

**Response from National Secular Society
to the Education Bill Committee
on the Education Bill, as introduced.**

7 March 2011

25 Red Lion Square

London WC1R 4RL

TEL: 020 7404 3126

FAX: 0870 762 8971

EMAIL: enquiries@secularism.org.uk

WEB: www.secularism.org.uk

1. The National Secular Society (NSS) is Britain's only organisation working exclusively towards a secular society. The NSS promotes the separation of religion and state, and seeks a society where law and the administration of justice are based on equality, respect for Human Rights and objective evidence without regard to religious doctrine or belief.
2. We raise below a number of concerns about the Bill as introduced, and some further matters we believe that urgently need to be included which are within the scope of the Bill. Items are grouped by subject, with clause references where appropriate.

A. Non-religious Teacher Protection – major EU Directive compliance problem

3. We have separately provided the Bill Committee with legal opinions to the effect that the following four education areas (including one in the Bill itself) are in breach of the European Employment Directive 2000/78/EC. We have made a formal complaint to Ministers at the Department for Education about this, as well as to the European Commission and the EHRC, both of which are pursuing the complaint. With each area we make a practical suggestion as to how the breach can be remedied in the Bill. To the extent that academies become “the norm”, as promised, the vast majority of schools and teachers are potentially adversely and illegally affected:
 - i. Discretionary power in **Clause 58(3)(2)** Education Bill 2011 on VC school staff is unacceptably discriminatory – Explanatory note 284 reads “ ... The Secretary of State intends to use this power if he has agreed changes to an Academy's governance arrangements such that the religious body has majority control over the Academy in the same way that it does over a voluntary aided school governing

body.” On this basis, the draconian discretionary power will be used in most cases to impose a Voluntary Aided regime with 100% (as opposed to 20% maximum) Reserved Teacher posts and the removal of the existing protection for non-religious teachers. **We request that Clause 58(3)(2) be left out of the Bill.**

- ii. Employment protection for non-religious teachers in community schools must be retained on conversion to academies – **We request that S59 School Standards and Framework Act 1998 protection be introduced in respect of non-religiously-designated academies**, as it has been in Clause 58 for transferring voluntary controlled schools, providing that clause 58(3)(2) is not invoked.
- iii. Section 60(5) SSFA (Preference given in appointment, etc of Reserved Teachers and ability to dismiss them for conduct incompatible with religion etc.) - **We request that SSFA section 60(5) be repealed as well as equivalent wording in the Education Bill, the clauses 58(3)(6) and 58(3)(7).**
- iv. 100% reserved teachers as in VA schools goes beyond that permitted by the Directive – **We also request that the maximum proportion of Reserved Teachers is limited in religiously designated academies to one fifth (as in VC schools). If a religious ethos can be achieved with a maximum one fifth proportion in VC schools, our advice suggests that 100% of Reserved Teachers cannot be justified under the Directive as being necessary to achieve the ethos in VA schools or religiously designated academies.**

B. Collective Worship

4. The current arrangements require daily acts of worship of a mainly Christian nature and, exceptionally, for a determination for acts of worship of a different religion. Either can prove divisive in schools with pupils from a variety of different religions, and this current arrangement has even led to the resignations of staff unable to resolve the tensions resulting from the inflexibility of the law, particularly in schools with a multi-faith intake. The current law is also discriminatory in that provision is made for non-Christian religions, but there is no provision for a non-religious determination where schools decide religious worship is inappropriate. It could be argued that, especially in community schools, requiring daily acts of worship and pupil attendance is a manifestation of a nanny state. We acknowledge the importance of assemblies, and wish them to continue, acknowledging the opportunity they provide for team and ethos building and the engagement of pupils together in ethical matters. Such assemblies do not however have

to be religious to be effective.

We request that the Bill be amended to provide for the provision of and attendance at collective worship to be optional, but that the optional element does not extend to assemblies.

We include in the Appendix suggested legislative changes to bring about these proposals. The law requires pupils that are not withdrawn to “take part” in worship rather than just attend and even pupils of “sufficient maturity and intelligence” are unable to withdraw themselves, unless they are sixth form pupils (a concession we secured in the passage of the Education and Inspections Act 2006 (s.55)). We propose for this right of withdrawal to be extended to pupils two years younger; this is in line with recommendations by the Joint Committee on Human Rights (JCHR)¹, following the principles of the Gillick ruling.

We request that the Bill be amended to allow pupils of “sufficient maturity and intelligence” to withdraw themselves from collective worship.

Suggested amendment wording is provided in the Appendix.

