Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill

Evidence from the Jewish Council of Scotland (formerly the Scottish Council of Jewish Communities)

Background information

The Jewish Council of Scotland (formerly the Scottish Council of Jewish Communities (SCoJeC)) is the representative body of all the Jewish communities in Scotland. The Council advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. The Council also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. The Council also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

There is only one Jewish denominational school in Scotland, Calderwood Lodge Primary School in East Renfrewshire, which shares a joint campus with the Roman Catholic St Clare's Primary School.

In preparing this response we have consulted widely among organisations and individuals in the Scottish Jewish Community with relevant expertise, and this response also reflects the views of all branches of Judaism that have communities in Scotland.

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1. **What are your views on the proposed changes in the Bill to require that a child is informed if their parent asks for them to be withdrawn from either or both RME/RE and religious observance in school.**

   We have an interest in this legislation both from the point of view of the Jewish denominational primary school, Calderwood Lodge in East Renfrewshire, and also from the viewpoint of the vast majority of Jewish pupils in Scotland who attend schools that do not have a Jewish character.

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Those leading Jewish education provision in Scotland support a rights-based approach that facilitates children's voices being heard. In practice, this means that, according to their age and maturity, children should be part of the discussion in respect of all aspects of their education, including requests to withdraw from RME/RE and/or Religious Observance in school. We strongly support that position.

We are, however, concerned by the implication that parents should not initially be involved when a pupil's view is being sought. The Bill[1] states that it is only for the "*The operator of the school*" to "*tell the pupil about the request and the pupil's right to object to withdrawal*", "*give the pupil an opportunity to express the pupil's views*", and "*have regard to any views expressed by the pupil*". As we mention in more detail in response to question 4 below, unfortunately pupils can sometimes be made to feel 'other' by fellow pupils or teachers or both, if the possibility of withdrawing is even raised let alone acted on. If questioned alone by their teacher they may, therefore feel pressured to conform with regard to withdrawing (or not) from RME/RE and/or Religious Observance.

We therefore suggest that a revised version of Part 1 Section *(3)9A(5)* of the Bill, which refers to discussion between the school, parents, and pupils, should be moved up to Part 1 Section (3)9A(2) which would then read:

> "*(3)9A(2) The operator of the school must seek to discuss the parent's request with the pupil and the parent. The discussion should include—*
>
> *(a) telling the pupil about the parent's request and the pupil's right to object to withdrawal*
>
> *(b) giving the pupil an opportunity to express the pupil's views about the parent's request in—*
>
> *(i) the manner that the pupil prefers, or*
>
> *(ii) a manner that is suitable to the pupil if the pupil has not indicated a preference or it is not reasonable to accommodate the pupil's preference, and*
>
> *(iii) have regard to any views expressed by the pupil about the parent's request, taking into account the pupil's age and maturity."*

The renumbered Part 1 Section (3)9A(6) would then read:

> *"(3)9A(5) If, after the operator has complied with subsection (2), the pupil has relevant reasoned objections to all or part of the parent's request, the operator is not to give effect to the parent's request to the extent of the pupil's objection.*"

(See our response to question 2 below in respect of the additional revision from "objects" to "has reasoned objections".)

2. What are your views on the proposed changes in the Bill to require that a child is given the chance to express their views; and where the child's views are

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[1] Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-withdrawal-from-religious-education-and-amendment-of-uncrc-compatibility-duty-scotland-bill/introduced/spbill66s062025.pdf

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different from the parent's views, the school would have to follow the child's wishes?

The Policy Memorandum[2] states (our emphasis):

> "*11. … the Bill proposes to amend section 9 of the 1980 Act to qualify the parental right to withdraw to ensure that the child's views* ***are considered*** *as part of any withdrawal request, with* ***due weight being given in line with the child's age and maturity****. …*
>
> *30. These changes will mean that the parental right to withdraw their child from RO/RME is balanced with the pupil's views* ***depending on the pupil's capacity*** *…*
>
> *31. … a pupil's preference to remain in RO/RME would only supersede that of the parent* ***if the operator had judged the pupil to have the capacity to form a view****. …*"

However, although the Bill also states:

> "*Part 1 (3)9A(2)(c) [The operator must] have regard to any views expressed by the pupil about the request, taking into account the pupil's age and maturity.*"

It concludes, without any qualification as to age and maturity:

