

Consultation on the Curriculum and Assessment (Wales) Bill

Evidence submitted to the [Children, Young People and Education Committee](#) for Stage 1 scrutiny of the Curriculum and Assessment (Wales) Bill.

About you

Organisation: Children's Commissioner for Wales

1. The Bill's general principles

1.1 Do you support the principles of the [Curriculum and Assessment \(Wales\) Bill](#)?

Yes

1.2 Please outline your reasons for your answer to question 1.1

(we would be grateful if you could keep your answer to around 1500 words)

Overview

I support the principle of a new national curriculum framework for Wales and I also support the principles of the Bill listed in the explanatory memorandum: these principles I consider broadly consistent with the UNCRC General Comment No 1 on Article 29: The Aims of Education.

But there is a glaring and significant gap in that the principle of enabling children's human rights under the UNCRC does not appear anywhere in the legislation. This must be addressed through the inclusion of a due regard duty to the UNCRC on the face of this Bill.

Without this, the Bill will require a great deal of amendment to make it compliant with the UNCRC, by making detailed points on a number of rights issues. These are explained in full in this response. Rather than suggesting a long list of smaller and more detailed amendments, adding this one substantive amendment will provide for children to experience their human rights throughout their education and will be a significant step to meet the recommendations of the UN Committee on the Rights of the Child. This important step will enable Welsh Government to further meet its responsibility for full

compliance with the Convention and could also have a substantial positive impact on Article 4 (General Measures of Implementation) of the UNCRC. A single amendment of this nature would also have the potential to place Wales at the forefront of delivering human rights education internationally, in a manner consistent with the approach to human rights education adopted by the UN General Assembly.

This response demonstrates how Government's assertion that a due regard duty on the Bill is unnecessary due to the Rights of Children and Young Persons (Wales) Measure 2011 is erroneous: decision making relating to individual children is not taken by Welsh Ministers, but by professionals in local settings, who are not bound by the 2011 Measure. Examples of how the due regard duty would support decision making for individual children are included in this paper.

Support for principle

I support the principle of a new curriculum to replace that devised in 1988. The need for children and young people in Wales to receive new and more relevant curriculum entitlements is well-evidenced and the development of a national approach has been underway for several years, with the broad support of the teaching profession. I support the definition of the curriculum through a broad set of duties which establish entitlements and national consistency but also enable practitioners to use professionalism and creativity to meet the needs and interests of children and young people. Importantly, I consider that children and young people themselves should be involved in shaping and designing their own learning and this model allows for this (but could go further in establishing this, as I outline in my points below). Each of the four key principles noted at paragraph 3.8 of the explanatory memorandum have my support: this includes the purpose-led nature of the curriculum, and the purposes themselves, which are consistent with the principles of Comment No 1 on Article 29: The Aims of Education.

Need for due regard duty to the UNCRC

But despite Government's acceptance of my 2017/18 Annual Report recommendation that 'a children's rights approach underpins the guiding principles of curriculum delivery', Government have subsequently rejected my call for a due regard duty to the UNCRC on the face of the Bill. In this rejection, Government made the erroneous assertion that such a duty is unnecessary because of the Rights of the Children and Young Persons (Wales) Measure 2011.

This claim does not hold; as is evident in this Bill, the new legislation will enable a greater amount of decision making about the curriculum and assessment arrangements, and how

these apply to individual children, to be taken at a school level. It is beyond the scope of the Measure to ensure that children rights are central to the decision making of Head teachers and Governing bodies. Whilst many children, with excellent school leaders committed to their rights, do experience their rights through their education, this is not the case for all, as is evident by incidences of off-rolling , a lack of diverse representation in curriculum content , and a lack of participation opportunities . There is potential that this difference in how children experience their rights will increase under this new Bill, as it gives increased autonomy. Children's rights should not be left to chance in this way.

I have published at length the benefits of including a due regard duty on the face of the Bill , but rather than reiterating the benefits to children here, I will explain some examples of how this duty would make a practical difference in improving this Bill as it currently stands, and would be a far simpler step than the very many amendments needed to bring the Bill into line with the UNCRC if the duty is not included.

