

Education Bill

1. This briefing summarises key developments on the Education Bill. The briefing:
 - sets out the background to the Bill; and
 - identifies those aspects of the Bill that reflect the NASUWT's priorities as well as those that raise legitimate concerns.

Background and context

2. In October 2017, the Department of Education, Sport and Culture (DESC) announced plans to introduce significant changes to the legal framework within which the Isle of Man's education system operates.
3. The current Education Act has been in place since 2001. The NASUWT remains clear that the Act is outmoded in many important respects and requires reform to ensure that teachers, school leaders and the wider school workforce have the support they need to continue to provide high-quality learning experiences for all children and young people.
4. In January 2019, DESC published a draft Bill for public consultation. Guided by the concerns and experiences of Isle of Man teachers, the NASUWT submitted a detailed response to this consultation. A copy of the Union's submission is available to view at: www.nasuwt.org.uk/consultationresponses.
5. During the course of 2019, the NASUWT engaged in extensive and detailed discussions with the Minister and DESC officials on the content of the Bill. The Union's objective in these discussions was to secure improvements to the Bill before its presentation to Tynwald, as well as to emphasise those elements of the draft Bill that address the NASUWT's priorities and which should, therefore, be retained in a new Education Act.
6. Discussions with DESC resulted in further positive changes to the text of the Bill in many important respects, although some important issues of concern remain.
7. The NASUWT has sought throughout not to conflate discussions on the Bill with those taking place at the same time on teachers' pay and conditions. It is evident that matters related to the Bill are distinct from those at the centre of the Union's ongoing pay dispute and that it would be inappropriate to make progress in one area that is dependent on developments in respect of the other. The Union remains clear that regardless of any further progress that might be made on the Bill, it will continue to represent its members' interests on pay and conditions robustly until an acceptable settlement is secured.
8. Given that the Bill will provide the legal underpinning for all aspects of the education system, its provisions are detailed and wide-ranging and will require thorough scrutiny by Tynwald members. However, some of the most significant changes to current arrangements are set out below. Of particular interest to NASUWT members are the provisions in the Bill on 'contracted schools', behaviour, the curriculum and additional educational needs.

Education Bill – key provisions

Contracted schools

9. The Bill in its current form 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. The Bill would also give DESC power to convert maintained schools to contracted school status.

10. The NASUWT is concerned that this provision would permit the establishment of state-funded schools that would not be subject to the same legal obligations that apply to maintained schools. In many respects, these schools would resemble those associated with the academies and free schools programmes in England. Not only are academies and free schools able to ignore centrally determined pay and conditions and establish their own arrangements in this respect, but they also undermine collaboration between schools and lead to inefficient and often unethical use of public resources.
11. The academies and free schools programmes have had significant and negative consequences for staff and pupils in England. The introduction of new contracted schools, or the conversion of maintained schools to contracted status, would have just as severe implications for the education system in the Isle of Man.
12. The NASUWT accepts that it is not DESC's current policy intention to launch an academies and free schools programme in the Isle of Man. It is, therefore, not clear why DESC has chosen to retain provisions in the Bill that would allow such schools to be established in future. The Union understands that the purpose of this provision is to regularise the status of an existing publicly funded Manx-medium educational setting that has been set up outside the maintained sector. However, such action does not require the wide-ranging powers currently provided for in the Bill to apply to all other existing schools and any other publicly funded schools that might be opened in future.
13. In response to the NASUWT's concerns, the draft Bill has been amended to ensure that any proposal to create a new contracted school or to convert an existing maintained school to contracted status must be the subject of Tynwald approval. Nevertheless, the NASUWT can identify no acceptable rationale for the retention of this power in the Bill, even if Tynwald must endorse any proposals before it can proceed.
14. The Union will, therefore, continue to press for amendments to the Bill to ensure that teachers and pupils are fully protected from any attempt to import the academies and free schools model from England to the Isle of Man.

