

PROJET DE LOI

ENTITLED

The Education (Amendment) (Guernsey) Law, 1987 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XXX, p. 179; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. ** of 2009). This Law is applied to the Island of Alderney by the Alderney (Application of Legislation) (Education) Ordinance, 1992 (No. XXXVI of 1992), as amended by the Alderney (Application of Legislation) (Education) (Amendment) Ordinance, 1993 (Recueil d'Ordonnances Tome XXVI, p. 149). See also the Education (Guernsey) Law, 1970 (Ordres en Conseil Vol. XXII, p. 318).

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The Education (Amendment) (Guernsey) Law, 1987

ARRANGEMENT OF SECTIONS

Preliminary

1. Meaning of "special educational needs" and "special educational provision".

Provision of special education

2. Provision of special education: duties of the Council.
3. Provision of special education otherwise than in schools.

Identification and assessment of children with special educational needs

4. General duty of the Council towards children for whom it is responsible.
5. Assessment of special educational needs.
6. Assessment of special educational needs of children under the age of two.
7. Determination of child's special educational provision.
8. Requests for assessments.
9. Duty of Medical Officer of Health to notify Council.

Special schools and approved independent schools

10. Special schools and approved independent schools.
11. Approval of special schools.
12. Approval of independent schools.

School attendance orders

13. Proposed school attendance order: choice of school.
14. Amendment and revocation of school attendance orders.

Consolidated text

Miscellaneous

15. Duty of parents.
16. Provisions as to regulations under this Law.
17. Service of documents.
18. Interpretation.
19. Transitional provisions.
20. Consequential amendments and repeals to the principal Law.
21. Construction.
22. Citation.
23. Collective title.
24. Commencement.

FIRST SCHEDULE

Assessments of Special Educational Needs.

SECOND SCHEDULE

Transitional Provisions.

THIRD SCHEDULE

Consequential Amendments and Repeals to the
Principal Law.

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The Education (Amendment) (Guernsey) Law, 1987

THE STATES, in pursuance of their Resolution of the 29th day of January, 1987, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Preliminary

Meaning of "special educational needs" and "special educational provision".

1. (1) For the purposes of this Law a child has "**special educational needs**" if he has a learning difficulty which calls for special educational provision to be made for him.

(2) Subject to subsection (4) of this section, a child has a "**learning difficulty**" if –

- (a) he has a significantly greater difficulty in learning than the majority of children of his age, or
- (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided in schools for children of his age, or

- (c) he is under the age of five years and is, or would be if special educational provision were not made for him, likely to fall within paragraph (a) or (b) of this subsection when over that age.

(3) **"Special education provision"** means –

- (a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in schools, and
- (b) in relation to any child under that age, educational provision of any kind.

(4) A child is not to be taken as having a learning difficulty solely because the language in which he is, or will be, taught is different from a language which has at any time been spoken in his home.

NOTE

The Law is applied to the Island of Alderney by the Alderney (Application of Legislation) (Education) Ordinance, 1992, section 1, with effect from 25th November, 1992, subject to the modifications in the Schedule to the 1992 Ordinance.

Provision of special education

Provision of special education: duties of the Council.

2. (1) In section 4(2) of the principal Law (which requires the Council to have regard to certain matters in fulfilling its duty to secure provision of

primary and secondary schools) for paragraph (c) there is substituted the following paragraph –

"(c) to the need for securing that special educational provision is made for pupils who have special educational needs, and".

(2) Where the Council arranges special educational provision for a child for whom it has made a determination under section 7 of this Law it shall be the duty of the Council, if the conditions mentioned in subsection (3) of this section are satisfied, to secure that he is educated in an ordinary school.

(3) The conditions referred to in subsection (2) of this section are that account has been taken, in accordance with section 7 of this Law, of the views of the child's parent and that educating the child in an ordinary school is compatible with –

- (a) his receiving the special educational provision that he requires,
- (b) the provision of efficient education for the children with whom he will be educated, and
- (c) the efficient use of resources.

(4) It shall be the duty of the Council to keep under review the arrangements made by it for special educational provision.

(5) It shall be the duty of the Council, in the case of any school –

- (a) to use its best endeavours, in exercising its functions in relation to the school, to secure that if any registered pupil has special educational needs the special educational provision that is required for him is made,
- (b) to secure that, where the responsible person has been informed by the Council that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and
- (c) to secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.

(6) Where a child who has special educational needs is being educated in an ordinary school maintained by the Council it shall be the duty of those concerned with making special educational provision for that child to secure, so far as is both compatible with the objectives mentioned in paragraphs (a) to (c) of subsection (3) of this section and reasonably practicable, that the child engages in the activities of the school together with children who do not have special educational needs.

