Humanist Society Scotland

For an ethical future

[Consultation response] Proposals to amend the legislation on religious observance and religious education in schools

January 2025

Question 1: What are your views on the proposed changes, including in terms of practicality for schools and ease of implementation?

Humanist Society Scotland welcomes the opportunity to comment on the government's proposal to amend legislation on religious observance and religious education. Our organisation has a longstanding interest in the current opt-out provisions for religious observance and their compatibility with the UN Convention on the Rights of the Child (UNCRC). In response to a legal challenge brought by Humanist Society Scotland, Scottish ministers produced revised guidance on religious observance in 2017 which strengthened the focus on young peoples' views. Nearly eight years on, we're pleased that the Scottish Government has recognised the need for legislative reform in this area. However, as we will set out in our response, the proposed changes will not achieve the government's stated aim of UNCRC compliance.

NOTE: *Our response will focus on the provision of religious observance, which should not be conflated with religious education (RME). If delivered inclusively, in line with the national curriculum experiences and outcomes and without favouring any one faith, RME is an important part of the school curriculum that helps children understand the diversity of faiths, beliefs and perspectives around them. We do not favour an approach that allows withdrawal from RME. By contrast, the legal requirement for religious observance is predominantly delivered by Christian clergy with a focus on proselytising rather than teaching.*

The 2022 census found that over 60% of school-aged children in Scotland now identify as non-religious, with more pupils identifying as Muslim, Sikh, and Hindu than ever before[1]. In an increasingly secular and religiously diverse nation, it is critically important that children and young people of all faiths and none have their views, beliefs, and choices respected at school. Children and young people should be empowered to share their views on religious observance and those views should be taken seriously. In practice, pupils seeking to withdraw from religious observance must have their wishes respected. In line with UN recommendations, **children (including those under 16) must be allowed to opt out of religious observance**.

Section 9 of the Education (Scotland) Act 1980 gives a parent or guardian the right to withdraw their child from religious observance. No equivalent right is afforded to pupils themselves, making religious observance a *de facto* compulsory activity if children take a different view from their parent(s). This arrangement makes a number of problematic assumptions. Firstly, it assumes that school pupils, no matter their age, maturity or personal beliefs, do not have the capacity to make decisions on attending religious observance. Secondly, it assumes that parents and their children will always share the same belief systems. Thirdly, it sends the strong message that parents are entitled to dictate their child's thoughts, beliefs, and ideas.

In denying school pupils the right to take a decision on matters that affect them, existing opt-out provisions appear inconsistent with other areas of Scots law. 16-year-olds in Scotland have full legal capacity and the right to vote, gain employment, and leave school without the consent of their parents. Yet they can't choose to opt out of religious worship at school. Furthermore, the current approach fails to recognise children's evolving capacities and the "increasing level of responsibility for the regulation of matters affecting them"[2] that children are entitled to as they develop and grow.

Ministers propose to amend Section 9 of the 1980 act to "require due weight to be given to the pupil's views when parents are exercising their right to withdraw their child from RO/RME". The consultation paper states that this amendment would "effectively bring

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[1] https://www.scotlandscensus.gov.uk/2022-results/scotland-s-census-2022-ethnic-group-national-identity-language-and-religion/

[2] https://www.refworld.org/legal/general/crc/2009/en/70207

a key principle of existing guidance into law" and, in doing so, "put the position in relation to UNCRC compliance beyond doubt".

The guidance concerned was issued in 2017 and included a new provision that asks schools to "include children and young people in any discussions about aspects of their school experience, ensuring their views are taken into account"[3]. At the time, the Scottish Government stated that the revisions did not reflect a legislative or policy change, but rather clarified the existing position. Humanist Society Scotland welcomed the refreshed guidance and considered the improved focus on pupils' views to be "a step in the right direction". However, we were clear that pupils must be able to independently withdraw from religious observance[4]. Retaining the parent opt-out did not go far enough to ensure compliance with UNCRC requirements. Young people were given a voice, but they weren't given a choice.

Humanist Society Scotland has several concerns in relation to this proposal and whether it meets its stated aim:

Firstly, the wording of the amendment is unclear. The current guidance on religious observance asserts that pupils should be involved in any discussions about their school experience, and for those views to be taken into account. However, the amendment's wording suggests that a statutory duty on schools to consider pupils' views would only apply when a parent was seeking to withdraw their child from religious observance. As a minimum, the government should ensure that the legal requirement to take pupils' views into account applies in all circumstances, whether a parent is choosing to exercise their withdrawal rights or not. Ministers must also produce clear and robust guidance to support discussions on religious observance in all schools.

