

**Department of Education, Sport and Culture  
Education Bill Consultation  
20 March 2019**

1. The NASUWT welcomes the opportunity to comment on the Department of Education, Sport and Culture's (DESC's) consultation on the Education Bill.
2. The NASUWT is the teachers' union.

**GENERAL COMMENTS**

3. The NASUWT is clear that the current legislative framework for education in the Isle of Man is outmoded in many essential respects and requires reform to ensure that teachers, headteachers and the wider school workforce can continue to provide high-quality learning experiences for all children and young people.
4. However, while it is important to ensure that the legislative framework is fit for purpose and addresses the current challenges facing the education system, it is equally essential that the development and implementation of policy within this framework is also conducted on an effective basis.
5. For example, the Union has continued to express its disappointment that DESC has yet to establish a comprehensive, system-wide curriculum framework, notwithstanding the fact that the Education Act 2001 permits it to do so. The absence of such a framework continues to have profound implications for the transition of pupils from primary to secondary education and impedes the ability of all children and young people to

access their universal curricular entitlements, regardless of the school they happen to attend or where they happen to live. This shortcoming in the Island's education system is, therefore, the result of a failure to take advantage of legislative provisions rather than their absence.

6. It is, therefore, essential that DESC not only addresses issues in respect of the legal framework underpinning the education system but also ensures that legislative provisions are used purposefully to allow children and young people to continue to access high-quality learning opportunities.
7. Effective policy development and implementation require meaningful consultation with the school workforce. For this reason, the NASUWT must continue to insist that DESC moves to establish arrangements for engagement with the Union through the implementation of an effective recognition agreement. Such an agreement would ensure that the views and interests of teachers are reflected fully in the development of policy. The NASUWT looks forward to working with DESC to this end.

## **SPECIFIC COMMENTS**

### **Principles and duties**

8. The NASUWT welcomes the inclusion in section 6 of a range of fundamental principles of education to which DESC must have regard in the discharge of its legislative functions.
9. The Union believes that education is properly regarded as a public good and human right.<sup>1</sup> This conceptualisation of education is reflected in important international legal frameworks, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child (UNCRC).

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<sup>1</sup> NASUWT (2013). *Maintaining world class schools*. Available at: <https://www.nasuwt.org.uk/uploads/assets/uploaded/5dc40a68-85dd-4e47-9ebb018e40e6d454.pdf>, accessed on 06.03.19.

10. The purpose of education, as seen through the prism of human rights, focuses on the need to empower individuals to make the most of their talents and potential. Education's status as a public good reflects its role in serving wider economic, social, cultural, democratic and civic purposes.
11. These considerations are reflected to a significant extent in the principles set out in Section 6. However, it is clear that the individual and social purposes of education must fully reflect the obligation on, and the power of, the education system to work to secure educational, social and economic equality of opportunity. The NASUWT notes that section 6(3)(g) states that the education system should support the development of a diverse society based on mutual respect. While this objective is entirely legitimate, it is important that this statement is accompanied by a clear and unequivocal setting out of the critical importance of securing genuine equality of opportunity for all.
12. In this context, the NASUWT welcomes the introduction of overarching equalities legislation in the Isle of Man through the Equality Act 2017 and the important responsibility the Act places on schools and other public bodies, including DESC, to promote equality and diversity and tackle discrimination and prejudice. However, a clear statement in the Education Bill to this effect would confirm that securing genuine equality of opportunity is at the heart of the education system's mission.
13. The Bill places a general duty on DESC to secure and permit the education of persons resident in the Island and the NASUWT notes that section 7 sets out a range of consequent responsibilities on DESC to this end.
14. However, section 7(4) states that DESC must merely 'aim' to discharge these responsibilities. The NASUWT believes that qualifying DESC's responsibilities in this way is not appropriate and would, in effect, require only that DESC must demonstrate that it has sought to discharge these responsibilities rather than to discharge them in practice. The Bill should, therefore, be amended to address this issue.

15. Notwithstanding this consideration, it is important that the responsibilities enumerated in section 7 are set out unambiguously. In this regard, the NASUWT notes that section 7(4)(b) states that DESC must aim to provide facilities for education that use a range of learning and communications technology.
16. It is not contested that schools should be supported to make appropriate use of technology. However, it is not clear what legitimate expectations would be established by the inclusion of this provision in legislation, particularly in light of the rapidly changing nature of educational technology. Before the Bill is presented to Tynwald, DESC should set out with greater clarity the objectives that this provision is intended to secure in practice and the attendant responsibilities it would establish.
17. Section 7(4)(f) would require DESC to aim not only to provide and use educational facilities on the Island, but also to use facilities provided outside the Island where such use is 'economical, efficient and effective'.
18. Given the relatively small scale of the Isle of Man's education system, the NASUWT understands that circumstances arise on occasion when off-Island provision is necessary to secure some pupils' educational entitlements, particularly in relation to those children and young people with special and additional needs. However, it is difficult to understand why DESC should be required to 'aim to' use off-Island facilities. Section 7(4)(f) should be amended so that it makes clear that such facilities will be used only when appropriate and necessary for educational reasons.
19. The NASUWT welcomes provisions in section 8 that DESC must, where appropriate, exercise its functions in co-operation with other key public bodies including the Department of Health and Social Care (DHSC), the Safeguarding Board, the Department of Home Affairs (DHA), and any other relevant public authority.
20. The NASUWT strongly welcomes the legal underpinning to inter-agency working that enactment of this provision would secure. The Union is clear that co-operation between public institutions, agencies and bodies is

critical to ensuring children and young people's educational rights and entitlements, their wider wellbeing and their future life chances. Effective inter-agency working is a characteristic feature of any society that recognises that all children and young people are entitled to benefit from a healthy and safe childhood, in which they are supported to achieve their potential and develop the skills required for adulthood.

