



United Nations UPR Third Cycle: United Kingdom Submission from the British Humanist Association

19 September 2016

About us

The BHA is the UK-wide charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We promote Humanism, support and represent the non-religious, and promote a secular state and equal treatment in law and policy of everyone, regardless of religion or belief. Founded in 1896, we have over 45,000 members and supporters, and over 70 local and special interest affiliates.

We are a human rights-based charity, with our area of expertise being religion or belief. Human rights underpin all of our public affairs work. We are a member of the British Institute of Human Rights' Human Rights Alliance, the Equality and Diversity Forum, the Children's Rights Alliance, and Rights of the Child UK. We are accredited at the UN Human Rights Council and make regular interventions at the thrice-annual sessions in Strasbourg.

Word count excluding cover page and footnotes: 2,796 words.

For more details, information and evidence, contact the British Humanist Association:

Pavan Dhaliwal
Director of Public Affairs and Policy
+447738 435059
+4420 7324 3065
pavan@humanism.org.uk
www.humanism.org.uk

Summary

1. We wish to raise the following issues:
 - a. Religious discrimination in state school admissions
 - b. Religious discrimination in state school employment
 - c. Exclusion of non-religious worldviews from the state school curriculum
 - d. Requirement for Christian collective worship in state schools
 - e. Status of Personal, Social, Health, Economics Education and Sex and Relationships Education in state schools
 - f. Religious discrimination in the provision of public services
 - g. Religious discrimination in the recruitment of state chaplains/pastoral support
 - h. Criminality of assisted dying
 - i. Inconsistency of marriage laws across the UK
 - j. Criminality of abortion in Northern Ireland

a. Religious discrimination in state school admissions

2. In deciding which children to admit, state schools designated with a religious character are allowed to discriminate against children on the basis of their own or their parents' religion.¹ 16% of places at state schools in England and Wales, and a much higher proportion in Northern Ireland, are subject to discrimination in this way. It is also due to get significantly worse in England, with the Government currently consulting on overturning a rule that has meant for the last nine years that almost all new schools can only religiously select 50% of places. Instead it is proposing that new and existing schools be allowed to religiously select 100% of their intake.²
3. This violates Article 2 of the UDHR and, similarly, Article 2.1 of the UNCRC, which outlaw religious discrimination. It also severely limits the rights of young people to be autonomous and hold different beliefs to their parents, as set out in Article 18 of the UDHR, as well as in its preamble, and Article 14 of the UNCRC. In addition, religious selection in schools causes both religious and ethnic segregation, which has a severe impact on the realisation of an education system that 'shall promote understanding, tolerance and friendship among all nations, racial or religious groups', as articulated in Article 26 of the UDHR. Further, there is significant evidence that religious selection criteria cause significant socio-economic selection of pupils,³ violating Article 2 of the UNCRC.

¹ Schedule 11(5) Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/schedule/11/paragraph/5>

² 'Schools that work for everyone: Government consultation', Department for Education, 12 September 2016: https://consult.education.gov.uk/school-frameworks/schools-that-work-for-everyone/supporting_documents/SCHOOLS%20THAT%20WORK%20FOR%20EVERYONE%20%20FINAL.pdf
See also 'Government publishes plans to allow full religious discrimination in school admissions', British Humanist Association, 13 September 2016: <https://humanism.org.uk/2016/09/13/government-publishes-plans-to-allow-full-religious-discrimination-in-school-admissions/>

³ For the correlation between religious selection and socio-economic selection in England, see e.g.

