

Kirsty Williams AS/MS
Y Gweinidog Addysg
Minister for Education



Llywodraeth Cymru
Welsh Government

Lynne Neagle MS
Chair of Children, Young People and Education Committee

12/08/2020

Dear Lynne,

Thank you for your letter dated 21 July 2020 with some further questions on Religion, Values and Ethics (RVE) and Relationships and Sexuality Education (RSE).

My response to the questions raised are as follows:

Q1. The Bill makes no provision for parents to be able to withdraw their children from RVE or RSE. Are you satisfied that this is compatible with parents' rights to respect for their religious and philosophical convictions under Article 2 Protocol 1 (right to education) and their right to freedom of thought, conscience and religion under Article 9 of the European Convention on Human Rights?

This is a complex area in the Bill and so I have set out below a summary of what each category of school is obliged to do in the new Bill in respect of RVE.

Community schools, and foundation and voluntary schools without a religious character

- There is no right to withdraw from RVE
- RVE must be designed and taught having regard to the agreed syllabus
- RVE must be designed and taught having regard to Welsh Ministers statutory guidance

Foundation and voluntary controlled schools that have a religious character:

- There is no right to withdraw from RVE
- The curriculum must provide for:
 - RVE which has been designed having regard to the agreed syllabus

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

- RVE to be taught in accordance with the trust deeds of the school or the tenets of the faith of the school (“Denominational RVE”);
- RVE must be designed and taught having regard to Welsh Ministers’ statutory guidance
- The default position is for learners to receive RVE which has been designed having regard to the agreed syllabus (so, even though the curriculum makes provision for both Denominational RVE and RVE in accordance with the agreed syllabus, the default position is that only RVE in accordance with agreed syllabus is taught)
- If parents request it, Denominational RVE can be provided. This is not a right to withdraw from RVE.

Voluntary aided schools that have a religious character:

- There is no right to withdraw from RVE
- RVE must be designed and taught having regard to Welsh Ministers’ statutory guidance
- The curriculum must provide for:
 - RVE in accordance with the trust deeds of the school or the tenets of the faith of the school
 - RVE which has been designed in accordance with the agreed syllabus
- The default position is for learners to receive Denominational RVE. The curriculum makes provision for both RVE in accordance with the agreed syllabus and Denominational RVE, but the default is that only Denominational RVE is taught unless a parent requests RVE in accordance with the agreed syllabus
- If a parent requests it, RVE must be provided for their child or children, that accords with the agreed syllabus only.

The Bill provisions ensure that RVE is mandatory and that all children in all schools have access to pluralistic RVE.

The Bill then ensures that all children have the right of access to a pluralistic RVE if that is wanted. By pluralistic we mean it does not seek to indoctrinate. In doing that the Bill recognises the role of schools with a religious character in the provision of state education.

The Welsh Government recognises that historically the state has embraced various faiths into the provision of education. In drafting the Bill Welsh Government have endeavoured to respect this, and to balance parents’ existing right in the Welsh and indeed UK school system to choose a religious education for their child with a recognition that it will not be appropriate for all pupils who attend such schools.

In respect of voluntary aided schools with a religious character their default under Schedule 19 of the School Standards and Framework Act 1998 is that they teach the Denominational RVE i.e. according to their trusts or tenets of their religion. It is possible that those schools are required by their trust deed to provide education in a particular way which may not be pluralistic. In respect of foundation and Voluntary Controlled faith schools Schedule 19 to the 1998 Act provides that they must teach the agreed syllabus unless a parent requests the denominational RVE be provided. The Welsh Government does not see those trust deeds and so we cannot be certain on that point. In light of that the Bill provides that if a parent does not want that denominational RVE they can require the school to provide the agreed syllabus RVE. These provisions would apply to all voluntary aided schools with a religious character irrespective of what the faith of that school was. The School Standards and Organisation (Wales) Act 2013 allows for new schools of other faiths to be established.

