Should the Department make arrangements for children receiving home education to have access to school or college facilities for example, to be able to access laboratory facilities?



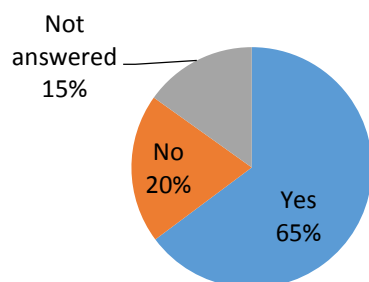
Question 21 – Are the assessment proposals sufficient for the Department to ensure that a suitable education is being provided to Home Educated children?



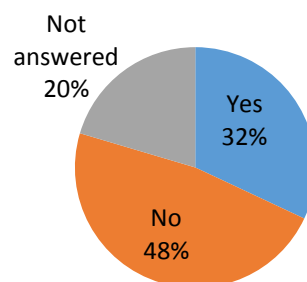
Question 22 - Do you agree that the Department should have an upper age of 21 to consider educational provision for those with additional educational needs?



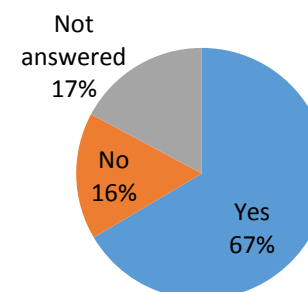
Question 24 - In some of the principles there is a reference to assessment and allocation of resources for those with additional educational needs; do you agree that these are appropriate?



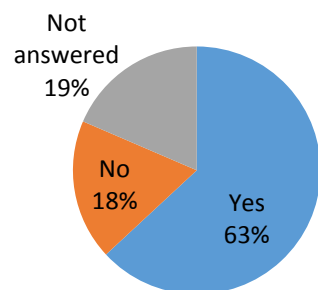
Question 25 – Other principles deal with parent and young person involvement in decision making; having full information and co-operation and communication around decisions. Is there anything else that should be considered?



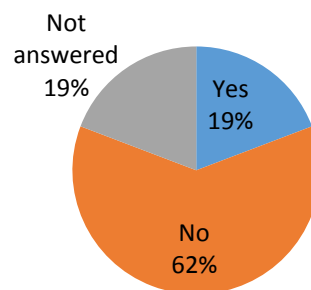
Question 26 – It is proposed that additional educational needs assessments can be requested by the Department and by parents of children in maintained schools and the Department may assess children such as those in Independent Schools or are Home Educated. Is this appropriate?



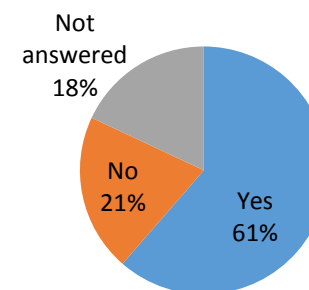
Question 27 – If a parent does want an assessment or alternatively does not want an assessment carrying out when proposed, then an appeal to a Tribunal is being suggested. Do you believe that this gives a parent sufficient remedy to challenge a decision being taken about their child, whether this is for an assessment or not?



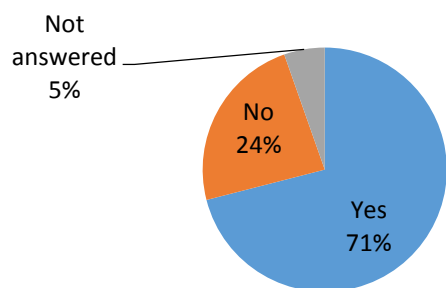
Question 28 – Are there any other criteria that should be used?



Question 29 – Do you believe that this will help to ensure rogue education institutions will be identified and if necessary closed down?



Question 30 - Do you consider that this registration is sufficient for parents to get some basic information about tutors available on the island?



APPENDIX 9:
28th June 2019 – Consultation Feedback

The New Education Bill

Closed 20 Mar 2019

Opened 29 Jan 2019

Contact

Andrew Shipley

(Legal and Administration Manager)

[Contact details redacted]

Feedback Updated 28 Jun 2019

We Asked

The Department of Education, Sport and Culture (DESC) consulted Isle of Man residents on the draft Education Bill. The purpose of the Bill is to modernise existing legislation and address matters which include:

- Considering fundamental principles of education in the Isle of Man and updating the duties of the DESC as well as developing provisions around financial assistance for pupils.
- Having a range of school types and considering regulation of catchment areas
- Inappropriate use of social media

- Being more flexible in pupils starting compulsory schooling and considering holidays during school terms
- Assessing work done by those of compulsory school age being educated otherwise
- Having principles underlying Additional Educational Needs and introducing an Additional Educational Need Code
- Assessing the educational provision of pre-school education
- Regulating educational institutions and private tutors
- Introducing an Educational Tribunal to deal with issues

You Said

In total there were 588 responses considered, the majority of which were submitted via the Consultation Hub and others which were either emailed in or submitted in hard copy. A range of views were expressed across the all questions.

We Did

Responses were analysed to see whether there were any dominant views, which are detailed in the overview document. These were then considered by the Department with suggestions being put forward for drafting instructions to revise the draft Bill.

Results Updated 28 Jun 2019

Files:

- Report on draft education bill consultation June 2019.pdf (<https://consult.gov.im/education-and-children/the-new-education-bill/results/reportondraftededucationbillconsultationjune2019.pdf>), 459.7 KB (PDF document)

Published Responses

View submitted responses (https://consult.gov.im/education-and-children/the-new-education-bill/consultation/published_select_respondent) where consent has been given to publish the response.

Overview

The Education Act 2001 has been the primary legislation governing what happens in education since it came into effect in 2004. It was necessary to make changes in 2009 and now the Department of Education, Sport and Culture believes the time is right to look at new legislation in some key areas. A consultation has occurred on principles and the Department is grateful for the feedback and comments of all who took part in that exercise.

In considering a new Education Bill, all areas of the present legislation have been considered and although some areas have seen significant changes proposed, there are areas which are unchanged. The primary focus of this consultation is on those aspects which have changed significantly although comments are most welcome on those aspects which have not changed.

This consultation is about the draft Education Bill which will update the Island's legislation to reflect changes in education practice both in the UK and other jurisdictions as well as seeking to be progressive where appropriate.

Following the consultation on principles, the Education Council will no longer exist along with the Religious Education Advisory Council. Religious Education will become a compulsory school subject and issues relating to assemblies will be dealt with in the Articles and Instruments of Government of schools.

We are looking for views from members of the public on:

- the major changes being proposed in the new Bill
- the proposed changes to amend or add to existing legislative provisions


Why We Are Consulting


The consultation will help the Department of Education, Sport and Culture understand views from members of the public on the changes that are being proposed in the new Education Bill.

What Happens Next

Consultation responses will be processed by the Department to inform the final contents of the Bill and feedback will be given.

Related

 The New Education Bill 2019 (https://consult.gov.im/education-and-children/the-new-education-bill/supporting_documents/EducationBill2019.pdf)
721.3 KB (PDF document)

 Major changes in the new Education Bill (/education-and-children/changes-new-education-bill-consultation/)

Areas


All Areas


Audiences

All residents

Interests

Education 16-19 Early years & primary education Secondary education Higher education

Share  (<http://twitter.com/share?url=https%3A%2F%2Fconsult.gov.im%2Feducation-and-children%2Fthe-new-education-bill%2F&text=Have+a+look+at+this+consultation+from+%23citizenspace%3A>)

 (<https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fconsult.gov.im%2Feducation-and-children%2Fthe-new-education-bill%2F>)

[Accessibility \(/accessibility_policy/\)](/accessibility_policy/) [Terms of Use \(/terms_and_conditions/\)](/terms_and_conditions/)

[Cookies \(/cookie_policy/\)](/cookie_policy/) [Privacy \(/privacy_policy/\)](/privacy_policy/) [Help / Feedback \(/support/\)](/support/)

Citizen Space (<http://www.citizenspace.com>) from Delib (<http://www.delib.net>)

APPENDIX 10:

**8th July 2019 – Correspondence with
Andrew Shipley, Legal and Administration
Manager, Department of Education Sport
and Culture regarding first draft Bill with
amendments**

Archived: 27 September 2019 13:04:26

From: [Andrew Shipley]

Sent: 08 July 2019 10:38:05

To: [Jonathan King](#)

Cc: [Graham Cregeen]

[Lawrie Hooper]

[Ann Corlett]

[Marlene Maska]

Subject: RE: Draft Education Bill - Confidential

Importance: Normal

Hello

The first draft was prepared by the Legislative Drafting Division and then there were various meetings with the Heads and Unions which led to changes. These changes have not been discussed with the Drafter and instructions will need to be drafted to account for the suggestions for changes that have been put forward. The Department wanted to give the Social Affairs Policy Review Committee the opportunity to see the changes that were being thought about and make suggestions as they felt appropriate at this stage.

Thank you

Andrew

Andrew Shipley

Legal and Administration Manager

Department of Education, Sport and Culture

Hamilton House, Peel Road

Douglas, Isle of Man

IM1 5EZ

[Contact details redacted]

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RAAUE: S'preevaadjagh yn chaghteraght post-l shoh chammah's coadany'n erbee currit marish as ta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-l shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydagh ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-l er son Rheyynn ny Boayrd Slattyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scrut leayr veih Reireyder y Rheyynn ny Boayrd Slattyssagh t'eh bentyn rish.

From: Jonathan King

Sent: 08 July 2019 10:03

To: Shipley, Andrew

Cc: Cregeen, Graham; Hooper, Lawrie (MHK); Corlett, Ann (MHK); Maska, Marlene

Subject: RE: Draft Education Bill - Confidential
Sensitivity: Confidential

Caution: This email is from an external sender.

Please take care before opening any attachments or following any links.

Dear Andrew

Thank you very much for sending this through. I will circulate it to the Social Affairs Policy Review Committee as you have asked.

I think it would be helpful to the Committee if you could please explain your comment "This is not a new second draft copy as drafting instructions will need to be sent to the Legislative Drafter to update the first draft"? If the text which you sent me on 4 July was not prepared by the Legislative Drafting Division on the instructions of the Department, how did it come into existence?

Thank you.

Jonathan

Jonathan King
Deputy Clerk of Tynwald and Clerk of the Legislative Council
Legislative Buildings, Douglas, Isle of Man IM1 3PW
[Contact details
redacted]

From: Shipley, Andrew
Sent: 04 July 2019 17:20
To: Jonathan King
Cc: Graham Cregeen; Hooper, Lawrie (MHK); Ann Corlett; Marlene Maska
Subject: Draft Education Bill - Confidential
Sensitivity: Confidential

FAO Members of the Social Affairs Policy Review Committee – Please forward for any comments from Members of the Committee.

Dear Members of the Social Affairs Policy Review Committee

The Department has asked me to forward a copy of the first draft Bill with amendments and inclusions following meetings with parties including Headteachers and most lately the teaching unions. This is not a new second draft copy as drafting instructions will need to be sent to the Legislative Drafter to update the first draft. The Department would appreciate any comments from the Committee by Friday 19 July 2019 on the first draft Bill amended to include suggestions in this revised document.

Thank you

Andrew

Andrew Shipley

Legal and Administration Manager

Department of Education, Sport and Culture
Hamilton House, Peel Road
Douglas, Isle of Man
IM1 5EZ

[Contact details redacted]

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APPENDIX 11:

**7th August 2019 – Correspondence with
Yvette Mellor, Director Strategy and
Corporate Services, Department of
Education Sport and Culture regarding
draft Bill**

Archived: 28 September 2019 13:58:11
From: [Yvette Mellor]
Sent: 07 August 2019 14:24:34
To: [Jonathan King]
Cc: [Andrew Shipley; [Name redacted]]
Subject: FW: Draft Education Bill - Confidential
Importance: Normal
Attachments:
[Draft Bill - 4 7 19 SAPRC version to review.docx](#) 

Good afternoon Jonathan

I believe you wrote to Andrew Shipley asking whether the Department would have any objections to the SAPRC including the attached version of the bill with their report that will be going to October Tynwald.

Andrew is on leave at the moment but the matter was discussed at the Department meeting this morning and it was agreed that the Department did not want the draft bill sent to the SAPRC to be included in their report as the final version that will hopefully enter the branches in October will in some parts be significantly different to this version.

