

# UNITED NATIONS UNIVERSAL PERIODIC REVIEW: FOURTH CYCLE, UNITED KINGDOM



Submissions from Humanists UK, March 2022

## 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 100,000 members and supporters and over 100 members of the All-Party Parliamentary Humanist Group.

We are leading experts in the religion or belief human rights strand. Our charitable objects include 'The promotion of equality and non-discrimination and the protection of human rights as defined in international instruments to which the United Kingdom is party, in each case in particular as relates to religion and belief'. We are the only national humanist organisation accredited as an NGO at the UNHRC and we make interventions at every session. Our commitment to human rights has seen us organise a coalition over the last year of more than 250 charities, trades unions, human rights organisations, and religion or belief groups in opposition to any weakening of the UK Human Rights Act (HRA) or judicial review powers.<sup>1</sup>

## SUMMARY AND RECOMMENDATIONS

### We wish to raise the following issues:

- Plans to weaken and replace the Human Rights Act 1998
- Religious discrimination in state school admissions
- Religious discrimination in state school employment
- Exclusion of non-religious worldviews from the state school curriculum
- Requirement for Christian collective worship in state schools
- Status of Personal, Social, Health, Economics Education (PSHE) and Relationships and Sex Education (RSE) in state schools
- Religious discrimination in the provision of public services
- Criminality of assisted dying
- Inconsistency in the legal recognition of humanist marriages across the UK
- Blasphemy laws in Northern Ireland

### List of recommendations for inclusion in UK UPR report

1. Drop plans to weaken sections 3 and 6 of the Human Rights Act. (UK Government)
2. Remove the power of state-funded religious schools to discriminate on grounds of religion in school admissions. (UK and devolved governments)
3. Remove the power of state-funded religious schools to discriminate on grounds of religion in teacher recruitment and promotion. (UK and devolved governments)
4. Introduce Beliefs and Values education in England and Northern Ireland to replace statutory religious education with a curriculum that is fully inclusive of non-religious worldviews, including humanism. (UK and Northern Ireland Governments)

<sup>1</sup> Protect Human Rights and Judicial Review: <https://humanrightsact.org.uk/>

5. Remove the requirement for compulsory religious worship in state-funded schools, replacing it with fully inclusive assemblies appropriate for all. (UK Government)
6. Abolish the power of parents in England and Northern Ireland to remove their children from RSE prior to their 16th birthdays, and also remove the power of faith schools to teach RSE only in line with their religious beliefs. (UK and Northern Ireland Governments)
7. Revise section 6 of the HRA to ensure that the definition of a public authority is extended to include all organisations carrying out any function on behalf of a public authority under contract, notwithstanding any exemptions from the provisions of the Equality Act. (UK Government)
8. Legalise assisted dying for the terminally ill and incurably suffering. (UK Government)
9. Legally recognise humanist marriages in England and Wales without further delay. (UK Government)
10. Abolish the common law offences of blasphemy and blasphemous libel in Northern Ireland. (Northern Ireland Government)

## PLANS TO WEAKEN AND REPLACE THE HUMAN RIGHTS ACT 1998

1. We are concerned by the UK Government's proposals launched in recent months to reform and/or replace the Human Rights Act (HRA) 1998 and to weaken its accountability under the judicial review procedure. The planned repeal or weakening of sections 3 and 6 to remove the power of the courts and public authorities to 'read into' legislation interpretations that are human rights-complaint will undermine human rights protections for non-religious people, such as humanists. This is because sections 3 and 6 have been fundamental in establishing that references to 'religion' in the law (including statute law that predates the HRA) must, where possible, be interpreted as inclusive of those with non-religious beliefs. Under the proposed reforms, public bodies and the courts would no longer be able to rely upon this 'reading in' mechanism to resolve incompatibilities in areas such as marriage and family life, education, and employment. Therefore humanists would have little choice but to seek repeated declarations of incompatibility under section 4, thus creating more work for public authorities (when the focus of a case is policy or guidance) and Parliament (when the focus is an Act or regulation) on matters that can currently easily be resolved by the courts or public authorities as a matter of course. Claimants, denied a quick and easy remedy, are likely to take more cases to Strasbourg.