Provision of special education otherwise than in schools.

3. If, in relation to any child who has special educational needs, the Council is satisfied that it would be inappropriate for the special educational provision required for that child, or for any part of that provision, to be made in a school, it may after consulting the child's parent arrange for it or, as the case may be, for that part of it, to be made otherwise than in a school.

Identification and assessment of children with special educational needs

General duty of the Council towards children for whom it is responsible.

4. (1) It shall be the duty of the Council to exercise its powers under this Law with a view to securing that, of the children for whom it is responsible, those with special educational needs which call for the Council to determine the special educational provision that should be made for them are identified by the Council.

(2) For the purposes of this Law the Council is responsible for a child if –

- (a) he is registered as a pupil at a States' school, or
- (b) he has been brought to the attention of the Council as having, or as probably having, special educational needs and –
 - (i) is registered as a pupil at a school but does not fall within paragraph (a) above, or
 - (ii) is not registered as a pupil at a school and is not under the age of two years or over compulsory school age.

Assessment of special educational needs.

5. (1) Where, in the case of a child for whom the Council is responsible the Council is of the opinion –

- (a) that he has special educational needs which call for the

Council to determine the special educational provision that should be made for him, or

- (b) that he probably has such special educational needs,

it shall make an assessment of his educational needs under this section.

(2) Assessments under this section shall be made in accordance with the following provisions of this section and of the First Schedule to this Law.

(3) If the Council proposes to make an assessment of the educational needs of a child under this section it shall, before doing so, serve notice on the child's parent informing him –

- (a) that it proposes to make an assessment,
- (b) of the procedure to be followed in making it,
- (c) of the name of the officer of the Council from whom further information may be obtained, and
- (d) of his right to make representations to the Council within such time as may be specified in the notice.

Assessment of special educational needs of children under the age of two.

6. (1) Where, in the case of a child who is under the age of two years, the Council is of the opinion –

- (a) that he has special educational needs which call for the Council to determine the special educational provision

that should be made for him, or

(b) that he probably has such special educational needs,

it may, with the consent of the child's parent, make an assessment of his educational needs and shall do so at the request of that parent.

(2) An assessment under this section shall be made in such manner as the Council considers appropriate.

Determination of child's special educational provision.

7. (1) Where an assessment has been made in respect of a child under section 5 of this Law, the Council shall, in accordance with the provisions of this section if it is of the opinion that it should determine the special educational provision that should be made for him, make a determination specifying the special educational provision which should be made for him.

(2) In any case where the Council has determined the special educational provision under this section in respect of a child, it shall be the duty of the Council to arrange that the special educational provision specified in the determination is made for him unless his parent has made suitable arrangements.

(3) Before making a determination under this section the Council shall serve on the parent of the child concerned a copy of the proposed determination and the Council shall inform him of his right to make representations to the Council within such time as may be specified.

(4) If the parent on whom a copy of a proposed determination has been served under subsection (3) of this section disagrees with any part of the proposed determination he may, before the expiry of the period specified –

- (a) make representations (or further representations) to the Council about the content of the proposed determination,
- (b) require the Council to arrange a meeting between him and an officer of the Council at which the proposed determination can be discussed.

(5) Where the Council receives a request duly made under subsection (4) of this section it shall arrange such meeting or meetings as it considers will enable the parent to discuss the relevant advice with the appropriate person or persons.

(6) The Council shall consider any representations made by the parent of a child under this section before making a determination under this section and the Council shall serve a copy of the determination so made on the parent of the child concerned.

Requests for assessments.

8. (1) If the parent of a child in respect of whom no determination has been made by the Council under section 7 of this Law asks the Council to arrange for an assessment to be made of the child's educational needs the Council shall comply with the request unless it is in its opinion unreasonable or inappropriate.

(2) If the parent of a child in respect of whom the Council has made a determination under section 7 of this Law asks the Council to arrange for an assessment of his educational needs under section 5 of this Law and such an assessment has not been made within the period of six months ending with the date

on which the request is made, the Council shall comply with the request unless it is satisfied that an assessment would be inappropriate.

Duty of Medical Officer of Health to notify Council.

9. (1) It shall be the duty of the Medical Officer of Health to bring to the attention of the Council any case where, in the course of exercising any of his functions in relation to a child, he forms the opinion that such a child has, or probably has, special educational needs.

(2) In any case falling within subsection (1) of this section, the Medical Officer of Health shall inform the parent of the child concerned of his opinion regarding that child's special educational needs and of his duty under this section to bring it to the attention of the Council.

