

EDUCATION (MISCELLANEOUS PROVISIONS) BILL 2008

Explanatory Memorandum

1. This Bill, which is promoted by the Department of Education, abolishes the Isle of Man Board of Education and makes a number of amendments of the Education Act 2001, principally relating to the state education system; school attendance and school discipline.
2. *Clause 1 and the Schedule* abolish the Isle of Man Board of Education. *Clause 2* establishes a panel from which members of governing bodies of schools and colleges are to be drawn, and which the Department may consult on education matters. *Clause 3* enables the Department to give directions to governing bodies. *Clause 4* amends the provisions of the 2001 Act relating to the education of children with special educational needs.
3. *Clause 5* requires the parent of a child of compulsory school age who is not a registered pupil at a state school to notify the Department of the arrangements for the child's education. *Clause 6* increases the maximum fine on a parent for a child's non-attendance, enables a fixed penalty to be imposed, and allows the police to remove a truant child to school or designated premises.
4. *Clause 7* authorises the detention of pupils for misbehaviour, subject to restrictions. *Clause 8* makes it an offence for a suspended pupil to be on school premises after being required to leave. *Clause 9* gives teachers express powers to deal with misbehaviour, viz. to restrain unruly pupils, to confiscate prohibited items and to search pupils and their belongings for weapons.
4. *Clause 10* enables regulations to require employers of children to notify the Department of such employment. *Clause 11* is supplemental.
5. *[Financial statement under Keys SO 4.1]*
6. In the view of the Member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of sections

The state education system

1. Dissolution of Board
2. Panel of governors
3. Power of Department to give directions
4. Special educational needs

School attendance

5. Duty to notify Department of arrangements for child's education
6. Truancy

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7. Detention
8. Removal of suspended pupil from school premises
9. Powers of teachers to maintain discipline

Miscellaneous and supplemental

10. Employment of children
11. Short title and commencement

Schedule — Repeals and revocations

A BILL

to dissolve the Isle of Man Board of Education; and
to amend the Education Act 2001.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

The state education system

1. Dissolution of Board

(1) On the coming into operation of this section —

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(a) the Isle of Man Board of Education shall be dissolved; and

(b) the functions of the Isle of Man Board of Education shall vest in the Department of Education.

(2) Paragraph 5 of Schedule 2 to the Government Departments Act 1987¹ (transfer of property etc.) applies, with the necessary modifications, to the transfer of functions effected by subsection (1)(b) as it applies to a transfer of functions effected by an order under paragraph 1 of that Schedule.

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(3) The enactments specified in the Schedule are repealed or, as the case may be, revoked to the extent specified in column 3 of the Schedule.

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2. Panel of governors

After section 4 of the Education Act 2001² insert —

"4A. Panel of governors

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(1) The Department shall establish a body ("the panel"), by such name as is prescribed, from among whose members the Department may, subject to the provisions of any instrument of government under section 5(1) or 33(2), appoint members of the governing bodies of schools and colleges provided or maintained by the Department.

(2) The members of the panel —

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(a) shall be appointed by the Department after consultation with such persons or bodies of persons as the Department considers appropriate;

(b) shall not include —

¹ 1987 c.13

² 2001 c.33

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- (i) a member of the Council or the Keys,
 - (ii) a member of the Isle of Man Civil Service,
 - (iii) any employee of the Department, or
 - (iv) a teacher who works at a provided school, maintained school or special school; and
- (c) shall hold office in accordance with the terms of their appointment.

10 (3) The Department may consult with the panel on any matter on which it appears to the Department that its advice would be desirable, and in exercising its functions under this Act may have regard to any advice given by the panel pursuant to any such consultation.

(4) The Department may by regulations make provision for meetings and proceedings of the panel."

15 **3. Power of Department to give directions**

(1) After section 23 of the Education Act 2001 insert —

"23A. Power of Department to give directions

20 (1) If the Department is satisfied that the governing body of a provided school or maintained school has acted or is proposing to act unreasonably with respect to the exercise of any function under this Act, it may give the body such directions as to the exercise of the function as appear to it to be expedient (and may do so despite any enactment which makes the exercise of the function contingent upon the opinion of the body).

25 (2) If the Department is satisfied that the governing body of a provided school or maintained school has failed to discharge any duty imposed on the body by or for the purposes of this Act, it may make an order —

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- (a) declaring the body 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) If a governing body fails to comply with a direction under subsection (1) or (2), the High Court, on an application by the Department, may make an order enforcing it to comply with the direction."

35 — (2) In section 33 of that Act (provision etc. of colleges), at the end insert

"(5) Section 23A applies to the governing body of a college provided or maintained by the Department as it applies to the governing body of a provided school or maintained school."

40 **4. Special educational needs**

(1) In section 15 of the Education Act 2001 (selection of school) —

- (a) in subsection (2), for paragraph (a) substitute —

"(a) that the child has special educational needs and the Department has certified that they cannot reasonably be provided for at that school;"

(b) in subsection (3), for paragraph (a) substitute —

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"(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),

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to a person specified in or a person, committee or tribunal appointed in accordance with the regulations, and".

(2) In Schedule 4 to that Act, after paragraph 2 insert —

"Assessment at request of school

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

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(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.

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(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

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(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.

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(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)."

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School attendance

5. Duty to notify Department of arrangements for child's education

After section 24 of the Education Act 2001 insert —

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

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(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;

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(b) the full name and address of the parent;

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- (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 address where he or she is receiving or is to receive education and 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) —

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- (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

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- (b) at any time, within 21 days after being required by the Department to do so by notice in writing.