- A due regard duty will ensure equity. There is precedent for a due regard duty in both the Social Services and Well-being (Wales) Act 2014 and the Additional Learning Needs and Education Tribunal (Wales) Act 2018. If this Bill does not include this duty there will be an incoherent legislative framework in which some but not all children and young people have the provisions of the UNCRC in domestic legislation pertaining to their education.
- A due regard duty will support this Bill, and its principles, to endure. Although Successful Futures is the blueprint for curriculum design now, by the time the curriculum becomes statutory for all year groups, in 2026, it will be more than a decade since its publication. The purposes and principles of curriculum design laid out in this Bill are likely to be more long lasting if they are underpinned by the UNCRC – an international, politically neutral framework of human rights, which can withstand political challenge.
- A due regard duty will ensure shared decision making. Head teachers and Governing bodies have powers under sections 33 (2) and 35 (4) which enable them not to apply teaching and learning chosen by a pupil in some circumstances. Currently there are gaps in how the provisions of the Bill ensure participation in this process. A due regard duty would mean children and young people should participate in this decision making so that they can choose an alternative learning pathway that a school can support. Without a due regard duty there will need to be amendments to sections 33, 34 and 35 to enable participation.
- A due regard duty will help ensure pluralistic religious education in the development of local syllabi for Religion, Values and Ethics. Currently the Bill does not

provide for all children to receive a pluralistic education in religion. This is inconsistent with Article 29 of the United Nations Convention on the Rights of the Child. Without a due regard duty there will need to be substantial amendments to Schedule 1 to ensure this takes account of children's rights. Even with the protections of the UNCRC in place Schedule 1 will need some amends (outlined in my answer at the end of this response) as currently the schedule directly contradicts children's rights.

- A due regard duty would ensure children's rights are considered when the curriculum is dis-applied for learners with ALN or other learners on a temporary basis, and it would ensure children and young people participate in this decision. Currently the Bill does not require the rights of the individual child to be considered when a decision is taken by a local authority to dis-apply the curriculum in the preparation of IDPs or EHCs (Section 43 of the Bill), and it doesn't specify how the child themselves participates in this decision, though as this intersects with the Additional Learning Needs and Education Tribunal (Wales) Act 2018 children's rights should be taken into account (although how this will be the case for EHC preparation needs to be made clear in the Code which is still not finalised). However, there is currently no such provision to specifically consider the rights for children without ALN when the curriculum is temporarily dis-applied under section 44 of the Bill. Without a due regard duty there will need to be substantial amendments to sections 44, 45, 46, 47 and 48 to ensure the best interests of the child and to set out how a child will participate in this decision-making, this must include an advocacy mechanism for the participation of children, even when 'head teachers consider that the pupil does not have the capacity to understand' [Section 46 (5)].

- A due regard duty would ensure children's rights are considered when curriculum entitlements are only partially offered to children in EOTAS settings, and it would ensure children and young people participate in this decision. I have previously submitted evidence to this Committee about how young people in EOTAS provision often feel they are not participating in decision making about their education, and that they do not have a chance to review decisions. Sections 52 – 57 sets out the specific curriculum requirements for children in EOTAS settings and how this should be reviewed. These sections mandate only one of the six AoLEs and only some of the other mandatory requirements that apply for other learners. I am not opposed to a flexible approach to learners in EOTAS provision as this may well be in the best interests of the individual child. However, I do feel strongly that more safeguards are needed than the Bill currently provides in order to ensure that the decision of the local authority, management committee or teacher in charge of a PRU is informed by the child's rights and the participation of the child. If a due regard duty is not included, then sections 52- 57 will need substantial revision to ensure participation in

decision making. This is a very clear example of how Government's assertion that a due regard duty on the Bill is unnecessary due to the Rights of Children and Young Persons (Wales) Measure 2011 entirely misses the point: decision making relating to individual children is not taken by Welsh Ministers, but by professionals in local settings, who are not bound by the 2011 Measure.