(3) Where the Medical Officer of Health has under this section brought to the attention of the Council the case of any child in respect of whom he has formed the opinion that such a child has, or probably has, special educational needs, the Council shall take such action as it deems appropriate in accordance with the provisions of this Law in respect of that child.

Special schools and approved independent schools

Special schools and approved independent schools.

10. (1) In section 5 of the principal Law (States' schools, voluntary schools, nursery schools and special schools) for subsection (3) there is substituted the following subsection –

" (3) Schools which are specially organised to make special educational provision for pupils with special educational needs and which are for the time being approved by the Council as special schools shall be

known as special schools."

(2) The parent of a child who is of compulsory school age and is registered as a pupil at a special school in accordance with arrangements made by the Council shall not withdraw the child from that school without the consent of the Council.

(3) Where the Council makes a determination in respect of a child under section 7 of this Law it shall not make arrangements for the provision of education for that child at an independent school unless –

- (a) the school is for the time being approved by the Council as suitable for the admission of children for which determinations are made under the aforesaid section 7, and
- (b) the Council deems it appropriate that such arrangements should be so made and consents to the child being educated there.

Approval of special schools.

11. (1) The Council may by regulations make provision as to –

- (a) the requirements which are to be complied with by any school as a condition of approval of the school as a special school under section 5(3) of the principal Law,
- (b) the requirements which are to be complied with by a special school while such an approval is in force with respect to it, and

- (c) the withdrawal of approval from any school –
 - (i) at the request of the proprietor, or
 - (ii) on the ground that there has been a failure to comply with any prescribed requirement.

(2) Without prejudice to the generality of subsection (1) of this section, regulations under that subsection may impose requirements which call for arrangements to be approved by the Council.

(3) Notwithstanding that the provisions of the principal Law requiring the Council to have regard to the need for securing that primary and secondary education are provided in separate schools do not apply with respect to special schools, the regulations may impose requirements as to the organisation of any special school as a primary school or as a secondary school.

(4) Provision shall be made in the regulations to secure that, so far as practicable, every pupil attending a special school will attend religious worship and religious instruction, or will be withdrawn from attendance at such worship or instruction in accordance with the wishes of his parent.

Approval of independent schools.

- 12.** (1) The Council may by regulations make provisions as to –
- (a) the requirements to be complied with by any school as a condition of approval of the school for the purposes of section 10(3)(a) of this Law,

Consolidated text

- (b) the requirements which are to be complied with by any school while such an approval is in force with respect to it, and
- (c) the withdrawal of approval from any school –
 - (i) at the request of the proprietor, or
 - (ii) on the ground that there has been a failure to comply with any prescribed requirement.

(2) Any approval under section 10(3)(a) of this Law may be given subject to such conditions (in addition to those prescribed) as the Council sees fit to impose.

(3) Any consent under section 10(3)(b) of this Law may be given subject to such conditions as the Council sees fit to impose.

(4) In any case where there is a failure to comply with a condition imposed under subsection (2) or (3) of this section, the Council may withdraw its approval or, as the case may be, consent.

School attendance orders

Proposed school attendance order: choice of school.

13. (1) This section applies in any case where –
- (a) the Council proposes to serve a school attendance order on the parent of a child under section 18 of the principal Law, and

- (b) the Council has made a determination in respect of that child under section 7 of this Law.

(2) The order shall not be served until the expiry of the period of fourteen days beginning with the date on which the Council serves on the parent written notice –

- (a) of their intention to serve the order,
- (b) stating that if, before the expiry of that period, he selects a school at which he desires the child to become a registered pupil, that school will, unless the Council otherwise directs, be named in the order.

(3) If, before the expiry of the period mentioned in subsection (2) of this section, the parent selects such a school, that school shall, unless the Council otherwise directs, be named in the order.

(4) If the Council is of the opinion that –

- (a) the school selected by the parent as the school to be named in the order is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
- (b) that the attendance of the child at the school so selected would prejudice the provision of efficient education or the efficient use of resources,

the Council may, after giving the parent notice of their intention to do so, determine what school is to be named in the order.

Amendment and revocation of school attendance orders.

14. (1) This section applies in any case where –

- (a) the Council has served a school attendance order on the parent of a child under section 18 of the principal Law, and
- (b) the Council has made a determination in respect of that child under section 7 of this Law.