Kind regards

Yvette

Yvette Mellor A.C.A.
Director of Strategy & Corporate Services
Department of Education, Sport and Culture
Hamilton House, Peel Road
Douglas, Isle of Man, IM1 5EZ

[Contact details redacted]

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From: Shipley, Andrew
Sent: 04 July 2019 17:20
To: King, Jonathan
Cc: Cregeen, Graham [Contact details redacted] ; Hooper, Lawrie (MHK) [Contact details redacted] ; Corlett, Ann (MHK) [Contact details redacted] ; Maska, Marlene [Contact details redacted]
Subject: Draft Education Bill - Confidential
Sensitivity: Confidential

FAO Members of the Social Affairs Policy Review Committee – Please forward for any comments from Members of the Committee.

Dear Members of the Social Affairs Policy Review Committee

The Department has asked me to forward a copy of the first draft Bill with amendments and inclusions following meetings with parties including Headteachers and most lately the teaching unions. This is not a new second draft copy as drafting instructions will need to be sent to the Legislative Drafter to update the first draft. The Department would appreciate any comments from the Committee by Friday 19 July 2019 on the first draft Bill amended to include suggestions in this revised document.

Thank you

Andrew

Andrew Shipley
Legal and Administration Manager

Department of Education, Sport and Culture
Hamilton House, Peel Road
Douglas, Isle of Man
IM1 5EZ

[Contact details redacted]

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RAAUE: S'preevaadjagh yn chaghteraght post-I shoh chammah's coadany'n erbee currit marish as ta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-I shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydagh ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-I er son Rheyynn ny Boayrd Slattyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scrut leayr veih Reireyder y Rheyynn ny Boayrd Slattyssagh t'eh bentyn rish.

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**WRITTEN EVIDENCE – TEACHERS,
FORMER TEACHERS AND TEACHING
UNIONS**

APPENDIX 12:

21st March 2019 – Submission from

Richard Tanton, Association of School and

College Leaders

Archived: 28 September 2019 14:02:48

From: [David Trace]

Sent: 21 March 2019 14:40:38

To: [committees](#)

Cc: [Richard Tanton] [Sue Moore]

Subject: Better outcomes for children and young people consultation

Response requested: Yes

Importance: Normal

Attachments:

[Isle of Man Education Bill - ASCL response - March 2019 Final.docx](#) 

Please find attached, as requested, a letter from the Association of School and College Leaders (ASCL) that was sent to The Department of Education, Sport and Culture in response to the consultation on The Education Bill.

Notwithstanding the Minister's written response to Tynwald this week, ASCL would not be in this position had we been engaged in genuine and meaningful dialogue with the Department.

We would be happy to supply additional information on request.

Yours sincerely

David Trace
ASCL Pay and Pensions Officer IOM

Consultation on the new Isle of Man Education Bill

Response of the Association of School and College Leaders

1. The Association of School and College Leaders (ASCL) represents nearly 19,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. On the Isle of Man specifically, we have 32 members, with leadership roles in all of the secondary schools.

Timing of the consultation period

3. Before addressing the detailed proposals in the Bill, we would like to make a general point about the rushed nature of this consultation process. Isle of Man government policy on consultations would indicate that the statutory period is six to twelve weeks, and that for major changes the consultation period should be towards the upper end of that range. Given that this is such a pivotal and significant piece of legislation, which will shape education policy and direction for a considerable time, this must surely constitute major change. A new Education Act will impact on generations of children and teachers on the island. It is ASCL's position that the consultation period is far too short. Seven weeks does not allow for genuine consultation and dialogue with lead professionals charged with delivering education on the island, or with ASCL as a professional association.
4. For this reason, ASCL calls for the Bill either to be withdrawn and re-tabled with a longer consultation period, or for the current consultation period to be extended.
5. Despite the extremely challenging timescale, we have been able to consult with a significant number of ASCL members on the Isle of Man. The rest of this response outlines their immediate concerns about a number of aspects of the Bill as it stands. If the consultation period were to be extended, we would be more than willing to consult further with members on other aspects of the Bill.

Language and tone

6. ASCL members on the island are concerned about the overall language and tone of the Bill, and what this implies about school and college leadership on the island. The last major Education Act was in 2001, so the Bill should set out the vision for the future education provision and reflect the views of those responsible with the significant task of leading the schools on the island. In too many instances the language and tone appear to be constraining rather than enabling, with the guidance feeling unnecessarily top-down.

7. The most striking example of this is Section 22, headed 'Failures by governors and head teachers'. The implication here that governors and/or head teachers will fail is unhelpful.

The undermining of head teachers

8. While this dismissive tone is concerning, even more worrying are a number of proposals which would explicitly undermine the professionalism and autonomy of head teachers. Section 22.6 states that 'an order under this section may dismiss a governor or head teacher who appears to the Department to be unable or unwilling to perform functions under or in accordance with this Act, the articles of government or a direction under this section'. This clause is extremely subjective. What criteria would the Department use to determine whether a head teacher 'appears' unable or unwilling to perform certain functions? We cannot see how these accords with existing capability and disciplinary policies, let alone the statutory employment law that applies to both employers and employees.
9. It is ASCL's view that Section 22 should be omitted. Head teachers are all too aware of their responsibilities and accountabilities. There should be clear and transparent policies in place that allow for head teacher performance to be professionally and objectively appraised on a regular basis. This would, in our view, render Clause 22 redundant.
10. In addition, Clause 49.4 mentions the right of the Department to 'dismiss a head teacher' on the 'grounds of performance failure'. The objective should be that there are sufficient checks and balances in place to allow for transparent, objective, professional appraisal of head teacher performance – not that the Department should be able to unilaterally dismiss a head teacher.
11. We would ask for confirmation with respect to clause 22.3. Does this authorise the department to override governors and headteachers, even for matters which have been delegated to them? If this is the case, where does this fit with autonomy.

Other issues

12. Below we outline a number of other issues raised by ASCL members on the Isle of Man. The short timescale means that this is by no means an exhaustive list of concerns, but it does at least give an indication of some of the key points raised.
13. Page 8 defines 'secondary education' as education for children between the ages of 11 and 16 inclusive. We would question where this sits in relation to 16-19 education, whether this provision is provided by schools or other providers? This is a significant change of definition from existing legislation which defines secondary education as full-time education for pupils up to the age of 19 and secondary schools as schools which provide for secondary education. Would the department have the authority to remove sixth form provision from schools without the need to consult with schools or to gain Tynwald's approval?
14. Clause 5 refers to the Minister meeting with the Chair of Governors (or other representative of the governing body) and outlines the purpose of that meeting. It doesn't, however, suggest that there is a *requirement* on the Minister to consult with such a representative, or commit the Minister to having due regard to their advice or concerns. Clause 8 requires the department to consult with other government departments but on safeguarding, there appears to be no requirements to consult with any other educational professionals.

15. Clause 6 details the nine principles of education on the Isle of Man. We have two questions or concerns about this section. Firstly, are these principles the result of consultation with school leaders, and are school leaders in agreement with them? And secondly, the language used is, in places, rather vague and open to interpretation. Point (e), for example, states that 'children, young persons, and their parents should have a reasonable degree of influence over the kind of education which is provided to them'. What is meant by a 'reasonable degree of influence'?
16. In Section 10, the analysis of the classification of schools refers to an all-through school, but does not mention special schools or PRUs. Are we to assume that no such provision will be made and, if so, on what grounds?
17. Section 19 states that 'an individual may not serve as a governor of any one school for a period or periods amounting in total to more than six years'. While we recognise that it is good practice to encourage people to move on to different governing roles, might this requirement after only six years cause a supply problem when schools are drawing from a relatively small pool of people?
18. Section 21 suggests that the majority of governors in every school will be appointed by the Department. This feels rather top-down and raises questions as to the independence of governors from the DESC. We also have concerns around the relative of opaqueness with respect to co-opted governors.
19. Section 22 also refers to governors. We have addressed this in part above in relation to head teachers. We would also question if governors would be comfortable with the supposition that they will fail in their duties and that could be removed if they 'appear to the Department' to be 'unable or unwilling' to perform their duties. Unlike head teachers, governors have no contract of employment with the Department. Would they have the right of appeal if they were to be removed under this proposed clause? Surely this would be a requirement of any process where a governor is 'dismissed'?
20. Section 29: The curriculum mentions Tynwald 'laying only'. Does this mean that schools will be required to submit their curricula to Tynwald for approval? How much autonomy does the Department envisage will head teachers and governors having in developing and delivering curricula that they consider the most beneficial and appropriate for the children in their school? Surely it is entirely inappropriate for Tynwald to be vetting every school's curriculum? Does this give the department complete control over the curriculum including public examinations? Would educational professionals be consulted with respect to curriculum and public examinations? Would schools maintain some autonomy in this regard, and will they be consulted?
21. Although the guidance in Clause 33 self-evidently useful, we would ask for a tighter definition of what would constitute 'reasonable force'. Without such detail being provided, our concern is that ASCL members may be vulnerable to legal process should they be in a specific position where they consider that restraint may be necessary. It should also be remembered that school leaders will have to offer guidance to their staff so that all are clear of the circumstances in which the 'restraining' of a pupil would be both legitimate and appropriate response to a specific circumstance. Parents and children also need to be made aware of the circumstances where the restraining of a pupil was legitimate and appropriate.
22. Section 41: Inappropriate use of social media is fast becoming an area of huge concern for school leaders. It is a far-reaching subject, with technological developments quickly outstripping available guidance. Although this section is useful, further consultation with school leaders is required to ensure the issues are fully explored. The phrase

‘reasonable steps’ is far too open to interpretation, and could leave school leaders vulnerable should a parent or child consider that the response of the head teacher falls short of their expectations.

23. Finally, we have a number of observations on behaviour and exclusions.
24. Section 30 implies that the Department, the governing body or the head teacher could be responsible for setting behaviour standards in different schools. Should this not be consistent? And if not, should it not be made clearer under what circumstances these different bodies would assume this responsibility? Section 31 states that ‘only the Department may exclude a pupil’. ASCL assumes that this is reflective of the current situation, and that the Bill is not proposing to take away the right of heads to exclude. We would welcome clarification on this.
25. Section 80(a), with respect to Additional Educational Needs, states that ‘the educational system should include and integrate children and young persons who present challenging behaviour or who have special needs as a result of their mental or physical condition’. ASCL supports this principle. However, the Bill appears to suggest that, when a child is excluded, the only available course of action is for that pupil to be moved to another mainstream school. We recognise, of course, that in some instances this is the right thing to do. There is nothing, however, in the Bill on what extra resources, if any, will be made available to ensure that this ‘managed move’ is successful. The Bill is also quiet on how the child’s needs will be assessed against what a possible new school can offer, and whether governors will have the opportunity to decline to admit an excluded child.
26. In addition, it is important to recognise that, on occasion, professional judgement concludes that a child’s specific needs cannot be addressed in a mainstream environment, and that placing that child in a mainstream school may present a significant health and safety risk to the child in question or to the broader school community. The Bill contains significant detail on the AEN Code, assessment of need, procedure and post-assessment reporting. We can, however, find little detail with respect to alternative provision, other than Clause 86, which states that ‘the Department may provide education at a secondary school or all-through school for individuals with additional educational needs’. ASCL is of the firm opinion that the Bill should be clearer about the nature and extent of alternative provision that is both available at present and will be made available in the future for children with additional educational needs.
27. Finally, ASCL notes that the Bill is primary legislation, and that it could be argued that much of the detail we call for in this response will be available through secondary legislation. However, given the extent and depth of our concerns on some of the proposals in the Bill, we would urge the Department to ensure that ASCL plays a significant role in the ongoing consultative process.
28. We are willing to work with the Department in whatever way is most helpful to ensure that this major, far-reaching piece of legislation achieves its goal of encouraging and enabling high quality education provision on the Isle of Man for generations to come.

Richard Tanton
Director of Member Support
Association of School and College Leaders
March 2019

APPENDIX 13:
25th March 2019 – Submission from
Peter Murcott

25th March: 2019

Mr David Cretney, MLC
Chairman
The Social Affairs Policy Review Committee
The Legislative Buildings
Douglas
IM1 3PW

Dear Mr Cretney

THE EDUCATION BILL 2019

Further to the invitation from the Social Affairs Policy Review Committee [“the Committee”] for comments on the above Bill, I enclose a submission, the substance of which I have also laid before the Department of Education & Children in response to its consultation.