21. The nature of the Isle of Man as a relatively small, independent jurisdiction creates unique opportunities for all children and young people's services to work together to secure these objectives. However, it is clear that these opportunities have not been fully exploited to date. Placing a statutory duty on DESC to co-operate with other children's services represents an important advance towards addressing this concern. With specific regard to schools, it is important to acknowledge in policy and practice that children's safety, health and wellbeing both inside and beyond school are profoundly interrelated.
22. It will be critical for DESC and other relevant bodies to develop systems and structures to give practical effect to the co-operation envisaged in the Bill. In particular, it will be important that these provisions of the Bill, when enacted, are further strengthened by ensuring that the public bodies and agencies referred to in it are subject to a reciprocal duty to co-operate with DESC and with schools more generally. This reciprocal duty should be set out on the face of the Bill. The Bill should also make provision, by regulations subject to Tynwald approval and public consultation, for establishing practical arrangements for the operation of inter-agency working.
23. The NASUWT notes that DHA is referenced on the face of the Bill as a body with which DESC must co-operate. The Union believes that this reference to DHA is appropriate given the wide range of responsibilities within its remit that relate to children and young people. However, while the Isle of Man Constabulary sits within DHA's remit, it is noted that it has a significant degree of operational independence. Given that the work of youth justice agencies has a central role to play in the lives of many

children and young people of school age, it would be appropriate for the Isle of Man Constabulary to be included among the bodies with which DESC must co-operate.

24. The activities of the Youth Justice Team (YJT) are also critical in this respect, given that it draws on a range of different agencies working with children and young people who are involved with, or at risk of involvement with, the criminal justice system. The NASUWT believes that the YJT would have the potential to make an even greater contribution to these children and young people's lives if representation on it were extended to include DESC, and members with current experience of working in schools. So reconstructed, the YJT should be placed on a more formal footing through regulations that set out its roles and responsibilities, and also be subject to a duty to co-operate set out on the face of the Bill.

### **Consultation with school governors**

25. The NASUWT notes that legislation introduced in 2009 requires the maintenance of the Education Council, with a remit to provide advice to DESC 'as necessary' and to sit on official bodies and panels related to education matters.
26. The Union is, therefore, concerned that section 5 would replace the Council with an annual meeting with the Chair of Governors of each school in the Island, although attendance at this meeting would be voluntary.
27. It is clear that Ministers have ultimate democratic accountability for the decisions they are entitled to take in relation to the education system. However, the existence of a body such as the Education Council, independent of DESC, contributes to the development of more effective policy and provides a means by which the transparency of decision-making can be enhanced.
28. This consideration is particularly important given that DESC is not currently subject to any specific oversight through a dedicated body established for this purpose in the House of Keys or the Legislative Council. Meaningful external scrutiny is central to effective governance,

and DESC's intention to abolish the Education Council is, therefore, a matter of significant concern in this regard.

29. While the Union is open to consideration of ways in which the current Education Council's composition and remit might be reformed, its discontinuation with the arrangements proposed in the Bill is not acceptable.

### **Definitions of schools**

30. Section 10 would allow for the creation of federated schools. The NASUWT notes that the Bill defines such schools as involving a group of two or more schools sharing a single headteacher and single governing body.
31. The Union is not opposed in principle to the creation of federations of this type, where it is identified as a way of securing the position of small, geographically-isolated schools that may not be economically viable otherwise. However, DESC should set out in further detail its rationale for including the provision set out in section 10 and the circumstances in which it might be used.
32. Similarly, the rationale for the provisions in section 10(4) for DESC to make regulations that provide for the establishment of middle schools should be set out more clearly. The intended purposes behind the creation of a distinct category of maintained faith school, provided for in section 12, should also be explained. In any event, DESC should confirm in the Bill that aside from provisions in respect of the religious character of these schools, they would have the same status as other maintained schools.
33. The NASUWT notes the provisions in section 13 that would allow for the creation of contracted schools, defined as schools in respect of which the curriculum is provided or management functions are performed under a contract entered into by DESC.
34. The Union is concerned that this provision would permit the establishment of state-funded schools that would not be subject to the legal framework

applicable to maintained schools. Further, Section 17(1)(d) would allow DESC to establish new contracted schools or convert existing schools into contracted schools.

35. It must be acknowledged that such provisions appear to resemble those associated with the academy and free schools programmes in England. Among other profound shortcomings of these programmes has been the extent to which they have undermined inter-school collaboration and have impeded efforts to ensure that finite public resources are used efficiently, equitably and transparently. In a jurisdiction of the size of the Isle of Man, the distortions and inefficiencies inherent in such programmes would be likely to be amplified significantly and would undermine DESC's ability to meet its legal responsibility to provide efficient and effective education.
36. It is for this reason that the NASUWT supports DESC's ongoing commitment to reject the introduction of academies and free schools in the Isle of Man. It is, therefore, essential that this commitment is reflected clearly in the legal framework for the provision of education in the Island.
37. Accordingly, the NASUWT is clear that there can be no circumstances in which it would be appropriate for an existing school to be converted into a contracted school.
38. The NASUWT understands that the proposed introduction of contracted school status represents an attempt to regularise the status of existing provision for Manx-medium education which is currently provided by means of a contract with DESC. The Union further understands DESC's position to be that if new school provision of the type provided at present by maintained schools is required in future, then such provision would be established by means of a new maintained school rather than a contracted school. However, as currently drafted, this policy stance would not be reflected in the legal framework proposed in the Bill, as section 17(1)(d) would allow for the replacement of a maintained school with a contracted school.

