

THE EDUCATION (MISCELLANEOUS PROVISIONS) BILL 2008

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Anne Craine, MHK

TITLE OF MEASURE

The Education (Miscellaneous Provisions) Bill 2008

CHANGES IN POLICY

The main change associated with the Bill is the Department's decision to seek Tynwald's approval to the abolition of the directly-elected Isle of Man Board of Education and the establishment in its place of an Education Council.

This apart, the principal aims of the Bill can be summarised as follows:-

- The introduction of measures to address what are viewed by the Department, in the light of experience, as omissions or deficiencies in existing legislative provision, and
- The provision of additional safeguards regarding the welfare and general well-being of children.

EFFECTS OF THE MEASURE

Clause 1 and Schedule 1

Clause 1 and Schedule 1 abolish the Isle of Man Board of Education.

Background

Following the passing of the Education (Amendment) Act 2007, which extended the life of the Board until 1 June 2009 at the latest, consideration was given by the Department to the nature of an education advisory and consultative body appropriate to the requirements of the 21st Century and the Island's ministerial system of government.

Before 1968, there were 2 bodies responsible for education: the Isle of Man Education Authority, consisting of 24 members, popularly elected to represent the same constituencies as the Keys, and a 5-member supervisory Board of Tynwald, the Isle of Man Board of Education. In 1968 the Authority was merged with the Board, which thereafter consisted of 24 elected ('non-

Tynwald') members and 5 Tynwald members, whose approval was required to any policy or financial decision.

In 1987, when the ministerial system was established, the Department of Education was set up, and the Tynwald members were removed from the Board. At the same time, the number of elected members of the Board was reduced from 24 to 15 (one per constituency), and all of the Board's functions were transferred to the Department, except to the extent that the Department might delegate any function to the Board or its committees. The Board has thus become an advisory body only, meeting 3 times a year. Members of the Board also serve as members of the governing bodies of primary and secondary schools and the Isle of Man College.

Before the commencement of the Education Act 2001 on 1 September 2004, the Board provided members for various committees, but since then their responsibilities have been taken over by members of the Department. The exception is the statutory Religious Education Advisory Committee, which includes members of the Board, teachers and representatives of the Churches.

The Department considered it appropriate to review the role of the Board of Education and the first step of this review involved a meeting with the current members of the Board of Education to obtain their views on their method of selection and the future role. At this meeting, it was agreed by those present, that the current practice of election every five years was inappropriate and a long-term alternative should be found. A number of options were considered by the Board Members for their selection and their future functions. These were subsequently presented by representatives from the Board at a Department meeting. In order for the Department to continue to progress this matter, it decided to promote a Bill to extend the life of the Board from 30 November 2007 until 1 June 2009; this was enacted as the Education (Amendment) Act 2007.

When there have been elections every five years for the Board, the interest among members of the public has been poor. The last Board of Education general election was held in November 2002 and on that occasion; there were eight un-contested seats, namely Ayre, Douglas East, Douglas North, Douglas South, Glenfaba, Michael, Peel and Rushen. Seven elections were held, Castletown, Ramsey, Douglas West, Garff, Malew and Santon, Middle and Onchan. The percentage turnout for the elections was poor and, in some cases, in single figures. Details of the Board of Education elections since 1972 are attached at Appendix 1.

It was interesting to note that the initial publication of the writ for West Douglas in 2007 produced no candidates but when the Department advertised a vacancy (to be filled by appointment by the Department), eight members of the public put their names forward.

Clause 2 and Schedule 2

Clause 2 and Schedule 2 establish, in place of the Board, an Education Council which the Department may consult on educational matters and from which the Department may draw members of the governing bodies of schools and the Isle of Man College. Under the new Schedule 3A, the Council will be appointed by the Appointments Commission, and its meetings and proceedings will be covered by regulations. In accordance with section 58(1) of the Education Act 2001, these regulations will need to be submitted to Tynwald for approval.

Clause 3

Clause 3 empowers the Department to give directions where it considers that a governing body, head teacher or principal has acted unreasonably or contrary to the Articles of Government of the school or college, or where it is satisfied that a governing body, head teacher or principal has failed to discharge a duty imposed by the Education Act 2001 or the articles of government of the school or college.