It may be helpful if I outline my professional background and experience. I worked in the primary school sector in England for twenty-six years, during which I was the Head Teacher of a Primary School for just over thirteen years. I taught law at the Isle of Man College for fifteen years, in addition to two years’ part-time lecturing in law in Wales, prior to coming to the Island. Whilst at the Isle of Man College, and after I retired I was one of the trade union officials until 2010, and as such played a considerable part in drawing up and revising policy documents. In addition, I was the social legislation officer for the Trade Union Council from 2003 to 2008, as a result of which I was nominated for membership of the Employment Tribunal and the Work Permit Appeal Tribunal on which I sat for eleven years.

This response, therefore, draws upon my experience in several relevant fields, which I hope the Social Affairs Policy Review Committee will find helpful.

Yours sincerely

Peter Murcott
Enc.

A Submission to the Social Affairs Policy Review Committee Regarding the Education Bill 2019



1: Parental Wishes

1.1 Section 1(2) of the Education Act 2001 [“the Act”] says that –

“In the performance of its functions under this Act, the Department shall have regard to the general principle that, so far as is compatible with the provision of efficient education and the efficient use of resources, pupils are to be educated in accordance with the wishes of their parents.”

1.2 In contrast, clause 6(3)(e) of the Education Bill 2019 [“the Bill”], under the heading of “Principles of Education” says that –

“children, young persons and their parents should have a reasonable degree of influence over the kind of education which is provided to them”

1.3 This is less emphatic than the present provisions, and it seems to be at variance with clause 7(4)(d) under the heading “General Duty of Department”:

“to take account of the wishes of children, young persons and their parents”

1.4 It is submitted that it would be preferable to retain the current wording in section 1(2) of the Act

2: Clause 12: Dispute Resolution

1.1 The principles in this clause are wholeheartedly supported. There are provisions in the Bill for appeals, and one assumes that the principles of clause 12 will apply to them.

1.2 It is submitted that

- (i) there are other areas where an appeal ought to be granted, which are identified below; and
- (ii) wherever possible, the proposed Education Tribunal should be used for the adjudication of an appeal.

1.3 The reason is that the majority of the issues will raise questions requiring expertise in education. The tribunals system is specially suited for this.

3: School Categories

3.1 Contracted Schools (clause 13)

3.1.1. There is a provision for the establishment of “contracted schools” whereby the curriculum is provided, or the management functions are performed in accordance with a contract entered into by the Department.

3.1.2 There is no such school at present listed in the Schedules.

3.1.3 A “contracted” school receives a specific mention along with “maintained schools” in the following provisions, but not elsewhere:-

- (i) clause 16 (“Term Dates”);
- (ii) clause 17(d) (“Establishment: closure and alteration of schools”);
- (iii) clause 38 (“Exclusion of Members of Public from Premises”);
- (iv) clause 39 (“Members of Public: Disorderly Conduct”);
- (v) clause 41 (“Social Media”).

3.1.4 Question: “Is a “contracted” school exempted from the other provisions?”

3.2 Maintained “Faith” Schools (clause 12)

3.2.1 Would not these be better described as “Maintained Religious Schools” as the Bill elsewhere speaks of education in religion and not of education in “faith”?

3.2.2 This would require an amendment to -

- (i) Clause 18(3);
- (ii) Clause 20(2);
- (iii) Clause 21(4);
- (iv) Clause 25 – The heading: “Maintained Faith School”;
- (v) Clause 25(1) and the subtitle; and
- (vi) Clause 28(3).

3.3 The use of the word “school” (Clauses 16-49)

3.3.1 Clauses 16-49 of the Bill usually refer to “maintained” schools, occasionally to “maintained and contracted” schools”, and in other places to “schools” only.

The relevant clauses are as follows. Bold type is used where “school” alone appears: -

- (i) Clause 16: “maintained & contracted schools” (“Term Dates”);
- (ii) Clause 18: “Premises of Maintained Schools”;
- (iii) Clause 19: “Articles of Government” “For each school...”;**
- (iv) Clause 20: “Model instruments of Government” -
 - Sub-clause (1) “primary and secondary schools”**
 - Sub-clause (2) “maintained primary and secondary schools”;
- (v) Clause 22: (1) “maintained school”;
(2) “maintained school”;
- (vi) Clause 23 “Delegated financial management” “maintained secondary school”
- (vii) Clause 24 “Charges etc.” “maintained school”;
- (viii) Clause 26: “Reports to Parents” “maintained schools”;
- (ix) Clause 27: (1) Information to Government “...of a school”;**
(2) “maintained school”.
- (x) Clause 28: “Employment of Teachers etc.”
(1) ...in maintained schools;
(2)...maintained faith school;
- (xi) Clause 29: “The curriculum” “maintained schools”.
- (xii) Clause 30: “School rules “..a maintained school”.
- (xiii) Clause 31: “Suspension and Exclusion” “each maintained school”.
- (xiv) Clause 32: “Corporal punishment” “No school...”**
- (xv) Clause 33(1)(d): “Restraining pupils” “...at the school”.**
- (xvi) Clause 34(2) “Confiscation” “..of a school”;**
- (xvii) Clause 36(1) “Offensive weapons” “..member of staff at a school”;**
- (xviii) Clause 37(1) “Behaviour Outside School Premises” “..teacher of a school”.**
- (xix) Clause 37(2) “Behaviour Outside School Premises” “..each maintained school”.
- (xx) Clause 38(1) “Members of Public Excluded” “maintained or contracted school”.
- (xxi) Clause 39 “Disorderly conduct” – “maintained or contracted school.”
- (xxii) Clause 41 “Social Media” – “maintained or contracted school”.
- (xxiii) Clause 42: “Catchment Areas” - “maintained school”.
- (xxiv) Clause 43(1): Registers of pupils: “each school”.**
- (xxv) Clause 44(1)(a) “Admissions to Schools”- “...at a school” and throughout this clause.**
- (xxvi) Clause 45(1): “Inspections”- “maintained schools”.
- (xxvii) Clause 46(1) “...each maintained school”.
- (xxviii) Clause 47: “Interim and additional inspections” “..of maintained schools”.
- (xxix) Clause 48(2)(a) “Inspections: supplementary” – “authorise persons to enter a school”**
- (xxx) Clause 49(1)(b)/(3)/(4) : “Enforcement” – “school”.**

3.3.2 Question:

Does the word “school” (without the adjective “maintained”) mean that the provision applies to *any* school, independent or otherwise? (Note: the definition of “independent schools” in clause 50 and of a “school” in clause 10(1)(e)).

If so -

- (i) Does clause 19, for instance, apply to an independent school?
- (ii) Do the clauses with the word “school” apply to contracted schools, or are they confined to those clauses that specifically mention them? See: paragraph 2.1.3 above.

4: Failures by Governors and Head Teachers (clause 22)

- 4.1 This clause creates a power to the Department to give directions.
- 4.2 One of the circumstances in which it may be exercised is to be found in clause 22(1)(a), which allows the Department to give directions to a governing body or the head teacher of a maintained school where it is satisfied that the governing body or head has acted or is proposing to act “unreasonably”.
- 4.3 Whilst “unreasonably” is a useful word because of its flexibility, it is not without its problems, not least in establishing where the limits of the band of reasonableness lie. This (and the other powers in clause 22) surely highlights the need for a right of appeal to the Education Tribunal against the Department’s decision, in view of the Department’s powers under clause 22(6) where there is non-compliance.
- 4.4 There is a power under clause 22(5) to remove a governor or governors “who appear to the Department to be unable or unwilling to perform their functions”. Again there should be provisions for a right of an appeal to the Education Tribunal against such a decision.
- 4.5 In contrast, with regard to independent schools, there is a right of an appeal to the Education Tribunal by clause 57(5) over a complaint, or by clause 59(3)(b) against the Department’s decision.
- 4.6 In fairness, it is recommended that there ought to be comparable provisions for an appeal by head teachers and governors of maintained schools to the Education Tribunal.**

5: Church Contributions to Maintained “Faith” Schools (clause 25)

- 5.1. Clause 25(1) refers to “significant development or other capital costs”. It is very unclear what this means or would include.
- 5.2 The figure of a 50% contribution (in sub-clause (2)) is very significantly more than that which existed in England when I was the Headmaster of a Church of England (Aided) Primary School.
- 5.3 In my experience in England, the church authorities through the Governing Body of a church aided school were required to make a 15% contribution to the cost of all exterior maintenance of the building and the cost of any additional building work.
- 5.4 Thus although I agree with the principle of a financial contribution by a maintained church school, it is respectfully recommended that -**
- (i) the wording of clause 25(1) needs to be revisited;**
 - (ii) the 50% contribution in sub-clause (2) is too high, especially as a starting point; and**
 - (iii) the financial responsibility of the church should be confined to a percentage of the exterior maintenance of the building, plus that of any additional building work.**

6: The Curriculum (clause 29)

6.1 Clause 2(a): Education in Religion, Ethics and Values

- 6.1.1. This is the first time since the Elementary Education Act 1872 that a statute has not contained specific and detailed provisions on religious instruction in schools.
- 6.1.2 From 1872 to 1949 Religious Instruction was to be conducted in accordance with the following provision (see: section 7(4) of the Elementary Education Act 1872): -

“...In every public elementary school... provision shall be made in the timetable for instruction in religious subjects, and for the reading of the Holy Bible accompanied by such explanation thereof and instruction therefrom as may be suited to the capacities of children”

- 6.1.3 The Education Act 1921 created the Religious Instruction Advisory Committee to produce syllabi, and give general advice on the teaching of the Christian faith.
- 6.1.4 Interestingly, on Wednesday, May 3rd: 1922, *Mona’s Herald* reported that the Religious Instruction Advisory Committee had unanimously recommended to the Central Education Authority a syllabus for the use in schools controlled by the Authority, which included a

recommendation that the hymn book for use in Infants' Schools should be *Child Songs* by Carey Bonner.² (A book that was still in print up to the 1970s, and from which hymns were sung by the infants at my last school until 1990.)

- 6.1.5 It is very clear from the debate on June 8th: 1948 on the Education Act 1949's provisions for Religious Instruction (see: *Debates of Tynwald* for 1948, pp.838-839) that the House of Keys wanted to maintain completely Christian religious instruction and assemblies.
- 6.1.6 It was only by the Education Act 2001 that a new and somewhat impenetrable formula was adopted from the English Education Reform Act 1988 of "wholly or mainly of a broadly Christian character" education and worship.
- 6.1.7 This represented a turning point; yet there were still the same detailed provisions about the rights of withdrawal for both staff and children – the decision being taken by their parents.
- 6.1.8 Clause 2(a) of the Education Bill 2019 speaks of "avoiding proselytising for any particular religion or religious approach".
- 6.1.9 With respect, no Christian, who understands the faith, would ever do this, if it means trying to make someone into a Christian. All that can and should be done is to provide the children with Christian teaching that enables them to understand what Christianity is.
- 6.1.10 The absence of the usual detailed clauses in the Education Bill, together with the unnecessary reference to "proselytising", implies a further departure from the Christian faith in Manx schools (save for those that are still church connected). This is to be very much regretted. Society is falling apart in the British Isles. It is ironical, then, that there should be a further reduction in schools of the Christian faith which has underpinned the Island for a millennium or more.
- 6.1.11 **Therefore I would respectfully recommend a return to the Christian principles that were clearly intended by the Education Act 1949, as explained in the June, 1948 debate.**

6.2 Clause 29(2)(c): Age Appropriate Education about Sex and Values

- 6.2.1 The very broad nature of clause 29(2)(c) makes it impossible to make a response beyond a general statement that it is regrettable that there is no detail whatsoever as to what "Age appropriate education in sex and values" entails.
- 6.2.2. Thus there is no information about –
 - (i) at what age this would commence;
 - (ii) what the content would be;
 - (iii) whether parents would have a right of withdrawal of their children;
 - (iv) whether teachers would have a comparable right as they do regarding religious instruction;
 - (v) what is meant by "relationships",and so on.
- 6.2.3. This means that the content will be brought into law by way of delegated legislation which is approved at just one sitting, unlike the six legislative stages (three in each Branch of Tynwald) for primary legislation. Moreover, regulations are not usually put out to consultation.
- 6.2.4 Given that it is impossible to comment on the content of something that not specified, the following remarks are of a general nature.
- 6.2.5 This whole area is a veritable minefield. In Britain, the Legislature, until very recently, declined to introduce any such legislation. At the very least, one would have thought that the Island would follow its traditional policy of waiting and seeing how the English legislation operates, since it will not come into force until September: 2020, before considering whether or not to follow it.
- 6.2.6 **In any event**, the concept ("sex and relationships") goes against everything said in the past few decades about education. Any class includes a wide range of abilities and aptitudes, not to mention maturity. A particular emphasis of educational thinking has taken this into account in structuring the teaching, especially where there is an age range in a class of two or more years.
- 6.2.7 The whole area is highly controversial and cuts directly across religious beliefs which are one of the protected characteristics under the Equality Act.

