

**REPLY BY THE PRESIDENT OF
THE COMMITTEE FOR EDUCATION, SPORT & CULTURE**

**TO QUESTIONS ASKED PURSUANT TO RULE 14 OF THE
RULES OF PROCEDURE BY DEPUTY STEPHENS**

Question One:

How does the extant Education Law support education across primary, secondary, special and post 16 phases in the Bailiwick¹ in the following: -

- 1.1. In terms of the delivery of education including pre-school;
- 1.2. In terms of the structuring of education;
- 1.3. In terms of the curriculum;
- 1.4. In terms of registration and admission of pupils;
- 1.5. In terms of the exclusion and transfer of pupils;
- 1.6. In terms of school committees;
- 1.7. In terms of the resolutions of the States of Deliberation following the debate of Billet VII March 2016 p1497 – ‘The Future Structure of Secondary and Post 16 Education’?

Answer

Whilst the Education (Guernsey) Law, 1970 includes general principles and duties, it is in the main permissive rather than prescriptive as to their attainment and performance. This has allowed it to stand the test of time and in many ways it remains as relevant today as when it was first published. There is no aspect of the current Law which we can see which prevents the States or the Committee *for* Education, Sport & Culture from achieving its objectives. The philosophy enshrined in the Law is to allow the States to provide an education service appropriate to age, ability and aptitude.

Question

- 1.1. In terms of the delivery of education including pre – school education;

Answer

The Education (Guernsey) Law 1970 ("the Law") provides that it is the duty of the Committee to provide full-time primary and secondary education for children of compulsory school age, i.e. from age 5 years to age 16 years. It must provide sufficient schools "in number, character and equipment" to cater for pupils of different ages, abilities and aptitudes. The Committee is charged with the duty to have regard (inter alia) to the need for securing that provision is also made for pupils who have not attained the age of 5 years by the provision of nursery schools or, where the Committee considers the provision of such schools to be inexpedient, by providing nursery classes in other schools². The Law also gives the Committee power to give financial assistance in respect of children attending school and students attending institutions of further education³. The Education (Amendment) (Guernsey) Law, 1987 makes more detailed provision for the education of children with special educational needs.

¹ The Committee has responsibility for education in Alderney (by virtue of the Alderney (Application of Legislation) (Education) Ordinance 1970) but not in Sark which has its own legislation and Committee).

² Section 4 of the Law.

³ Section 49 of the Law.

The Law has never been an inhibitor to progress. In terms of the delivery of pre-school education, for example, the permissive nature of the Law allows the Committee to establish pre-schools. The real inhibitors to progress have been how such provision will be resourced, the availability or otherwise of suitable premises and trained staff and considerations around the role played by private providers. These are of course all matters recently discussed by the States during the debate on universal pre-school entitlement. The permissive nature of the Law has ensured that the former Education Department has had the flexibility to facilitate change where and when needed. This now rests with the Committee *for* Education, Sport and Culture.

Question

1.2. In terms of the structuring of education;

Answer

As stated in paragraph 1.1, the Law imposes a duty to provide separate schools for primary and secondary age pupils (except in the case of schools for children with special educational needs); the Committee must also have regard (in addition to the expediency of nursery provision) to the need for making provision for children with special educational needs and to the expediency of the provision of boarding accommodation. The Law also requires the States to bear the expense of maintaining any voluntary schools except for the costs of upkeep of the buildings⁴. The Committee also has the power to make such arrangements as it considers necessary or desirable for the provision of adequate facilities for further education⁵.

Question

1.3. In terms of the curriculum;

Answer

The Committee has the power to control the secular element of the education of all pupils in States' schools and in voluntary schools, including the curriculum⁶.

It shall be the duty of the Committee so far as its powers extend, to contribute towards the spiritual, moral and mental and physical development of the community by securing that efficient education throughout those stages shall be available to meet the needs of the population. Schools shall not be sufficient unless they "afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities and aptitudes. It is in respect of these duties, which still remain very much at the fore today, that the previous Education Board (and now this Committee also) has attempted to gain the agreement of the States to the re-organisation of secondary and further education. Again, the Law has been a facilitator in this matter and not an inhibitor.

Question

1.4. In terms of registration and admission of pupils;

⁴ Section 7 of the Law.

⁵ Section 23 of the Law.