4. With respect to Northern Ireland, the 2016 report of the UN Committee on the Rights of the Child said: *'In Northern Ireland segregation of schools by religion persists. The State party, in Northern Ireland, [should] actively promote a fully integrated education system and carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration'*.⁴

b. Religious discrimination in state school employment

5. The European Employment Equality Directive prohibits discrimination on the basis of religion or belief in employment, except where there can be said to be a genuine, legitimate and justified occupational requirement (GOR) that the post-holder shares the particular religion or belief in question.⁵ The Directive is implemented by the Equality Act 2010,⁶ except that there is an exemption that unilaterally allows religious schools to discriminate regardless of whether a GOR applies.⁷ This

'Groundbreaking new research maps the segregating impact of faith school admissions', Fair Admissions Campaign, 2013: <http://fairadmissions.org.uk/groundbreaking-new-research-maps-the-segregating-impact-of-faith-school-admissions/> and <http://fairadmissions.org.uk/map/>

Allen, Rebecca and West, Anne, *Religious schools in London: school admissions, religious composition and selectivity*, 2009: <http://eprints.lse.ac.uk/25635/>

Allen, Rebecca and West, Anne, *Why do faith secondary schools have advantaged intakes?: the relative importance of neighbourhood characteristics, social background and religious identification amongst parents*, 2011: <http://eprints.lse.ac.uk/32192/>

Harris, Richard, *Geographies of transition and the separation of lower and higher attaining pupils in the move from primary to secondary school in London*, 2012: <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-5661.2012.519.x/abstract>

Shepherd, Jessica and Rogers, Simon, 'Church schools shun poorest pupils', *The Guardian*, 2012: <http://www.theguardian.com/education/2012/mar/05/church-schools-shun-poorest-pupils>

For research showing that church attendance is boosted by religious selection, see e.g.

'New Church research shows growth is strongest where there are oversubscribed schools', *Fair Admissions Campaign*, 2014: <http://fairadmissions.org.uk/new-church-research-shows-growth-is-strongest-where-there-are-oversubscribed-schools/>

'Church attendance massively boosted by control of state-funded schools', BHA, 2013: <https://humanism.org.uk/2013/12/18/church-attendance-massively-boosted-control-state-funded-schools/>

For research showing that any difference in performance between religiously selective and other schools is due to differences in socio-economic make-ups, see e.g. Gibbons, Stephen and Silva, Olmo, *Faith primary schools: better schools or better pupils?*, 2007: <http://cep.lse.ac.uk/pubs/download/cp228.pdf>

For research on ethnic segregation, see e.g. 'Religious schools most racially segregated state schools, new findings show', BHA, 2013: <https://humanism.org.uk/2013/10/18/religious-schools-racially-segregated-state-schools-new-findings-show/>

⁴ https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx

⁵ *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:en:PDF>

⁶ <http://www.legislation.gov.uk/ukpga/2010/15/schedule/9>

⁷ <http://www.legislation.gov.uk/ukpga/2010/15/schedule/22>

combined with education laws⁸ means that religiously designated schools can require every single teacher to share the faith of the school, and choose which to promote, remunerate, and dismiss on that basis. This is problematic under article 23 (taken with article 2) of the Universal Declaration of Human Rights.

6. In 2010 the BHA complained to the European Commission about the UK breaking EU law in this area.⁹ After a lengthy investigation, in late 2015 it closed the case, failing to cite any reasons for doing so, but the UK Government acknowledged that if the matter came to court, the court should have to rule in line with our understanding (an approach incompatible with ECJ case law¹⁰). The closure appears to us to be politically motivated, and we are concerned that when the UK withdraws from the EU, then there will be no compulsion from European law to end this discrimination against teaching staff.

c. Exclusion of non-religious worldviews from the state school curriculum

7. Subject content for education about religions and beliefs largely excludes non-religious worldviews. In England the age-16 examined qualification specifies that pupils must systematically study two religions, but does not allow students to systematically study a non-religious worldview alongside a religion. This ignores the beliefs of young people (surveys suggest 31-69% are not religious¹¹) and is not in keeping with Article 13 of the UNCRC.¹² The exclusion also falls foul of Articles 18 and 19 of the UDHR, and the Human Rights Act 1998 which together with case law demands that references in law to religion be read as inclusive of non-religious worldviews.¹³
8. In 2015, three parents initiated a judicial review this new qualification, arguing that it permitted and encouraged insufficient inclusion of non-religious worldviews across the curriculum as a whole, and was therefore in breach of article 2, protocol 1 of the ECHR, under which it had been established that religious education has to be

⁸ E.g. <http://www.legislation.gov.uk/ukpga/1998/31/section/60> for England and Wales; similar laws exist in Scotland and Northern Ireland, albeit in the latter there is an exemption written into the European Directive itself that permits ongoing discrimination.