6.2.8 Furthermore, there are very worrying press reports from Britain of the type of material already entering even primary schools. It is very difficult to see how this equates with the current emphasis on the safeguarding of children.

6.2.9 It is very strongly recommended that the proposal to make “age appropriate education on sex and values” compulsory be abandoned.

6.2.10 Nothing in the foregoing comments relates to the rest of the proposal of clause 29(2)(c), that is, “health and lifestyle, and economic and other well being”, provided none of these areas will be interpreted to include that which this response opposes.

7: Exercising Functions as a Head Teacher etc. (clause 32(2))

7.1 This sub-clause says: “Exercising functions as a head teacher or other members of staff of a school is not in itself a defence to a charge of assault”.

7.2 This needs to be read alongside the following provisions: -

- (i) clause 33: “Restraining pupils” (though actions by “other members of staff” are *not* included);
- (ii) clause 34: “Confiscation” (which *does* include actions by “other members of staff”); and
- (iii) clause 36: “Offensive weapons” (which again *does* include actions by “other members of staff”).

7.3 In each case, the employees will surely be “exercising functions” in their capacity either “as a head teacher, teacher or other members of staff”. Indeed, it is the very fact of their being an employee with various functions to perform that enables them to take certain steps, using reasonable force if needs be, in the specified circumstances. Were a comparable action to be taken by a non-employee, he or she would not have the defence of reasonable force against a charge of an assault, since a non-employee has no function to exercise in a school.

7.4 Question: “In the light of this, why does clause 32(2) say that “Exercising functions as a head teacher, teacher or other member of staff is not in itself a defence to a charge of assault? Does this not conflict with, and possibly undermine, clauses 33, 34 & 36?”

8: Clauses 33, 34, 36 & 37: The References to Staff Members

8.1 Whereas clause 32(2) refers to “a head teacher, teacher or other member of staff”, clause 33 (restraining pupils) refers to “a teacher” only.

8.2 Clause 34(4) (“confiscation”) refers to “a teacher or other member of staff”.

8.3 Clause 36(2) (“Offensive weapons”) confines the powers to a head teacher, or to a teacher or other member of staff authorised by the head teacher.

8.4 Clause 37(3) (“Behaviour outside school premises”) says that “teacher” includes “another member of staff”.

8.5 Questions:

- (i) **Is clause 33 confined to “a teacher”, that is, someone other than the head teacher?**
- (ii) **Why does the exercise of the powers under clause 36 alone have to be authorised by the head teacher?**

9: Clauses 36(3) & (4): Offensive Weapons - Searches

9.1 Clause 36(3) & (4) raise the issue of someone who “self-identifies” as a person of the opposite sex.

9.2 Presumably, this means that, in each case, a person physically of one sex, purely on his or her own say so, “identifies” with the other.

9.3 This raises the controversial question of the distinction between “sex” and “gender”; and it may be noted that whereas there are just two sexes, there are said to be more than two “genders” - for instance, “non binary” and “gender fluid”, for which no provision is made.

9.4 This raises the question could a person who self-declares as “gender fluid” or “non-gender” expect the searcher to be likewise?

9.5 In contrast, the person making the search is described as either a “man” or a “woman”.

9.6 Thus according to the provision, a woman could be searching a physical male for an offensive weapon, and a man could be searching a physical female.

9.6 The danger of a false accusation being levelled against a searcher is surely obvious.

9.7 Ought searchers to be exposed to this and to other kinds of potential danger? The answer is surely “No”.

9.8 In determining the true answer, the following points are pertinent: -

- (i) rights pushed too far lead to wrongs;
- (ii) equal rights of necessity require *the balancing of competing interests*, which includes the object to be achieved, as well as the means of achieving it;
- (iii) there are several “protected characteristics” under the Equality Act; yet only one aspect of one of them is singled out for special treatment;
- (iv) for instance, it is equally arguable that a person of a particular religious belief, or of no belief at all (for that is what legally constitutes “religion”) could contend that the searcher should have the same belief or non-belief;
- (v) the same argument could apply to disability, race, and so on;
- (vi) of all the possible “protected characteristics” – and there are many, one that is “self-identified”, as opposed to those that can be objectively established, is easy to assert and hard to disprove;
- (vii) in short, the provision does not meet the canons either of fairness, or of equality, or of common sense.

9.9 Unless this provision for the making of searches is to be abandoned altogether as totally unworkable, the only answer is for a physical male to be searched by a man, and for a physical female to be searched by a woman, full stop!

10: Clauses 38 & 39: Offences relating to Premises

10.1: A Failure to Comply with an Order to Leave (clause 38)

10.1.1 Clause 38(1) creates an offence where a person fails to comply with an order of the head teacher of a maintained or a contracted school to leave the school premises.

10.1.2 The provision is silent as when or why the order may be made.

10.1.3 The provision does not apply to members of the school staff, or to registered pupils who have not been suspended.

10.1.4 In contrast, section 21 of the Education Act 2001 excludes persons employed by, or appointed, or authorised by the Department of Education, or members of the Governing Body from the provision.

10.1.5 In view of this, clause 38 at present could permit the ordering of any of the persons mentioned in paragraph 10.1.4 above off the p[remises, including an inspector; though this could lead to a charge of “intentionally obstructing an inspector” under clause 48.

10.1.6 It would appear that this clause requires further consideration.

10.2: Disorderly Conduct (clause 39)

10.2.1 In contrast the forbidden conduct is defined in this clause, albeit slightly differently from the existing law.

10.2.2. The penalty is identical with that of clause 38 – a maximum of a level 4 fine (currently £5,000).

10.2.3 Given that the impugned conduct for a clause 39 offence is not only specified, but is more serious than that of clause 38, which is simply a failure to leave for whatever reason, ought not the maximum penalty for a clause 38 offence to be less than that of a clause 39 offence?

11: Criminal Penalties

11.1 The Education Bill 2019

11.1.1. The penalty in brackets refers to the comparable one in the Education Act 2011 as amended by the Interpretation Act 2015:

(i) Clause 38: Persons ordered to leave the school premises - a failure to comply .	(£2,000) £5,000
(ii) Clause 39: Violent or disorderly conduct on school premises, obscene, indecent, threatening language	(£2,000) £5,000
(iii) Clauses 48: Inspections - intentional obstruction	(Fine only £5,000) £10,000 fine/6 months' imprisonment
(iv) Clause 49: Enforcement - intentional obstruction	(Fine only £5,000) £10,000 fine/6 months' imprisonment
(v) Clause 55: Operating an unregistered independent school.	(£5,000) £5,000
(vi) Clause 59: Operating a deregistered school	(£5,000) £5,000
(vii) Clause 60(4): the intentional obstruction of an authorised person making an inspection of an independent school regarding the children's welfare.	(Fine only: £2,000) 6 months' imprisonment/ £10,000 fine
(viii) Clause 66: Failure to secure child's regular attendance	(£2,000) £5,000
(ix) Clause 68: A failure without a reasonable excuse to abide by an order to attend a guidance course. (A new provision.)	(Not applicable) 6 months' imprisonment / £10,000 fine
(x) Clause 74(1) A failure to comply with a school attendance order.	(£2,000) 6 months' imprisonment/£10,000 fine
(xi) Clause 95(2): Unrecognised awards, taken to be a degree or purports to be a degree etc.	(Currently the same) £10,000 /6 months' imprisonment

11.1.2 **Note: there are two new maximum penalties of 6 months' imprisonment/£10,000 fine:**

- (i) **The intentional obstruction of an inspection of an educational institution (clause 113(6));**
- (ii) **The provision of false information by a private tutor (clause 120(4)).**

11.1.3 The comparable penalties under the Education Act 2001 are shown on the next page.

11.2 The Education Act 2001

Education Act 2001	Penalty Prior to Jan 1st 2018 in brackets
(i) Section 21 Persons ordered to leave the school premises - a failure to comply	(£1,000) £2,000
(ii) Section 22 Violent, quarrelsome, indecent or disorderly conduct or profane, obscene, indecent or threatening language	(£1,000) £2,000
(iii) & (iv) Section 51(5) This is the penalty for a number of offences in relation to a school inspection.	(£2,500) £5,000
(v) Section 42(5) Operating an unregistered independent school.	(£2,500) £5000
(vi) Section 45 Operating a deregistered independent school.	(£2,500) £5,000
(vii) Section 48(9) Intentional obstruction of a person Inspecting an independent school regarding welfare.	(£1,000) £2,000
(viii) Section 29(1) Failure to secure child's regular attendance	(£1,000) £2,000
(ix) NO EQUIVALENT PROVISION	
(x) Section 28(1) School Attendance Order	(£1,000) £2,000
(xi) Section 52 Unrecognised awards, taken to be a degree or purports to be a degree etc.	(£5,000/6 mths) £10,000/6 months' imprisonment

11.2.1 The penalty in brackets operated between 2001 and 2018. On January 1st: 2018 all maximum penalties were increased by the operation of the Interpretation Act 2015.

11.2.3 The following table shows how the various penalties increased and how some of them would increase further under the Education Bill 2019 as currently drafted: -

	<u>2001-2018</u>	<u>January 1st: 2018</u>	<u>The Proposed New Maximum</u>
(i)	£1,000	£2,000	£5,000
(ii)	£1,000	£2,000	£5,000
(iii)	£2,500	£5,000	£10,000/6 months' imprisonment
(iv)	£2,500	£5,000	£10,000/6 months' imprisonment
(v)	£1,000	£2,000	£10,000/6 months' imprisonment
(vi)	£2,500	£5,000	£5,000
(vii)	£2,500	£5,000	£5,000
(viii)	£1,000	£2,000	£5,000
(ix)	No equivalent provision		£10,000/6 months' imprisonment
(x)	£1,000	£2,000	£10,000/6 months' imprisonment
(xi)	£5,000/	£10,000/6 months' imprisonment	£10,000/6 months' imprisonment
6	months' imprisonment		

11.2.4 **Questions:**

- (i) Why will the fines of categories (i) to (v) & (viii & x) increase dramatically, whilst those in (vi) & (vii) (concerning unregistered private schools) remain at the 2018 level?
- (ii) Are the additional penalties of imprisonment justified?

11.2.5 **It is recommended that all the proposed increases to the financial and other penalties be closely re-examined and that, at the very least, the *new* provisions for imprisonment be removed. (This would leave the existing provision in the Education Act 2001, concerning unauthorised degrees).**

12: Inspections

12.1: A Preliminary Point: Contracted Schools

12.1.1 Whereas clauses 38 & 39 refer to “maintained and contracted schools”, clauses 45(1), 46(1) and 47(1) refer to “maintained schools” only.

12.1.2 Clause 50 makes it clear that an “independent school” means a school which is not a maintained or a contracted school.

12.1.3 Neither is a “contracted school” covered by the provisions for an “educational institution”, since clause 107(a) says that an “educational institution” provides education in the course of a business other than a school.

12.1.4 Question: “Is the above omission an oversight?”

12.2 Clause 47: Interim and additional inspections

There is a hyphen at the end of line two, which could mean that there are further provisions, though there are none in the Bill. Alternately, is this simply a typing error and that a full stop was intended?

12.3 Clauses 48/96/98 & 113: Proof of Identity & Authority

12.3.1 It makes sense to consider the above clauses together as they all raise the same point.

12.3.2 Although there is a provision in clause 60(3)(c) that a person inspecting the premises (in connection with children’s welfare in independent schools) must produce on request identification and proof of authority, there is no comparable provision in –

- (i) clause 48: inspections of maintained schools;
- (ii) clause 96(1)(c): a person entering premises further to an investigation concerning the suspected awarding of unrecognised degrees or awards;
- (iii) clause 98: inspections in connection with Early Year Providers; or in
- (iv) clause 113: inspections of Educational Institutions.

12.3.3. **It is recommended that a provision is inserted in the relevant clauses, comparable to that of clause 60(3)(c) (proof of identity and authority).**

13: Clause 48: Inspections: Seizure of Records

13.1 Clause 48(2)(c) deals with the Department authorising the seizure of records in the course of inspections.

13.2 It is far from clear why there should be such a provision.

13.3 For instance, clause 27(1) (“Information to government”) says that “The Department may require the head teacher, or governing body of a school to provide information about pupils and activities at the school”; whilst clause 27(2) provides for the Department to specify the kind of records that it requires to be kept.