- A due regard duty means that accountability frameworks for schools can't lead to decision making that goes against the best interests of individual children. New evaluation and improvement arrangements being developed have my broad support but there is nothing in the legislation itself to ensure the four key principles for these arrangements as described at 3.122 of the Explanatory Memorandum. Instead the existing provisions for evaluation and improvement will provide the legislative base. But the existing legislation has not prevented attainment being used in a way that is detrimental to the individual best interests of children. Accountability arrangements will be subject to ongoing political change and pressures but there is no legislative change to ensure against unintended consequences to children such as off-rolling or the offer of a very narrow, exam-focussed curriculum, which can disengage many young people. Without a due regard duty, there will need to be serious consideration about whether there should be legislative change to ensure accountability does not come at the expense of individual children, and a focus needed on the most effective form this legislative provision might take.

- A due regard duty would mean that the assessment of children and young people is consistent with children's rights and upholds optimum development and wellbeing. The aims for progression, and formative assessment as part of this progression, as elucidated in the Explanatory Memorandum, are consistent with children's rights principles. However, without a due regard duty there is not a provision in the legislation that ensures the implementation of the Progression Code in settings (and the role assessment plays in this) is in line with children's rights. With a due regard duty, settings will need to have regard to the rights of children in their assessment processes, so assessment will need to reflect children's best interests (Article 3), their participation (Article 12) and their optimum development (Article 29). It is important to note that assessment is a major concern of children and young people, and that current experience of assessment is a contributor to anxiety, particularly in secondary schools. Without the due regard duty Sections 58 and 59 of the Bill will need amending so that they reflect children's rights more fully, and to protect children from harmful impacts to their wellbeing due to assessment.

- A due regard duty would help ensure equality and non-discrimination. I welcome the provision in the Bill about suitability of the curriculum at Section 22, which states that

'The curriculum must be suitable for pupils, or children, of differing ages, abilities and aptitudes'. However, I am unsure exactly how inclusive this curriculum will be of different children and young people. The Equality Impact Assessment makes several bold assertions, but I am not sure how well these are evidenced. For example, the EIA notes a 'positive impact on young mothers attending EOTAS, who will benefit from learning more tailored to the needs and abilities and make it easier for them to reintegrate into mainstream education where practical'. But there is not a clear evidence base for this; it has not been made clear whether this has been investigated during the development stage and it could be possible that greater divergence between settings (under a subsidiarity approach) might make it harder for young people to transfer between settings. Research currently being led by WISERD into teachers' perspectives of curriculum reform shows that teachers involved in the development of the AoLEs through the pioneer process have been unable to cite specific examples of how children from disadvantaged backgrounds would benefit from the new approach. Teachers interviewed as part of this research from pioneer and non-pioneer settings also felt uncertain that the curriculum would be inclusive: only 31% of teachers interviewed in this research selected they thought pupils eligible for Free School Meals would be positively affected by the introduction of the new curriculum and less than 20% selected that BAME pupils would be positively affected. This reinforces research indicating that issues with the Foundation Phase need to be addressed so that Foundation Phase approaches equitably benefits boys and children living in poverty. I have previously submitted my concerns about this to Government and requested more thorough impact assessments which set out mitigations for any potential negative effects. One such mitigation is including in legislation a duty for all relevant bodies to have regard to the rights of children, as at the core of children's human rights is the principle of equality and non-discrimination. This duty would mean settings will need to monitor, evaluate and address inequalities in curriculum content or in outcomes for particular groups.

1.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?

(we would be grateful if you could keep your answer to around 500 words)

There is a need for legislation to deliver what this Bill aims to achieve. At the heart of the Bill are new and relevant entitlements that children and young people should experience through their education. Legislation is needed to create these entitlements.

There are two particular areas of the curriculum where legislative change is urgent.

First, children and young people urgently need the provision of the Health and Wellbeing AoLE as a mandatory experience throughout their education.

Second, legislation must be updated to enable all children and young people in Wales to experience the Relationships and Sexuality Education. SRE Expert Panel key findings show that the current law on SRE is outdated and existing legislation does not support the rights and gender-equity based sex and relationships education that is advised to schools in previous guidance issued by Welsh Government.