⁶ Section 8 of the Law.

Answer

As stated in paragraph 1.1 the Committee has a duty to make available sufficient schools for providing education to those pupils of compulsory school age who need it (and parents have a corresponding duty to cause their child to receive efficient full-time education suitable to his age, ability, and aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise)⁷. The Committee must have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable expenditure by the States, pupils are to be educated in accordance with the wishes of their parents⁸. The Law requires a register of all pupils to be kept at every States' school and every voluntary school which must contain such details in respect of every pupil as are prescribed in regulations. Each school must also keep an attendance register⁹.

It is the duty of parents to secure the education of their children. Education and schooling are not synonymous. Education is compulsory; attendance at a particular school is not. Children may be educated otherwise than at school.

Question

1.5. In terms of the exclusion and transfer of pupils;

Answer

The Law does not confer any power on the Committee or any headteacher or other education professional to exclude pupils from education. There is no express power to transfer pupils but transfer would be possible provided that it is consistent with the duties of the Committee to provide education and to have regard to the wishes of the parents (see 1.4).

Question

1.6. In terms of school committees;

Answer

The Law establishes a committee of management for every primary school and every secondary school the constitution, powers and duties of which are conferred by Ordinance¹⁰. There shall be 'for every primary school and every secondary school, a committee of management with authority to exercise such powers and to perform such duties as the States shall from time to time by Ordinance confer and impose upon it. The States shall by Ordinance make provision for the composition of Primary and Secondary Schools Committees and the procedures at such meetings. The current Law therefore allows through the relatively simple mechanism of an Ordinance for any powers that are felt to be desirable to be passed over to the school committee. The formation of governing bodies through this mechanism would be relatively straightforward. Again, the current Law is a facilitator and not an inhibitor.

⁷ Section 17 of the Law.

⁸ Section 34 of the Law.

⁹ Section 36 of the Law; the Pupils' Registration (Guernsey) Regulations 1970.

¹⁰ Section 6 of the Law; Education (Schools Committees) (Guernsey) Ordinance 1970

Question

1.7. In terms of the resolutions of the States of Deliberation following the debate of Billet VII March 2016 p1497 – ‘The Future Structure of Secondary and Post 16 Education’?

Answer

The resolutions of 15th March 2016 concerning the future structure of secondary and post-16 education are largely matters of policy which could be accommodated within the present structure of the Law. Any subsequent changes to the funding arrangements with the grant-aided colleges might require amendment to the enactments respectively applicable to those institutions. As regards the re-organisation and rebuilding elements of the proposals ‘It shall be the duty of the Committee to ensure that there are sufficient schools ... the schools available shall not be sufficient unless they are sufficient in number, character and equipment to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities and aptitudes ... including practical instruction and training appropriate to their respective needs’. This element of the current Law addresses the need for modern fit for purpose schools and the need to differentiate in education terms for pupils with different abilities, including those who may be gifted and talented.

All communications between Elizabeth College and the States and between The Ladies’ College and the States shall be through the Committee. The Committee may, in accordance with such conditions as the Committee may from time to time determine and subject to such decisions as the States may from time to time by Resolution prescribe, for the purpose of enabling pupils to take advantage of any educational facilities available to them ‘pay the whole or any part of the fees and expenses payable in respect of pupils attending schools at which fees are payable. Therefore, the Committee may pay fees in full, or part of any fees at the Colleges, but it is not required in Law to do so. Again, the permissive nature of the Law is evident.

Question Two:

2.1 How does the extant Education Law support the provision of appeals procedures for use by members of the public against decisions of the Education Department and Committee?

Answer

The Law confers upon the States the power to make an Ordinance making provision for appeals against a decision of the Committee concerning the making of a loan, grant or allowance in respect of further education¹¹. This power has not yet been exercised. The Law also confers a right of appeal to the Royal Court against a decision of the Committee concerning the registration of independent schools. There is no general statutory right of appeal against other decisions of the Committee. However, an application may be made to the Review Board constituted in accordance with the Administrative Decisions (Review) (Guernsey) Law, 1986 to have a decision reviewed. A decision may also be challenged in the Royal Court by means of judicial review proceedings.

¹¹ Section 49 of the Law.

Question

2.2 How many and of what type are the appeals procedures offered by the Education Department to members of the public that are wholly independent of the Committee members or the staff of the Education Department?

