

November 2019

Ensuring access to the full curriculum: NSS consultation response (DRAFT)

Submitted by email to: AHWB@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. Issues relating to education represent a significant area of our work and we are actively involved in debates over reform of RE (religious education) and RSE (relationships and sex education), including participation in the consultation concerning the new curriculum for Wales.

Summary

3. We have no objection in principle to a removal of the right to withdraw from RE/RW. However, our support for any removal is contingent on institutional and cultural change to ensure the subject area is genuinely objective, critical and pluralistic. We do not believe that the current reforms go far enough to justify ending this long-standing right at this time.
4. We believe that the right to withdraw from RE/RW should be retained in faith schools as long as such schools retain their abilities to teach the subject from a faith-based perspective.
5. In all schools we believe the right to withdraw from RE/RW should be retained for 3 to 5 years to allow a more informed assessment of its current use and any remaining necessity in the new curriculum.
6. With regards to RSE, we believe that the balance of rights and the potential harms caused by denying children access to comprehensive RSE, justify ending the right to withdraw.

Question 1 – What implications would there be for learners, parents/carers and schools if all learners were required to receive RE and/or RSE lessons in the new curriculum?

7. We regret the conflation of the right to withdraw from RE/RW with that from RSE. While there are significant parallels, there are also important differences in the balance of rights involved, the historical role and motivation of these rights to withdraw and the implications for ending these rights. We will therefore address these separately.

8. On this point, as well as our concern that reforms to RE do not go far enough so as to insulate an end to the right to withdraw from legal challenge, we are in agreement with the Religious Education Council of England and Wales' statement of October 4 2019.¹

"The proposal to remove the right of withdrawal in RE will be welcomed by many who want to end RE's exceptionalism, but will prove highly contentious for some who see it as a necessary safeguard. If the Welsh Government do want to remove the right of withdrawal from RE, and want to avoid legal challenges, it will be necessary to ensure that the subject and its delivery will be objective, critical, and pluralistic in all settings. It is not yet clear that this is the case.

"It is regrettable that the consultation's questions combine the parental right to withdraw their child from Religious Education with the equivalent right to withdraw from Relationships and Sex Education. The two subjects' place in the curriculum is justified on very different grounds and you should not assume that the need for a right of withdrawal from one means there is an equivalent need in the other. The rights of withdrawal from each should be considered separately."

Religious education (RE/RW)

9. We agree with the consultation's assessment of the significant benefits for pupils of all backgrounds in receiving a broad and balanced education about different worldviews. We want every pupil to have the same entitlement to high quality, non-partisan education about worldviews. This would see all schools preparing young people for life in modern Britain 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.
10. We agree with the minister for education that the right to withdraw is something of an historical "anomaly", and that there are circumstances where it may act to undermine children's rights to access education and to gain understanding of and respect for those with different worldviews. However, the subject area itself, and the organisation of it, is also something of an anomaly. For example, the level of influence from religious groups, whose *raison d'être* is their own representation in a positive light, is educationally inappropriate. We therefore believe there are significant human rights implications to ending the long-standing parental right of withdrawal from this contested area of the curriculum.
11. Almost all European states make some provision for a right to withdraw from religious education. This is because in most countries, including in Wales, the subject's roots (despite significant reforms) lie in confessionalism and faith formation/promotion.

¹ <https://www.religiouseducationcouncil.org.uk/news/welsh-government-proposal-to-change-the-name-of-re-and-remove-the-right-of-withdrawal/>