## RELIGIOUS DISCRIMINATION IN STATE SCHOOL ADMISSIONS

2. State schools designated with a religious character are allowed to discriminate against children on the basis of their own or their parents' religion in admissions.<sup>2</sup> 34% of English state school places, 16% in Wales, and a much higher proportion in Northern Ireland, may discriminate in this way.<sup>3</sup> In England, from 2010-18 there was a limit of 50% religious

<sup>2</sup> Schedule 11(5), Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/schedule/11/paragraph/5>

<sup>3</sup> Here it is important to note that, unlike in England and Wales, in Northern Ireland children from different backgrounds largely end up attending separate schools as a result of already living in highly segregated communities. This means many schools do not need to make explicit reference to religion in their admissions criteria. Nevertheless, some do give preference to pupils for whom the school is the nearest Catholic or controlled (*de facto* Protestant) school. Furthermore, many use policies that favour pupils whose family members have previously attended a school. These are likely to act as a proxy for religious selection because they ensure that members of the groups who traditionally attended a school in the past are prioritised over those without such a history (i.e. newcomer pupils or those from non-religious or other faith backgrounds).

selection on any new religious schools that opened. But at that stage the Government lifted this limit, through a new funding scheme.<sup>4</sup>

3. Religious discrimination in state school admissions violates Article 2 of the UDHR and 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 from their parents, as set out in Article 18 of the UDHR and Article 14 of the UNCRC. 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,<sup>5</sup> violating Article 2 of the UNCRC.<sup>6</sup>

4. In Northern Ireland, the 2016 report of the UN Committee on the Rights of the Child said:

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<sup>4</sup> DfE, 'Voluntary-aided schools: capital scheme', 2018 <https://www.gov.uk/government/publications/voluntary-aided-schools-capital-scheme>

<sup>5</sup> For an overview of research on the problems with religiously selective admissions see Accord Coalition, 'Databank of Independent Evidence on Faith Schools', 2021 <https://accordcoalition.org.uk/wp-content/uploads/2013/12/Databank-of-Independent-Evidence-on-Faith-Schools-April-2014.pdf> and Fair Admissions Campaign, 'Research into religiously selective admissions criteria', 2017 <http://fairadmissions.org.uk/wp-content/uploads/2017/08/2017-08-29-FINAL-Religious-Selection-Research-Survey.pdf>

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

- 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/>
- Rebecca Allen and Meenakshi Parameshwaran, *Caught Out: Primary schools, catchment areas and social selection*, 2016 [https://www.suttontrust.com/wp-content/uploads/2019/12/Caught-Out\\_Research-brief\\_April-16-1.pdf](https://www.suttontrust.com/wp-content/uploads/2019/12/Caught-Out_Research-brief_April-16-1.pdf)
- Carl Cullinane, Jude Hillary, Joana Andrade and Stephen McNamara, *Selective Comprehensives 2017: Admissions to high-attaining non-selective schools for disadvantaged pupils* 2017 <https://www.suttontrust.com/wp-content/uploads/2019/12/Selective-Comprehensives-2017.pdf>

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>
- Education Policy Institute, *Faith Schools, pupil performance, and social selection*, 2016 <https://epi.org.uk/publications-and-research/faith-schools-pupil-performance-social-selection/>
- Leckie, George and Goldstein, Harvey, *The importance of adjusting for pupil background in school value-added models: A study of Progress 8 and school accountability in England*, 2019 [https://research-information.bris.ac.uk/ws/portalfiles/portal/197130552/Leckie\\_et\\_al\\_2019\\_British\\_Educational\\_Research\\_Journal.pdf](https://research-information.bris.ac.uk/ws/portalfiles/portal/197130552/Leckie_et_al_2019_British_Educational_Research_Journal.pdf)

