

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

Wales Humanists is a part of 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 85,000 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.

We have 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 and the curriculum for over 60 years. We also provide materials and advice to parents, governors, students, teachers and academics, for example through our Understanding Humanism website¹ and our school speakers programme. We have made detailed responses to all recent reviews of the school curriculum in Wales (and the rest of the UK) and submit memoranda of evidence to MSs, MPs, civil servants, and parliamentary select committees on a range of education issues.

We are an active member of many organisations working in education in the UK, including the Religious Education Council for England and Wales (REC), of which we are a founding member, and our Chief Executive was, until recently, the Treasurer; the Welsh Association of Standing Advisory Councils on RE (WASACRE), of which our Wales Coordinator was formerly an executive committee member; and, in England, the Sex Education Forum, the PSHE Association, and the Children's Rights Alliance for England (CRAE). We have been on all Welsh and UK government steering groups that have reviewed RE in recent years and currently sit on the Welsh Government working groups for RVE and RSE.

Our primary interests in education relate to the curriculum (in particular RVE, PSE/RSE, citizenship, and science), collective worship/school assemblies, and state-funded religious schools, as well as children's rights. Given this, our evidence largely focuses on the changes to religious education

¹ Understanding Humanism (2020) <<https://understandinghumanism.org.uk/>> [accessed 11 September 2020].

proposed in the Bill. However, we have also included our views on other areas – notably RSE and science education – where this is relevant. **A summary of the key points we raise with respect to the Bill is included in response to question 6.**

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)

We strongly agree with the underlying principles of the ambitious new Curriculum for Wales which, once implemented, we believe will be the most inclusive curriculum in the UK. In our view, this will particularly be the case with respect to religious education (or Religion, Values, and Ethics as it is set to be renamed). But this advance in inclusivity will be further achieved by provisions which will guarantee all learners aged 3 - 16 access to comprehensive relationships and sexuality education (RSE).

We fully support the four purposes of the curriculum, which display an explicit commitment to equality and human rights that, as is clear from the curriculum guidance that accompanies the Bill, permeates each area of learning and experience (AoLE).² We also support the 'what matters' structure within each AoLE and agree with the Government that these statements set out the fundamental building blocks of curriculum content should be enshrined in legislation.

As noted in the explanatory memorandum,³ the Bill is designed to ensure that the legislative framework relating to the curriculum adequately facilitates **all** learners in Wales to 'embody the four purposes' and receive the 'high-quality broad and balanced education' to which they are entitled throughout the course of their statutory education. This laudable aim would be impossible under the current legal arrangements, which the Government is correct to say are 'no longer fit for purpose'.⁴

² Welsh Government, *Curriculum for Wales Guidance* (January 2020)

<<https://hwb.gov.wales/api/storage/afca43eb-5c50-4846-9c2d-0d56fbffba09/curriculum-for-wales-guidance-120320.pdf>> [accessed 15 September 2020].

³ Welsh Government, *Curriculum and Assessment (Wales) Bill: Explanatory Memorandum* (September 2020), para. 3.8 <<https://senedd.wales/laid%20documents/pri-ld13294-em-r/pri-ld13294-em-r-e.pdf>> [accessed 15 September 2020].

⁴ *ibid.* para. 3.2.

Religion, Values, and Ethics:

The inclusion of humanism

One of the most important improvements the new Bill proposes to make involves clarifying that the newly titled subject Religion, Values, and Ethics must be fully inclusive of non-religious worldviews like humanism. At present, both the subject name and the wording of the law underpinning it refer solely to 'religion' and 'religions', whereas human rights law has established that this should be read as 'religion or belief'.

Here it is important to note that the proposed changes do not involve a substantive change to the law. In fact, the Human Rights Act 1998 (following the European Convention on Human Rights) already dictates that humanism must be treated equally to religions, and the judgment in the only domestic case law on the issue found that a curriculum which systematically excluded the teaching of humanism would fail to meet the legal standard of being 'objective, critical, and pluralistic'.⁵

The Bill's clarification of the requirement to include non-religious perspectives in RVE is made even more pertinent by the fact that, along with the rest of Britain, Wales is becoming increasingly non-religious. The most recent British Social Attitudes Survey suggests that 52% of British and 57% of Welsh adults belong to no religion.⁶ The former figure rises to 71% for the age-bracket most likely to have children of school age (25-54) and 78% amongst younger people (18-24). In this context, a syllabus that 'give[s] priority to the study of religions (including some with a relatively very small following and no significant role in the tradition of the country) over all non-religious world views (which have a significant following and role in the tradition of the country)⁷ would violate the law: 'Such a syllabus would not afford 'equal respect', would not be pluralistic, and would therefore be unlawful'.⁸

An RVE curriculum that failed to be inclusive of humanism would not only be problematic because it would fail to meet the standard of being objective, critical, and pluralistic, it would also seriously risk violating the freedom of thought, conscience, religion, and belief that young people are legally entitled to enjoy under Article 9 of the European Convention on Human Rights and Article 14(1) of the UN Convention on the Rights of the Child. In addition, by failing to provide a well-rounded

⁵ See *R (Fox) v Secretary of State for Education* (2015) <<https://www.judiciary.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>> [accessed 18 June 2020].