12. As the recent ECHR case of *Papageorgiou and others v. Greece*² affirms, parties to the convention are “forbidden” from attempting to indoctrinate children in a way “that might be considered as not respecting parents’ religious and philosophical convictions”. However, RE/RW need not rise to the level of “indoctrination” to represent significant concerns of bias which affect these rights.
13. In the many cases where we have acted to assist parents in exercising their right to withdraw from RE in England and Wales, we can think of few if any examples where parents are opposed to their children receiving broad and balanced information about other worldviews. Where parents have concerns over bias, we always encouraged them to discuss these constructively with the school. However, where the schools are unwilling or unable to acknowledge and respond to such concerns the right to withdraw remains an important if undesirable last resort.
14. Maintaining faith schools’ ability to teach according to their religious ethos, the continuation of denominational (section 50) inspections and the ongoing role of Standing Advisory Councils for Religious Education fatally undermine the argument that RE/RW has been sufficiently reformed so as to justify an end to the right to withdraw. It is not enough to simply provide information about a broad range of worldviews, if a school continues to privilege a specific worldview or range of views. Denominational RE both directly and indirectly conveys a message that certain religious worldviews (or range of worldviews) are worthy of greater prominence or respect. Even under the latest reforms, the teaching of religion will still be prioritised over the teaching of non-religious worldviews, and secular philosophical approaches.
15. The consultation’s accompanying equality impact assessment is right to acknowledge the limits to Article 9 and Article 2 Protocol 1 protections. While these cannot be dismissed, parents do not enjoy an absolute right to a specific type of state education which conforms to their religious beliefs. The right to have these beliefs respected is balanced against the children’s right to access a full broad and balanced education and the advantages it conveys. However, the assessment is right to acknowledge that these rights are potentially breached “if a school fails to provide pluralistic education in these subject areas” and that “there is some risk that they may in practice be delivered in a way which in some respects does not meet that requirement”. We do not believe that the current pluralistic requirement goes far enough to ensure (particularly in faith schools) that the right to withdraw can be ended without raising considerable Article 9 and Article 2 Protocol 1 concerns.
16. We believe that time is needed to allow a cultural change within the RE/RW community for any pluralistic requirement to fully bed in, rather than simply be an ambition at best or a platitude at worst. Pluralism is a step forward, but it doesn’t solve every problem. Over the last three quarters of a century RE has evolved from being an area of the curriculum for promoting a specific view of Christianity, to a subject which promotes a positive view of the major religions. While Humanism is increasingly included to represent the vast diversity of secular thought and worldviews, these changes fundamentally don’t change the way in which organised religion remains privileged.
17. While the proposed curriculum reforms go some way to addressing conscious bias within RE/RW, subconscious bias remains unaddressed. There remains what could be conceptualised as a cultural or subconscious bias within the RE community.

² [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-197254%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-197254%22]})

18. We draw attention to “Bad Religion as False Religion: An Empirical Study of UK Religious Education Teachers’ Essentialist Religious Discourse” a 2018 article in the journal *Religions*.³ A survey of 465 RE teachers across the UK found that 60% “absolutely agree” that “religion should be taught in a positive way in RE”. Six per cent did not agree, with the remainder “moderately” (16%), “somewhat” (13%) or “slightly” (five per cent) agreeing. While almost all RE teachers strive to present at least somewhat nuanced view of religion worldviews taking into account positive and negative manifestations, this often in a paradigm where positive manifestations are framed as a “true” religion and negative manifestations as “false” or “distorted”. Negative views of religion are often presumed to be primarily based on ignorance or lack of religious literacy. When invited to give further detail, the teachers in the survey frequently stressed the importance of presenting positive manifestations of religion as more authentic, in order to “counteract prejudices”. Even where respondents stressed the importance of critical accounts, their written responses often framed this as a critical examination of the positives of “real” religion and the negatives of “distorted” religion.
19. This phenomenon is likely to particularly be exacerbated in faith schools where there is already an institutional bias towards a positive view of (a) religion, and where many teachers are selected in part on grounds of their personal religion or belief.
20. We also take issue with the quality impact assessments conception of nonreligious and religious minorities, for example:
- “Based on the evidence we have been able to gather, it will be a particular issue for Jehovah’s Witnesses and humanists. We have not identified any other groups significantly affected by a decision to not include the right to withdraw for RE...”*
21. This is not the first time in this consultation process that humanism/humanist has been used as synonymous with nonreligious. This reflects a poor understanding of the modern nonreligious landscape and abridges the right of self-identification for the nonreligious majority, very few of whom identify as humanist. This is also reflected in the continuing use of the outdated conception of “nonreligious views that are analogous to religious views”, which frames religious worldviews as default and in practice leads to widely varied nonreligious being reduced to simply “humanism”.

Relationships and sexuality education (RSE)

22. We do not support a parental right of withdrawal from the new RSE curriculum. Parents should not be supported to shield children from education which promotes their health and wellbeing. 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.

