

## **EDUCATION BILL**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Graham Cregeen, MHK.*

### **INTRODUCTION**

1. These explanatory notes relate to the Education Bill 2020. They have been prepared by the Department of Education, Sport and Culture in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

### **SUMMARY AND BACKGROUND**

3. The Bill is intended to replace the Education Act 2001 with legislation which is relevant to the current situation in schools and the University College Isle of Man (UCM). It is also intended that the Bill takes proper account of changes required by other relevant legislation such as that on equality, employment, and safeguarding.
4. The objective to be delivered by the Bill is the establishment of modern educational provision which is fit for purpose. New provisions have been introduced which deal with behaviour, catchment areas and out of catchment requests, governing bodies, home education, inspections, private tutors, regulation of educational establishments, school attendance and Additional Educational Needs (AEN).
5. All areas of the Education Act 2001 were considered and even where there was no real change in the substance of the original provisions, they have been updated as appropriate to reflect other changes in legislation and to modernise the language being used.
6. Where possible or appropriate the legislation is enabling in nature, allowing secondary legislation to be drafted and then amended as and when necessary.
7. The Education Bill sets out some fundamental principles of education in the Island generally and for Additional Educational Needs.

8. Should the Bill be passed by the Branches, it will be brought into operation by one or more Appointed Day Orders at an appropriate time following the announcement of Royal Assent to Tynwald.
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## NOTES ON CLAUSES

### PART 1 – INTRODUCTORY

#### DIVISION 1 – TECHNICAL PROVISIONS

9. **Clauses 1 and 2** provide that the short title of the Act will be the Education Act 2020 and that the bulk of the Act will come into operation by one or more Appointed Day Orders at an appropriate time following the announcement of Royal Assent to Tynwald.
10. **Clause 3** provides an overview of the Bill. The Bill has 6 Parts, with each Part having divisions.
11. **Clause 4** provides definitions which apply throughout the Bill.
12. **Clause 5** requires that at least once a year the Minister of Education, Sport and Culture meets the Chair of Governors of each school, or his or her representative, and for a report to be published of the proceedings of each meeting. It is also intended that there should be a separate meeting with head teachers of each school, or their representative. The purpose of these meetings is three-fold; to outline the Department's educational strategy, to outline key achievements, challenges and events since the previous meeting, and to give those attending the meeting the opportunity to say what they think about educational matters in the Island.

#### DIVISION 2 – PRINCIPLES AND DUTIES

13. **Clause 6** sets out the fundamental principles of education in the Island, which must be taken into account when a public authority considers education in the Island. 9 principles have been considered.  
The first principle recognises that each individual should have an equality of opportunity as far as practicable.  
The second principle says that mainstream education should incorporate if possible, principles associated with additional educational needs (referred to in the Bill as "AEN principles").  
The third principle reflects the importance of vocational and other practical training, and that the Department should make provision for this.

Providing provision for life-long learning is recognised in the fourth principle. The fifth principle recognises that children or young people and their parents should have a reasonable degree of influence over the kind of education which is provided.

The cultural heritage of the Isle of Man is recognised in the sixth principle and the seventh supports the development of a diverse society based on respect.

The eighth principle seeks to make use of developing technologies.

The ninth principle recognises that education should be provided economically, effectively and efficiently.

14. **Clause 7** sets out the general duty of the Department to secure and promote education on the Island, providing educational services economically, efficiently and effectively.

To fulfil its general duty the Department must aim to provide facilities for education throughout people's lives, provide facilities for education that use a range of learning and communication technology, provide facilities for part-time and remote learning, take account of the wishes of children, young persons and their parents, make arrangements for the welfare of individuals attending educational establishments and generally in connection with their education, provide or use facilities in the Island, or facilities provided outside the Island where that is economical, efficient and effective, and provide appropriate support for children and young persons with medical conditions attending educational establishments. Appropriate provision for this last point will need to be put in place in cooperation with other Departments, most notably DHSC.

15. To achieve the general duty of the Department, **clause 8** requires the Department to consult education professionals and others whom it considers appropriate. The Department must also where appropriate consult DHSC, the Safeguarding Board, the Department of Home Affairs and other public authorities.

There are also provisions for the Department to review facilities providing education in the Island and issue guidance about how the Department exercises its functions under the Act, and report on both of these matters.

16. **Clause 9** introduces dispute resolution principles concerning education which must be applied. A three-stage process is proposed; the first involves an internal review, the second mediation and the third involves a referral to an independent tribunal. Ultimately, a party could take matters to court.

