

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5015 GIBRALTAR Thursday 8th December 2022

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B. 27/22

## BILL

FOR

**AN ACT** to amend the Education and Training Act.

**ENACTED** by the Legislature of Gibraltar.

**Short title.**

1. This Act may be cited as the Education and Training (Amendment) Act 2022.

**Commencement.**

2. This Act comes into operation on the day of publication.

**Amendment to the Education and Training Act.**

3.(1) The Education and Training Act is amended in accordance with this section.

(2) In section 2—

(a) in subsection (1) —

(i) substitute the following for the definition of “college”—

““college” means an educational institution where pupils, ordinarily of ages sixteen to eighteen, as well as adult learners are trained in either a vocational qualification or advanced school level qualifications;”;

(ii) in the definition of “Education Council”, for “established by” substitute “that may be established under;”;

(iii) in the definition of “Government school”, after “by the Government” insert “and includes the Gibraltar College”;

(vi) substitute the following for the definition of “headteacher”—

- ““headteacher” includes the principal, other head of a school or acting headteacher;”;
- (v) in the definition of “independent school” for “special” substitute “SEND”;
- (vi) in the definition of “medical inspection”, on both occasions that it appears, for “inspection” substitute “examination”;
- (vii) in the definition of “nursery school” for–
- (aa) “providing education” substitute “providing full-time or part-time education”; and
- (bb) “started primary education” substitute “attained compulsory school age”;
- (viii) substitute the following for the definition of “primary education” –
- ““primary education” means full-time education suitable to the requirements of children between the age of four and eleven;”;
- (ix) in the definition of “Public Health Director” for “Public Health Director” substitute “Director of Public Health”;
- (x) substitute the following for the definition of “pupil”–
- ““pupil” means a person for whom education is being provided at a school, other than–
- (a) a person who has attained the age of nineteen for whom further education is being provided, or
- (b) a person for whom part-time education suitable to the requirements of persons of any age over compulsory school age is provided;”;
- (xi) substitute the following for the definition of “secondary education”–
- ““secondary education” means–
- (a) full-time education suitable to the requirements of children between the ages of eleven and sixteen; and
- (b) full-time education suitable to the requirements for pupils who are over compulsory school age but under the age of 19 which is provided at a school at which education within paragraph (a) is also provided;”;

- (xii) insert the following definition after the definition of “secondary education”–
- ““SEND” means Special Educational Needs and Disabilities;”;
- (xiii) substitute the following for the definition of “special school”–
- ““SEND school” means a school which is specially organised to make SEND educational provision for pupils with SEND;”;
- (xiv) insert the following definitions after the definition of “statutory education system” –
- ““the Review Panel” means the SEND Review Panel established under section 47A;
- “vocational education” means education relating to occupational and technical (work-related) qualifications or skills;”;
- (xv) substitute the following for the definition of “young person”–
- ““young person” means a person over the compulsory school age but under the age of nineteen years.”;
- (b) delete subsection (2);
- (c) substitute the following for subsection (3)–
- “(3) Subject to subsection (3A), where a school is used for providing both primary and secondary education, references in this Act to–
- (a) primary schools shall be construed as including references to that school; and
- (b) secondary schools shall not be construed as including references to that school.”;
- (d) insert the following subsection after subsection (3)–
- “(3A) Where a school is–
- (a) used for providing both primary and secondary education; and
- (b) the primary education is provided in a separate department,
- the Minister may direct for purposes of this Act, the school be deemed to be a secondary school and such references be construed accordingly.”;

- (e) in subsection (4)–
    - (i) for “fifteenth” substitute “sixteenth”;
    - (ii) for “school term” substitute “school year”; and
    - (iii) for “such term” substitute “such school year”; and
  - (f) in subsection (5), after “prescribed”, insert “by notice in the Gazette”.
- (3) Delete sections 3, 4 and 5.
- (4) In section 6–
- (a) delete subsection (1); and
  - (b) in subsection (2), for “total less than five” substitute “total not more than five”.
- (5) In section 8, in subsection (2)–
- (a) substitute the following for paragraph (d)–
    - “(d) to report to the Education Council, if established under section 14, annually on the progress of education in Gibraltar;”;
  - (b) in paragraph (f) for–
    - (i) “Director of Medical and Health Services” substitute “Medical Director of the Authority”; and
    - (ii) “inspection” substitute “examination”;
  - (c) in paragraph (g), for “require special educational treatment” substitute “have SEND”;
  - (d) in paragraph (i), for “direct.” substitute “direct;”;
  - (e) insert the following paragraphs after paragraph (i)–
    - “(j) to provide remote learning for the registered pupils of government and independent schools where the Director deems it appropriate; and
    - (k) to endeavour to develop educational opportunities in line with new and innovative teaching techniques.”.
- (6) Insert the following section after section 8–