Secondly, the amendment would not alter existing opt-out provisions. The law would require that school pupils have an opportunity (seemingly under very specific circumstances) to voice their opinions on religious observance. But the final decision on their attendance would still ultimately rest with parents. As is the case today, no school would be compelled to adapt their religious observance provision in response to pupil feedback. We therefore share the government's own assessment that it doesn't expect

[3] https://www.gov.scot/publications/curriculum-for-excellence-religious-observance/

[4] https://www.togetherscotland.org.uk/news-and-events/news/2017/04/revised-religious-observance-guidance-for-schools-falls-short-of-un-recommendation/

“significant practical impacts” arising from this amendment. Indeed, the proposal would have no effect other than to reassert the status quo in legislation. Several key stakeholders, including Together Scotland, the Children and Young People’s Commissioner Scotland, and the UN Committee for the Rights of the Child, have stated that the current opt-out provision is incompatible with children’s rights under the UNCRC. While the requirement to provide religious observance remains in its current form, no solution short of extending the right of withdrawal to pupils would support alignment with the UNCRC (see answer to question 4).

Practicalities of implementing a pupil opt-out

When considering how best to fulfill and respect children’s rights, ease of implementation should never be an overriding consideration for decision-makers. Nevertheless, we acknowledge that the approach to delivering a pupil opt-out will differ depending on pupils’ age and maturity, as well as the ethos of the school they attend. However, we are also clear that the legislation must apply in all state-funded schools, irrespective of educational stage or religious ethos. This is in line with UNCRC Article 2, which stipulates that the convention applies to every child without discrimination.

In a 2017 submission to the Scottish government, the Educational Institute of Scotland (EIS) supported pupils having the independent right to withdraw from religious observance “at a suitable point in their development (probably around the age of 12)”. They also acknowledged that some pupils will seek to exercise this right at an earlier age, and that this right must be recognised[5].

In line with the views of the teaching profession, we believe that all secondary-aged pupils should have an automatic right to withdraw from religious observance. Given the secular and religiously-diverse profile of Scotland’s school-age population, Ministers may wish to consider making religious observance an opt-in activity for secondary school pupils. This was suggested by the Children and Young Peoples’ Commissioner Scotland, who proposed a review to consider whether religious observance should be offered at all in non-denominational schools, or as an exclusively opt-in activity.

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5 https://www.eis.org.uk/Content/Images/Education/Policies/Religious%20Observance%20guidance%20-%20Feb%202017.Pdf

In primary schools, we recognise the need for a more holistic approach by which children are empowered to share their views on religious observance, with particular focus paid to pupils' evolving capacities, maturity, and personal beliefs. Primary-age pupils who are deemed to have reached a suitable point in their development must be allowed to exercise their right to opt out of religious observance. It is worth highlighting here that teachers are routinely assessing and responding to pupils' evolving capacities.

<u>Question 2:</u> What do you anticipate being the main positive and negative implications of these changes, including for schools, pupils, parents and any financial implications? How might any negative implications best be addressed?

Positive Implications

We support the principle of embedding children's right to have their views heard in legislation, no matter the issue at hand. The fact remains, however, that existing non-statutory guidance already instructs schools to consider pupils' views on the provision of religious observance. Whilst the right to withdraw from religious observance remains reserved to parents, the positive implications of this proposal for young people will be extremely limited.

Negative Implications

In many cases, the views of school pupils would continue to be ignored if they did not align with those of their parent/guardian and their school. Children and young people's decision-making capacity would continue to be undermined. Problematic assumptions regarding unity of belief within families and the scope of parental responsibilities would persist (see answer to question 1).

How might any negative implications best be addressed?

By following the advice of the UN Committee on the Rights of the Child and allowing school pupils (including those under 16) to independently withdraw from religious observance.

<u>Question 3:</u> What insights or experiences do you have regarding how the right to withdraw from religious observance and RME/RE currently works in schools, including how schools communicate with parents, the pupil's voice and the practical application of the withdrawal process?

It appears that the Scottish government has brought forward this proposal with little awareness of how religious observance is operating in schools, the extent to which individual schools' provision is informed by the non-statutory guidance, or how opt-out provisions currently work in practice. In addition to this consultation, we hope the government engages extensively with schools and hears directly from pupils on their experience of religious observance. Any such engagement must allow pupils to express their views openly and candidly, free from external influence or pressure.

Our organisation is regularly approached by parents seeking advice on how to navigate the opt-out process at their children's schools. A number of non-religious parents have reported facing resistance and undue scrutiny from school leadership when seeking to withdraw their children from religious observance. Parents tell us that school leaders often fail to understand why they wouldn't want their children to attend religious worship. It is a common perception that those who identify with a humanist philosophy 'don't believe in anything' and are simply making trouble by refusing to participate in religious worship. Parents tell us their families often found these experiences distressing and stigmatising.