Background

The Education Act 1949 introduced the principle of school governance to Island schools. This principle was confirmed by the Education Act 2001. Schools, the Isle of Man College and the International Business School are largely self-governing entities, with the respective roles and responsibilities of the Department, the governors and the head teacher or principal set out in their Articles of Government.

This effectively created a degree of independence for the school or college from the authority of the Department and the development of the role of individual governing bodies. Areas of responsibility and accountability are now divided between the Department, the head teacher or principal and the governing body. There is therefore a need for machinery to ensure that the governors and the headteacher act reasonably and in accordance with their legal duties.

Therefore the purpose of this Clause is to establish within primary legislation a power for the Department to give directions to a governing body, head teacher or principal if they are acting unreasonably or contrary to the Act or the Articles of Government of the school or college.

Clause 4

Clause 4 amends the Education Act 2001 by limiting the power of a school to refuse to admit a child on the grounds of special educational needs which cannot be provided for at the school to the case where the Department certifies that this is the case. It also places a statutory obligation on a head teacher to request an assessment where a child at the school has been identified as having special educational needs and the head considers that the school's resources are insufficient to meet those needs.

Background

The Education Act 2001 made provision under Schedule 4 for the assessment of special educational needs but also enables the head teacher to refuse admission to a child with special educational needs if of the opinion that the child's needs cannot be met.

The purpose of Clause 4 is to ensure that a school cannot refuse admission to a child on the ground of special educational needs without a certificate by the Department that the school cannot cope with them, but to require a school to have a formal assessment undertaken. Such an assessment can already be requested by child's parents or by the Department. Once the assessment has been carried out, then the Department, together with the school, will be able to examine more carefully whether in fact the child's needs can be met within existing resources or whether additional resources or alternative placement were appropriate for the child.

Clause 5

Clause 5 requires the parent of a child who is of compulsory school age, and who is not a registered pupil at a state school, to notify the Department of the arrangements that have been made for the child's education.

Background

Parents have a legal right under the Education Act 2001 (Section 24) to opt out of the state school system if they so wish but must ensure they cause the child *to receive suitable education, either by regular attendance at school or otherwise.*

The Act defines suitable education as *efficient full-time education suitable to [the child's] age, ability and aptitude and to any special educational needs he may have.* This is usually accomplished either by sending their children to an independent school (as a day or boarding pupil) or by educating them at

home. The Department has no intention to interfere with this fundamental parental right.

However, there is no clear picture at present of the number of children on the Island who are being educated outside the state school system. This information would enable more accurate projections to be made regarding the number of applications likely to be received for financial support for further and higher education courses. It would also enable the Department to discharge its existing statutory duty under Section 25 of the Education Act 2001 to intervene when it has reason to believe that parents are not ensuring that their children receive suitable education. The difficulty the Department has is that it does not have accurate records to indicate to it which children resident in the Island are being educated at home or an independent school.

The clause will require parents who wish to educate their child otherwise than in the Island's state school system to provide the Department with certain basic information. This information will be limited to the full name and address of the parent and child, the age of the child, whether the child is at school, and if so, the identity of the school, and if not, the name and address of the person providing the education. This information is required within 3 months after a child attains compulsory school age, moves to the Island or ceases to be a registered pupil at a provided or maintained school.

The Act does not at present give the Department the power to request the information and therefore the Department cannot discharge its statutory duty. The Department is aware of some young people who are educated 'otherwise', particularly at home, and with some of these parents the Department works closely in ensuring that appropriate education is being delivered. This clause will enable the Department —

- a) to carry out its statutory duty under the Education Act 2001, and
- b) to plan better for the future needs of these young people who are being educated otherwise.

In particular when it comes to higher or further education, the Department will be aware that, in addition to the registered pupils, there will be a number of other pupils who may so wish to look to the Department for support to continue their education.

Clause 6

Clause 6 is intended to strengthen existing statutory provision regarding school attendance. It proposes to give the court, on convicting a parent of failing to secure a child's attendance, to impose, as an alternative or additional measure, the requirement for the parent to attend a course of counselling or guidance.