⁹ 'European Commission to investigate whether 'faith' schools break European employment laws', BHA, 24 July 2012: <https://humanism.org.uk/2012/07/24/news-1084/>

¹⁰ As set out by the European Commission in 'Reasoned Opinion on Infringement No 2006/2450', paragraph 8, 2009: <http://www.secularism.org.uk/uploads/ec-reasoned-opinion.pdf>

¹¹ The 2011 Census found 31% of 0-19 year olds having no religion, with a further 8% not stated. The 2013 *British Social Attitudes Survey* records 69% of 15-24 year olds as not belonging to any religion: see the British Social Attitudes Information System, with cross-tabs by age:

http://www.britsocat.com/BodyTwoCol_rpt.aspx?control=CCESDMarginals&MapID=RELIGION&SeriesID=12

¹² <http://www.unicef.org/gambia/UNCRC.pdf>

¹³ See section 3. Such inclusion was also specifically called for by the UN Special Rapporteur on Freedom of Religion or Belief, in her last country report into the UK:

<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Visits.aspx>

Nowadays it is commonplace for non-religious worldviews to be studied in detail in Religious Education (RE), as the subject is known, and the new qualification content is out of step with the consensus of subject professionals. For more on why Humanism is included in RE, see

<http://humanismforschools.org.uk/guidance/why-humanism-is-included-in-religious-education-re/>

‘pluralistic’. The UK High Court agreed,¹⁴ but unfortunately this merely prompted the Government to produce new guidance on the matter that is even more misleading than its original claims.¹⁵ Coupled with the fact that most other Religious Education syllabuses followed by schools are also highly exclusory, it seems inevitable that further court action will be required on this matter.

d. Requirement for Christian collective worship in state schools

9. All state schools are required to hold a daily act of collective worship in England, Wales, and Northern Ireland, and less frequently in Scotland. In English and Welsh schools with no religious character, this must be ‘wholly or mainly of a broadly Christian character’.¹⁶ Whilst schools can seek government consent to change from Christian worship to another religion, they cannot determine not to have worship at all. Such worship excludes the non-religious, leading to feelings of social exclusion and the possibility of young people who are excused from worship missing out on other aspects of school life such as morning announcements. This is not in keeping with Article 2 of the UNCRC or article 18 of the UDHR.

10. By allowing children to opt themselves out of collective worship only from the age of 16, UK law fails to enable children to fully realise their ‘Gillick competence’ rights,¹⁷ as established in European case law and reflected in Articles 12 and 14 of the UNCRC. This view has been repeatedly endorsed by the UK Parliament’s Joint Committee on Human Rights (JCHR), for example in reports in 2006¹⁸, 2008¹⁹ and 2010.²⁰ And the 2016 report of the UN Committee on the Rights of the Child said:

‘The Committee is concerned that pupils are required by law to take part in a daily religious worship which is “wholly or mainly of a broadly Christian character” in publicly funded schools in England and Wales, and that children do not have the right to withdraw from such worship without parental permission before entering the sixth form. In Northern Ireland and Scotland,

¹⁴ ‘Judge rules Government broke the law in excluding Humanism from school curriculum’, BHA, 25 November 2015: <https://humanism.org.uk/2015/11/25/judge-rules-government-broke-the-law-in-excluding-humanism-from-school-curriculum/>

¹⁵ ‘High Court ruling on Religious Education: BHA responds to ‘misleading’ and unfair criticism by Government’, BHA, 31 May 2016: <https://humanism.org.uk/2016/05/31/high-court-ruling-on-religious-education-bha-responds-to-misleading-and-unfair-criticism-by-government/>