As noted above the Bill requires that all pupils receive RVE. The Bill also ensures that all pupils will be able to have the agreed syllabus/es RVE. In doing that the Bill recognises the role of schools with a religious character in the provision of state education.

The Bill seeks to preserve the current position described above and set out in Schedule 19 to the 1998 Act. However, in order to secure that each learner has access to pluralistic RVE in Voluntary Aided faith schools parents of learners can request agreed syllabus RVE. Likewise we recognise that parents who send their children to a foundation or Voluntary Controlled faith school may wish to have their child receive denominational RVE. In that way every learner has access to the agreed syllabus RVE which will be pluralistic in nature.

Therefore, we are satisfied that the Bill provisions are compatible with the rights protected by the Human Rights Act 1998, including A2P1 and Article 9.

Q2 .What safeguards exist within the Bill (or more widely) to seek to ensure that both the RVE and RSE curricula are designed and delivered in a way that is objective, critical and pluralistic?

The Welsh Government agrees that it is important to ensure that the approach and teaching is pluralistic, and particularly so where it is mandatory. The Bill contains a number of provisions that designed to ensure pluralistic RVE and RSE and these are summarised below:

RVE

The Bill makes provision in a number of respects which is designed to secure the pluralistic content and teaching of RVE. These are as follows:

Re-naming of religious education to Religion, Ethics and Values (RVE):

The purpose of the change in name is to reflect the expanded scope of religious education (RVE) and to ensure that it was clear from the legislation itself that the new subject should include non-religious views. That was done by linking the Bill provision to the term “philosophical convictions” in A2P1 (see section 62 of the Bill). In other words the RVE provided pursuant to the Bill must be compatible with A2P1 in that it must include teaching on non-religious philosophical convictions. The term philosophical convictions has within the meaning of A2P1. We consider that religious philosophical convictions would amount in any event to a religion. The Bill also amends the Education Act 1996 (see Schedule 2 of the Bill) to insert references where appropriate to philosophical convictions into the provisions dealing with religious education in the Education Act 1996. Please see the following:

- inserts a new section 375A of the 1996 Act (provision about the agreed syllabus) which requires that the agreed syllabus must reflect a range of non-religious philosophical convictions are held in Great Britain. As with section 62 of the Bill the term is defined in reference to A2P1;
- amends section 390 of the 1996 Act (constitution of Agreed Syllabus Conferences) including reference to philosophical convictions as defined above;
- amends section 392 of the 1996 Act (supplementary provision on the constitution of Agreed Syllabus Conferences) including reference to philosophical convictions as defined above.
- amends Schedule 31 of the 1996 Act (provision in respect of the type of RVE that must be provided at each category of school) including reference to philosophical convictions as defined above.

You will also note section 62(5) of the Bill which specifically requires that governing bodies must exercise their functions with a view to ensuring that RVE is provided in accordance with section 62 of the Bill.

Agreed Syllabus Conferences (ASCs):

Whilst the Government has chosen to retain ASCs, the Bill amends the constitution of ASCs so as to require a local authority to include in its ASC, a group of persons to represent such non-religious philosophical convictions as, in the opinion of the authority, ought to be represented. This reflects current guidance issued by Welsh Ministers to local authorities and ASCs. That guidance was revised following a legal challenge to the Vale of Glamorgan Council in 2017. The Vale of Glamorgan Council was challenged by way of judicial review in respect of its refusal to appoint a person with non-religious beliefs to Group A of its SACRE. It was a challenge to the Council's decision to refuse 'full' membership (i.e. membership with a right to take part in a group vote) of the SACRE to a Humanist representative on the basis that Humanism is not a religion. Subsequently the Council decided to retake its decision and the case did not proceed to a full hearing. The Minister for Education wrote to each local authority stating the following:

- a. "to ensure compatibility with the Human Rights Act 1998 the provisions relating to the constitution of SACRES and ASCs in the 1996 Act are to be interpreted as permitting the appointment of persons who represent holders of non-religious beliefs in the same way as they permit the appointment of persons who represent holders of religious beliefs; (section 390(4)(a) of, and paragraph 4(2)(1) of Schedule 31 to, the 1996 Act). However, we consider the non-religious beliefs adhered to by the person to be appointed must be analogous to a religious belief, such as humanism. To be "analogous" we consider the non-religious beliefs must in accordance with case law under the European Convention of Human Rights and the Human Rights Act 1998 attain the necessary level of cogency, seriousness, cohesion and importance to attract protection under the Convention Rights;
- b. an appointment is dependent on the relevant local authority's opinion as to whether such a representative would help ensure that the relevant traditions in the local authority's area are appropriately reflected in Group A. The final decision of an appointment rests with the local authority, and they are best placed to assess whether a SACRE has the necessary expertise and experience to properly discharge its function.
- c. The same principle applies in relation to appointments to Agreed Syllabus Conferences (ASCs)."

An ASC may not recommend to its local authority the adoption of an agreed syllabus unless it meets the requirements of the Bill including that in section 62 that the agreed syllabus must reflect a range of non-religious philosophical convictions as held in Great Britain. As with section 62 of the Bill the term is defined in reference to A2P1. Therefore unless the agreed syllabus included philosophical convictions as defined by A2P1 it could not adopt the recommended agreed syllabus.

A copy of this correspondence is attached for your information and ease of reference.

Relationships and Sexuality Education (RSE)

In terms of RSE the Bill also makes provision in a number of respects which is designed to secure the pluralistic content and teaching of RVE. These are as follows.

Change of name:

The Bill provides for a change in the current name in legislation from sex education to RSE. This indicates the breadth of the subject and concepts that should be included.

Statutory Code on RSE:

The Bill requires the Welsh Ministers to publish a code setting out the core learning to be undertaken in RSE. This means areas that must be covered by schools and funded non-maintained settings in the teaching and learning for this specific mandatory element. This will be to set out matters that must be covered and how that should be covered. A statutory code on RSE is an exceptional approach to reflect the important cultural, moral and ethical issues inherent in the teaching of RSE, within a curriculum which largely seeks to be non-prescriptive. Case law, and the European convention on Human rights, requires that pluralistic RSE must be available for all learners¹.

Developmentally appropriate:

The Bill will also include express provision that the RSE provided will be developmentally appropriate

Q3. Why does the Bill not place a requirement on all schools to design and teach RVE having regard to the agreed syllabus?

Welsh Government recognises the role of the Catholic Education Service and the Church in Wales as providers of education in Wales.

Case law, and the European convention on Human rights, requires that pluralistic RVE must be available for all learners².

We could ensure the provisions of pluralistic RVE by one of two ways. Both would ensure the proposed legislative framework and guidance would be compatible with the rights protected by the Human Rights Act 1998. The first way would be to impose a new obligation on all schools to teach RE in a pluralistic manner. This approach would remove all other restrictions and would force all schools to change the way they teach (assuming any change was necessary). It would also have primacy over any provision set out in their trust deeds. This would have an impact on the ability of voluntary aided schools with a religious character to teach RVE in accordance with their trust deeds or in accordance with their denomination. The scale of that impact would vary depending on the specific provision contained in the school's trust deed and the approach currently adopted in the school.

The Bill does not pursue this requirement because it would have significant implications for schools of religious character.

The other approach is that contained in the Bill itself which we consider is an appropriate response to the issues and compatible with Convention rights.

¹ As relevant case law see *Dojan and Others v Germany* Application no. 319/08.

² As to the relevant case law please see (*Folgerø v Norway* ; *Lautsi v Italy* (2008) 46 EHRR 47, paragraph 54); (*Lautsi v Italy* (2012) 54 EHRR 3, paragraph 59) and the *Fox* case [2015] EWHC 3404 (Admin).