(4) The Department may at any time by notice in writing to —

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- (a) a parent who has given a notification under subsection (1), or
 - (b) a person specified in such a notification as the person by whom education is being or is to be given,

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require him or her within the period specified in the notice (not being less than 15 days beginning with the day on which the notice is served) to give such particulars of the child's education as are specified in the notice and as the Department may reasonably require to satisfy itself that the child is receiving or will receive suitable education.

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(5) 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.

(6) A person who, without reasonable excuse, fails to comply with a notice under subsection (3)(b) or (4) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(7) Proceedings for an offence under subsection (5) or (6) shall not be brought otherwise than by the Department.

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(8) Proceedings for an offence under subsection (5) may be commenced at any time within —

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- (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.

(9) For the purpose of subsection (8), a certificate signed on behalf of the Department as to the date on which such evidence as is mentioned in subsection (8)(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."

6. Truancy

5 (1) In section 29 of the Education Act 2001 (failure to secure regular attendance of registered pupil) —

(a) in subsection (1), for "£1,000" substitute "£5,000";

(b) after subsection (3) insert —

"(3A) Where —

10 (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),

15 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."

(2) After that section insert —

"29A. School attendance: fixed penalty

20 (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.

25 (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).

30 (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 £50.

35 (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.

40 (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.

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 —

- 5 (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
- 10 (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."
- (3) In section 58 of that Act (subordinate legislation) —
- (a) in subsection (1), after "under this Act," insert "orders made by the Department under section 29A(5),";
- 15 (b) in subsection (2), after "orders under sections" insert "29A(5),".

School discipline

7. Detention

20 In section 10 of the Education Act 2001 (school discipline), at the beginning insert "(1)", and at the end insert —

 "(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 —

- 25 (a) a Saturday or Sunday,
- (b) any day outside the school term (a half-term break being treated for this purpose as outside 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.
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 (3) The articles of government shall not authorise the detention for misbehaviour of any pupil before or after, or during a break in, 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 —

- 35 (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."
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8. Removal of suspended pupil from school premises

In section 21 of the Education Act 2001 (conduct on school and college premises) —

(a) in subsection (1), for paragraph (b) substitute —

5 "(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);"

(b) after subsection (3) insert —

10 "(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
15 proved."

9. Powers of teachers to maintain discipline

After section 21 of the Education Act 2001 insert —

"21A. Power of teacher to restrain pupil

20 (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,
- 25 (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.

30 (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.

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.

35 (2) This section applies to any of the following —

- (a) an offensive weapon;
- (b) 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
40 time being in force at the school;

but does not apply to an article of clothing which is being worn by a pupil.

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 who is of the same sex as the pupil.

(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.

21D. Discipline: supplemental

(1) A teacher may exercise the power under section 21A(1), 21B(1) or 21C(1) —

(a) on the premises of the school, or

(b) 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) Anything seized under section 21B(1) or 21C(6) must, within 12 hours of its seizure, be delivered to —

(a) a parent of the pupil or a constable, in the case of an offensive weapon;

(b) the pupil or a parent of the pupil, in any other case.

(4) Section 34 of the Summary Jurisdiction Act 1989³ (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.

(5) In sections 21A, 21B and 21C and this section —

"offensive weapon" means —

(a) any article to which section 27A of the Criminal Justice Act 1991⁴ (article with blade or point) applies;

(b) any article made or adapted for use for causing injury to a person; or

³ 1989 c.15

⁴ 1991 c.25

(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.

(6) 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."

Miscellaneous and supplemental

10. Employment of children

In section 54 of the Education Act 2001, after subsection (2) insert —

"(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."

11. Short title and commencement

(1) This Act may be cited as the Education (Miscellaneous Provisions) Act 2008.

(2) Section 1 and the Schedule shall come into operation on —

(a) such day, not later than 1st June 2009, as the Department of Education may by order appoint, or

(b) if no such order is made, 1st June 2009.

(3) Except as provided by subsection (2), this Act shall come into operation on such day or days as the Department of Education may by order appoint.

Education (Miscellaneous Provisions) Bill 2008

Section 1(3).

SCHEDULE
REPEALS AND REVOCATIONS

<i>Reference</i>	<i>Citation</i>	<i>Extent of repeal or revocation</i>
1980 c.9	Jury Act 1980.	In Part 1 of Schedule 1, in Group A, the words "Members of the Isle of Man Board of Education".
1990 c.8	Civil Service Act 1990.	In Part II of Schedule 1, in paragraph 3, the words "or the Isle of Man Board of Education".
1990 c.18	Redundancy Payments Act 1990.	In section 1(4), the words "by that Department in relation to those schools and".
1995 c.13	Representation of the People Act 1995.	In section 66(1), the words "or the Board of Education", "or Board of Education" and ", the Board of Education" (in each place). In section 77, the definition of "the Board of Education". Section 78. Schedule 4.
SD 22/96	Representation of the People Regulations 1996.	Regulation 23.
2001 c.33	Education Act 2001.	Section 49. In section 59(1), the definition of "the Board". Schedule 7
SD 440/04	Education (Functions) Order 2004.	The whole Order.
SD 441/04	Board of Education (Proceedings) Regulations 2004.	The whole Regulations.
2006 c.12	Registration of Electors Act 2006.	In section 15(1), in the definition of "national election", the words "(a)" and "or (b) a non-Tynwald member or members of the Isle of Man Board of Education;".
2006 c.21	Employment Act 2006.	In Schedule 8, in the entries relating to the Redundancy Payments Act 1990, paragraph 2.
2007 c.8	Education (Amendment) Act 2007.	The whole Act.