⁶ Humanists UK *Latest British Social Attitudes Survey shows continuing rise of the non-religious* (2019) <<https://humanism.org.uk/2019/07/11/latest-british-social-attitudes-survey-shows-continuing-rise-of-the-non-religious/>> [accessed 19 June 2020].

⁷ *R (Fox) v Secretary of State for Education* (2015) para 77 <<https://www.judiciary.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>> [accessed 18 June 2020].

⁸ Professor Satvinder Juss (UCL), *High Court ruling on Religious Education Legal guidance on what it means for local authorities, academies, schools, teachers, Agreed Syllabus Conferences, and SACREs* (2016) <<https://humanism.org.uk/wp-content/uploads/2016-04-28-FINAL-High-Court-ruling-on-Religious-Education-legal-guidance.pdf>> [accessed 19 June 2020].

education in the various beliefs that are prevalent in society, such a curriculum would undermine one of the four key principles of the new curriculum; namely, to produce 'ethical, informed citizens who are ready to be citizens of Wales and the world.'⁹

What's more, none of the usual contemporary justifications for religious education – its contribution to social cohesion and mutual understanding, its presentation of a range of answers to questions of meaning and purpose, its role in educating about the history and present culture of humanity, and its role in the search for personal identity and values – can be adequately met without including humanist perspectives alongside different religions. For this reason, the legal clarification will also better enable schools and teachers to provide high quality lessons in the subject.

Agreed Syllabus Conferences (ASCs) and Standing Advisory Councils on Religious Education (SACREs)

The new Bill also clarifies the law regarding humanist representatives on the bodies that govern RVE by explicitly providing for the inclusion of the non-religious.

The human rights provisions that dictate that religions and humanism must be treated equally in the content and delivery of R(V)E also cover the issue of which groups should be represented on these bodies (called ASCs and SACREs), which develop and oversee the locally agreed syllabus for the subject. This means that, although the current law on the composition of SACREs refers to 'such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area,'¹⁰ humanists may nevertheless legitimately participate as full voting members of these councils.

Indeed, in 2018 the Government issued guidance¹¹ to this effect following a successful legal challenge of the Vale of Glamorgan Council's decision to prevent a humanist representative from joining the SACRE.¹² Nevertheless, while there is currently humanist involvement in more than half of the 22 Welsh SACREs, just six have humanists as full members, and a handful have continued to actively oppose their appointment. Without a change to the wording of the law to make it clear that those with non-religious convictions may be included on these bodies, humanists will continue

⁹ See e.g. Welsh Government *Developing a Vision for Curriculum Design* (2020) <<https://hwb.gov.wales/curriculum-for-wales/designing-your-curriculum/developing-a-vision-for-curriculum-design/#curriculum-design-and-the-four-purposes>> [accessed 19 June 2020].

¹⁰ Education Act 1996, section 390(4)(a) <<http://www.legislation.gov.uk/ukpga/1996/56/part/V/chapter/III/crossheading/constitution-of-standing-advisory-councils-on-religious-education/2013-03-04>> [accessed 13 July 2020].

¹¹ Letter from Kirsty Williams to Local Authority Directors of Education (May 2018) <https://humanism.org.uk/wp-content/uploads/KW_0783_18-en.pdf> [accessed 13 July 2020].

¹² Humanists UK (2017) 'Council backs down in High Court challenge to exclusion of humanists from local RE body' <<https://humanism.org.uk/2017/10/06/council-backs-down-in-high-court-challenge-to-exclusion-of-humanists-from-local-re-body/>> [accessed 13 July 2020].

to face unfair discrimination with respect to their involvement, and find it more difficult to convince local authorities that they should be admitted.

Further, the continued existence of SACREs and ASCs which fail to adequately include humanist representatives is highly likely to entail the production of syllabuses which misrepresent or caricature humanist perspectives. Since it is deemed essential that religious groups are given the opportunity to ensure the curriculum presents their beliefs in an authentic way, the same right must be afforded to humanists.

For all these reasons, the proposed introduction of a group on the SACRE which is composed of 'persons to represent such non-religious philosophical convictions (within the meaning of section 375A(3)) as, in the opinion of the authority, ought to be represented'¹³ is not only welcome, but vital.

The removal of the right to withdraw

To expand the proportion of learners who are able to access inclusive Religion, Values, and Ethics, the Government has taken the decision to remove the parental right to withdraw children from these lessons. But, to mitigate the potential for this to interfere with the right to freedom of religion or belief, alongside clarifying the requirement for lessons to be objective, critical, and pluralistic, the Bill also introduces a parental right to demand this form of RVE in faith schools.