Q4. Will schools with a religious character be required to design two syllabi, one denominational and the other having regard to the agreed syllabus? If so, how will schools be able to deliver this in practice where they are required to teach both?

Schools with a religious character will have to design two syllabi. As there is no right to withdraw a child from RVE (or indeed RSE) the Bill needs to ensure that those children attending a faith school have access to a pluralistic RVE if that is wanted by the parent. That is what the current law requires – access to pluralistic RVE if there is no right to withdraw. It is possible that some children attending a voluntary aided faith school will do so because it is the nearest suitable school and not necessarily because of the provision of denominational RVE. In that case they may want access to pluralistic RVE. That is achieved by allowing parents to request the agreed syllabus RVE for their children. If that is requested it must be provided by the school. That ensures all children have access to pluralistic agreed syllabus RVE if that is wanted. Welsh Government will work with schools of a religious character to understand the numbers of learners who request this as the requirements of the Curriculum and Assessment Bill begin implementation, and will ensure the likely expectation is considered within the Regulatory Impact Assessment for the Bill. We consider that is compatible with the Convention Rights and safeguards these for all learners. As to how they can deliver that in practice, we anticipate that the numbers of pupils not following the denominational syllabus will be very small. The school would need to consider how they could best deliver on that. For example, they could be provided with additional supplementary or separate classes. My officials are working with the Catholic Education Service and the Church in Wales to consider how to assess and address the impact of implementing this requirement.

Q5. Is there a risk, given that the Bill requires a pupil to be provided with non-denominational RVE in a voluntary aided school where their parent requests it, certain schools with a religious character could end up in breach of their trust deeds where a majority of parents make such a request?

No. There are a number of ways the school could comply with that requirement. The school can provide this type of RVE by providing additional supplementary classes for those pupils at the school. If the school did not think that was appropriate, then options could include making arrangements for additional learning to be provided at another setting or making arrangements for external providers to provide the learning on the school premises. The school would need to make that clear including what would be provided

We have listened carefully to the concerns raised by partners and stakeholders but do not anticipate that there will be a large number of pupils opting out of denominational RVE. We consider that it is likely that where parents have exercised the right to withdraw from religious education under the current legislation they will also opt out of the denominational RVE. Our understanding that current exercise of the right to withdraw in schools with a religious character is extremely low.

Q6. Can you confirm whether the Welsh Government intends to undertake a further consultation on the statutory guidance to local authorities regarding agreed syllabi for RVE and that the current consultation (ending 28 July 2020) is a preliminary step to this? When do you anticipate undertaking any additional consultation on RVE

A Supporting Framework for RVE which will be statutory guidance and has been co-constructed with practitioners and RVE experts over the past 12 months. It is designed to support ASCs and Schools in respectively developing and implementing their agreed syllabus

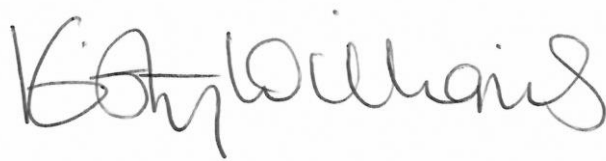
I can confirm there will be a formal consultation on the statutory framework for RVE late in the year. Where we will welcome consideration of the Framework from all faiths and backgrounds.

Further guidance is also planned to support the curriculum design in schools with a religious character. Welsh Government officials have been in discussion with both the Catholic Education Service and the Church in Wales to take forward development of guidance collaboratively and I look forward to working in partnership with both bodies to develop these.

The Catholic Education Service, in partnership with the three Catholic Dioceses of Wales and Welsh Government will co-construct 'Curriculum Guidance' (CG) documentation for Catholic schools in Wales that will:

- make links between Catholic denominational RE and the Humanities, supporting Catholic schools in Wales to have due regard to the AoLE;
- make wider links between the Catholic denominational syllabi and the content of the other Areas of Learning and Experience;
- reference other cross-cutting elements of the curriculum, such as: Literacy, Numeracy and Digital Competence

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams'.

