

22/03/2019

A transformational curriculum – proposals for a new legislative framework: NSS consultation response

Submitted by email to CurriculumReformLegislation@gov.Wales

1. This submission is made by the National Secular Society (NSS). The NSS is a not-for-profit non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual Human Rights, which should never be overridden on the grounds of religion, tradition or culture.
2. Education is the largest area of our work, as it is where a lack of secularism most impinges on the rights of UK citizens. We campaign for a secularist and inclusive approach to education, free from religious discrimination, privilege or control and where pupils from all backgrounds have their rights respected.

Question 1 – Do you agree with our approach to legislating for the new curriculum structure?

3. We fully support the structure of the legislative changes needed for the exciting new curriculum project and will address concerns with the details in our responses below.

Question 6 – Do you agree with making age and developmentally appropriate RSE compulsory for 3–16 years?

4. Yes. We fully support the recommendations of the Expert Panel.
5. There is an extremely broad base of support across the education, youth and equality sectors for making RSE a statutory and compulsory part of the curriculum. In particular the UN Committee on the Rights of the Child have noted with concern that:

“Relationships and sexuality education is not mandatory in all schools, its contents and quality varies depending on the school, and LGBT children do not have access to accurate information on their sexuality.”¹

6. The Welsh government should fulfil its duties under the UNCR, by acting to:

¹ <https://www.secularism.org.uk/news/2016/06/un-childrens-rights-committee-calls-on-uk-to-abolish-compulsory-worship-in-schools>

“Ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres, in all areas of the State party. Such education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; prevention of sexual abuse or exploitation, including sexual bullying; available support in cases of such abuse and exploitation; and sexuality, including that of LGBT children.”

7. The terminology of “age appropriate” RSE is widely used and understood. However, it is reasonable to transition to the terminology of “developmentally appropriate” where this will allow schools greater flexibility and nuance.
8. At all ages and stages of development it is appropriate for pupils to learn about:
 - The diversity of different relationships pupils of that age will encounter.
 - The rights and responsibilities inherent in different relationships.
 - The characteristics of healthy and unhealthy relationships.
9. However, their level of understanding should develop over time, for example at age 3, “relationships” – may simple be learning about friendship and caring, different family structures they or their peers may have and the different relationships they may have to adults and peers.
10. A recurring trope in the anti-LGBT moral panic surrounding RSE is that LGBT issues are dangerous and not age appropriate, or that they are a cover to indoctrinate the young. The age appropriateness of any aspect of RSE should not differ based on the sexuality of examples used. If it is developmentally appropriate for pupils to receive certain information about sex, it is developmentally appropriate for them to receive this information about LGBT and non-LGBT sex. If it is developmentally appropriate for pupils to receive certain information about relationships, it is developmentally appropriate for them to receive this information about LGBT and non-LGBT relationships. If a certain level of detail about a specific area of non-LGBT sex or relationships is not developmentally appropriate, then the same level of detail about LGBT sex or relationships would be equally (though no more or less) developmentally inappropriate.

Question 7 – Do you agree with the proposed changes to the guidance-making power so that it is designed to secure that RSE is provided in a way that is age and developmentally appropriate to the children receiving it?

11. Yes.
12. We will refrain from detailed comments that are more appropriate to the content of the guidance itself.
13. We welcome the duty on Welsh Ministers to issue such guidance, however we would like the legislation to include specific duties for the Minister to ensure the guidance pays due regard to the Equality Act, issues guidance which applies equally in all schools, and that requires RSE to be comprehensive and accurate. The legislation should also set out a non-exhaustive list of topics that the RSE guidance must cover.
14. These are necessary to ensure the guidance does not allow faith-based schools to restrict RSE or promote discriminatory and/or shame-based teachings in accordance with their ethos.²

² <https://www.secularism.org.uk/uploads/unsafe-sex-education-welsh-faith-schools-may-2018.pdf>

15. The duty to have a sex education policy available on request should be amended to a duty to publish an RSE policy.

Question 8 – Do you agree with our proposals to make RSE optional for learners in sixth forms?

16. Yes.

17. At sixth form where students make independent subject choices it is disproportionate to mandate specific subjects. However, sixth forms should be required to maintain adequate provision for RSE and/or signposting to other appropriate support service.

Question 9 – Do you agree with the proposed approach to RE?

18. We want every pupil to have the same entitlement to high quality, non-partisan education about worldviews. We want to see all schools preparing young people for life in modern Wales by teaching pupils about:

- The diversity of religious and non-religious worldviews.
- How people's worldviews may influence their thinking on philosophical, moral and cultural issues.
- Worldviews and rights: how the freedom to manifest religion and belief interacts with the rights of others.

19. As such, we broadly support the proposals moves towards a modern more inclusive RE curriculum that addresses the diversity of worldviews in Wales. It is good for this to be embedded in a wider humanities area of learning, rather than being treated as an exceptional area. Much will depend on the curriculum content itself.

20. However, the proposals maintain many of the flaws in the current RE settlement.

21. The most glaring element of this is continuing provision for faith schools to teach the subject in accordance with their ethos. This holds RE back in its confessional roots and undermines the subject as an academic endeavour. If schools wish to make provision for faith formation, then this must be entirely voluntary and separate from the academic subject of RE.

