



**Isle of Man**

*Ellan Vannin*

**AT 33 of 2001**

**EDUCATION ACT 2001**





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## EDUCATION ACT 2001

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**Isle of Man***Ellan Vannin*

## EDUCATION ACT 2001

*Received Royal Assent:* 15 October 2001  
*Passed:* 15 October 2001  
*Commenced:* See endnote 46

**AN ACT** to make new provision for education; and for connected purposes.

### PART 1 – GENERAL DUTIES OF DEPARTMENT

#### 1 General duties of Department

- (1) It is the duty of the Department of Education and Children (“the Department”) –
  - (a) to promote the education of persons, and in particular persons under the age of 18 years, resident in the Island; and
  - (b) for that purpose to provide efficient and comprehensive educational services in the Island.<sup>1</sup>
- (2) 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.
- (3) The Department shall keep under review the facilities for –
  - (a) the provision of education in the Island, and
  - (b) the provision of education outside the Island for persons resident in the Island.
- (4) The Department shall from time to time prepare and lay before Tynwald statements of the policies adopted by it for the performance of its functions under this Act.

## PART 2 – PRIMARY AND SECONDARY EDUCATION

### *Provision of schools*

#### 2 Primary and secondary education

- (1) The Department shall secure that there are available in the Island sufficient schools for providing primary education and secondary education.
- (2) For the purpose of this section “sufficient schools” means schools sufficient in number, character and equipment to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of –
  - (a) their different ages, abilities and aptitudes, and
  - (b) the different periods for which they may be expected to remain at school,including practical instruction and training appropriate to their respective needs.
- (3) In performing its duty under this section, the Department shall in particular have regard to the need to secure –
  - (a) that suitable provision is made for pupils who have been assessed as having special educational needs; and
  - (b) subject to paragraph (a), that primary and secondary education are provided in separate schools.
- (4) For the purpose of performing its duty under this Act the Department may –
  - (a) provide primary and secondary schools;
  - (b) maintain such schools, whether provided by the Department or otherwise; and
  - (c) assist any school which is not provided or maintained by the Department.
- (5) In this Act –
  - (a) primary and secondary schools (other than special schools) provided and maintained by the Department are referred to as “**provided schools**”;
  - (b) primary and secondary schools (other than special schools) maintained but not provided by the Department are referred to as “**maintained schools**”;
  - (c) schools provided by the Department and specially organised for the purpose of providing education suitable for pupils who have



been assessed as having special educational needs are referred to as “**special schools**”.

- (6) The schools listed in Schedule 1 are the schools maintained by the Department at the passing of this Act as follows —
- (a) those specified in Part 1 of that Schedule are provided schools;
  - (b) those specified in Part 2 of that Schedule are maintained schools;
  - (c) that specified in Part 3 of that Schedule is a special school;
- and, subject to section 3, those schools shall continue to be maintained as such by the Department.
- (7) The duty of the Department to maintain a school includes the duty of defraying all the expenses of maintaining the school; and “maintain” shall be construed accordingly
- (8) The duty of the Department to maintain a maintained school includes the duty to provide any site which is to be provided for the school in addition to, or instead of, the whole or any part of the existing site of the school.

### **3 Establishment etc of schools**

- (1) The Department may by order provide for —
- (a) the establishment of a new provided school, maintained school or special school;
  - (b) the constitution of a school (not already being a provided school or a maintained school) as a provided school or a maintained school;
  - (c) the constitution of a maintained school as a provided school, or of a provided school as a maintained school;
  - (d) the closure of a provided school or a special school;
  - (e) the discontinuance of a maintained school as such a school;
  - (f) the division of a provided school or a maintained school into 2 or more separate schools (each to be either a provided school or a maintained school).
- (2) The Department may by order provide for the alteration of the character of a provided school or maintained school, that is —
- (a) for education to begin or cease to be provided at the school —
    - (i) for pupils above or below a particular age; or
    - (ii) for girls or boys;
  - (b) for making, altering or terminating arrangements for the admission of pupils by ability or aptitude;
  - (c) for significantly enlarging or altering the school premises; or
  - (d) for transferring the school to a new site.

- (3) The Department may not provide for any matter specified in subsection (1) or (2) otherwise than by an order under subsection (1) or (2).
- (4) An order may not be made under subsection (1)(b) without the consent of the proprietor of the school in question, and an order may not be made under subsection (1)(c), (d) or (f) or subsection (2) with respect to a maintained school without the consent of the governing body of the school.
- (5) Schedule 2 has effect with respect to the making of orders under subsection (1) and (2) and the related matters referred to in that Schedule.
- (6) Schedule 3 has effect with respect to the discontinuance of maintained schools.

#### **4 Use and care of premises of maintained schools**

- (1) Subject to any directions under subsection (2) and to the requirements of any enactment other than this Act, the occupation and use of the school premises of a maintained school shall be under the control of the governing body of the school.
- (2) Subject to subsections (3) and (4), the Department may give such directions as it thinks fit as to the occupation and use of the school premises of a maintained school.
- (3) The governing body of a maintained school shall be entitled to determine the use to which the school premises or any part of them shall be put on Saturdays, except when required to be used on Saturdays for the purposes of the school or for any purpose connected with education or with the welfare of the young for which the Department desires to provide accommodation on the premises or on that part of them.
- (4) The foundation governors of a maintained school shall be entitled to determine the use to which the school premises or any part of them shall be put on Sundays.
- (5) The persons employed for the purposes of the care and maintenance of the school premises of a maintained school shall be appointed and dismissed by the Department.
- (6) In relation to any school with respect to which the trust deed provides for any person other than the governing body of the school being entitled to control the occupation and use of the school premises, this section shall have effect as if for the references to the governing body there were substituted references to that person.
- (7) Any sum received by the governors or trustees of a maintained school, so far as it is paid in respect of the letting or hiring of any part of the school

premises other than school buildings, shall be paid over to the Department.

#### **4A The Education Council**

- (1) There shall be established an Education Council (“the Council”).
- (2) The Department may consult with the Council on any matter on which it appears to the Department that its advice would be desirable, and in exercising its functions under this Act shall have regard to any advice given by the Council pursuant to any such consultation.
- (3) Subject to the provisions of any instrument of government under section 5(1) or 33(2), the Department may appoint from among the members of the Council members of the governing bodies of schools and colleges provided or maintained by the Department.
- (4) Schedule 3A shall have effect with respect to the Council.
- (5) The Department may by order amend Schedule 3A.<sup>2</sup>

#### **5 Government of schools**

- (1) The Department —
  - (a) shall make an instrument (an “instrument of government”) providing for the constitution and proceedings of a governing body for —
    - (i) each secondary school, and
    - (ii) each primary school, being a maintained school, and
  - (b) may make such an instrument providing for the constitution and proceedings of a governing body for —
    - (i) a primary school, being a provided school, or
    - (ii) 2 or more primary schools, each of which is a provided school.
- (2) The instrument of government of a maintained school shall provide that one third of the governing body shall be persons (“foundation governors”) appointed otherwise than by the Department for the purpose of securing, so far as is practicable, that the character of the school as a maintained school is preserved and developed, and, in particular, that the school is conducted in accordance with the provisions of any trust deed relating to it.
- (3) The Department shall for each school make an instrument (“articles of government”) in accordance with which the school is to be conducted.
- (4) The articles of government of a school shall include provision (consistent with the provisions of this Act) 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 terms, holidays and sessions;
- (d) the admission of pupils;
- (e) subject to section 10, the discipline, suspension, expulsion and reinstatement of pupils; and
- (f) giving effect to any financial arrangements under section 22.

### **5A Power of Department to give directions**

- (1) If the Department is satisfied that the governing body or head teacher of a provided school or maintained school has acted or is proposing to act —
  - (a) unreasonably, or
  - (b) contrary to the articles of government of the school,with respect to the exercise of any function under this Act or the articles of government, it may give the governing body or head teacher, as the case may be, such directions as to the exercise of the function as appear to it to be expedient.
- (2) If the Department is satisfied that the governing body or head teacher of a provided school or maintained school has failed to discharge any duty imposed on it, him or her by or for the purposes of this Act or the articles of government of the school, it may make an order —
  - (a) declaring the 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 as appear to it to be expedient.
- (3) The Department may act under subsection (1) or (2) despite any provision which makes the exercise of the function, or the performance of the duty, in question contingent upon the opinion of the governing body or head teacher.
- (4) It shall be the duty of a governing body or head teacher to comply with a direction under subsection (1) or (2)(b).<sup>3</sup>

### **6 Employment of teachers**

- (1) The appointment of teachers —
  - (a) in every provided school and special school, and
  - (b) subject to subsection (2) and section 7, in every maintained school,

shall, except in so far as the articles of government for the school otherwise provide, be under the control of the Department, and no teacher shall be dismissed except by the Department.

- (2) Where the appointment of the head teacher of a maintained school falls to the Department, it shall before making such an appointment –
  - (a) inform the governors of the school as to the person whom it proposes to appoint, and
  - (b) consider any representations made by the governors with respect to the proposed appointment.
- (3) The remuneration and conditions of service of teachers in provided schools, maintained schools and special schools shall be determined by the Department.
- (4) Subject to section 7(5) –
  - (a) no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher in a provided school or maintained school, or from being otherwise employed for the purposes of such a school; and
  - (b) no teacher in any such school shall –
    - (i) be required to give religious education, or
    - (ii) receive any less emolument, or be deprived of, or disqualified for, any promotion or other advantage, by reason of the fact that he does or does not give religious education or by reason of his religious opinions or of his attending or omitting to attend religious worship.

## **7 Teachers of religious education in maintained schools**

- (1) Where the number of the teaching staff of a maintained school exceeds 2, the teaching staff shall include persons (“reserved teachers”) selected for their fitness and competence to give religious education in accordance with any trust deed relating to the school.
- (2) The Department or, where the function of appointing teachers is under the articles of government of the school vested in the governing body, the governing body shall not appoint a person to be a reserved teacher in a maintained school unless the foundation governors of the school are satisfied as to his fitness and competence to give religious education in accordance with any trust deed relating to the school.
- (3) The head teacher of a maintained school shall not, while holding that position, be a reserved teacher.
- (4) If the foundation governors of a maintained school are of opinion that any reserved teacher has failed to give religious education efficiently and suitably in accordance with any trust deed relating to the school, they

may require the Department to dismiss him from employment as a reserved teacher in the school.

- (5) Except as provided by paragraph (b)(ii), section 6(4) does not apply with respect to a reserved teacher in a maintained school.

*Education in primary and secondary schools*

## **8 Curriculum**

- (1) The Department shall by order prescribe a curriculum for all registered pupils of compulsory school age at provided schools and maintained schools.
- (2) The curriculum shall include provision for the following matters —
- (a) religious education in accordance with section 12;
  - (b) the teaching of Manx Gaelic and the culture and history of the Island;
  - (c) the assessment, at stages to be specified in the order under subsection (1), of the progress made by each pupil in any subject so specified;
  - (d) preparation for public examinations set in the Island or elsewhere;
  - (e) physical education.
- (3) Except so far as the Department may otherwise direct in the case of a pupil with special educational needs, the education of every pupil at a provided school or maintained school shall be in accordance with the curriculum prescribed under this section.
- (4) Before making any order under subsection (1) the Department shall consult such organisations representative of teachers, and such other persons and bodies, as it considers appropriate.

## **9 Information and reports to parents**

The Department shall make regulations requiring arrangements to be made for the regular provision to the parents of each registered pupil at every provided school or maintained school of —

- (a) information about —
  - (i) the educational provision made by the school for pupils at the school; and
  - (ii) the curriculum and syllabuses followed at the school in the course of such provision; and
- (b) reports on the educational achievements of that pupil, including the results of any examinations and assessments he may have undergone;

- (c) such other documents and information as may be prescribed.

## 10 School discipline

- (1) The articles of government of a provided school or maintained school —
- (a) shall specify the authority (that is, the Department, the governing body or the head teacher) which shall determine the standard of behaviour which is to be regarded as acceptable at the school;
  - (b) shall specify the penalties (which shall not include corporal punishment) which may be imposed on a pupil for any misbehaviour;
  - (c) shall specify the authority (that is, the Department, the governing body, the head teacher or any other teacher) who may administer any penalty;
  - (d) shall provide for an appeal to the Department against any penalty involving the suspension of a pupil from the school; and
  - (e) shall not permit any authority other than the Department to expel a person from the school.
- (2) The articles of government may authorise the detention for misbehaviour of any pupil who has not attained the age of 18 on any day other than —
- (a) a Sunday,
  - (b) any day outside the school term (a half-term break being treated for this purpose as in the school term), or
  - (c) any day on which the pupil has leave to be absent granted by the head teacher or any other person authorised to do so by the governing body.<sup>4</sup>
- (3) The articles of government shall not authorise the detention for misbehaviour of any pupil before or after the school session on any day unless, not less than 24 hours before the time when the detention begins, the pupil's parent has been —
- (a) notified of the time and duration of the intended detention, and
  - (b) if arrangements have to be made for the pupil to travel to school for the purposes of the detention or to travel home after the detention, informed whether such arrangements have been made, and if so, what they are.<sup>5</sup>

## 11 Charges for certain services

- (1) The Department may by regulations provide for the making of charges for or in respect of —
- (a) such descriptions of teaching provided for pupils, or
  - (b) such descriptions of activities arranged for pupils,

at a provided school or maintained school (whether or not as part of the normal curriculum of the school) as are specified in the regulations.

- (2) Except in accordance with regulations under subsection (1), no charge may be made by or on behalf of the Department or the governing body of a provided school or maintained school for any teaching provided for pupils at the school or any activity arranged for pupils at the school.