Answer

This does not relate to the legislation which is explained in 2.1. There are none wholly independent of the States but those which do exist are considered to be impartial.

Where an appeal is to be heard in respect of a draft determination (Special Educational Provision), an Appeal Panel of three members will be convened as follows:

An independent chairperson

An independent Educational Psychologist

A Headteacher (who is not from a school identified in the draft determination).

A Review of exceptional circumstances for pupils undertaking the 11+ will be undertaken by the Director of Education and two impartial headteachers, not involved in the appeals. The headteachers are chosen on the basis that they have no connections with the children and parents lodging appeals. School admission appeals panels usually comprise at least three political members of the Committee. None of the members will have had any involvement in the earlier decision processes and allocation exercise prior to the appeal. These areas require a level of expertise and awareness of the Guernsey education system which would be difficult to find outside the service. Impartiality is essential and that is achieved through the current systems in operation. Independent arbiters with little or no current experience in these areas would be a retrograde step.

Question Three:

What references are there in the extant Education Law to the rights, roles and responsibilities of: -

3.1 The Education Department;

Answer

The Committee has the following rights, roles and responsibilities under the Law, in addition to those mentioned above -

- a) The duty to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient education throughout the stages of primary, secondary and further education shall be available to meet the needs of the population¹².
- b) The power from time to time to approve schools which are specially organised to make provision for pupils with special educational needs¹³.
- c) The power to take over the temporary conduct of a voluntary school where its managers are unable or unwilling to carry on the school¹⁴.

¹² Section 3 of the Law.

¹³ Section 5(3) of the Law.

¹⁴ Section 7 of the Law.

- d) The power to control the secular instruction to be given to the pupils of every States' school and voluntary school (subject to the right of voluntary schools to control religious instruction), and to determine the times at which school days begin and end, term dates and to require attendance at premises other than the school for the purpose of receiving instruction¹⁵.
- e) The power to control the appointment and dismissal of teachers in States' schools and voluntary schools (subject to the right of a representative of a school's committee to vote in the appointment of the head teacher or deputy head)¹⁶.
- f) To approve certain matters in connection with religious education in States' schools and voluntary schools and the excusal of pupils from such education¹⁷.
- g) To serve school attendance orders on parents whose child of compulsory school age is not receiving full-time education¹⁸.
- h) To make such arrangements as the Committee thinks fit for full-time and part-time education for persons over compulsory school age and for leisure-time occupation¹⁹.
- i) To keep a register of independent schools and to make regulations concerning such register and to issue notices of complaints in respect of such schools specifying measures required to remedy the matters complained of, and to make orders striking any such school off the register, or disqualifying any person from being a proprietor of such a school, or a teacher, in certain circumstances²⁰.
- j) The Committee must have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents (see 1.4)²¹.
- k) The Committee must arrange school inspections at regular intervals and where it appears desirable, unless it is satisfied that suitable alternative arrangements for inspections are in place²².
- l) The power to make regulations concerning the school registers of States' schools and voluntary schools (see 1.5).
- m) The power to authorise the Medical Officer of Health to examine the pupils and as a result of such examination to make orders requiring cleansing of the person and clothing²³.
- n) The power to provide board and lodging for pupils in appropriate circumstances, and to provide clothing where necessary in order to enable a pupil to attend school, and to recover the costs from the parents where possible²⁴.
- o) The Committee must provide adequate facilities for recreation and social and physical training in primary, secondary and further education²⁵.
- p) The power to make arrangements for the provision of transport to and from school²⁶.
- q) The power to make arrangements for a pupil to receive education otherwise than at a school where appropriate²⁷.

¹⁵ Section 8 of the Law.

¹⁶ Section 9 of the Law.

¹⁷ Sections 10-12 of the Law.

¹⁸ Section 18 of the Law.

¹⁹ Section 23 of the Law.

²⁰ Sections 24-28 of the Law.

²¹ Section 34 of the Law.

²² Section 35 of the Law.

²³ Section 38 of the Law.

²⁴ Sections 40-42 of the Law.

²⁵ Section 43 of the Law.

²⁶ Section 44 of the Law.

²⁷ Section 45 of the Law.

