
OPERATING THE INDEPENDENT SCHOOL REGULATORY SYSTEM

Response of Humanists UK, June 2018

About Humanists UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 70,000 members and supporters and over 100 members of the All Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

Humanists UK has a long history of work in education, children's rights and equality, with expertise in the 'religion or belief' strand. We have been involved in policy development around the school curriculum for over 60 years. We also provide materials and advice to parents, governors, students, teachers and academics, for example through <http://www.understandinghumanism.org.uk> and our school volunteers programme. We have made detailed responses to all recent reviews of the school curriculum, and submit evidence to parliamentary select committees on a range of education issues.

Humanists UK is an active member of many organisations working in education, including the Religious Education Council for England and Wales (REC), National Children's Bureau Sex Education Forum (SEF), the PSHE Association, the Children's Rights Alliance for England (CRAE) and Rights of the Child UK (ROCK).

Response to consultation questions

1. Do you agree that the government should issue a single document giving non-statutory advice on the independent school standards?

Yes

2. What general comments do you have on the draft advice document? You can make comments on sections of the advice document relating to individual Parts of the standards further on in this form

First and foremost, we want to record our support for the draft advice, which on the whole is well-worded, well-intentioned, and well-considered. Our response simply identifies a number of sections that we believe could be improved to varying degrees, and throughout the document we have indicated which paragraph our comments relate to. We do have some general comments, however.

Firstly, the advice deals with faith and belief to a significant extent, particularly in the sections related to British values and SMSC development. Whilst the term 'faith and belief' or 'religion and belief', et cetera, are used on a number of occasions, these terms are not sufficiently clear in their inclusion of the non-religious. There is not a single explicit mention of the term 'non-religious' in the advice, and the existence of people who do not belong to a religion is only acknowledged once, in brackets (see paragraph 45). This disproportionately relegates non-religious people and their beliefs below their religious equivalents and represents a failure on the part of Government to encourage schools to grant equal respect to both religious and non-religious people.

The Government must be aware that in certain faith schools and within certain religious communities being non-religious (or, worse still, being an apostate) is either unfathomable or seen as uniquely sinful. The equating of non-religious worldviews with amorality or immorality is worryingly common, even in schools that are otherwise not particularly conservative or extreme in their outlook. Clearly, if a school is to meet the requirement that it promotes 'mutual respect and tolerance for those of different faiths and beliefs', this must include non-religious beliefs. In our view, the Government risks failing to communicate this to schools with sufficient clarity in its advice as it is currently drafted. We would very much welcome the addition of a number of explicit mentions of non-religious people and non-religious beliefs in order to address this, and a clear definition that 'belief' means non-religious worldviews such as humanism.

Secondly, it is clear from this advice that the Government is greatly concerned by many of the views, policies, and practices of a number of faith schools in England, and rightly so. We are glad to see that, on paper at least, a firm line is being taken by the Government in setting out what is expected of such settings and what is considered to be unacceptable.

With that said, we have gone into some detail below about the teaching of religious perspectives on protected characteristics, particularly sexuality and gender, which we believe the advice does not get quite right. As a general comment we are curious as to why this advice seeks to prohibit creationist teaching (welcome though that is), but does not seek to expressly prohibit homophobic, biphobic, and transphobic teaching too. For many, the idea that the world is only a few thousands years old and all the living creatures living within it were created, as they are now, by God is as central to their religion as any other doctrine or belief. If the Government feels emboldened enough to prohibit the teaching of creationism in schools, therefore, we see no reason why it shouldn't feel similarly emboldened to prohibit homophobic, biphobic, and transphobic teaching too. After all, while pseudoscientific and creationist teaching is not to be trivialised, the consequences of homophobic, biphobic, and transphobic teaching are evidently far graver. And as we elaborate on below, such teaching needn't be delivered forcefully or aggressively to cause damage.