**“Duty to promote environmental education.**

- 8A. In addition to section 8(2), it shall be the duty of the Director, to promote education in regard to the environment with particular emphasis on–
- (a) the climate emergency and the ecological crisis; and
  - (b) the provision of opportunities for pupils to experience the outdoors, build relationships with nature and understand that their actions have an impact on others and the environment.”.
- (7) In section 9 –
- (a) in the title, for “**the Assembly**” substitute “**Parliament**”;
  - (b) for “the Parliament at the next convenient meeting of the Assembly following the receipt by him of such report” substitute “Parliament following the receipt of such report”.
- (8) In section 14–
- (a) in subsection (1), for “There shall be an Education Council” substitute “The Minister may establish an Education Council under this section, ”;
  - (b) in subsection (2), paragraph (b), for –
    - (i) “six members appointed by the Minister, one of whom shall be nominated by the Roman Catholic Bishop of Gibraltar,” substitute “eight members appointed by the Minister”; and
    - (ii) “education.” substitute “education or are currently employed as a teacher in Gibraltar.”.
- (9) In section 16–
- (a) renumber section 16, “16.(1)”;
  - (b) substitute the following for the newly renumbered subsection (1)–

“16.(1) The functions relating to the provision of education to which this Act applies are, in so far as they are capable of being exercised, exercised by the Director with a view to–

    - (a) promote high standards and fulfilment of every child concerned of his/her educational potential;

- (b) ensure an equality of educational opportunity for all, so that pupils should be educated according to their abilities, aptitudes, and any SEND;
  - (c) foster a sense of community and awareness and understanding of other people of the world;
  - (d) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education, secondary education and further education are available to meet the needs and aspirations of the population of Gibraltar;
  - (e) constantly improve educational standards;
  - (f) the progressive development of all educational institutions in so far as is possible.”;
- (c) insert the following subsection after the newly renumbered subsection (1)–
- “(2) Subsection (1) shall extend to independent schools.”.
- (10) In section 17–
- (a) for “section 16 the Government” substitute “section 16, the Minister”;
  - (b) in paragraph (b), delete “, whether established by the Government, or not”;
  - (c) in paragraph (d), delete “such technical institutions and training centres as he may consider necessary for technical and”; and
  - (d) in paragraph (g), delete, “exhibitions”.
- (11) Insert the following section after section 17–
- “Information to be provided when registering child.**
- 17A. The Director or an officer of the Department of Education, upon receiving an application to register a child in a Government School, may request the applicant provide proof of the material particulars of the application.”.
- (12) Substitute the following for section 19–
- “Provision of primary and secondary schools.**
19. The Minister shall to the best of his endeavours ensure that there shall be sufficient schools–

- (a) to provide primary education, that is to say full-time education for all children between the age of four and eleven; and
- (b) to provide secondary education, that is to say, full-time education for—
  - (i) all children between the age of eleven and sixteen; and
  - (ii) pupils who are over compulsory school age, but under the age of nineteen that choose to remain in full-time education.”.

(13) Insert the following section after section 20—

**“Minimum number of secondary schools.**

20A. For the purposes of providing secondary education under this Act, there must be at least two secondary schools established by the Minister and maintained by the Government at any one time in Gibraltar.”.

(14) In section 22—

- (a) for “There shall be” substitute “The Minister may appoint”; and
- (b) for “every Government School” substitute “any Government School”.

(15) In section 23 for—

- (a) “VII” substitute “V”;
- (b) “Public Service Commission Act” substitute “Public Appointments Act 2007”;
- (c) “by the Minister” substitute “in accordance with Government recruitment procedures and any qualification requirements that may be prescribed in Regulations under this Act”; and
- (d) for “with the approval of the Minister” substitute “in accordance with Government dismissal policies and procedures”.

(16) Insert the following sections after section 24—

**“Responsibility for discipline.**

24A.(1) The Director must ensure that policies designed to promote good behaviour and discipline on the part of pupils at schools are pursued.

(2) In particular, the Director—

- (a) must make, and from time to time review, a written statement of general principles to which headteachers are to have regard in determining any measures under section 24B(1); and
  - (b) where they consider it desirable that any particular measures should be so determined by the headteacher or that they should have regard to any particular matters—
    - (i) shall notify them of those measures or matters; and
    - (ii) may give them such guidance as they consider appropriate.
- (3) Before making or revising the statement required by subsection (2)(a) the Director must consult (in such manner as appears to them to be appropriate)—
- (a) the headteacher;
  - (b) such other persons who work at the school (whether or not for payment) as it appears to the Director to be appropriate to consult; and
  - (c) the Minister.