Giving a statutory basis to the principles of RSE listed in the Explanatory Memorandum is an essential step to begin a much needed process in Wales that ensures all children and young people receive high quality opportunities to develop their understanding of relationships and sexuality.

These learning entitlements are as important as any other in the curriculum, and this is not learning from which any child nor young person should be excluded on any basis. Legislative change relating to RSE will help realise the provisions of the UNCRC to which all children in Wales are entitled, including:

- the right to non-discrimination (Article 2)
- the right to be heard, express opinions and be involved in decision-making (Article 12);
- the right to access information that will allow children to make decisions about health (Article 17)
- the right to experience the highest attainable health, access to health facilities, preventative health care, and family planning education and services (Article 24)
- the right to an education that support all children to develop and reach their full potential and prepare children to be understanding and tolerant to others (Article 29)
- the right to government protection from sexual abuse and exploitation (Article 34).

This legislative change will also enable the following justiciable legal rights under the Human Rights Act and the European Convention on Human Rights (ECHR):

- the right to freedom of thought, conscience and religion (Article 9).
- the right to freedom of expression (Article 10)
- the right not to be denied education (Article 2, Protocol 1)

The 2017 European Network of Ombudspersons for Children (ENOC) position statement on Comprehensive Relationship and Sexuality Education, states that all children and young people have the right to high quality, holistic and inclusive education about sexuality and relationships. This echoes the 2016 Concluding Observations of the UN Committee on the Rights of the Child. In response to the Committee's concerns about the variability of relationships and sexuality education, and the lack of accurate information for young people (Section 63b) the Committee recommends State Parties ensure education around relationships and sexuality is mandatory within the school curriculum (Section 64b).

A list of international binding and non-binding legal instruments underpinning the requirement to deliver high quality RSE are listed on p.1 of the ENOC 2017 statement. In this international context, legislative change is needed to end the parental right to withdraw a child from RE and RSE. Retaining legislation that allows parents to withdraw a young person from these subjects denies children and young people their own rights, and does not allow a young person to opt in to relationships and sexuality education before the legal age of consent.

In a domestic context this is again incompatible with the human rights of children under both the domestic legislation of the Human Rights Act 1998 and the European Convention on Human Rights (ECHR). In Wales, it is also incompatible with the commitment in Wales to the UNCRC guaranteed by the Rights of Children and Young Persons (Wales) Measure 2011. In a policy context in Wales making this legislative change will also develop the inclusion of Sex and Relationships education in Successful Futures, and Objective 2 in the Welsh Government's National Strategy on Violence against Women, Domestic Abuse and Sexual Violence (2016-2021) which states that the new curriculum must include the importance of safe, equal and healthy relationships.

2. The Bill's implementation

2.1 Do you have any comments about any potential barriers to implementing the Bill? If no, go to question 3.1

(we would be grateful if you could keep your answer to around 500 words)

I anticipate that there will be a volume of detail received in response to this question from education leaders, practitioners and children and young people themselves, all of whom are better placed to assess barriers on the basis of their current experience of curriculum development. I would like to offer the support of my office in discussing and finding

possible solutions to the potential challenges that are raised through this consultation process.

2.2 Do you think the Bill takes account of these potential barriers?

(we would be grateful if you could keep your answer to around 500 words)

Again, I anticipate that there will be a volume of detail received in response to this question from education leaders, practitioners and children and young people themselves, all of whom are better placed to assess barriers on the basis of their current experience of curriculum development. I would like to offer the support of my office in discussing how the Bill could better account for challenges that are raised through this consultation process.

3. Unintended consequences

3.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

(we would be grateful if you could keep your answer to around 500 words)

Parity of AoLEs during 14-16 qualifications

It is hard to assess to what extent young people will experience the full curriculum between the ages of 14-16 given that thinking around 14-16 qualifications is currently underway and developing. In light of this, I note that evidence around the impact of examination on teaching and learning indicates that narrowing the curriculum can be a damaging effect of external examinations, with schools allocating more teaching time to examined subjects and reducing time for subjects that are not formally tested. The Health and Wellbeing AoLE and the Expressive Arts AoLE may be particularly vulnerable to marginalisation for young people during this time, as may cross curricular elements such as RSE. During the development of qualifications there must be measures put in place to ensure that the curriculum is not narrowed for many learners from the age of 14, this should ensure that young people do not miss out on areas of the curriculum that under the present system can be marginalised. Again, a due regard duty to the UNCRC would mean that professionals must be guided by the need for holistic education as articulated in Article 29, which would mitigate against the risk that a narrow curriculum is designed for older young people.