- r) The power to serve notices prohibiting the employment of a child to the detriment of the child's education²⁸.
- s) The power to give financial assistance including payment of fees, expenses required for school activities, and loans, grant and allowances for further education²⁹.
- t) The Committee must provide services for the purpose of assisting pupils to obtain employment³⁰.
- u) Power to undertake research for the purpose of improving educational facilities and to organise educational conferences³¹.
- v) The Committee must report annually to the States³².
- w) In relation to children with special educational needs, the Committee must-
 - (i) where appropriate, secure that a child with special educational needs is educated in an ordinary school,
 - (ii) keep under review the arrangements for special educational provision,
 - (iii) inform the teachers of the special educational needs of any child,
 - (iv) where appropriate, arrange for a child with special educational needs to be educated otherwise than in a school,
 - (v) make an assessment of the special educational needs of any child for whom the Committee is responsible and to determine what special educational provision should be made for him, having given the parent the opportunity to make representations,

and the Committee also has power to make regulations concerning the approval of special schools and to serve school attendance orders including a determination of which school a child should attend³³.

Question

3.2 The Schools including Special Schools, the College of Further Education, the Sixth Form Centre, and provision in other specialist units;

Answer

All educational establishments to which the Law applies must comply with the requirements of the Committee in the proper exercise of its powers and duties under the Law (see 3.1). Similarly, nothing should be done which is inconsistent with the powers and duties of the School Committee appointed/elected in respect of the particular establishment³⁴. Subject to these general principles -

- a) A member of the committee of management may take part in meetings for the purpose of appointing a head or deputy head teacher³⁵.
- b) Requirements are imposed by the Law in respect of religious instruction and worship in States' and voluntary schools, subject to the right of parents to request that their child be excused from attendance, and protection for teachers³⁶.

²⁸ Section 47 of the Law.

²⁹ Section 49 of the Law.

³⁰ Section 50 of the Law.

³¹ Section 51 and 52 of the Law.

³² Section 54 of the Law.

³³ Education (Amendment) (Guernsey) Law, 1987.

³⁴ Education (Schools Committees) (Guernsey) Ordinance 1970.

³⁵ Section 10 of the Law.

³⁶ Sections 10-13 of the Law.

- c) Independent schools must ensure that they are registered and comply with the requirements of the Committee in relation thereto, subject to their right of appeal to the Royal Court³⁷.
- d) It is an offence to obstruct any person authorised to inspect the school³⁸.
- e) The Committee or proprietor of the school must keep a register containing the prescribed particulars in respect of pupils³⁹.
- f) No fees to be charged for education in any school maintained by the States.

Question

3.3 Parents, carers, pupils and students;

Answer

Parents -

- a) have the general duty to cause their child of compulsory school age to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, whether by regular attendance at school or otherwise⁴⁰,
- b) must comply with a school attendance order in default of which they will be guilty of an offence⁴¹,
- c) may apply to the Committee for the revocation of a school attendance order⁴²,
- d) must ensure that their child attends school regularly and is not absent without leave except by reason of sickness or any unavoidable cause⁴³,
- e) have the right, so long as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable expenditure by the States, to have their child educated in accordance with their wishes (See 3.1. J. This right does not extend to securing a place at a particular school)⁴⁴,
- f) must submit their child for medical inspection if required to do so by the Medical Officer of Health and to pay for any medical treatment if able to do so⁴⁵.

Question

3.4 All staff of the educational delivery sites for which the Education Department has some responsibility?

Answer

See 3.2

Question Four:

When did staff of the Education Department last consider the review, revision or provision of a 'new' Education Law, and when is a 'new' Law likely to be delivered?

³⁷ Section 24-26 of the Law.

³⁸ Section 35 of the Law.

³⁹ Section 36 of the Law.

⁴⁰ Section 17 of the Law.

⁴¹ Section 18(4) of the Law.

⁴² Section 18(3) of the Law.

⁴³ Section 20 of the Law.

⁴⁴ Section 34 of the Law.

⁴⁵ Section 37 of the Law.

Answer

The States were updated in July 2015 and July 2014. In July 2015 the advice to the States was that any review was on hold due to insufficient resource to prioritise this workstream. Prior to this, in 2014, the Education Board advised that it had decided not to prioritise a new Education Law in the short term, as other workstreams had more potential to have an immediate impact on its aims.

The Committee wishes to note that the approximate cost of preparation of this response was £550.

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