### *Religious education and worship*

## **12 Religious education**

- (1) Subject to section 14, religious education shall be given to every pupil of compulsory school age in every provided school and every maintained school.
- (2) The religious education given to any pupils at a provided school pursuant to subsection (1) —
  - (a) shall be given in accordance with a syllabus prepared under subsection (4)(a) and adopted by the Department for the school or for those pupils; and
  - (b) shall be wholly or mainly of a broadly Christian character; but
  - (c) shall not include any catechism or formulary which is distinctive of any particular religious denomination.
- (3) The Department shall establish a committee (“the committee”) for the purpose of exercising the functions specified in subsection (4).
- (4) The committee, when requested by the Department, shall from time to time —
  - (a) prepare any syllabus of religious education required by the Department for use in provided schools and maintained schools (which may be more than one syllabus for different classes or descriptions of pupils);
  - (b) recommend text books for the assistance and guidance of teachers and pupils;
  - (c) arrange for the conduct of examinations in religious knowledge based upon the religious education provided in such schools, and report on them to the Department; and
  - (d) generally advise the Department on all matters relating to religious education in such schools:

Provided that no such syllabus or text book shall advance any catechism or formulary which is distinctive of any particular religious denomination.



- (5) The Department shall make regulations for the appointment, terms and conditions of membership and proceedings of the committee, providing —
  - (a) for a majority of the members of the committee to represent the principal Christian denominations in the Island, and
  - (b) for other members of the committee to represent teachers in provided schools and maintained schools.
- (6) No directions shall be given by the Department as to the secular education to be given to pupils in attendance at a maintained school so as to interfere with the provision of reasonable facilities for religious education in the school during school hours.

### **13 Religious worship**

- (1) Subject to section 14, the Department or, in the case of a maintained school, the governing body of the school shall ensure that arrangements are made for regular collective worship on the part of all pupils at every provided school and every maintained school.
- (2) Arrangements under subsection (1) for any school shall provide for a single act of worship attended by all pupils at the school unless the Department or the governing body, as the case may be, considers that the school premises are such as to make it impracticable to assemble them for that purpose.
- (3) The collective worship required by subsection (1) shall be wholly or mainly of a broadly Christian character but shall not, in a provided school, be distinctive of any particular religious denomination.

### **14 Parents' rights as to religious education and worship**

- (1) If the parent of any pupil at any provided school or maintained school requests that he be wholly or partly excused from attendance at —
  - (a) religious education in the school,
  - (b) religious worship in the school, or
  - (c) both religious education and religious worship in the school,then, until the request is withdrawn, the pupil shall be excused from such attendance accordingly.
- (2) Subject to subsection (3), where any pupil has been wholly or partly excused from attendance at religious education or worship in any school in accordance with subsection (1) and the Department is satisfied —
  - (a) that the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods during which he is excused from such attendance;

- (b) that the pupil cannot with reasonable convenience be sent to another provided school or maintained school where religious education of the kind desired by the parent is provided;
- (c) that arrangements have been made for him to receive religious education during school hours elsewhere; and
- (d) that the arrangements will not interfere with the attendance of the pupil at school on any day except at the beginning or end of the school session on that day,

the pupil may be withdrawn from the school during such periods as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements.

- (3) Where a secondary school (being a provided school) is so situated that arrangements cannot conveniently be made for the withdrawal of pupils from the school in accordance with subsection (2), then, if the Department is satisfied –
  - (a) that the parents of pupils in attendance at the school desire them to receive religious education in the school in accordance with the tenets of a particular religious denomination; and
  - (b) that satisfactory arrangements have been made for the provision of such education to those pupils in the school and for securing that the cost of providing such education to those pupils in the school will not fall upon the Department;

the Department, unless it is satisfied that owing to any special circumstances it would be unreasonable so to do, shall provide facilities for the carrying out of those arrangements.

- (4) Where the parents of any pupils in attendance at a maintained school request that they may receive religious education –
  - (a) in accordance with the provisions of the trust deed relating to the school, or
  - (b) where provision for that purpose is not made by such a deed, in accordance with the practice observed in the school before it became a maintained school,

the foundation governors shall, unless they are satisfied that owing to special circumstances it would be unreasonable to do so, make arrangements for securing that such religious education is given to those pupils at the school during not more than 2 periods in each week.

- (5) It shall not be required as a condition of any pupil attending any provided school or maintained school that he shall attend or abstain from attending any Sunday school or any place of religious worship.
- (6) No directions shall be given by the Department as to the secular education to be given to pupils in attendance at a maintained school so as to prevent a pupil from receiving religious education in accordance

with this section during the hours normally set apart for that purpose, unless arrangements are made whereby the pupil is to receive such education in the school at some other time.

*Admission etc. of pupils*

**15 Selection of school**

- (1) Where a parent of a child requests that the child be admitted as a registered pupil to a provided school or maintained school which provides education for pupils of the same age as the child, the responsible authority shall if practicable comply with that request, subject to the following provisions of this section.
- (2) The responsible authority may refuse such a request on any of the following grounds —
  - (a) that the child has special educational needs and the Department has certified that they cannot reasonably be provided for at that school;<sup>6</sup>
  - (b) that the child is resident outside the catchment area of the school designated under subsection (4) and his admission would seriously prejudice the admission to the school of children living within that area;
  - (c) that the child has been expelled from the school and has not since been re-admitted.
- (3) The Department shall by regulations make provision for —
  - (a) an appeal by a parent against —
    - (i) a certificate under subsection (2)(a), or
    - (ii) the refusal of such a request on a ground mentioned in subsection (2)(b) or (c),to a person specified in or a person, committee or tribunal appointed in accordance with the regulations, and<sup>7</sup>
  - (b) the procedure for the making, hearing and determination of such an appeal and the notification of such determination.
- (4) In relation to any provided school or maintained school, the Department may by order designate such area as appears to the Department to be the area, the children living within which would normally be expected to attend that school as the catchment area of the school.
- (5) The Department shall give public notice of any order made under subsection (4), and shall cause a copy of the order to be kept available for inspection by the public at all reasonable hours at its offices and at every school to which the instrument relates.

- (6) In this section “the responsible authority”, in relation to a school, means the person or body responsible under the articles of government for the admission of pupils.

## 16 Registration of pupils

- (1) The Department shall by regulations make provision for —
- (a) the keeping by the head teacher of every school of a register of the persons who are pupils at the school;
  - (b) the particulars with respect to each such person to be entered in the register;
  - (c) enabling such registers to be inspected,
  - (d) enabling extracts from such registers to be taken for the purposes of this Act by persons duly authorised for the purpose under the regulations, and
  - (e) requiring the persons by whom such registers are required to be kept to make to the Department such periodical or other returns as to the contents of them as may be prescribed.
- (2) Regulations under subsection (1) shall —
- (a) prescribe —
    - (i) the procedure by which a child may become a registered pupil, and
    - (ii) the procedure by which a child (not being a child with respect to whom a school attendance order is in force) may be withdrawn from any school at which he is a registered pupil;
  - (b) make provision for the deletion from the register of the name of any pupil so withdrawn and of any pupil expelled from the school;
  - (c) provide that a child who has under arrangements made by the Department become a registered pupil at a special school shall not be withdrawn from the school without the consent of the Department;
  - (d) enable any such register to be kept on a computer;
  - (e) make it an offence —
    - (i) to fail to comply with any requirement imposed on any person by the regulations, or
    - (ii) to obstruct a person exercising powers conferred under subsection (1)(c) or (d);
  - (f) provide that any such offence shall be punishable on summary conviction by a fine not exceeding £200; and

- (g) apply this section with modifications in the case of children of compulsory school age who have attained the age of 14 years and for whom education is provided at a college.

*Provision of education otherwise than at school*

**17 Provision of education otherwise than at school**

- (1) The Department may provide education at a college for a child of compulsory school age who has attained the age of 14 years.
- (2) If the Department is satisfied that by reason of any extraordinary circumstances a person under the age of 19 years is unable to attend a suitable school for the purpose of receiving primary education or secondary education, it may make special arrangements for him to receive such education otherwise than at school.

*Special educational needs*

**18 Special educational needs**

- (1) For the purposes of this Act a child has special educational needs if he has a learning difficulty which calls for special educational provision to be made for him.
- (2) The Department shall take reasonable steps to identify children who have special educational needs.
- (3) Schedule 4 has effect with respect to the assessment of a child's special educational needs.
- (4) For the purposes of this Act a child has a learning difficulty if —
  - (a) he has a significantly greater difficulty in learning than the majority of children of his age;
  - (b) he has a disability which prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in provided schools; or
  - (c) he is below compulsory school age and is, or if special educational provision were not made for him would be, likely to fall within paragraph (a) or (b) when he is of compulsory school age.

**19 Report on child's special educational needs**

- (1) Where, as a result of an assessment under Schedule 4, it appears to the Department that a child has special educational needs, it shall —
  - (a) consider what special educational provision it should make for him, and
  - (b) prepare a report on that special educational provision.

- (2) The report shall be in such form and contain such information as may be prescribed, but shall in particular specify the special educational provision which (unless the child's parent makes suitable arrangements) the Department intends to make for the purpose of meeting the child's special educational needs, including —
  - (a) the type of school or other institution, or the type of unit or facility within a school or other institution, which the Department considers would be appropriate for the child, and
  - (b) if the Department is required by subsection (4) to specify a school, the name of that school.
- (3) In preparing a report under this section the Department shall have regard to —
  - (a) the assessment under Schedule 4, and
  - (b) the resources which are, or are likely to be, available for meeting the child's special educational needs.
- (4) If the parent of the child in accordance with regulations expresses a preference as to the provided school, maintained school or special school at which he wishes education to be provided for the child, the Department shall specify that school in the report unless it considers that —
  - (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
  - (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.
- (5) Where the Department has prepared a report under this section —
  - (a) unless the child's parent has made suitable arrangements, the Department shall arrange for the special educational provision specified in the report to be made for the child, and
  - (b) if the name of a provided school, maintained school or special school is specified in the report, the Department or the governing body of the school, as the case may be, shall admit the child to the school.
- (6) Subsection (5)(b) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.
- (7) The Department may, of its own motion or at the request of the parent of the child, amend or cancel a report under this section; and the preceding provisions of this section apply, with any necessary modifications, to the amendment or cancellation of the report as they apply to the preparation of the report.

- (8) The Department shall make regulations providing for the procedure to be followed in preparing, amending or cancelling a report under this section, and in particular for —
- (a) requiring the Department to notify the parent of what it proposes to include in the report or amended report, or of the proposed cancellation, as the case may be;
  - (b) giving a parent a right of appeal against the proposal to a person specified in or a person, committee or tribunal appointed in accordance with the regulations;
  - (c) the procedure for the making, hearing and determination of such an appeal and the notification of such determination; and
  - (d) requiring the report or amended report, or a notice of the cancellation of the report, as the case may be, to be served on the parent.

## 20 Special education at other schools

- (1) This section applies where —
- (a) special educational provision in respect of a child with special educational needs is made at a school which is not a provided school, a maintained school or a special school, and
  - (b) the Department is satisfied —
    - (i) that his interests require the necessary special educational provision to be made for him at a school which is not a provided school, a maintained school or a special school, and
    - (ii) that it is appropriate for the child to be provided with education at the particular school.
- (2) Where this section applies, the Department shall pay the whole of the fees payable in respect of the education provided for the child at the school, and if —
- (a) board and lodging are provided for him at the school, and
  - (b) the Department is satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided,
- the Department shall pay the whole of the fees payable in respect of the board and lodging.

### *Supplemental*

## 21 Conduct on school and college premises

- (1) Any person, not being —

- (a) a person employed or appointed or authorised by the Department or the governing body of a provided school, maintained school or special school, or
- (b) a registered pupil at the school (other than a pupil who, in accordance with the articles of government of the school, is for the time being suspended from the school for misbehaviour),<sup>8</sup>

who is present on any school premises and, on being requested by the head teacher to quit the school premises, refuses or fails to do so is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

- (2) Any person being present on any school premises who –
  - (a) behaves in a violent, quarrelsome, indecent or disorderly manner on any school premises, or
  - (b) uses any profane, obscene, indecent or threatening language on such premises,

is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

- (3) All constables are required, on the demand of the head teacher, or some person in his behalf, to expel or assist in expelling from the school premises any person committing or having committed an offence under subsection (1) or (2), and may use such reasonable force as may be required for that purpose.
- (3A) In proceedings for an offence under subsection (1) a certificate signed by the head teacher that a pupil was at the material time suspended as mentioned in subsection (1)(b) shall be admissible as evidence that he or she was so suspended; and a document purporting to be such a certificate shall be deemed to be such a certificate unless the contrary is proved.<sup>9</sup>
- (4) References in this section to the head teacher of a school include references to a teacher acting as the head teacher.
- (5) This section applies to the premises of a college provided or maintained by the Department as it applies to school premises; and in relation to such premises references in this section to the head teacher of a school shall be construed as references to the principal, or a teacher acting as the principal, of the college.

## **21A Power of teacher to restrain pupil**

- (1) A teacher may use, in relation to any pupil at a school, such force as is reasonable in the circumstances for the purpose of preventing the pupil from doing, or continuing to do, any of the following –
  - (a) committing an offence,



- (b) causing personal injury to, or damage to the property of, any person (including the pupil himself or herself), or
  - (c) behaving in any way prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether during a teaching session or otherwise.
- (2) In this section “offence” includes anything that would be an offence but for the operation of any presumption that a person under a particular age is incapable of committing an offence.<sup>10</sup>

### **21B Seizure of certain articles**

- (1) Where a pupil at a school is in possession of an article to which this section applies, a teacher may seize and detain the article.
- (2) This section applies to any of the following —
- (a) an offensive weapon;
  - (b) a controlled drug;
  - (c) any liquor; and
  - (d) any article, the possession or use of which by a pupil is forbidden (whether generally or at particular times or under particular circumstances) under any rule of discipline for the time being in force at the school;

but does not apply to an article of clothing which is being worn by a pupil.<sup>11</sup>

### **21C Search for weapons**

- (1) Where a teacher at a school who has reasonable grounds for suspecting that a pupil may have an offensive weapon with him or her or in his or her possession, the teacher may search that pupil or his or her possessions for such weapons.
- (2) A teacher may not exercise the power under subsection (1) unless he or she is —
- (a) the head teacher of the school; or
  - (b) authorised by the head teacher to carry out the search.
- (3) A girl may not be searched under subsection (1) except by a woman.
- (4) A pupil may not be searched under subsection (1) except in the presence of another teacher.
- (5) A pupil’s possessions may not be searched under subsection (1) except in his or her presence and in the presence of another teacher.