RVE in voluntary aided schools

We were initially concerned about the proposal to remove the right to withdraw because it acts as an important safety valve for the protection of the freedom of religion or belief in the event that these lessons are taught in a partisan or insufficiently pluralistic way.¹⁴ We were particularly worried about the removal of the right to withdraw from RVE in faith schools, where religious bodies will retain the right to teach the subject from a faith perspective, something which, because it endorses a particular religion, would constitute indoctrination under human rights law.¹⁵

Many parents, particularly those living in rural areas, have little choice over which school their children attend. This means many pupils end up in faith schools when they and their families do not share the religion of the school. These families are currently forced to decide between religious indoctrination or opting out of religious education altogether, thus socially isolating themselves, and missing a vitally important aspect of their education. Despite our earlier concerns, however, we believe that the provision for voluntary aided schools with religious character to provide RVE in

¹³ Curriculum and Assessment (Wales) Bill, Schedule 2, Minor and consequential amendments and repeals, 26 (4) (aa) p.51 <<https://senedd.wales/laid%20documents/pri-ld13294/pri-ld13294%20-e.pdf>>

¹⁴ Humanists UK, 'Scrapping right to withdraw from RE could undermine human rights law says legal expert' (2020) <<https://humanism.org.uk/2020/02/08/scrapping-right-to-withdraw-from-re-could-undermine-human-rights-law-says-legal-expert/>> [accessed 13 July 2020].

¹⁵ See e.g. European Court of Human Rights (2020) *Guide on Article 2 of Protocol No. 1 - Right to education* p.18 <https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf> [accessed 13 July 2020].

accordance with the locally agreed syllabus when parents demand this is an innovative solution to this problem, and marks a significant improvement on the current situation.¹⁶

We nevertheless think that a number of amendments are required to make the proposals relating to RVE, particularly as it is taught in VA schools, fit for purpose. These are discussed in more detail in our response to question 2.1 (on potential barriers to implementation) and include requiring schools to give parents an explicit choice as to whether to opt for agreed syllabus RVE or a faith-based version of the subject that is renewed on a regular basis, granting older pupils the right to opt-in to agreed syllabus RVE, a requirement for faith schools to employ teachers who are adequately trained to teach the subject in an objective manner, and a requirement for the agreed syllabus provision to be inspected by Estyn rather than a denominational body.¹⁷

RVE in schools without a religious character

In schools without a religious character, the removal of the right to withdraw should be far less problematic than in faith schools because these lessons will be taught in line with the locally agreed syllabus for the subject, and the new law will require that the ASC will 'have regard to' statutory guidance (including the necessity to make provision for the teaching of non-religious worldviews). That said, to help prevent RVE lessons violating the requirement to be 'objective, critical, and pluralistic', schools and teachers should be provided with additional professional learning opportunities, and ASCs and SACREs must be adequately trained to make sure they fully comprehend the legal requirements, as well as the potential impact of any failure to meet them properly.

Abolition of the right to demand faith-based RVE

We note that the Bill removes the right of religious parents to demand faith-based R(V)E in schools without a religious character. Here the change is warranted because, under human rights law, there is no legal right to an education which entirely reproduces the faith (or other) beliefs of parents,¹⁸ only one that does not seek to impose a particular perspective. In schools without a religious character, RVE will be necessarily 'objective, critical, and pluralistic', therefore, as long as this remains the case, the state need not facilitate an alternative during school time.

On the same basis, the right to demand faith-based RVE in voluntary controlled (VC) schools, which will already be teaching the agreed syllabus by default, should similarly be removed. Failing this, in

¹⁶ Curriculum and Assessment (Wales) Bill (2020), schedule 1, paragraph 8(4) <<https://senedd.wales/laid%20documents/pri-ld13294/pri-ld13294%20-e.pdf>> [accessed 15 September 2020].

¹⁷ NB: A full list of these suggested amendments is available in the summary response to question 6.

¹⁸ See e.g. the Belgian Linguistic Case, where the Court found that there was no obligation to provide schools which taught French simply because this was the language spoken at home and parents wanted such schools (Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (merits) (1968)) <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57525%22%5D%7D>> [accessed 21 June 2020].

line with our recommendations for VA schools (see response to question 2.1), from Year 10 onwards learners receiving the faith-based version of the subject should be permitted to opt back in to agreed syllabus lessons if they wish.

Relationships and sexuality education

We fully endorse the Government's decision to make comprehensive, age and developmentally appropriate RSE mandatory for all pupils and abolish the parental right to withdraw their children from the subject. This will have a hugely positive impact on the rights and interests of all young people with a variety of protected characteristics, but particularly LGBT pupils, women and girls, and people with disabilities.

All the best evidence¹⁹ shows that teaching about different types of relationship, including sexual relationships, as well as about consent, sexual health, and the advantages of delaying sex, ensures that young people grow up healthier, happier, and more able to keep themselves, and those around them, safe. RSE also plays a very important safeguarding role which brings it into line with Article 19 of the UNCRC which requires that 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'.²⁰

Given the role RSE plays in the health, safety, and wellbeing of children and young people, there should be no right for parents to withdraw their children from this vitally important aspect of their education.