**Determination by headteacher of behaviour policy.**

24B.(1) The headteacher of a relevant school must determine measures to be taken with a view to—

- (a) promoting, among pupils, self-discipline and proper regard for authority;
  - (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils;
  - (c) securing that the standard of behaviour of pupils is acceptable;
  - (d) securing that pupils complete any tasks reasonably assigned to them in connection with their education; and
  - (e) otherwise regulating the conduct of pupils.
- (2) The standard of behaviour which is to be regarded as acceptable must be determined by the headteacher, so far as it is not determined by the Director.
- (3) The measures determined by the headteacher under subsection (1) must be publicised by them in the form of a written document as follows—
- (a) they must make the measures generally known within the school and to parents of registered pupils at the school; and



- (b) they must in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons who work at the school (whether or not for payment).

### **Meaning of “disciplinary penalty”**

24C.(1) “Disciplinary penalty” means a penalty imposed on a pupil, by any school at which education is provided for him, where their conduct falls below the standard which could reasonably be expected of them (whether because they fail to follow a rule in force at any such school or an instruction given to them by a member of its staff or for any other reason).

- (2) In subsection (1), the reference to conduct, in relation to a pupil, includes conduct which consists of a failure by the pupil to comply with a penalty previously imposed on them.

### **Enforcement of disciplinary penalties.**

24D.(1) This section applies in relation to a disciplinary penalty imposed on a pupil by any school at which education is provided for him, other than a penalty which consists of a suspension under section 25 or regulations made under section 82.

- (2) The imposition of the disciplinary penalty is lawful if the following three conditions are satisfied—
  - (a) the imposition of the penalty on the pupil—
    - (i) is not in breach of any statutory requirement or prohibition; and
    - (ii) is reasonable in all the circumstances;
  - (b) the decision to impose the penalty on the pupil was made—
    - (i) by any paid member of the staff of the school, except in circumstances where the headteacher has determined that the member of staff is not permitted to impose the penalty on the pupil; or
    - (ii) by any other member of the staff of the school, in circumstances where the headteacher has authorised the member of the staff to impose the penalty on the pupil and it was reasonable for the headteacher to do so; and
  - (c) the decision to impose the penalty was made, and any action taken on behalf of the school to implement the decision was taken—
    - (i) on the premises of the school; or

- (ii) elsewhere at a time when the pupil was under the lawful control or charge of a member of staff of the school.
- (3) In determining for the purposes of subsection (2)(a)(ii) whether the imposition of the penalty is reasonable, the following matters must be taken into account—
  - (a) whether the imposition of the penalty constitutes a proportionate punishment in the circumstances of the case; and
  - (b) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it (or of which he ought reasonably to be aware) including in particular—
    - (i) the pupil's age;
    - (ii) any SEND they may have; and
    - (iii) any religious requirements affecting them.
- (4) For the purposes of subsection (3)(b)(ii) a pupil has SEND if section 44A(3) is satisfied.
- (5) A determination or authorisation by the headteacher for the purpose of subsection (2)(b)(i) or (ii) may be made—
  - (a) in relation to a particular member of staff or members of staff of a particular description;
  - (b) in relation to a particular disciplinary penalty or disciplinary penalties of a particular description;
  - (c) in relation to a particular pupil or pupils of a particular description or generally in relation to pupils.
- (6) Where the disciplinary penalty is detention outside school sessions, this section has effect subject to section 24E.

**Enforcement of disciplinary penalties: detention outside school sessions.**

24E.(1) This section applies in relation to a disciplinary penalty which consists of the detention of a pupil outside school sessions.

- (2) In relation to a disciplinary penalty to which this section applies, section 24D(2) has effect as if it required the following additional conditions to be satisfied as well as the conditions set out in that section—
  - (a) that the pupil has not attained the age of 18;

- (b) that the headteacher of the school has previously determined, and has made generally known within the school and to parents of registered pupils at the school, that the detention of pupils outside school sessions is one of the measures that may be taken with a view to regulating the conduct of pupils;
  - (c) that the detention is on a permitted day of detention; and
  - (d) that the pupil's parent has been given at least 24 hours' notice in writing that the detention is due to take place.
- (3) The additional conditions set out in subsection (2)(a), (c) and (d) do not apply in the case of a detention during a break between school sessions on the same day.
- (4) In this section, “permitted day of detention”, in relation to a pupil, means a school day, other than a day on which the pupil has leave to be absent, and for this purpose “leave” means leave granted by a person authorised to do so by the Director.”.

(17) For section 25, substitute the following—

**“Power of suspension.**

25. Subject to such regulations as may be prescribed, a headteacher of a school in the exercise of his disciplinary functions, shall have the power of suspending pupils from such school for any cause which he considers adequate, but on taking any such action he shall—
- (a) within one school day, make a report thereof to the Director who will then confirm or revoke the suspension; and
  - (b) within one school day of the Director’s decision, inform the parents of the pupil of said decision.”.