- (6) If, in the course of a search under this section, a teacher finds anything which he or she has reasonable grounds for suspecting to be an offensive weapon, he or she may seize and detain it.<sup>12</sup>

### 21D Discipline: supplemental

- (1) A teacher may exercise the power under section 21A(1), 21B(1) or 21C(1) —
- on the premises of the school, or
  - elsewhere when, as teacher at the school, he or she has lawful control or charge of the pupil concerned.
- (2) A teacher who exercises that power may use such force as is reasonable in the circumstances.
- (3) Subject to subsection (4), anything seized under section 21B(1) or 21C(6) must, within 24 hours of its seizure, be delivered to —
- a parent of the pupil or a constable, in the case of an offensive weapon or any liquor;
  - a constable, in the case of a controlled drug;
  - the pupil or a parent of the pupil, in any other case.
- (4) Where a parent is notified that —
- an article has been seized under section 21B(1) or 21C(6),
  - it may be collected from the school at any time during a school session within 7 days after the notification is given, and
  - if not collected within that time, it may be disposed of,
- the requirement under subsection (3) that the article be delivered to the parent shall be taken to be satisfied; and the head teacher of the school may, if the article is not collected within that time, cause it to be disposed of in accordance with directions given by the Department.
- (5) Section 34 of the *Summary Jurisdiction Act 1989* (disposal of property) applies to anything delivered to a constable under subsection (3) as it applies to property which has come into the possession of the police in the circumstances mentioned in that section.
- (6) In sections 21A, 21B and 21C and this section —
- “controlled drug” has the same meaning as in the *Misuse of Drugs Act 1976*;
- “liquor” has the same meaning as in the *Licensing Act 1995*;
- “offensive weapon” means —
- any article to which section 27A of the *Criminal Justice Act 1991* (article with blade or point) applies;
  - any article made or adapted for use for causing injury to a person; or

- (c) any article intended by the pupil for such use by the pupil or another person;

“teacher”, in relation to a school, means a teacher who works at the school, and includes any person who, with the authority of the head teacher, has lawful control or charge of pupils at the school.

- (7) The powers conferred by sections 21A, 21B and 21C are in addition to any powers exercisable by a teacher apart from those sections and are not to be construed as restricting such powers.<sup>13</sup>

## 22 Financial management

The Department, with the consent of the Treasury, may make arrangements for —

- (a) the management by the governing body or head teacher of any provided school or maintained school of expenditure to be incurred by the Department in the exercise of any of its functions in relation to the school; and
- (b) for that purpose, the preparation by the governing body or head teacher annually, in accordance with any directions of the Department, of financial proposals for consideration by the Department.

## PART 3 – DUTIES OF PARENTS

### *Compulsory school age*

## 23 Compulsory school age

- (1) Subject to subsection (2), in any statutory provision “**compulsory school age**” means any age between 5 years and 16 years, and a person shall be treated as being of compulsory school age if he has attained the age of 5 years and has not attained the age of 16 years.
- (2) Where a person who —
  - (a) is a registered pupil at a school, or
  - (b) has been a registered pupil at a school within the previous 12 months,attains the age of 16 years during any year beginning on the 1st September, he shall be deemed for the purpose of subsection (1) to attain that age on the Friday before the last Monday in May in that year.
- (3) [Repealed]<sup>14</sup>

## 24 Duty of parents of children of compulsory school age

- (1) It is the 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.
- (2) The Department shall enforce the duty imposed by subsection (1).
- (3) In this Part —

“**school**”, in relation to a child of compulsory school age who has attained the age of 14 years and for whom education is provided at a college, includes a college;

“**suitable education**”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

## 24A Duty to notify Department of arrangements for child's education

- (1) Where a child of compulsory school age is not a registered pupil at a provided school, maintained school or special school, the parent of the child must notify the Department in writing of the arrangements made for the child to receive education.
- (2) A notification under subsection (1) must state —
  - (a) the full name, address and date of birth of the child;
  - (b) the full name and address of the parent;
  - (c) whether the child is receiving or is to receive education by regular attendance at school (in the Island or elsewhere);
  - (d) if so, the name and address of the school; and
  - (e) if not, the name and address of the person or persons by whom it is being or is to be given.
- (3) The parent of a child must give a notification under subsection (1) —
  - (a) within 3 months after the child —
    - (i) attains the compulsory school age;
    - (ii) becomes resident in the Island; or
    - (iii) ceases to be a registered pupil at a provided school, maintained school or special school; or
  - (b) at any time, within 21 days after being required by the Department to do so by notice in writing.
- (4) A parent who, without reasonable excuse, fails to give a notification under subsection (1) within the time allowed by subsection (3)(a) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

- (5) A person who, without reasonable excuse, fails to comply with a notice under subsection (3)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (6) Proceedings for an offence under subsection (4) or (5) shall not be brought otherwise than by the Department.
- (7) Proceedings for an offence under subsection (4) may be commenced at any time within –
  - (a) the period of 6 months from the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to its knowledge, or
  - (b) 2 years after the commission of the offence,whichever period last expires.
- (8) For the purpose of subsection (7), a certificate signed on behalf of the Department as to the date on which such evidence as is mentioned in subsection (7)(a) came to its knowledge shall be conclusive evidence thereof; and a certificate purporting to be so signed shall be deemed to be so signed until the contrary is proved.<sup>15</sup>

## 25 Enforcement of parents' duty

- (1) 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 in writing on a parent of the child requiring him to satisfy it within the period specified in the notice (not being less than 15 days beginning with the day on which the notice is served) that the child is receiving such education.
- (2) A notice under subsection (1) may require the parent on whom it is served to submit the child for examination or assessment for the purpose of the notice.
- (3) If –
  - (a) a parent on whom a notice has been served under subsection (1) fails to satisfy the Department, within the period specified in the notice, that the child is receiving suitable education, and
  - (b) in the opinion of the Department it is expedient that the child should attend school,the Department shall make and serve on the parent a further notice in writing containing the matters specified in subsection (4).
- (4) A notice under subsection (3) shall –
  - (a) inform the parent of its intention, after the expiration of the period specified in the notice (not being less than 21 days beginning with the day on which the notice is served), to make an order under section 26;

- (b) specify the school which the Department intends to name in the order and, if it thinks fit, one or more other schools which it regards as suitable alternatives; and
- (c) state the effect of section 26.

*School attendance orders*

## **26 School attendance orders**

- (1) After the expiry of the period specified under section 25(4)(a) the Department may make and serve on any parent of the child an order (a “school attendance order”) in the prescribed form, requiring the parents of the child to cause him to become a registered pupil at a school named in the order.
- (2) If the notice under section 25(3) specified one or more alternative schools and the parent before the making of the order notified the Department that he has selected one of them, that school shall be named in the order.
- (3) If before the making of the order —
  - (a) the parent applied for the child to be admitted to a provided school or maintained school,
  - (b) the child was offered a place at the school as a result of the application, and
  - (c) the parent notified the Department of that offer,that school shall be named in the order.
- (4) If before the making of the order —
  - (a) the parent applied for the child to be admitted to a school which is not a provided school or maintained school,
  - (b) the child was offered a place at the school as a result of the application, and
  - (c) the parent notified the Department of that offer, and
  - (d) the school is suitable to his age, ability and aptitude and to any special educational needs he may have,that school shall be named in the order.
- (5) Where a provided school or maintained school is named in a school attendance order —
  - (a) the Department shall inform the governing body and the head teacher; and
  - (b) the Department or the governing body, as the case may be, shall admit the child to the school.
- (6) Subsection (5) does not affect any power to expel or suspend from a school a pupil who is already a registered pupil there.

- (7) A special school shall not be named in a school attendance order unless –
- (a) the parent of the child consents to his attending such a school, or
  - (b) the name of the school is specified in a report under section 19 in force in respect of the child.
- (8) A school attendance order shall, subject to any variation made by the Department and unless it is revoked, continue in force for so long as the child is of compulsory school age.

## **27 Variation and revocation of school attendance order**

- (1) This section applies where a school attendance order is in force in respect of a child.
- (2) If at any time the parent applies to the Department –
- (a) stating that arrangements have been made for the child to receive suitable education otherwise than at school, and specifying those arrangements, and
  - (b) requesting that the order be revoked on that ground,
- the Department shall comply with the request, unless it is of the opinion that those arrangements are not satisfactory.
- (3) If at any time –
- (a) the parent applies for the child to be admitted to a provided school or a maintained school which is different from the school named in the order,
  - (b) as a result of the application, the child is offered a place at the school, and
  - (c) the parent requests the Department to amend the order by substituting that school for the one currently named,
- the Department shall comply with the request.
- (4) If at any time –
- (a) the parent applies for the child to be admitted to a school which is not a provided school or a maintained school and which is different from the school named in the order;
  - (b) as a result of the application, the child is offered a place at the school, and
  - (c) the parent requests the Department to amend the order by substituting that school for the one currently named,
- the Department shall comply with the request, unless it is of the opinion that that school is not suitable to his age, ability and aptitude and to any special educational needs he may have.

- (5) If the Department refuses a request under subsection (2) or (4), it shall give the parent notice in writing –
- (a) stating its opinion;
  - (b) specifying its reasons for that opinion; and
  - (c) specifying the period (not being less than 21 days beginning with the day on which the notice is served) within which an appeal may be brought against the refusal.
- (6) If the Department refuses a request under subsection (2) or (4), a parent of the child may, within the period specified under subsection (5)(c), appeal to a court of summary jurisdiction against the refusal on the ground that –
- (a) satisfactory arrangements have been made for the education of the child otherwise than at school, or
  - (b) the school is suitable to his age, ability and aptitude and to any special educational needs he may have,
- as the case may be.
- (7) On an appeal under subsection (6) the court may confirm the refusal or –
- (a) in the case of a request under subsection (2), revoke the order (but without prejudice to the future exercise by the Department of its powers under this Part); or
  - (b) in the case of a request under subsection (4), amend the order in accordance with the request.
- (8) Without prejudice to subsections (2) to (7), the Department may at any time –
- (a) with the consent of the parent of the child, vary the school attendance order, or
  - (b) revoke the order,
- if it considers that it is expedient to do so.

## 28 Contravention of school attendance order

- (1) Where a school attendance order is in force in respect of a child, any parent of the child who fails to comply with the requirements of the order is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (2) In proceedings for an offence under subsection (1) it is a defence for the person accused to show –
- (a) that the school attendance order had not been served on him; or
  - (b) that he is causing the child to receive suitable education otherwise than at school, or at a school other than that named in the order.



- (3) If in proceedings for an offence under this section the parent is acquitted, the court may revoke the school attendance order, but without prejudice to the power of the Department to take action under section 25 on a future occasion.
- (4) Proceedings for an offence under this section shall not be brought otherwise than by the Department.

*Failure to secure regular attendance of registered pupil*

**29 Failure to secure regular attendance of registered pupil**

- (1) If any child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, the parent of the child is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (2) In proceedings for an offence against this section, a child who is not a boarder at the school at which he is a registered pupil —
  - (a) shall be not treated as having failed to attend regularly at the school by reason of his absence from it —
    - (i) with leave;
    - (ii) at any time when he was prevented from attending by reason of sickness or any unavoidable cause;
    - (iii) on any day exclusively set apart for religious observance by the religious body to which his parent belongs; but
  - (b) subject to paragraph (a), shall be treated as having failed to attend regularly at the school if he fails without leave or reasonable excuse to arrive there punctually at the beginning of the school session on any day.
- (3) In proceedings for an offence against this section, a child who is a boarder at the school at which he is a registered pupil shall be treated as having failed to attend regularly at the school if he is absent from it without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.
- (3A) Where —
  - (a) a person is convicted of an offence under subsection (1), and
  - (b) it appears to the court that it would be desirable to do so in the interests of preventing the commission of a further offence under subsection (1),

the court may order him or her to attend, for a period not exceeding 3 months and not more than once in any week, such a course of counselling or guidance as may be prescribed.<sup>16</sup>

- (4) In this section “leave” —
  - (a) in relation to a provided school or maintained school, means leave granted by any person authorised in that behalf by the Department or the governing body;
  - (b) in relation to any other school, means leave granted by any person authorised in that behalf by the governing body or proprietor of the school.
- (5) Proceedings for an offence under this section shall not be brought otherwise than by the Department.

### **29A School attendance: fixed penalty**

- (1) Where a constable or an authorised person has reasonable cause to believe that a person has committed or is committing an offence under section 29, he or she may give that person a notice in writing in the prescribed form offering the opportunity of discharging any liability to be convicted of that offence by payment of a fixed penalty under this section.
- (2) A person to whom a notice is given under this section in respect of an offence shall not be liable to be convicted of that offence if the fixed penalty is paid in accordance with this section before the expiration of such period as is specified in the notice (not being less than 14 days following the date of the notice).
- (3) Where a person is given a notice under this section in respect of an offence, criminal proceedings shall not be taken against any person for the act constituting that offence before the expiration of the period referred to in subsection (2).
- (4) The amount of a fixed penalty under this section shall be £100.<sup>17</sup>
- (5) The Department may by order substitute a different amount for the amount for the time being specified in subsection (4).
- (6) A fixed penalty under this section shall be paid to the Chief Registrar and applied as a fine imposed by a criminal court.
- (7) In any proceedings a certificate purporting to be signed by or on behalf of the Chief Registrar that payment of a fixed penalty under this section was or was not made in accordance with subsection (6) by a date specified in the certificate shall be evidence of the fact stated.<sup>18</sup>

### **29B Removal of truants**

- (1) This section applies where a constable has reasonable cause to believe that a child found by the constable in a highway or other place to which the public has access —
  - (a) is of compulsory school age; and

- (b) is absent from school without leave.
- (2) The constable may remove the child to —
  - (a) the school at which it appears to the constable that the child is a registered pupil; or
  - (b) premises notified by the Department to the Chief Constable as premises to which children of compulsory school age may be removed under this section.<sup>19</sup>

*Education supervision orders*

### 30 Education supervision orders

- (1) On the application of the Department a juvenile court, if it is satisfied that a child —
  - (a) is of compulsory school age, and
  - (b) is not receiving efficient full-time education suitable to his age, ability and aptitude,
 may make an order (an “education supervision order”) putting him under the supervision of DHSC.<sup>20</sup>
- (2) Where —
  - (a) a school attendance order is in force in respect of a child and that order is not being complied with, or
  - (b) a child is a registered pupil at a school and is failing to attend regularly there (within the meaning of section 29(2)),
 it shall be presumed, until the contrary is proved, that the condition in subsection (1)(b) is fulfilled.
- (3) An education supervision order may not be made with respect to a child who is in the care of DHSC by virtue of a care order.<sup>21</sup>
- (4) Before making an application for an education supervision order the Department shall consult DHSC.<sup>22</sup>
- (5) Schedule 5 to this Act has effect with respect to education supervision orders.