¹⁶ <http://www.legislation.gov.uk/ukpga/1998/31/schedule/20>

¹⁷ For an explanation of ‘Gillick competence’, see ‘A child’s legal rights@ Gillick competency and Fraser guidelines’, National Society for the Prevention of Cruelty to Children (NSPCC): <https://www.nspcc.org.uk/preventing-abuse/child-protection-system/legal-definition-child-rights-law/gillick-competency-fraser-guidelines/>

¹⁸ *Legislative Scrutiny: Thirteenth Progress Report: Twenty-fifth Report of Session 2005-06*, Joint Committee on Human Rights, 2006, paragraphs 2.1-2.6:

<http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/241.pdf>

¹⁹ *Legislative Scrutiny: Education and Skills Bill: Nineteenth Report of Session 2007-08*, 2008, paragraphs 1.40-1.45: <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/107/107.pdf>

²⁰ *Legislative Scrutiny: Children, Schools and Families Bill; other Bills: Eighth Report of Session 2009-10*, Joint Committee on Human Rights, 2010, paragraphs 1.30-1.40: <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>

*children do not have right to withdraw from collective worship without parental permission. **The Committee recommends that the State party repeal legal provisions for compulsory attendance at collective worship in publicly funded schools and ensure that children can independently exercise the right to withdraw from religious worship at school.***²¹

e. Status of Personal, Social, Health, Economics Education (PSHE) and Sex and Relationships Education (SRE) in state schools

11. There are references throughout the UNCRC to the need to ensure children’s health and well-being. All the best evidence shows that providing young people with comprehensive, age-appropriate PSHE (including SRE)²² leads to the best outcomes in terms of health, wellbeing, consent, safe sex, preventing abortions, improving attitudes to women, and tackling homophobic bullying.²³
12. The last report by the UN Committee on the Rights of the Child into the UK said *‘Relationships and sexuality education is not mandatory in all schools, its contents and quality varies depending on the school, and LGBT children do not have access to accurate information on their sexuality. **The Committee recommends that the State party ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres, in all areas of the State party. Such education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; prevention of sexual abuse or exploitation, including sexual bullying; available support in cases of such abuse and exploitation; and sexuality, including that of LGBT children.***²⁴
13. And in 2009 the JCHR regarded proposals for mandatory SRE as a ‘significant human rights enhancing measure’.²⁵ Despite this, most secondary schools are not required

²¹ https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx

²² As the relevant subjects are known in England. In Wales they are called Personal and Social Education (PSE) and SRE; in Scotland Health and Wellbeing Education and Relationships, Sexual Health and Parenthood Education; and in Northern Ireland PSHE and Relationships and Sexuality Education (RSE). For the avoidance of doubt we are referring to all of them in this section.

²³ *SRE – the evidence*, Sex Education Forum, 2015: <http://www.sexeducationforum.org.uk/media/28306/SRE-the-evidence-March-2015.pdf>. See also *International Technical Guidance on Sexuality Education: An evidence-informed approach for schools, teachers and health educators*, UNESCO, 2009:

<http://unesdoc.unesco.org/images/0018/001832/183281e.pdf>. Surveys also consistently show that SRE is what parents want – see e.g. ‘Parents support sex and relationships education at primary school’, Sex Education Forum, 2014: <http://www.sexeducationforum.org.uk/policy-campaigns/parents-want-sre.aspx> – and what young people want – see e.g. *Heads or tails? What young people are telling us about SRE*, Sex Education Forum, 2016: <http://www.sexeducationforum.org.uk/media/34250/Head-or-tails-SRE-2016.pdf>

²⁴ https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx

²⁵ *Legislative Scrutiny: Children, Schools and Families Bill; other Bills Eighth Report of Session 2009-10*, Joint Committee on Human Rights, 2010:

