

## **Consultation on the new Isle of Man Education Bill**

### **Response of the Association of School and College Leaders**

1. The Association of School and College Leaders (ASCL) represents nearly 19,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. On the Isle of Man specifically, we have 32 members, with leadership roles in all of the secondary schools.

#### **Timing of the consultation period**

3. Before addressing the detailed proposals in the Bill, we would like to make a general point about the rushed nature of this consultation process. Isle of Man government policy on consultations would indicate that the statutory period is six to twelve weeks, and that for major changes the consultation period should be towards the upper end of that range. Given that this is such a pivotal and significant piece of legislation, which will shape education policy and direction for a considerable time, this must surely constitute major change. A new Education Act will impact on generations of children and teachers on the island. It is ASCL's position that the consultation period is far too short. Seven weeks does not allow for genuine consultation and dialogue with lead professionals charged with delivering education on the island, or with ASCL as a professional association.
4. For this reason, ASCL calls for the Bill either to be withdrawn and re-tabled with a longer consultation period, or for the current consultation period to be extended.
5. Despite the extremely challenging timescale, we have been able to consult with a significant number of ASCL members on the Isle of Man. The rest of this response outlines their immediate concerns about a number of aspects of the Bill as it stands. If the consultation period were to be extended, we would be more than willing to consult further with members on other aspects of the Bill.

#### **Language and tone**

6. ASCL members on the island are concerned about the overall language and tone of the Bill, and what this implies about school and college leadership on the island. The last major Education Act was in 2001, so the Bill should set out the vision for the future education provision and reflect the views of those responsible with the significant task of leading the schools on the island. In too many instances the language and tone appear to be constraining rather than enabling, with the guidance feeling unnecessarily top-down.

7. The most striking example of this is Section 22, headed 'Failures by governors and head teachers'. The implication here that governors and/or head teachers will fail is unhelpful.

### **The undermining of head teachers**

8. While this dismissive tone is concerning, even more worrying are a number of proposals which would explicitly undermine the professionalism and autonomy of head teachers. Section 22.6 states that 'an order under this section may dismiss a governor or head teacher who appears to the Department to be unable or unwilling to perform functions under or in accordance with this Act, the articles of government or a direction under this section'. This clause is extremely subjective. What criteria would the Department use to determine whether a head teacher 'appears' unable or unwilling to perform certain functions? We cannot see how these accords with existing capability and disciplinary policies, let alone the statutory employment law that applies to both employers and employees.
9. It is ASCL's view that Section 22 should be omitted. Head teachers are all too aware of their responsibilities and accountabilities. There should be clear and transparent policies in place that allow for head teacher performance to be professionally and objectively appraised on a regular basis. This would, in our view, render Clause 22 redundant.
10. In addition, Clause 49.4 mentions the right of the Department to 'dismiss a head teacher' on the 'grounds of performance failure'. The objective should be that there are sufficient checks and balances in place to allow for transparent, objective, professional appraisal of head teacher performance – not that the Department should be able to unilaterally dismiss a head teacher.
11. We would ask for confirmation with respect to clause 22.3. Does this authorise the department to override governors and headteachers, even for matters which have been delegated to them? If this is the case, where does this fit with autonomy.

### **Other issues**

12. Below we outline a number of other issues raised by ASCL members on the Isle of Man. The short timescale means that this is by no means an exhaustive list of concerns, but it does at least give an indication of some of the key points raised.
13. Page 8 defines 'secondary education' as education for children between the ages of 11 and 16 inclusive. We would question where this sits in relation to 16-19 education, whether this provision is provided by schools or other providers? This is a significant change of definition from existing legislation which defines secondary education as full-time education for pupils up to the age of 19 and secondary schools as schools which provide for secondary education. Would the department have the authority to remove sixth form provision from schools without the need to consult with schools or to gain Tynwald's approval?
14. Clause 5 refers to the Minister meeting with the Chair of Governors (or other representative of the governing body) and outlines the purpose of that meeting. It doesn't, however, suggest that there is a *requirement* on the Minister to consult with such a representative, or commit the Minister to having due regard to their advice or concerns. Clause 8 requires the department to consult with other government departments but on safeguarding, there appears to be no requirements to consult with any other educational professionals.