Kirsty Williams MS
Minister for Education



Local Authority Directors of Education

3 May 2018

Dear Colleagues

I am writing to update you in relation to the governance and membership on Standing Advisory Councils on Religious Education (“SACREs”) and Agreed Syllabus Conferences (“ASCs”).

As you may be aware, the extant guidance relating to SACRE membership is laid out in Circular 10/94 (published by the former Welsh Office in 1994). The circular is non-statutory and is neither binding nor authoritative but there have been a number of queries recently on the issue of membership to Group A of a SACRE. Specifically, on whether persons who hold non-religious beliefs (such as Humanists) should be permitted full membership on Group A in light of the Human Rights Act 1998. For information, details on how membership to a SACRE is constituted is included at Annex A.

The circular states at paragraph 103:

“The inclusion of representatives of belief systems such as humanism, which do not amount to a religion or religious denomination, on Committee A of an agreed syllabus conference or Group A of a SACRE would be contrary to the legal provisions referred to at paragraph 102”.

The appointment of persons to a SACRE is a matter for local authorities and the SACREs. However, taking legal advice into consideration, I am of the opinion that representatives from non-religious belief systems may be appointed to Group A of a SACRE or ASCs, to ensure that SACREs/ASCs fully reflect the beliefs of the communities that they are representing and to comply with current legislation.

It is the view of the Welsh Government that:

- to ensure compatibility with the Human Rights Act 1998 the provisions relating to the constitution of SACRES and ASCs in the 1996 Act are to be interpreted as

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permitting the appointment of persons who represent holders of non-religious beliefs in the same way as they permit the appointment of persons who represent holders of religious beliefs; (section 390(4)(a) of, and paragraph 4(2)(1) of Schedule 31 to, the 1996 Act). However, we consider the non-religious beliefs adhered to by the person to be appointed must be analogous to a religious belief, such as humanism. To be “analogous” we consider the non-religious beliefs must in accordance with case law under the European Convention of Human Rights and the Human Rights Act 1998 attain the necessary level of cogency, seriousness, cohesion and importance to attract protection under the Convention Rights.

- an appointment is dependent on the relevant local authority’s opinion as to whether such a representative would help ensure that the relevant traditions in the local authority’s area are appropriately reflected in Group A. The final decision of an appointment rests with the local authority, and they are best placed to assess whether a SACRE has the necessary expertise and experience to properly discharge its function.

The same principle applies in relation to appointments to Agreed Syllabus Conferences (ASCs).

For the avoidance of doubt, the guidance set out in this letter supersedes paragraph 103 of Circular 10/94.

With regards to an updating Circular 10/94, I am aware that there are other areas of contention within the document that need to be addressed. As there are some complex issues, consideration of those matters is still on-going and therefore a review of the guidance will be considered once all information on this matter has been received.

I hope this provides clarification on these matters.

Yours sincerely



Kirsty Williams AC/AM

Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Annex A

1. The functions of a SACRE are set out in section 375 of the Education Act 1996 (“the 1996 Act”) and broadly those are to advise a local authority in respect of matters relating to religious education and collective worship. Section 390 of the 1996 Act set out how a SACRE is to be constituted as follows:
 - a) a group of persons to represent Christian denominations and other religions and denominations as in the opinion of the authority appropriately reflect the principal religious traditions in the area. The number of persons appointed should reflect broadly the proportionate strength of the particular denomination or religion in the area (“Group A”);
 - b) a group of persons representing associations that represent teachers; and
 - c) a group of persons to represent the authority.
2. In addition a SACRE may include co-opted members onto it. Such members are to be appointed on the terms as may be determined by those co-opting that person i.e. the SACRE itself (section 392(5) of the 1996 Act). Co-opted members cannot take part in a group vote.