

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

21st June, 2023

Proposition No. P.2023/38

Committee for Education, Sport & Culture

Education Law Review

AMENDMENT

Proposed by: Deputy L Trott

Seconded by: Deputy S Fairclough

1. To insert a new proposition 1A to agree that, for the purposes of the Education Law, an '**Accredited Independent School**' shall be defined to mean an Independent school:
 - (a) where any of its head teacher (or principal), its bursar or any member of its governing board is a member of a professional association or body that upholds the respective standards for head teachers, bursars or members of governing bodies in the independent education sector in the United Kingdom (and for so long as such association or body and any successor body upholds such standards), including any of the Girls' Schools Association (GSA), the Heads' Conference (HMC), the Independent Schools Association (ISA), the Association of Governing Bodies of Independent Schools (AGBIS), the Independent Schools' Bursars Association (ISBA), any associated or affiliated bodies within the Independent Schools Council (ISC) from time to time, or any other professional association or body with similar standing in the independent education sector in the United Kingdom from time to time and which is notified to the Committee *for* Education, Sport & Culture; and
 - (b) which is subject to the inspection regime of the Independent Schools Inspectorate (or such successor or other appropriate inspection regime used by schools in the independent education sector in the United Kingdom, which is notified to the Committee *for* Education, Sport & Culture).
2. To EITHER:
 - a) delete proposition 14;OR
 - b) amend proposition 14 by inserting after 'schools' as follows:

‘that are not Accredited Independent Schools’.

3. To delete proposition 15.
4. To amend proposition 17 as follows:
 - a) To delete proposition 17 a) and replace it as follows:

‘a) all States-maintained schools, Voluntary schools and any Independent schools that are not Accredited Independent Schools to be subject to inspection at a frequency and by an inspectorate approved by the Committee *for* Education, Sport & Culture; it being noted that an ‘Accredited Independent School’ is as defined in amending proposition 1;’.
 - b) To delete proposition 17 c) and replace it as follows:

‘c) all inspection reports of States-maintained schools, Voluntary schools and any Independent schools that are not Accredited Independent Schools shall be provided to, and published by, the Committee *for* Education, Sport & Culture. Inspection reports of Accredited Independent Schools shall be published in accordance with the requirements of their relevant professional body and/or inspection regime.’.
5. To amend proposition 18 as follows:
 - a) To insert in proposition 18 a) after ‘from’ as follows:

‘States-maintained and Voluntary’.
 - b) To delete proposition 18 b) and replace it as follows:

‘Independent schools (including Accredited Independent Schools, as defined in amending proposition 1) must liaise with the Director of Education prior to the permanent exclusion of a learner from their setting in order to enable the transition between education providers for that learner, save that an Independent school (including Accredited Independent Schools) is not obliged to retain a learner on its roll once reasonable notice of that exclusion has been given to the Director of Education.’.
6. To amend proposition 22 by replacing ‘current’ with ‘prevailing’.
7. To add a new proposition 23A as follows:

‘To direct the Committee *for* Education, Sport & Culture to agree a process, to be set by non-statutory guidance and after consultation with all Independent schools (and, prior to the first commencement of all or any part of the Education Law, the grant-aided colleges), to ensure that children missing education are identified, having regard

to the prevailing data protection, safeguarding and children’s legislation, regulations and guidance.’.

8. To insert at the end of proposition 27, after ‘12.2’, as follows:

‘, and the Independent schools (including Accredited Independent Schools, as defined in amending proposition 1).’.