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)

Yes.

Religion, Values, and Ethics:

As noted in our response to question 1.2, the key provisions requiring Religion, Values, and Ethics to cover religious and non-religious beliefs equally in the syllabus, and include humanist representatives on ASCs and SACREs do not represent a substantive change to the law. However, owing to the religion-centric language of the current legal framework, humanists have been

¹⁹ Sex Education Forum, *SRE: The Evidence* (2015) <<https://www.sexeducationforum.org.uk/sites/default/files/field/attachment/SRE%20-%20the%20evidence%20-%20March%202015.pdf>> [accessed 19 September 2019]

²⁰ Convention on the Rights of the Child (1989) <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> [accessed 19 September 2019]

systematically excluded from participating in SACREs and ASCs, and humanism has been erroneously left out of the RE curriculum. In order to ensure that this does not happen in future, it is, therefore, vitally important that the wording of the law is clarified to make it completely clear that, in line with the Human Rights Act, non-religious perspectives and those who hold them must be treated equally.

We believe that the ideal state of affairs with respect to the introduction of the new, inclusive RVE curriculum would be for it to be compulsory in all schools irrespective of their religious character. This would ensure that, as per the vision of the Religious Education Council for England and Wales, every learner in Wales would receive 'a personally inspiring and academically rigorous education in religious and non-religious worldviews.'²¹

However, short of that, we support the proposal to require that voluntary aided schools teach RVE according to the agreed syllabus when parents demand it. Legally speaking, the Government's decision to abolish the parental right to withdraw from RVE across all schools, including faith schools, necessitates that the law is amended to ensure that the freedom of religion or belief of families whose beliefs do not cohere with the religion of the school is protected through the offer of such an alternative. For this reason, as set out in the Bill, schools should not be able to refuse this when requested.

This change will represent a marked improvement on the current situation whereby parents who do not share the faith of the school their child attends are compelled to choose between exposing their child to a potentially indoctrinatory faith-based approach to RE or exercising their right to withdraw altogether, risking isolation from peers as well as depriving their child of a vital aspect of their education.

Relationships and sexuality education:

The changes to the law proposed by the Bill are also necessary to ensure that children in Wales have equal access to the comprehensive relationships and sex education to which they are entitled. This is particularly the case with respect to the abolition of the parental right to withdraw which, at present, systematically denies some of the most vulnerable children and young people their right to receive impartial information that, in some cases, could be life-saving. It is alarming to think that, under the present legislation, an abusive parent may simply exercise the right to withdraw a child from RSE and, by so doing, prevent them from receiving any safeguarding education.

It is also of great importance that the content of RSE is made statutory through the RSE Code. To see why this is the case, one need only look at how the statutory guidance in England has been interpreted. There, provisions saying RSE must take the religious background of pupils into account

²¹ Aims, Vision and Values, Religious Education Council for England and Wales <<http://religiouseducationcouncil.org.uk/about/how-the-rec-works/aims-vision-and-values>> [accessed 19 June 2020].

²² and that this might mean the provision of a 'differentiated curriculum' have been weaponised by those opposing the subject. This includes protesters outside schools in Birmingham claiming that Muslim children should not be taught about LGBT people,²³ but also religious schools using these faith-based 'carve-outs' to attempt to avoid their duty to teach the subject altogether.²⁴

RSE will only be effective if the content, not simply the broad subject area, is enshrined in legislation, guaranteeing a broad and balanced curriculum for all pupils regardless of religion or belief.

The What Matters Code, science, evolution, and creationism

We understand that the Curriculum for Wales is predicated on the idea that teachers should be granted the flexibility to design the curriculum they provide around the needs of their pupils. However, in order to ensure that learners get full access to a broad and balanced curriculum, it is nevertheless necessary to stipulate a range of non-negotiable, basic content that all learners must receive, as well as an outline of what progression looks like in each curriculum area. It is for this reason that we strongly support the decision to establish statutory codes for the what matters statements and curriculum progression.

In our view, one area where this is particularly important is the teaching of science. When the new curriculum was published, we voiced concern that the Science and Technology AoLE did not appear to require the teaching of evolution in primary schools and, owing to a lack of any explicit prohibition on the teaching of pseudoscience, could allow the teaching of theories such as intelligent design or creationism to be taught as evidence-based.²⁵ We found this especially worrying given that the move from discrete subjects to 'Areas of Learning and Experience' seems likely to encourage cross-disciplinary teaching that could include the merging of lessons on religion with science.

²² Para. 20, p.12 and Para. 68, p. 24.

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805781/Relationships Education Relationships and Sex Education RSE and Health Education.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805781/Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education.pdf)> [accessed 16 September 2020].