(18) Insert the following sections, after section 25—

**“Duty of Director where pupil has been suspended or excluded.**

25A.(1) Where a pupil –

- (a) has been suspended under section 25 or regulations made under section 82;
- (b) has been excluded under section 56 or regulations made under section 82;  
or
- (c) may not, for any period, receive suitable education by reason of illness,

and is of compulsory school age, the Director must make arrangements for the provision of suitable education for the duration of the suspension, exclusion or illness.

- (2) In determining what arrangements to make under subsection (1) in the case of any pupil, the Director must have regard to any guidance given from time to time by the Minister.

**Reintegration interviews.**

25B.(1) If a pupil was suspended under section 25 or regulations made under section 82 of this Act, the Director must request a parent of the pupil to attend a reintegration interview at the school with the headteacher of the school or any other person authorised by the headteacher.

- (2) The purpose of a reintegration interview will be to assist the reintegration of the pupil after the period of suspension and to promote the improvement of their behaviour.

**Form of request and timing of interview.**

25C.(1) Where the duty in section 25A applies, the Director must give notice in writing to the parent of the following matters—

- (a) the date, time and duration of the reintegration interview; and
  - (b) the purpose of the interview.
- (2) Subject to subsection (4), reasonable endeavours must be made in order to have interview held on a school day within the period—
- (a) beginning with the first day to which the suspension relates; and
  - (b) ending with the school day falling after the last day to which the suspension relates (whether or not that school day falls in the same term).
- (3) Before giving the notice the Director must use reasonable endeavours to arrange the interview for a date and time (within the period) suggested by the parent.
- (4) Where an interview cannot be held in person the Director may arrange an interview to be held in an alternative manner.

**Duty of parent in relation to suspended pupil.**

25D.(1) This section applies where—

- (a) a pupil suspended under section 25 or any regulations made under section 82 of this Act, is suspended on disciplinary grounds from a school, whether for a fixed period or permanently; and
- (b) notice under section 25E has been given to a parent of the pupil.

- (2) The parent of the suspended pupil must ensure that the pupil is not present in a public place at any time during school hours on a day which the suspension relates.
- (3) If the suspended pupil is present in a public place at any time during school hours on a school day to which the suspension relates, the parent commits an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that they had a reasonable justification for their failure to comply with the duty imposed by subsection (2).
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding £500.
- (6) Proceedings for an offence under subsection (3) may not be instituted except by the Director.
- (7) Where the suspended pupil is suspended during the course of a school day but before the beginning of any afternoon session on that day, that day is to be treated for the purposes of subsection (2)(a) as the first day to which the suspension relates.

**Notice to parent relating to suspended pupil.**

- 25E.(1) The headteacher of a relevant school, on suspending from the school a pupil, must give the parent, within one school day of the Director confirming a suspension under section 25, a notice in writing complying with subsections (2) and (3) and containing such other information as may be prescribed.
- (2) Where arrangements under section 25A of this Act have been made, the notice must specify the first day on which the said arrangements are to commence.
  - (3) The notice must specify, the days on which the parent is to be subject to section 25D(2).
  - (4) Subsection (7) of section 25D applies for the purposes of subsection (3) as it applies for the purposes of subsection (2)(a) of that section.
  - (5) The Director must provide the headteacher with such information as will enable the headteacher to give a notice complying with subsection (2).”.
- (19) In section 27, in paragraph (c), for “technical and commercial” substitute “vocational”.
- (20) In section 29, in subsection (1)—
- (a) for “There shall be”, substitute “The Minister may appoint”;
  - (b) delete “to be responsible for the management of such college and”; and

(21) In section 30, delete subsection (3).

(22) In section 35, for “medical inspection and treatment of pupils with such modifications as may be prescribed by such order” substitute “medical examination and pupils with SEND”.

(23) In section 37, in every instance that it occurs for “Minister” substitute “Director”.

(24) In section 38, delete “or special”.

(25) Delete section 40.

(26) In section 41–

(a) in subsection (1)–

(i) for “There shall be an Advisory Council on Religious Education” substitute “The Minister may establish an Advisory Council on Religious Education under this section”;

(ii) delete “the religious character of schools,”; and

(iii) for “the provision of lectures for teachers” substitute “religious education”;

(b) in subsection (2)–

(i) for “The Advisory Council on Religious Education” substitute “An Advisory Council on Religious Education established under section (1),”;

(ii) in paragraph (e), for “three persons appointed by the Roman Catholic Bishop of Gibraltar” substitute “a representative of the Hindu community,”; and

(ii) insert the following paragraphs after paragraph (e)–

“(f) a representative of the Muslim community; and

(g) such other persons as the Minister may appoint.”; and

(c) in subsection (4), delete “and shall make such representations to the Education Council on matters of religious education as the Advisory Council shall require”.

(27) In section 42–

(a) in subsection (1), for “Subject to the provisions of this section, sufficient” substitute “Subject to subsection (1A), sufficient”;

(b) insert the following subsection after subsection (1)–

“(1A) Subsection (1) does not apply to the Gibraltar College.”; and

(c) delete subsections (2), (3), (4) and (5).