39. It should be recognised that it would be entirely feasible for any new state-funded Manx-medium education to be provided by a setting located within the maintained sector. The Union notes that in Wales and Scotland, publicly-funded Welsh and Gaelic-medium schools are provided for in this way. It is, therefore, clear that section 17(1)(d) of the Bill should be amended to remove reference to the establishment of new contracted schools. The position of existing provision might best be regularised by referring to it explicitly on the face of the Bill, thereby permitting it to operate on a legal footing.

### **Governance and finance**

40. Section 21(2)(b) would give a secondary school or college the ability to appoint a pupil as a member of its governing body. The NASUWT is strongly opposed to this proposal.
41. It is evident that serious issues arise in relation to the formal engagement by pupils in the work of governing bodies. The NASUWT is clear that contact between pupils and governors is not necessarily inappropriate and can be an important part of effective approaches to student voice and pupil participation. For example, members of a school's student council may be invited to attend meetings of governors to give feedback on their activities or to discuss relevant aspects of the life of their school.
42. However, policies and practices on student voice must reflect the capacity of pupils to participate in particular activities and the extent to which they can reasonably be held to account for the results of their actions.
43. It is not contested that students should be encouraged to explore, develop and participate in school life as well as in the life of the school community as a whole. There is strong evidence that where students share a strong and positive affinity with their school, they are likely to be better motivated to learn. To this end, students may, for example, be encouraged to undertake responsibilities such as being a school prefect or monitor.
44. Nevertheless, while schools will want to encourage students to take greater ownership of, and responsibility for, aspects of school life, there

are school-level responsibilities and tasks that should not be undertaken by pupils. In particular, students should not undertake activities that require professional skills and expertise. These activities should only be carried out by qualified and skilled persons who can be held accountable for their decisions and actions through their status as employees or governors.

45. It is, therefore, clear that there are potentially serious implications for both staff and pupils of those who are not adults, and who, consequently, cannot be held to account, serving on governing bodies. Involving pupils in governing bodies decision-making processes could create serious conflicts of interest for the pupils concerned. It would not be reasonable, for example, to expect some pupils to be impartial about individual pupils who may be the subject of a governing body determination and with whom they have a particular personal history of friendship or conflict. In respect of staffing issues, pupil involvement on staff matters could have a direct bearing on the terms and conditions of employment of individual staff and may involve the disclosure of information that could undermine the continuation of an appropriate educational relationship between pupils and teachers.
46. For these reasons, section 20(1)(b) should be withdrawn.
47. Section 22(6) would give DESC the power to dismiss a governor or headteacher who it deems unable or unwilling to perform functions under or in accordance with relevant provisions of the Bill, a school's Articles of Government or a direction that DESC may issue in respect of the operation of governing bodies.
48. The NASUWT believes that this provision fails to acknowledge the important distinctions between the role of governors and headteachers. The role of governors is to take responsibility for the strategic leadership of schools. A key feature of this role is to hold headteachers to account for the performance of the schools for which they are responsible. Headteachers are, in turn, responsible for the internal organisation, management and control of schools. It is, therefore, not appropriate for

DESC to acquire powers to dismiss headteachers for failures in areas of governance over which they have no control. Furthermore, headteachers are employees, with consequent statutory and contractual rights. These rights include provisions for the assessment of their performance and conduct as well as the circumstances in which they might legitimately be dismissed.

49. Section 22(6) should, therefore, be amended to remove headteachers from the specific powers this provision would confer on DESC.
50. DESC will be aware that the NASUWT continues to have significant concerns about the operation of delegated financial management (DFM), particularly the ongoing rollout of reform of funding for pupils with special and additional needs.
51. The NASUWT has never objected to schools being given an appropriate degree of local financial control. However, it is important that the terms of this control are established in a way that ensures that finite public resources are used efficiently. Experience gained by the Union elsewhere serves to demonstrate that implemented and structured poorly, financial delegation to schools results in significant adverse implications for learners, staff in schools and the education system more broadly. Specifically, inappropriate financial delegation results in:
  - headteachers and others with senior leadership roles in schools being distracted from their core responsibilities for teaching and leading teaching and learning;
  - diseconomies of scale that arise from excessively dispersed and poorly allocated resources;
  - increased barriers to inter-school collaboration and partnership; and
  - increased complexity in securing effective oversight of, and accountability for, the use of public money in the education system.

52. As a minimum expectation, the exercise of any system of financial delegation must operate within the context of a robust regulatory

framework that secures the efficient, equitable and transparent use of funding. Funding models should serve to enhance, not detract from, efforts to continue to raise standards of educational achievement. Section 23, which relates to delegated financial management should, therefore, be amended to confirm that any scheme of delegation would be subject to Tynwald approval of regulations and guidance, which in turn should be subject to consultation with all interested parties, including trade union representatives of the school workforce.