For research on ethnic segregation, see e.g. 'Religious schools most racially segregated state schools, new findings show', Humanists UK, 2013 <https://humanism.org.uk/2013/10/18/religious-schools-racially-segregated-state-schools-new-findings-show/> or Humanists UK, *Ethnic Diversity in religious Free Schools*, 2016 <https://humanists.uk/wp-content/uploads/2016-09-15-FINAL-Ethnic-diversity-in-religious-Free-Schools.pdf>

<sup>6</sup> This is a matter of particular significance in those many areas of the country where there is an excess of places in religious schools and a comparative dearth of schools that are not religiously designated, with the result that parents find that their children against their wishes are required to attend religious schools, including some ('voluntary aided' schools and equivalent 'academies') that have greater religious privileges than other ('voluntary controlled' etc) religious schools.

'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'.<sup>7</sup>

## 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.<sup>8</sup> The Directive is implemented in Britain by the Equality Act 2010,<sup>9</sup> except that there is an exemption that unilaterally allows religious schools to discriminate regardless of whether a GOR applies.<sup>10</sup> This combined with education laws<sup>11</sup> means that religiously designated schools can require every single teacher (and arguably other employees) to share the faith of the school, and make decisions on promotion, remuneration, and dismissal on that basis. This is problematic under article 23 (taken with article 2) of the Universal Declaration of Human Rights.<sup>12</sup>

## EXCLUSION OF NON-RELIGIOUS WORLDVIEWS FROM THE STATE SCHOOL CURRICULUM

6. In Wales, Religion, Values, and Ethics (RVE), which is fully inclusive of humanism, will be introduced as a replacement for Religious Education (RE) in 2022.<sup>13</sup> No such reform has been introduced in the rest of the UK.<sup>14</sup> A particular instance of discrimination in England

<sup>7</sup> Committee on the Rights of the Child, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' 3 June 2016, [https://humanism.org.uk/wp-content/uploads/CRC\\_C\\_GBR\\_CO\\_5\\_24195\\_E.docx](https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx)

<sup>8</sup> 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>

<sup>9</sup> Equality Act 2010, Section 9. <http://www.legislation.gov.uk/ukpga/2010/15/schedule/9>

<sup>10</sup> Ibid section 22. <http://www.legislation.gov.uk/ukpga/2010/15/schedule/22>

<sup>11</sup> E.g. School Standards and Framework Act 1998, section 60 <http://www.legislation.gov.uk/ukpga/1998/31/section/60> for England and Wales; similar law exists in Scotland. But Northern Ireland has recently voted to remove its exemption to equality law for school teachers (see Humanists UK, 'Northern Ireland Assembly ends teacher religious discrimination exemption' 25 March 2022 <https://humanists.uk/2022/03/25/northern-ireland-assembly-ends-teacher-religious-discrimination-exemption/>).

<sup>12</sup> In 2010, Humanists UK complained to the European Commission about the UK breaking EU law in this area. 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 would have to rule in line with our understanding (an approach incompatible with ECJ case law). The closure appears to us to be politically motivated. With the UK's departure from the EU, the status of this misinterpretation is unclear.

<sup>13</sup> Curriculum and Assessment (Wales) Act 2021. <https://www.legislation.gov.uk/asc/2021/4/contents/enacted>

<sup>14</sup> For example, the law in England still specifies that local RE syllabuses for use in schools without a religious designation be drawn up by conferences including representatives of 'the principal religious traditions in the area' and that these syllabuses 'reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain'. There is no legal sanction for the inclusion of non-religious (for example, humanist) representatives in the Agreed Syllabus Conferences or for the inclusion of humanism in the 'agreed

concerns the age 16-examined qualification for 'Religious Studies'. This 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 31-68% are not religious<sup>15</sup>) and is not in keeping with Articles 13 and 14 of the UNCRC.<sup>16</sup> The exclusion falls foul of Articles 18 and 19 of the UDHR, and the HRA which together with case law demands that references in law to religion be read as inclusive of non-religious worldviews.<sup>17</sup>