(28) In section 43, in subsection (1), after “proprietor” insert “, with the approval of the Director,”.

(29) Insert the following section after section 43–

**“Excuses from attendance at religious worship or religious instruction**

43A.(1) If the parent or guardian of any pupil in attendance at any Government school requests in writing that such pupil be excused from attendance at religious worship or religious instruction at the school or from both, then, until the request is withdrawn, the pupil shall be excused from such attendance accordingly.

(2) Excuse from such attendance under subsection (1) shall not alter the pupil’s liability to come to school at the normal starting time or to remain at school during normal school hours.

(3) The Director must ensure that meaningful provision of an alternative education based lesson is provided for pupils that have been excused from attendance at religious worship or religious instruction in accordance with this section.”.

(30) In the title of Part VIII, for “SPECIAL EDUCATION” substitute “SEND”.

(31) Insert the following section before section 45–

**“Interpretation.**

44A.(1) In this Part–

“panel” means the SEND Assessment Panel.

(2) Under this Act, a child is considered to have SEND if he has a learning difficulty which calls for SEND education provision to be made for him.

(3) Subject to subsection (4) a child has a learning difficulty for the purposes of this Act if–

(a) they have a significantly greater difficulty in learning than the majority of children their age;

(b) they have a disability which either prevents or hinders them from making use of education facilities of a kind generally provided for children of their age in government schools; or

- (c) they are between the ages of two and four and if SEND provision were not provided for them, are or would be likely to fall within paragraphs (a) or (b) when of that age.
- (4) A child is not to be taken as having a learning difficulty solely because the language (or form of the language) in which they are, or will be taught is different from a language (or form of language) which has at any time been spoken in their home.”.
- (32) In section 45–
- (a) in the title, for “**special educational treatment**” substitute “**SEND provision**”;
  - (b) for “physical or mental disabilities in special schools” substitute “SEND requirements”;
  - (c) for “is not serious” substitute “allows”;
  - (d) for “house of the pupils” substitute “pupil’s home”;
  - (e) for “Director of Medical and Health Services” substitute “Medical Director of the Authority”.
- (33) Delete section 46.
- (34) In section 47–
- (a) in the title, for “special educational treatment” substitute “SEND provision”;
  - (b) in subsection (1)–
    - (i) after “The Director” insert “, under the recommendation of the SEND Assessment Panel,”;
    - (ii) on both occasions that it occurs, for “special educational treatment” substitute “SEND provision”;
    - (iii) for “five” substitute “four”; and
    - (iv) for “Government medical officer” substitute “medical professional”;
  - (c) in subsection (2), for “£10” substitute “£500”;
  - (d) in subsection (3), for “five” substitute “four”;
  - (e) insert the following subsection after subsection (4);



“(5) A parent may make an appeal to the SEND Review Panel established, under section 47C, against a decision made under subsection (1).”.

(35) Insert the following sections after section 47–

**“Establishment of SEND Assessment Panel.**

47A.(1) There is hereby established a SEND Assessment Panel.

- (2) The panel shall consist of not less than eight persons, appointed by the Minister by notice in the Gazette, being persons who–
  - (a) are employed in–
    - (i) the Government department with responsibility for education;
    - (ii) the Government department with responsibility for social services (or a relevant agency); or
    - (iii) the Authority; and
  - (b) have knowledge and experience in the assessment, provision for and care of children with SEND.
- (3) Members of the panel shall hold office for such period and on such terms as may be specified in their instrument of appointment, and shall be eligible for re appointment.
- (4) Notwithstanding anything contained in sub-section (3) the Minister may, in his discretion, terminate the appointment of any member of the panel at any time on the grounds of inability, neglect of duty, persistent failure to attend meetings or due to the person no longer being eligible to be a member by virtue of that person no longer holding an employment listed under sub-section (2)(a).
- (5) The Minister–
  - (a) shall designate a member of the panel as Chairman;
  - (b) shall designate a member of the panel as Deputy Chairman; and
  - (c) may designate a public officer as Secretary to the panel.
- (6) The Chairman (or in his absence the Deputy Chairman) shall preside at all meetings of the panel.
- (7) Subject to the provisions of this Act the panel shall regulate its own procedure.

**Duties and objectives of the SEND Assessment Panel**

- 47B.(1) The objectives of the panel shall be to co-ordinate all efforts aimed at the welfare and interests of children with SEND, by the Government, to liaise with and give guidance to voluntary organizations concerned with the welfare of such children and to stimulate and encourage interest in the welfare of such children.
- (2) The duties of the panel in respect of every child with SEND referred to it shall be—
- (a) to receive, examine and assess such child;
  - (b) to advise the Director on the education of such child;
  - (c) to keep under review the progress of every such child; and
  - (d) to oversee all therapeutic provisions including medical, psychological and social provision.
- (3) Without prejudice to anything contained in sub-section (2) the panel may give advice to the parents or any other person who has custody of a child with SEND as to the care and provision of such child.
- (4) Notwithstanding anything contained in sub-section (2) the panel shall not be bound to carry out the duties imposed upon it by such subsection unless it is satisfied that the parents of the child referred to it have been consulted and this subsection shall not be construed as requiring the consent of the parents to the reference of the child to the panel.