School transport – elimination of discrimination on grounds of religion or belief

5. The law requires provision of free transport for children entitled to free school meals etc. for journeys up to six miles. Where travel to school is in accordance with the parents’ religion or belief, however, the limit is 15 miles. We would like to see an end to this discrimination, and also the discrimination commonly practised in travel to schools of a religious character, where those going in accordance with the parents’ religion or belief are treated more favourably. We have had complaints where some neighbouring children attending the same school on a faith basis receive free transport and/or a seat on a dedicated bus, whereas neighbouring children attending the same school are denied this.

We request that discrimination on the grounds of religion or belief in the provision of school transport be made unlawful.

Suggested amendment wording, and a reference to supportive wording from the JCHR, is provided in the Appendix.

¹ <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/247/24705.htm>

C. Cohesion (Clause 40)

6. We regret the omission of the focus on promoting community cohesion. Some minority faith schools have been demonstrated not only to have failed to promote cohesion, but to promote the opposite. The number of such schools, often with high proportions of pupils of minority ethnicities and from already segregated communities is likely to rise under the free school and academy model. Additionally, the complete independence of such schools must raise the likelihood of such dangerous attitudes continuing unchecked.

We request that promotion of community cohesion is reinstated as an area on which OFSTED is required to focus.

D. Admissions (Clause 34)

7. We regret the diminished role of the adjudicator in relation to admissions. Even when adhering absolutely to the admissions code, schools of a religious nature and religiously designated academies have an advantage over their non-religious counterparts because the selection process is much more likely to result in less desirable pupils being screened out – something community schools cannot do. It is clear from the sample test carried out by Ed Balls that such religious schools bend even these privileged rules far more than other schools do². The problem is more prevalent in schools that are their own admissions authority. Unfairness over admissions is therefore likely to rise on both the higher proportion of religious schools and those being their own admissions authority.

We request that the adjudicators' current role over admissions is reinstated in the Bill.

We have deliberately kept this submission brief and are happy to provide further examples, evidence and legislative references on request.

² http://www.timesonline.co.uk/tol/life_and_style/education/article3671157.ece *The Times* 3 April 2008 "Top state schools hit by cash for places row"

APPENDIX – Additional suggested legislative changes

A. Collective Worship

Suggested New Clause 1

- (1) Section 70 of the School Standards and Framework Act 1998 (Requirements relating to collective worship) is amended as follows:
- (2) Omit subsection (1) and (2) and substitute “community, foundation or voluntary schools and academies may hold acts of collective worship at the discretion of the governors. Pupils may attend such acts of worship, but not doing so should not permit the school to exclude them from any non-religious part of assemblies.”
- (3) In subsection (3) for “required” substitute “permitted”.
- (4) Schedule 20 of the School Standards and Framework Act 1998 (Collective Worship) is amended as follows.
- (5) In subparagraphs (1) to (4) for “required” substitute “permitted”.

(This makes both acts of collective worship, and attendance at them, optional.)

Suggested New Clause 2

- (1) Section 71 of the School Standards and Framework Act 1998 (which, in relation to religious education and attendance at religious worship, makes provision for exceptions and special arrangements, and for special schools) is amended as follows.
- (2) In subsections (1A), (1B), (5), (5A) and (7) for “sixth-form pupil” substitute “competent pupil”.
- (3) In subsection (8) leave out (8)a and (8)b and substitute “In this section, a “competent pupil” is any pupil who is over 14 years of age except one who, in the opinion of the headteacher, lacks sufficient age and maturity to decide for themselves to withdraw from Collective Worship.”
- (4) Insert after subsection (8) “pupils shall not be excluded from any non-religious part of assemblies because they declined to attend collective worship.”

(This is a minimum change to conform Human Rights norms, as opposed to the more thorough and fairer change suggested in New Clause 1. The minimum change reduces the age at which pupils can withdraw themselves from collective worship anyway that is closer to the advice of the Joint Committee on Human Rights. The amendments seek to achieve the “Sufficient age and maturity” sought in the JCHR report³ in the most practical way.)

³ <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/16910.htm> JCHR 26th report - scrutiny of Equality Bill [2010] published 27 October 2009.

B. School transport

(1) Schedule 35B of Education Act 2006 (Children entitled to free school meals etc.) is amended as follows.

(2) Leave out Paragraph 12

(3) Insert after paragraph 14 “Neither schools or academies are permitted to discriminate on grounds of religion or belief in the provision of transport for pupils”.

(This replaces discriminatory provisions with a duty not to discriminate. We also draw to the attention of the committee the deliberations of the JCHR on this matter⁴ supporting our proposals.)

⁴ <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/16910.htm> (Paras 234- 239) a