13.4 Furthermore, whilst there are comparable provisions in clause 56 about the provision of information by independent schools, there is no provision for the seizure of records, either by way of clause 56, or under clause 57 in relation to a complaint.

13.5 The seizure of records is normally a feature of a police investigation into an alleged offence for which specific provisions are made in the appropriate legislation.

13.6 The only other example that this writer has come across is of the recognition of *Anton Piller* orders by the civil courts in relation to a civil action over an alleged breach of copyright.

13.7 On the face of it, there appears to be no need whatsoever for this provision. Indeed, by its very nature, it is potentially fraught with danger.

14: Clauses 48, 60 & 113: Legally Privileged Material

14.1 It is notable that, except for clause 96(2), there is no provision to protect legally privileged material in either clause 48 or clause 113.

14.2 It might be noted also that clause 60 (“Welfare of Children”) (where there are no powers of seizure), which grants the power to *inspect* records (clause 60(3)(b)) does not exempt legally privileged material, either.

14.3 None of these powers of seizure requires a magistrate’s warrant, such as is required under section 51(7) of the Education Act 2001 for the entry by force into a building.

14.4 Neither does the Bill indicate that the person making the seizure must have reasonable grounds for suspecting that the material is evidence, or may contain evidence, relevant to the inspection.

14.5 The powers of seizing property are usually confined to police officers, who operate under clear statutory provisions as to the circumstances in which they may be undertaken, and their grounds for doing so. The police also act under codes of conduct.

14.6 It is strongly recommended that

(i) the powers of seizure by authorised persons under this Bill *should be removed*, and that the proper people for undertaking this activity should be police officers; and

(ii) in any event for legally privileged material to be exempted in each case from seizure or inspection.

15: Clauses 48 & 49: the Offence of Obstruction

15.1 There are comparable provisions for the intentional obstruction of the performance of a function by an inspector in the existing legislation.

15.2 However, the proposed penalty is totally disproportionate – a maximum of 6 months imprisonment or a level 5 fine (£10,000). Under section 49(9) of the Education Act 2001 the maximum penalty since January 1st: 2018 has been a fine of £2,000.

15.3 This writer would contend that there is *no need for a criminal penalty at all*, either here, or in clause 49(2) of the Bill, which has a comparable penalty for the intentional obstruction of the enforcement of a decision about a school. The Department already has adequate contractual powers of the suspension of an employee and of a possible dismissal for gross misconduct.

15.4 Your attention is again drawn to clause 38(1), which allows a head teacher to order a person (other than a member of staff or a registered unsuspended pupil) to leave the school premises, and which creates an offence for a failure to comply.

15.5 Thus under clause 38(1) a head teacher could lawfully order an inspector, who sought to seize school records, off the premises; but that same head teacher could be charged with intentional obstruction of an inspector under clause 48(3) if he or she did so.

15.6 The need for a re-consideration and a revision of both provisions is self-evident.

16: Defences to a Charge of an Intentional Obstruction of an Inspector

16.1 The offence of intentionally obstructing an inspector is a serious one for it potentially carries a prison sentence.

16.2 The offence occurs not only with regard to maintained schools (clause 48), but with regard to independent schools in connection with the children’s welfare (clause 60(4)), and to educational institutions (clause 113(6)).

16.3 It is noticeable that there is no defence, such as “reasonable excuse”, such as is available under clause 68(3) for a failure to attend a guidance course on school attendance. Yet the expression “intentionally obstructs” is potentially very wide ranging.

16.4 It is strongly recommended that -

(i) there should at least be a defence of “lawful excuse” or “reasonable cause”; and that

(ii) consideration should be given to whether there should be a criminal penalty at all, and if so, what it should be.

17: School Attendance (Clauses 66, 68, 74)

17.1 This has historically always been a contentious issue. Under the present law, the maximum penalty for any offence in relation to it is £2,000 (as from January 1st: 2018).

17.2 Clause 66(1) increases the maximum fine to £5,000.

17.3 As an alternative to a fine, clause 68(1) enables a court to make an order for an attendance a Guidance Course”. Although this is welcomed, the penalty for failing non-compliance under clause 68(3) without reasonable excuse is *not* supported. Six months’ imprisonment is totally inappropriate and the fine of £10,000 is grossly disproportionate.

17.4 Regarding clause 74(1) (“contravention of a school attendance order”), the penalty of 6 months’ imprisonment is again totally inappropriate and the £10,000 fine is grossly disproportionate, more especially since it has been £2,000 since January 1st: 2018.

17.5: In evaluating these penalties, a necessary question is this: “What exactly is one seeking to achieve by the draconian penalties, such as those in clauses 68(3) and 74(1)?” If a parent is sent to prison, the likelihood is that –

- (i) the parent may lose his or her job;
- (ii) this may lead to the family home being re-possessed;
- (iii) the child will undoubtedly be very distressed and may have to be taken into care;
- (iv) the family life will never be the same again; and
- (v) the whole scenario would inevitably have an adverse effect upon the child’s education.

17.6 It is submitted that since the penalties were increased only in January, 2018, they should remain as they are.

18: School Attendance (Clause 69) A Civil Penalty

18.1 Although this provides for a fixed penalty to be issued, which is modest in comparison to the fines, there should be a provision for an appeal.

18.2 The point is that, however attractive this may seem, in principle a fixed penalty makes a person judge and jury in his own cause; and an appeal to an independent adjudicator is entirely in accord with settled legal principles.

19: Clause 98: Early Years Providers – An Appeal

19.1 Clause 98(6)(a)-(f) permits the Department to take a number of steps following the inspector’s report.

19.2 Although there is a provision under clause 99(5) for the early years provider (the proprietor) to refer a *complaint* to the Education Tribunal, there is no such right of appeal where the Department acts under clause 98(6)(a)-(f) as a result of an inspector’s report.

19.3 Clause 99 appears to cover a different set of circumstances as sub-clause (1) speaks of the Department serving the early years provider with a complaint notice “to the effect that the Department believes that there are likely to be issues in relation to” the matters in (a) to (d).

19.4 On the other hand, an inspector’s report under clause 98 relates to issues that the inspector *has actually found to exist*.

19.5 In practice, is there any real difference between the outcome following an inspection and that following a complaint?

19.6 It is recommended, therefore, that -

(i) early years providers ought similarly to have the right of appeal to an Education Tribunal against a Departmental decision under clause 98; and that

- (ii) the same principles should apply to a maintained school concerning an action plan following an inspection under clause 49, more especially since there are potentially severe penalties for “an intentional obstruction”.

20: In Conclusion

Time prevents any further submission on other parts of the Bill, save for a single comment on clause 120(4). On the face of it, it appears to be one of strict liability. After all, the tutor may inadvertently provide false information. Surely there *at least* needs to be a mention of the mental element of the accused, such as “intentionally” or “recklessly” and a defence to the charge.

Secondly, is the offence, as worded, more serious than operating without being registered at all, which carries a maximum penalty of £5,000?

Peter Murcott

[Address redacted]

Monday, March 25th: 2019

APPENDIX 14:
1st April 2019 – Submission from Darren
Northcott, NASUWT

Tynwald Social Affairs Committee

Education Bill Consultation

1 April 2019

1. The NASUWT welcomes the opportunity to submit comments to the Tynwald Social Affairs Committee on the Department of Education, Sport and Culture's (DESC's) draft Education Bill.
2. The NASUWT is the teachers' union.

GENERAL COMMENTS

3. The NASUWT is clear that the current legislative framework for education in the Isle of Man is outmoded in many essential respects and requires reform to ensure that teachers, headteachers and the wider school workforce can continue to provide high-quality learning experiences for all children and young people.
4. However, while it is important to ensure that the legislative framework is fit for purpose and addresses the current challenges facing the education system, it is equally essential that the development and implementation of policy within this framework is also conducted on an effective basis.
5. For example, the Union has continued to express its disappointment that DESC has yet to establish a comprehensive, system-wide curriculum framework, notwithstanding the fact that the Education Act 2001 permits it to do so. The absence of such a framework continues to have profound implications for the transition of pupils from primary to secondary education and impedes the ability of all children and young people to

access their universal curricular entitlements, regardless of the school they happen to attend or where they happen to live. This shortcoming in the Island's education system is, therefore, the result of a failure to take advantage of legislative provisions rather than their absence.

6. It is, therefore, essential that DESC not only addresses issues in respect of the legal framework underpinning the education system but also ensures that legislative provisions are used purposefully to allow children and young people to continue to access high-quality learning opportunities.
7. Effective policy development and implementation require meaningful consultation with the school workforce. For this reason, the NASUWT must continue to insist that DESC moves to establish arrangements for engagement with the Union through the implementation of an effective recognition agreement. Such an agreement would ensure that the views and interests of teachers are reflected fully in the development of policy. The NASUWT looks forward to working with DESC to this end.

SPECIFIC COMMENTS

Principles and duties

8. The NASUWT welcomes the inclusion in section 6 of a range of fundamental principles of education to which DESC must have regard in the discharge of its legislative functions.
9. The Union believes that education is properly regarded as a public good and human right.¹ This conceptualisation of education is reflected in important international legal frameworks, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child (UNCRC).

¹ NASUWT (2013). *Maintaining world class schools*. Available at: (<https://www.nasuwt.org.uk/uploads/assets/uploaded/5dc40a68-85dd-4e47-9ebb018e40e6d454.pdf>), accessed on 06.03.19.

10. The purpose of education, as seen through the prism of human rights, focuses on the need to empower individuals to make the most of their talents and potential. Education's status as a public good reflects its role in serving wider economic, social, cultural, democratic and civic purposes.
11. These considerations are reflected to a significant extent in the principles set out in Section 6. However, it is clear that the individual and social purposes of education must fully reflect the obligation on, and the power of, the education system to work to secure educational, social and economic equality of opportunity. The NASUWT notes that section 6(3)(g) states that the education system should support the development of a diverse society based on mutual respect. While this objective is entirely legitimate, it is important that this statement is accompanied by a clear and unequivocal setting out of the critical importance of securing genuine equality of opportunity for all.
12. In this context, the NASUWT welcomes the introduction of overarching equalities legislation in the Isle of Man through the Equality Act 2017 and the important responsibility the Act places on schools and other public bodies, including DESC, to promote equality and diversity and tackle discrimination and prejudice. However, a clear statement in the Education Bill to this effect would confirm that securing genuine equality of opportunity is at the heart of the education system's mission.
13. The Bill places a general duty on DESC to secure and permit the education of persons resident in the Island and the NASUWT notes that section 7 sets out a range of consequent responsibilities on DESC to this end.
14. However, section 7(4) states that DESC must merely 'aim' to discharge these responsibilities. The NASUWT believes that qualifying DESC's responsibilities in this way is not appropriate and would, in effect, require only that DESC must demonstrate that it has sought to discharge these responsibilities rather than to discharge them in practice. The Bill should, therefore, be amended to address this issue.

15. Notwithstanding this consideration, it is important that the responsibilities enumerated in section 7 are set out unambiguously. In this regard, the NASUWT notes that section 7(4)(b) states that DESC must aim to provide facilities for education that use a range of learning and communications technology.
16. It is not contested that schools should be supported to make appropriate use of technology. However, it is not clear what legitimate expectations would be established by the inclusion of this provision in legislation, particularly in light of the rapidly changing nature of educational technology. Before the Bill is presented to Tynwald, DESC should set out with greater clarity the objectives that this provision is intended to secure in practice and the attendant responsibilities it would establish.
17. Section 7(4)(f) would require DESC to aim not only to provide and use educational facilities on the Island, but also to use facilities provided outside the Island where such use is 'economical, efficient and effective'.
18. Given the relatively small scale of the Isle of Man's education system, the NASUWT understands that circumstances arise on occasion when off-Island provision is necessary to secure some pupils' educational entitlements, particularly in relation to those children and young people with special and additional needs. However, it is difficult to understand why DESC should be required to 'aim to' use off-Island facilities. Section 7(4)(f) should be amended so that it makes clear that such facilities will be used only when appropriate and necessary for educational reasons.
19. The NASUWT welcomes provisions in section 8 that DESC must, where appropriate, exercise its functions in co-operation with other key public bodies including the Department of Health and Social Care (DHSC), the Safeguarding Board, the Department of Home Affairs (DHA), and any other relevant public authority.
20. The NASUWT strongly welcomes the legal underpinning to inter-agency working that enactment of this provision would secure. The Union is clear that co-operation between public institutions, agencies and bodies is

critical to ensuring children and young people's educational rights and entitlements, their wider wellbeing and their future life chances. Effective inter-agency working is a characteristic feature of any society that recognises that all children and young people are entitled to benefit from a healthy and safe childhood, in which they are supported to achieve their potential and develop the skills required for adulthood.