7. When in 2015 the Government introduced this specification for the examination curriculum it asserted in statutory guidance that it would meet the legal requirements for RE. Three parents and their children initiated a judicial review of this claim, arguing that inclusion of non-religious worldviews was required under Strasbourg case law, which established that such education had to be 'objective, critical and pluralistic'. The Government's assertion was therefore in breach of article 2, protocol 1 of the ECHR. The UK High Court agreed,<sup>18</sup> but unfortunately this merely prompted the Government to withdraw its assertion and produce new guidance on the matter that is even more misleading than its original claims.<sup>19</sup> Most RE syllabuses remain heavily biased in favour of religion.

## REQUIREMENT FOR CHRISTIAN COLLECTIVE WORSHIP IN STATE SCHOOLS

8. All state schools are required to hold a daily act of collective worship in England, Wales, and Northern Ireland, and less frequently in Scotland. This requirement applies even to schools without a religious designation. In English and Welsh schools with no religious character, this must be 'wholly or mainly of a broadly Christian character'.<sup>20</sup> Whilst schools can seek consent to change from Christian worship to that of another religious character, they are not allowed

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syllabuses'. Under pressure from Humanists UK it has become accepted among subject professionals that non-religious worldviews should be included and by arguing on the basis of section 6 of the Human Rights Act Humanists UK has made some progress in persuading local authorities to this point of view – but the Government's proposed amendment or repeal of sections 3 and 6 of the HRA (see above) threatens to undermine this argument.

<sup>15</sup> The 2011 Census found 31% of 0-19 year olds having no religion, with a further 8% not stated. The 2019 *British Social Attitudes Survey* records 67.6% of 15-24 year olds as not belonging to any religion: see the British Social Attitudes Information System, with crosstabs by age:

[http://www.britsocat.com/BodyTwoCol\\_rpt.aspx?control=CCESDMarginals&MapID=RELIGSUM&SeriesID=12](http://www.britsocat.com/BodyTwoCol_rpt.aspx?control=CCESDMarginals&MapID=RELIGSUM&SeriesID=12)

<sup>16</sup> UN Convention on the Rights of the Child 1989 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>17</sup> 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 becoming accepted 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 <https://humanists.uk/wp-content/uploads/2019-07-02-LD-Why-humanists-should-have-a-role-on-SACREs-1.pdf>

<sup>18</sup> 'Judge rules Government broke the law in excluding Humanism from school curriculum', Humanists UK, 25 November 2015: <https://humanism.org.uk/2015/11/25/judge-rules-government-broke-the-law-in-excluding-humanism-from-school-curriculum/>

<sup>19</sup> 'High Court ruling on Religious Education: BHA responds to 'misleading' and unfair criticism by Government', Humanists UK, 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/>

<sup>20</sup> School Standards and Framework Act 1998, section 20. <http://www.legislation.gov.uk/ukpga/1998/31/schedule/20>

to have no worship at all. Such worship is alien to the non-religious, leading to feelings of social exclusion. This is exacerbated if their parents (or themselves after the age of 16) avail themselves of the right of exclusion from worship since it physically separates them from the rest of the school.<sup>21</sup> This is not in keeping with Article 2 of the UNCRC or Article 18 of the UDHR.

9. 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.<sup>22</sup> This view has been repeatedly endorsed by the UK Parliament's Joint Committee on Human Rights (JCHR), for example in reports in 2006<sup>23</sup>, 2008<sup>24</sup> and 2010.<sup>25</sup> 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, children do not have the 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.'<sup>26</sup>

Ahead of its next report, in 2021 the Committee pressed all four UK nations to 'describe the measures taken' on this issue.<sup>27</sup>

10. In 2019, two parents initiated a High Court case<sup>28</sup> to secure an alternative assembly of equal educational worth for their children who were withdrawn from collective worship at their

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<sup>21</sup> They may subsequently also miss out on other aspects of school life such as morning announcements.