The current legislation stipulates that meaningful alternatives must be provided for children whose parents have opted them out of religious observance. However, we know of many cases where pupils are left to do homework and 'babysat' by teachers or administrative staff while their classmates attend religious worship. It is highly debatable whether such practice could be considered a meaningful alternative. In one extreme example, one parent we spoke to was informed they would have to take their child out of primary school while religious observance took place, as there were no teachers available to supervise them. In this case, the school was clearly acting unlawfully by refusing to provide any alternative.

In highlighting these examples, we are also keen to stress that **the decision to withdraw from religious observance should be for pupils themselves to make**. While parents will naturally have more involvement in the early years of education, children will form their own beliefs and perspectives as they grow up. That is their fundamental right and should be respected by both parents and school authorities with regards to religious observance.

<u>Question 4:</u> Do you think the proposed changes offer a reasonable way forward at this time to address questions about UNCRC compliance?

No.

In our assessment, the existing opt-out provision does not fully align with the UNCRC and must be extended to school pupils. The current guidance on religious observance - while recognising the need to consider pupils' views - is constrained by the legislation that prohibits pupils from independently withdrawing. By amending the legislation to better reflect the non-statutory guidance without also extending the opt-out provision, the proposed changes fail to address questions about UNCRC compliance. We are concerned that the proposed amendment fails to align with the following rights:

- **Article 12** specifies children's right to express their views, feelings, and wishes on everything that affects them, and for that to be taken seriously. The amendment would place a statutory duty on schools to consider pupils' views on attending religious observance, but those views could still ultimately be ignored by teachers and parents. As is the case today, young people would have a voice, but no real choice.
- **Article 14** specifies that children have the right to think and believe what they choose, and are free to adhere to any or no religion. And while parents' role in guiding their children's beliefs is recognised by the UNCRC (Article 5), neither parents nor teachers can force a child to adopt a religion or, in this case, engage in religious worship at school.
- It is also worth highlighting that parental rights and responsibilities enshrined under **Article 5** must be exercised in a manner consistent with children's evolving capacities. The blanket ban on allowing school pupils to decide for themselves whether to attend religious observance - no matter their age, maturity, or personal beliefs - is in direct contravention with this principle.

Several children's rights stakeholders have reached a similar conclusion. The United Nations Committee on the Rights of the Child has twice called for the end of compulsory collective worship in state-funded schools in Scotland. In its 2016 General Comment on the rights of the child during adolescence, the committee clearly articulated that it is *pupils* who must have the final say over participating in acts of religious worship:

> It is the child who exercises the right to freedom of religion, not the parent, and the parental role necessarily diminishes as the child acquires an increasingly active role in exercising choice throughout adolescence. Freedom of religion should be respected in schools and other institutions, including with regard to choice over attendance in religious instruction classes, and discrimination on the grounds of religious beliefs should be prohibited.[6]

And in its 2023 concluding observations on the state of children's rights, the committee again urged the Scottish Government and its UK counterparts to:

> Repeal legal provisions for compulsory attendance in collective worship and establish statutory guidance to ensure the right of all children, including children under 16 years of age, to withdraw from religious classes without parental consent[7].

Together (Scottish Alliance for Children's Rights), has recommended a pupil opt-out right from religious observance in five of its last six reports[8] on the state of children's rights in Scotland. The Children and Young People's Commissioner Scotland has also come out in support of a pupil opt-out[9]. In setting out their position, the commissioner highlighted the incompatibility of current practice with the UNCRC and proposed a broader review of religious observance in schools. If the Government believes that this proposal will put beyond doubt their compliance with the UNCRC, they must directly address the concerns raised by these organisations and provide a clear justification for their position.

<u>Question 5:</u> What mechanisms do you think would be most effective for ensuring that schools and parents give due weight to pupils' views when considering withdrawal from religious observance or RME/RE?

As stated in our previous answers, the most effective way of ensuring pupils' views are given due weight is to give them the independent right to withdraw from religious observance. A parent opt-out does not go far enough to ensure pupils' views and beliefs are fully respected in every case.

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[6] https://documents.un.org/doc/undoc/gen/g16/404/44/pdf/g1640444.pdf
[7] https://documents.un.org/doc/undoc/gen/g23/112/77/pdf/g2311277.pdf
[8] https://www.togetherscotland.org.uk/resources-and-networks/state-of-childrens-rights-reports
[9] https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/Religious-Observation.pdf

Question 6: **As part of our work to bring forward amendments to legislation, we will finalise a Children's Rights and Wellbeing Impact Assessment, and an Equality Impact Assessment. To help inform this work, we would welcome your views on the impact of our proposals on children's rights and equalities, as well as any related evidence/research you may be aware of.**

Please see our response to questions 1, 2 and 4.

For more information, please contact Joe Higgins, Policy and Campaigns Officer, at joe@humanism.scot.

Humanist Society Scotland
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Registered address: Humanist Society Scotland, 3 Castle Court, Carnegie Campus, Dunfermline, KY11 8PB

Visit: www.humanism.scot