53. The NASUWT notes that section 24 would permit DESC to issue regulations to allow for the making of charges in respect of teaching or other activities for pupils, whether these activities are part of the normal curriculum or not. The Union recognises that similar provisions are set out in the Education Act 2001 but that, to date, these powers have not been used to levy charges for access to the normal curriculum. However, the fact that provisions to this effect remain in place means that it would be open to DESC in future to permit the levying of such charges. In light of the principles enumerated in section 7, charging pupils and their families for access to elements of their core education entitlement would be wholly unacceptable, particularly in relation to pupils from socio-economically deprived backgrounds, and must not, therefore, be provided for in legislation.
54. Section 25 would provide for financial contributions to be made by maintained faith schools to significant capital costs. The NASUWT notes that comparable provisions are in place in England and Wales for meeting capital costs in voluntary-aided schools. It is important to recognise that schools in the Isle of Man that would be subject to a requirement of this nature appear not to have been liable to make such financial contributions previously. The NASUWT is concerned that the Bill would give DESC complete discretion over whether or not to seek contributions in any particular case and, if it chose to do so, the level at which such contributions would be set. Any provision of this nature must be subject to clear and reasonable criteria to ensure consistency of approach in all circumstances.

55. It should also be noted that the extent of the contribution required for comparable schools in the UK is around 10% of total cost. It is not evident that the 50% benchmark referred to in the Bill would be reasonable or implementable in practice. The NASUWT, therefore, believes that if contributions are to be required, 10% would appear to represent a more reasonable benchmark.

### **Information for Government**

56. Section 27(1) would allow DESC to require the headteacher or governing body of a school to provide information about pupils and activities at the school.
57. The NASUWT does not object to reasonable requirements on schools to provide such information, given its importance in informing system level policy-making. However, it is important that any such requirements DESC may seek to introduce are subject to meaningful public scrutiny and oversight. Section 27(1) should, therefore, be amended to confirm that any requirements in this respect would be set out in regulations subject to Tynwald approval and following consultation with interested parties, including teachers and their trade unions.

### **Employment of teachers and educational support staff**

58. The NASUWT is concerned that there remains no statutory requirement specifying the qualifications that those employed as teachers in educational settings in the Isle of Man should possess.
59. This absence creates circumstances in which unqualified individuals can be employed to teach without legal restriction. Employment of such staff is profoundly detrimental to the provision of high-quality education. The NASUWT recognises that for practical reasons, teacher supply in the Isle of Man is supported by those trained and qualified in the UK and the Republic of Ireland. The Union, therefore, continues to believe that legislation should be introduced to ensure that only those individuals eligible for recognition as qualified teachers in a UK jurisdiction or in the Republic of Ireland can be employed as teachers in Isle of Man schools.

## **The curriculum**

60. As noted above, the NASUWT remains concerned that the Isle of Man does not have a clear and consistent curricular framework that sets out in sufficient detail the nature and extent of children and young people's educational entitlement.
61. It is recognised that the Education Act provides that DESC shall prescribe a curriculum for all registered pupils of compulsory school age at provided schools and maintained schools. Currently, this duty is discharged by means of the Education (Curriculum) Order 2011. The NASUWT notes that while the Order sets out broad subject headings and areas of learning to be followed at the Foundation Stage and Key Stages 1-3, it does not establish programmes of study or subject content. As such, the Order does not secure a universal, high-quality, engaging and personally relevant learning entitlement for all pupils regardless of the school or setting in which they are educated.
62. The NASUWT notes that section 29 does not change this position and introduces no requirement on DESC to move beyond the minimal curriculum it has adopted to date.
63. The Union recognises that schools should have the scope to address areas of learning that reflect their circumstances and context. In calling for a system-wide curricular framework, the NASUWT does not insist that it should seek to encapsulate all the skills, knowledge and understanding that pupils might be expected to acquire during the course of their schooling. The Union also does not advocate a curriculum that would constrain the ability of teachers to make appropriate use of their professional judgement and autonomy to make suitably informed decisions about teaching and learning.
64. However, a system-wide curriculum would establish a common learning entitlement for pupils and would also support effective transition between primary, secondary and further education, giving receiving schools more certainty about pupils' prior learning experiences.

65. The NASUWT, therefore, calls on DESC to commit to the establishment of such a curricular framework through express provisions to this effect in the Bill. This curricular framework should be developed through meaningful consultation with all those with a legitimate interest in the Isle of Man's education system, including teachers and their trade unions.
66. The need to introduce such a framework is emphasised by the proposal in the Bill to introduce a requirement for age-appropriate education about sex and relationships, as well as health, lifestyle, economic and other forms of wellbeing. The Union believes that all children and young people should be able to benefit from a broad, engaging and age-appropriate programme of study in this area and it is, therefore, clear that it is right for the Bill to include provisions in this respect.
67. However, as current experience in England demonstrates, the introduction of such a requirement engages many complex and contested issues and can only be implemented effectively following extensive consultation that is necessary to establish clear common expectations about those areas of learning that need to be addressed in schools' provision. It will, therefore, be essential for DESC to make clear that such provision would be included in the curricular framework advocated above.
68. Section 29(c) includes provision for the first time for DESC to provide for regular assessment as part of its curriculum Order. The NASUWT has no objection in principle to the introduction of system-wide assessments. However, it is clear that such a provision could give rise to legitimate concerns about its potential to allow for the introduction of crude league tables of schools' performance in such assessments. The NASUWT is aware that DESC has made clear previously that it does not support the introduction of a high stakes accountability regime based on the publication of tables of school performance. It will be important for DESC to set out an unequivocal commitment to this policy so as to provide reassurance that the provisions of section 29(1) would not be used in ways inconsistent with it.