²³ Humanists UK, '600 pupils reportedly withdrawn from Birmingham school as protesters announce 'God created women for men's pleasure'' (20 May 2019) <<https://humanism.org.uk/2019/05/20/600-pupils-reportedly-withdrawn-from-birmingham-school-as-protestors-announce-god-created-women-for-mens-pleasure/>> [accessed 22 September 2020].

²⁴ Humanists UK, 'Jewish school caught encouraging mass withdrawal of children from RSE so school can foster good religious girls' <<https://humanism.org.uk/2019/07/24/jewish-school-caught-encouraging-mass-withdrawal-of-children-from-rse-so-school-can-foster-good-religious-girls/>> [accessed 21 August 2020]

²⁵ Humanists UK, 'Welsh Government ignores leading scientist's advice on teaching evolution not creationism' (28 January 2020) <<https://humanism.org.uk/2020/01/28/welsh-government-ignores-leading-scientists-advice-on-teaching-evolution-not-creationism/>> [accessed 22 September 2020].

The proposal for a What Matters Code that will make the what matters statements – including a statement on living things that refers to the impact of natural selection on diversity of life²⁶ – statutory has somewhat assuaged our concerns in this regard. Nevertheless, the fact that evolution is not explicitly mentioned in the progression steps of the curriculum until progression step 5 (which should ordinarily coincide with the final stages of secondary school) still gives us pause, as does the failure to expressly rule out the teaching pseudoscience, which could easily corrupt teaching elsewhere in the curriculum, particularly RSE²⁷. Of course, whether the legislation pertaining to the What Matters Code will be enough to prevent erroneous theories being taught as fact (or having some basis in evidence) will depend on the guidance and professional development that is brought in alongside the new law, and the devil will very much be in the detail. In our view, any guidance on the teaching of the new Science and Technology AOLE must emphasise the importance of teaching young children the fundamentals of evolution and of avoiding teaching creationism and other pseudoscientific theories as science when they are not.

Here it is worth mentioning that, in England, academies and free schools are prohibited from teaching unevidenced theories such as creationism as science by a clause in their funding agreements preventing them from allowing 'any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations.'²⁸ This clause applies to all subjects. The UK Government has also clarified that in its view, the duty on all state schools to teach a 'broad curriculum' also means that this requirement is in force in other types of school.²⁹ In our view, the Bill could easily include a similar declaration and thus close down any opportunity for unscrupulous providers to use curriculum flexibility as a means by which to introduce unsupported theories into the classroom.

²⁶ Welsh Government Hwb, 'Science and Technology Statements of What Matters' (28 January 2020) <<https://hwb.gov.wales/curriculum-for-wales/science-and-technology/statements-of-what-matters>> [accessed 22 September 2020].

²⁷ There is evidence to suggest that this is particularly common in teaching about abortion. See Humanists UK, 'Abortion factsheet launched to challenge spread of junk science in schools' <<https://humanism.org.uk/2019/01/31/abortion-factsheet-launched-to-challenge-spread-of-junk-science-in-schools/>> [accessed 22 September 2020].

²⁸ Department for Education, 'Academy and free school funding agreement: single academy trust' (2014) <<https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements-single-academy-trust>> [accessed 21 September 2020].

²⁹ Robert Long and Shadi Danechi, 'Faith Schools in England: FAQs' *House of Commons Library Briefing Paper Number 06972*, (20 December 2019) <<http://researchbriefings.files.parliament.uk/documents/SN06972/SN06972.pdf>> [accessed 21 September 2020].

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)

Right to demand agreed syllabus RVE:

As mentioned in our response to question 1.2, we think the proposal to replace the right to withdraw from RVE with a right to demand the subject in line with the locally agreed syllabus in voluntary aided faith schools marks a significant step towards giving most learners in Wales access to fully inclusive lessons about religions and humanism. We do nevertheless think that there are some ways in which the proposals should be improved and/or further clarified if they are to achieve this purpose:

1. Process for demanding agreed syllabus RVE

Since the right to demand RVE in accordance with the agreed syllabus will serve as a vital protection for the freedom of religion or belief for families whose children attend voluntary aided schools, the Welsh Government must establish a process to ensure that parents are regularly informed of their rights in this regard (e.g. at the start of every academic year or at the point any new pupil joins the school). Ideally, VA schools should be required to explicitly ask parents to select the type of R(V)E they prefer, rather than simply defaulting to faith-based RE unless told otherwise. This will help to ensure that all parents make the choice that they think is right for their children, and would prevent children feeling singled out when their parents make this choice. It is hard to see what grounds faith providers would have for legitimately objecting to it, given that it is only allowing for what parents and pupils want. Rather, faith schools should be happy to ensure regular and open communication with parents confirming their and their children's rights.

Failing this, VA schools should at the very least be required to make it known to all parents that another option is available, and reference to the right to demand agreed syllabus RVE should feature in every school's published policy for the subject (which should be available both on request and via the school's website).

