

This is the response of a group of local home educators to the 2008 Isle of Man consultation dealing with proposed amendments to the Education Act 2001. This response was drafted with the assistance of an advocate in the Isle of Man. Education Otherwise provided financial support for fees to the advocate and for additional research material from home education barrister Ian Dowty. The recommendations for action come from the local home education community on the Isle of Man.

<http://www.gov.im/lib/news/education/departmentsconsul.xml>

15th May 2008

Mr John Gill
Department of Education
St George's Court
Upper Church Street
Douglas
IM1 2SG

Dear Mr Gill,

Re: Education (Miscellaneous Provisions) Bill 2008 – Clause 5

Further to our previous communications, please find below our response to the consultation, including comments relating to your letter to us of 7th May.

Education Act 2001

In section 1 General Duty of Department it states that pupils are to be educated in accordance with their parents wishes. In section 24 Duty of Parent of Children of Compulsory School Age subsection 1 it states that 'it is the duty of the parent of every child of compulsory school age to cause him to receive suitable education, either by regular attendance at school or otherwise.' In subsection 2 it goes on to state 'the Department shall enforce the duty imposed by subsection 1. Section 25 specifies how the Department is to discharge its duty of enforcement. This legislation is clear and concise in prescribing the liability for parents and the Department. The principles underpinning these sections are robust and have historically been successfully implemented in the Island and other jurisdictions with similar legislation. In contrast, the changes proposed in the Bill fulfil none of these criteria as outlined in the remainder of this letter.

Comments Relating to the Bill

24A. Duty to notify Department of arrangements for child's education

(1) Where a child of compulsory school age is not a registered pupil at a.....school, the parent of the child must notify the Department in writing of the arrangements made for the child to receive education.

Parents are legally responsible for educating their children and the choice to educate their children otherwise than at school is a legal right of parents. It is therefore unreasonable to require parents to notify the Department of their lawful choices regarding their children's education. In accordance with the legal principle of assumed innocence, the Department should take the position, as governments do in other circumstances, that parents are acting legally and that their children are in receipt of education otherwise than at school. As this education is entirely independent, it is not subject to government supervision, the Department has no need to register, monitor or keep details of such children.

In your letter to us (attached) you justified the need for a register of home educated children in terms of planning for the future and to enable the Department to meet its legal obligations. We find these justifications to be based on weak arguments. There are a number of other unknown factors that the Department must take into account when planning for the financial demands that may be made on the Department of which home educated children are a small part. These include children arriving and leaving the Island requiring education, as well as adults who may decide to apply for support. The legal duty you refer to is that given to the Department under Part 1(1)a of the 2001 Education Act namely 'it is the duty of the Department of Education to promote the education of persons, in particular persons under the age of 18 years, resident in the Island,' The Department does not need a register of home educated children in order to fulfil this duty. Promoting education is dependent on many factors to which a compulsory register of home educated children is not required. We would suggest that the best way to promote education is to create a free library service that is integrated Island-wide. Also as the Department has a duty to promote education, they should be promoting all forms of education, including home education.

Subsection (2) (a)-(e)

We have previously made comments relating to the practical difficulties in providing this information. In addition, how would it be made known that parents needed to register and provide this information? It is unfair to make it the duty of the parents to inform the Department and possibly prosecute them for not doing so, if they were unaware of this duty.

(4) The Department may at any time by notice in writing to a parents who has given a notification under subsection (1) require him or her to give such particulars of the child's education as are specified in the notice and as the Department may reasonable require to satisfy itself that the child is receiving or will receive suitable education.

We are very concerned about the implications of this part of the Bill. This subsection gives the Department the right to demand any kind or amount of information, at any time, from parents which could amount to harassment. Such harassment would undermine the principle of parental responsibility and interfere with the right to privacy and respect for family life. It could also allow for educational prejudices and preferences to be the primary factor governing an enquiry rather than evidence of a lack of suitable education. If this subsection were to be legalised, it could allow the Department to prescribe educational approaches which satisfy it. This would contradict the general duty of the Department as stated in Part 1(1)2 of the Education Act 2001, which states 'in the performance of its function under this act the Department shall have regard to the general principle thatpupils are to be educated in accordance with the wishes of the their parents' and also contravenes our human rights, see discussion below.