> "*Part 1 (3)9A(6) If the pupil objects to all or part of the parent's request … the operator is not to give effect to the parent's request to the extent of the pupil's objection.*"

This concerns us, despite the Bill's prior stipulation that:

> "*Part 1 (3)9A(3) The operator is not required to comply with subsection (2) if satisfied that the pupil is not capable of forming a view.*"

since capability to form a view is both subjective, and also does not necessarily mean that the view has been formed on the basis of relevant and appropriate grounds. Especially given that the rationale for this Bill is to replace the current guidance[3] that *"schools should include children and young people in any discussions about aspects of their school experience, ensuring their views are taken into* account" with a legal requirement, it is not sufficient for a key criterion to be left only to guidance.

The legislation must be clear that a pupil's view may only be exercised for genuine reasons of religious conscience, and not for frivolous reasons such as a friend remaining in class, or liking or disliking the teacher. Consideration should also be given to whether the parent's request, and the pupil's response to the request, are based on positive or negative grounds. (For example, "I would like to spend the time reading

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[2] Policy Memorandum to the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-withdrawal-from-religious-education-and-amendment-of-uncrc-compatibility-duty-scotland-bill/introduced/spbill66pms062025accessible.pdf

[3] Curriculum for Excellence: religious observance (Scottish Government, 2017) https://www.gov.scot/publications/curriculum-for-excellence-religious-observance/

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prayers from my religious tradition" as opposed to "I don't want to sing hymns".) We therefore suggest that Part 1 Section (3)9A(6) (renumbered as suggested in response to question 1 above) should be amended to state:

> *"If the pupil has relevant reasoned objections to all or part of the parent's request the operator is not to give effect to the parent's request to the extent of the pupil's objection."*

We are also concerned at the potential for increased family disputes if children disagree with their parents about whether or not to withdraw from RME/RE and/or Religious Observance, and even more so if parents disagree, and their child or children side with one parent against the other. That may particularly be the case in interfaith partnerships when the parents are of different faiths, or even, in cases of family breakdown, if there is antagonism between the parents, one parent siding – or not – with the child (or vice versa). The accompanying documents to the Bill are silent about any proposed hierarchy for decision-making in such a case, and we suspect it will be left to schools to mediate, in all probability without additional financial, staffing, or expert resources.

3. What do you anticipate being the implications of this Bill for schools, pupils and parents?

Schools with a Religious Character

It would be very difficult to withdraw a pupil from all RME/RE and Religious Observance in schools with a religious character such as the Jewish denominational Calderwood Lodge Primary School in East Renfrewshire where Jewish-related activities permeate the whole school day, and are woven into most areas of the curriculum. This has been recognised in the current Scottish Government Guidance "Curriculum for Excellence: religious observance", which states:

> "*Where a parent chooses a denominational school for their child's education, they choose to opt in to the school's ethos and practice which is imbued with religious faith and religious observance. In denominational schools, it is therefore more difficult to extricate a pupil from all experiences which are influenced by the school's faith character*.", and notes that "*where a school community is continuous with a faith community … worship may be considered to be appropriate as part of the formal activity of the school*."[4]

In the case of family disputes concerning pupils at schools with a particular religious character, since the family has already effectively opted in to the ethos by sending their child to that school, we suggest there should be a strong presumption against complete withdrawal; it would not be reasonable - or practical - for pupils to withdraw from all activities that incorporate aspects of that faith.

Non-Denominational Schools

We hope the new legislation may encourage non-denominational schools to consider the propriety of incorporating religious features into non-religious activities. While, for example, we fully recognise the long history of Christianity in Scotland, we are

[4] ibid. Sections 24 and 26

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concerned that the inclusion of Christian prayers or hymns into the annual prize-giving ceremony, causing some pupils to withdraw from an otherwise secular event, could engender feelings of "I'm different" for Jewish, Muslim, Hindu, Sikh, or Humanist pupils, and so risk the conclusion "I don't belong". In particular, it risks alienating some of the pupils supposedly being honoured at the event. (For avoidance of doubt, we agree that it is entirely reasonable for schools with an explicitly Christian character to include hymns and prayers, etc., on such occasions, and we expect that families with a different faith or belief will have considered this probability before choosing the school for their children.)