We therefore urge the Government to state in no uncertain terms that schools are not entitled to teach that same-sex relationships can't be equated with opposite-sex relationships, that being gay is a sin, that while being gay might be 'fine', acting on it is not, or any other variation of the doctrine. The religious ethos of a school is no excuse for teaching such damaging views, and that must be made clear. It is simply not acceptable for a school in the UK to be deemed as meeting the required standards while potentially jeopardising the wellbeing, fulfilment, and even lives of its pupils in this way.

3. If you have comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed document, insert them here

4. If you have comments on the advice in relation to the Quality of Education standard (Part 1), please insert them here

Paragraph 9 - Whilst we recognise that the three examples given under paragraph 9 are only examples, we think they could be improved.

Firstly, the example at 9c correctly identifies that a curriculum policy that suggests to pupils that all religions are wrong and their adherents not worthy of respect would clearly undermine British values. However, in reality there are no schools in England that have curriculum policies that even approach this outlook, so the example is not particularly useful. On the other hand, there are certain faith schools that suggest to pupils that all *other* religions *and* non-religious beliefs are wrong, and that their adherents are not worthy of respect. In our view, this example could therefore be reworded to more helpfully read:

'c. are designed to suggest to pupils that all religions, **OR SPECIFIC RELIGIONS AND BELIEFS**, are wrong and that therefore those who follow them are not worthy of respect.'

Secondly, the three examples given correspond to three of the four British values - democracy, the rule of law, and mutual respect and tolerance of those with different faiths and beliefs. There is no corresponding example given for individual liberty. This seems to us to be a significant omission, not least given the constraints on individual liberty and autonomy that certain types of private faith schools are known to enforce on their pupils. To give a brief example, earlier this year we revealed that a state faith school in London has been redacting its textbooks to remove mention of LGBT people and instances of women socialising with men, among other things, as well as banning students from accessing the internet either in or outside school, or to visit public libraries unaccompanied. Such policies, whether reflected in the school's written curriculum policy or not, clearly undermine individual liberty and it would be worth the Government making this clear in its advice. We suggest an example along the lines of the following:

'd. Encourage pupils to believe that women are not equal to men or that same-sex relationships are not legitimate, thereby undermining the individual liberty and autonomy of their pupils.'

We are aware that similar advice is provided under paragraph 20, but this relates only to the PSHE curriculum, not to the curriculum as a whole. We are aware, too, that an addition along these lines would likely be opposed by some, but we urge the Government to be resilient to that opposition. It is not acceptable for schools to undermine their pupils rights in these ways and the Government should state this in no uncertain terms.

Paragraph 13 - We welcome the Government's acknowledgement that creationism should not be presented as having a similar or superior evidence base to scientific theories such as evolution. This is clearly the right line to take. A child's right to an

education is severely undermined if, in the course of providing that education, schools fail to differentiate between fact and opinion. Teaching creationism as science blurs the line between the two, and it is only right that schools be held to account for this.

Paragraph 20 - Again, we know that the examples under this paragraph are only examples, but we want to suggest two minor amendments. First, in the interests of inclusivity, we would welcome the addition of 'or beliefs' to the first example. Second, it is worth making clear under example 'b' that schools should not be suggesting to *female* pupils either that a woman's role is subservient to that of a man. The removal of the word 'male' would suffice here.

Paragraph 21 - Clarity is needed over the precise meaning of the sentence 'A school can teach its particular faith has teachings relevant to these matters, and explain to pupils what those teachings are' so that schools do not fall foul of the Equality Act 2010. This clarity is long overdue more generally, as in our view there is widespread confusion as to what is and is not acceptable in terms of teaching religious perspectives on specific protected characteristics.

Section 85 of the Equality Act 2010 states that a school must not discriminate, harass, or victimise pupils 'in the way it provides education for the pupil'. However, section 89(2) of the Equality Act 2010 states that 'nothing in this chapter applies to anything done in connection with the content of the curriculum.' This has been interpreted by some to mean that faith schools are free to teach, for instance, that homosexuality is a sin or that women should be subservient to men. This is not correct.