21. The nature of the Isle of Man as a relatively small, independent jurisdiction creates unique opportunities for all children and young people's services to work together to secure these objectives. However, it is clear that these opportunities have not been fully exploited to date. Placing a statutory duty on DESC to co-operate with other children's services represents an important advance towards addressing this concern. With specific regard to schools, it is important to acknowledge in policy and practice that children's safety, health and wellbeing both inside and beyond school are profoundly interrelated.
22. It will be critical for DESC and other relevant bodies to develop systems and structures to give practical effect to the co-operation envisaged in the Bill. In particular, it will be important that these provisions of the Bill, when enacted, are further strengthened by ensuring that the public bodies and agencies referred to in it are subject to a reciprocal duty to co-operate with DESC and with schools more generally. This reciprocal duty should be set out on the face of the Bill. The Bill should also make provision, by regulations subject to Tynwald approval and public consultation, for establishing practical arrangements for the operation of inter-agency working.
23. The NASUWT notes that DHA is referenced on the face of the Bill as a body with which DESC must co-operate. The Union believes that this reference to DHA is appropriate given the wide range of responsibilities within its remit that relate to children and young people. However, while the Isle of Man Constabulary sits within DHA's remit, it is noted that it has a significant degree of operational independence. Given that the work of youth justice agencies has a central role to play in the lives of many

children and young people of school age, it would be appropriate for the Isle of Man Constabulary to be included among the bodies with which DESC must co-operate.

24. The activities of the Youth Justice Team (YJT) are also critical in this respect, given that it draws on a range of different agencies working with children and young people who are involved with, or at risk of involvement with, the criminal justice system. The NASUWT believes that the YJT would have the potential to make an even greater contribution to these children and young people's lives if representation on it were extended to include DESC, and members with current experience of working in schools. So reconstructed, the YJT should be placed on a more formal footing through regulations that set out its roles and responsibilities, and also be subject to a duty to co-operate set out on the face of the Bill.

Consultation with school governors

25. The NASUWT notes that legislation introduced in 2009 requires the maintenance of the Education Council, with a remit to provide advice to DESC 'as necessary' and to sit on official bodies and panels related to education matters.
26. The Union is, therefore, concerned that section 5 would replace the Council with an annual meeting with the Chair of Governors of each school in the Island, although attendance at this meeting would be voluntary.
27. It is clear that Ministers have ultimate democratic accountability for the decisions they are entitled to take in relation to the education system. However, the existence of a body such as the Education Council, independent of DESC, contributes to the development of more effective policy and provides a means by which the transparency of decision-making can be enhanced.
28. This consideration is particularly important given that DESC is not currently subject to any specific oversight through a dedicated body established for this purpose in the House of Keys or the Legislative Council. Meaningful external scrutiny is central to effective governance,

and DESC's intention to abolish the Education Council is, therefore, a matter of significant concern in this regard.

29. While the Union is open to consideration of ways in which the current Education Council's composition and remit might be reformed, its discontinuation with the arrangements proposed in the Bill is not acceptable.

Definitions of schools

30. Section 10 would allow for the creation of federated schools. The NASUWT notes that the Bill defines such schools as involving a group of two or more schools sharing a single headteacher and single governing body.
31. The Union is not opposed in principle to the creation of federations of this type, where it is identified as a way of securing the position of small, geographically-isolated schools that may not be economically viable otherwise. However, DESC should set out in further detail its rationale for including the provision set out in section 10 and the circumstances in which it might be used.
32. Similarly, the rationale for the provisions in section 10(4) for DESC to make regulations that provide for the establishment of middle schools should be set out more clearly. The intended purposes behind the creation of a distinct category of maintained faith school, provided for in section 12, should also be explained. In any event, DESC should confirm in the Bill that aside from provisions in respect of the religious character of these schools, they would have the same status as other maintained schools.
33. The NASUWT notes the provisions in section 13 that would allow for the creation of contracted schools, defined as schools in respect of which the curriculum is provided or management functions are performed under a contract entered into by DESC.
34. The Union is concerned that this provision would permit the establishment of state-funded schools that would not be subject to the legal framework

applicable to maintained schools. Further, Section 17(1)(d) would allow DESC to establish new contracted schools or convert existing schools into contracted schools.

35. It must be acknowledged that such provisions appear to resemble those associated with the academy and free schools programmes in England. Among other profound shortcomings of these programmes has been the extent to which they have undermined inter-school collaboration and have impeded efforts to ensure that finite public resources are used efficiently, equitably and transparently. In a jurisdiction of the size of the Isle of Man, the distortions and inefficiencies inherent in such programmes would be likely to be amplified significantly and would undermine DESC's ability to meet its legal responsibility to provide efficient and effective education.
36. It is for this reason that the NASUWT supports DESC's ongoing commitment to reject the introduction of academies and free schools in the Isle of Man. It is, therefore, essential that this commitment is reflected clearly in the legal framework for the provision of education in the Island.
37. Accordingly, the NASUWT is clear that there can be no circumstances in which it would be appropriate for an existing school to be converted into a contracted school.
38. The NASUWT understands that the proposed introduction of contracted school status represents an attempt to regularise the status of existing provision for Manx-medium education which is currently provided by means of a contract with DESC. The Union further understands DESC's position to be that if new school provision of the type provided at present by maintained schools is required in future, then such provision would be established by means of a new maintained school rather than a contracted school. However, as currently drafted, this policy stance would not be reflected in the legal framework proposed in the Bill, as section 17(1)(d) would allow for the replacement of a maintained school with a contracted school.

39. It should be recognised that it would be entirely feasible for any new state-funded Manx-medium education to be provided by a setting located within the maintained sector. The Union notes that in Wales and Scotland, publicly-funded Welsh and Gaelic-medium schools are provided for in this way. It is, therefore, clear that section 17(1)(d) of the Bill should be amended to remove reference to the establishment of new contracted schools. The position of existing provision might best be regularised by referring to it explicitly on the face of the Bill, thereby permitting it to operate on a legal footing.

Governance and finance

40. Section 21(2)(b) would give a secondary school or college the ability to appoint a pupil as a member of its governing body. The NASUWT is strongly opposed to this proposal.
41. It is evident that serious issues arise in relation to the formal engagement by pupils in the work of governing bodies. The NASUWT is clear that contact between pupils and governors is not necessarily inappropriate and can be an important part of effective approaches to student voice and pupil participation. For example, members of a school's student council may be invited to attend meetings of governors to give feedback on their activities or to discuss relevant aspects of the life of their school.
42. However, policies and practices on student voice must reflect the capacity of pupils to participate in particular activities and the extent to which they can reasonably be held to account for the results of their actions.
43. It is not contested that students should be encouraged to explore, develop and participate in school life as well as in the life of the school community as a whole. There is strong evidence that where students share a strong and positive affinity with their school, they are likely to be better motivated to learn. To this end, students may, for example, be encouraged to undertake responsibilities such as being a school prefect or monitor.
44. Nevertheless, while schools will want to encourage students to take greater ownership of, and responsibility for, aspects of school life, there

are school-level responsibilities and tasks that should not be undertaken by pupils. In particular, students should not undertake activities that require professional skills and expertise. These activities should only be carried out by qualified and skilled persons who can be held accountable for their decisions and actions through their status as employees or governors.

45. It is, therefore, clear that there are potentially serious implications for both staff and pupils of those who are not adults, and who, consequently, cannot be held to account, serving on governing bodies. Involving pupils in governing bodies decision-making processes could create serious conflicts of interest for the pupils concerned. It would not be reasonable, for example, to expect some pupils to be impartial about individual pupils who may be the subject of a governing body determination and with whom they have a particular personal history of friendship or conflict. In respect of staffing issues, pupil involvement on staff matters could have a direct bearing on the terms and conditions of employment of individual staff and may involve the disclosure of information that could undermine the continuation of an appropriate educational relationship between pupils and teachers.
46. For these reasons, section 20(1)(b) should be withdrawn.
47. Section 22(6) would give DESC the power to dismiss a governor or headteacher who it deems unable or unwilling to perform functions under or in accordance with relevant provisions of the Bill, a school's Articles of Government or a direction that DESC may issue in respect of the operation of governing bodies.
48. The NASUWT believes that this provision fails to acknowledge the important distinctions between the role of governors and headteachers. The role of governors is to take responsibility for the strategic leadership of schools. A key feature of this role is to hold headteachers to account for the performance of the schools for which they are responsible. Headteachers are, in turn, responsible for the internal organisation, management and control of schools. It is, therefore, not appropriate for

DESC to acquire powers to dismiss headteachers for failures in areas of governance over which they have no control. Furthermore, headteachers are employees, with consequent statutory and contractual rights. These rights include provisions for the assessment of their performance and conduct as well as the circumstances in which they might legitimately be dismissed.

49. Section 22(6) should, therefore, be amended to remove headteachers from the specific powers this provision would confer on DESC.
50. DESC will be aware that the NASUWT continues to have significant concerns about the operation of delegated financial management (DFM), particularly the ongoing rollout of reform of funding for pupils with special and additional needs.
51. The NASUWT has never objected to schools being given an appropriate degree of local financial control. However, it is important that the terms of this control are established in a way that ensures that finite public resources are used efficiently. Experience gained by the Union elsewhere serves to demonstrate that implemented and structured poorly, financial delegation to schools results in significant adverse implications for learners, staff in schools and the education system more broadly. Specifically, inappropriate financial delegation results in:
 - headteachers and others with senior leadership roles in schools being distracted from their core responsibilities for teaching and leading teaching and learning;
 - diseconomies of scale that arise from excessively dispersed and poorly allocated resources;
 - increased barriers to inter-school collaboration and partnership; and
 - increased complexity in securing effective oversight of, and accountability for, the use of public money in the education system.

52. As a minimum expectation, the exercise of any system of financial delegation must operate within the context of a robust regulatory

framework that secures the efficient, equitable and transparent use of funding. Funding models should serve to enhance, not detract from, efforts to continue to raise standards of educational achievement. Section 23, which relates to delegated financial management should, therefore, be amended to confirm that any scheme of delegation would be subject to Tynwald approval of regulations and guidance, which in turn should be subject to consultation with all interested parties, including trade union representatives of the school workforce.

53. The NASUWT notes that section 24 would permit DESC to issue regulations to allow for the making of charges in respect of teaching or other activities for pupils, whether these activities are part of the normal curriculum or not. The Union recognises that similar provisions are set out in the Education Act 2001 but that, to date, these powers have not been used to levy charges for access to the normal curriculum. However, the fact that provisions to this effect remain in place means that it would be open to DESC in future to permit the levying of such charges. In light of the principles enumerated in section 7, charging pupils and their families for access to elements of their core education entitlement would be wholly unacceptable, particularly in relation to pupils from socio-economically deprived backgrounds, and must not, therefore, be provided for in legislation.
54. Section 25 would provide for financial contributions to be made by maintained faith schools to significant capital costs. The NASUWT notes that comparable provisions are in place in England and Wales for meeting capital costs in voluntary-aided schools. It is important to recognise that schools in the Isle of Man that would be subject to a requirement of this nature appear not to have been liable to make such financial contributions previously. The NASUWT is concerned that the Bill would give DESC complete discretion over whether or not to seek contributions in any particular case and, if it chose to do so, the level at which such contributions would be set. Any provision of this nature must be subject to clear and reasonable criteria to ensure consistency of approach in all circumstances.

55. It should also be noted that the extent of the contribution required for comparable schools in the UK is around 10% of total cost. It is not evident that the 50% benchmark referred to in the Bill would be reasonable or implementable in practice. The NASUWT, therefore, believes that if contributions are to be required, 10% would appear to represent a more reasonable benchmark.

Information for Government

56. Section 27(1) would allow DESC to require the headteacher or governing body of a school to provide information about pupils and activities at the school.
57. The NASUWT does not object to reasonable requirements on schools to provide such information, given its importance in informing system level policy-making. However, it is important that any such requirements DESC may seek to introduce are subject to meaningful public scrutiny and oversight. Section 27(1) should, therefore, be amended to confirm that any requirements in this respect would be set out in regulations subject to Tynwald approval and following consultation with interested parties, including teachers and their trade unions.