<sup>22</sup> As established in European case law and reflected in Articles 12 and 14 of the UNCRC. 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/>

<sup>23</sup> *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>

<sup>24</sup> *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>

<sup>25</sup> *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>

<sup>26</sup> Committee on the Rights of the Child, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' 3 June 2016, [https://humanism.org.uk/wp-content/uploads/CRC\\_C\\_GBR\\_CO\\_5\\_24195\\_E.docx](https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx)

<sup>27</sup> Committee on the Rights of the Child, 'List of issues prior to submission of the combined sixth and seventh reports of United Kingdom of Great Britain and Northern Ireland', 9 February 2021, para. 17.a. [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GBR/CRC\\_C\\_GBR\\_QPR\\_6-7\\_44382\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GBR/CRC_C_GBR_QPR_6-7_44382_E.pdf)

<sup>28</sup> *Harris vs. Oxford Diocesan Schools Trust* (2019), <https://humanists.uk/wp-content/uploads/bha20191119184327-1.pdf>

school of no religious character.<sup>29</sup> The local Church of England Diocese, in spite of the lack of religious character, ran the school. It conceded, agreeing to provide an alternative assembly with no Christian worship, and the case did not go to trial, although the terms of the settlement, which was specific to the family concerned, were agreed by the court.

11. The collective worship law therefore remains in place. At the time of writing, the Education (Assemblies) Bill is before the House of Commons.<sup>30</sup> If it becomes law, it would abolish the requirement for compulsory worship and replace it with inclusive assemblies that are suitable for all children regardless of their religion or belief in schools with no religious character.<sup>31</sup>

## STATUS OF RELATIONSHIPS AND SEX EDUCATION IN STATE SCHOOLS

12. 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 personal, social, health, and economic education (PSHE), including relationships and sex education (RSE),<sup>32</sup> leads to the best outcomes in terms of health, wellbeing, consent, safe sex, preventing abortions, improving attitudes to women, and tackling homophobic bullying.<sup>33</sup>
13. In 2020, following recommendations from the UN Committee on the Rights of the Child<sup>34</sup> and JCHR,<sup>35</sup> RSE was made statutory in all English secondary schools, and relationships education was made statutory in all primary schools. However, parents may withdraw their

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<sup>29</sup> The parents argued that compulsory prayers in assembly were against their children's rights to freedom of religion or belief.

<sup>30</sup> Education (Assemblies) Bill (2021): <https://bills.parliament.uk/bills/2878>

<sup>31</sup> These assemblies could include religious material, but not in a way that presents any particular religion or belief as true. The Bill does not propose to alter the requirement that worship takes place in faith schools. However, it does specify that children who have been withdrawn from worship must be provided with a meaningful educational alternative. This alternative must be in line with the assembly provision in other schools.

<sup>32</sup> As the relevant subjects are known in England. In Wales they are called Personal and Social Education (PSE) and Relationships and Sexuality Education (RSE); in Scotland 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.

<sup>33</sup> 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, 2018: <https://unesdoc.unesco.org/ark:/48223/pf0000260770>. 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. Sex Education Forum, *Young People's RSE Poll 2021*, 1 February 2022 <https://www.sexeducationforum.org.uk/sites/default/files/field/attachment/Young%20Peoples%20RSE%20Poll%202021%20-%20SEF%201%20Feb%202022.pdf>

<sup>34</sup> Committee on the Rights of the Child, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' 3 June 2016. [https://humanism.org.uk/wp-content/uploads/CRC\\_C\\_GBR\\_CO\\_5\\_24195\\_E.docx](https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx)

<sup>35</sup> 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/itselect/jtrights/57/57.pdf>

children from sex education up until three terms before their 16th birthdays, which we believe violates children's rights to objective information on sex and relationships. Additionally, faith schools are legally entitled to teach the subject in line with their religious beliefs.

14. In 2021, the new curriculum in Wales made RSE compulsory for all children aged 3-16, with no parental opt-outs nor any concessions for faith schools.