2. Right to demand agreed syllabus RVE for older pupils

From Year 10 onwards, pupils themselves should be granted the power to request inclusive RVE in line with the locally agreed syllabus. As already noted with respect to voluntary controlled schools, this would better respect the rights of children and young people and fits more closely with the requirement for policy decisions to take proper account of the UNCRC than either the current or proposed arrangements. What's more, given that children are currently expected to exercise a degree of choice over what they will be taught in years 10 and 11 when they select their GCSE

options at the end of year 9, there is a clear point at which it would be reasonable to begin to offer this alternative.

3. Teacher training, recruitment, and dismissal

Since RVE that follows the agreed syllabus will be a significant change to teachers in voluntary aided schools, it is vital that they are properly trained to understand the key differences between the faith-based approach and that taken when teaching the agreed syllabus. Any failure to take these differences seriously could lead to breaches of the right to freedom of religion or belief of learners and their families as outlined above. For this reason, Welsh Government should, at the very least, produce additional guidance outlining these differences, the basic features of non-confessional RVE, and the legal ramifications of failing to meet the standard of being sufficiently objective, critical, and pluralistic, alongside a clear explanation of what this will mean in practice (e.g. through a list of do's and don'ts/ clear examples).

At present, VA faith schools are legally permitted to give preference 'in connection with the appointment, remuneration or promotion of teachers... whose religious opinions are in accordance with the tenets of the religion'. They can do this for all teachers.^{30 31} Faith is often seen as a particularly important requirement for RE teachers. However, when the right to demand agreed syllabus RVE is introduced, it will be necessary for at least some of the teachers in every VA faith school to be able to teach using the more objective approach adopted by the agreed syllabus. There should, therefore, be a requirement for every school to retain a suitable number of teachers who are willing and able to teach in this way. This could mirror the current requirement for reserved teachers in VC schools. Although, if the requirement for VC faith schools to teach faith-based RVE on demand were to be removed, as it legitimately could be, then it would be appropriate to remove the provision in that context and only provide for a proportion of reserved agreed syllabus teachers in VA schools.

The current law allows VA faith schools to terminate the employment of a teacher if 'any conduct on his part... [is deemed] incompatible with the precepts, or with the upholding of the tenets, of the

³⁰ School Standards and Framework Act 1998, Sec.60 (5) a <<http://www.legislation.gov.uk/ukpga/1998/31/section/60>> [accessed 15 July 2020].

³¹ Here it is worth noting that the current provisions permitting all teachers in VA schools to be appointed on religious grounds is far broader than permitted under the European Employment Directive (Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 4 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>> [accessed 29 September 2020]). This only allows such discrimination to take place when there is a 'genuine occupational requirement' (GOR) for an employee to have a particular faith. While that may be the case for a head teacher or teacher of confessional religious education in a faith school, it is entirely unnecessary for those teaching other subjects. Unfortunately, there was a mistransposition of the Directive into UK law and it is unclear whether this will be resolved post-Brexit. Nevertheless, the issue of religious discrimination in teacher employment is one in which the Equality and Human Rights Commission (EHRC) has taken an interest in the past (see EHRC, *Religion or Belief: Is the Law Working?* 2016, sec. 3.3 <<https://www.equalityhumanrights.com/sites/default/files/religion-or-belief-report-december-2016.pdf>> [accessed 29 September 2020]).

religion or religious denomination' of the school³². Because of this, it will be necessary for the new law to reflect the fact that such schools will need to employ teachers who teach RVE which is not faith-based and to clarify that teaching RVE in an objective manner does not constitute a violation of this provision. Otherwise there is a serious risk that some VA schools could work against the intent of the law simply by refusing to employ suitable teachers for teaching agreed syllabus RVE. This is a particular concern given the Catholic heads' recorded objections to this requirement.³³ As they are presently set out in the Bill, the arrangements represent a clear conflict of interest, between what the church wants and what the law allows, that is open to abuse.

4. Inspection and monitoring

Currently, RE in VA schools is inspected by a denominational body chosen by the governors.³⁴ Since those responsible for inspecting faith-based RE cannot be guaranteed to have the requisite skills or expertise for inspecting inclusive RVE, and may misunderstand the requirement to provide RVE which is objective, critical, and pluralistic, we think it is crucial that, where the provision is in operation, it is inspected by Estyn. When inspecting VA schools, Estyn should also be expected to consider the extent to which schools are adequately and transparently making parents and, if our suggestion is adopted, older children aware of this option (e.g. through the explicit opt-in process highlighted above), and making sure there is appropriate staff provision for inclusive RVE.

To ensure issues relating to effective provision of agreed syllabus RVE in VA faith (and indeed other) schools are tackled at an early stage, the Welsh Government should consider setting up an early intervention service that is able to offer advice and guidance to parents on these matters, as well as inform schools when and how their practice is likely to be unlawful. There may also be a role for SACREs in providing guidance, as well as helping to monitor and address any issues that arise with respect to the provision of adequately pluralistic RVE. However, to avoid the need for legal challenges in this area the Government will need to establish a process that seeks to compel (rather than merely advise) schools that fail to adequately respect the legal rights of their pupils and their families.

