

# Briefing: HSS Judicial Review of Scottish Government's Policy on Religious Observance

In the last year there have been many interventions which have an impact of the current Scottish Government policy on Religious Observance. Despite many years of campaigning, and significant developments in terms of education policy, children's rights and the development of human rights jurisprudence across Europe, the Scottish Government's policy on RO remains badly unreformed.

## Background

Religious Observance is required to take place in all Scottish schools at least 6 times per year. The Original Requirement came from the 1872 Education Act, and was continued by the Education Act of 1980. Although a parental opt-out has always been available, the Scottish Government have never introduced the right to opt-out for young people.

## Timeline

### November 2015

The Arts and Humanities Research Council released a report titled *Collective Worship and Religious Observance in Schools: An Evaluation of Law and Policy in the UK*. This report called specifically on the Scottish Government to make changes to religious observance.

### December 2015

The Commission on Religion and Belief in British Public Life published its report *Living with Difference: Community, Diversity and the Common Good*, which again called on the Scottish Government to make changes to their policy on religious observance.

### February 2016

The report which HSS funded, *Religion in Scots Law: Report of an Audit at the University of Glasgow*, also highlighted the need for parental withdrawal from religious observance in Scotland.

### March 2016

At a meeting with Scottish Government education officials on 2 March 2016 HSS raised this inconsistency between England and Wales, and Scotland. This meeting was followed up by a letter on 10 March 2016 from HSS with a formal request that the Scottish Government review their policy.

### June 2016

The United Nations Committee on the Rights of the Child issued its fifth periodic review of the UK. In the report they specifically highlight the fact that children in Scotland are not able to legally withdraw from religious observance, as being incompatible with Articles 12 and 14 of the UNCRC.

### June 2016

HSS received an official response from the Scottish Government, in which they confirm that "*There is no [...] statutory right to withdraw afforded to children and young people.*" and they have no intention to change the policy.

## FAQs

- **What age do you want young people to be able choose to opt-out of RO?**

We don't have a firm view and believe it should be up to the Courts and the Scottish Government to decide. However the *Gillick* case<sup>1</sup> established 13 as a reasonable age for young people to make important medical decisions, and 16 years olds in Scotland are able to vote, so these would seem to be reasonable ages at which a young person could decide.

- **What about Denominational/Catholic schools?**

The law and policy which regulates RO is the same in all schools. It is the case currently that some parents of children in denominational schools choose to opt their children out of RO.

- **For young people who opt-out, what should they do instead?**

The Scottish Government guidance currently states that young people should have a 'worthwhile alternative'. We believe that schools should continue to provide this worthwhile alternative to pupils who choose to opt out of RO.

- **Why should young people be able to opt-out of RO, but not other areas of the curriculum?**

RO is different from all other areas of the school curriculum, in that it includes confessional activities. There has been a parental right to opt-out for nearly 150 years, we simply want to extend this right to young people.

- **Does the ECHR not guarantee a parent's right to have their children educated in conformity with their own religious views?**

The ECHR (First Protocol, Article 2, P1A2) says that "...the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." However, the ECtHR has held that this right does not necessarily place a duty on the State. In *Norway v Folgero*<sup>2</sup> the Court reiterated the need to avoid indoctrination, and ensure all education was conveyed in an objective, critical and pluralistic manner.

- **Aren't you just making more work for teachers?**

Parents already have the right to withdraw their children from RO, all we are seeking to do is extend that right to young people themselves. Teachers and local authorities are already required to make plans for parents who opt their children out, this should not be any different.

- **When the Churches handed over their schools to the State in 1872, didn't they make a deal to keep them Christian?**

It's true that many schools were handed over from Churches to the state in 1872. In many cases Churches were struggling to manage them, and lots had been funded by local parish taxes before.

Gary McLelland | Head of Communications and Public Affairs  
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<sup>1</sup> <http://www.bailii.org/uk/cases/UKHL/1985/7.html>

<sup>2</sup> 15472/02, [2007] ECHR 546, [2011] ECHR 2148, [2011] ECHR 2189