## RELIGIOUS DISCRIMINATION IN THE PROVISION OF PUBLIC SERVICES

15. Exemptions in the Equality Act 2010 allow religious groups to discriminate in their employment practices and treatment of service users if a GOR can be demonstrated.<sup>36</sup> This is *not necessarily* objectionable in itself. But is particularly concerning when these groups are contracted by the state to provide public services. If the services were provided direct by the authority concerned such discrimination would be illegal. This anomaly is due to an unintended interpretation by the courts of the term 'public authority' in section 6 of the HRA.<sup>37</sup> In our view an amendment of the law is now required to clarify that all organisations when carrying out 'public functions' on behalf of the government or other statutory authority are subject to the HRA, notwithstanding any exemptions in the Equality Act. As it is public service users have not been protected from discrimination by organisations that are providing public services under contract. This is important given the increasing practice of contracting out provision of public services – from housing to transport, social care to welfare, and employment services – to private and third sector providers, including many that are religious.<sup>38</sup> This means that increasing numbers of service users are left in a lottery as to whether they are protected by the HRA or not. Human rights have not adapted to the changing situation in UK service provision and increased involvement of non-state bodies.

## CRIMINALITY OF ASSISTED DYING

16. Assisted dying for terminally ill and incurably suffering individuals is currently illegal across the UK. In 2014 a case was brought to the 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.<sup>39</sup> The Court ruled that it might be willing to consider making a declaration of incompatibility, however, given the significant public ethical implications, the Court indicated that it would first look to Parliament to resolve the legal issues at hand. Parliament was, at the time, considering a bill that would have legalised assisted dying for

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<sup>36</sup> See e.g. 'Strengthening human rights and equality', Humanists UK <https://humanism.org.uk/campaigns/human-rights-and-equality/strengthening-human-rights-and-equality/> for an explanation.

<sup>37</sup> This problematic interpretation is of nearly 20 years' standing. At that time the then Government planned to intervene in a new case to seek a much wider interpretation of the term, but they failed to do so and subsequent governments have expressed no interest in the matter.

<sup>38</sup> For example, in a memorandum to the Joint Committee on Human Rights in 2006 the Salvation Army, an evangelical Christian organisation, stated, 'whilst it is appropriate for the state to be religiously neutral, this is impossible for an organisation such as The Salvation Army, which delivers its services as a direct outworking of the Christian faith' and openly expressed homophobic views. It has held contracts to provide housing support to trafficked and vulnerable women.

<sup>39</sup> 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.

the terminally ill (but not incurably suffering).<sup>40</sup> In 2015 MPs voted overwhelmingly against an equivalent bill.<sup>41</sup>

17. In 2019, a fresh legal bid to challenge the law prohibiting assisted dying was launched by one of the individuals in the Supreme Court case. The Court of Appeal refused permission to bring a full case and instead ruled firmly that the issue of assisted dying should be resolved by Parliament and not the courts. There is little possibility of future legal challenges on assisted dying for the foreseeable future.
18. Following a citizens' jury, politicians in Jersey have approved the principle of legalising assisted dying. A further debate on processes and safeguards is due to be held this year and if those proposals are backed then a draft law could be discussed and voted on in 2023. In Scotland, a public consultation on Liam McArthur MSP's proposed Assisted Dying Bill received an unprecedented number of responses.<sup>42</sup> At the time of writing, Baroness Meacher's Assisted Dying Private Member's Bill has had its second reading in the House of Lords.
19. The lack of an adequate assisted dying law may contravene UN treaties. Numerous UK cases have been unsuccessfully taken under the ECHR citing Articles 2, 3, 8, 9, and 14.<sup>43</sup> Nevertheless, a person suffering from an illness in which effective pain relief was not an option may suffer from 'cruel, inhuman or degrading treatment' prohibited by UDHR Article 5. As suicide is legal in the UK, an able-bodied person would be able to end their lives through their own means while someone with severe disabilities would not, contravening UDHR Article 7.