³ <https://www.mdpi.com/2077-1444/9/11/361>

23. While RSE and its predecessor subjects has at times been used to advance particular usually heteronormative and often discriminatory worldviews, this is not analogous to the confessional genesis of RE/RW. We agree with the Welsh government that in general such concerns are best addressed by challenging such bad practice rather than a right to withdraw. This is not to dismiss or devalue the stigmatisation suffered where faith-based RSE is used to advance discriminatory messages.⁴
24. It is possible that through RSE children are exposed to information and ideas which conflict with their parents' religious convictions. In such cases Articles 9 and Article 2 Protocol 1 are engaged. However, these rights are not unlimited and are weighed against the significant interests in ensuring pupils' interests in receiving a comprehensive rights-based education.
25. 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".

Question 2 – What support, information and guidance would be needed if this approach was adopted?

Religious education (RE/RW)

26. Our understanding had been that the Welsh government intended to address concerns over the management of the right to withdraw through improved guidance. This remains our preferred outcome. However, any restriction or revocation of the right to withdraw must be accompanied by guidance and support for schools.
27. In our response to the March 2019 consultation on the legislative framework for the new curriculum, we set out some of our concerns with the current guidance and how it might be improved following broad consultation.⁵
28. Many organisations already provide advice and support for schools on this topic. For example, we drew to attention that from the Wales Association of SACREs, which is in large part practical, clear and effective.⁶ However, it is problematic that such guidance is in most cases produced by those opposed to the exercise of the right to withdraw. As a consequence, consideration is rarely given to parents having legitimate concerns. Such guides typically assume bad faith, prejudice or ignorance on behalf of parents wishing to withdraw their children. We are not aware of any organisations which campaigns for withdraw from RE/RW. However, several organisations offer guidance and support for those who feel they need to exercise this right.
29. If the right is retained then new guidance should provide practical information on addressing misconceptions or prejudices, while not dismissing the possibility of legitimate concerns which might lead to an exercise of withdrawal. If the right is removed, then guidance should provide support for parents in raising concerns.

⁴ <https://www.secularism.org.uk/uploads/unsafe-sex-education-welsh-faith-schools-may-2018.pdf>

⁵ <https://www.secularism.org.uk/uploads/a-transformational-curriculum-proposals-for-a-new-legislative-framework---nss-response.pdf> paragraphs 34 to 36.

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

30. Absent a legal right to withdraw, individual schools may still wish to make individual judgements around accommodating requests for partial withdrawal. Schools will need support dealing with such requests and we would not expect these to be routinely granted. However, there may be extraordinary circumstances e.g. where a child or parent may be a victim of religious trauma. Guidance should ensure this is done in a careful and consistent way, and should never result in a detriment to a pupil's education.
31. Guidance should cover managing concerns around withdrawal from other activities related to RE/RW. For example, external visitors and school trips can enrich delivery of the subject. However, without appropriate boundaries being made clear, parents can understandably be concerned when elements of RE/RW are delivered not by a trained teacher by an external organisation, particularly those with an evangelical purpose. For this reason, guidance should make clear that parents retain the right not to consent to their children participating in such activities.
32. All schools should have an external visitors' policy informed by this guidance which ensures adequate safeguards for balance and against inappropriate proselytisation. Guidance should support the development of best practice policies. Our experience is that parents' largest concern is a lack of communication about the presence and purpose of external speakers for RE/RW. However, our 2016 research covering 300 schools in England found that only 35% of schools had a policy or policies which covered the participation, invitation or behaviour of external groups/visitors/speakers, and only 16% of schools had a policy or policies concerning the partisan promotion of religious or political beliefs by external groups/visitors/speakers.⁷

Relationships and sexuality education (RSE)

33. Guidance should set out a process for parents raising concerns and how schools should address these where legitimate. Schools would benefit from practical guidance including best practice and guides on how to respond to queries and potential misconceptions surrounding RSE and how to clearly communicate with parents.
34. The introduction of statutory RSE in England has unfortunately led to high profile campaigns over the last year coordinated largely by conservative religious opponents to RSE, with a particular focus on anti-LGBT rhetoric and encouraging parents to withdraw. While thankfully there has not been similar disruption in Wales, the government should remain alive to this possibility, and be prepared to bring out additional guidance if necessary. It is important to robustly address misinformation and ensure that any such campaigns do not undermine the welfare of pupils or teachers.⁸

⁷ <https://www.secularism.org.uk/evangelism-in-schools/>

⁸ <https://www.secularism.org.uk/opinion/2019/10/anti-rse-campaigns-guidance-is-welcome-but-schools-need-more-support>

Question 3 – Our proposal is that parents/carers should not be able to prevent their child from having RE or RSE lessons. This will be rolled out from September 2022, for all primary age learners and learners in Year 7 in secondary school (with additional year groups being added each year). Should the ability of parents/carers to prevent their child from receiving RE and RSE lessons also be stopped under the old curriculum from September 2022? (This would only have implications for learners in Years 8–11 in 2022, Years 9–11 in 2023, and so on.)