22. The construction and content of any programmes of study subject covering religion and belief should be determined by the same process as other subjects – by senior educationalists, subject specialists and teachers

23. The second flaw is the retention of SACREs and local determination. A national curriculum would remove SACREs *raison d'être*. SACREs are not suitable bodies for the task of advising on, delivering or supporting a national curriculum for objective, critical and pluralistic religion and belief education. In our view, it has not been helpful that teaching and learning in this area has been so heavily influenced – and even determined – by faith and belief communities who could be regarded as constituting groups with a vested interest. A reformed subject should be supported and inspected in exactly the same way as any other academic subject. A major motivation of those joining SACREs has been to represent their faith or belief tradition in the most positive light. This is educationally inappropriate.

24. While efforts to make SACREs more inclusive are admirable, religion and belief enthusiasts do not do a good job of representing the diversity to views in Wales. To continue this approach would particularly serve the wishes of well-established religion and belief groups that regard the subject as advertising space and an opportunity to evangelise in schools and have the capacity to join SACREs.
25. It seems that efforts have been made to find a new role for SACREs due to their popularity among faith groups, rather than an objective assessment of their effectiveness and responsibilities. Any advisory function they serve can be replaced by supporting local teacher and school networks across all subjects which brings together best practice and expertise.
26. We also take issue with the flawed and outdated language around “nonreligious views that are analogous to religious views”. This frames religious worldviews as the default and gives an unnecessarily narrow and impoverished picture of non-religious worldviews. For example, The Commission on Religious Education has recognised secularism as a key concept in the study of religion and worldviews, despite it not being analogous to a religion. In practice this is likely to lead to non-religious worldviews being reduced to simply Humanism – a label that few of Wales’s non-religious majority identify with.
27. One way that the legislation could establish a clear break with RE’s confessional/instructional roots and refresh the subject is a new name. We would suggest “Worldviews” or “Religion & Worldviews”.

Question 10 – Do you agree with our proposals to make RE optional for learners in sixth forms?

28. Yes.
29. At sixth form where students make independent subject choices it is disproportionate to mandate specific subjects. However, sixth forms should be required to maintain adequate provision for RE where it is taken up.

Question 11 – Should the right to withdraw from RE and RSE be retained?

30. The right to withdraw in RE and RSE raises some similar, but many different issues that we will address below, and it is not always helpful for these to be conflated.
31. On RE, we in principle support an end to the right to withdraw.³ However, as has been noted by organisations including the Religious Education Council of England and Wales, ending this longstanding right has significant legal implications.
32. There are clearly legitimate concerns that the right to withdraw from RE undermines the subject’s esteem, frustrates schools and can be used selectively for discriminatory or ill-informed reasons. However, the right exists to protect parental and children’s rights to religious freedom. Religious education is still widely used (particularly, but not exclusively in denominational schools) either for faith formation or to present a positive view of religion.⁴

³ <https://www.secularism.org.uk/news/2016/05/nss--religious-education-must-be-reformed-before-ending-parental-opt-out>

⁴ <https://www.secularism.org.uk/news/2018/12/framing-religion-as-intrinsically-positive-harms-education-study-says>

33. If it cannot be guaranteed that RE is not promoting a particular view of religion, then we share the view of the Commission on Religious Education that ending the right to withdraw may not be consistent with European and Human Rights law.⁵
34. We would welcome new guidance and support for schools on managing the right to withdraw, and there may be limits to the right that can be introduced which are consistent with European case law. For example, a request to withdraw from RE in a faith school, or delivered by/at an external faith based organisation is markedly different from that in a community school.
35. Many organisations already provide advice and support for schools on managing the right to withdraw, including the Wales Association of SACREs, whose latest guidance we have largely welcomed.⁶
36. Unfortunately, many opponents of the right to withdraw – however well intentioned – have consistently failed to adequately engage with legitimate religious freedom concerns parents wishing to withdraw their children may have. For example, in the largely common sense WASACRE guide on managing the right, parents can apparently only “misunderstand the true nature of RE” – they can only believe that the “school is failing to deliver on this aim”. Consideration is rarely given to parents having legitimate concerns about RE being used to promote particular religious views or a generally positively biased view of religion.
37. On RSE, we do not support a parental right of withdrawal. We don't think parents should be supported to shield children from education and knowledge within the state school system. Parents do not have a right to selectively withdraw their children from science or history lessons that may conflict with their religion or belief, and we argue that the same should hold true for RSE. The right of withdrawal is most likely to deny knowledge to children from conservative religious backgrounds, who most need impartial, appropriate education in this area. This can place both themselves and others at risk.
38. We regard the 2018 ECHR case of AR & LR v Switzerland as instructive. Unless the RSE pursues an aim of indoctrination, enshrining a right of parental withdrawal is not necessary to protect parental rights or religious freedom. Indeed, such a ‘right’ may undermine children’s UNCRC rights enshrined in UK law, including the Article 19 right of that Convention, which requires government to take “all measures”, including “educational” measures, to “protect the child against all forms of physical or mental violence, injury or abuse”. (...), including sexual violence”.
39. By this logic we would support a right to withdraw where a faith school used RSE to promote discriminatory faith-based perspectives or misinformation on relationships and sexuality. Although of course we would infinitely prefer this simply not to be permitted.