## LEGAL RECOGNITION OF HUMANIST MARRIAGES ACROSS THE UK

20. Humanist marriages have been legally recognised in Scotland since 2005 and in Northern Ireland since 2018, but not in England and Wales. In Scotland, they have overtaken the Church of Scotland weddings to become the most popular form of belief-based marriage.<sup>44</sup> The UK Government gained the power to extend legal recognition in England and Wales under the Marriage (Same Sex Couples) Act in 2013<sup>45</sup> 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.<sup>46</sup>

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<sup>40</sup> 'Assisted dying appeals supported by the BHA dismissed by Supreme Court, Parliament urged to review law', Humanists UK, 25 June 2015: <https://humanism.org.uk/2014/06/25/assisted-dying-appeals-supported-bha-dismissed-supreme-court-parliament-urged-review-law/>

<sup>41</sup> 'With MPs voting against assisted dying, the fight must now turn back to the courts', Humanists UK, 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/>

<sup>42</sup> The consultation closed in December 2021 and a report is due before 2023.

<sup>43</sup> [Factsheet – End of life and the ECHR](#), ECHR, April 2021

<sup>44</sup> '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>

<sup>45</sup> Marriage (Same Sex Couples) Act 2013, section 14(4): <https://www.legislation.gov.uk/ukpga/2013/30/section/14/enacted>

<sup>46</sup> 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. Threatened with a court case, the Government announced a second Law Commission review into marriage

21. Such inconsistencies across the UK are questionable, as the state is granting rights to some citizens and not others. In 2020, a High Court case found that the failure to legally recognise humanist marriages in England and Wales gave rise to discrimination.<sup>47</sup> The court stopped short of issuing a formal declaration of incompatibility only because of an ongoing review of the Law Commission into the whole of marriage law – but the outcome of this review will not commit the Government to action.
22. This issue was noted by the Special Rapporteur on freedom of religion or belief during the most recent country visit to the United Kingdom in 2008. She observed that 'humanists made the criticism that in practice there are institutional and legal examples of discrimination against non-religious believers... while humanist weddings are legal in Scotland since June 2005, marriages conducted by humanist celebrants are not recognized in the law of England and Wales.'<sup>48</sup> The situation has not changed in the 14 years since.
23. By preventing humanists from having a legally recognised marriage ceremony in accordance with their beliefs, the failure to provide for humanist marriages contravenes the right to manifest one's religion or belief under Article 18 of the UDHR.

## BLASPHEMY LAWS IN NORTHERN IRELAND

24. Blasphemy or blasphemous libel in Northern Ireland is a criminal offence under the common law of Northern Ireland, and is also underpinned in legislation.<sup>49</sup> These need to be amended to omit references to 'blasphemy' to remove these crimes from the statute books.<sup>50</sup> A prosecution has not occurred in Northern Ireland since 1855, although use of the law could be threatened at any time, as it was in Denmark in 2017 with respect to Islam, and in the Republic of Ireland that same year with respect to Stephen Fry. Every year since 2018, the Northern Ireland Human Rights Commission has recommended that: 'the NI Executive introduce legislation to the NI Assembly to abolish the common law offence of blasphemy and blasphemous libel to ensure compatibility with the ICCPR, Article 19.'<sup>51</sup> Blasphemy laws also run counter to Article 18 and 27 of the ICCPR and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

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law in 2018, the outcome of which is expected in July 2022: <http://www.lawcom.gov.uk/project/marriage-law/>

<sup>47</sup> ECHR article 9 taken with article 14.