School-Family Discussions following a Withdrawal Request

The proposed school-facilitated family discussion following a request to withdraw a pupil from RME/RE and/or Religious Observance would appear to be a sensible way to enable parents and pupils to express, hear, and respect each other's views. The majority of schools do not, however, have access to the professional mediators who will undoubtedly be required in some situations, and nor do they have financial and staffing resources to take on this additional duty without withdrawing resources from existing teaching and extra-curricular provision. The Scottish Government must, therefore, make appropriate new resources available to schools to enable them to undertake the new duties imposed by this legislation.

Alternative Provision

We continue to support the current requirement on schools to respect the religion or belief of pupils and their parents, and to make provision for pupils withdrawing from RME/RE and/or Religious Observance to "*engage in a worthwhile alternative activity*"[5] during that time. It is also important for schools to provide appropriate accommodation for withdrawing pupils. The decision as to whether or not to withdraw from RME/RE and/or Religious Observance should not be made on the basis of a choice between a warm brightly decorated classroom with a familiar teacher, and a drab storeroom or formal secretary's office where the pupil must either sit alone or under the supervision of an adult not well known to him or her. In addition, the school must ensure that any general information and announcements that are, for example, provided to the school during assembly, are also given to all pupils withdrawn from that activity.

We strongly support the existing – and, we presume, continuing – requirement that "*In no circumstances should a pupil be disadvantaged as a result of withdrawing from RO*"[5] although we are concerned about the staffing and financial implications for schools, especially if a significant number of pupils in each year group choose to withdraw. Whilst the provision for suitable provision for pupils is a basic requirement, we worry that it may be impossible, or disproportionately onerous in practice, and so will be honoured in name only but not in fact. This need again cannot be met from existing resources. It can only be met by Scottish Government provision of additional financial and staffing resources that will enable them to make appropriate provision for

[5] ibid. Section 25

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withdrawn pupils, particularly those of lower primary age who will need active adult supervision, or even active engagement.

4. **What insights or experiences do you have regarding how the right to withdraw from religious observance and RME/RE currently works in schools?**

In part because of different understandings of what RME/RE and Religious Observance, mean, there is a wide disparity in the way the right to withdraw from Religious Observance, and Religious and Moral Education currently works. In some schools, including the single Jewish denominational school, teachers facilitate conversations with the family to ensure that pupil's views are sought and shared, and, despite practical difficulties, seek to foster an inclusive ethos even when children are withdrawn. There are, however, schools in which pupils are sometimes made to feel 'other' if the possibility of withdrawing is even raised let alone acted on.

We have received many reports from parents of children at non-denominational schools concerned about explicitly Christian activities taking place on a regular basis.

For example, the mother of one primary school pupil told us "*every month my son's school have an assembly where a Christian minister comes in. It would be unfair for my son to be the only person to be removed from this and single him out … Where there are a tiny proportion of Jewish kids or Muslim kids in a school for example, I feel it is very 'othering' to make primary school kids sit in another room in a school assembly. What kind of message does this show our youngest children if they are excluded from such events? The other children will only see them as different. Children don't know or understand the reasoning or options to opt in/out and this can lead to bullying.*"

We have also frequently received reports about pupils being forced to participate in Christmas or Easter activities because this was deemed to be an appropriate musical, dramatic, or social – rather than religious – activity for the entire school or cohort. "*My child attends a non-denominational primary school.*" a parent told us. "*The huge amount of time spent on the Christmas nativity and Easter activities was a surprise to me as, perhaps naively, I thought non-denominational did not have such a big Christian slant. My son spent two hours at nativity rehearsals for over 5 weeks prior to the school show. This is in addition to the Christmas lunch, the Christmas fair, Christmas jumper day – I could go on ...*".

The problem, however, goes beyond Christmas and Easter, as shown when the concerns of a Jewish parent who objected to his daughter being made to sing "The Water of Life" during primary school music lessons were dismissed by the teacher because "*it's a beautiful sentiment" and "we all worship the same Gd really*". As the parent of a child in another school who was also told "*we all worship the same Gd really*" commented, "*No, we don't; that's part of the point*."

Yet another failure to understand is evidenced by the following letter from a head teacher, forwarded to us by a parent, and which can only exacerbate feelings of alienation: "… *we hold the Assembly in Church for all S3 to S6 pupils. Participating in a service in Church is an ancient tradition in the school. … Irrespective of any question of personal belief, Easter is part of our cultural inheritance and the theme of renewal is of universal significance*." The final phrase and the fact that the letter goes on to affirm

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that this "*celebrate[s] the many strengths*" of the school, just emphasises how far the school is from grasping the nature of cultural and religious diversity.