<http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>

to teach any SRE or PSHE,²⁶ and the UK Government has rejected attempts to change this for years now.

f. Religious discrimination in the provision of public services

14. Exemptions written into the Equality Act 2010 allow religious groups to discriminate in terms of whom they employ when a GOR can be demonstrated, and against service users.²⁷ This is *not necessarily* objectionable in itself. But it is particularly concerning when these groups are contracted by the state to provide public services. Here the exemptions still apply – while the state, if it were providing the services directly, would not be able to discriminate due to the Human Rights Act, the Act does not apply to organisations to which provision of services has been contracted.
15. As public services become increasingly contracted out, this problem continues to grow. For example, in 2011 the national contract for providing services to trafficked women was given to the evangelical Salvation Army, which regards homosexuality as ‘self evidently abnormal’, and says that lesbian and gay people should be celibate.²⁸ In the same month, a local council awarded its children’s counselling contract to the anti-LGBT Catholic Children’s Society.²⁹ In 2015, research by the Equality and Human Rights Commission, in its review of the place of religion and belief in the workplace, found many complaining about ‘unwelcome “preaching” or proselytising, and the expression of views that were hurtful or derogatory towards other faiths and/or towards lesbian, gay, bisexual and transgender (LGBT) people’ – including in public service provision.³⁰

g. Religious discrimination in the recruitment of state chaplains/pastoral support

16. In England and Wales, about £20 million a year is spent by National Health Service Trusts on the salaries of chaplains, who are overwhelmingly Protestant Christians. Further money is spent by prisons and the armed forces on similar roles.
17. As previously discussed under b., the European Employment Equality Directive prohibits discrimination on the basis of religion or belief in employment, except

²⁶ More precisely, in England, what are known as maintained schools are at the secondary level required to teach only about anatomy, puberty and the biological aspects of reproduction as part of national curriculum science, and about STIs, HIV and AIDS as part of sex education. Maintained primary schools do not have to teach a separate programme of SRE at all. But Academies (including Free Schools), which make up the majority of state secondary schools, are not required to teach any of this.

²⁷ See e.g. <https://humanism.org.uk/campaigns/human-rights-and-equality/strengthening-human-rights-and-equality/> for an explanation.

²⁸ ‘Control of vital service for trafficked women handed to evangelical religious group’, BHA, 12 April 2011: <https://humanism.org.uk/2011/04/12/news-787/>

²⁹ ‘Children’s counselling service handed to anti-gay Catholic group’, BHA, 15 April 2011: <https://humanism.org.uk/2011/04/15/news-790/>

³⁰ ‘Equality and Human Rights Commission publishes findings of call for evidence on religion, belief and discrimination’, BHA, 12 March 2015: <https://humanism.org.uk/2015/03/12/equality-and-human-rights-commission-publishes-findings-of-call-for-evidence-on-religion-belief-and-discrimination/>

where there can be said to be a genuine, legitimate and justified occupational requirement (GOR) that the post-holder shares the particular religion or belief in question.³¹

18. However, unpublished research conducted by the BHA has found that the vast majority of advertisements for chaplain jobs in NHS hospitals (paid for by the NHS Trusts) require the post-holder to be an ordained Anglican or member of the Free Churches, and almost all require the post-holder to be religious. This is in spite of the fact that it is typically the case that almost all existing paid chaplains are Anglicans or members of the Free Churches.
19. There is also evidence to show that the overwhelming majority of religious and pastoral support provided by Christian chaplains is to Christians. In other words, Christian chaplains cannot meet the needs of the non-religious.³²
20. As a result, earlier this year the BHA threatened to judicially review one such NHS Trust, when recruiting such a restricted post, on the grounds that it had failed to discharge the public sector equality duty (including failing to carry out an equality impact assessment);³³ breached article 9 of ECHR; and failed to take proper account of the relevant NHS England guidelines, which are rightly inclusive on this matter.³⁴ The result was that the Trust suspended the recruitment process and is now carrying out an Equality Impact Assessment.
21. A further threat to another Trust was similarly successful. Then at the end of May we issued such threats to seven further Trusts – all those that were then advertising in a discriminatory way. This prompted NHS England and the Chaplaincy Leadership Forum to commit to sorting the issue out once and for all. The bodies are currently producing guidance for all Trusts on the matter, a process that is ongoing until the end of 2016. No similar progress has been made in other settings such as prisons.