Pupil behaviour

15. The Education Bill introduces provisions to allow for the restraint of pupils and the confiscation of alcohol, tobacco and other restricted or prescribed substances found in pupils' possession, as well as powers to search pupils for offensive weapons.
16. The NASUWT has been clear that it is appropriate for schools to have such powers and has experience of their effective use elsewhere. However, schools must be given effective guidance on ways in which these powers should be used in practice, given the sensitive nature of the circumstances they address. It is also critical that effective training is made available to all relevant staff. The Union will continue to seek assurances that advice and guidance on these matters will be developed in full consultation with relevant stakeholders, including the NASUWT.
17. The NASUWT has used the opportunity created by the Bill to secure improvements to the management of behaviour away from school sites. The Bill contains provisions that would ensure that teachers have the power to discipline pupils off-site when they are responsible for their welfare or behaviour under the written rules of the school; for example, when pupils are engaged in educational visits under the control of teachers.
18. While this proposed change to the disciplinary powers of schools is welcome, the Union remains concerned that, too often, insufficient action is taken to address pupil indiscipline that takes place away from school sites when pupils are not under the formal responsibility of school staff, but that can have implications for the maintenance of good order in schools.
19. The NASUWT has continued to engage with DESC and the Minister on this issue and has highlighted the profound nature of its concerns in this respect.
20. It has become clear that the Department of Home Affairs (DHA) draft Bill on stalking and harassment, scheduled for introduction later this year, provides an opportunity to establish robust arrangements to

address pupil indiscipline that takes place away from school sites and that may have adverse consequences for staff and other pupils. Of particular importance is the need to ensure that schools, DESC, the DHA, the police, the Safeguarding Board and all other relevant services for children and young people work together more effectively to tackle such indiscipline and intervene to secure positive behaviour on the part of children and young people experiencing problems in this respect.

21. Teachers continue to report significant concerns about the misuse of social media. The NASUWT, therefore, strongly welcomes the provisions in the Bill that would require schools to take action if a pupil at a school, their parents or associates are using social media in ways that cause, or are intended to cause, distress or offence to other pupils, teachers or other members of school staff.
22. The NASUWT is clear that these provisions, if enacted, would establish the most effective legislative framework for addressing social media-related concerns across all the jurisdictions in which the NASUWT organises and would represent a model for other education systems to follow.
23. The Union will engage with DESC to develop practical guidance for schools on effective and reasonable approaches to tackling the misuse of social media.

Curriculum

24. The NASUWT is 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 entitlements. Such a framework is in place in all the other jurisdictions in which the Union operates.
25. The Bill would continue current arrangements in which the curriculum to be followed would be set out in a separate Order. The current Order described broad headings and areas to be taught at the Foundation Stage and Key Stages 1-3. However, 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 entitlement for all pupils, regardless of the school or setting in which they are educated.
26. The NASUWT remains clear that such a curricular framework should be introduced through express provisions to this effect in the Bill. However, as a minimum expectation, DESC should commit to reviewing the requirements of the current Order so that it can support teachers in securing a meaningful universal learning entitlement, while allowing them to continue to make effective use of their professional judgement and autonomy to tailor learning experiences to the needs and interests of their pupils. This review should be undertaken in full consultation with teachers, school leaders and their representative organisations.
27. Such a review should also address other shortcomings in the current Order, including its failure to provide for the learning of modern foreign languages other than French.
28. The need to review current arrangements in respect of the curriculum is further emphasised by the proposal in the Bill to introduce a requirement for age-appropriate education on sex and relationships, as well as health, lifestyle, economic and other forms of wellbeing.
29. The Bill would no longer provide for the teaching of religious education through specific legislative provisions. The subject would instead be included in the general curriculum. If this element of the Bill is passed by Tynwald, it will be critical for DESC to ensure that its curriculum Order would maintain the current extent and quality of provision in the subject.