35. Absolutely not. The argument (which we seriously question above) for ending the right to withdraw from RE/RW is that the new curriculum negates the need for this right. Therefore, we can see no justification for ending the right where pupils continue to receive the old curriculum.
36. In RSE, we believe the balance of harm favours ending the right to withdraw sooner as there are far less compelling grounds for retaining it and RSE plays an important direct role in safeguarding.
37. We would welcome greater guidance for schools in managing the right to withdraw during the interim.

Question 4 – What is an appropriate name for ‘religious education’, to accurately reflect the broader scope proposed in the new curriculum?

38. While we do not wish to overstate the importance of a name change, it would be an opportunity to reflect the idea of the fresh start and renewal for a maligned subject. “Religion and worldviews” is endorsed by the Commission on Religious Education and we believe it would be an appropriate subject name, reflecting a move towards a parity of esteem for nonreligious majority.
39. However, we would prefer simply “Worldviews” as the proposed formulation continues to place religion as the default and nonreligious worldviews as an addition or afterthought. It is incongruous to elevate a subset (religion) to parity or pre-eminence over the set (worldviews). An analogy as the professor of philosophy AC Grayling has pointed out would be something like “tomato growing and agriculture”, one could also point to “running and sport”, “drawing and art” etc. Religious worldviews should not be treated as inherently exceptional.
40. It is unfortunate to see such an assumption of religious superiority in the reaction of some including the Catholic Education Service to the proposed name change, claiming that the inclusion of nonreligious worldviews will “dumb down” or “water down” the subject.⁹
41. If the right to withdraw ends, and subject to adequate safeguards, schools should have flexibility for how the worldviews content is delivered and whether it is a distinct subject or integrated into their Humanities AoLE.
42. Whilst we welcome the broader scope proposed in the new curriculum as a positive development, we are ultimately disappointed that the opportunity has not been seized to fundamentally rethink the way worldviews are covered in schools.

⁹ <https://twitter.com/CathEdService/status/1188792371871469569> | <http://www.catholiceducation.org.uk/component/k2/item/1003676-protecting-the-rights-of-welsh-parents>

Question 7 – 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.

43. We believe that ending the right to withdraw from RE/RW at this time is misguided, and - particularly in faith schools where the subject is used to advance a religious ethos - opens the door to potential legal challenge. As a minimum the right must be retained in schools with a religious character.
44. We believe it would be better to move forward cautiously, following a thorough assessment of the evidence regarding the use of the right to withdraw. We note the lack of any quantitative evidence supplied with this consultation. Even if the new curriculum genuinely negates concerns over lingering confessionalism within RE/RW, it would take time for such cultural and organisational changes to bed in. A wait of three to five years would allow a more accurate assessment of how the subject will have changed and whether the right remains necessary.
45. As is acknowledged, the current evidence on the right to withdraw is largely anecdotal due to a lack of data and relatively small numbers of pupils withdrawn. We don't know how many people are fully or partially withdrawn or for what reasons; which may range from concerns over the whole subject to specific forms or content, to prejudice or simply seeing the subject as low value.
46. Given the obstacles we often see faith schools place to parents wishing to exercise their right to withdraw and the fears of repercussions and social consequences (not to mention a lack of information on the right being provided) we don't know if the actual numbers withdrawing represent those who have concerns over RE.
47. We are concerned that ending the right to withdraw from RE/RW opens the door to challenges against the right to withdraw from collective worship. This concern could be addressed by ending the requirements on schools in Wales to hold daily acts of (usually) broadly Christian worship. We would like to see a new duty on schools to ensure that all aspects of the school day are inclusive for pupils from all faith and belief backgrounds, which would facilitate a move towards inclusive assemblies with no directed worship element. In the meantime, there should be no weakening of the right to withdraw from collective worship. Indeed, this right should be advanced to pupils of sufficient maturity as recommended by the UNCRC and the JCHR.