Challenges in evaluating the impact of the curriculum

There must be two broad purposes of assessment: one purpose must be to provide formative, supportive assessment for and as learning in a way that is consistent with promoting the wellbeing and self-esteem of children and young people. The other broad purpose must be to collect information to evaluate teaching, learning and the curriculum approach as a whole.

This information does not require standardised testing and can be based on professional knowledge of progress or on a research approach that uses sampling and observation. It should not be publicised in school league tables or used in a high stakes accountability system. But a carefully developed approach that generates comparable data from classroom to classroom is needed to be able to objectively evaluate how educational reform is affecting all children and young people and to have an informed basis on which to make improvements – this is true at a school level as well as at a national level.

The current curriculum guidance for assessment do not set out a consistent national approach to generate comparable data, and this suggests it may be challenging or even impossible to compare data at a local or national level. This will mean it may not be possible to identify groups of young people that are being disadvantaged by new approaches and this has particular implications for narrowing the attainment gap as evidence shows that rigorous data use is one way of achieving this.

Whilst I am supportive of much of the approach advocated around moderation as a means to share and develop good practice in teaching and learning, Government should ensure comparable data is generated across Wales so that the impact of education reform for different groups of children can be evaluated as the curriculum develops. Young people should not be in the situation that the impact of reform for different groups is only able to be evaluated at the point of summative assessment at 16, as this will be too late for the first cohorts of young people learning under the new curriculum arrangements. Without a means of generating comparable data through the ongoing formative process there is also a danger that summative assessment will become even more pressured for young people and their teachers as there will not be another nationally recognised way of evaluating and showing progress and learning.

As measures against these pitfalls I recommend:

- Government should ensure some comparable data is generated across Wales so that the impact of education reform for different groups of children can be evaluated as the curriculum develops.
- Assessing equity should be a key consideration for the post implementation review and the ongoing evaluation

4. Financial implications

4.1 Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the [Explanatory Memorandum](#))? If no, go to question 5.1

(we would be grateful if you could keep your answer to around 500 words)

Additional Learning Needs

I am not convinced that the Explanatory Memorandum adequately takes account of the combined cost of the introduction of the Additional Learning Needs and Education Tribunal (Wales) Act 2018. The 2018 Act isn't mentioned in Chapter 8 of the Explanatory Memorandum. There is not a specific assessment on the financial impact of the new curriculum on SEN schools or ALN provision in mainstream schools.

This may be because the costs of the implementation of the 2018 Act are accounted for elsewhere, but I feel strongly that the combined implementation of the two Acts concurrently will (and should) generate their own financial implications. For example, there will need to be substantial professional learning to understand how to understand ALN provision in line with the new curriculum. Practice will need to develop to combine the expectations for progression, pedagogy and curriculum design in this Bill alongside the expectations for Additional Learning Provision (ALP) and participation in the 2018 Act. Professionals should not be experiencing professional learning as 'learning about curriculum and assessment' and 'learning about Additional Learning Needs', for educational reform to be transformative the two need to be combined and there will be financial implications in designing and delivering this learning together.

Welsh language

Welsh language provision and sufficiency of teachers able to teach Welsh and teach through the medium of Welsh is considered but the specialist workforce is not included in this consideration, despite the fact that there are well-documented gaps in the bilingual specialist workforce. Specialist professionals will be key to enabling the curriculum for

children and young people with Additional Learning Needs and should be considered in the costs of curriculum implementation.

Similarly, more professionals are needed in EOTAS settings who are able to teach Welsh and teach through Welsh. As noted by Estyn, there is a lack of bilingual EOTAS provision in Wales. This is essential to address in the implementation of the curriculum for children and young people in EOTAS settings.