Additional educational needs

30. The Bill contains helpful provisions that would establish a legal framework for supporting children and young people with special and additional needs. The absence to date of such a framework has been a longstanding NASUWT concern, particularly in respect of the current lack of clarity about roles, rights and responsibilities of all those involved in working with children who require additional support.
31. The Bill sets out a framework for the assessment of needs and how these needs should be met. Critically, the Bill would place a duty on DESC to publish a Code of Practice to which schools, DESC and all relevant

public bodies would need to have regard in the discharge of their duties. In all other jurisdictions in which the NASUWT represents teachers and school leaders, such codes play a central role in describing in detail how provision for pupils with additional and special needs should be organised, including the forms of support pupils and the staff that work with them can expect to receive.

32. DESC has undertaken to consult with the NASUWT on the development of the Code. The Union's objective in this work will be to ensure that the Code provides meaningful support to teachers and other relevant practitioners and is tailored appropriately to the particular circumstances of the Isle of Man.

Principles and DESC's duties

33. The Bill articulates the principles that must guide the development of education policy. These principles reflect the NASUWT's longstanding view that education should be regarded as a public good and a human right for all children and young people. In all its activities, DESC would be required by law to demonstrate that it is acting in a way consistent with these principles. The NASUWT, therefore, welcomes these aspects of the Bill.
34. A critical feature of the NASUWT's mission is to secure an education system founded on the principle of equality of opportunity. Following representations made by the Union, a specific duty on DESC to this end has been included in the Bill.

Co-operation across children and young people's services

35. Teachers and school leaders have continued to express concern that, too often, agencies with responsibility for children and young people do not always co-operate effectively. The NASUWT has raised particular issues in this respect on the management of pupil behaviour away from school sites and support for vulnerable children and those with special and additional needs.
36. The nature of the Isle of Man as a relatively small but independent jurisdiction creates unique opportunities for these agencies, including schools and DESC, to work together to the benefit of all children and the professionals that work with them. However, these opportunities have not been fully exploited to date. The introduction in the Bill of a statutory duty on DESC to co-operate with other services represents an important step forward in addressing this concern, given that children's safety, health and wellbeing both inside and beyond school are closely related.
37. As a result of representations made by the NASUWT, the draft Bill has been amended to identify the Isle of Man Constabulary as one of the bodies with which DESC must co-operate. This will be important in regard to those pupils with behaviour issues that are the subject of police attention.
38. The NASUWT will continue to call for the Bill to be strengthened further by placing a reciprocal duty on these bodies and agencies identified in the Bill to co-operate with DESC and with schools.

Consultation with school governors and headteachers

39. The Education Bill will abolish the Education Council and replace it with an annual meeting between the Minister and representatives of the governing bodies of all maintained schools. During discussions on this aspect of the Bill, DESC agreed to include an additional annual meeting between the Minister and all headteachers.
40. While the NASUWT has no objection in principle to the introduction of these meetings and recognises some of the limitations of the current Education Council, a wider range of stakeholders should be given the opportunity to engage with the Minister on a comparable basis. In respect of the workforce, while the views of headteachers must be sought in the development of policy, these views should not be privileged over those of teachers and other members of the wider school workforce.
41. For this reason, the NASUWT will continue to press DESC to introduce formal arrangements for engagement with the Union through the implementation of an effective trade union recognition agreement. Such an agreement would ensure that the views and legitimate interests of teachers are taken into account in the development of policy.