## **PART 2 – SCHOOLS**

### **DIVISION 1 – DEFINITIONS**

**This Division comprises clauses 10 to 13**, which define different types of school. A new concept of a “federated school” is introduced in clause 10. This describes a situation where two or more schools have a common head teacher and a common governing body. “Middle schools” cover an age range of pupils which spans the divide between primary and secondary schools. Typically their pupils will be aged between 9 years old to 13 or 14 years old. “Contracted schools” are schools which aim to support specific purposes, such as the provision of Manx Gaelic to pupils, and does not refer to Academy Schools and the Department has no intention of introducing an Academy type system.

### **DIVISION 2 – MAINTAINED SCHOOLS**

#### **Subdivision 1 – Provision and maintenance of schools**

17. **Clause 14** places a duty on the Department to ensure that there are sufficient schools in the Island, including provision for those with additional educational needs.
18. **Clause 15** requires the Department to provide and maintain schools. **Schedule 1** lists schools.
19. **Clause 16** requires the Department to set the dates of terms and to publish these.

#### **SUBDIVISION 2 – OPENING, CLOSING AND ALTERING SCHOOLS**

20. **Clause 17** allows the Department to open, close or alter schools. **Schedule 2** makes additional provision about the establishment, closure and alteration of schools.

#### **SUBDIVISION 3 – PREMISES**

21. **Clause 18** requires the Department to make arrangements for the maintenance and development of premises for maintained schools. There is a provision to seek contributions from the respective religious organisation involved in a maintained faith school. Regulations will need to be made which will determine the rate of contribution.

#### **SUBDIVISION 4 – GOVERNANCE AND FINANCE**

22. **Clause 19** requires the Department to make articles of government for schools which must include provision for governance of the school in relation to the Department, governors and the head teacher, the appointment of teachers, times during which a school will operate, the admission of pupils, the standards, discipline, suspension, expulsion and reinstatement of pupils, and financial

arrangements. They will also clearly define the role and responsibilities of governors and the duration of their tenure.

23. **Clause 20** requires the Department to make model instruments of government relating to the constitution and proceedings of the governing bodies of schools.
24. **Clause 21** deals with the Department issuing policies concerning the governance of a school and particularly about standards of behaviour.
25. **Clause 22** requires instruments of government to include provision about the appointment of governors to a school, the majority of whom should not be Department appointed governors. For secondary schools there is the provision for a pupil governor. For faith schools "foundation governors" must make up a third of the governing body.
26. **Clause 23** allows the Department to give directions to schools where governors, governing bodies or head teachers are behaving unreasonably or unlawfully.
27. **Clause 24** allows the Department to make arrangements for delegated financial management of schools.
28. **Clause 25** allows the Department to make regulations about charges for specified kinds of services provided at schools.
29. **Clause 26** allows the Department to aim to secure capital contributions from church and faith institutions where significant development or other capital costs are expected to be incurred.
30. **Clause 27** requires the Department to make regulations about providing reports to parents of pupils at maintained schools. The reports must give information relating to the curriculum and syllabuses being followed and must give details about academic achievement.
31. **Clause 28** allows the Department to require the provision of information about pupils and activities at schools taking into account data protection law.
32. **Clause 29** gives the Department responsibility for employing teachers and for other public bodies to employ staff in schools.
33. **Clause 30** requires the Department to set a balanced curriculum for registered pupils of compulsory school age at maintained schools which must include religion, ethics and values, Manx Gaelic, Manx culture and Manx history, age appropriate education about relationships and sex, health and lifestyle, and economic and other wellbeing, and opportunities for physical education.

## **SUBDIVISION 6 – BEHAVIOUR**

34. **Clause 31** requires the articles of government of maintained schools to make provision about standards of behaviour in the school and the sanctions that can be applied.
35. **Clause 32** requires the articles of government of maintained schools to include procedural provisions relating to suspension and exclusion.
36. **Clause 33** forbids the use of corporal punishment.
37. **Clause 34** allows staff at schools to use reasonable force to restrain pupils to prevent them from committing an offence, injuring a person, damaging property or behaving in such a way that undermines good order and discipline in the school. Further guidance material is to be compiled to complement continuing training about using reasonable force.
38. **Clause 35** makes provision about the confiscation of property in schools, particularly an offensive weapon, a controlled drug, a psychoactive substance, and tobacco or tobacco products. Other articles may also be confiscated depending on the school rules determined by the head teacher and governors. It also specifies to whom the confiscated items should be delivered.
39. **Clause 36** allows the recovery of costs in relation to damage caused by pupils at schools.
40. **Clause 37** makes provision about an offensive weapon in a school, particularly for staff to search a pupil if it is suspected that there is an offensive weapon in school. There will be occasions where it is not clear who a particular school bag belongs to hence the inclusion of the term "where known".
41. **Clause 38** gives a school teacher limited powers in relation to behaviour outside school premises at times when the teacher is responsible for the welfare or behaviour of pupils, for example on school trips.
42. **Clause 39** allows a head teacher of a maintained or contracted school to ban a person from the premises, with some exceptions.
43. **Clause 40** creates an offence of violent or disorderly behaviour in a school, including using obscene, indecent or threatening language.
44. **Clause 41** allows a constable to assist a head teacher to remove a person from the school premises if they have been requested to do so, or if an offence has been committed under clause 39 and clause 40.
45. **Clause 42** allows a head teacher to take action in relation to certain inappropriate use of social media affecting pupils or staff members at a school.