69. DESC should ensure that any future proposals in respect of assessments should be subject to Tynwald approval and be subject to public consultation with all relevant stakeholders, including teachers and their trade unions.
70. The NASUWT notes that the current Order refers to curricular requirements in respect of the teaching of French rather than modern foreign languages. This aspect of the Order is unnecessarily restrictive and is inconsistent with DESC's objective of ensuring that pupils can access a broad and balanced curriculum. Curriculum arrangements to be introduced through relevant provisions in the Bill should address this issue.
71. The NASUWT notes that the Bill would no longer provide for the teaching of religious education through specific legislative provisions. The Union further notes DESC's previously expressed view that religious education is a subject like any other in the school curriculum and should be treated in the same manner through inclusion in curriculum regulations and orders.
72. The NASUWT respects the right of the people of the Isle of Man and their elected representatives, in consultation with teachers and their trade unions, to determine this issue. However, it remains important for DESC to make clear how, if specific provision for religious education is to be removed from legislation, it will ensure that the current scope and quality of teaching in the subject is maintained. In particular, as noted above, the lack of a coherent curricular framework is of critical concern in this respect, and it is clear that amending the current status of religious education in legislation must be accompanied by steps to introduce such a framework, if it is to be acceptable.
73. The Bill further removes the legal underpinning for the Religious Education Advisory Committee (REAC). The NASUWT notes that the Education Act provides for REAC to examine religious education issues and to determine the nature and content of the curriculum.
74. It is important to note that, unlike other areas of the curriculum, REAC gives teachers and other legitimate stakeholders an influence over the

religious education curriculum established in schools. This approach to curriculum development and implementation ensures that all these stakeholders can have a meaningful sense of ownership over the curriculum and, thereby, helps to ensure their commitment to it. The NASUWT recognises that the sensitive nature of issues that can arise in respect of religious education means that Tynwald will seek to take into account views across a range of different constituencies with an interest in this matter before deciding to proceed with the proposals set out in the Bill.

75. For the reasons set out above, the NASUWT would not support the transfer of exclusive authority to determine the content of the religious education curriculum to DESC on the terms proposed in the Bill. Instead, as part of the overarching reform of the curriculum advocated above, the Union recommends that DESC establishes a forum for all the curriculum areas to be provided for in legislation. This forum should be comprised of stakeholders including members of the teacher workforce and should discharge the function for all subjects that REAC undertakes for religious education currently.

## **Behaviour**

76. Section 33(6) introduces provisions that would permit teachers to restrain pupils. The NASUWT does not object to such provisions in principle but notes that the use of this power is limited to teachers. The Union can identify no credible reason why other appropriately qualified members of the school workforce should be excluded from these provisions.
77. It is important that powers to restrain pupils are subject to clear guidance to which all relevant parties must be under a legal obligation to have regard. Specific provisions to be set out in such guidance should include:
- defining 'reasonable force' in practice;
  - the circumstances in which, and to what end, reasonable force can be used;
  - provisions in respect of staff training;

- communicating with parents, pupils and other relevant parties; and
  - dealing with complaints.
78. Section 33(6) should not be enacted until appropriate guidance has been developed and has been subject to public consultation, including with teachers and their trade unions.
79. Similarly, provisions in sections 34 and 36 on confiscation and dealing with offensive weapons in schools should be accompanied by clear guidance to which schools should have regard. On offensive weapons, guidance would need to address important considerations including
- the definition of an offensive weapon;
  - the circumstances in which a search for a suspected weapon on pupils' persons or among their property should be undertaken;
  - that only support staff with school security as the primary focus of their role should be empowered and required to search pupils for offensive weapons;
  - clarification that the power to search is not a duty;
  - that headteachers should keep records of staff authorised to search pupils for offensive weapons;
  - that searches for offensive weapons should not be undertaken without an appropriately qualified member of staff present as a witness;
  - the questions to ask of and information to give to pupils found in possession of an offensive weapon or subject to a search for such a weapon;
  - that no searches should be undertaken by untrained staff;
  - that schools should have a policy setting out the basis upon which matters relating to offensive weapons will be addressed;

- that schools may, in certain circumstances, use wands or arches as part of a range of options to try and ensure the safety of staff and pupils in schools in preventing the presence of offensive weapons on school sites;
  - how circumstances in which pupils do not give consent to be searched for offensive weapons should be addressed;
  - arrangements in respect of the removal of clothing and the searching of pockets for offensive weapons;
  - considerations to be taken into account in deciding whether or not to conduct a search, including when it would be appropriate to contact the police; and
  - considerations to be taken into account if private security providers are to be contracted to search pupils for offensive weapons.
80. On confiscation, guidance should be developed to ensure that schools are clear about:
- how confiscation should be managed in practice, including confirming a requirement on schools to have a policy in place;
  - the key provisions to be taken into account in the development and implementation of such policies; and
  - the responsibilities of teachers and other members of school staff in respect of seized items.
81. The NASUWT notes that section 37 introduces provisions in respect of the behaviour of pupils outside school premises.
82. The Union welcomes proposals to ensure that teachers have the power to discipline pupils away from school sites when they are responsible for the welfare or behaviour of pupils in accordance with written rules of the school; for example, when pupils are engaged in educational visits under the control of teachers.