15. Clause 6 details the nine principles of education on the Isle of Man. We have two questions or concerns about this section. Firstly, are these principles the result of consultation with school leaders, and are school leaders in agreement with them? And secondly, the language used is, in places, rather vague and open to interpretation. Point (e), for example, states that 'children, young persons, and their parents should have a reasonable degree of influence over the kind of education which is provided to them'. What is meant by a 'reasonable degree of influence'?
16. In Section 10, the analysis of the classification of schools refers to an all-through school, but does not mention special schools or PRUs. Are we to assume that no such provision will be made and, if so, on what grounds?
17. Section 19 states that 'an individual may not serve as a governor of any one school for a period or periods amounting in total to more than six years'. While we recognise that it is good practice to encourage people to move on to different governing roles, might this requirement after only six years cause a supply problem when schools are drawing from a relatively small pool of people?
18. Section 21 suggests that the majority of governors in every school will be appointed by the Department. This feels rather top-down and raises questions as to the independence of governors from the DESC. We also have concerns around the relative of opaqueness with respect to co-opted governors.
19. Section 22 also refers to governors. We have addressed this in part above in relation to head teachers. We would also question if governors would be comfortable with the supposition that they will fail in their duties and that could be removed if they 'appear to the Department' to be 'unable or unwilling' to perform their duties. Unlike head teachers, governors have no contract of employment with the Department. Would they have the right of appeal if they were to be removed under this proposed clause? Surely this would be a requirement of any process where a governor is 'dismissed'?
20. Section 29: The curriculum mentions Tynwald 'laying only'. Does this mean that schools will be required to submit their curricula to Tynwald for approval? How much autonomy does the Department envisage will head teachers and governors having in developing and delivering curricula that they consider the most beneficial and appropriate for the children in their school? Surely it is entirely inappropriate for Tynwald to be vetting every school's curriculum? Does this give the department complete control over the curriculum including public examinations? Would educational professionals be consulted with respect to curriculum and public examinations? Would schools maintain some autonomy in this regard, and will they be consulted?
21. Although the guidance in Clause 33 self-evidently useful, we would ask for a tighter definition of what would constitute 'reasonable force'. Without such detail being provided, our concern is that ASCL members may be vulnerable to legal process should they be in a specific position where they consider that restraint may be necessary. It should also be remembered that school leaders will have to offer guidance to their staff so that all are clear of the circumstances in which the 'restraining' of a pupil would be both legitimate and appropriate response to a specific circumstance. Parents and children also need to be made aware of the circumstances where the restraining of a pupil was legitimate and appropriate.
22. Section 41: Inappropriate use of social media is fast becoming an area of huge concern for school leaders. It is a far-reaching subject, with technological developments quickly outstripping available guidance. Although this section is useful, further consultation with school leaders is required to ensure the issues are fully explored. The phrase

'reasonable steps' is far too open to interpretation, and could leave school leaders vulnerable should a parent or child consider that the response of the head teacher falls short of their expectations.

23. Finally, we have a number of observations on behaviour and exclusions.
24. Section 30 implies that the Department, the governing body or the head teacher could be responsible for setting behaviour standards in different schools. Should this not be consistent? And if not, should it not be made clearer under what circumstances these different bodies would assume this responsibility? Section 31 states that 'only the Department may exclude a pupil'. ASCL assumes that this is reflective of the current situation, and that the Bill is not proposing to take away the right of heads to exclude. We would welcome clarification on this.
25. Section 80(a), with respect to Additional Educational Needs, states that 'the educational system should include and integrate children and young persons who present challenging behaviour or who have special needs as a result of their mental or physical condition'. ASCL supports this principle. However, the Bill appears to suggest that, when a child is excluded, the only available course of action is for that pupil to be moved to another mainstream school. We recognise, of course, that in some instances this is the right thing to do. There is nothing, however, in the Bill on what extra resources, if any, will be made available to ensure that this 'managed move' is successful. The Bill is also quiet on how the child's needs will be assessed against what a possible new school can offer, and whether governors will have the opportunity to decline to admit an excluded child.
26. In addition, it is important to recognise that, on occasion, professional judgement concludes that a child's specific needs cannot be addressed in a mainstream environment, and that placing that child in a mainstream school may present a significant health and safety risk to the child in question or to the broader school community. The Bill contains significant detail on the AEN Code, assessment of need, procedure and post-assessment reporting. We can, however, find little detail with respect to alternative provision, other than Clause 86, which states that 'the Department may provide education at a secondary school or all-through school for individuals with additional educational needs'. ASCL is of the firm opinion that the Bill should be clearer about the nature and extent of alternative provision that is both available at present and will be made available in the future for children with additional educational needs.
27. Finally, ASCL notes that the Bill is primary legislation, and that it could be argued that much of the detail we call for in this response will be available through secondary legislation. However, given the extent and depth of our concerns on some of the proposals in the Bill, we would urge the Department to ensure that ASCL plays a significant role in the ongoing consultative process.
28. We are willing to work with the Department in whatever way is most helpful to ensure that this major, far-reaching piece of legislation achieves its goal of encouraging and enabling high quality education provision on the Isle of Man for generations to come.

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