h. Criminality of assisted dying

22. Assisted dying for terminally ill and incurably suffering individuals is currently illegal across the UK. In 2014 a case was brought to the UK Supreme Court by two individuals with locked-in syndrome, arguing the consequent suffering meant that their right to private life under ECHR was severely disrupted.³⁵

³¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:en:PDF>

³² Savage, Dr David, "All faiths and none"? An Audit of Chaplains' Visits, "All faiths and none"? *Health and Social Care Chaplaincy*, Vol 3, No 1 (2015): <https://journals.equinoxpub.com/index.php/HSCC/article/view/26550>

³³ Equality Act 2010, section 149: <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

³⁴ *NHS Chaplaincy Guidelines 2015 Promoting Excellence in Pastoral, Spiritual & Religious Care*, NHS England: <https://www.england.nhs.uk/wp-content/uploads/2015/03/nhs-chaplaincy-guidelines-2015.pdf>

³⁵ The individuals were Tony Nicklinson and Paul Lamb. Tony died midway through the sequence of appeals; after this, his wife Jane argued that her right to family life had been disrupted by the fact that Tony had been unable to secure an assisted death.

23. In an unusual decision, the Supreme Court ruled that it might be willing to consider making a declaration of incompatibility. But given the significant high-profile public ethical implications at play, it would first look to Parliament to resolve the legal issues at hand. Parliament was, at the time, considering a bill that would legalise assisted dying for the terminally ill (but not incurably suffering).³⁶
24. However, in September 2015 MPs voted overwhelmingly against any such legalisation.³⁷ This means that the issue must now return to the courts to resolve. As of writing, no such case has commenced.

i. Inconsistency of marriage laws across the UK

25. Same-sex marriages are now legal across England, Wales, and Scotland, and humanist marriages have since 2005 been legal in Scotland – where they have overtaken the Church of Scotland to become the most popular form of belief-based marriage.³⁸
26. But in Northern Ireland, same-sex marriages are not legal, because in spite of most MLAs voting in favour of legalisation late last year, the DUP used a ‘petition of concern’ to block it.³⁹
27. Humanist marriages are not legal in England, Wales, or Northern Ireland. The UK Government gained the power to extend legal recognition of humanist marriages in England and Wales under the Same-Sex Marriage Act and committed itself to consulting and deciding on whether to execute that power. In December 2014 public consultation found 95% in favour of such recognition, but the Government has not acted.⁴⁰
28. Such inconsistencies in marriage law across the UK are questionable, as the state is granting rights to some citizens and not others. There are also questions with respect

³⁶ ‘Assisted dying appeals supported by the BHA dismissed by Supreme Court, Parliament urged to review law’, BHA, 25 June 2015: <https://humanism.org.uk/2014/06/25/assisted-dying-appeals-supported-bha-dismissed-supreme-court-parliament-urged-review-law/>

³⁷ ‘With MPs voting against assisted dying, the fight must now turn back to the courts’, BHA, 11 September 2015: <https://humanism.org.uk/2015/09/11/with-mps-voting-against-assisted-dying-the-fight-must-now-turn-back-to-the-courts/>

³⁸ ‘Leaders: Humanists offer choice in a rapidly changing world’, *The Scotsman*, 17 August 2016: <http://www.scotsman.com/news/opinion/leaders-humanists-offer-choice-in-a-rapidly-changing-world-1-4204851>