## PART 4 – OTHER EDUCATIONAL SERVICES

*Higher and continuing education*

### 31 Higher education

- (1) The Department shall make such arrangements as it considers appropriate to secure the provision of education of persons in the Island

over compulsory school age, at or under the supervision of universities, colleges and other educational establishments and institutions in the Island or elsewhere, leading to the award of degrees, diplomas or other qualifications.

- (2) Education provided pursuant to arrangements under subsection (1) (except so far as it is provided under section 17(1)) is in this Act referred to as “**higher education**”.
- (3) Arrangements under subsection (1) –
  - (a) shall include provision pursuant to regulations under section 37; and
  - (b) may include financial assistance to 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.

### 32 Continuing education

- (1) The Department shall 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) Education provided pursuant to arrangements under subsection (1) is in this Act referred to as “**continuing education**”.
- (3) The Department may –
  - (a) use any premises or facilities of a provided school or of a college provided by the Department, or
  - (b) arrange for the use of any premises or facilities of a maintained school or of any other college,for the purpose of its functions under subsection (1).

### 33 Provision etc of colleges

- (1) The Department may –
  - (a) provide one or more colleges;
  - (b) maintain any college, whether provided by it or otherwise, and
  - (c) assist any college which is not provided or maintained by the Department.
- (2) The Department may make for a college provided or maintained by the Department –
  - (a) an instrument (an “instrument of government”) providing for the constitution and proceedings of a governing body for the college; and

- (b) an instrument (“articles of government”) in accordance with which the college is to be conducted.
- (3) Articles of government of a college may include provision (consistent with the provisions of this Act) for –
- (a) the functions of the Department, the governing body and the principal in relation to the conduct of the college;
  - (b) the preparation by the governing body annually, in accordance with any directions of the Department, of financial proposals for consideration by the Department;
  - (c) the appointment of teachers;
  - (d) the determination of terms, holidays and sessions;
  - (e) the admission of pupils; and
  - (f) the discipline, suspension, expulsion and reinstatement of pupils.
- (4) The Department may enter into an agreement with a university for the affiliation to the university of any college provided by the Department.
- (5) Section 5A applies to the governing body or principal of a college provided or maintained by the Department as it applies to the governing body or head teacher of a provided school or maintained school.<sup>23</sup>

#### *Nursery schools and classes*

### **34 Nursery schools and classes**

The Department may provide, or assist in the provision of, –

- (a) schools for children under compulsory school age (“nursery schools”); and
- (b) classes for children under compulsory school age at provided schools and maintained schools.

#### *Community services*

### **35 Libraries**

- (1) The Department may –
- (a) provide and maintain public libraries; and
  - (b) assist in the provision and maintenance of public libraries by others.
- (2) The Department may make such reasonable charges as it thinks fit for the use of a public library maintained under subsection (1)(a).
- (3) The Department may make regulations with respect to the use of public libraries maintained under subsection (1)(a).

- (4) Regulations under subsection (3) may provide that persons contravening any provision of the regulations shall be liable on summary conviction to a fine not exceeding £200.

### 36 Youth and community services

- (1) The Department may provide or arrange for the provision of facilities for fostering and encouraging the personal and social welfare of persons of all ages, but particularly of persons under the age of 18.
- (2) Facilities which may be provided under subsection (1) include —
- (a) recreational facilities (within the meaning of the *Recreation and Leisure Act 1998*);
  - (b) vacation schools, vacation classes, camps, play-centres and other means of education and recreation during school holidays or outside school hours;
  - (c) other facilities for education;
  - (d) advice and assistance in choosing a career.
- (3) The Department may —
- (a) assist (financially or otherwise) and co-operate with, and
  - (b) make accommodation and facilities at a provided school available for use by,
- voluntary organisations engaged in the provision of any such facilities as are mentioned in subsections (1) and (2).
- (4) Any accommodation and facilities mentioned in subsection (3)(b) may be made available for use by such organisations notwithstanding any restriction on the use of the school premises imposed by any trust deed, covenant or other instrument.
- (5) The Department may co-operate with any local authority or other public authority in exercising its functions under this section; and any such authority may, notwithstanding any limitations otherwise imposed on its powers, co-operate with the Department and voluntary organisations approved by the Department in providing any facilities referred to in subsections (1) and (2).
- (6) The Department may make grants towards the expenses of a voluntary organisation approved by the Department —
- (a) in providing or aiding the provision of facilities referred to in subsections (1) and (2); and
  - (b) in respect of the training and supply of teachers, leaders and other workers.
- (7) The Department may let any facilities provided by it under subsection (1) to any person, club, society or organisation.

- (8) The Department may make grants to or for the benefit of individuals to enable them to take advantage of any facilities provided under subsection (1).
- (9) In this section “voluntary organisation” means any person or body of persons, whether corporate or unincorporate, carrying on or proposing to carry on an undertaking otherwise than for profit.

*Ancillary services*

### **37 Financial support, scholarships and bursaries**

The Department may, in accordance with regulations made with the concurrence of the Treasury, do all or any of the following for the purpose of enabling persons to take advantage without hardship to themselves or their parents of any educational facilities available to them —

- (a) defray such expenses of pupils attending provided schools, maintained schools or special schools as may be necessary to enable them to take part in any school activities;
- (b) pay the whole or any part of the fees and expenses payable in respect of pupils attending schools in the Island or elsewhere at which fees are payable;
- (c) grant scholarships, exhibitions, bursaries and other awards or allowances (including awards or allowances by way of loan) in respect of persons over compulsory school age receiving continuing education or higher education in the Island or elsewhere.

### **38 Transport**

- (1) The Department may make arrangements for the provision of transport and otherwise for the purpose of facilitating the attendance of pupils at schools or colleges.
- (2) Arrangements under subsection (1) may require the making of such reasonable charges for the use by such pupils of any transport so provided as the Department, with the concurrence of the Treasury, may determine.
- (3) The Department may pay the reasonable travelling expenses of any pupil in attendance at any school or college for whose transport no arrangements are made under subsection (1).

### **39 Provision of food and drink**

- (1) The Department may provide or arrange for the provision of food and other refreshment for pupils in attendance at provided schools,

maintained schools, special schools and colleges provided or maintained by the Department.

- (2) Regulations may make provision as to —
  - (a) the manner in which and the persons by whom the expense of providing such food or refreshment is to be defrayed;
  - (b) the facilities to be afforded (including any buildings or equipment to be provided); and
  - (c) the services to be rendered by governing bodies and teachers with respect to the provision of such food or refreshment.
- (3) Such regulations shall not —
  - (a) impose upon teachers at any school or college duties upon days on which the school or college is not open for instruction, or duties in respect of meals other than the supervision of pupils, or
  - (b) require the governing body of a maintained school, or the proprietor of a college other than a college provided by the Department, to incur expenditure.

#### 40 Cleanliness

- (1) The Department may authorise the director of public health (“the director”) to cause examinations of the persons and clothing of pupils in attendance at a provided school, maintained school or special school to be made whenever in his opinion such examinations are necessary in the interests of cleanliness.
- (2) If the director has reasonable cause to suspect that the person or clothing of a pupil in attendance at any college is infested with vermin or in a foul condition, he may cause an examination thereof to be made.
- (3) An examination under subsection (1) or (2) shall be made by a person authorised by DHSC to make such examinations, and if the person or clothing of any pupil is found upon such an examination to be infested with vermin or in a foul condition, the DHSC may serve on —
  - (a) the parent of the pupil, or
  - (b) in the case of a pupil over the age of 18 or in attendance at a college, the pupil,a notice requiring him to cause the person and clothing of the pupil to be cleaned.<sup>24</sup>
- (4) A notice under subsection (3) shall inform the person on whom it is served that, unless within the period specified in the notice (not being less than 24 hours after service) the person and clothing of the pupil to whom the notice relates are cleaned to the satisfaction of such person as is so specified, they will be cleaned under arrangements made by DHSC.<sup>25</sup>



- (5) If, on a report made by the person specified in a notice under subsection (3), the director is not satisfied that the person and clothing of the pupil have been properly cleaned, he may make an order directing that the person and clothing of the pupil be cleaned under such arrangements.
- (6) DHSC shall make arrangements for the cleaning of any person or clothing required under this section to be cleaned (whether at the request of a parent or pupil or in pursuance of an order under subsection (5)).<sup>26</sup>
- (7) An order under subsection (5) shall be sufficient to authorise any officer of DHSC —
- (a) to cause the person and the clothing of the pupil named in the order to be cleaned in accordance with arrangements made under subsection (6), and
  - (b) for that purpose to convey him to, and detain him at, any premises provided in accordance with such arrangements.<sup>27</sup>
- (8) If, after the person or clothing of any pupil has been cleaned under this section —
- (a) his person or clothing is again found to be infested with vermin or in a foul condition at any time while he is in attendance at a provided school, maintained school, special school or college, and
  - (b) it is proved that the condition of his person or clothing is due to —
    - (i) neglect on the part of his parent, or
    - (ii) in the case of a pupil over the age of 18 or in attendance at a college, his own neglect,
- the parent or the pupil, as the case may be, is guilty of an offence and liable on summary conviction to a fine not exceeding £200.
- (9) Where —
- (a) the director suspects that the person or clothing of any pupil in attendance at a provided school, maintained school, special school or college is infested with vermin or in a foul condition, but
  - (b) action for its examination or cleaning cannot immediately be taken,
- he may, if he considers it necessary so to do either in the interest of the pupil or of other pupils in attendance at the school or college, direct that the pupil be suspended from the school or college until such action has been taken.
- (10) A direction under subsection (9) is a defence to any proceedings under this Act in respect of the failure of the pupil to attend school on any day on which he is excluded in pursuance of the direction, unless it is proved

that the issue of the direction was necessitated by the wilful default of the pupil or his parent.

- (11) No girl shall be examined or cleaned under the powers conferred by this section except by a registered medical practitioner or by a woman authorised for that purpose by DHSC.<sup>28</sup>

#### **41 Medical and dental inspections etc**

- (1) A person authorised for the purpose by the Department may –
- (a) require the parent of a pupil under the age of 16 who is in attendance at any provided school, maintained school or special school or at any college provided or maintained by the Department to submit the pupil for medical inspection or dental inspection; and
  - (b) require a pupil of the age of 16 or over who is in attendance at any school or college mentioned in paragraph (a) to submit himself for medical inspection or dental inspection.
- (2) A person authorised for the purpose by the Department –
- (a) may visit a pupil of any school absent from school through alleged illness, and
  - (b) on the occasion of such a visit may require the parent of the pupil to produce and submit the pupil for medical inspection.
- (3) Any person who fails without reasonable excuse to comply with a requirement under subsection (1) or (2)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding £200.
- (4) Where a person imposes a requirement under subsection (1) or (2)(b) he shall forthwith notify DHSC.<sup>29</sup>
- (5) The Department may make regulations as to medical inspections and dental inspections under this section.
- (6) The Department shall make arrangements for encouraging and assisting pupils to take advantage of services provided by DHSC under section 16 of the *National Health Service Act 2001*.<sup>30</sup>
- (7) The Department may give directions to the governing body of a provided school or maintained school requiring it to provide such reasonable facilities as may be specified in the directions for the purpose of enabling the Department of Health to carry out its functions under the said section 16; but the governing body of a maintained school shall not be required by any such directions to incur expenditure.<sup>31</sup>
- (8) In this section “medical inspection” and “dental inspection” mean inspection by or under the directions of a registered medical practitioner or a registered dentist, as the case may be, employed or engaged,

whether regularly or for the purposes of any particular case, by the Department of Health.<sup>32</sup>

## PART 5 – INDEPENDENT SCHOOLS

### 42 Registration of independent schools

- (1) There shall be appointed a Registrar of Independent Schools (“the registrar”); and it shall be the duty of the registrar –
  - (a) to keep a register of all independent schools, which shall be open to public inspection at all reasonable times, and
  - (b) subject as hereinafter provided, to register therein any independent school of which the proprietor makes application for the purpose in the prescribed manner and furnishes the prescribed particulars.
- (2) No independent school shall be registered if, by virtue of an order made under the following provisions of this Part –
  - (a) the proprietor is disqualified from being the proprietor of an independent school, or
  - (b) the school premises are disqualified from being used as a school, or if the school premises are used or proposed to be used for any purpose for which they are disqualified by virtue of any such order.
- (3) The registration of any school shall be provisional only until the Department –
  - (a) has caused the school to be inspected under section 50, and
  - (b) gives notice to the proprietor that the registration is final.
- (4) If the Department is satisfied that –
  - (a) it is in possession of sufficient information with respect to any independent school or any class of independent schools, and
  - (b) registration of that school or the schools comprised in that class is unnecessary,

the Department may by order exempt that school or schools of that class from registration, and any school so exempted shall be treated for the purposes of this Act as a registered school.
- (5) If any person –
  - (a) conducts an independent school which is not a registered school or a provisionally registered school; or
  - (b) being the proprietor of a provisionally registered school, does any act calculated to lead to the belief that the school is a registered school,

he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

- (6) The Department may make regulations —
- (a) prescribing the particulars to be furnished from time to time to the registrar by the proprietors of such schools;
  - (b) providing for the notification to the registrar of any changes in the particulars so furnished;
  - (c) as to the circumstances in which the Department may order the name of any school to be deleted from the register in the event of the registrar being unable to obtain sufficient particulars of it.