These additional points represent important safeguards on the provision of agreed syllabus RVE in VA faith schools. As we know these schools would likely prefer for all pupils to participate in a faith-based version of the subject that does not include non-religious perspectives on an equal footing with religions,³⁵ it is imperative that this potential conflict of interest is independently monitored;

³² School Standards and Framework Act 1998, Sec.60 (5) b <<http://www.legislation.gov.uk/ukpga/1998/31/section/60>> [accessed 15 July 2020].

³³ Wales Online 'Catholic schools call for changes to RE in Wales to be scrapped' (23 June 2020) <<https://www.walesonline.co.uk/news/education/catholic-schools-religious-education-wales-18470657>> [accessed 17 July 2020].

³⁴ Education Act 2005, Sec.50 (2) < <http://www.legislation.gov.uk/ukpga/2005/18/section/50>> [accessed 14 July 2020].

³⁵ Indeed, the Catholic Education Service have claimed that the inclusion of non-religious worldviews in the subject will mean that it is not as intellectually rigorous and constitutes 'dumbing down' (see Catholic

otherwise, it will hamper the right of children and their families to access lessons that are adequately objective, critical, and pluralistic.

Collective worship:

Despite the UN Committee's recommendation that the requirement be repealed,³⁶ schools in Wales are still legally mandated to carry out a daily act of collective worship that is 'wholly or mainly of a broadly Christian character'.³⁷

Although schools can opt – through a process called 'determination' – to have worship that aligns with an alternative faith, they are not permitted to opt out of delivering worship altogether. Parents have a legal right to withdraw their children from collective worship, and, since 2006, sixth-form pupils have been permitted to withdraw themselves from these sessions. However, withdrawal can be a difficult process (not least because the law is often poorly understood by schools) that isolates children from their classmates.

Children who have been removed from worship are rarely given a meaningful alternative of equal educational value during the time their peers are attending worship. Indeed, in 2019 two non-religious parents, Lee and Lizanne Harris (supported by Humanists UK), took a legal challenge against their children's school in England because it refused to provide just such an alternative.³⁸ When the Trust that runs the school eventually backed down after the HARRISES won permission to have their case heard at the High Court, the school agreed to provide an inclusive alternative to the Harris children and any other withdrawn children whose parents wished them to receive it.

As the law is identical in England and Wales, this logically ought to mean that similar arrangements are possible at other schools in both countries. However, most parents who would like to see a meaningful alternative to collective worship in their child's school won't be in a position to mount time-consuming legal proceedings. What's more, such action may risk alienating the family from the school. For this reason, this is clearly not the most desirable means by which to ensure that children get the kind of non-discriminatory provision to which they are entitled under Article 2 of the UNCRC. Instead, this aim would be far better met by a change to the law.

Education Service (2019) <<https://www.catholiceducation.org.uk/component/k2/item/1003674-statement-from-the-catholic-education-service-on-the-consultation-to-re-and-rse-in-wales>> [accessed 22 September 2020]).

³⁶ UN Convention on the Rights of the Child, Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (July 2016) <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskHOj6VpDS%2F%2FJgg2Jxb9gncnUyUgbnuttBweOlyfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0G>> [accessed 18 August 2020].

³⁷ School Standards and Framework Act 1998 <<https://www.legislation.gov.uk/ukpga/1998/31/part/II/chapter/VI/crossheading/religious-worship>> [accessed 18 August 2020].

³⁸ Humanists UK, 'School concedes in collective worship case – will provide alternative assemblies' <<https://humanism.org.uk/2019/11/20/school-concedes-in-collective-worship-legal-case-will-provide-alternative-assemblies/>> [accessed 19 August 2020].

Unfortunately, however, the Welsh Government has said that it won't take action on the issue of collective worship in the current Senedd term.³⁹ This is despite the fact that the continuation of statutory Christian worship contradicts much of the rationale for the new curriculum, particularly the requirement to ensure that children and young people develop into ethical citizens of Wales and the world (which is predicated on understanding and exercising 'human and democratic responsibilities and rights'⁴⁰). Given that, in other respects, this is likely to be the most inclusive curriculum in the UK, this undermines its purpose and risks diminishing the impact of the important changes this innovative curriculum seeks to make.

The Minister has also explicitly accepted that the current law on collective worship raises human rights issues and has said that if she personally was 'starting from a blank piece of paper,' she would be unlikely to 'enshrine the law in the way it currently is'.⁴¹ Seemingly, the decision not to take action on the issue was motivated by the view that the Government must prioritise the changes to the curriculum over ostensibly less important changes to collective worship. However, here it is worth noting that this separation of the curriculum from what happens in other aspects of the school day is largely artificial. For pupils, worship delivered by teachers in a school environment is very likely to be experienced in a similar way to a lesson, making the fact this form of spiritual, moral, social, and cultural development is inconsistent with the proposed changes in the wider curriculum all the more difficult to defend.