The explanatory notes accompanying section 89(2) of the Equality Act 2010 state that:

'the prohibitions [against discrimination]... do not apply to anything done in relation to the content of the school curriculum. This ensures that the Act does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds.'

'The way in which the curriculum is taught is, however, covered by the reference to education in section 85(2)(a), so as to ensure issues are taught in a way which does not subject pupils to discrimination.'

In other words, schools are permitted to teach pupils from a wide range of sources and on a wide range of issues, including, for instance, controversial views on homosexuality. But in doing so the school must ensure that such issues are taught in a way that does not subject pupils to discrimination, harassment, or victimisation.

Teaching children that homosexuality is a sin clearly subjects LGBT pupils to discrimination. Similarly, teaching children that 'in our community homosexuality is seen as a sin', or 'our religious rules dictate that homosexual behaviour is a sin', or other variations thereof, is clearly discriminatory. This is true regardless of the tone in which these messages are conveyed. Regrettably the Government's *Equality Act 2010 and schools* guidance fails to recognise this and suggests that such teaching may only fall foul of the Act if it 'involved haranguing, harassing, or berating a particular pupil or group of pupils'. This is obviously wrong. An LGBT pupil told in the nicest, most measured way that their sexuality or gender identity is sinful, and that this is the school's policy, has been discriminated against. Despite this, teaching of this kind is

taking place in classrooms up and down the country, in both private and state schools. The Government must make clear, both in this advice and elsewhere, that this is unacceptable.

To be clear, none of this has any impact on individual teachers expressing personal views on such matters, provided it is done in an appropriate manner and context (when they are asked by pupils, for instance). It is when teaching of the kind outlined above is a matter of school policy and is delivered as such that it becomes problematic.

Paragraphs 26 - This is an important section and we fully endorse the Government's comments around the need for children to be prepared not just to live within their immediate community, but in society more broadly. Without this preparation, the individual liberty and personal autonomy of children - and later adults - will be severely limited.

Given its importance, therefore, we believe that it would be helpful for the advice to provide examples of things that would fail to meet this standard, as it has done in other sections of the advice. For example:

- Redacting textbooks or exam papers to censor information about life in Britain.
- Misleading pupils about the legal rights and freedoms to which individuals in Britain are entitled.
- Banning various activities undertaken outside of school, such as visiting public libraries or women driving, and making these prohibitions a condition of attendance.

The Department will be aware that these are all things that are current practice in some independent faith schools, and we should not have to wait for an Ofsted inspection for them to be condemned. Explicitly ruling out such practices in Government guidance would be a welcome defence of the rights of children to be prepared for life outside the school gates.

Paragraph 27 - We welcome the robust criticism of gender discrimination and segregation in the advice, both in this paragraph and at paragraph 40. However, while the advice mentions mixed-sex schools specifically, and the problems that result from gender separation within them, it fails to explicitly mention single-sex schools too. The final sentence of paragraph 27 refers to 'schools' in general, but given that it can be harder to identify instances of gender discriminatory teaching or practice in single-sex schools, we believe explicit mention would be worthwhile.

This is particularly important in light of the High Court's recent ruling in the case of *HM Chief Inspector of Education, Children's Services and Skills v Al-Hijrah School*. Without getting into the details, the ruling means that it is unlawful for mixed-sex schools to segregate girls and boys for the entirety of their time. Unfortunately, rather than end the segregation of girls and boys, some mixed-sex faith schools have responded to the ruling by proposing to de-amalgamate into two separate single-sex schools. Whilst there is no legal barrier to this happening, it should ring alarm bells. In fact, de-amalgamations of this nature could well result in a worse situation and even more comprehensive segregation of boys and girls than was the case in the forerunner mixed-sex schools.

We suggest that a simple addition at the end of paragraph 27 along the following lines would suffice:

‘Single-sex schools should consider the additional efforts they may need to take in order to adequately prepare pupils for gender mixing and to ensure that gender stereotypes do not take hold’.