Relationships and Sexuality Education (RSE)

I am unconvinced that the true cost of the transformation needed for effective RSE is reflected in the Explanatory Memorandum. The Explanatory Memorandum does not give consideration given to all recommendations of the SRE panel, which have been accepted by the Minister, and all of which will be key to the development of effective RSE.

In particular, the Explanatory Memorandum should account for the establishment of an expert network in RSE, and the development of lead practitioner roles in settings. Both of these steps will require resource but without these steps the legislative change will be less successful.

Whilst there is broad acknowledgement in the Explanatory Memorandum that professional learning will be required in order for teachers to gain the knowledge and confidence to embed relationships and sexuality education within their teaching, the Explanatory Memorandum also does not in my opinion clearly set out the wholesale and robust learning needed for the profession to gain the confidence necessary to deliver effective RSE, which is currently shown to be lacking within the profession.

5. Powers to make subordinate legislation

5.1 Do you have any comments on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the [Explanatory Memorandum](#)). If no, go to question 6.1.

(we would be grateful if you could keep your answer to around 500 words)

I am concerned about the power of Ministers under section 5 of the Bill to make Regulations to add, remove or revise the identified areas of learning and experience, mandatory elements and cross-curricular skills. Whilst I accept that this enables flexibility over time to account for social, technological change and developments in educational research, I am concerned that this could create a risk for some Areas of Learning and

Experience and other mandatory elements that are less well-established. The Health and Wellbeing AoLE and the mandatory element of RSE, both of which are vital to this curriculum, may be particularly vulnerable to political change and challenge.

Welsh Ministers are separately, under Section 6 (1) of the Bill, conferred with powers to revise the What Matters codes, which set out learning under each AoLE. I question if it is necessary for regulations to also include the power to remove whole Areas of Learning and Experience or mandatory elements. An amendment to this power so that it enables the addition and revision of an AoLE or of a mandatory element would still enable flexibility and would also ensure that young people do receive the current AoLEs and mandatory elements – all of which have been determined through the long process of consultation and public engagement outlined in Chapters Three and Four of the Explanatory Memorandum.

6. Other considerations

6.1 Do you have any other points you wish to raise about this Bill?

(we would be grateful if you could keep your answer to around 1000 words)

Legislating for the Whole School Approach to Mental Health and Wellbeing.

I have previously recommended that there must be a statutory basis for the Whole School Approach to Mental Health and Wellbeing. I am therefore pleased to see that the draft framework guidance on embedding a whole-school approach, which is currently published for consultation, does specify that this guidance will be statutory under the Education Act 2002. I will respond in full to the public consultation on this draft guidance to welcome this statutory status but also to highlight some additional actions that will ensure clarity for the role of health bodies.

In light of this development, it is now my assessment that it is no longer necessary to consider including additional provision for the whole school approach in the Curriculum and Assessment Bill.

Amendments needed to ensure Religion, Values and Ethics provision is consistent with children's human rights.

I consider it necessary to substantially amend Schedule 1 even if a due regard duty to the UNCRC is added, because this schedule is currently in direct contradiction to the UNCRC.

Schedule 1 lays out the requirements for the Religion, Values and Ethics (RVE) curriculum for schools without a religious character, and for foundation and voluntary controlled schools of a religious character, and for voluntary aided schools that have a religious character. These provisions show that the human rights of children attending settings that are religious in character have not been given the same regard as those of other children: first, because they do not necessarily have access to a pluralistic education in line with human rights requirements under the UNCRC ; second, because their parents can determine the RVE curriculum they experience.

To me, this is an attempted compromise that does not uphold the rights of children as a primary consideration. It sets out that the parent's view takes primacy if there is a difference of opinion between the child and the parent, and it also denies a child access to a pluralistic education. In addition to not upholding the provisions of the UNCRC to participation, education and equality, proposals relating to settings of religious character also fail to take account of the safeguarding role of pluralistic religious education in creating cohesive communities both within and outside the education setting, and therefore undermine the PREVENT agenda, an equalities approach to anti-bullying education, and the principles of the Well-being of Future Generations (Wales) Act.