The clause also enables a parent to be given a fixed penalty notice as an alternative to prosecution. Provision is also made enabling the Police to return suspected truants to school or to remove them to other suitable premises designated by the Department.

Background

There has been an increase in recent years in the number of unauthorised absences, as well as the number of children who either arrive late or attend when the register is taken but then fail to attend classes. The Department seeks through this Bill to introduce three new measures to improve the attendance of pupils at school. First, a fixed penalty notice for may be more appropriate than prosecution, which is the only sanction currently available, and impacts on the family from both the experience of appearing in Court, and the costs involved. It is felt that the option to impose a fixed penalty notice is needed in certain circumstances.

Secondly, the Department is of the opinion that in some cases, it would be appropriate for the parents to attend counselling and parenting classes. At present, although the Department is able to suggest this as a way of helping improve the attendance levels, neither it nor the court can impose such a requirement.

Finally, the clause gives the police to remove suspected truants to the school or to a place of safety designated by the Department. The current position is that should police officers see students who are obviously truanting from school, they have no power to remove them from the streets back to that school. They can and do speak to them and take their details. However, unless they feel that they are at risk they do not have the power to remove them from the streets. This clause was originally part of a Bill to be introduced by the Department of Home Affairs but it was felt more appropriate for it to be included within the Education (Miscellaneous Provisions) Bill.

Clause 7

Clause 7 authorises the detention of pupils for misbehaviour, subject to certain restrictions.

Background

Detentions are already included in schools' Articles of Government as one of the penalties that may be imposed for misbehaviour. However, legal advice following an incident at one of the Island schools was that the Department needed to introduce a requirement for the school to notify the parents of the intention to detain their child after normal school time, otherwise any detention without the parents' consent could constitute unlawful

imprisonment, enabling a parent to sue a teacher or headteacher on behalf of the child for false imprisonment.

This clause is considered to be essential as it provides the Department and its schools with a statutory defence against claims of wrongful imprisonment where a period of detention has been imposed without the parents consent.

Clause 8

Clause 8 makes it an offence for a pupil who has been suspended from school to be on the school premises after being asked to leave.

Background

Section 21 of the Education Act 2001 makes it an offence for a person to be on school or college premises after being required to leave, and requires the police to remove an offender at the head teacher's request. There are exceptions for an authorised person and a registered pupil. There have been incidents where young people who have been suspended from school have returned to their school and deliberately caused disruption. Technically they cannot be removed as they are registered pupils. The purpose of this amendment is to remove that anomaly and allow the school to have a suspended pupil removed.

Clause 9

Clause 9 gives teachers express powers to deal with misbehaviour (including the power to use reasonable force to restrain unruly pupils), together with the power to confiscate prohibited items (e.g. drugs, knives, etc) or search pupils and their belongings for weapons. It is considered by the Department to be important in terms of maintaining discipline in schools and securing the safety of pupils.

Background

The position over searching and restraint of pupils has for a number of years been giving concern. At present there is the possibility that if a member of staff was to restrain a child if they thought they were going to possibly cause harm to themselves or an other pupil, they could be charged with assault. Recent Acts of Parliament have given teachers in England and Wales a defence in law in certain circumstances, and a power to search pupils and seize certain articles, and similar provisions are considered necessary in the Isle of Man.

If this clause is enacted, the Department intends to introduce a policy for schools and colleges detailing how searches should be carried out, following

the recommendations contained in *Screening and Searching of pupils for weapons – a guidance for school staff*, produced by the Department for Education and Skills in 2007. (A recommendation of this document that a search should always be carried out with two members of staff, one of whom must be the same sex as the person being screened, is embodied in the clause.)

Clause 10

This Clause makes it unlawful to administer corporal punishment to a minor at any school or other place of education in the Island.

Background

The current position regarding corporal punishment is that Section 10(b) of the Education Act 2001 prohibits the corporal punishment of a pupil at a provided or maintained school. This prohibition does not apply to an independent school on the Island, teachers in which may be given legal authority by a child's parents to administer corporal punishment as 'reasonable chastisement'.