5. If you have comments on the advice relating to the SMSC standard (Part 2), insert them here

Paragraph 45 - The list provided here is a good one, but we believe it would be improved by a recognition that **apostasy** is a particular taboo within certain forms of some religions. Apostates are often singled out for discrimination and ill-treatment by the communities whose religious beliefs they have eschewed. Indeed, it is not at all uncommon for such communities to display general respect for diversity of religion while also condemning and encouraging the ostracism of apostates. This dissonance is even reflected in the statute of a number of countries around the world, which criminalise apostasy but not adherence to any particular religion or belief. The following addition would suffice:

- An understanding that the freedom to hold other faiths and beliefs is protected in law; **this includes the freedom to change or leave one’s religion or belief.**

Paragraph 47 - In the interest of consistency and to ensure that both the religious *and* non-religious are included as subjects of the requirement to promote respect, the fourth and fifth bullet points under this paragraph should be amended to say ‘faith(s) **and belief(s)**’ rather than just ‘faith(s)’.

Paragraph 51 - The implications of this paragraph insofar as it relates to the teaching of religious law may well be clear to schools, but we believe it is worth making explicit that where conflict between state law and religious law arises, state law always has precedence. There should be no room for doubt on this point.

Paragraph 55 - Again, it is important that this advice encourages schools to promote respect for both religious and non-religious people, and their beliefs. The use of the word ‘faith’ without also mentioning ‘belief’ more generally, or indeed non-religious beliefs specifically, risks failing on this score. Given the growing proportion of people in this country that identify as non-religious, that is not acceptable. The following sentence in this paragraph should be changed in line with the below:

‘Pupils must be encouraged to regard all cultures with respect and this cannot be achieved properly without reference to the influence of faith **and belief**. Teaching should aim to prepare pupils to interact positively with people of different cultures and faiths, **as well as non-religious worldviews.**’

Paragraph 58 - This is an extremely welcome addition to the advice and both the Department and Ofsted should not shy away from enforcing the requirement that pupils are specifically made aware of and encouraged to respect each and every protected characteristic.

However, the paragraph falls down by accepting the notion that 'alternative lifestyles' can be 'promoted'. This is obviously not the case and risks suggesting that an individual's sexuality or gender identity are choices towards which people can be persuaded or dissuaded. This approach is an incredibly damaging one, which continues to justify discrimination and encourage repression all over the world. Given this, and the fact that the current draft is reminiscent of the language of section 28, we recommend that this sentence (i.e. the second sentence of the paragraph) is simply removed.

Paragraph 60-65 - We believe that this section would benefit from acknowledging that faith schools can be - and have been - particularly problematic in terms of promoting partisan political views. To be clear, this has very little to do with the religious character of faith schools *per se*, and the majority of faith schools in England cannot be accused of being politically partisan to any great extent. However, the fact that faith schools are often influenced or run to at least some extent by national organisations that also engage in political lobbying has led to problems in the recent past.

For example, in 2012 the Catholic Education Service (CES) wrote to Catholic schools in England and Wales to urge pupils to sign a petition against same-sex marriage. More recently, Catholic schools were encouraged to promote a letter-writing campaign targeted at influencing Government proposals to overturn the 50% cap of faith-based admissions at free schools. In both cases a captive audience of pupils (and parents) within faith schools was exploited to further the partisan political ends of national organisations. This is inappropriate and, in our view, unlawful. We would welcome an addition to the advice to make this clear.

6. If you have comments on the advice relating to the welfare, health and safety of pupils standards (Part 3), insert them here

Paragraph 83 - The Government ought to be bolder in condemning corporal punishment in schools and this advice should state unequivocally that any use of corporal punishment, whether deemed as common assault or not, will result in schools failing to meet standards 7(a) and 7(b). The defence of reasonable chastisement should be removed entirely from English law, as is happening in Wales, but until that happens there is no reason why the Government cannot effectively end it in schools.