**SEND Review Panel.**

- 47C.(1) There is hereby established a SEND Review Panel, for the purpose of dealing with appeals against a decision that has been made under section 47(1) of this Act.
- (2) The Review Panel shall consist of—
- (a) two education advisors that were not part of the SEND Assessment Panel established under section 47A; and
  - (b) subject to subsection (3), two headteachers from schools that have a learning support facility.
- (3) The headteacher of the school that the assessed child currently attends or a headteacher from the potential placement school that the SEND Assessment Panel is recommending may not be appointed to the Review Panel.
- (4) The members of the Review Panel shall hold office for such period and on such terms as may be specified in their instrument of appointment, and shall be eligible for re appointment.

- (5) Notwithstanding anything contained in sub-section (4) the Minister may, in his discretion, terminate the appointment of any member of the Review Panel at any time on the grounds of inability, neglect of duty, persistent failure to attend meetings or due to the person no longer being eligible to be a member by virtue of that person no longer holding an employment listed under sub-section (2).
- (6) The Minister—
- (a) shall designate a member of the Review Panel as Chairman;
  - (b) shall designate a member of the Review Panel as Deputy Chairman; and
  - (c) may designate a public officer as Secretary to the Review Panel.
- (7) The Chairman (or in his absence the Deputy Chairman) shall preside at all meetings of the Review Panel.
- (8) Subject to the provisions of this Act the Review Panel shall regulate its own procedure.

**Powers of Review Panel.**

47D.(1) Where an application is made to the Review Panel under section 47(5), the Review Panel may—

- (a) maintain; or
- (b) overturn,

the decision taken by the director under section 47(1).

(2) The Director will inform the parents or legal guardians of the child that is the subject of the appeal in writing within 5 days of the Review Panel meeting.”.

(36) Delete section 48.

(37) After the newly delete section 48, insert this Part”–

**“PART IIXA  
SEND PROVISION**

**Review of arrangements.**

48A. The Department of Education shall keep under review the arrangements made by them for the provision of SEND.

**SEND provision otherwise than in schools.**

48B.(1) Where the Department of Education is satisfied that it would be inappropriate for the SEND provision which the learning difficulty of a child calls for or any part of such provision, to be made in school, they may arrange for the provision (or part of it) to be made otherwise than in a school.

(2) Before making an arrangement under this section, the Department of Education shall consult the child's parents.

**Provision outside Gibraltar.**

48C.(1) Where appropriate arrangement has been decided upon by the Director, in consultation with the Assessment Panel, the Department of Education may make such arrangements to enable a child, who was assessed under section 47, to attend an institution outside of Gibraltar which specialises in providing for children with SEND.

(2) The arrangements referred to in subsection (1) may include paying for in part or in full—

(a) fees charged by the institution;

(b) expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from in;

(c) the child's travel expenses; and

(d) expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.

(3) This section is without prejudice to any other powers of the Department of Education.”.

(38) Substitute the following for section 49—

**“Compulsory school age.**

49.(1) In this Act, “compulsory school age” means any age between four years and sixteen years and accordingly, a person shall be deemed to be of compulsory school age if they have attained the age of four years and have not attained the age of sixteen years and a person shall, subject to the provisions of section 2(4), be deemed to be over compulsory school age as soon as he has attained the age of sixteen years.

(2) If the Minister is satisfied that it has become practicable to raise the upper limit of the compulsory school age to eighteen years, he may by order direct that the forgoing provisions of this Act shall have effect as if for references therein to the

age of sixteen years, there were substituted references to the age of eighteen years.”.

(39) In section 50, for “him to receive efficient full-time education which, in the opinion of the Director, is suitable to his age, ability and aptitude, either by regular attendance at school or otherwise” substitute the following—

“them to receive suitable education which, in the opinion of the Director is appropriate—

- (a) to their age, ability and aptitude; and
- (b) to any SEND they may have,

either by regular attendance at school or otherwise.”.

