

For Women Scotland response to the Scottish Government proposal to amend the legislation on religious observance in schools

It would have been helpful if the consultation provided the exact wording of the proposed change to section 9 of the 1980 Act. The Act currently states “*any pupil may be withdrawn by his parents from any instruction in religious subjects and from any religious observance*” [1] and the Scottish Government Guidance [2] further clarifies that while parents can withdraw their children from participation in religious observance, there is no equivalent right to withdraw afforded to children.

The initial information given in the consultation document is that the proposed change will require children’s views to be taken into account in relation to their participation in religious observance (RO). On the face of it, this indicates that the views of all children will be sought, although later information in the consultation suggests views will be sought only from those children whose parents have withdrawn them from RO. Until a Bill is published we shall assume the latter applies, and that where a school observes a religion or philosophical belief it will require children to attend and the proposed change only seeks for the State to intervene where parents have requested their child to be withdrawn.

The consultation document also portrays the 1980 Act as giving parents the right to withdraw their child “without taking into account the views of the child”. It makes it sound as if parents regularly make detrimental decisions against the wishes and best interests of their children and the State is required to step in. No evidence is presented that this is the case, nor any evidence that (any) children request to attend RO against their parents wishes. Significantly, it undermines and fails to understand the underlying premise of the UNCRC that parents have the best interests of the child as their basic concern and exercise their rights and responsibilities taking into account the child’s age and capacity.

The Preamble and Articles 5 and 18(1) of the UN Convention on the Rights of the Child [3] states:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community....

(5) State parties shall respect the responsibilities, rights and duties of parents ... to provide in a manner consistent with the evolving capacity of the child appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention...

(18) Parents...have the primary responsibility for the upbringing and development of their child: the best interests of the child will be their basic concern.

The right to education guaranteed by the first sentence of Article 2 of Protocol No. 1 to the European Convention on Human Rights by its very nature calls for regulation by the State, but such regulation must not conflict with other rights enshrined in the Convention or its Protocols. Accordingly, the Scottish Government must exercise its powers in a manner which is compatible with the requirements of A2P1 ECHR, particularly the second sentence which

has been incorporated into Schedule 1 of the Human Rights Act 1998 [4] (also see Sections 29(2)(d) and 57(2) Scotland Act 1998 [5]) which states:

In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Consequently, parents have a fundamental right, which the State must respect and protect, to raise their children in accordance with their own views and beliefs about what is best for their child's wellbeing, development and flourishing. As the judge noted in *AB v CD* [2021] EWHC 741 (Fam) at §44 [6]:

The caselaw is replete with judicial statements about not merely the centrality of parents in decisions about their children, but also as to why the Courts should in the vast majority of situations respect and uphold the parents' views and decision making about their children.

The consultation document omits any discussion as to how these rights will continue to be upheld and what will happen if the views of a child are contrary to those of the parent. Who makes the final decision as to whether that child attends RO or not? A person does not have to be a child psychologist to appreciate the family tensions that may arise by pitting children against parents in this situation, and it displays a failure in the council's duty to have regard to the value of *stable* family life in a child's development. [7]

The State, whether it be a school or any other public authority, has no business interfering with the exercise of parental authority unless the child is suffering or at risk of suffering significant harm. It is difficult to imagine a decision on non-participation in a religious education class falls into this category and overriding a parental decision would never be a matter on which a school alone might act unilaterally, however well meaning its views on the wellbeing of the child.

No regard either is given to the age of the child. Of course, a similar situation has been documented in our report 'What's Happening in Your Child's Classroom' [8] whereby the Scottish Government's transgender guidance for schools [9] appears to be predicated on the erroneous idea that children under the age of sixteen in Scotland have the legal capacity or power, without any parental involvement, knowledge or consent - or even contrary to specific parental wishes as communicated to the school - to require school authorities accede to their request to be affirmed as the opposite sex.

The parallels with what is proposed for RO are clear. Schools have been ferocious in their pursuit of teaching the Scottish Government view on gender ideology (nine out of ten schools teach gender identity as if it were a settled and agreed fact [10]) at the expense of respecting the views of the vast majority of parents who would wish to raise their children with the protected philosophical belief known as "gender critical" ie. the understanding that human sex is binary and immutable. Many parents have been left confused and distrustful of the Government and it is not hard to envisage similar tabloid headlines [11] regarding schools usurping parents' religious (or non-religious) views, breakdown in school relationships and potential court cases.

References:

- [1] <https://www.legislation.gov.uk/ukpga/1980/44/section/9>
- [2] <https://www.gov.scot/publications/curriculum-for-excellence-religious-observance/>
- [3] <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
- [4] <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>
- [5] <https://www.legislation.gov.uk/ukpga/1998/46/section/29>
<https://www.legislation.gov.uk/ukpga/1998/46/section/57>
- [6] <https://www.casemine.com/judgement/uk/6062ccd52c94e033f025b9d1>
- [7] <https://www.legislation.gov.uk/asp/2000/7/section/35>
- [8] <https://forwomen.scot/wp-content/uploads/2024/08/Whats-Happening-in-Your-Childs-Classroom.pdf> (page 13)
- [9] Page 60 of the guidance claims the Age of Legal Capacity (Scotland) Act 1991 states that “a child of 12 and over is presumed to have sufficient capacity to make decisions, and enter into formal agreements on their own behalf.”
<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2021/08/supporting-transgender-young-people-schools-guidance-scottish-schools/document/s/supporting-transgender-pupils-schools-guidance-scottish-schools/supporting-transgender-pupils-schools-guidance-scottish-schools/govscot%3Adocument/supporting-transgender-pupils-schools-guidance-scottish-schools.pdf>
- Such a statement runs contrary to the provisions of the Act which states at Section 1:
- (1) As from the commencement of this Act—
- (a) a person under the age of 16 years shall, subject to section 2 below, have no legal capacity to enter into any transaction;
 - (b) a person of or over the age of 16 years shall have legal capacity to enter into any transaction.
- <https://www.legislation.gov.uk/ukpga/1991/50>
- [10] <https://forwomen.scot/wp-content/uploads/2024/08/Whats-Happening-in-Your-Childs-Classroom.pdf> (page 27)
- [11] Scottish four-year-olds can change gender at school without parents’ consent
<https://www.telegraph.co.uk/news/2021/08/12/scottish-four-year-olds-can-change-gender-school-without-parents/>
<https://archive.ph/m6Nt6>
- Private school had parents investigated by social services in row over trans daughter
<https://www.telegraph.co.uk/news/2024/05/01/scotland-private-school-george-watson-college-trans-row/>

<https://archive.ph/vmMPs>

Scots school did not tell parents about their child's gender transition

<https://www.thescottishsun.co.uk/news/10908790/scots-school-didnt-tell-parents-pupils-transition/>

<https://archive.ph/j18o0>