Appropriate policies and procedures will need to be developed to support schools in relation to social media.

#### **SUBDIVISION 7 – ADMISSION OF PUPILS**

46. **Clause 43** requires the Department to set catchment areas for maintained schools and the Department may make regulations about how the catchment area procedures will operate.
47. **Clause 44** makes provision about registers of pupils at schools, including providing information to the Department.
48. **Clause 45** makes provision for admission of pupils to schools and the withdrawal or expulsion of a pupil. Selection criteria based on ability or aptitude is not allowed in non-independent schools.

#### **SUBDIVISION 8 - INSPECTIONS**

49. **Clause 46** provides for inspections of maintained schools and requires the Department to make regulations about the inspection of maintained schools.
50. **Clause 47** requires maintained schools to carry out self-assessments at such intervals as may be prescribed in regulations. and it details the provisions that inspections may cover. The Department currently issues annual guidance about school self review and evaluation, which includes self-assessment, to head teachers.
51. **Clause 48** makes provision for interim or additional inspections of maintained schools.
52. **Clause 49** makes supplementary provision in relation to inspections, particularly who can carry them out and the penalty for deliberately obstructing an inspection.
53. **Clause 50** makes provision where inspections have identified deficiencies in schools, including varying actions required by the school and assigning staff to the school to assist.

#### **DIVISION 3 – INDEPENDENT SCHOOLS**

54. **Clause 51** defines what is meant by an "independent school".
55. **Clause 52** provides for the maintenance of a register of independent schools in the Island.
56. **Clause 53** makes provision for entry of independent schools in the register and **clause 54** makes provision for provisional registration.
57. **Clause 55** makes provision for removal from the register of independent schools and **clause 56** makes it an offence to conduct an unregistered independent school.

58. **Clause 57** makes provision for the inspection of independent schools where they are not already inspected by another professional body.
59. **Clause 58** requires the provision of information about independent schools to the Department and may include the quality of the education provided in the school, the spiritual or ethical, social and cultural development of pupils at the school, the welfare (including safeguarding issues), health and safety of pupils at the school, the qualifications and suitability of the proprietor, teachers and other staff at the school, the quality of the leadership and management of the school, the premises and facilities used by the school, the procedures for the handling of complaints in respect of the school, and other matters relating to the school specified by the Department.
60. **Clause 59** makes provision for complaints relating to independent schools and particularly to the suitability of the school premises or facilities, the quality or suitability of the education being provided at the school, the quality or suitability of the proprietor, a teacher or other member of staff at the school and the welfare of pupils at the school.
61. **Clause 60** makes provision about the determination of complaints and **clause 61** makes provision for the enforcement of complaint notices in relation to independent schools.
62. **Clause 62** makes provision about the welfare of children in independent school residential accommodation.

### **PART 3 – COMPULSORY EDUCATION**

#### **DIVISION 1 – COMPULSORY SCHOOL AGE**

63. **Part 3** deals with compulsory education.
64. **Clause 63** defines “compulsory school age” and allows the Department to make regulations to make allowances for specific circumstances, such as summer born children.

#### **DIVISION 2 – PARENTAL DUTY**

65. **Clause 64** requires parents of children of compulsory school age to ensure that they receive suitable education which may be at a school or may be otherwise.
66. **Clause 65** requires parents who wish to arrange for their children to attend school to do so in the academic year before the academic year in which the child reaches the age of five, even if the provisions of clause 63 apply.
67. **Clause 66** requires parents to notify the Department of arrangements made for children's education other than at a maintained or contracted school.

68. **Clause 67** makes provision where the Department suspects that a child is not receiving suitable education. There is also provision for the Department to issue guidance in regard to determining the suitability of education.