83. DESC will be aware that the NASUWT drew its attention to the absence of such provisions in the Education Act and it is right that steps are being taken through the Bill to correct this shortcoming in the current legislative framework. However, the Union remains concerned that schools in the Isle of Man would continue to have no power to address pupil indiscipline that takes place away from school sites when pupils are not subject to the control of school staff but that, in any event, has implications for the maintenance of good order in schools.
84. The NASUWT remains in dispute with DESC on this issue. The Union remains clear that matters in this respect would most effectively be addressed by amending the Bill to ensure that teachers and school leaders are given the ability to discipline pupils for any instances of misconduct that occur away from school sites but that may have have adverse impacts on sustaining positive behavioural climates in schools. The NASUWT continues to observe that comparable provisions were introduced in England in 2006 and continue to be regarded as an important means by which schools can deter indiscipline and promote good behaviour.
85. The NASUWT notes that DESC does not share this view and that its position remains that statutory provisions should only permit teachers and other relevant members of the school workforce to discipline pupils on the terms set out in the Bill.
86. However, and without prejudice to the status of its dispute, the NASUWT would be open to exploring additional means by which schools might be supported to address episodes of indiscipline and inappropriate conduct that take place away from school sites but that may have implications for maintaining positive relationships between pupils, and between members of staff and pupils, while they are at school.
87. The NASUWT believes that the greater emphasis on developing collaboration between different agencies for children and young people envisaged in the Bill may create opportunities in this respect. When pupils' behaviour outside school has implications for their conduct in school, it is

important that all agencies with responsibilities for their wellbeing work together to share information and develop strategies for addressing concerns. Similarly, information gained at school about pupils' behaviour can play a critical role in supporting efforts to resolve problems with their conduct in the wider community.

88. The focus of this work should be to bring together partners from the field of education, social care, health and youth justice. Partners should be supported to collaborate on the identification and prevention of concerns, information sharing and the development of strategies for intervention to secure the fundamental wellbeing, positive behaviour and regular school attendance of pupils, particularly those who are most at risk of experiencing difficulties in this respect.
89. The NASUWT draws DESC's attention to the development of Behaviour and Education Support Teams (BESTs), introduced in England in 2002, that were based on such an approach. Independent research confirms that this strategy had a profoundly positive impact on the behaviour of pupils both within and beyond school. The NASUWT believes that, adapted to the circumstances and context of the Isle of Man, a strategy reflecting the principles on which the BEST model was based could make a significant contribution to addressing the concerns the Union has raised. The NASUWT would welcome the opportunity to engage further with DESC to explore ways in which such an approach might be adopted in the Island.
90. As the NASUWT has continued to make clear, it is not acceptable that there is no legal requirement on schools to implement behaviour policies. It is evident that such policies are fundamental to the maintenance of good order in schools.
91. Therefore, section 30 should be amended to require schools to implement a behaviour policy and, through regulations and guidance, establish minimum expectations in respect of the content of such policies.
92. The NASUWT strongly welcomes the proposals set out in section 41 that would require schools to take action if a pupil at a school is using social

media in a way that causes, or is intended to cause, distress or offence to another pupil or to a teacher or other member of staff at the school. It is also helpful that these provisions are extended to similar actions in this respect undertaken by a relative, or present or former associate, of a pupil at the school.

93. The Bill recognises that misuse of social media often involves criminal activity and it is right that if schools have grounds for concern in this respect, they should be required to contact the police to assess whether an offence has been committed. The NASUWT continues to encounter circumstances across all the jurisdictions in which it represents teachers and headteachers in which pupils and members of school staff are subjected to unacceptable and often illegal treatment that has been facilitated by the use of social media.
94. The NASUWT continues to defend its members robustly when social media and technology are used abusively. Most recently, the Union successfully pressed the Public Prosecution Service in Northern Ireland to bring to court a pupil who had taken covert upskirt photographs of two NASUWT members in County Fermanagh.
95. While welcoming the guilty verdict passed by the court on the pupil, the Union emphasised that the absence of a specific offence of upskirting in Northern Ireland had risked a profound injustice in this case. As a result of this case, the Northern Ireland Department of Justice has commenced a consultation on making upskirting a criminal offence, which would, if introduced, bring the law in Northern Ireland into line with legislation in England, Wales and Scotland.
96. The NASUWT believes that similar protections should be introduced in the Isle of Man and would welcome the opportunity to engage further with the Isle of Man Government on this issue.
97. However, it is clear that there are instances involving the misuse of social media that have adverse impacts on pupils and staff and that schools must address, but that may not constitute criminal activity. In such cases, as

acknowledged in the Bill, it is important that schools have measures other than contacting the police available to them to assist their attempts to tackle the unacceptable use of social media. The NASUWT, therefore, welcomes the measures in the Bill that would require schools to take steps to ensure that the use of social media does not take place during school hours, on school premises or through the use of school equipment. It is also appropriate that schools should be expected to provide education and guidance to pupils about the particular harm that social media misuse can inflict.