(2) If at any time while the order is in force the parent applies to the Council requesting –

- (a) that another school be substituted for that named in the order, or
- (b) that the order be revoked on the ground that arrangements have been made for the child to receive efficient full-time education suitable to his age, ability and aptitude and to his special educational needs otherwise than at school,

the Council shall amend or revoke the order in compliance with the request unless it is of the opinion that –

- (i) the school selected by the parent as the school to be named in the order is unsuitable to the

Consolidated text

child's age, ability or aptitude or to his special educational needs or that the proposed change of school is against the interests of the child,

- (ii) the attendance of the child at the school so selected would prejudice the provision of efficient education or the efficient use of resources, or
- (iii) no satisfactory arrangements have been made for the education of the child otherwise than at school.

Miscellaneous

Duty of parents.

15. In section 17 of the principal Law (Duty of parents to secure the education of their children) after the word "aptitude" there are inserted the words "and to any special educational needs he may have".

Provisions as to regulations under this Law.

16. Any regulations made by the Council under the provisions of this Law shall be laid before a meeting of the States as soon as may be after the making thereof and if, at that meeting or at the next subsequent meeting, the States resolve that the regulations be annulled, the regulations shall cease to have effect without prejudice to anything done thereunder or to the making by the Council of new regulations.

Service of documents.

17. Any order, notice or other document required or authorised by this

Law to be served upon any person may be served by delivering it to that person, or by leaving it at his usual or last known place of residence, or by sending it by post addressed to him at that place.

Interpretation.

18. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"appropriate person" means the person who gave the relevant advice or any other person who, in the opinion of the Council, is the appropriate person to discuss it with the parent,

"assessment" means the assessment by the Council of a child's special educational needs under this Law,

"child", except in section 9 of this Law, includes any person who has not attained the age of 19 years and is registered as a pupil at a school, and in section 9 of this Law, the expression **"child"** has the meaning assigned to it in section 1(1) of the principal Law,

"determination", in respect of a child's special educational provision, means a determination made by the Council in respect of that child under section 7 of this Law and the expression **"determine"** shall be construed accordingly,

"ordinary school" means a school which is not a special school,

"principal Law" means the Education (Guernsey) Law, 1970^a,

"relevant advice" means such of the advice given to the Council in connection with the assessment as it considers to be relevant to that part of the assessment with which the parent disagrees,

"responsible person", in respect of any school, means the head teacher of that school,

and any other expressions have the same meanings as in the principal Law.

(2) Except where the context otherwise requires, any reference in this Law to any other enactment shall be construed as including a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

NOTE

In its application to the Island of Alderney, subsection (1) is modified in accordance with the provisions of the Alderney (Application of Legislation) (Education) Ordinance, 1992, section 1, Schedule, as amended by the Alderney (Application of Legislation) (Education) (Amendment) Ordinance, 1993, with effect from 31st March, 1993.

Transitional provisions.

19. The transitional provisions made by the Second Schedule to this Law shall have effect.

Consequential amendments and repeals to the principal Law.

^a Ordres en Conseil Vol. XXII, p. 318; No. X of 1981; No. VII of 1983.

20. The principal Law shall have effect subject to the consequential amendments and repeals hereby specified in the Third Schedule to this Law.

Construction.

21. This Law shall be construed as one with the Education (Guernsey) Law, 1970.

Citation.

22. This Law may be cited as the Education (Amendment) (Guernsey) Law, 1987.

Collective title.

23. This Law and the Education (Guernsey) Laws, 1970 to 1983, may be cited together as the Education (Guernsey) Laws, 1970 to 1987.

Commencement.

24. (1) This Law shall come into force on such date as shall be appointed by Ordinance of the States and different dates may be appointed for different provisions or different purposes.

(2) Any Ordinance under this section may make such transitional provisions as appear to the States to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions, or of any other provisions of this Law then in force, as appear to be necessary or expedient for the purpose or in consequence of the operation of any provisions of this Law before the coming into force of any other provision.

(3) Any power conferred by any provisions of this Law to make any regulations may be exercised at any time after the registration of this Law and before the day on which the provisions of this Law under which such regulations

are made shall come into force:

Provided that such regulations shall not come into force until such aforesaid provisions of this Law under which they are made shall come into force.

NOTE

The Law was brought into force on 1st December, 1992 by the Education (Amendment) (Guernsey) Law, 1987 (Commencement) Ordinance, 1992, section 1.

FIRST SCHEDULE Section 5(2)
ASSESSMENTS OF SPECIAL EDUCATIONAL NEEDS

Regulations

1. (1) The Council may by regulations make provision as to the advice which the Council is to seek in making assessments.

(2) Without prejudice to the generality of sub-paragraph (1) of this paragraph, regulations made under that sub-paragraph may require the Council to seek medical, psychological and educational advice and such other advice as may be prescribed.