Whilst children and young people may attend different types of educational setting, their human rights under the UNCRC are the same. But the Bill's requirements relating to settings of a religious character are in direct contradiction to children's human rights as guaranteed by the UNCRC and are further inconsistent with the removal of the right of parents to withdraw children and young people from RVE, and would effectively deny access to the full curriculum to some children. This is in direct contradiction with the wishes of Government as expressed by the Minister in her statement of 21st January 2020 . I am in strong disagreement to this provision being taken forward.

I do not accept the assertion at 3.49 of the Explanatory memorandum that this is a necessary provision to enable "parents' existing right in the Welsh and indeed UK school system to choose a religious education for their child" because a requirement for schools of a religious character to include pluralistic RVE for every child will not alter the character of the school. Ethos and practice in schools of religious character would still be guided by the trust deeds or tenets of the faith – and this would be reflected in collective worship, in the observance of religious events and teachings, and in the values and approach of the school. The whole-school ethos and culture does not and should not preclude a pluralistic approach to teaching and learning about religion through a syllabus.

There are also significant practical implications of this approach (particularly in an integrated curriculum) and it is unclear how schools would manage this with timetabling and staffing. As such this appears to be unworkable as a proposed solution.

I therefore recommend that even with a due regard duty to the UNCRC, Schedule 1 is amended to ensure that a pluralistic requirement applies to education in all settings, and that the ability of parents to decide what type of RVE their child receives is removed, as it is not consistent with the human rights of children and young people to themselves take part in decision making which will affect their life (Article 12); nor is it consistent with the human right of children to an holistic education that promotes understanding among 'among all peoples, ethnic, national and religious groups and persons of indigenous origin' (Article 29).

Children's Rights Impact Assessment

The Children's Rights Impact Assessment (CRIA) in the Explanatory Memorandum refers only to Articles 28 and 29, but fails to acknowledge the wide range of rights affected and how while many may be enhanced, some of those could be risk. I have noted these positive benefits and risks to children's rights at several points in my response, but as two examples:

- the right to government protection from sexual abuse and exploitation is enhanced by the Bill's provisions around RSE (Article 34).
- the right to participation in decision making is at risk for children in faith settings due to the RVE requirements relating to faith settings (Article 12).

The failure to analyse the impact to children's human rights means that this Bill is less compliant than it should be with the UNCRC. Proper analysis would highlight the need for amendments in some instances (for example amendments to the RVE requirements), and mitigation in others (for example through the implementation review and ongoing evaluation of curriculum and assessment arrangements). The analysis that I have conducted in my answer to 1.2 shows that there are many amendments needed to bring this Bill fully into line with the UNCRC and a pressing need for a due regard duty to the UNCRC on the face of the Bill.

The CRIA also notes the involvement of my office in curriculum design. In brief, I consider the involvement of my office in this process to have contributed to the following elements of curriculum guidance:

- The development of a consultation with children and young people designed to enable wide and targeted participation by children and young people from particular groups;
- The inclusion of a checklist for settings about key questions to consider in designing local curriculum to ensure some consistency;
- The inclusion of human rights education and the UNCRC in the overarching curriculum guidance;
- The inclusion of guidance to support children and young people to participate in school-level curriculum design in the overarching guidance;
- The inclusion of incremental learning about children's rights and human rights in the Health and Wellbeing and the Humanities AoLE;
- The development of an understanding of children's rights in professionals during the co-construction phase of the AoLEs

But there have been several missed opportunities and ways in which I would have liked the curriculum to go further in including children's human rights. Participation of children and young people could have been far more systematic, strategic, and better integrated into the process of development. Children's rights and the UNCRC could have been explicitly integrated into all AoLEs. But most importantly children's rights and the UNCRC should be directly integrated into the legislation itself. At no point in the Bill are human rights education or the UNCRC included. All the supporting curriculum guidance that details how children's human rights will be enabled and met through the curriculum will be subject to ongoing development and change. Therefore, all of the gains I list above could be lost. The only way Government can ensure a long lasting commitment to the human rights of children and young people through their education is to include it in primary legislation. A duty of due regard must be included on this Bill.