Subsection (4) creates discriminatory practise where the educational provision of home educated children and school children is subject to differing methods of investigation. Section 25 of the 2001 Education Act states that 'If it appears to the Department that a child of compulsory school age in the Island is not receiving a suitable education, either by regular school attendance or otherwise, it shall serve a notice in writing on the parent of the child requiring him to satisfy it.... that the child is receiving such education.' Therefore evidence of a failure to provide a suitable education is required before serving notice on a parent. Clause 5 of the Bill (4) refers only to children outside the school system and dispenses with the principle of assumed innocence and proceeds to formal legal enquiry with a notice being served without the need for the appearance of failure to provide a suitable education. School educated children are only subject to section 25. This also appears contradictory as there is conflicting requirements on the Department to gain evidence before serving a notice. We believe, the existing legislation as outlined in section 25 is fit for purpose in ensuring all parents

provide their children with a suitable education.

In our letter, questions pertaining to this part of the Bill were unanswered. Therefore, we are not aware of any justification for the inclusion of this subsection within the Bill. We can therefore conclude that it is unjustifiable and as such should be removed from the Bill.

Subsections (5)–(9)

Parents have the legal right to home educate their children. It is unjust and highly irregular for parents to be compelled to register any legal choice through the use of punitive measures, including fines.

The Department will investigate, prosecute, and pass judgement on parent's educational provision. There appears to be no checks and balances in place and no provision for independent scrutiny during this process.

Finally, subsections (4)–(9) deal with enforcement issues and therefore should not reside in section 24 of the Act which deals with the parent's duty. These subsections should have been included within section 25 which deals with enforcement carried out by the Department. These subsections need removing from the Bill for the reasons given above.

Comments Relating to Human Rights Issues

Here we will refer to the Government's policy 'Human Rights: Further Information About The Human Rights Act'.

In the preface to this policy it states that 'all public authorities.....have to work in line with the Convention of Rights when they make decision that affect you. If they interfere with your rights they will have to justify that interference in accordance with the new law.' The right to home educate with regard to a parent's philosophical convictions is enshrined in Article 2 of the First Protocol. This Bill interferes with this right by placing a requirement on parents to provide particulars, punishable by a fine for non-compliance, which will satisfy the Department. Parents must then consider what the Department may or may not find satisfactory rather than what is a suitable education for their child and their own philosophical beliefs. The Department has provided little or no justification for its proposed interference.

In page 9 of the policy, it states that interference can be justified if itis done in the pursuit of a legitimate aim and it is fulfilling a pressing social need and it is proportionate.' In our letter, we asked you what the aim of the Bill was. This question was not directly answered but from information provided we are assuming it is to gain a register of home educated children. We have argued against the necessity of this. There is no evidence of a pressing social need. When we enquired about the Department's use of the current legislation, you were not able to provide us with any particular instances where it has proven inadequate and you confirmed that the Department had not issued any School Attendance Orders since the introduction of the 2001 Act. If the Department has not needed to utilise the powers given to it within the current legislation, why is there a need to strengthen these powers? This could lead the Department open to the criticism of trying to avoid due process. The policy states that the test of proportionality 'means that public authorities must not use a sledgehammer to crack a nut!' We contend that the Department is doing exactly this. The policy continues 'If there is a less intrusive way of achieving the legitimate aim, it should be used. The solution to the problem should be proportionate to the problem.' The Department has not provided evidence of a problem, or consideration of alternative solutions, and therefore we find that the Bill is disproportionate. Thus we can conclude that clause 5 of the Bill is incompatible with

human rights principles. If the Government were to legitimise this Bill, it would be acting in opposition to its own guidance and contravening human rights legislation. The Department should rethink the whole of clause 5 and find a less intrusive way of achieving its aim. We have made suggestions on how to achieve this below.

Comments Relating to Your Letter of 7th May (Not Dealt with Above)

A copy of your letter is attached. This has been highlighted and numbered for ease of reference as we make our comments.

1. We agree that the Department is unaware of any organisation that speaks for home educators. However, you are aware of individual home educators who you could have contacted to find out if such an organisation existed. You could also have obtained this information from Education Otherwise whose contact details are listed in the Departments' 'Education Otherwise Than At School – Home Education' policy. You seem to imply that as individual parents of school educated children were not contacted, that individual parents of home educated children did not need to be contacted. However, parents of home educated children are the primary educators for their children and as such should be given the same respect as educators within the school system.
2. We asked what research you had undertaken prior to formulating clause 5. You have not specified what this was other than to state that you found out that there were children not being educated in schools. However, you already knew this as a number of home educators are registered with you and you have records of those that have de-registered from schools. More importantly, the fact that children who are not registered at school exist should not in itself be reason to bring in new legislation. In accordance with the principle of presumed innocence, the Department should assume that parents are acting legally (in the absence of evidence to the contrary) and that if a child is not a registered pupil then they are in receipt of education otherwise than at school. In addition, we expected that you would have researched the practice and theories of home education so that you had a background knowledge pertaining to those you were legislating for.
3. Mr Sewell is aware of the recently issued draft Code of Practice on 'Consultation', however our letter was also from Mrs Sewell who is not aware. In addition, Mr Sewell did not know if the drafting of the Bill pre-dated the Code of Practice issue. We now know the development of the legislation did not pre-date the Code of Practice because you have confirmed that you have complied with this document. It is clear from the information contained within paragraph number 1 of this letter you have not complied with paragraph 1.2 or 1.3 of criterion 1 of the Code of Practice and for this reason the minimum period of 6 weeks should not have been imposed for your consultation period. In addition, our formal request dated 16 April 2008 for an extension to the duration of the consultation period was not dealt with by somebody outside the team running the consultation in accordance with criterion 3 paragraph 3.9. If this had occurred an extension may have been granted because the Department's response to our requests for additional information did not answer all the questions we had asked, was received on 12 May 2008 which is almost one calendar month after our request for this information and gave us 5 days to provide our final response to your consultation.
4. Having carefully read the Bill, we are aware that the Bill is not about removing the powers of parents to home educate their children. We have not, at any point, raised this as an issue and do not need this pointing out to us.

5. You have stated that the shortcoming in the current legislation is that parents are not required to register and have gone on to give your reasons why this should be so. You do not make specific reference to information contained in subsections (4)-(9) of clause 5 of the Bill. You are clearly unable to justify the inclusion of these subsections, as is also the case in relation to point 7.
6. We have dealt with how we believe the Bill contradicts section 25.
7. You state that the only change to the legislation will be a definitive list of where all children are educated. You make no reference here to the changes brought about by subsections (4)-(9).
8. We welcome your statement 'the department in no way wishes to prescribe the education philosophies that should be followed by parents who opt to home educate their child'. We have two comments to make in relation to this statement. Firstly, when we asked about philosophies, we were enquiring about the ones you were familiar with and had managed. You have not provided this information. However, from information you have provided, it is clear that you are familiar with formal methods of home education including the 'school at home' model. You have not though provided any information to show that you are familiar with other philosophies of home education, such as unschooling, informal learning and autonomous education. If you have no experience of these philosophies, we find this to be worrying. Secondly, your policy 'Education Otherwise Than At School – Home Education' is prescriptive, as were comments made to Mr Sewell in your meeting. We therefore find this reassurance unconvincing and continue to be concerned about this issue.
9. We are not aware of these legislation issues and would like to be informed of the dates for the reading of the Bill when they are available. We also request to be kept informed of the progress of the Bill and of any amendments made to clause 5. If the report you write on the consultation is available to the public, we would like to receive a copy.

Suggestions

We would like to ensure that home educators, now and in the future, are able to home educate in accordance with their own philosophical convictions, without undue interference from Government (i.e. approaches to home educators are made on the basis of an evidence of failure) as is their current legal right. We have the following suggestions to make which may be suitable to all parties:

- A group of home educators and Department staff is formed to work together for mutual benefit. It is important that an open, positive relationship is developed. Home educators are aware of many historical instances where their peers have received unjust treatment and harassment from other education authorities. Home educators have had to fight hard to preserve their rights. There is fear of contacting educational authorities that the Department needs to dispel. If home educators can work together without animosity and fear, this will benefit home educated children and the Department.
- Home educators work with Department staff to increase the levels of knowledge and understanding of home education and address any training issues that may arise. Home educators have much to offer in terms of expertise within the field of informal learning and educational diversity. Mrs Sewell has worked as a commercial trainer and held the positions of Head of History and Head of Sixth Form within a comprehensive high school. She is willing to assist the Department with training in this area if it is considered helpful.
- The Department instigates a voluntary register of home educators which is mutually beneficial. For example, home educators who register would receive such things

as: a truancy card, invitations to educational training events that it organises for its staff, educational visits for home educated children, teacher status with libraries, etc. This would mean that suspicions of Department motives would be allayed, the Department would gain a register of home educated children and there would be something in it for home educators other than the stressful and time consuming prospect of being investigated.

We hope you give serious consideration to the points we have made and we look forward to receiving your response.

Derek Sewell BSc (Hons),
Dawn Sewell BA (Hons), PGCE.