Employment of teachers and educational support staff

58. The NASUWT is concerned that there remains no statutory requirement specifying the qualifications that those employed as teachers in educational settings in the Isle of Man should possess.
59. This absence creates circumstances in which unqualified individuals can be employed to teach without legal restriction. Employment of such staff is profoundly detrimental to the provision of high-quality education. The NASUWT recognises that for practical reasons, teacher supply in the Isle of Man is supported by those trained and qualified in the UK and the Republic of Ireland. The Union, therefore, continues to believe that legislation should be introduced to ensure that only those individuals eligible for recognition as qualified teachers in a UK jurisdiction or in the Republic of Ireland can be employed as teachers in Isle of Man schools.

The curriculum

60. As noted above, the NASUWT remains concerned that the Isle of Man does not have a clear and consistent curricular framework that sets out in sufficient detail the nature and extent of children and young people's educational entitlement.
61. It is recognised that the Education Act provides that DESC shall prescribe a curriculum for all registered pupils of compulsory school age at provided schools and maintained schools. Currently, this duty is discharged by means of the Education (Curriculum) Order 2011. The NASUWT notes that while the Order sets out broad subject headings and areas of learning to be followed at the Foundation Stage and Key Stages 1-3, it does not establish programmes of study or subject content. As such, the Order does not secure a universal, high-quality, engaging and personally relevant learning entitlement for all pupils regardless of the school or setting in which they are educated.
62. The NASUWT notes that section 29 does not change this position and introduces no requirement on DESC to move beyond the minimal curriculum it has adopted to date.
63. The Union recognises that schools should have the scope to address areas of learning that reflect their circumstances and context. In calling for a system-wide curricular framework, the NASUWT does not insist that it should seek to encapsulate all the skills, knowledge and understanding that pupils might be expected to acquire during the course of their schooling. The Union also does not advocate a curriculum that would constrain the ability of teachers to make appropriate use of their professional judgement and autonomy to make suitably informed decisions about teaching and learning.
64. However, a system-wide curriculum would establish a common learning entitlement for pupils and would also support effective transition between primary, secondary and further education, giving receiving schools more certainty about pupils' prior learning experiences.

65. The NASUWT, therefore, calls on DESC to commit to the establishment of such a curricular framework through express provisions to this effect in the Bill. This curricular framework should be developed through meaningful consultation with all those with a legitimate interest in the Isle of Man's education system, including teachers and their trade unions.
66. The need to introduce such a framework is emphasised by the proposal in the Bill to introduce a requirement for age-appropriate education about sex and relationships, as well as health, lifestyle, economic and other forms of wellbeing. The Union believes that all children and young people should be able to benefit from a broad, engaging and age-appropriate programme of study in this area and it is, therefore, clear that it is right for the Bill to include provisions in this respect.
67. However, as current experience in England demonstrates, the introduction of such a requirement engages many complex and contested issues and can only be implemented effectively following extensive consultation that is necessary to establish clear common expectations about those areas of learning that need to be addressed in schools' provision. It will, therefore, be essential for DESC to make clear that such provision would be included in the curricular framework advocated above.
68. Section 29(c) includes provision for the first time for DESC to provide for regular assessment as part of its curriculum Order. The NASUWT has no objection in principle to the introduction of system-wide assessments. However, it is clear that such a provision could give rise to legitimate concerns about its potential to allow for the introduction of crude league tables of schools' performance in such assessments. The NASUWT is aware that DESC has made clear previously that it does not support the introduction of a high stakes accountability regime based on the publication of tables of school performance. It will be important for DESC to set out an unequivocal commitment to this policy so as to provide reassurance that the provisions of section 29(1) would not be used in ways inconsistent with it.

69. DESC should ensure that any future proposals in respect of assessments should be subject to Tynwald approval and be subject to public consultation with all relevant stakeholders, including teachers and their trade unions.
70. The NASUWT notes that the current Order refers to curricular requirements in respect of the teaching of French rather than modern foreign languages. This aspect of the Order is unnecessarily restrictive and is inconsistent with DESC's objective of ensuring that pupils can access a broad and balanced curriculum. Curriculum arrangements to be introduced through relevant provisions in the Bill should address this issue.
71. The NASUWT notes that the Bill would no longer provide for the teaching of religious education through specific legislative provisions. The Union further notes DESC's previously expressed view that religious education is a subject like any other in the school curriculum and should be treated in the same manner through inclusion in curriculum regulations and orders.
72. The NASUWT respects the right of the people of the Isle of Man and their elected representatives, in consultation with teachers and their trade unions, to determine this issue. However, it remains important for DESC to make clear how, if specific provision for religious education is to be removed from legislation, it will ensure that the current scope and quality of teaching in the subject is maintained. In particular, as noted above, the lack of a coherent curricular framework is of critical concern in this respect, and it is clear that amending the current status of religious education in legislation must be accompanied by steps to introduce such a framework, if it is to be acceptable.
73. The Bill further removes the legal underpinning for the Religious Education Advisory Committee (REAC). The NASUWT notes that the Education Act provides for REAC to examine religious education issues and to determine the nature and content of the curriculum.
74. It is important to note that, unlike other areas of the curriculum, REAC gives teachers and other legitimate stakeholders an influence over the

religious education curriculum established in schools. This approach to curriculum development and implementation ensures that all these stakeholders can have a meaningful sense of ownership over the curriculum and, thereby, helps to ensure their commitment to it. The NASUWT recognises that the sensitive nature of issues that can arise in respect of religious education means that Tynwald will seek to take into account views across a range of different constituencies with an interest in this matter before deciding to proceed with the proposals set out in the Bill.

75. For the reasons set out above, the NASUWT would not support the transfer of exclusive authority to determine the content of the religious education curriculum to DESC on the terms proposed in the Bill. Instead, as part of the overarching reform of the curriculum advocated above, the Union recommends that DESC establishes a forum for all the curriculum areas to be provided for in legislation. This forum should be comprised of stakeholders including members of the teacher workforce and should discharge the function for all subjects that REAC undertakes for religious education currently.

Behaviour

76. Section 33(6) introduces provisions that would permit teachers to restrain pupils. The NASUWT does not object to such provisions in principle but notes that the use of this power is limited to teachers. The Union can identify no credible reason why other appropriately qualified members of the school workforce should be excluded from these provisions.
77. It is important that powers to restrain pupils are subject to clear guidance to which all relevant parties must be under a legal obligation to have regard. Specific provisions to be set out in such guidance should include:
- defining 'reasonable force' in practice;
 - the circumstances in which, and to what end, reasonable force can be used;
 - provisions in respect of staff training;

- communicating with parents, pupils and other relevant parties; and
 - dealing with complaints.
78. Section 33(6) should not be enacted until appropriate guidance has been developed and has been subject to public consultation, including with teachers and their trade unions.
79. Similarly, provisions in sections 34 and 36 on confiscation and dealing with offensive weapons in schools should be accompanied by clear guidance to which schools should have regard. On offensive weapons, guidance would need to address important considerations including
- the definition of an offensive weapon;
 - the circumstances in which a search for a suspected weapon on pupils' persons or among their property should be undertaken;
 - that only support staff with school security as the primary focus of their role should be empowered and required to search pupils for offensive weapons;
 - clarification that the power to search is not a duty;
 - that headteachers should keep records of staff authorised to search pupils for offensive weapons;
 - that searches for offensive weapons should not be undertaken without an appropriately qualified member of staff present as a witness;
 - the questions to ask of and information to give to pupils found in possession of an offensive weapon or subject to a search for such a weapon;
 - that no searches should be undertaken by untrained staff;
 - that schools should have a policy setting out the basis upon which matters relating to offensive weapons will be addressed;

- that schools may, in certain circumstances, use wands or arches as part of a range of options to try and ensure the safety of staff and pupils in schools in preventing the presence of offensive weapons on school sites;
- how circumstances in which pupils do not give consent to be searched for offensive weapons should be addressed;
- arrangements in respect of the removal of clothing and the searching of pockets for offensive weapons;
- considerations to be taken into account in deciding whether or not to conduct a search, including when it would be appropriate to contact the police; and
- considerations to be taken into account if private security providers are to be contracted to search pupils for offensive weapons.

80. On confiscation, guidance should be developed to ensure that schools are clear about:

- how confiscation should be managed in practice, including confirming a requirement on schools to have a policy in place;
- the key provisions to be taken into account in the development and implementation of such policies; and
- the responsibilities of teachers and other members of school staff in respect of seized items.

81. The NASUWT notes that section 37 introduces provisions in respect of the behaviour of pupils outside school premises.

82. The Union welcomes proposals to ensure that teachers have the power to discipline pupils away from school sites when they are responsible for the welfare or behaviour of pupils in accordance with written rules of the school; for example, when pupils are engaged in educational visits under the control of teachers.

83. DESC will be aware that the NASUWT drew its attention to the absence of such provisions in the Education Act and it is right that steps are being taken through the Bill to correct this shortcoming in the current legislative framework. However, the Union remains concerned that schools in the Isle of Man would continue to have no power to address pupil indiscipline that takes place away from school sites when pupils are not subject to the control of school staff but that, in any event, has implications for the maintenance of good order in schools.
84. The NASUWT remains in dispute with DESC on this issue. The Union remains clear that matters in this respect would most effectively be addressed by amending the Bill to ensure that teachers and school leaders are given the ability to discipline pupils for any instances of misconduct that occur away from school sites but that may have have adverse impacts on sustaining positive behavioural climates in schools. The NASUWT continues to observe that comparable provisions were introduced in England in 2006 and continue to be regarded as an important means by which schools can deter indiscipline and promote good behaviour.
85. The NASUWT notes that DESC does not share this view and that its position remains that statutory provisions should only permit teachers and other relevant members of the school workforce to discipline pupils on the terms set out in the Bill.
86. However, and without prejudice to the status of its dispute, the NASUWT would be open to exploring additional means by which schools might be supported to address episodes of indiscipline and inappropriate conduct that take place away from school sites but that may have implications for maintaining positive relationships between pupils, and between members of staff and pupils, while they are at school.
87. The NASUWT believes that the greater emphasis on developing collaboration between different agencies for children and young people envisaged in the Bill may create opportunities in this respect. When pupils' behaviour outside school has implications for their conduct in school, it is

important that all agencies with responsibilities for their wellbeing work together to share information and develop strategies for addressing concerns. Similarly, information gained at school about pupils' behaviour can play a critical role in supporting efforts to resolve problems with their conduct in the wider community.

88. The focus of this work should be to bring together partners from the field of education, social care, health and youth justice. Partners should be supported to collaborate on the identification and prevention of concerns, information sharing and the development of strategies for intervention to secure the fundamental wellbeing, positive behaviour and regular school attendance of pupils, particularly those who are most at risk of experiencing difficulties in this respect.
89. The NASUWT draws DESC's attention to the development of Behaviour and Education Support Teams (BESTs), introduced in England in 2002, that were based on such an approach. Independent research confirms that this strategy had a profoundly positive impact on the behaviour of pupils both within and beyond school. The NASUWT believes that, adapted to the circumstances and context of the Isle of Man, a strategy reflecting the principles on which the BEST model was based could make a significant contribution to addressing the concerns the Union has raised. The NASUWT would welcome the opportunity to engage further with DESC to explore ways in which such an approach might be adopted in the Island.
90. As the NASUWT has continued to make clear, it is not acceptable that there is no legal requirement on schools to implement behaviour policies. It is evident that such policies are fundamental to the maintenance of good order in schools.
91. Therefore, section 30 should be amended to require schools to implement a behaviour policy and, through regulations and guidance, establish minimum expectations in respect of the content of such policies.
92. The NASUWT strongly welcomes the proposals set out in section 41 that would require schools to take action if a pupil at a school is using social

media in a way that causes, or is intended to cause, distress or offence to another pupil or to a teacher or other member of staff at the school. It is also helpful that these provisions are extended to similar actions in this respect undertaken by a relative, or present or former associate, of a pupil at the school.