### 43 Complaints about independent schools

- (1) If at any time the Department is satisfied that any registered or provisionally registered school is objectionable upon all or any of the following grounds —
- (a) that the school premises or any parts thereof are unsuitable for a school;
  - (b) that the accommodation provided at the school premises is inadequate or unsuitable having regard to the number, ages, and sex of the pupils attending the school;
  - (c) that efficient and suitable instruction is not being provided at the school having regard to the ages and sex of the pupils attending it;
  - (d) that the proprietor of the school or any teacher employed in it is not a proper person to be the proprietor of an independent school or to be a teacher in any school, as the case may be;

the Department shall serve upon the proprietor of the school a notice of complaint stating the grounds of complaint together with full particulars of the matters complained of.

- (2) Unless any of the matters complained of are stated in the notice under subsection (1) to be in the opinion of the Department irremediable, the notice shall specify —
- (a) the measures necessary in the opinion of the Department to remedy the matters complained of, and
  - (b) the time, not being less than 6 months after the service of the notice, within which such measures are thereby required to be taken.
- (3) If it is alleged by any notice of complaint served under this section that any person employed as a teacher at the school is not a proper person to be a teacher in any school —
- (a) that person shall be named in the notice;

- (b) the particulars contained in the notice shall specify the grounds of the allegation; and
  - (c) a copy of the notice shall be served upon him.
- (4) Every notice of complaint shall specify the time, not being less than one month after the service of the notice or copy, within which the complaint may be referred to the tribunal under section 44.

#### **44 Determination of complaints**

- (1) Any person upon whom a notice or a copy of a notice is served under section 43 may, within the time limited by the notice, appeal by referring the complaint, in such manner as may be prescribed, to the Independent Schools Tribunal (“the tribunal”).<sup>33</sup>
- (1A) The tribunal shall consist of a chairman and 2 other persons appointed in accordance with the *Tribunals Act 2006*.<sup>34</sup>
- (1B) A teacher in a provided school, maintained school or special school shall be disqualified for being appointed or being a member of the tribunal.<sup>35</sup>
- (2) Upon a complaint being referred to it, the tribunal may, after affording to all parties concerned an opportunity of being heard, and after considering such evidence as may be tendered by them or on their behalf, order —
- (a) that the complaint be annulled;
  - (b) that the school in respect of which the notice was served be struck off the register;
  - (c) that the school be so struck off unless the requirements of the notice (subject to such modifications, if any, as may be specified in the order) are complied with to the satisfaction of the Department before the expiration of such time as may be specified in the order;
  - (d) if satisfied that the premises alleged by the notice to be unsuitable for use as a school or any part of those premises are in fact unsuitable for such use, disqualify the premises or part from being so used;
  - (e) if satisfied that the accommodation provided at the school premises is inadequate or unsuitable having regard to the number, ages and sex of the pupils attending the school, disqualify the premises from being used as a school for pupils exceeding such number or of such age or sex as may be specified in the order;
  - (f) if satisfied that any person alleged by the notice to be a person who is not proper to be the proprietor of an independent school or to be a teacher in any school is in fact such a person, disqualify

that person from being the proprietor of any independent school or from being a teacher in any school, as the case may be.

- (3) Where —
- (a) a notice has been served under section 43 on the proprietor of any school, and
  - (b) the complaint is not referred by him to the tribunal within the time limited in that behalf by the notice,

the Department may, subject to subsection (4), make any order which the tribunal could have made if the complaint had been referred to it.

- (4) If —
- (a) it was alleged by the notice that a person employed as a teacher at the school is not a proper person to be a teacher in any school, and
  - (b) that person has, within the time limited by the copy of the notice served upon him, referred the complaint to the tribunal,

the Department may not make an order requiring his dismissal or disqualifying him from being a teacher in any school.

- (5) Where by virtue of an order made by the tribunal or the Department any person is disqualified either from being the proprietor of an independent school or from being a teacher in any school, then, unless the order otherwise directs, that person shall by virtue of the order be disqualified both from being the proprietor of an independent school and from being a teacher in any school.

## 45 Enforcement

- (1) Where an order is made under section 44 directing that any school be struck off the register, the registrar shall as from the date on which the direction takes effect strike the school off the register.
- (2) If any person uses any premises for purposes for which they are disqualified by virtue of an order under section 44, he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.
- (3) If any person —
- (a) acts as the proprietor of an independent school, or
  - (b) accepts or endeavours to obtain employment as a teacher in any school,

while he is disqualified from so acting or from being so employed by virtue of an order under section 44, he is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

- (4) No proceedings shall be instituted for an offence against this Part except by or on behalf of the Department.

**46 Removal of disqualifications**

- (1) If on an application of any person the Department is satisfied that any disqualification imposed by an order under section 44 is by reason of any change of circumstances no longer necessary, the Department may by order remove the disqualification.
- (2) Any person who is aggrieved by the refusal of the Department to remove a disqualification so imposed may appeal to the tribunal within such time after the refusal has been communicated to him as may be prescribed.

**47 Proceedings before tribunal etc**

- (1) The Department may make regulations as to —
  - (a) the constitution of the tribunal,
  - (b) the manner of making appeals to the tribunal,
  - (c) proceedings before the tribunal and matters incidental to or consequential on such proceedings.
- (2) Regulations under subsection (1) may make provision —
  - (a) requiring the tribunal to sit at such places as may be directed in accordance with the rules, and
  - (b) as to appearance before such tribunal by an advocate.
- (3) The *Arbitration Act 1976* shall not apply to any proceedings before the tribunal except so far as any provisions of that Act may be applied to such proceedings, with or without modifications, by regulations.
- (4) Every order of the tribunal shall be registered by the registrar and shall be open to public inspection at all reasonable times.

**PART 5A — WELFARE OF CHILDREN ACCOMMODATED IN SCHOOLS OR COLLEGES<sup>36</sup>****48 Welfare duties**

- (1) This section applies for any child who is accommodated at a school or college.
- (2) It is the duty of the following to safeguard and promote the child's welfare (the "welfare duty")—
  - (a) for an independent school —
    - (i) its proprietor; and
    - (ii) if a person other than its proprietor is responsible for conducting the school, that person; or
  - (b) for any other school or a college, its governing body.

- (3) However, the welfare duty does not apply if the school or college is an adult care home or childrens home under the *Regulation of Care Act 2013* (the “care Act”) for which there is provider registration under that Act.
- (4) DHSC must take reasonably practicable steps to allow it to decide if the welfare duty is being complied with (“**DHSC’s function**”).<sup>37</sup>
- (5) If DHSC considers the welfare duty has been contravened, it must notify the Department.<sup>38 39</sup>

#### **48A Functions of inspectors under care Act apply**

- (1) An inspector under the care Act (a “care Act inspector”) may, at any time, enter premises that are, or are to be, premises of a school or college to facilitate the performance of DHSC’s function.<sup>40</sup>
- (2) Part 4, Division 1 (monitoring) of the care Act applies for a care Act inspector acting under subsection (1) —
  - (a) as if the premises were premises at which there is a care service under the care Act;
  - (b) as if a reference in the Division to the provision of social care were a reference to education provided at the school or college;
  - (c) as if a reference in the Division to the following were a reference to the persons with the welfare duty for the premises —
    - (i) a registered person for a care service; or
    - (ii) a person with a role for the premises; and
  - (d) with other necessary changes.
- (3) If DHSC receives a report under section 130 of the care Act for the school or college, it must give the Department and the persons with the welfare duty for the school or college a copy.<sup>41 42</sup>

#### **48B Care Act inspector’s duty to notify the Department**

- (1) If it appears to a care Act inspector performing functions under section 48A(1) that any of the following has happened, the inspector must give the Department notice of that fact —
  - (a) there has been a contravention of the welfare duty; or
  - (b) a child accommodated at a school or college is suffering, or is likely to suffer, significant harm.
- (2) Subsection (1) is in addition to the inspector’s duties under the provisions of the care Act applied under section 48A(2).<sup>43</sup>



**48C Annual fee for DHSC's function<sup>44</sup>**

- (1) DHSC may, by regulations, impose an annual fee for performing DHSC's function for schools or colleges, including for inspections by care Act inspectors.<sup>45</sup>
- (2) The following person (the "responsible person") must pay the annual fee at the time required under the regulations –
  - (a) for an independent school –
    - (i) its proprietor; and
    - (ii) if a person other than its proprietor is responsible for conducting the school, that person; or
  - (b) for any other school or a college, its governing body.
- (3) If the responsible person does not pay the fee at the time required, DHSC may recover from the person the amount of the annual fee summarily as a debt.<sup>46</sup>
- (4) Subsection (3) does not affect any other method of recovery of the annual fee from the responsible person.<sup>47</sup>

**48D Accommodation in school or college: minimum standards by DHSC<sup>48</sup>**

- (1) DHSC may make standards (the "minimum standards") to safeguard and promote the welfare of children accommodated in a school or college.<sup>49</sup>
- (2) The minimum standards are a public document but not a statutory document.
- (3) Before making the minimum standards, DHSC must consult in a way it considers appropriate about the standards.<sup>50</sup>
- (4) DHSC must make the minimum standards publicly available in the way it considers appropriate.<sup>51</sup>
- (5) The Department must take the minimum standards into account in deciding whether or not the welfare duty has been contravened.<sup>52</sup>

## PART 6 – MISCELLANEOUS AND SUPPLEMENTAL

### *The Isle of Man Board of Education*

#### 49 [Repealed]<sup>53</sup>

### *Inspection of schools and colleges*

#### 50 Inspection of schools and colleges

- (1) The Department shall –
  - (a) cause inspections to be made of every school and college at such intervals and to such standards as appear to it to be appropriate, and
  - (b) cause a special inspection of any school or college to be made whenever it considers such an inspection to be desirable.
- (2) The Department need not cause inspections to be made of any school or college during any period during which it is satisfied that suitable arrangements are in force for its inspection otherwise than in accordance with subsection (1).
- (3) The religious education given in a maintained school otherwise than in accordance with a syllabus prepared under section 12(4)(a) shall not be subject to inspection under subsection (1), but may be inspected under arrangements made for that purpose by the foundation governors of the school.
- (4) Not less than 14 days' notice of a day fixed for an inspection under subsection (3) shall be given to the Department.
- (5) No pupil who has been excused from the attendance at religious worship or education in a maintained school in accordance with this Act shall be required to attend the school on a day fixed for an inspection under subsection (3).
- (6) If the persons responsible for the management of any institution which is not a school or college request the Department to cause an inspection of the institution to be made, the Department may cause such an inspection to be made as if it were a school or college.

#### 51 Powers of entry etc

- (1) For the purpose of exercising any function of the Department under section 50, an authorised person may at any reasonable time enter the premises of any school or college.
- (2) An authorised person entering premises under this section may –

- (a) inspect the premises;
  - (b) inspect any arrangements made for the education or welfare of any person under the age of 18 years there; and
  - (c) require any person to produce any documents or other items relating to or connected with the school or college.
- (3) Any person authorised to exercise the power conferred by subsection (2)(c) –
- (a) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with the records in question; and
  - (b) may require the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, apparatus or material, to afford him such assistance as he may reasonably require.
- (4) An authorised person exercising a power conferred by subsection (1), (2) or (3) –
- (a) shall, if asked to do so, produce some duly authenticated document showing his authority to do so;
  - (b) when entering any premises, may take with him such other persons and such equipment as may appear to him to be necessary.
- (5) Any person who –
- (a) intentionally obstructs another in the exercise of any power conferred by this section, or
  - (b) fails without reasonable excuse to comply with a requirement under subsection (2)(b) or (3)(b),
  - (c) refuses or neglects to answer any question or to furnish any information or to produce any document or other item when required to do so under this section; or
  - (d) in purported compliance with any requirement imposed on him under this section, furnishes, or causes or permits to be furnished, any information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular; or
  - (e) produces, or causes or permits to be produced, any document or other item which he knows to be false or misleading in a material particular or recklessly produces any document or other item which is false or misleading in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.

- (6) If it is shown to the satisfaction of a justice of the peace on information on oath that there are reasonable grounds for entry of any premises for the purpose mentioned in subsection (1), the justice may by warrant under his hand authorise an authorised person to enter and search the premises, using force if need be.
- (7) A warrant issued under subsection (6) shall continue in force for 7 days.
- (8) Nothing in this section shall compel the production of any communication which is subject to legal privilege.

*Regulation of degrees and awards*

## 52 Regulation of degrees and awards

- (1) This section applies to any award, not being a recognised award, —
  - (a) which may reasonably be taken to be an award granted or to be granted by an institution; and
  - (b) which either —
    - (i) may reasonably be taken to be a degree; or
    - (ii) purports to confer on its holder the right to the title of bachelor, master or doctor.
- (2) Any person who, in or from within the Island, grants, offers to grant, or issues any invitation relating to, an award to which this section applies is guilty of an offence.
- (3) Any person being —
  - (a) an individual resident in the Island; or
  - (b) a body corporate either —
    - (i) incorporated in the Island; or
    - (ii) registered in the Island under the *Foreign Companies Act 2014*,<sup>54</sup>who, in the Island or elsewhere, grants, offers to grant, or issues any invitation relating to, an award to which this section applies is guilty of an offence.
- (4) Any person who —
  - (a) is the owner or occupier of premises in the Island, and
  - (b) knowingly uses, or knowingly causes or permits the use of, the premises as an address for the receipt of correspondence, payments or enquiries, by whatever means, relating to any award to which subsection (1) applies,is guilty of an offence.

- (5) A person guilty of an offence under subsection (2), (3) or (4) is liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both.
- (6) In this section “recognised award” means —
- (a) any award granted or to be 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) any award granted or to be granted by any body for the time being permitted by any body falling within paragraph (a) to act on its behalf in the granting of degrees; or
  - (c) such other award as the Department may by order designate for the purposes of this subsection.
- (7) In this section “invitation” includes any circular, prospectus or advertisement, whether addressed to the public generally, to any section of the public, or to any particular individual or individuals.