(3) The Council may by regulations make provision –

- (a) as to the manner in which assessments are to be conducted, and
- (b) in connection with such other matters relating to the making of assessments as the Council considers appropriate.

Attendance for assessment

2. (1) Where the Council proposes to make an assessment it may serve a notice on the parent of the child to be assessed requiring the child's attendance for his assessment in accordance with the provisions of the notice.

(2) A notice under this paragraph shall –

- (a) state the purpose of the attendance required,
- (b) state the time and place at which the child's attendance is required,
- (c) name the officer of the Council from whom further information may be obtained, and
- (d) inform the parent of his right to submit such information to the Council as he may wish within such time as may be specified in the notice.

(3) Any parent on whom a notice has been served under this paragraph and who fails without reasonable excuse to comply with any of the requirements of the notice shall, if the notice relates to a child who was not over compulsory school age at the time stated in the notice as the time for holding the assessment, be guilty of an offence and liable, on conviction, to a fine not exceeding [level 3 on the uniform scale].

NOTE

In the First Schedule, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

SECOND SCHEDULE
TRANSITIONAL PROVISIONS

Section 19

Approval of special schools

1. Any special school under section 5(3) of the principal Law immediately before the commencement of section 11 of this Law shall be deemed to be a special school approved by the Council under the aforesaid section 11 of this Law.

Special educational treatment

2. The following provisions of this Schedule apply in relation to any child for whom, immediately before the commencement of section 7 of this Law, the Council was providing special educational treatment under the principal Law.

3. The child shall be taken to have special educational needs and the Council shall be taken to have made an assessment of his special educational needs under section 5 of this Law and to have formed the opinion, that his special educational needs call for the Council to determine the special educational provision that should be made for him.

4. During the period of twelve months beginning with the commencement of section 7 of this Law the Council shall not be under the duty imposed by that section to make a determination in respect of the child's special educational needs.

5. A determination made in respect of the child under section 7 of this Law, but before an assessment of his special educational needs is made under section 5 of this Law, need not give details of the Council's assessment of those

needs until such time as an assessment has been made under section 5 of this Law.

6. Until such time as the Council makes a determination in respect of the child under section 7 of this Law it shall be under a duty to continue to provide the special educational treatment which the child was receiving immediately before the commencement of section 7 of this Law unless the child's parent makes suitable arrangements; but this paragraph shall not require the Council to act in any way which would be incompatible with the provisions of a school attendance order in force under section 18 of the principal Law.

7. Sections 13 and 14 of this Law apply, at any time before a determination is made for the child under section 7 of this Law, as if in each of those sections the following were respectively substituted for paragraph (b) of subsection (1) thereof –

"(b) the Council was, immediately before the commencement of section 7 of this Law, providing special educational treatment for that child under the principal Law.".

8. Where immediately before the commencement of section 4 of this Law a decision under section 29 of the principal Law was in force with respect to a child classifying him as suffering from a disability of mind as to make him unsuitable for education at school, section 5 of this Law shall apply as if the decision made had been an assessment of his special educational needs made under the aforesaid section 5 of this Law.

THIRD SCHEDULE
CONSEQUENTIAL AMENDMENTS AND
REPEALS TO THE PRINCIPAL LAW

Section 20

1. In section 1(1) of the principal Law (Interpretation) there is hereby inserted the following additional definitions of the expressions "special educational needs" and "special educational provision" –

"special educational needs" and "special educational provision" have the meanings given to them by section 1 of the Education (Amendment) (Guernsey) Law, 1987, ".

2. Sections 14 and 15 of the principal Law are hereby repealed.

3. In section 18 of the principal Law (School attendance orders) –

(a) in subsections (1), (2), (3) and (4) after the word "aptitude" in each case there are respectively hereby inserted the words "and to any special educational needs he may have",

(b) in subsection (2) the words from "provided that" to the end thereof, in subsection (3) the words from "requesting that another" to "order or", the words "amend or", the words from "that the proposed" to "child or" and the words "as the case may be" are respectively hereby repealed.

4. Section 19 of the principal Law is hereby repealed.

5. ...

6. Sections 29, 30, 31, 32 and 33 of the principal Law are hereby repealed.

7. In section 40(1) of the principal Law (Provision of board and lodging otherwise than at boarding schools) –

- (a) after the word "aptitude" there are hereby inserted the words "and to any special educational needs he may have",
- (b) for the words "requiring special educational treatment" there are hereby substituted the words "having special educational needs", and
- (c) for the words "treatment", in the second place where it occurs, there is hereby substituted the word "provision".

NOTE

In the Third Schedule, paragraph 5 was repealed by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, paragraph 23, with effect from 4th January, 2010.