Paragraph 84 - We welcome the Government's efforts to tackle the issue of ostracism in this advice, but believe it could go further. Rather than simply 'minimise the impact' of ostracism upon children, schools must not be complicit in ostracising families or individuals who may or may not have provoked the disapproval of their communities. This entails, among other things, treating the parents of children equally and with equal respect, subject to any directives issued by a family court, and refraining from any form of endorsement of a community's use of ostracism. We recommend an addition to reflect this.

7. If you have comments on the advice relating to the suitability of staff, supply staff and proprietors standards (Part 4), insert them here

8. If you have comments on the advice relating to the premises of and accommodation at schools standards (Part 5), insert them here.

9. If you have comments on the advice relating to the provision of information standards (Part 6), insert them here

10. If you have comments on the advice relating to the manner in which complaints are handled standard (Part 7), insert them here

11. If you have comments relating to the advice on the Quality of leadership in and management of schools standard (Part 8), insert them here

12. Do you agree that the department should replace the existing regulatory policy statement with one which also covers enforcement action?

Yes

13. Do you agree with the change in policy highlighted at paragraph 10 of the draft statement?

Yes

14. If you have comments on the policy statement in relation to regulatory action, insert them here

15. If you have comments on the policy statement in relation to enforcement action, insert them here

Paragraph 26(c) - The example of faith schools used to illustrate the consistent approach to enforcement action is as follows:

'...faith schools should not be treated differently from others in a similar situation (unless the issues connect directly to faith, or their faith specifically)'

This is clearly well-intentioned, but it is not clear what purpose is served by the caveat in brackets. Religion is, of course, a protected characteristic and care must be taken by the Department not to act in a way that discriminates, directly or indirectly, on the basis of religion. However, none of the enforcement actions outlined in the statement (removal from the register, closure of buildings, admissions ban, etc) could possibly be said to require any more or less sensitivity when faith schools are involved. Indeed, it is difficult to imagine any scenario in which the specific nature of enforcement action would need to be altered on account of a school's religious character. Unless the Department can provide one, we recommend removing the bracketed caveat.

Paragraph 27(d) - This paragraph on the impact that enforcement action has on pupils, as well as parents and staff, would benefit from a great deal more consideration.

'...ordinarily, DfE will attach less weight to the potential disruption caused to pupils and their families, the more serious it considers the nature and extent of the breaches of the ISS, because in the longer term pupils' interests will be best served by the enforcement action despite short-term disruption.'

Firstly, this approach does not seem to have been the one taken in recent years. In fact, in 2017 a *Schools Week* investigation found that some 20% of non-association

independent schools had failed to meet the ISS in 2014-15. Of these, 30% had failed twice, 13% failed three times, and some schools had even been failed as many as seven times without being closed. Despite this, just three schools were shut down in that time. If anything, the DfE 'ordinarily' displays a high degree of hesitation in moving to take enforcement action against schools.

In any case, allowing schools to remain open for a number of years whilst failing to meet the ISS is clearly not in the interests of children. In the most extreme cases, there are children who have spent the entirety of their education to date in schools that fail to meet all of the standards. This is not acceptable and the Government needs to come up with a clear strategy that allows it to close failing schools, whilst also ensuring the continued education of the pupils within them. This is not an easy task, and may well involve considerable investment, particularly in ensuring the availability of other schools with spare places in local areas, but it is too important not to do. Without such a strategy, the Government will continue to be unable to take enforcement action against failing schools, afraid either that there is simply nowhere for pupils to go, or that they will fall into illegal schools.

16. If you have comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed statement, insert them here

17. If you have any other comments on the policy statement, insert them here

18. Do you agree that the government should revise the current regulations as shown in the draft regulations?

Yes

19. Are there any changes in the revised regulations which you believe should not be made? If so, please comment here

20. If there any items of information which are not included in the draft regulations which you believe should be required from schools, please comment here

21. Do you have any comments on the proposals to make amendments in respect of the Non-Maintained Special Schools Regulations or Independent School Standards as described in the consultation document? If so, please comment here

22. If you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) to the draft regulations, insert them here

23. If you have any further comments to make on matters covered by this consultation, or on the independent school regulatory system more generally, insert them here