(40) In section 51—

(a) in subsection (1)—

- (i) for “parent a notice requiring him” substitute “parent a notice in writing, requiring him”; and
- (ii) for “receiving efficient fulltime education suitable to his age, ability and aptitude either by regular attendance at school or otherwise” substitute “receiving suitable education”; and

(b) substitute the following for subsection (2)—

“(2) If after such notice has been served upon a parent by the Director and—

(a) the parent fails to satisfy the Director in accordance with the requirements of the notice that the child to whom the notice relates is receiving suitable education; and

(b) if in the opinion of the Director it is expedient that they should attend school,

the Director shall serve upon the parent, an order in the prescribed form (hereinafter referred to as a “school attendance order”) requiring them to cause the child to become a registered pupil at a school named in that Order.”;

(c) in subsection (3), for “receive efficient full-time education suitable to his age ability and aptitude” substitute “receive suitable education”;

(d) in subsection (4), for “receive efficient full-time education suitable to his age ability and aptitude” substitute “receive suitable education”;

(e) in subsection (5), delete “, but without prejudice to the duty of the Director to take further action under this section if at any time the Director is of the opinion that, having regard to any change of circumstances, it is expedient so to do”;

(f) insert the following subsection after subsection (5)–

“(5A) A direction under subsection (5) does not affect the duty of the Director to take further action under section 51, if at any time the Director is of the opinion that, having regard to any change of circumstance, it is expedient to do so.”.

(41) In section 52–

(a) in subsection (1), for “attend regularly thereat, the parent of the child is guilty of an offence against this section” substitute “maintain an attendance rate of 85% in any school term, the parent of the child is guilty of an offence”;

(b) in subsection (2)–

(i) for “In any proceedings for an offence against this section in respect of a child who is not a boarder at the school at which he is a registered pupil, the” substitute “A”;

(ii) delete “by reason of his absence therefrom with leave or”;

(iii) for paragraphs (a) and (b) substitute–

“(a) with leave;

(b) at any time when he was prevented from attending by reason of sickness of unavoidable cause;”;

(iv) insert the following paragraphs after paragraph (b)–

“(c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs;

(d) by reason of a suspension given under section 25 or any regulations made under section 82; or

(e) by reason of being excluded under section 56 or any regulations made under section 82.”

(c) delete subsection (3).

(42) In section 53, for “first offence to a fine of £5, in the case of a second offence to a fine of £10, and in the case of a third or subsequent offence to imprisonment for one month and to a fine of £20” substitute–

“–

- (a) first offence a fine of £500;
- (b) second offence to a fine of £1000; and
- (c) third or subsequent offence to imprisonment for a period of up to three months and to a fine of £4000.”.

(43) In section 53B, for “shall, in co-operation with the relevant authorities in the child’s country of origin,” substitute “may use his best endeavours to”.

(44) Delete section 53C.

(45) In section 54–

- (a) in the title, for “**inspection**” substitute “**examination**”;
- (b) in subsection (1)–
  - (i) for “It shall be the duty of the Director” substitute “Subject to subsection (1A), the Director may”;
  - (ii) for “Public Health Director” substitute “Director of Public Health”;
  - (iii) for “inspection at regular intervals” substitute “examination at intervals of his discretion”;
- (c) Insert the following subsection after subsection (1)–

“(1A) Subsection (1) does not apply to independent schools.”;
- (d) in subsection (2) in every instance that it occurs for–
  - (i) “inspection” substitute “examinations”;
  - (ii) “submit” substitute “present”;
- (e) in subsection (3), for “free medical inspection” substitute “a medical examination”;
- (f) insert the following after subsection (3)–

“(3A) The costs of the medical examinations referred to in subsection (3) shall be paid by the independent school.”;
- (g) in subsection (4), for “£5” substitute “£500”.

(46) In section 56–

- (a) in subsection (1)–
  - (i) for “Public Health Director” substitute “Director of Public Health”;
  - (ii) for “practitioner” substitute “officer”;
  - (iii) for “at such schools” substitute “at such relevant schools”;
- (b) insert the following subsection after subsection (2)–

“(2A) A notice served on a parent under subsection (2) must include any penalties that would be incurred by non-compliance with said notice.”;
- (c) in subsection (3)–
  - (i) for “notice under” substitute “notice, within the specified time,”; and
  - (ii) or “£5” substitute “£500”;
- (d) in subsection (4)–
  - (i) for “public” substitute “medical”; and
  - (ii) for “a school is infested” substitute “a relevant school is infested”;
- (e) insert the following subsection after subsection (4)–

“(4A) Any action taken under subsection (4) must be considered necessary and in the interests of either the pupil or other pupils in attendance at the school.”; and
- (f) in subsection (5), for “Public Health Director” substitute “Director of Public Health”.