9. To amend proposition 30 as follows:

a) To insert in proposition 30 a) after ‘proprietors’ as follows:

‘(being the persons or body of persons responsible for the management of an Independent school (including an Accredited Independent School, as defined in amending proposition 1))’.

b) To delete proposition 30 b) and replace it as follows:

‘b) proprietors of an Independent school which does not fall within the meaning of an Accredited Independent School, must re-register at regular intervals as set out in non-statutory guidance and after consultation between the Committee *for* Education, Sport & Culture and all Independent schools (including, prior to (and after) the first commencement of all or any part the Education Law, the grant-aided colleges);’.

c) To amend proposition 30 c) by inserting ‘(i)’ after ‘c)’ and inserting after ‘reported;’ as follows:

‘(ii) that such conditions should be set by non-statutory guidance and after consultation between the Committee *for* Education, Sport & Culture and all Independent schools (including, prior to (and after) the first commencement of all or any part of the Education Law, the grant-aided colleges); and

‘(iii) that such conditions will vary dependent on whether an Independent School is or is not an Accredited Independent School;’.

d) To delete proposition 30 e) and replace it as follows:

‘e) the Committee *for* Education, Sport & Culture shall prescribe the standards to be adopted by, and applied to, Independent schools that are not Accredited Independent Schools;’.

e) To insert after proposition 30 e) additional propositions 30 f) and g) as follows:

- 'f) on the first commencement of all or any part of the Education Law, each of the grant-aided colleges shall be (and shall be deemed to be) an Accredited Independent School entered on the register of Independent Schools, and each grant-aided college shall be deemed to have satisfied all conditions and other obligations to ensure that it is in compliance with all applicable registration requirements as an Accredited Independent School under the Education Law, and have all such rights arising from such registration; and
- 'g) on the first commencement of all or any part of the Education Law, an independent dispute resolution mechanism will be established, to enable the cost-efficient and effective resolution of any matters in dispute arising between, on the one hand, the Committee *for* Education, Sport & Culture and/or the Director of Education and, on the other, any Independent school (including any Accredited Independent School) in relation to its obligations under the law, related ordinances, rules or regulations for matters including (for example) registration, re-registration and data sharing.'

10. To amend proposition 31 as follows:

- a) To insert at the end of proposition 31 a), after 'updated', as follows:

' , save that, in relation to an Accredited Independent School (as defined in amending proposition 1), it shall establish its own policies and practices in line with applicable legislation and its inspection regime; and'.

- b) To insert in proposition 31 b), after 'requirements', as follows:

'for States-maintained schools, Voluntary schools and any Independent schools that are not Accredited Independent Schools'.

11. To EITHER:

- a) delete proposition 32 c);

OR

- b) amend proposition 32 c) by inserting after 'Headteachers' as follows:

' , other than those in Accredited Independent Schools (as defined in amending proposition 1),'.

12. To delete proposition 36 and replace it as follows:

'To agree that the sharing of data shall be required, as necessary, to support (i) effective safeguarding in all schools in line with the prevailing safeguarding regime;

and (ii) the delivery of education services in States-maintained and Voluntary schools in accordance with the principles and objectives of the Education Law.'

13. To insert a new proposition 36A as follows:

'36A To direct the Committee *for* Education, Sport & Culture to consult on and agree with all Independent schools from time to time (including, prior to the first commencement of all or any part of the Education Law, the grant-aided colleges) the terms of non-statutory guidance to identify which data are to be provided to that Committee and/or the Director of Education, the scope of powers to require delivery of data by an Independent school (including an Accredited Independent School, as defined in amending proposition 1), and the scope of powers to access (by the Committee or Director of Education) such data held by or on behalf of any such Independent school, together with the ability for such Independent schools to challenge such powers, whether pursuant to proposition 36 or otherwise under the Education Law, and having regard to prevailing data protection laws.'

14. To insert at the end of proposition 37, after 'outcomes', as follows:

'of States-maintained and Voluntary schools'.

15. To insert in proposition 38, after 'learners', as follows:

'in States-maintained and Voluntary schools'.

16. To insert a new proposition 40A as follows:

'To agree that teachers and lecturers who are already employed in any States-maintained, Voluntary or Independent school (and including the grant-aided colleges) at the time of the first commencement of all or any part of the Education Law, shall (unless otherwise proven to the contrary) be deemed to be appropriately qualified and to comply with all applicable requirements for the purposes of proposition 40; and to direct the Committee *for* Education, Sport & Culture to consult and agree with all Independent schools (and including the grant-aided colleges) prior to (and after) the first commencement of all of any part of the Education Law, non-statutory guidance which determines what constitutes an appropriate qualification, having regard to the requirements of the relevant professional organisation or body (or successor body) of an Accredited Independent School (as defined in amending proposition 1) or its Independent Schools Inspectorate (or any successor or other appropriate inspection regime used by another Accredited Independent School or by other schools in the independent education sector in the United Kingdom at that time).

17. To insert in proposition 41 a), after 'practice', as follows:

'or according to any of the above propositions (whether amended or replaced) that are adopted or by any additional propositions that are adopted'.

Rule 4(1) Information

- a) The propositions contribute to the States' objectives and policy plans by developing or clarifying proposals pursuant to the Education Law review.
- b) In preparing the propositions, consultation has been undertaken with the Committee *for* Education, Sport & Culture.
- c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no funding implications arising from these propositions. The work will be undertaken using existing resources.

EXPLANATORY NOTES

These amendments to the relevant propositions deal with:

- (a) issues that should be decided at either a general policy or school level, and not prescribed in law;
- (b) issues where there is an apparent increase in control by the Committee *for* Education, Sport & Culture (ESC) over matters which are already within the remit of other legislation, such as safeguarding;
- (c) requirements for any '**Accredited Independent School**', a new definition which covers an Independent school where (i) any of its head teacher (or principal), bursar or any member of its governing body is a member of a relevant organisation or body in the UK independent education sector that upholds certain educational standards (and for as long as that body upholds those standards), and (ii) the school is subject to the inspection regime of the Independent Schools Inspectorate (or a successor or other appropriate inspection regime used by UK independent schools and notified to ESC). This type of school should attract lighter touch obligations, in certain circumstances, compared to other Independent schools; and it is anticipated that the three grant-aided colleges would fall within the definition of an Accredited Independent School;
- (d) a recognition that Accredited Independent Schools should be independent of ESC and the Director of Education, apart from their obligations for safeguarding;
- (e) registration and certain other requirements for Independent schools, which recognise there should be a distinction in the scope of oversight, potential intervention and the provision of data to ESC as between (i) Accredited Independent Schools and (ii) any other Independent schools that do not fall within that definition and would be subject to a higher level of control in some circumstances; and
- (f) areas where, in relation to Independent schools, ESC should not be imposing obligations which are new, overly onerous (including potential costs) and/or excessive in scope or control over the independent education sector, where the consequences for non-compliance are unknown.

There is an additional concern about the overall direction of travel in the Education Law Review propositions, in relation to the Independent schools' sector. An increased level of control, prescription and direction by ESC and/or the Director of Education over the independent education

sector (which for this purpose includes the grant-aided schools) would suggest ESC has concerns that the independent education sector is not functioning as it should. Evidence from the grant-aided colleges' inspection reports suggests otherwise.

Using the same paragraph numbering as the proposed amendment propositions:

1. This amendment creates a definition of Accredited Independent Schools.
2. Curriculum should be a matter for Independent schools. It is important that Independent schools are given the space to leverage their independence to explore and develop curriculum. **Proposition 14**, unamended, risks stifling creativity that might also offer wider solutions for the island.
3. Inclusion of the requirement, in **proposition 15**, to 'assemble as a school community to encourage cohesion and allow time for celebration' should be a decision of individual head teachers and governing bodies. It may also be impracticable for a whole school to meet 'as a community'. The ethos of a school will in any event be picked up under an inspection regime.
4. The **amendments to proposition 17**:
 - (A) **Amendments to proposition 17 a)** seek to remove a duplication of process in respect of those Independent schools which are Accredited Independent Schools, by removing ESC's proposed control over the inspection regime for these schools. Accredited Independent Schools are either within the inspection regime of the Independent Schools Inspectorate, which is appointed by the UK Department of Education to inspect private and independent schools in England, or any successor or other appropriate regime notified to ESC. As such, unamended, this proposition amounts to excessive interference by ESC in relation to Accredited Independent Schools.
 - (B) **Amendments to proposition 17 c)** seek to remove another duplication of process for Accredited Independent Schools. The publication of inspection reports by an Accredited Independent School should be left to that school (and not ESC), in accordance with that school's inspection regime and in line with their independence.
5. **Amendments to proposition 18** are underpinned by the premise that Independent schools will have their own policies about sanctions and must have the power to exclude learners.
6. The **amendment to proposition 22** clarifies that the on-island transport strategy at the relevant time should apply.
7. In order for ESC to identify children missing education, **proposition 23** appears to effectively impose a statutory duty on all schools to identify all school age children to ESC. As such, all parents who choose to enrol their children in Independent schools - and their children - would be identified to ESC. The statutory duty on Independent schools to share this data would override the data protection law safeguard of obtaining parental and/or student consent to provide that data to ESC. Therefore, **proposition 23A** requires a process to be determined, to ensure that only specific children need to be identified by an Independent school to ESC (e.g., by giving notification to the Director of Education), in certain circumstances, such as when a learner leaves an Independent school for another school or to be home schooled. Non-statutory guidance to establish appropriate processes should be consulted on with the Independent schools (and grant-aided colleges) before (and any time after) the law commences.

8. The **amendment to proposition 27** requires the Independent schools to be consulted about the appointment of a Director of Education, given the broad scope of powers of this statutory officeholder.
9. **Amendments to proposition 30** address concerns about the registration regime for Independent schools:
 - (A) The **amendment to proposition 30 a)** clarifies the meaning of proprietors of Independent schools.
 - (B) The registration regime for Independent Schools will cover the grant-aided colleges (which would be Accredited Independent Schools), so in **amending resolution 9 e)**, a **new proposition 30 f)** introduces appropriate ‘grandfathering’ provisions for these schools. This ensures that the grant-aided colleges will be (and be deemed to be) registered when the law comes into effect.
 - (C) The **amendment to proposition 30 b)** proposes that Accredited Independent Schools should not be required to re-register at (unknown) regular intervals, as those schools are subject to the Independent Schools Inspectorate, or other appropriate inspection regime or successor regimes. Those Independent schools which do not fall within the definition of an Accredited Independent School would be required to meet re-registration requirements. A consultation on the non-statutory guidance is proposed.
 - (D) The **amendment to proposition 30 c)** revises proposals for various conditions to be met, in order for an Accredited Independent School to retain its registration. Without the amendment, which proposes consultation on non-statutory guidance to establish the appropriate conditions to maintain registration, there is a concern that Accredited Independent Schools (which would include the grant-aided colleges) could be subject to excessive control by ESC and/or the Director of Education. As such, their operations could be put at risk by uncertain and/or overly onerous or costly conditions. Consultation between the Independent schools (including the grant-aided colleges, before (and any time after) the Education Law commences) and ESC, would establish detailed requirements for registration and re-registration, with a lighter touch for Accredited Independent Schools.
 - (E) The **amendment to proposition 30 e)** carves out Accredited Independent School from any requirement for ESC to prescribe standards that Independent schools should adopt. Prescribing standards for Accredited Independent Schools would be an unnecessary encroachment on the independence of those schools and would place their operations under the control of ESC, thereby effectively removing an independent education sector from the island.
 - (F) A **new proposition 30 g)** requires an independent dispute resolution mechanism for Independent schools. In doing so, this recognises that ESC and/or the Director of Education undertake the roles of policy-maker, education provider and regulator under the Education Law which might (directly or indirectly) impact their approach to Independent schools. It is important, therefore, that Independent schools are able to challenge, in a cost-efficient way, any unreasonable or unexplained conditions or obligations that may be imposed on them, and which they would need to meet, in order to remain registered. Matters to be reviewed by this mechanism could include, for example, registration conditions and data-sharing obligations.
10. Safeguarding obligations are established under the Children’s (Guernsey and Alderney) Law, 2008 and related regime. **Amendments to proposition 31** remove Accredited Independent

Schools from ESC's specified requirements for policies and procedures in relation to safeguarding and wellbeing. Accredited Independent Schools adhere to the Independent Schools Inspectorate (or another appropriate inspection) regime, where safeguarding and wellbeing form part of that inspection process. As independent schools that must also meet requisite standards through membership of appropriate professional bodies, they should not be required to adhere to another layer of oversight and regulation by ESC.

11. The **amendment to proposition 32 c)** recognises that it is really a matter of policy, rather than a matter for inclusion in legislation, to determine when head teachers may direct if a child should not attend school for health reasons. The amendment carves out head teachers of Accredited Independent Schools, as this is a matter that independent institutions should determine (through their principal and governing body). It is also unclear why head teachers should be obliged to seek medical advice: in an emergency they may not be able to do so, but risk being open to legal challenge if they do not adhere to that statutory duty.
12. Data sharing - **amendments to proposition 36:**
 - (A) The amendments to proposition 36 are, firstly, to ensure that safeguarding obligations for all schools remain in line with the existing safeguarding regime, including the Children's Law, rather than the Education Law imposing another layer of regulation that is interpreted by ESC and/or the Director of Education.
 - (B) There is a concern that the independent education sector could be obliged to provide information to ESC and/or the Director of Education of a type which independent schools in the UK would not be required to provide under their regime. Also, the rationale for this data gathering power for Independent schools is unclear.
 - (C) Proposition 36 also raises issues about the expectations of parents and students in the independent education sector, who may not expect their details to be provided by their Independent school to ESC and/or the Director of Education (under a statutory obligation that would override individual consent under data protection laws). Of particular concern is the inclusion of their data in public annual reports, where only ESC and/or the Director of Education may determine how that information is disclosed.
 - (D) Similarly, the delivery of education services in line with the principles and objectives in the Education Law should be matters for the States-maintained and Voluntary schools only. Schools in the independent education sector should retain their independence to set strategy, policies and curriculum; and, in principle, the registration process should not be used to impose these principles and objectives on these schools. In any event, an Accredited Independent School (because it meets certain criteria) should not be required to have regard to the principles and objectives in the Education Law when determining their curriculum, otherwise the whole rationale for participating in the independent education sector is undermined (as further explained in paragraph 2 above, in relation to proposition 14).
13. New **proposition 36A** reflects data protection concerns, in relation to data sharing and access obligations which the Education Law seeks to impose on Independent schools. Under the new proposition, a consultation is proposed (to include the grant-aided schools) on the data sharing requirements and their rationale, including the scope of the information involved, access rights and related powers. Detailed data sharing provisions established in non-statutory guidance is the goal. In the absence of consultation and guidance, Independent schools may be made subject to overly onerous and excessive obligations (without considering the data protection consent rights of their parents and students). Further, these schools need to be

consulted (and be able to challenge) the scope of these data-sharing obligations, otherwise an Independent school's registration could be adversely impacted, through the introduction of potentially onerous obligations that are, for example, operationally or financially too onerous to meet in the ordinary course of their operations.

14. The **amendment to proposition 37** reflects the position that there is no justification to include the Independent schools in ESC's annual reports, as these schools do not have control over how their data may be used; and the Independent schools will have their own reporting policies.
15. The **amendment to proposition 38** reflects the position that there is no justification to include the Independent schools in requirements for reporting a child's progress, as these schools will have their own reporting policies and procedures.
16. Proposition 40 imposes an obligation for all teachers and lecturers employed in the education system to be 'appropriately qualified', but it is unclear what is meant by that term. As such, **proposition 40A** is a 'grandfathering' provision to ensure all teachers and lecturers employed in the system are deemed 'appropriately qualified' when the new law comes into force (unless there is evidence to the contrary). In addition, it requires a consultation on non-statutory guidance to establish the requirements to be treated as 'appropriately qualified'. A relevant education organisation or the inspection regime of an Independent school typically sets out requirements about who can be a teacher in a school within their organisation. As such, ESC should consult and agree that guidance with the Independent schools (including the grant-aided colleges).
17. The **amendment to proposition 41 a)** ensures that any provisions in Appendices 2 and 3 to the Policy Letter that are to be carried forward into the new Education Law are amended, replaced or enhanced (as appropriate) according to the propositions that are adopted by the States.