Creationism and pseudoscience:

As noted in our response to question 1.3, without adequate regulation and guidance, the flexibility in the curriculum could give rise to the teaching of pseudoscientific theories such as creationism and intelligent design. However, this problem could be solved fairly straightforwardly by introducing a prohibition, either in the law itself or via its interpretation in statutory guidance (see above for more detail).

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)

³⁹ Humanists UK, 'Disappointment as Welsh Government refuses to act on collective worship during current assembly term' (8 January 2020) <<https://humanism.org.uk/2020/01/08/disappointment-as-welsh-government-refuses-to-act-on-collective-worship-during-current-assembly-term/>> [accessed 9 September 2020].

⁴⁰ Welsh Government, 'Developing a vision for curriculum design' (January 2020) <<https://hwb.gov.wales/curriculum-for-wales/designing-your-curriculum/developing-a-vision-for-curriculum-design/#curriculum-design-and-the-four-purposes>> [accessed 9 September 2020].

⁴¹ Humanists UK, 'Disappointment as Welsh Government refuses to act on collective worship during current assembly term' (8 January 2020) <<https://humanism.org.uk/2020/01/08/disappointment-as-welsh-government-refuses-to-act-on-collective-worship-during-current-assembly-term/>> [accessed 9 September 2020].

No, but our proposals for how they might be addressed are covered in our response to question 2.1.

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)

These have already been outlined in our responses to previous questions.

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)

No comment, falls outside of our policy remit.

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)

In our view, it is appropriate that Welsh Ministers are able to make changes to areas of the curriculum such as the What Matters Code and the RSE Code should, in future, the current provisions need adjusting or not be fit for purpose. Nevertheless, it is vital that such changes are subject to appropriate oversight from the Senedd and that the codes are devised with a view to the majority of any later changes to the curriculum occurring at the level of statutory guidance.

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)

Summary of key points

Religion, Values, and Ethics:

It is vital that religion, values, and ethics (RVE) should encompass both religious and non-religious beliefs that are philosophical convictions (in line with the European Convention on Human Rights) as described in the consultation document;

Non religious worldviews form an integral part of any objective, pluralistic and critical curriculum and any claim that the 'introduction' of non-religious worldviews into religious education will serve to 'dilute' or 'dumb down' the subject, ignores the fact that:

- a) the law already stipulates that this should be the case and the changes only seek to clarify this fact;
- b) humanism and humanist beliefs are well-represented in Wales and thus worthy of recognition through the curriculum;
- c) humanism is a cogent, well-developed worldview with a significant and rigorous body of literature underpinning it that is suitable for teaching in schools.

As the only non-religious worldview that meets this standard and is common in Wales, in effect the proposal to include non-religious worldviews that are philosophical convictions means the inclusion of humanism alongside religions;

We largely support the proposals outlined in the consultation document, particularly the parental right to demand RVE according to the agreed syllabus in VA but suggest some key improvements. These are as follows:

- a) Grant older pupils in faith schools (year 10 and 11) the power to opt-in to RVE taught according to the agreed syllabus to fully respect their rights to freedom of religion or belief;
- b) Ensure that inclusive RVE taught according to the locally agreed syllabus is inspected by Estyn rather than denominational bodies;
- c) Remove the right to request denominational R(V)E in VC schools;
- d) Remove the requirement for up to a fifth of teachers in VC schools to be appointed on the basis of their 'fitness and competence' to teach faith-based RE;
- e) Ensure that teachers in all schools, but particularly those in schools with a religious character, understand the difference between objective, critical, objective RVE and that taught from a faith perspective, as well as the legal ramifications of not taking this difference seriously. Welsh Government should consider publishing guidance on this issue;

f) Require that a suitable number of 'reserved' teachers in VA schools are trained to teach pluralistic RVE, and remove the legal provision that allows such teachers to be selected, remunerated, promoted, or dismissed according to faith;

g) Require that VA schools with a faith character provide parents with an explicit choice between faith-based and agreed syllabus RVE, or at the very least, fully inform parents (and older children) of their right to demand the subject in accordance with the agreed syllabus. This should be done through school policy documents, the school website, and parents should be provided with regular reminders every academic year/ when new pupils join the school;

h) Estyn to inspect requirements (e), (f) and (g) as part of their inspection regime in VA schools.

Collective worship

Owing to the fact that the imposition of compulsory Christian worship undermines the rationale for the new curriculum, steps should be taken to replace this legal requirement with a requirement to hold inclusive assemblies designed to foster the spiritual, moral, social, and cultural development of pupils from all backgrounds.

RSE

As set out in the Bill, the parental right to withdraw children from RSE should be removed. The proposed RSE Code must make statutory the basic content of the subject for all pupils in all schools irrespective of background or belief, and should be fully LGBT inclusive.

Science, evolution and the prevention of pseudoscience

The content of the What Matters Statements should be made statutory by the What Matters Code. However, the Government should also explicitly prohibit the teaching of pseudoscientific theories such as creationism or intelligent design as evidence-based or scientific.