93. The Bill recognises that misuse of social media often involves criminal activity and it is right that if schools have grounds for concern in this respect, they should be required to contact the police to assess whether an offence has been committed. The NASUWT continues to encounter circumstances across all the jurisdictions in which it represents teachers and headteachers in which pupils and members of school staff are subjected to unacceptable and often illegal treatment that has been facilitated by the use of social media.
94. The NASUWT continues to defend its members robustly when social media and technology are used abusively. Most recently, the Union successfully pressed the Public Prosecution Service in Northern Ireland to bring to court a pupil who had taken covert upskirt photographs of two NASUWT members in County Fermanagh.
95. While welcoming the guilty verdict passed by the court on the pupil, the Union emphasised that the absence of a specific offence of upskirting in Northern Ireland had risked a profound injustice in this case. As a result of this case, the Northern Ireland Department of Justice has commenced a consultation on making upskirting a criminal offence, which would, if introduced, bring the law in Northern Ireland into line with legislation in England, Wales and Scotland.
96. The NASUWT believes that similar protections should be introduced in the Isle of Man and would welcome the opportunity to engage further with the Isle of Man Government on this issue.
97. However, it is clear that there are instances involving the misuse of social media that have adverse impacts on pupils and staff and that schools must address, but that may not constitute criminal activity. In such cases, as

acknowledged in the Bill, it is important that schools have measures other than contacting the police available to them to assist their attempts to tackle the unacceptable use of social media. The NASUWT, therefore, welcomes the measures in the Bill that would require schools to take steps to ensure that the use of social media does not take place during school hours, on school premises or through the use of school equipment. It is also appropriate that schools should be expected to provide education and guidance to pupils about the particular harm that social media misuse can inflict.

98. In the NASUWT's experience, managing issues related to social media can be challenging for schools. For this reason, the Union recommends that DESC should include provisions in the Bill that would give it powers to issue guidance to which schools must have regard on how issues related to social media use can be managed effectively.
99. The NASUWT notes that section 42 would require DESC to introduce admissions arrangements based on admitting children to schools located within the catchment area within which they live, unless specific exemption criteria, to be defined in regulations, are met.
100. In principle, the NASUWT does not object admissions criteria established on the basis of catchment areas. However, it will be important to ensure that exemption criteria are established that ensure that these arrangements can operate equitably and transparently.
101. In particular, it will be important to ensure that catchment area boundaries do not lead to excessive class sizes in some cases. It will also be important to allow parents to send siblings to the same school if they wish, including in circumstances where they may have moved from the relevant catchment area of a school attended by their other children or if the boundaries of the catchment area are redrawn. For some children with additional and special needs, consideration will also need to be given as to whether their catchment area school is best placed to meet these needs. Arrangements for admission to schools with a religious character will also need to be set out clearly in any revised admissions framework.

102. The NASUWT believes that, given the importance of this issue, DESC must establish regulations on the operation of catchment areas and ensure that its proposals are subject to full public consultation.
103. Section 43 of the Bill appears to remove the ability of schools set out in section 16(2)(b) of the Education Act to delete from the register the name of any pupil withdrawn or excluded from a school.
104. Given that it would appear sensible for schools to have this power, the NASUWT is not clear why comparable provisions have not been included in the Bill. DESC should, as a minimum expectation, set out the rationale underpinning this proposed change to current arrangements.
105. The NASUWT welcomes the provisions set out in section 44 that would prohibit schools from using selection criteria for admissions that refer to ability or aptitude.

Inspections

106. The NASUWT recognises that the provisions of section 46 would require, through regulations, that a maintained school must undertake a self-assessment at least once during the course of a school year. The Union would expect to be consulted on the content of such regulations.
107. The NASUWT acknowledges that all schools should reflect on their effectiveness as part of their work to improve and enhance the quality of their provision. However, the Union's experience elsewhere has been that without the establishment of clear parameters for the conduct of school self-evaluation, the processes that schools adopt are often unacceptably burdensome and workload intensive. Poorly implemented, such systems may also not ensure transparency or public confidence in the quality of educational provision. It is, therefore, essential that these risks are addressed in any system of self-evaluation that DESC may intend to introduce.
108. It is helpful that DESC has recognised the need for arrangements in respect of inspection to be set out clearly in regulations that would be

subject to Tynwald approval. The NASUWT looks forward to engaging with DESC on the provisions it intends to introduce in respect of the conduct of inspections.

Independent schools

109. The NASUWT welcomes the recognition section 56(1) that independent schools, as an automatic condition of registration, must comply with regulations set out by DESC on the provision of information. The Union is clear that the provision of information is critical to effective regulation of schools in the independent sector. To this end, the categories of information specified in section 56(2) and the forms in which it is to be provided appear to the Union to be clear and reasonable. The regulations envisaged by section 56(1) must require the provision of such information.
110. It is right that DESC should establish regulations in respect of complaints about independent schools, how such complaints would be addressed and how the outcome of any complaint would be enforced. It is also essential that robust arrangements are in place to safeguard the safety and welfare of pupils attending independent schools. The NASUWT, therefore, supports the provisions set out in sections 57-60 that seek to address these issues.

Provisions on home education

111. The NASUWT notes that the Bill sets out an expectation that each parent of a child of compulsory school age must ensure that the child receives a suitable education, whether or not by regular attendance at school. It is acknowledged that such a provision would continue to give parents the right to meet their obligations in this respect by means of home education.
112. It should be recognised at the outset that it is by no means a matter of expert consensus that the Isle of Man Government is obliged by international law to continue to permit home education. In particular, Article 29 of the UNCRC sets out a fundamental right for all children to an education that is directed to the development of their personalities, talents and mental and physical abilities. The social dimensions of education also

establish important considerations in this context. The Universal Declaration of Human Rights establishes that the whole purpose of education is the strengthening of respect for human rights and fundamental freedoms. The Declaration confirms that education should promote understanding, tolerance and friendship among ‘nations, racial or religious groups’.

113. Further, it is not at all clear that the Isle of Man Government is required by the European Convention on Human Rights to permit home education in all circumstances. It is also the case that the European Court of Human Rights has upheld the rights of states to withdraw or mediate the right to home education. Other European countries, including Sweden and Germany, have considerably more constrained rights to home educate than is the case currently in the Isle of Man. Most European jurisdictions require mandatory registration of home-educated children while in New Zealand, the relevant legal framework demands that home-educated children are ‘taught at least as regularly and as well as in registered school’.
114. In light of the considerations set out above, it is evident that the appropriateness of current rights of parents to home educate must be evaluated in the context of education as a human right and a public good. The NASUWT remains clear that high-quality education requires the deployment of appropriately qualified teachers and, therefore, continues to find difficulty in reconciling a general right to home education with this principle. It should be noted that the right to be taught by appropriately qualified persons is also found in the universally applicable United Nations Strategic Development Goals.
115. Therefore, DESC must recognise in its development of policy in this area that international law does not obstruct it from considering a wide range of options in regulating and restricting the rights of parents to home educate.
116. The Bill confirms that DESC has significant responsibilities in relation to the safeguarding of home-educated children, as well as the suitability of the education they receive. It is clear that DESC cannot fulfil these

requirements effectively if it does not have accurate records of all home-educated children. Therefore, if DESC intends to continue to give parents a right to educate their children at home, then it is entirely reasonable, as a minimum expectation, for it to establish a system of mandatory registration of all children educated in this way. However, the scope of any registration requirements must include those children who receive a combination of school-based and home education.

117. Notwithstanding the importance of registration, DESC is right to recognise that registration, by itself, is insufficient to ensure that home educated children and young people are kept safe and are benefitting from their educational entitlements. It is, therefore, appropriate that section 78 seeks to establish a duty on DESC to assess the educational development of children in the Island receiving home education. In light of its legal responsibilities, it is vital that DESC oversees and monitors the effectiveness of home education.

118. The NASUWT notes that section 78(9) of the Bill would give DESC the power to make regulations about the methodology used to monitor home education. The Union believes that these regulations should:

- oblige home educators to provide a clear statement of their intended educational approach, intent and planned outcomes for each child for which they will be responsible over the following 12 months;
- confirm that DESC has the power to:
 - access the dwelling places of home educated children; and
 - designate properly qualified officers to speak with each child alone if it is deemed appropriate, or, if a child is particularly vulnerable or has particular communication needs, in the company of a trusted person who is not the home educator or the child's parents;

- oblige parents to allow the child, through exhibition or other means, to demonstrate that both attainment and progress are in accord with minimum expected standards and the statement of intent lodged at the time of registration;
- ensure that all DESC officers engaged in the monitoring and support of home educated children and their families are suitably trained;
- require all public services for children, young people and adults to inform those charged with the monitoring and support of home education of any properly evidenced concerns that they have about parents' ability to provide a suitable education, irrespective of whether or not they are known to children's social services; and
- confirm the circumstances in which DESC may refuse or revoke registration through the use of a School Attendance Order if significant concerns about the quality of provision or any safety risks faced by children are identified.

Additional educational needs

119. The NASUWT recognises that there is no current legislative provision for the establishment of a system-wide framework for additional educational needs (AEN). The Union, therefore, welcomes DESC's intention to establish such a framework through provisions set out in Part 4 of the Bill (sections 80-90). These provisions represent an important and positive development in ensuring that the education system can meet the needs of some of the vulnerable children and young people for which it is responsible.

120. In particular, the Union welcomes the inclusion on the face of the Bill in section 80 of the fundamental principles on which the system of AEN should be based. It occurs to the NASUWT that many of these principles reflect those that characterise an efficient, equitable and accountable AEN system. The Union notes that section 80(a) provides that the education

system should include and integrate children and young persons who present challenging behaviour or have special needs as a result of their mental or physical conditions.

121. While accepting this principle, the NASUWT is clear that a meaningful definition of an inclusive education system should recognise the importance of building a range of expertise in teaching and learning, including expertise in teaching pupils with AEN. It should be recognised that a genuinely inclusive education system is one that offers a range of provision, including in mainstream and special settings. Within an inclusive education system, children's social and emotional needs, as well as their educational needs, must be met in settings best suited to their circumstances. Inclusive education systems are also characterised by close co-operation between all forms of setting.
122. The NASUWT believes, therefore, that section 80(a) should be amended to reflect this understanding of the nature of inclusive education.
123. The Union recognises that sections 82-90 establish the parameters within which the AEN system would operate, including in respect of the assessment of AEN, the procedure to be followed in assessing pupils' needs, including rights of appeal against decisions, the production of reports and ways in which assessed needs should be met.
124. In respect of section 84 on assessment procedures and section 85 on post-assessment reports, the NASUWT notes that DESC may introduce regulations, subject to Tynwald approval, detailing how these provisions in these sections should be implemented. Given the importance of these matters, the Union is clear that the Bill should be amended to require the publication by DESC of such regulations, given that the provisions set out on the face of the Bill would provide inadequately detailed direction to those involved in the processes addressed in the sections referenced above. These regulations must be subject to consultation with relevant stakeholders, including teachers and their trade unions, prior to their consideration by Tynwald.

125. The NASUWT welcomes the provisions of section 81 that would require DESC to issue a Code of Practice on educational provision for persons with AEN. Ensuring that there is clear and mandatory guidance on the ways in which all those with responsibilities for AEN meet their legal obligations is a central feature of any effective special and additional needs system. Given its critical role in such a system, it is essential that the Code of Practice is subject to full consultation with relevant stakeholders, including teachers and their trade unions.
126. Given its importance in informing the ways in which the provisions in Part 4 of the Bill would be interpreted in practice, DESC should make a draft version of the Code available for consideration before sections 80-90 are enacted.

Pre-school education

127. The NASUWT welcomes inclusion in the Bill of detailed provisions on the definition, inspection, accountability and funding of early years settings.
128. As the NASUWT has emphasised previously, it is not appropriate for DESC to be excluded from the oversight of pre-school provision given its critical role in the educational development of young children. The provisions in section 98 that would establish inspection of early years settings under the direction of DESC is helpful. The Union looks forward to engaging in further consultations with DESC on the arrangements for such inspections in due course.

Regulation and registration of private tutors, training and educational establishments

129. The NASUWT welcomes the proposals set out in sections 107-120 to introduce arrangements for the regulation and registration of private tutors and educational establishments. In particular, the Union notes positively that section 111 would create a criminal offence of conducting an unregistered institution and that comparable provisions in respect of private tutors are set out in section 118.

130. It is right that DESC should have powers to inspect and monitor the quality of provision secured through private tuition and educational establishments. The NASUWT looks forward to engaging with DESC on the details of any regulations it publishes in this regard, including in respect of the regulation of individuals and organisations providing services free of charge, given that they appear to be beyond the scope of the Bill as drafted currently.

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