(47) In section 58–

- (a) in subsection (1) –
  - (i) on both occasions that it occurs, for “Public Health Director” substitute “Director of Public Health”;
  - (ii) delete–
    - (aa) “duly qualified”; and



- (bb) “(for which no charge shall be made)”; and
  - (b) in subsection (2), for “£5” substitute “£500”.
- (48) In section 59–
- (a) on both occasions that it occurs, for “Public Health Director” substitute “Director of Public Health”; and
  - (b) delete “not being boarders, in or”.
- (49) In section 81–
- (a) for “Minister” substitute “Director”; and
  - (b) for “establishments” substitute “institutions providing further education”.
- (50) In section 82–
- (a) in subsection (1)
    - (i) in paragraph (ii), for “City Fire Brigade” substitute “Fire and Rescue Service”;
    - (ii) in paragraph (xv) for–
      - (aa) “VII” substitute “V”; and
      - (bb) “Public Service Commission Act” substitute “Public Appointments Act 2007”;
    - (iii) in paragraph (xxv), for “inspection” substitute “examination”;
    - (iv) in paragraph (xix), on both occasions that it occurs, for “special educational treatment” substitute “SEND Provision”;
    - (v) in paragraph (xliii), for “£100 on conviction of any such offence.” substitute “£500 on conviction of any such offence.”; and
    - (vi) insert the following paragraphs after paragraph (xliii)–
      - “(xliv) the manner, form and requirements for the recording of attendance registers in Government schools;
      - (xlv) the minimum number of working and inset days for teachers and the number of school days for pupils in an academic year;

(xlvi) the purpose of implementing, or further implementing in Gibraltar-

(aa) a Convention, Treaty, or bilateral or multilateral agreement;

(bb) any other obligations or standards concerned with a Convention, Treaty or bilateral or multilateral agreement;

(cc) the recommendations (however described) of international bodies that are involved with the adoption, monitoring or promotion of such obligations or standards;

(dd) any other international obligation, that concerns the matters covered by this Act; and

(xlvii) amendments to this Act for the purposes set out in paragraph (xlvii).”.

(b) in subsection (1A) –

(i) in paragraph (e), for “regulations;” substitute “regulations:”; and

(ii) delete paragraph (f).

(51) In section 83–

(a) insert the following after paragraph (c)–

“(ca) for the purposes of registering a child for enrolment at a Government School, furnishes the Minister, Director or any officer of the Department of Education with –

(i) a statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is false; or

(ii) any information or particulars which he knows to be false in a material particular or recklessly provides any information or particulars which are false;”;

(b) for “£100” substitute “£500”; and

(c) for “£250” substitute “£1000”.

(52) In section 86, in subsection (1)–

(a) in the title, delete “**of unsound mind and persons**”;

- (b) substitute the following for paragraph (b)–
  - “(b) being detained under the Mental Health Act 2016;” and
  - (c) delete paragraph (c).
- (53) In the Schedule–
  - (a) in PART I–
    - (i) in paragraph 1–
      - (aa) delete subparagraph (a); and
      - (bb) in paragraph (b), for “four” substitute “five”;
    - (ii) in paragraph 4, for “in his discretion terminate the appointment of any member of the Committee other than an ex officio member” substitute “remove from office on the grounds of inability, neglect of duty, insolvency or misconduct any appointed member of the Committee”;
  - (b) substitute the following for Part II–

**“PART II.**

**COMMITTEE FOR THE GIBRALTAR COLLEGE.**

section 29(2)

**Constitution of committee of the Gibraltar College.**

1. The committee of the Gibraltar College (hereinafter called “the Committee”) shall consist of not less than seven persons selected for their interest in and knowledge of education, and shall be appointed by the Minister as follows–

- (a) not less than five members, not less than half of whom shall represent the parents or guardians of pupils attending the Gibraltar College;
- (b) the headteacher or headteachers of the Gibraltar College;
- (c) one member (not being a member of the staff of the Gibraltar College) appointed after consultation with any association representative of the teachers of Gibraltar.

**Secretary.**

2. The Director or his nominee shall be secretary to the Committee.

**Term of office.**

3. The members of the Committee (other than ex officio members) shall hold office for three years, and shall be eligible for re-appointment.

**Termination of appointment.**

4. The Minister may remove from office on the grounds of inability, neglect of duty, insolvency or misconduct any appointed member of the Committee.

**Vacancy.**

5. The powers of the Committee may be exercised notwithstanding any vacancy in their number.

**Procedure.**

6. The committee may, subject to such regulations as may be prescribed, make standing orders regulating their own procedure.”.

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**EXPLANATORY MEMORANDUM**

This Act amends the Education and Training Act in order to update terms and definitions, reflect current teaching practices and duties, include a duty to promote environmental education, set a minimum number of secondary schools in Gibraltar, establish disciplinary procedures and requirements, establish and set out the roles and duties of the SEND Assessment Panel and SEND Review Panel as well as laying out how SEND education may be arranged and provided, change the compulsory school age to ages four to sixteen, updating the levels of fines for offences under the Act and creating powers to make regulations for the purposes of taking registration, the setting of inset days and schools days in an academic year and implementing conventions, treaties and agreements.

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**Printed by the Gibraltar Chronicle Printing Limited  
Unit 3, New Harbours  
Government Printers for Gibraltar,  
Copies may be purchased at 6, Convent Place, Price. £1.45**