### **53 Regulation of degrees and awards: enforcement**

- (1) For the purpose of ascertaining whether any offence under section 52 has been committed, an authorised person may —
- (a) require any person to produce any documents or other items relating to or connected with the granting of awards;
  - (b) require any information which is contained in a computer to be produced in a form which may be taken away and in which it is visible and legible; and
  - (c) seize and detain anything which he has reason to believe may be evidence of the commission of an offence under that section;
- and may for that purpose enter any premises.
- (2) An authorised person seizing anything under subsection (1)(c) shall inform the person from whom it is seized.
- (3) Section 51(3) to (7) applies, with any necessary modifications, to the power conferred by subsection (1) as it applies to the power conferred by section 51(1), (2) and (3).
- (4) Nothing in this section shall compel the production of any communication which is subject to legal privilege or authorise the detention of such a communication.
- (5) Proceedings for an offence under section 52 shall not be instituted except by or with the consent of the Attorney General.
- (6) Where an offence under section 52 has been committed by a body corporate and was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager,

secretary or other similar officer of that body, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### *Corporal punishment*

#### **53A No right to give corporal punishment.**

- (1) Corporal punishment given by, or on the authority of, a teacher to a minor —
  - (a) for whom education is provided at any school, or
  - (b) for whom education is provided, otherwise than at school, under any arrangements made by the Department,cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the teacher by virtue of his or her position as such.
- (2) Subsection (1) applies to corporal punishment so given to a minor at any time, whether at the school or other place at which education is provided for the minor or elsewhere.
- (3) For the purposes of this section —
  - (a) any reference to giving corporal punishment to a minor is to doing anything for the purpose of punishing that minor (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery; but
  - (b) corporal punishment shall not be taken to be given to a minor by virtue of anything done for the purpose of preventing personal injury to, or damage to the property of, any person (including the minor himself or herself).
- (4) In this section “teacher”, in relation to a minor, means a teacher who works at the school or other place at which education is provided for the minor, and includes any person who works or otherwise provides services there (whether or not for payment) and has lawful control or charge of the minor.<sup>55</sup>

### *Employment of children*

#### **54 Employment of children**

- (1) The Department may make regulations prohibiting, restricting or regulating —
  - (a) the employment of children;
  - (b) the taking part by children in any performance;

- (c) the training of children to take part in performances of a dangerous nature;
  - (d) the removal of children out of the Island for the purpose of taking part in performances outside the British Islands and the Republic of Ireland; and
  - (e) the engagement of children in street trading.
- (2) Regulations under this section may —
- (a) prohibit any activity mentioned in subsection (1) except where authorised by, and in accordance with the terms and conditions of, a licence granted by such authority as is specified in the regulations;
  - (b) provide for the grant, renewal, variation, transfer, suspension and revocation of any such licence; and
  - (c) provide for appeals to a court or tribunal (including a tribunal established pursuant to the regulations) against a refusal to grant, renew, vary or transfer any such licence or the suspension or revocation of any such licence.
- (2A) Regulations under this section may require a person by whom a child is employed to notify the Department, within such time and in such manner as may be prescribed, of such particulars of the employment as are prescribed.<sup>56</sup>
- (3) Regulations under this section may —
- (a) make any contravention of the regulations, or of the terms and conditions of any licence mentioned in subsection (2), an offence;
  - (b) empower the court by whom any person is convicted of an offence consisting of the contravention of the terms and conditions of any licence mentioned in subsection (2) to suspend or cancel the licence;
  - (c) confer power on any constable or other person of a prescribed description to enter and inspect —
    - (i) any premises where he has reasonable cause to believe that any activity mentioned in subsection (1) is being carried on, or
    - (ii) any premises where a person is authorised by a licence mentioned in subsection (2) to carry on any such activity,and to make enquiries there with respect to any such activity;
  - (d) make any obstruction of a person exercising powers conferred under paragraph (c) an offence;
  - (e) provide that any offence created by the regulations shall be punishable on summary conviction by a fine not exceeding such amount (which shall not exceed £5,000) as may be prescribed.

- (4) Regulations under this section shall provide that it shall be a defence to a prosecution for an offence mentioned in subsection (3)(a) for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (5) Regulations under this section may repeal or amend section 23(3) and any provision of —
- (a) the *Children and Young Persons Act 1966*;
  - (b) the *Children and Young Persons Act 1969*;
  - (c) the *Children and Young Persons (Restriction on Employment) (Modification) Act 1980*; and
  - (d) any Act amending any of those Acts;

which appears to the Department to be unnecessary, or to require amendment, in consequence of any provision of the regulations; and such regulations may make such consequential, supplemental and transitional provisions as appear to the Department to be necessary or expedient for the purposes of the repeal or amendment.

- (6) In this section —

“broadcast”, “cable programme”, “film”, “literary work” and “sound recording” have the same meanings as in the *Copyright Act 1991*;

“child” means any person under the age of 18;

“performance” means —

- (a) a dramatic performance (which includes dance and mime),
- (b) a musical performance,
- (c) a reading or recitation of a literary work, or
- (d) a performance of a variety act or any similar presentation;

and includes a performance for the purpose of making a film, sound recording, broadcast or cable programme, but does not include taking part in a religious service or a practice for a religious service;

“prescribed” means prescribed by regulations under this section;

“street trading” includes hawking articles for sale, providing any service for profit and taking part in any performance in a street or other public place.

- (7) For the purposes of this section a child shall be regarded as employed if he assists in a trade or occupation carried on for profit, even though he receives no reward for his work.



*Educational trusts***55 Educational trusts**

- (1) The Department may accept, hold and administer any property upon trust for purposes connected with education.
- (2) Schedule 8 shall have effect with respect to the powers of the Department in relation to educational trusts.

*Evidence***56 Certificates of birth and registrar's returns**

- (1) Where the age of any person is required to be proved for the purposes of this Act or of any enactment relating to the employment of minors, the registrar having the custody of the register of births containing the entry relating to the birth of that person shall —
  - (a) on being presented by any person with a written requisition in such form and containing such particulars as may be prescribed, and
  - (b) on payment of the prescribed fee,supply that person with a copy of the entry certified under his hand.
- (2) Every registrar shall supply to the Department such particulars of the entries contained in any register of births in his custody and in such form as, subject to any regulations, the Department may from time to time require.
- (3) In respect of every entry in respect of which particulars are furnished by a registrar to the Department in compliance with a requirement under subsection (2), the Department shall pay to the registrar the prescribed fee.
- (4) In this section —

“prescribed fee” means such fee as may be prescribed for the purpose by regulations under section 43(2) of the *Civil Registration Act 1984*;

“register of births” means a register of births kept in pursuance of that Act;

“registrar” has the same meaning as in that Act.

**57 Further provisions as to evidence**

- (1) Where in any proceedings under this Act the person by whom the proceedings are brought —
  - (a) alleges that any person whose age is material to the proceedings is under, of or over any age, and

- (b) satisfies the court that having used all reasonable diligence to obtain evidence as to the age of that person he has been unable to do so,

then, unless the contrary is proved, the court may presume that person to be under, of or over the age alleged.

- (2) In any legal proceedings (under this Act or otherwise) any document purporting to be —
- (a) a document issued by the Department and signed by an officer of the Department authorised to sign it;
  - (b) an extract from the minutes of the proceedings of the governing body of any provided school or maintained school, and signed by the chairman of the governing body or by its clerk or secretary;
  - (c) a certificate giving particulars of the attendance of a person at a school or college, and signed by the head teacher of the school or principal of the college; or
  - (d) a certificate issued by a registered medical practitioner employed or engaged by the Department, whether regularly or for the purposes of any particular case;

shall be received in evidence and shall, unless the contrary is proved, be deemed to be the document which it purports to be and to have been signed by the person by whom it purports to be signed, without proof of his identity, signature or official capacity.

- (3) Any such extract or certificate as is mentioned in subsection (2)(b), (c) or (d) shall be evidence of the matters therein stated in it.

### *Supplemental*

## 58 Subordinate legislation

- (1) Regulations made by the Department under this Act, regulations made by DHSC under section 48C, orders made by the Department under section 29A(5), and orders made by the Council of Ministers under paragraph 2 of Schedule 7, shall not have effect unless they are approved by Tynwald.<sup>57</sup>
- (2) Orders made by the Department under this Act (other than school attendance orders and orders under sections 4A(5), 29A(5), 44 and 46) shall be laid before Tynwald as soon as may be after they are made.<sup>58</sup>
- (3) An order made by the Department under section 4A(5) shall not have effect unless it is approved by Tynwald.<sup>59</sup>

## 59 Interpretation

- (1) In this Act —

- “**articles of government**” means an instrument under section 5(3) or 33(2)(b);
- “**authorised person**”, in relation to any function exercisable by an authorised person, means a person generally or specially authorised in writing by the Department to exercise that function;
- “**the Board**” [Repealed]<sup>60</sup>
- “**care Act**” has the meaning given under section 48(3);<sup>61</sup>
- “**care Act inspector**” has the meaning given under section 48A(1);<sup>62</sup>
- “**child**” means a person who is not over compulsory school age;
- “**college**” means an educational establishment or institution in the Island whose principal purpose is to provide higher education or continuing education or both;
- “**compulsory school age**” has the meaning given by section 23;
- “**continuing education**” has the meaning given by section 32(2);
- “**the Department**” means the Department of Education and Children;<sup>63</sup>
- “**DHSC**” means the Department of Health and Social Care;<sup>64</sup>
- “**DHSC’s function**” has the meaning given under section 48(4);<sup>65</sup>
- “**education supervision order**” means an order under section 30(1);
- “**foundation governors**” means persons appointed as governors of a maintained school in accordance with section 5(2);
- “**the Health Department**” [Repealed]<sup>66</sup>
- “**higher education**” has the meaning given by section 31(2);
- “**independent school**” means any school at which full-time education is provided for 5 or more pupils of compulsory school age, whether or not such education is also provided for pupils under or over that age, not being a provided school or a maintained school;
- “**infants**” means children under school age or who have not commenced to attend day school;
- “**instrument of government**” means an instrument under section 5(1) or 33(2)(a);
- “**learning difficulty**” has the meaning given by section 18(4);
- “**maintain**”, in relation to a school, shall be construed in accordance with section 2;
- “**maintained school**” means a primary school or secondary school (other than a special school) maintained but not provided by the Department;
- “**medical treatment**” includes treatment by a registered medical practitioner or registered dentist, but does not, in relation to any pupil other than a pupil receiving primary or secondary education otherwise than at school

under arrangements made by the Department, include treatment in that pupil's home;

“**nursery school**” means a school for children under compulsory school age;

“**parent**”, in relation to any person under the age of 18 years, includes —

- (a) any person who has parental responsibility for him, and
- (b) any person with whom he is living and who has care of him;

“**premises**” in relation to any school, includes any detached playing fields, but, except where otherwise expressly provided, does not include a teacher's dwelling-house;

“**prescribed**” means prescribed by regulations made by the Department;

“**primary education**” means full-time education suitable to the requirements of children who have not attained the age of 12 years;

“**primary school**” means a school for providing primary education;

“**proprietor**”, in relation to a school, means the person or body of persons responsible for the management of the school, and for the purposes of Part 5, includes any person or body of persons proposing to be so responsible;

“**provided school**” means a primary school or secondary school (other than a special school) provided and maintained by the Department;

“**provisionally registered school**” means an independent school registered in the register of independent schools, of which the registration is provisional only;

“**pupil**”, without more, means a person attending, or registered as a pupil at, a school or college;

“**registered pupil**” means, in relation to any school, a pupil registered as such in the register kept in accordance with regulations under section 16, but does not include a person who has been withdrawn from the school in the prescribed manner;

“**registered school**” means an independent school registered in the register of independent schools, of which the registration is final;

“**school**” means an institution for providing primary education or secondary education or both, being a school maintained by the Department or an independent school;

“**school attendance order**” means an order made by the Department under section 26(1);

“**school buildings**” in relation to any school, means any building or part of a building forming part of the school premises, except a building or part of a building required only —

- (a) as a caretaker's dwelling;

- (b) for use in connection with playing fields;
- (c) for affording facilities for DHSC to carry out its functions under section 16 of the *National Health Service Act 2001*; or<sup>67</sup>
- (d) for affording facilities for providing milk, meals or other refreshment for pupils in attendance at the school;

“**secondary education**” means full-time education suitable to the requirements of pupils who have attained the age of 12 years but have not attained the age of 19 years, other than such full-time education as may be provided for such pupils in pursuance of arrangements under section 31 or 32;

“**secondary school**” means a school for providing secondary education;

“**senior pupil**” means a pupil who has attained the age of 12 years but has not attained the age of 19 years;

“**special educational needs**” has the meaning given by section 18(1);

“**special school**” means a school maintained by the Department and specially organised for the purpose of providing education suitable for pupils who have been assessed as having special educational needs;

“**the tribunal**” means the Independent Schools Tribunal;

“**trust deed**”, in relation to a maintained school, includes any instrument (not being an instrument of government or articles of government made under this Act) regulating the maintenance, management or conduct of the school or the constitution of its governing body.

“**welfare duty**” has the meaning given under section 48(2).<sup>68</sup>

- (2) Any requirement under this Act to give public notice of any matter is satisfied by its publication in one or more newspapers published and circulating in the Island.

## 60 Transitional provisions, amendments and repeals

- (1) The transitional provisions in Schedule 9 shall have effect.
- (2) An order under section 61(2) may make such further transitional provisions as the Department thinks expedient, including provisions consequential on the partial operation of this Act.
- (3) The enactments specified in Schedule 10 are amended in accordance with that Schedule.
- (4) The enactments specified in Schedule 11 are repealed to the extent specified in column 3 of that Schedule.

## 61 Short title and commencement

- (1) This Act may be cited as the Education Act 2001.