During July 2008, a delegation from the United Kingdom was questioned by the United Nations Human Rights Committee which monitors the implementation of the United Nations International Convention on Civil and Political Rights. The concluding observation includes the following comment in paragraph 27 *"The Committee notes with concern that corporal punishment of children is not prohibited in schools in Bermuda, the British Virgin Islands, Gibraltar, Monserrat and the Crown dependencies. The states party should expressly prohibit corporal punishment in all schools in all British overseas territories and Crown dependencies"*.

Under these circumstances, the Department considers it appropriate to include in this Bill a prohibition on the use of corporal punishment in any school on the Island.

Clause 11

Clause 11 empowers the Department to make regulations requiring employers to notify the Department of any children employed by them.

Background

The Department has no immediate intention of making new regulations but it currently has no statutory means of ascertaining the extent of child employment on the Island. A clearer picture of this may be required in the

future. Currently, employers are merely required to maintain a register, which may be inspected by the Department's officers, containing details of any children of compulsory school age they employ.

Clause 12

This clause seeks to validate the closure and establishment of schools in Ramsey.

Background

In September 2008 the Department opened a new school building in Ramsey to replace the building occupied by junior pupils at Albert Road. The Education Act 2001 provides legal procedures for the closure of a school and the establishment of a new school, requiring public notice and giving members of the public the right to object. In the case of the new Ramsey primary school these procedures were not followed, as it was overlooked that, although the head teacher, staff and pupils remained the same, the school was not only housed in a new building, but also given a new name (Scoil Ree Gorree). It therefore needs to be made absolutely clear that the new school is legally established as a provided primary school.

Clause 13

This clause provides for the short title of the Bill and for its commencement. Clause 1 and Schedule 1, dissolving the Isle of Man Board of Education, are to come into force not later than the end of the extended life of the present Board under the Education (Amendment) Act 2007. The rest of the Bill is to come into force on an appointed day or days.

RESOURCE IMPLICATIONS

The Bill has minimal or neutral resource implications.

Although members of the Education Council will have to be eligible for attendance and travelling allowances under the Payment of Members' Expenses Act 1989, members of the Board already receive these allowances.

Moreover, any minor increase in expenses will be more than offset by the cost of the five-yearly Board of Education General Elections. The last General Election in 2002, which resulted in contested elections in only seven of the 15 constituencies, cost in the region of £50,000.

Additional administrative responsibilities falling on the Department as a result of the Bill will be accommodated within existing resources, including present personnel levels.

The Department has obtained Treasury concurrence for the introduction of the Bill at the meeting of Treasury held on 3 September 2008.

Appendix 1

BOARD OF EDUCATION GENERAL ELECTIONS

YEAR	CONTESTED (poll required)		UNCONTESTED (poll not required)	
	No of Constituencies	No of Members Elected	No of Constituencies	No of Members Elected
1972	4	6	9	18
1977	1	3	12	16
1982	9	17	4	6
1987	6	6	9	9
1992	7	7	7	7
1997	8	8	6	6
2002	7	7	8	8

In 1977, 1982, 1992 and 1997 there were insufficient nominations for the number of seats available.

In 2007 no nominations were received for the vacancy in Douglas West arising from the death of Mr G Cannell.

In 2008 no nominations were received for the Ramsey vacancy arising from the resignation of Mrs G Kirk.

Appendix 2

Results of Consultation

Total number of responses: 45

		Number of Comments on Clause
Clause	1	15
	2	28
	3	10
	4	13
	5	13
	6	14
	7	21
	8	5
	9	22
	10	5

Teachers Unions

ATL
NAHT
ASCL

Commissioners

Ramsey
Castletown
Peel
Maughold
Michael
Patrick
Lonan

Government Department

DHSS
DHA (Integrated Children's Services)
Project Manager
DHA (Probation)

School Governors

Marown
Rushen
Sulby
Andreas and Bride
Ramsey Grammar School
Ballacottier
Ballasalla
Ballacloan

Church Groups

Methodist

TEACHERS 9

Board of Education

Members had the opportunity to meet on a number occasions to discuss the Bill, in particular the future of the Board. Their views were considered by the Department following a presentation by the Board members to the Department Members. In addition 32 current members and 1 former member submitted their own comments.

Other Organisations

Isle of Man Freethinkers
Voice
Action for Home Education Group
Education Otherwise
Isle of Man Trades Council

Members of the Public 8