³⁹ In Northern Ireland it is possible for one party to block the will of the majority of Members of the Legislative Assembly, as the Democratic Unionist Party did here. ‘Same-sex marriage: Proposal wins assembly majority but fails over DUP block’, *BBC News*, 2 November 2015: <http://www.bbc.co.uk/news/uk-northern-ireland-politics-34692546>

⁴⁰ Instead in December 2014 it chose to refer the matter to the Law Commission. In December 2015 the Law Commission reported that it was indeed unfair that religious groups can marry people but humanists cannot, and since then the matter has been back with the Government awaiting a fresh decision: <http://www.lawcom.gov.uk/project/marriage-law/>

to religion or belief discrimination with respect to humanist marriages in particular (ECHR article 9.2 taken with article 14).

j. Criminality of abortion in Northern Ireland

29. Currently abortion is legal in Northern Ireland only where there is risk to the mother's life⁴¹ or where there is serious risk to the mother's physical or mental health.⁴² There are several ongoing legal issues related to this.
30. Last year the Northern Ireland High Court ruled that women's ECHR article 8 rights are infringed by the fact that abortion is not legal in the cases of rape, incest, and fatal foetal abnormality.⁴³ The Court issued a declaration of incompatibility, turning the matter over to the Northern Ireland Assembly to resolve. However, in February the Assembly voted down amendments that sought to legalise abortion in these three cases.⁴⁴
31. Also, there is a case about to go to the UK Supreme Court over the fact that women from Northern Ireland are charged around £900 by the NHS in Britain for accessing abortion services there (except when the services are needed due to a life-threatening emergency), in spite of the fact that such services are free for those from Britain. This challenge is also being brought under articles 8/14 ECHR (due to the unjustified financial barriers to obtaining an abortion).
32. Finally, there are ongoing cases where women are being prosecuted for taking, or supplying, abortion pills.⁴⁵ This is in spite of the fact that the UN Working Group on the issue of discrimination against women in law and in practice said in April that 'States should allow women to terminate a pregnancy on request during the first trimester or later in the specific cases listed above'.⁴⁶
33. The last report by the UN Committee on the Rights of the Child into the UK said '*In Northern Ireland, abortion is illegal in all cases except where continuance of the pregnancy threatens the life of the mother, and is sanctioned with life imprisonment. The Committee recommends that the State party decriminalize abortion in*

⁴¹ The Infant Life (Preservation) Act 1929.

⁴² 1938 case law known as the Bourne judgment.

⁴³ 'High Court rules Northern Ireland's abortion laws breach women's human rights', BHA, 30 November 2015: <https://humanism.org.uk/2015/11/30/high-court-rules-northern-irelands-abortion-laws-breach-womens-human-rights/>

⁴⁴ If such behaviour were to continue, this might lead to a constitutional crisis, as it ultimately falls to Westminster, and not devolved administrations, to ensure that domestic law is compatible with the ECHR. Westminster has not yet expressed a view on this situation. 'Northern Ireland fails to uphold women's rights while new campaign seeks to strike abortion from criminal law', BHA, 12 February 2016: <https://humanism.org.uk/2016/02/12/northern-ireland-fails-to-uphold-womens-rights-while-new-campaign-seeks-to-strike-abortion-from-criminal-law/>

⁴⁵ 'Second abortion pills case adjourned as defence challenges prosecution of accused mother', *The Irish News*, 28 April 2016: <http://www.irishnews.com/news/northernirelandnews/2016/04/28/news/second-abortion-pills-case-adjourned-as-defence-challenges-prosecution-501140/>

⁴⁶ *Report of the Working Group on the issue of discrimination against women in law and in practice*, 8 April 2016: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/44

Northern Ireland in all circumstances and review its legislation with a view to ensuring girls' access to safe abortion and post-abortion care services. The views of the child should always be heard and respected in abortion decisions.⁴⁷ Abortion is, in fact, criminalised across the UK, with Britain simply having broader exceptions to criminal law than Northern Ireland, but women are still being sent to prison across the UK for having unlawful abortions.

⁴⁷ https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx