

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 amend proposition 11 as follows:
 - a) To insert in proposition 11 a), after 'provision', as follows:

'for all State-maintained schools, Voluntary schools, and any Independent schools which are not Accredited Independent Schools.
 - b) To delete 'schools' at the start of proposition 11 b) and replace it as follows:

'all States-maintained schools, Voluntary schools, and any Independent schools which are not Accredited Independent Schools'.
 - c) To delete proposition 11 c) and replace it as follows:
 - 'c) the governing body of an Independent school shall abide by its obligations under the prevailing prevention of discrimination legislation to make reasonable adjustments to support learners with additional learning needs enrolled at its school;'
 - d) To amend proposition 11 d) by deleting 'a States-maintained school' and replacing as follows:

'either a States-maintained school or an Accredited Independent School and'.
2. To insert after 'Culture' in proposition 28 as follows:

‘and that the appeals process should not encroach on to matters which are to be determined solely within the remit of an Accredited Independent School, including any decision about the scope of provision for additional learning needs, regardless of any assessment or advice that such a school may receive from the Committee *for* Education, Sport & Culture under proposition 11 d),’.

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 deal with certain requirements in relation to ‘additional learning needs’, and address concerns where the Committee *for* Education, Sport & Culture (**ESC**) is seeking to impose requirements on Independent schools (which include Accredited Independent Schools), even though those schools have their own obligations for the provision of additional learning needs under the prevention of discrimination legislation.

An ‘**Accredited Independent School**’ would be an Independent school where (i) any of the school’s 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). It is anticipated that the three grant-aided colleges would fall within the definition of Accredited Independent Schools. An ‘Accredited Independent School’ would attract lighter touch obligations, in certain circumstances, compared to other Independent schools that do not fall within this definition.

Using the same paragraph numbering as the proposed amendment propositions:

- 1. The amendment to proposition 11:
 - a) The **amendment to proposition 11 a)** removes any Accredited Independent Schools from ESC’s processes (to identify, assess and determine additional learning needs). ESC’s proposal to control those processes for all schools, including Accredited Independent Schools, amounts to excessive interference in the Accredited Independent Schools’ sector. All Independent schools

are required to meet their obligations under the prevention of discrimination legislation (as per amended proposition 11 c)), and will set their own policies accordingly. Therefore, having an additional set of obligations imposed by ESC is neither appropriate nor required.

b) Sharing data

- (A) The **amendment to proposition 11 b)** removes Accredited Independent Schools from the requirement to **share** with ESC the data these schools gather about their learners with additional learning needs. An obligation to share these details with ESC would be a new obligation on the grant-aided colleges (which would fall within the meaning of Accredited Independent Schools). The rationale for this new obligation to share data with ESC is unclear.
- (B) Proposition 11 b) also raises concerns about the expectations of parents and students in the independent education sector, as they may not expect their details to be provided by their Independent schools to ESC and/or the Director of Education, under a statutory obligation that would override individual consent under data protection laws. A further concern is that their data could be included in public annual reports, where only ESC and/or the Director of Education may determine how that information is disclosed.
- (C) Accredited Independent Schools should not be required to provide additional educational needs data to ESC, when the school (and not the States) is responsible for meeting its obligations for additional learning needs provision in line with the prevention of discrimination legislation; and ESC makes clear that it will not be responsible for funding additional learning needs provision in these schools.
- (D) There is a concern that Accredited Independent Schools (if not removed from the data-sharing obligation in proposition 11 b)) would be subject to overly onerous and excessive statutory obligations which, if not met as ESC requires, could adversely impact an Accredited Independent School's registration.
- c) The **amendment to proposition 11 c)** clarifies that Independent schools are required to abide by the prevention of discrimination legislation. The amendment replaces ESC's proposition 11 c), as the original proposition appears to add an extra layer of obligations (under the Education Law) on Independent schools, on top of those set out in the prevention of discrimination laws. ESC's approach raises a number of concerns. ESC's proposition 11 c) does not take account of the proportionality contained in the prevention of discrimination legislation for Independent schools. The States sector is protected expressly by the caveat in proposition 11 g), enabling the States to take account of their restricted resources. In the absence of specific reference to the protections provided in the prevention of discrimination legislation, there is a risk that those protections for Independent schools might be undermined by the Education Law. Unamended, this provision is likely to create uncertainty about which set of duties and rights prevail.
- d) In the **amendment to proposition 11 d)**:
- (A) Accredited Independent Schools have been carved out of the requirement to abide by ESC's assessments and advice about additional learning needs for students who are brought to the attention of ESC. For an Accredited Independent School, issues such as additional learning needs assessment and provision (including any appeals against a decision made by a school's principal and/or governing body) should be matters for the relevant school, as that school is in the independent education sector and will be required to meet its obligations to make reasonable adjustments under the prevention of discrimination legislation.

- (B) There is a concern that ESC could effectively impose additional learning provision on an Accredited Independent School which would not be reasonable for that school under the prevention of discrimination legislation. ESC's intervention could also raise parental expectations about provision, which may not be reasonable within the context of an Accredited Independent School's resources. If an Accredited Independent School abides by the provisions of the prevention of discrimination legislation, ESC should not be entitled to impose its assessment and/or advice about additional learning provision on that type of school.
2. The proposed appeals process under **proposition 28** should not extend to matters which should remain solely within (and should not encroach on) the remit of an Accredited Independent School's policies and procedures, otherwise the independence of Accredited Independent Schools will be in question. Additionally, Accredited Independent Schools would run the risk of being challenged on the same matter by different processes (i.e., their own process under their policy and a different review process under the Education Law). One area of particular concern that should be excluded from appeal provisions under the Education Law is the purported assessment and advice about additional learning provision that ESC may give to Independent schools in (unamended) proposition 11 d). Accredited Independent Schools should be required to abide by their obligations (and the procedures) in line with the prevention of discrimination legislation only. These obligations (and related processes) should not be increased or undermined by the Education Law, whether by establishing ESC powers in addition to the powers over these schools in the prevention of discrimination law, or by enabling ESC to effectively interpret provisions in the prevention of discrimination law.