98. In the NASUWT's experience, managing issues related to social media can be challenging for schools. For this reason, the Union recommends that DESC should include provisions in the Bill that would give it powers to issue guidance to which schools must have regard on how issues related to social media use can be managed effectively.
99. The NASUWT notes that section 42 would require DESC to introduce admissions arrangements based on admitting children to schools located within the catchment area within which they live, unless specific exemption criteria, to be defined in regulations, are met.
100. In principle, the NASUWT does not object admissions criteria established on the basis of catchment areas. However, it will be important to ensure that exemption criteria are established that ensure that these arrangements can operate equitably and transparently.
101. In particular, it will be important to ensure that catchment area boundaries do not lead to excessive class sizes in some cases. It will also be important to allow parents to send siblings to the same school if they wish, including in circumstances where they may have moved from the relevant catchment area of a school attended by their other children or if the boundaries of the catchment area are redrawn. For some children with additional and special needs, consideration will also need to be given as to whether their catchment area school is best placed to meet these needs. Arrangements for admission to schools with a religious character will also need to be set out clearly in any revised admissions framework.

102. The NASUWT believes that, given the importance of this issue, DESC must establish regulations on the operation of catchment areas and ensure that its proposals are subject to full public consultation.
103. Section 43 of the Bill appears to remove the ability of schools set out in section 16(2)(b) of the Education Act to delete from the register the name of any pupil withdrawn or excluded from a school.
104. Given that it would appear sensible for schools to have this power, the NASUWT is not clear why comparable provisions have not been included in the Bill. DESC should, as a minimum expectation, set out the rationale underpinning this proposed change to current arrangements.
105. The NASUWT welcomes the provisions set out in section 44 that would prohibit schools from using selection criteria for admissions that refer to ability or aptitude.

## **Inspections**

106. The NASUWT recognises that the provisions of section 46 would require, through regulations, that a maintained school must undertake a self-assessment at least once during the course of a school year. The Union would expect to be consulted on the content of such regulations.
107. The NASUWT acknowledges that all schools should reflect on their effectiveness as part of their work to improve and enhance the quality of their provision. However, the Union's experience elsewhere has been that without the establishment of clear parameters for the conduct of school self-evaluation, the processes that schools adopt are often unacceptably burdensome and workload intensive. Poorly implemented, such systems may also not ensure transparency or public confidence in the quality of educational provision. It is, therefore, essential that these risks are addressed in any system of self-evaluation that DESC may intend to introduce.
108. It is helpful that DESC has recognised the need for arrangements in respect of inspection to be set out clearly in regulations that would be

subject to Tynwald approval. The NASUWT looks forward to engaging with DESC on the provisions it intends to introduce in respect of the conduct of inspections.

### **Independent schools**

109. The NASUWT welcomes the recognition section 56(1) that independent schools, as an automatic condition of registration, must comply with regulations set out by DESC on the provision of information. The Union is clear that the provision of information is critical to effective regulation of schools in the independent sector. To this end, the categories of information specified in section 56(2) and the forms in which it is to be provided appear to the Union to be clear and reasonable. The regulations envisaged by section 56(1) must require the provision of such information.
110. It is right that DESC should establish regulations in respect of complaints about independent schools, how such complaints would be addressed and how the outcome of any complaint would be enforced. It is also essential that robust arrangements are in place to safeguard the safety and welfare of pupils attending independent schools. The NASUWT, therefore, supports the provisions set out in sections 57-60 that seek to address these issues.

### **Provisions on home education**

111. The NASUWT notes that the Bill sets out an expectation that each parent of a child of compulsory school age must ensure that the child receives a suitable education, whether or not by regular attendance at school. It is acknowledged that such a provision would continue to give parents the right to meet their obligations in this respect by means of home education.
112. It should be recognised at the outset that it is by no means a matter of expert consensus that the Isle of Man Government is obliged by international law to continue to permit home education. In particular, Article 29 of the UNCRC sets out a fundamental right for all children to an education that is directed to the development of their personalities, talents and mental and physical abilities. The social dimensions of education also

establish important considerations in this context. The Universal Declaration of Human Rights establishes that the whole purpose of education is the strengthening of respect for human rights and fundamental freedoms. The Declaration confirms that education should promote understanding, tolerance and friendship among 'nations, racial or religious groups'.

113. Further, it is not at all clear that the Isle of Man Government is required by the European Convention on Human Rights to permit home education in all circumstances. It is also the case that the European Court of Human Rights has upheld the rights of states to withdraw or mediate the right to home education. Other European countries, including Sweden and Germany, have considerably more constrained rights to home educate than is the case currently in the Isle of Man. Most European jurisdictions require mandatory registration of home-educated children while in New Zealand, the relevant legal framework demands that home-educated children are 'taught at least as regularly and as well as in registered school'.
114. In light of the considerations set out above, it is evident that the appropriateness of current rights of parents to home educate must be evaluated in the context of education as a human right and a public good. The NASUWT remains clear that high-quality education requires the deployment of appropriately qualified teachers and, therefore, continues to find difficulty in reconciling a general right to home education with this principle. It should be noted that the right to be taught by appropriately qualified persons is also found in the universally applicable United Nations Strategic Development Goals.
115. Therefore, DESC must recognise in its development of policy in this area that international law does not obstruct it from considering a wide range of options in regulating and restricting the rights of parents to home educate.
116. The Bill confirms that DESC has significant responsibilities in relation to the safeguarding of home-educated children, as well as the suitability of the education they receive. It is clear that DESC cannot fulfil these

requirements effectively if it does not have accurate records of all home-educated children. Therefore, if DESC intends to continue to give parents a right to educate their children at home, then it is entirely reasonable, as a minimum expectation, for it to establish a system of mandatory registration of all children educated in this way. However, the scope of any registration requirements must include those children who receive a combination of school-based and home education.