Some schools are open to suggestions such as inviting guests from different faiths to speak to pupils about common values and beliefs. Some, sadly, are not.

All of these issues are exacerbated in the case of small rural schools where there may only be one or two teachers. If, despite the non-denominational status of the school, these teachers implement a strongly Christian culture, there is no other authority to whom a parent can turn for assistance.

5. **This Bill will introduce an exemption to the section 6 compatibility duty of the UNCRC Act in circumstances where a public authority is compelled to act incompatibly with UNCRC requirements in fulfilment of another Act of the Scottish Parliament. This mirrors the approach taken to Acts of the UK Parliament. Do you have any thoughts on this approach?**

As detailed in the Explanatory Notes to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024[6],

> "*28. … functions conferred by pre-devolution Acts of the UK Parliament are not subject to the subsection (1) compatibility duty, even where the subject matter of such Acts is devolved. Examples of such functions include … the Education (Scotland) Act 1980 …*
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> *29. … where one enactment inserts words into another enactment … and the inserted words confer a function … The function is to be regarded as conferred only by the enactment which has been modified (and not by the enactment which inserted the new words into the modified enactment). The effect of this is that (for example) a function conferred by words inserted, by an Act of the Scottish Parliament, into an Act of the UK Parliament is not a relevant function … The subsection (1) compatibility duty therefore does not apply in relation to such a function.*"

Part 1 of this Bill amends the Education (Scotland) Act 1980. It therefore already benefits from an exemption to the compatibility duty. As such, Parts 1 and 2 of this Bill are unrelated, and we are, therefore, unclear as to the necessity for a portmanteau Bill. We suggest that it would be more appropriate to separate Parts 1 and 2 into individual Bills.

Other than confessing to a certain amount of bemusement at the concept of the Scottish Parliament legislating to permit other Scottish Parliament legislation to be disregarded, we do not wish to say much about this measure.

We would, however note that since the Policy Memorandum[2] states:

> "*48. There should not be any provisions in existing legislation in devolved areas that require a public authority to act in a way that is incompatible with the UNCRC.*"

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[6] Explanatory Notes to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024
https://www.legislation.gov.uk/asp/2024/1/pdfs/aspen_20240001_en.pdf

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there would seem to be no necessity for this provision.

In addition, and somewhat in contradiction, the Policy Memorandum also states (our emphasis) that:

> "*47. Adding this exemption would make clear that public authorities can continue to exercise functions and therefore deliver services, that are potentially incompatible with the UNCRC requirements,* ***until remedial action is taken to remove the incompatibility***."

The text of the Bill, however, includes no such proviso, and makes no reference to remedial action. It simply mirrors the exemption already provided to legislation relating to Acts of the UK Parliament by the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024[7]. If the intention is to ensure UNCRC combability in the long term, the duty to take remedial action should be included in the Bill. If there is no such intention, section 47 of the Policy Memorandum should be deleted in order to avoid misleading the public.

6. Have you got any other comments on the Bill?

In order to ensure Scotland-wide consistency, formal and unambiguous Guidance should be produced to advise schools on procedures, effective mediation, and how to make a decision, when there is a dispute between parents, or between parents (or one parent) and their child as to whether or not to withdraw from RME/RE and/or Religious Observance.

As we have already mentioned briefly above, the situation may become very complex if the parents are of different faiths, if the child has been brought up in one faith but wants to convert to another, or when the school has a particular religious ethos. The majority of schools will not have access to professional mediation services, and detailed, clear guidance must be provided to schools to enable them to negotiate such difficult situations without inadvertently having a negative influence on relationships within the family, and between any family member and the school.

Some parents and pupils may find it helpful if a religious leader of their own faith or belief were also able to participate in the decision-making process, in order to assist in presenting faith-specific views about the RME/RE and Religious Observance in the school concerned, and explain why these may – or may not – be problematic.

It must be made clear to both parents and pupils that the option to withdraw may only be exercised for genuine reasons of religious conscience, and not for frivolous reasons such as a friend having withdrawn, or disliking the teacher.

The ethos of a school is not incidental, and when parents have chosen a school with a particular religious character, it is reasonable to expect parents and pupils to provide a fuller explanation of why they wish to withdraw.

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[7] United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 https://www.legislation.gov.uk/asp/2024/1/contents

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