⁵ <https://www.commissiononre.org.uk/wp-content/uploads/2018/09/Final-Report-of-the-Commission-on-RE.pdf#page=69>

⁶ <https://www.secularism.org.uk/opinion/2018/06/new-guidance-on-the-right-to-withdraw-from-re-in-wales-response>

Question 12 – If the right to withdraw is to be retained, should it remain with the parent (parent includes those with parental responsibility or those who have care of the child)?

40. Drawing on the recommendations of the UNCRC, the Joint Committee on Human Rights and case law regarding Gillick Competency, we suggest that any right to withdraw (or conversely to opt-in) should transfer to the pupil when they are of sufficient maturity to make that decision. Students over 16 are certainly capable of making such decisions independently and we suggest that guidance is provided for schools on taking students' own views into account when a request to withdraw a pupil over 14 is made by parents.

Question 13 – If the right to withdraw is removed, what alternative, if any, should be in its place?

41. Should the necessary reforms be made to allow for the end to the right to withdraw, then we will support this. However, any faith-based education or education intended to advance a faith perspective should be voluntary and separate from the curriculum.
42. There should be a clear mechanism for parents to raise concerns where a lack of a right to withdraw might be detrimental to pupils' or parents' rights. However, care must be taken that this does not open schools to erroneous accusations of breaching parental or religious rights by simply promoting information about and tolerance between people with different protected characteristics.
43. Where a right to withdraw does not exist, school should be able to clearly and reasonably justify if/when they accommodate a request to withdraw. This should never result in a detriment to a pupil's education and must be consistent with schools' public sector equality duty.

Question 16 – Do you agree with the proposed approach outlined for evaluating the effectiveness of curriculum and assessment arrangements?

44. Our comments on this section are restricted due to those areas which fall outside of our expertise. We believe the new curriculum structure lends itself to a more constructive form of evaluation, however we do have concerns about specific areas that should be addressed if the curriculum is to serve all pupils and families in Wales.
45. While we don't want a rigid structure which mandates reporting on every subject individually, inspections should provide information on how every school meets each AoLE. This will make it easier for parents and other stakeholders to understand how specific contentious issues in the Humanities and Health AoLE are addressed, and if there are any concerns they may wish to follow up on. This also allows a better qualitative comparison between schools without descending into a tick box exercise.
46. There should be a duty on Estyn to inspect all areas of the curriculum in all schools equally, along with all schools' promotion of community cohesion and their Public Sector Equality Duty.
47. Given the reformed curriculum we can see no justification for the continuation (let alone compulsion) of separate Section 50 (Education Act 2005) inspections. Such the split regime of Estyn and 'religiosity inspections' creates confusion over the role of RE in the curriculum.

48. It is unacceptable under a national curriculum for one subject to not be inspected by the national inspectorate, but only by religious bodies concerned with the promotion of their ethos. Further confusion is caused in faith schools teaching a locally agreed syllabus, which is then inspected both by Estyn and religious bodies to their own standards. Having all subjects inspected by the same authority is essential to ensure high-quality, objective and consistent RE is taught at all schools, regardless of location or type.

Question 22 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

49. We remain broadly positive about the new curriculum project and these proposals. However, the legislative framework can only lay the foundations, the curriculum itself and associated guidance will still need scrutiny.

50. We wish to take this opportunity to reiterate our disappointment that this legislative review has not considered the issue of collective worship. The law in Wales currently provides that children at all maintained schools “shall on each school day take part in an act of collective worship”. In community schools, the worship must be wholly or mainly of a Christian character.

51. School mandated worship is inherently coercive and where enforced is a serious breach of pupils’ and parents’ rights. Pupils in Welsh schools should enjoy the right to freedom of thought, conscience and religion under both Article 9 of the European Convention on Human Rights and Article 14(1) of the UN Convention on the Rights of the Child.

52. The law as it stands is the legacy of a society unrecognisable from the pluralistic, liberal Wales of today where citizens hold a wide variety of religious beliefs, including no religious beliefs. The majority of Welsh pupils are likely to have no religion and are unlikely to voluntarily engage in prayer. Many schools simply ignore the law, but where it is enforced it causes division and discrimination, as well as opening the door to evangelism and proselytization.

53. Inclusive assemblies can play an important role in fostering a sense of community in schools. Assemblies with an ethical dimension can promote shared values and aid pupils’ spiritual, moral, social and cultural development. Acts of religious worship are neither necessary nor desirable to achieve these valid educational goals.

54. We hope that there will soon be a legislative opportunity to remove the collective worship requirement from schools, or at least extend the right to withdraw to pupils of sufficient maturity. We would support a duty on all schools to hold inclusive ethical assemblies and have no objection to schools making proportionate provision for voluntary opt-in worship.

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