Governing bodies

42. Early versions of the draft Bill included provisions that would have given a secondary school or college the ability to appoint a pupil as member of its governing body. Enactment of these versions of the Bill would have allowed children as young as 11 to serve as school governors.
43. The NASUWT was strongly opposed to these proposals. While engagement between pupils and governing bodies can have an important role to play in supporting effective approaches to student voice, it is important to recognise that governing bodies discharge functions that it would be inappropriate to allocate to children of this age. Such responsibilities should be undertaken by qualified and experienced persons who can be held accountable for the decisions they take.
44. While the NASUWT would have preferred the power to appoint pupil governors to be removed entirely from the Bill, following representations made by the Union, the minimum age at which a pupil governor would be eligible for membership of a governing body has been raised to 16 in the revised version of the Bill.
45. The NASUWT will seek to engage with DESC to ensure that if this provision is passed into law, clear guidance is issued on the types of activity that might be carried out by pupil governors. In particular, it would be important to recognise that 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 other pupils who may be subject to a governing body determination and with whom they have a personal history of friendship or conflict. In respect of staffing issues, it would be highly inappropriate for pupils to become involved in any matter that could have implications for the employment of teachers or for the maintenance of an appropriate educational relationship between pupils and staff.
46. The original version of the draft Bill gave DESC the power to summarily dismiss a governor or headteacher whom it deemed unable or unwilling to perform functions under or in accordance with relevant provisions of the Bill, their school's Articles of Government, or a direction that DESC may have given in respect of the operation of governing bodies.
47. The NASUWT was clear that this provision failed to acknowledge the important distinctions between the role of governors and that of headteachers. Specifically, headteachers are employees with contractual and statutory rights. These rights include provisions for the assessment of their performance and conduct, as well as for the circumstances in which they might legitimately be dismissed.
48. The NASUWT, therefore, welcomed the removal of these provisions in respect of headteachers from the draft Bill.

Employment of teachers

49. The NASUWT is clear that all children and young people have the right to be taught by individuals who are qualified to teach or who are working to secure this status. As the Education Bill provided an opportunity to establish a requirement in law to this respect, it is disappointing that no such provision has been brought forward. The Union will continue to campaign for the introduction of regulations that would ensure that only those eligible for recognition as qualified teachers in the UK or the Republic of Ireland, or who are in the process of securing such recognition, can be employed as teachers in Isle of Man schools.

Inspection

50. The Bill would require maintained schools to undertake a self-assessment of their performance at least once during the course of a school year.
51. While all schools need to reflect continually on their effectiveness as part of their work to sustain and further improve the quality of their provision, the NASUWT's experience elsewhere has been that without clear guidance, schools can adopt self-evaluation processes that are unnecessarily and excessively burdensome and workload-intensive. Implemented ineffectively, such systems can also fail to secure their aim of establishing and maintaining high levels of public and professional confidence in the education system.

52. Arrangements for self-assessment and inspection more generally will be set out in regulations subject to Tynwald approval. The NASUWT will engage with DESC on these regulations so that they help to establish a coherent and supportive approach to school accountability.
53. The Bill would make it an offence for any person to obstruct the inspection of a school intentionally. It is right that those who wilfully impede a lawful inspection should be held to account for their actions and should face appropriate consequences for any unacceptable conduct in this respect. However, the Bill allows for the imposition of a custodial sentence in such circumstances. The NASUWT is clear that given the nature of this offence, a custodial sentence would be entirely disproportionate and has called for the removal of this provision from the Bill. It must be made that nothing in the Bill in this respect would impede the right of teachers and school leaders to take lawful industrial action.

Home education

54. The NASUWT supports the balanced and proportionate proposals in the Bill on the regulation of home education. It is a core duty of the state to ensure that all children and young people receive their entitlement to education and are kept safe.
55. Given that DESC intends to continue to allow parents to elect to educate their children at home, it is right that it has the legal means to require home educators to register and to provide information, where necessary, to confirm that their children are receiving a suitable education. The Bill also contains important provisions to ensure that the educational development of home-educated children is assessed periodically by DESC.

Regulation and registration of private tutors, training and educational establishments

56. The Bill sets out arrangements for the regulation and registration of private tutors and educational establishments. The NASUWT has pressed for the adoption of such provisions elsewhere, as it is right that relevant authorities are able to ensure that those providing such services are subject to meaningful scrutiny and oversight. The Union, therefore, welcomes the inclusion of these provisions in the Bill.

Next steps

57. The NASUWT will continue to engage with members on the Bill as it progresses through Tynwald and provide regular updates on developments. It is essential that its ongoing representations to DESC and Tynwald members on this critical issue are guided by the perspectives and concerns of serving teachers. The Union will press Tynwald members to resist any amendments that would undermine those aspects of the Bill that the Union supports and to address those elements that require further improvement.



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