<sup>48</sup> United Nations General Assembly, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum: Mission to the United Kingdom of Great Britain and Northern Ireland*, 7 February 2008. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/105/17/PDF/G0810517.pdf?OpenElement>

<sup>49</sup> Criminal Libel Act 1819, section 1(1) such blasphemous material can be seized and disposed of. <http://www.legislation.gov.uk/ukpga/Geo3and1Geo4/60/8>, Libel Act 1843, section 7: <http://www.legislation.gov.uk/ukpga/Vict/6-7/96/section/7>, Newspaper Libel and Registration Act 1881, section 4: <http://www.legislation.gov.uk/ukpga/Vict/44-45/60/section/4> Law of Libel Amendment Act 1888, Section 4: <http://www.legislation.gov.uk/ukpga/Vict/51-52/64/section/4>

<sup>50</sup> For both the common law and statutory offences, judges have discretion over sentencing and can impose either a fine or imprisonment, or both. The common law offence refers just to Christianity, whereas the statutory offences, although devised with Christianity in mind, don't specify a particular religion, so theoretically could apply to other religions as well.

<sup>51</sup> Northern Ireland Human Rights Commission, *The 2021 Annual Statement: Human Rights in Northern Ireland*: <https://nihrc.org/publication/detail/annual-statement-2021>

25. The UN Special Rapporteur on Freedom of Religion and Belief has repeatedly recommended the repeal of blasphemy laws globally, including in his most recent annual report,<sup>52</sup> because maintaining such laws is a violation of human rights and legitimises the violent persecution of religious minorities and the non-religious in totalitarian regimes. In 13 countries, blasphemy or apostasy is punishable by death and in a further 47 a person can be imprisoned. Therefore, even if a law has not recently been used to prosecute an individual, its maintenance on statute books has negative consequences for human rights as it can be cited around the world.
26. England and Wales abolished its blasphemy law in 2008, and the common law offence that exists in Scotland is set to be repealed in Scotland under the Hate Crime and Public Order Act 2021 – currently awaiting commencement.<sup>53</sup>

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<sup>52</sup> Dr Ahmed Shaheed, 'Rights of persons belonging to religious or belief minorities in situations of conflict or insecurity – Report of the Special Rapporteur on freedom of religion or belief' 02 March 2022.

<https://www.ohchr.org/en/documents/thematic-reports/ahrc4944-rights-persons-belonging-religious-or-belief-minorities>

<sup>53</sup> Since 2015, Canada, Denmark, Greece, Norway, Iceland, Malta, New Zealand, the Republic of Ireland, and the Alsace-Moselle region of France (the only part to still have such a law) have also abolished their blasphemy laws. Spain is also in the process of bringing forward legislation to do so.

## APPENDIX: FULL LIST OF RECOMMENDATIONS

1. OHCHR recommends the UK Government drops plans to weaken sections 3 and 6 of the Human Rights Act.
2. OHCHR recommends that the governments of the UK remove the power of state-funded religious schools to discriminate on grounds of religion in teacher recruitment and promotion
3. OHCHR recommends that the governments of the UK remove the power of state-funded religious schools to discriminate on grounds of religion in their employment practices, including recruitment, promotion, and dismissal.
4. OHCHR recommends that the UK Government and the Northern Ireland Government introduce Beliefs and Values education to replace statutory religious education with a curriculum that is fully inclusive of non-religious worldviews, including humanism.
5. OHCHR recommends that the governments of the UK remove the requirement for compulsory religious worship in state-funded schools, replacing it with fully inclusive assemblies appropriate for all.
6. OHCHR recommends that the UK Government and Northern Ireland Government abolish the power of parents in England and Northern Ireland to remove their children from RSE prior to their 16th birthdays, and also remove the power of faith schools to teach RSE only in line with their religious beliefs.
7. OHCHR to recommend that the UK Government revise section 6 of the HRA to ensure that the definition of a public authority is extended to include all organisations carrying out any function on behalf of a public authority under contract, notwithstanding any exemptions from the provisions of the Equality Act.
8. OHCHR recommends the UK Government legalise assisted dying for the terminally ill and incurably suffering.
9. OHCHR to recommend that the UK Government legally recognise humanist marriages in England and Wales without further delay.
10. OHCHR to include a recommendation to abolish the common law offences of blasphemy and blasphemous libel in Northern Ireland.

For more details, information, and evidence, contact Humanists UK:

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