117. Notwithstanding the importance of registration, DESC is right to recognise that registration, by itself, is insufficient to ensure that home educated children and young people are kept safe and are benefitting from their educational entitlements. It is, therefore, appropriate that section 78 seeks to establish a duty on DESC to assess the educational development of children in the Island receiving home education. In light of its legal responsibilities, it is vital that DESC oversees and monitors the effectiveness of home education.

118. The NASUWT notes that section 78(9) of the Bill would give DESC the power to make regulations about the methodology used to monitor home education. The Union believes that these regulations should:

- oblige home educators to provide a clear statement of their intended educational approach, intent and planned outcomes for each child for which they will be responsible over the following 12 months;
- confirm that DESC has the power to:
  - access the dwelling places of home educated children; and
  - designate properly qualified officers to speak with each child alone if it is deemed appropriate, or, if a child is particularly vulnerable or has particular communication needs, in the company of a trusted person who is not the home educator or the child's parents;

- oblige parents to allow the child, through exhibition or other means, to demonstrate that both attainment and progress are in accord with minimum expected standards and the statement of intent lodged at the time of registration;
- ensure that all DESC officers engaged in the monitoring and support of home educated children and their families are suitably trained;
- require all public services for children, young people and adults to inform those charged with the monitoring and support of home education of any properly evidenced concerns that they have about parents' ability to provide a suitable education, irrespective of whether or not they are known to children's social services; and
- confirm the circumstances in which DESC may refuse or revoke registration through the use of a School Attendance Order if significant concerns about the quality of provision or any safety risks faced by children are identified.

### **Additional educational needs**

119. The NASUWT recognises that there is no current legislative provision for the establishment of a system-wide framework for additional educational needs (AEN). The Union, therefore, welcomes DESC's intention to establish such a framework through provisions set out in Part 4 of the Bill (sections 80-90). These provisions represent an important and positive development in ensuring that the education system can meet the needs of some of the vulnerable children and young people for which it is responsible.

120. In particular, the Union welcomes the inclusion on the face of the Bill in section 80 of the fundamental principles on which the system of AEN should be based. It occurs to the NASUWT that many of these principles reflect those that characterise an efficient, equitable and accountable AEN system. The Union notes that section 80(a) provides that the education

system should include and integrate children and young persons who present challenging behaviour or have special needs as a result of their mental or physical conditions.

121. While accepting this principle, the NASUWT is clear that a meaningful definition of an inclusive education system should recognise the importance of building a range of expertise in teaching and learning, including expertise in teaching pupils with AEN. It should be recognised that a genuinely inclusive education system is one that offers a range of provision, including in mainstream and special settings. Within an inclusive education system, children's social and emotional needs, as well as their educational needs, must be met in settings best suited to their circumstances. Inclusive education systems are also characterised by close co-operation between all forms of setting.
122. The NASUWT believes, therefore, that section 80(a) should be amended to reflect this understanding of the nature of inclusive education.
123. The Union recognises that sections 82-90 establish the parameters within which the AEN system would operate, including in respect of the assessment of AEN, the procedure to be followed in assessing pupils' needs, including rights of appeal against decisions, the production of reports and ways in which assessed needs should be met.
124. In respect of section 84 on assessment procedures and section 85 on post-assessment reports, the NASUWT notes that DESC may introduce regulations, subject to Tynwald approval, detailing how these provisions in these sections should be implemented. Given the importance of these matters, the Union is clear that the Bill should be amended to require the publication by DESC of such regulations, given that the provisions set out on the face of the Bill would provide inadequately detailed direction to those involved in the processes addressed in the sections referenced above. These regulations must be subject to consultation with relevant stakeholders, including teachers and their trade unions, prior to their consideration by Tynwald.

125. The NASUWT welcomes the provisions of section 81 that would require DESC to issue a Code of Practice on educational provision for persons with AEN. Ensuring that there is clear and mandatory guidance on the ways in which all those with responsibilities for AEN meet their legal obligations is a central feature of any effective special and additional needs system. Given its critical role in such a system, it is essential that the Code of Practice is subject to full consultation with relevant stakeholders, including teachers and their trade unions.

126. Given its importance in informing the ways in which the provisions in Part 4 of the Bill would be interpreted in practice, DESC should make a draft version of the Code available for consideration before sections 80-90 are enacted.

### **Pre-school education**

127. The NASUWT welcomes inclusion in the Bill of detailed provisions on the definition, inspection, accountability and funding of early years settings.

128. As the NASUWT has emphasised previously, it is not appropriate for DESC to be excluded from the oversight of pre-school provision given its critical role in the educational development of young children. The provisions in section 98 that would establish inspection of early years settings under the direction of DESC is helpful. The Union looks forward to engaging in further consultations with DESC on the arrangements for such inspections in due course.

### **Regulation and registration of private tutors, training and educational establishments**

129. The NASUWT welcomes the proposals set out in sections 107-120 to introduce arrangements for the regulation and registration of private tutors and educational establishments. In particular, the Union notes positively that section 111 would create a criminal offence of conducting an unregistered institution and that comparable provisions in respect of private tutors are set out in section 118.

130. It is right that DESC should have powers to inspect and monitor the quality of provision secured through private tuition and educational establishments. The NASUWT looks forward to engaging with DESC on the details of any regulations it publishes in this regard, including in respect of the regulation of individuals and organisations providing services free of charge, given that they appear to be beyond the scope of the Bill as drafted currently.

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**General Secretary**

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