- (2) This Act shall come into operation on such day or days as the Department may by order appoint.<sup>69</sup>

**SCHEDULE 1****EXISTING SCHOOLS**

Section 2(6)

**PART 1 - PROVIDED SCHOOLS***Primary schools*

Albert Road Junior School, Ramsey  
Anagh Coar School, Douglas  
Andreas School  
Arbory School, Ballabeg  
Ashley Hill School, Onchan  
Auldyn Infants' School, Ramsey  
Ballacloan Infants' School, Douglas  
Ballacottier School, Douglas  
Ballaquayle Infants' School, Douglas  
Ballasalla School  
Ballaugh School  
Braddan School  
Bride Infants' School  
Cronk y Berry School, Douglas  
Dhoon School, Maughold  
Fairfield Junior School, Douglas  
Foxdale School  
Jurby School  
Kewaigue School, Braddan  
Kirk Michael School  
Laxey School  
Manor Park School, Douglas  
Marown School  
Murray's Road Junior School, Douglas  
Onchan School  
Peel Clothworkers' School  
Rushen Primary School  
Scoill Phurt le Moirrey (Port St Mary School)

Scoil Vallajeelt (Ballajeelt School, Douglas)  
St John's School  
Sulby School  
Victoria Road School, Castletown  
Willaston School, Douglas

*Secondary schools*

Ballakermeen High School, Douglas  
Castle Rushen High School, Castletown  
Queen Elizabeth II High School, Peel  
Ramsey Grammar School  
St Ninian's High School, Douglas

**PART 2 – MAINTAINED SCHOOLS**

St Mary's Roman Catholic School, Douglas  
St Thomas' Church of England School, Douglas

**PART 3 – SPECIAL SCHOOL**

Glencrutchery Special School, Douglas

**SCHEDULE 2**

**ESTABLISHMENT ETC. OF SCHOOLS**

Section 3(5)

*Procedure for orders under section 3*

1. (1) Where —
  - (a) the Department proposes to do anything mentioned in section 3(1) or (2), or
  - (b) any persons submit proposals to the Department that any school established by them or by persons whom they represent which for the time being is not a maintained school, or any school proposed to be so established, should be maintained by the Department as a maintained school,

the Department shall forthwith give public notice of the proposals.

- (2) Any of the following persons —
  - (a) the governing body of any maintained school affected by the proposals;



- (b) any 10 or more persons resident in the Island who are for the time being registered in a register of electors maintained under the *Registration of Electors Act 2006*;<sup>70</sup>
- (c) the Board;

may within 3 months after the first publication of the notice submit to the Department objections in writing to the proposals.

(3) After the expiry of the period specified in sub-paragraph (2), the Department may make an order under section 3 giving effect to the proposals made by or submitted to it under sub-paragraph (1), after making such modifications of them, if any, as appear to it to be desirable.

(4) The Department shall not make an order giving effect to proposals for the maintenance as a provided school of a school which at the material time is 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.

(5) On the coming into operation of an order under section 3(1)(a), (b), (c) or (f) it shall become the duty of the Department to maintain the school constituted by the order as a provided school or as a maintained school, as the case may be.

#### *Approval of plans and specifications*

2. (1) After an order has been made giving effect to proposals for the establishment of a new maintained school, the persons by whom the proposed school is to be established shall submit to it, in such form and in such manner as it may direct, specifications and plans of the school premises, and the Department on being satisfied that the school premises will conform to the prescribed standards, may approve the specifications and plans.

(2) When specifications and plans for a new maintained school have been approved by the Department under sub-paragraph (1) —

- (a) it shall be the duty of the persons by whom the proposed school is to be established to give effect to the proposals in accordance with the specifications and plans so approved, except that the duty of providing —
  - (i) playing fields, and
  - (ii) any buildings which are to form part of the school premises but are not to be school buildings,
 shall be the duty of the Department;
- (b) it shall be the duty of the Department to maintain the school.

*Discontinuance of duty to maintain*

3. The Department shall not be under any duty to maintain a school after the coming into operation of an order giving effect to proposals that it shall cease to maintain the school.

**SCHEDULE 3****RESTRICTIONS ON DISCONTINUANCE OF MAINTAINED SCHOOLS**

## Section 3(6)

*Notice of intention to discontinue school*

1. (1) The governing body of a maintained school shall not discontinue the school except after serving on the Department not less than 2 years' notice of their intention to do so.

(2) No notice under sub-paragraph (1) may be withdrawn except with the consent of the Department.

*Restrictions where Department has incurred capital expenditure*

2. (1) No notice under paragraph 1(1) may be served by the governing body of a maintained school without the consent of the Department where expenditure has been incurred in respect of the school premises by the Department otherwise than in connection with repairs.

(2) If the Department grants such consent, it may impose such requirements as it thinks just —

- (a) in regard to the repayment of the whole or any part of the amount of the expenditure so incurred by the Department;
- (b) where the Department is satisfied that it will require, for any purpose connected with education, any premises which are for the time being used for the purposes of the school, in regard to the conveyance of those premises to the Department;
- (c) in regard to the payment by the Department of such part of the value of any premises so conveyed as is just, having regard to the extent to which those premises were provided otherwise than at the expense of the Department;
- (d) where any premises for the time being used for the purposes of the school are not to be so conveyed, in regard to the payment to the Department by the governing body of the school of such part of the value of those premises as is just, having regard to the extent to which they were provided at the expense of the Department.

*Continuance of school pending expiry of notice*

3. (1) If, while a notice under paragraph 1(1) is in force with respect to a maintained school, the governing body of the school inform the Department that they are unable or unwilling to carry on the school until the expiration of the notice, the Department may conduct the school during the whole or any part of the unexpired period of the notice as if it were a provided school, and shall be entitled to the use of the school premises, free of charge, for that purpose.

(2) While any school is being conducted by the Department as a provided school under sub-paragraph (1), the Department shall keep the school premises in good repair, and for all purposes relating to the condition of the school premises, the occupation and use thereof, and the making of alterations thereto, any interest in the said premises which is held for the purposes of the school shall be deemed to be vested in the Department.

(3) The governing body of the school shall be entitled to the use of the school premises or any part of them when not required for the purposes of the school to the like extent as if they had continued to carry on the school during the unexpired period of the notice.

*Extinguishment of duty to maintain*

4. Where any school is discontinued in accordance with this Schedule, the duty of the Department to maintain the school as a maintained school shall be extinguished.

**SCHEDULE 3A<sup>71</sup>****THE EDUCATION COUNCIL**

## Section 4A(4)

*Constitution of Council*

1. The Council shall consist of —
- (a) the members of the Department (as defined in the *Government Departments Act 1987*);
  - (b) the Chief Executive of the Department; and
  - (c) not more than 10 other persons appointed by the Department none of whom may be —
    - (i) a member of the Legislative Council or the Keys;
    - (ii) an employee of the Public Services Commission;
    - (iii) an employee of the Department; or
    - (iv) a teacher who works at a provided school, maintained school or special school.<sup>72</sup>

*Tenure of office*

2. A member of the Council appointed under paragraph 1(c) —
- (a) shall be appointed —
    - (i) for a term of 3 years beginning with the date of his or her appointment, or
    - (ii) if appointed to fill a casual vacancy, for a term expiring on the date which the person in whose place he or she was appointed would ordinarily have gone out of office;
  - (b) may resign at any time by notice in writing to the Department;<sup>73</sup>
  - (c) shall go out of office if he or she becomes a person who may not be appointed under paragraph 1(c); and<sup>74</sup>
  - (d) shall cease to be a member of the governing body of a school or college on going out of office as a member of the Council.<sup>75</sup>

*Further provision as to Council*

3. The Department may by regulations make provision for the meetings and proceedings of the Council.<sup>76</sup>

**SCHEDULE 4****ASSESSMENT OF SPECIAL EDUCATIONAL NEEDS**

## Section 18(3)

*Assessment at the instance of the Department*

1. (1) Where the Department is of opinion that —
- (a) a child has special educational needs, and
  - (b) it is necessary for the Department to determine the special educational provision (if any) which any learning difficulty he may have calls for,

it shall give a notice in writing on a parent of the child stating that it is of that opinion and proposes to make an assessment of the child's special educational needs.

- (2) A notice under sub-paragraph (1) shall inform the parent —
- (a) that he may, within such reasonable period as may be specified in the notice, make representations and submit evidence to the Department with regard to the proposed assessment, and
  - (b) of the procedure to be followed in making the assessment and a report under section 19, and of the rights of appeal conferred by regulations under paragraph 3.

(3) Where the Department has served a notice under sub-paragraph (1) and the period specified in sub-paragraph (2)(a) has expired –

- (a) if, after taking into account any representations made in response to the notice, it remains of the opinion mentioned in sub-paragraph (1), it shall make an assessment of the child's educational needs;
- (b) otherwise, it shall give notice in writing to the child's parent of its decision not to make such an assessment and of the reasons for its decision.

*Assessment at request of parent*

2. (1) Where the Department is requested by the parent of a child to make an assessment of the child's educational needs, it shall make such an assessment unless –

- (a) it has previously made such an assessment, or decided not to make such an assessment, and
- (b) it decides that there has been no change in the child's educational needs since its previous assessment or decision.

(2) Before making a decision under sub-paragraph (1)(b) the Department shall give the parent an opportunity of making representations to it as to any change in the child's educational needs.

(3) Unless it makes a decision under sub-paragraph (1)(b), the Department shall serve a notice in writing on the parent informing him –

- (a) that he may, within such reasonable period as may be specified in the notice, make representations and submit evidence to the Department with regard to the proposed assessment, and
- (b) of the procedure to be followed in making the assessment and a report under section 19, and of the rights of appeal conferred by regulations under paragraph 3.

(4) Where the Department has served a notice under sub-paragraph (3) and the period specified in subsection (3)(a) has expired –

- (a) if, after taking into account any representations made in response to the notice, it is of the opinion mentioned in paragraph 1(1), it shall make an assessment of the child's educational needs;
- (b) otherwise, it shall give notice in writing to the child's parent of its decision not to make an assessment under this paragraph and of the reasons for its decision.

*Assessment at request of school*

2A. (1) If it appears to the head teacher of a provided school or maintained school that –

- (a) a child who is a registered pupil at the school has special educational needs, and
- (b) the resources of the school are insufficient to meet those needs,

he or she shall request the Department to make an assessment of the pupil's educational needs.

(2) Where the Department is requested by a head teacher pursuant to sub-paragraph (1) to make an assessment of a child's educational needs, it shall make such an assessment unless —

- (a) it has previously made such an assessment, or decided not to make such an assessment, and
- (b) it decides that there has been no change in the child's educational needs since its previous assessment or decision.

(3) Before making a decision under sub-paragraph (2)(b) the Department shall give the parent of the child an opportunity of making representations to it as to any change in the child's educational needs.

(4) Unless the Department makes a decision under sub-paragraph (2)(b), paragraph 2(3) and (4) shall apply with any necessary modifications following a request under sub-paragraph (1) as it applies following a request under paragraph 2(1).<sup>77</sup>

### *Regulations*

3. The Department shall make regulations providing for —

- (a) the procedure to be followed in making an assessment of a child's special educational needs;
- (b) requiring a child (accompanied by his parent, if the parent wishes) to attend for examination for the purpose of such an assessment;
- (c) making it an offence, punishable on summary conviction by a fine not exceeding £500, to fail to comply with a requirement under sub-paragraph (b);
- (d) enabling a parent to appeal to a committee or tribunal appointed in accordance with the regulations against such an assessment, or against a decision by the Department not to make such an assessment, and
- (e) the procedure for the making, hearing and determination of such an appeal and the notification of such determination.

**SCHEDULE 5****EDUCATION SUPERVISION ORDERS**

## Section 30(5)

*Effect of orders*

1. (1) Where an education supervision order is in force with respect to a child, it shall be the duty of an officer of DHSC authorised by that Department for the purpose (“the supervisor”) —

- (a) to advise, assist and befriend, and give directions to the supervised child and his parents in such a way as will, in the opinion of the supervisor, secure that he is properly educated;
- (b) where any such directions given to the supervised child or to a parent of his have not been complied with, to consider what further steps to take in the exercise of the supervisor’s powers under this Act.<sup>78</sup>

(2) Before giving any directions under sub-paragraph (1) the supervisor shall, so far as is reasonably practicable, ascertain the wishes and feelings of the child and his parents, including, in particular, their wishes as to the place at which the child should be educated.

(3) When settling the terms of any such directions, the supervisor shall give due consideration —

- (a) having regard to the child’s age and understanding, to such wishes and feelings of his as the supervisor has been able to ascertain; and
- (b) to such wishes and feelings of the child’s parents as he has been able to ascertain.

(4) Directions may be given under this paragraph at any time while the education supervision order is in force.

2. (1) Where an education supervision order is in force with respect to a child, the duties of the child’s parents under sections 24 and 29 shall be superseded by their duty to comply with any directions in force under the education supervision order.

- (2) Where an education supervision order is made with respect to a child —
- (a) any school attendance order with respect to the child and in force immediately before the making of the education supervision order, shall cease to have effect; and
  - (b) while the education supervision order remains in force, sections 1(2) and 24 shall not apply with respect to the child;
  - (c) a supervision order made under section 83 of the *Children and Young Persons Act 2001* with respect to the child may not, while

the education supervision order is in force, include an education requirement of the kind which could otherwise be included under paragraph 7 of Schedule 9 to that Act;

- (d) any education requirement of a kind mentioned in paragraph (c) which was in force with respect to the child immediately before the making of the education supervision order shall cease to have effect.

*Cancellation of school attendance order*

3. Where —

- (a) DHSC applies for an education supervision order with respect to a child who is the subject of a school attendance order, and<sup>79</sup>
- (b) the court is satisfied that the child is receiving sufficient full-time education suitable to his age, ability and aptitude,

the court may direct that the school attendance order shall cease to be in force.

*Effect where child also subject to supervision order*

4. (1) This paragraph applies where an education supervision order and a supervision order under section 31 or 83 of the *Children and Young Persons Act 2001* are in force at the same time with respect to the same child.

(2) Any failure to comply with a direction given by the supervisor under the education supervision order shall be disregarded if it would not have been reasonably practicable to comply with it without failing to comply with a direction given under the other order.

*Duration of orders*

5. (1) An education supervision order shall have effect for a period of one year, beginning with the date on which it is made.

