

Religious Observance

Thank you for the opportunity to respond to this consultation. As Children and Young People's Commissioner Scotland I promote and safeguard the rights of children and young people in Scotland with particular regard to the United Nations Convention on the Rights of the Child (UNCRC).

Children's right to withdraw from religious observance

I welcome the proposed changes to the guidance as an interim measure that attempts to recognise children's rights to be involved in decision making processes in relation to their participation in religious observance, in line with Article 12 of the UNCRC. However, I remain concerned that there is at present no proposal to amend the Education (Scotland) Act 1980 to provide children with an independent right to withdraw from religious observance. Equally there is no right for a pupil to attend religious observance when their parent wishes to withdraw them.

In June 2016, the United Nations Committee on the Rights of the Child recommended 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.”**¹ I urge the government to consider making this change and believe the forthcoming Education Bill would provide a good opportunity to do this.

Article 12 of the UNCRC states that a child who is capable of forming a view has the right to express that view, with due weight given to their age of maturity². As currently enacted, the 1980 Act means a child or young person's views can be completely ignored when parents make a decision regarding their attendance at religious observance, even if they are above school leaving age. In Scotland, 16 year olds can vote, join the army, marry and indeed leave school without the consent of their parents, yet they cannot, in law, independently withdraw from religious observance. The Age of Legal Capacity (Scotland) Act 1991 law recognises that most children will be capable of making decisions about medical treatment and instructing legal representation considerably before the age of 16. Current government guidance on Relationships, Sexual Health and Parenthood classes recognises the right of children to independently make decisions about participation in sexual health education, recognising their evolving capacity to make these decisions with appropriate support.

1

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

² <https://www.cypcs.org.uk/rights/uncrcarticles/article-12>

Article 14 of the UNCRC give children the right to choose their own religion. It also recognises children's right to freedom of thought and freedom of conscience. Whilst it is recognised that parents have a role to play in a child's religious upbringing, parents can't force a child to adopt a religion³. The current legislative position is therefore incompatible with children's rights under Article 14.

Article 3 of the UNCRC stresses that convention rights apply to all children, without discrimination. This guidance must therefore apply in all publicly funded schools in Scotland, including Roman Catholic and all other denominational schools.

Religious Observance Generally

I welcome the introduction of the concept of "Time for Reflection" into the guidance. This reflects Curriculum for Excellence Briefing Note 16 and the way in which religious observance can be developed into an inclusive experience for pupils from all faiths and those with no faith.

I note that the "Time for Reflection" concept is also used in the Scottish Parliament and that the Church of Scotland, in their guidance on religious observance, prefer this term⁴. However, the new guidance remains constrained by the requirement, in the 1980 Act, for schools to provide religious observance.

I would suggest that there is scope for a broader review of religious observance in all Scottish schools. Should such a review take place, consideration should be given to the necessity of any obligation to provide religious observance in non-denominational schools, on whether this should be on an opt-in or opt-out basis and what form it should take. There is an opportunity to develop an entirely new approach which would be inclusive for the diverse range of beliefs expressed in modern Scotland. Any review should also take into account the importance of ensuring that, if some form of religious observance or time for reflection is retained, it is done in a way which does not discriminate against children who choose not to participate.

Whilst I recognise that the proposed guidance attempts to address both the issue of children's right to withdraw from religious observance and attempts to encourage schools to take a more inclusive approach in planning religious observance, it is clear that a broader review of the legislation underpinning the guidance is required.

The current legislation is incompatible with children's rights as articulated in the UNCRC and inconsistent with the approaches taken in other areas of Scots law. I believe that the forthcoming Education Bill presents the ideal opportunity to address an outstanding religious observance issues.

³ <https://www.cypcs.org.uk/rights/uncrcarticles/article-14>

⁴ http://www.churchofscotland.org.uk/_data/assets/pdf_file/0003/16833/Religious-Observance-in-Schools.pdf