### **DIVISION 3 – FAILURE TO SECURE ATTENDANCE**

69. **Clause 68** creates an offence committed by a parent of a child of compulsory school age who is failing to attend school regularly despite being registered at a school.
70. **Clause 69** makes provision about determining what amounts to regular attendance and requires the Department to make regulations about absences of pupils during term time for the purpose of holidays.
71. **Clause 70** allows courts to require parents to attend guidance courses relating to school attendance if the court believes that it would be desirable to do so to prevent the commission of a further offence.
72. **Clause 71** allows the imposition of a civil penalty in relation to school attendance and specifies the amount of the penalty.

### **DIVISION 4 – SCHOOL ATTENDANCE ORDERS**

73. **Clauses 72 to 76** make provision about school attendance orders.

### **DIVISION 5 – EDUCATION SUPERVISION ORDERS**

74. **Clause 77** makes provision about education supervision orders and a child being put under the supervision of the DHSC by a juvenile court under specific circumstances.

### **DIVISION 6 - TRUANCY**

75. **Clause 78** makes provision for the return of truants to school by a constable or authorised person to a school or a place designated by the Department.

### **DIVISION 7 – HOME EDUCATION**

76. **Clauses 79 and 80** make provision about home education. **Clause 80** requires the Department to assess the educational development of children in the Island receiving home education and to make regulations about the assessments.

## **PART 4 – ADDITIONAL EDUCATIONAL NEEDS**

### **DIVISION 1 - INTERPRETATION**

77. **Part 4** makes provision about individuals with additional educational needs.
78. **Clause 81** defines “additional educational needs”.

### **DIVISION 2 – PRINCIPLES**

79. **Clause 82** sets out principles of education in relation to people with additional educational needs. “Include” involves strategies to create an inclusive climate in which children and young persons are welcomed and fairly treated. “Integrate”

involves strategies to address the diversity that comes with a range of children and young persons with all their different backgrounds, whether there are particular issues they face or have in their lives, through to possible disabilities. "Consistent provision of services" is a principle that seeks to avoid a 'postcode' lottery of provision developing, where an individual child or young person will get the same provision according to their needs irrespective of where they live.

80. **Clause 83** requires the Department to issue a code of practice about additional educational needs.

### **DIVISION 3 - ASSESSMENTS**

81. **Clause 84** makes provision for the assessment of children with additional educational needs if the Department has reason to believe that a child has additional educational needs which should be assessed.
82. **Clause 85** allows parents to request an assessment of their child's educational needs.
83. **Clause 86** makes provision about the procedure for assessments of a child's additional educational needs.

### **DIVISION 4 – REPORTS AND PROVISION**

84. **Clause 87** requires the Department to produce a report following an assessment in relation to additional educational needs.
85. **Clause 88** allows the Department to provide education at a maintained school for individuals with additional educational needs.
86. **Clause 89** allows the Department to provide education at colleges in certain circumstances.
87. **Clause 90** allows the Department to make arrangements for attendance at independent schools in certain circumstances.
88. **Clause 91** makes provision for the provision of education outside schools or colleges in certain circumstances.
89. **Clause 92** allows the Department to make off-Island provision for children in certain circumstances. By way of an example, this may be where a child has a particular disability, the Department's provision is not capable of meeting that particular child's needs in terms of providing a suitable education and this can only be achieved by his or her attending a specialist school or institution.

### **PART 5 – EDUCATION OUTSIDE SCHOOLS**

#### **DIVISION 1 - COLLEGES**

90. **Part 5** makes provision about education outside schools.

91. **Clauses 93 and 94** make provision about colleges, including applying other provisions of the Bill with modifications.

#### **DIVISION 2 – FURTHER AND HIGHER EDUCATION**

92. **Clause 95** makes provision about further education for those who have completed their compulsory education.
93. **Clause 96** makes provision about higher education.
94. **Clause 97** defines “recognised awards” and makes it an offence to take any of the following actions in relation to an unrecognised award, namely—
- a. to grant the award;
  - b. offer to grant the award; or
  - c. advertise an award or a course or scheme designed to lead to the grant of an award.
95. **Clause 98** provides for the enforcement of the provisions of clause 97.