(2) An education supervision order shall not expire if, before it would otherwise have expired, a juvenile court has, on the application of DHSC, extended the period during which it is in force.<sup>80</sup>

(3) Such an application may not be made earlier than 3 months before the date on which the order would otherwise expire.

(4) The period during which an education supervision order is in force may be extended under sub-paragraph (2) on more than one occasion.

(5) No one extension may be for a period of more than 3 years.

(6) An education supervision order shall cease to have effect on —

- (a) the child's ceasing to be of compulsory school age; or
- (b) the making of a care order with respect to the child;



and sub-paragraphs (1) to (4) are subject to this sub-paragraph.

*Information to be given to supervisor etc*

6. (1) An education supervision order may require the child –
- (a) to keep the supervisor informed of any change in his address; and
  - (b) to allow the supervisor to visit him at the place where he is living.
- (2) A person who is the parent of a child with respect to whom an education supervision order has been made shall –
- (a) if asked by the supervisor, inform him of the child's address (if it is known to him); and
  - (b) if he is living with the child, allow the supervisor reasonable contact with the child.

*Revocation of orders*

7. A juvenile court may revoke any education supervision order on the application of –
- (a) the child concerned;
  - (b) a parent of his; or
  - (c) DHSC.<sup>81</sup>

*Offences*

8. (1) If a parent of a child with respect to whom an education supervision order is in force persistently fails to comply with a direction given under the order or with paragraph 6(2), he is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (2) It shall be a defence for any person charged with an offence of failing to comply with such a direction to prove that –
- (a) he took all reasonable steps to ensure that the direction was complied with;
  - (b) the direction was unreasonable; or
  - (c) he had complied with a requirement included in a supervision order made with respect to the child or with directions given under such a requirement, and that it was not reasonably practicable to comply both with the direction and with the requirement or directions mentioned in this paragraph.

**SCHEDULE 6<sup>82</sup>****SCHEDULE 7<sup>83</sup>****SCHEDULE 8****SCHEMES RELATING TO EDUCATIONAL TRUSTS**

Section 55(2)

*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) any 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 shall 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 shall be substituted for the approval of the High Court under sub-paragraph (1)(a).

(3) In this paragraph “the prescribed amount” means £2,400 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 shall 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.

## SCHEDULE 9

### TRANSITIONAL PROVISIONS

#### Section 60(1)

#### *Interpretation*

1. In this Schedule “**the 1949 Act**” means the *Isle of Man Education Act 1949*.

#### *Management of primary schools*

2. (1) The body of managers of a primary school or a group of primary schools existing immediately before the commencement of section 5 shall continue in existence as the governing body of the school or schools; and in the case of a maintained school the foundation managers of the school shall be the foundation governors of the school.

(2) Any instrument of management or rules of management of a primary school or a group of primary schools in force immediately before the commencement of section 5 shall have effect as an instrument of government or articles of government, as the case may be, made under that section.

*Religious education*

3. Any syllabus of religious instruction prepared under section 58 of the 1949 Act and in use immediately before the commencement of section 12 shall be deemed to have been prepared under subsection (4)(a) of that section; and for this purpose any irregularity in the constitution of the committee established under the said section 58 shall be disregarded.

*Special educational needs*

4. A notice given under section 64(4) of the 1949 Act of a decision that a child requires special educational treatment shall, to the extent that it contains the information specified in, or prescribed under, section 19(2), have effect as a report under section 19.

*The Isle of Man College*

5. The Isle of Man College shall be deemed to have been provided under section 33(1)(a).

*Library, youth and community services*

6. Any facilities provided under section 6 of the *Education (Young People's Welfare) Act 1944* shall be deemed to have been provided under section 35 or 36.

*Education supervision orders*

7. Until the coming into operation of the relevant provisions of the *Children and Young Persons Act 2001* section 30 and Schedule 5 shall be construed as follows —

- (a) references to a care order shall be construed as references to any order placing a child in the care of the Department of Health and Social Security;
- (b) references to a supervision order under section 31 of that Act shall be construed as references to a supervision order under any provision of the Children and Young Persons Acts 1966 to 1990 or Schedule 2 to the *Family Law Act 1991*;
- (c) references to a supervision order under section 83 of that Act shall be omitted.

**SCHEDULE 10****AMENDMENT OF ENACTMENTS**

## Section 60(3)

[Sch 10 amended by SD439/04, by Sexual Offences (Amendment) Act 2006 s 5 and by Public Sector Pensions Act 2011 Sch 3, and amends the following Acts —

Blind Persons Welfare Act 1937 q.v.

Church Act 1960 q.v.

Children and Young Persons Act 1966 q.v.

Agriculture (Safety, Health and Welfare Provisions) Act 1974 q.v.

Interpretation Act 1976 q.v.

Misuse of Drugs Act 1976 q.v.

Chronically Sick and Disabled Persons Act 1981 q.v.

Dental Act 1985

Nursing and Residential Homes Act 1988 q.v.

Copyright Act 1991 q.v.

Employment Act 1991 q.v.

Criminal Justice Act 1991 q.v.

Value Added Tax Act 1996 q.v.]

**SCHEDULE 11****ENACTMENTS REPEALED**

## Section 60(4)

[Sch 11 repeals the following Acts wholly —

Education Act 1968

Education (Mentally Handicapped Children) Act 1973

Education Act 1986

Education (School Age) Act 1988

Education (Degrees, Etc.) Regulation Act 1989

and the following Acts in part —

Education (Young People's Welfare) Act 1944

Isle of Man Education Act 1949

Children and Young Persons Act 1966

Children and Young Persons Act 1969

Statute Law Revision (Miscellaneous Provisions) Act 1979

Governor's General Functions (Transfer) Act 1980

Chronically Sick and Disabled Persons Act 1981

Civil Registration Act 1984

Treasury Act 1985

Fines Act 1986

Health and Social Security Act 1986

Civil Service Act 1990

Employment Act 1991

Transfer of Governor's Functions Act 1992

Representation of the People Act 1995

Children and Young Persons Act 2001.]





## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

<sup>1</sup> Subs (1) amended by SD155/10 Sch 10.

<sup>2</sup> S 4A inserted by Education (Miscellaneous Provisions) Act 2009 s 2.

<sup>3</sup> S 5A inserted by Education (Miscellaneous Provisions) Act 2009 s 3.

<sup>4</sup> Subs (2) added by Education (Miscellaneous Provisions) Act 2009 s 7.

<sup>5</sup> S 10 amended by Education (Miscellaneous Provisions) Act 2009 s 7. Subs (3) added by Education (Miscellaneous Provisions) Act 2009 s 7.

<sup>6</sup> Para (a) substituted by Education (Miscellaneous Provisions) Act 2009 s 4.

<sup>7</sup> Para (a) substituted by Education (Miscellaneous Provisions) Act 2009 s 4.

<sup>8</sup> Para (b) substituted by Education (Miscellaneous Provisions) Act 2009 s 8.

<sup>9</sup> Subs (3A) inserted by Education (Miscellaneous Provisions) Act 2009 s 8.

<sup>10</sup> S 21A inserted by Education (Miscellaneous Provisions) Act 2009 s 9.

<sup>11</sup> S 21B inserted by Education (Miscellaneous Provisions) Act 2009 s 9.

<sup>12</sup> S 21C inserted by Education (Miscellaneous Provisions) Act 2009 s 9.

<sup>13</sup> S 21D inserted by Education (Miscellaneous Provisions) Act 2009 s 9.

<sup>14</sup> Subs (3) repealed by SD355/05.

<sup>15</sup> S 24A inserted by Education (Miscellaneous Provisions) Act 2009 s 5.

<sup>16</sup> Subs (3A) inserted by Education (Miscellaneous Provisions) Act 2009 s 6.

<sup>17</sup> Subs (4) amended by SD2016/0369.

<sup>18</sup> S 29A inserted by Education (Miscellaneous Provisions) Act 2009 s 6.

<sup>19</sup> S 29B inserted by Education (Miscellaneous Provisions) Act 2009 s 6.

<sup>20</sup> Subs (1) amended by SD359/11 and by SD2014/08.

<sup>21</sup> Subs (3) amended by SD359/11 and by SD2014/08.

<sup>22</sup> Subs (4) amended by SD359/11 and SD2014/08.

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- <sup>23</sup> Subs (5) added by Education (Miscellaneous Provisions) Act 2009 s 3.
- <sup>24</sup> Subs (3) amended by SD155/10 Sch 4 and by SD2014/08.
- <sup>25</sup> Subs (4) amended by SD155/10 Sch 4 and by SD2014/08.
- <sup>26</sup> Subs (6) amended by SD155/10 Sch 4 and by SD2014/08.
- <sup>27</sup> Subs (7) amended by SD155/10 Sch 4 and by SD2014/08.
- <sup>28</sup> Subs (11) amended by SD2014/08.
- <sup>29</sup> Subs (4) amended by SD155/10 Sch 4 and by SD2014/08.
- <sup>30</sup> Subs (6) amended by SD155/10 Sch 4 and by SD2014/08.
- <sup>31</sup> Subs (7) amended by SD155/10 Sch 4.
- <sup>32</sup> Subs (8) amended by SD155/10 Sch 4.
- <sup>33</sup> Subs (1) substituted by Tribunals Act 2006 Sch 3.
- <sup>34</sup> Subs (1A) inserted by Tribunals Act 2006 Sch 3.
- <sup>35</sup> Subs (1B) inserted by Tribunals Act 2006 Sch 3.
- <sup>36</sup> Part 5A inserted by Regulation of Care Act 2013 s 202.
- <sup>37</sup> Subs (4) amended by SD2014/08.
- <sup>38</sup> Subs (3) amended by SD2014/08. [DHSC substituted for DSC under SD2014/08 Sch 2, para 13(2).]
- <sup>39</sup> S 48 substituted by Regulation of Care Act 2013 s 202.
- <sup>40</sup> Subs (1) amended by SD2014/08.
- <sup>41</sup> Subs (3) amended by SD2014/08.
- <sup>42</sup> S 48A inserted by Regulation of Care Act 2013 s 202.
- <sup>43</sup> S 48B inserted by Regulation of Care Act 2013 s 202.
- <sup>44</sup> S 48C heading amended by SD2014/08.
- <sup>45</sup> Subs (1) amended by SD2014/08.
- <sup>46</sup> Subs (3) amended by SD2014/08.
- <sup>47</sup> S 48C inserted by Regulation of Care Act 2013 s 202.
- <sup>48</sup> S 48D heading amended by SD2014/08.
- <sup>49</sup> Subs (1) amended by SD2014/08.
- <sup>50</sup> Subs (3) amended by SD2014/08.
- <sup>51</sup> Subs (4) amended by SD2014/08.
- <sup>52</sup> S 48D inserted by Regulation of Care Act 2013 s 202.
- <sup>53</sup> S 49 repealed by Education (Miscellaneous Provisions) Act 2009 Sch 1.
- <sup>54</sup> Subpara (ii) amended by Foreign Companies Act 2014 Sch.
- <sup>55</sup> S 53A inserted by Education (Miscellaneous Provisions) Act 2009 s 10.
- <sup>56</sup> Subs (2A) inserted by Education (Miscellaneous Provisions) Act 2009 s 11.
- <sup>57</sup> Subs (1) amended by Education (Miscellaneous Provisions) Act 2009 s 6, by Regulation of Care Act 2013 s 203 and by SD2014/08.
- <sup>58</sup> Subs (2) amended by Education (Miscellaneous Provisions) Act 2009 ss 2 and 6.
- <sup>59</sup> Subs (3) added by Education (Miscellaneous Provisions) Act 2009 s 2.
- <sup>60</sup> Definition of “the Board” repealed by Education (Miscellaneous Provisions) Act 2009 Sch 1.
- <sup>61</sup> Definition of “care Act” inserted by Regulation of Care Act 2013 s 204.

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- <sup>62</sup> Definition of “care Act inspector” inserted by Regulation of Care Act 2013 s 204.
- <sup>63</sup> Definition of “the Department” amended by SD155/10 Sch 10.
- <sup>64</sup> Definition of “DSC” inserted by Regulation of Care Act 2013 s 204 and definition of “DHSC” substituted for the definition of “DSC” by SD2014/08.
- <sup>65</sup> Definition of “DSC’s function” inserted by Regulation of Care Act 2013 s 204 and definition of “DHSC’s function” substituted for the definition of “DSC’s function” by SD2014/08.
- <sup>66</sup> Definition of “the Health Department” repealed by SD155/10 Sch 4.
- <sup>67</sup> Para (c) amended by SD2014/08.
- <sup>68</sup> Definition of “welfare duty” inserted by Regulation of Care Act 2013 s 204.
- <sup>69</sup> ADO (whole Act, except ss 31(3)(a) and 37(c)) 1/9/2004 (SD426/04); (s 31(3)(a)) 1/5/2005; (s 37(c)) 11/2/05 (SD83/05).
- <sup>70</sup> Item (b) amended by Registration of Electors Act 2006 Sch 2.
- <sup>71</sup> Sch 3A inserted by Education (Miscellaneous Provisions) Act 2009 Sch 2.
- <sup>72</sup> Para 1 substituted by SD2015/0346.
- <sup>73</sup> Item (b) amended by SD2015/0346.
- <sup>74</sup> Item (c) amended by SD2015/0346.
- <sup>75</sup> Para 2 amended by SD2015/0346.
- <sup>76</sup> Para 3 amended by SD2015/0346.
- <sup>77</sup> Para 2A inserted by Education (Miscellaneous Provisions) Act 2009 s 4.
- <sup>78</sup> Subpara (1) amended by SD359/11 and by SD2014/08.
- <sup>79</sup> Subpara (a) amended by SD359/11 and by SD2014/08.
- <sup>80</sup> Subpara (2) amended by SD359/11 and by SD2014/08.
- <sup>81</sup> Subpara (c) amended by SD359/11 and by SD2014/08.
- <sup>82</sup> Sch 6 repealed by Tribunals Act 2006 Sch 3.
- <sup>83</sup> Sch 7 repealed by Education (Miscellaneous Provisions) Act 2009 Sch 1.