#### **DIVISION 3 – PRE-SCHOOL EDUCATION**

96. **Clauses 99** makes provision about early years providers and the Department may make regulations about registration, which may be automatic if registered with DHSC.
97. **Clause 100** requires the Department to inspect early years providers in collaboration with the Registrations and Inspections Unit of DHSC, particularly considering welfare and safeguarding, educational provision and other matters the Department considers appropriate.
98. **Clause 101** makes provision for complaints relating to an early years provider and particularly to the suitability of the provider’s premises or facilities, the quality or suitability of the education being provided by the provider, the quality or suitability of the proprietor, a teacher or other member of staff at the institution, the safeguarding and welfare of children to whom the early years provider is providing education.
99. **Clause 102** makes provision about the determination of complaints and **clause 103** makes provision for the enforcement of complaint notices in relation to an early years provider.
100. **Clause 104** makes provision for an appeal against a decision of the Department.
101. **Clause 105** makes provision for financial assistance in regards to early years education, whether to the parents of children under compulsory school age or an early years provider.

#### **DIVISION 4 – YOUTH, COMMUNITY AND ANCILLARY SERVICES**

102. **Clause 106** makes provision for youth and community services.

103. **Clause 107** makes provision allowing the Department to give financial assistance in respect of educational facilities, with the consent of the Treasury. The financial assistance may be in the form of scholarships, exhibitions, bursaries and other awards and allowances, payments in respect of training schemes or apprenticeships, grants, loans, guaranties and indemnities, lump sums and annual or other periodic payments, and any other kind of financial assistance. The regulations about financial assistance may confer discretion on the Department or another specified person in relation to terms and conditions, permit the inclusion of conditions requiring the provision of information, 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), refer to provision for repayment with or without interest in specified circumstances.
104. **Clause 108** allows the Department to make arrangements for transport to schools and colleges with the consent of the Treasury.
105. **Clause 109** allows the Department to arrange the provision of food and drink at maintained schools and colleges. With the concurrence of the Treasury regulations may be made making provision for the nature of food and drink to be provided under the arrangements, facilities and services to be provided by governing bodies and teachers, and charging for provision made under the arrangements.

#### **DIVISION 5 – EDUCATIONAL INSTITUTIONS**

106. **Clauses 110 to 119** make provision for the registration and inspection of an “educational institution”.
107. **Clause 110** defines “educational institution” for the purposes of the resulting Act.
108. **Clause 111, clause 112 and clause 113** requires the Department to consider applications, and maintain a register of educational institutions operating in the Island. Regulations under section 112 may require institutions to provide information in connection with applications for registration and in particular they may require the provision of details about safeguarding arrangements, courses offered and fees charged. If registration is granted, the Department may issue a registration certificate with the registration date and any terms and conditions.
109. **Clause 114** introduces an offence of conducting an unregistered institution.
110. **Clause 115** describes the kinds of information which the Department may request.

111. **Clause 116** makes provision for inspections of educational institutions.
112. **Clause 117** and **clause 118** deals with complaints about educational institutions and the determination of complaints, and in particular about—
- 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; and
  - d. the safeguarding and welfare of children and young persons studying at the institution.
113. **Clause 119** relates to enforcement arising from complaints.

#### **DIVISION 6 – PRIVATE TUTORS**

114. **Clauses 120** to **123** make provision for the registration of private tutors and an application must include a current enhanced check certificate issued by the Disclosure and Barring Service in accordance with the Safeguarding Vulnerable Groups Act 2006 (of Parliament), information about the subjects the tutor offers or intends to offer to teach, information about the age-range of students the tutor offers or intends to offer to teach and any prescribed fee.

### **PART 6 – GENERAL AND FINAL PROVISION**

#### **DIVISION 1 – GENERAL PROVISION**

115. **Part 6** makes general and final provision.
116. **Clause 124** specifies the membership of the Education Tribunal.
117. **Clause 125** and **Schedule 3** allow the Department to administer trust property. **Schedule 3** makes provision about schemes relating to educational trusts.
118. **Clause 126** makes provision about child employment, particularly the employment of children, participation by children in performances, training children to participate in performances including dangerous activities, participation by children in travel out of the Island for the purpose of taking part in performances and involvement of children in street trading.
119. **Clause 127** makes provision for the determination of children's ages.
120. **Clause 128** makes provision about the admission of certain documents in evidence.
121. **Clause 129** makes provision about the publication of notices.
122. **Clause 130** makes provision about subordinate legislation under the Bill.
123. **Clause 131** contains consequential repeals.
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### **EUROPEAN CONVENTION ON HUMAN RIGHTS**

124. Section 16 of the Human Rights Act 2001 requires the Member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the Member moving the Bill, the provisions of the Education Bill 2020 are compatible with the Convention rights.

### **FINANCIAL EFFECTS OF THE BILL**

125. In the view of the mover of the Bill, it is not expected to increase or decrease revenue or have any financial or personnel implications.