



**Evidence to the Joint Committee on Human Rights:
Education and Children Bill 2010**

October 2010

About the British Humanist Association

1. The British Humanist Association (BHA) is the national charity representing the non-religious and campaigning for an end to religious privilege and discrimination. The BHA is an active member of many organisations working in education and responds to every relevant consultation. We also provide materials and advice to parents, governors, students, teachers and academics.

Introduction

2. This submission on the forthcoming Education & Children Bill has been prepared in response to the call for evidence from the Joint Committee on Human Rights (JCHR).
3. Since the detail of what might be in the Bill is still not clear it is difficult to make specific comments. Instead, we draw the Committee's attention to a number of areas where human rights may be undermined, or significantly enhanced, by provisions of the Bill. We have taken into account government statements made in parliament and by individual ministers in media articles. We look forward to submitting more detailed evidence to the Committee when the Bill is published.
4. The BHA would welcome the opportunity to support our written submission by giving oral evidence to the Committee. To arrange this, please contact:

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Significant human rights issues likely to be raised by the Bill

New voluntary-aided schools

5. The secretary of state for education has stated that the government will make it 'easier to set up a new voluntary-aided school, simplifying the planning process for new schools'¹ and it is likely that provisions to this effect will be found in the Bill. We are deeply concerned that a proliferation of new voluntary-aided (VA) schools with a religious character ('faith' schools) will raise significant human rights issues, affecting both pupils and staff.
6. VA schools are their own admissions authorities, and as such have the power to discriminate against prospective pupils on the basis of parental belief. While we welcomed the JCHR's previous conclusion that it is not necessary to allow 'faith' schools to discriminate in their admissions in order to recognise parents' rights or maintain plurality of provision², we maintain

¹ Quoted in Jessica Elgott, 'Gove: free schools 'can still be totally Jewish'', *Jewish Chronicle*, July 22, 2010

² *Legislative Scrutiny: Equality Bill (second report); Digital Economy Bill*, JCHR, March 2010, HL Paper 73, HC 425

that such discrimination is not only unnecessary but also a direct contravention of children's rights. Article 2(2) of the Convention on the Rights of the Child (CRC), for example, asserts that states should protect children 'against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.'

7. VA schools are also able to appoint, remunerate and promote staff on the basis of religion or belief. These schools can even reprimand and dismiss staff members for conduct outside school which governors deem 'incompatible' with the school's religion. Staff in VA schools therefore do not enjoy the same protections from religious discrimination as other employees. The JCHR has previously found that these exemptions are likely to contravene rights legislation³ – any moves to expand the number of VA 'faith' schools risks violating the rights of thousands more employees.

The role of Ofsted

8. Media reports have highlighted the government's intention to reduce the role of Ofsted, including its obligation to report on schools' contribution to 'community cohesion'.⁴ The BHA strongly supports this inspection judgement and opposes any attempt to remove it from Ofsted's remit.
9. The judgement is particularly important in relation to 'faith' schools which, as explained above, can discriminate widely on religious grounds, in some cases excluding the majority of people who live or work in that area. These schools can teach their own syllabus of Religious Education (RE) (see below), which is not required to cover other beliefs.
10. As the Ofsted guidance says, where pupils are predominantly of one religious background, 'more will need to be done to provide opportunities for interaction between children and young people from different backgrounds.'⁵This interaction is vital for building strong communities with shared values, yet it is often undermined by discriminatory admissions and employment policies and insular RE.
11. The community cohesion duty places an obligation on schools to promote the awareness, application and defense of human rights and to challenge prejudice and discrimination. It is therefore of the utmost importance that Ofsted continues to report on it.

Opportunities to enhance the protection of human rights

Religious Education

12. The BHA has long held that the current arrangements for RE, whereby most schools teach a locally agreed syllabus set by an Agreed Syllabus Conference (ASC) and monitored by Standing Advisory Councils on Religious Education (SACREs), while 'faith' schools instruct pupils in the

³ *Legislative Scrutiny: Equality Bill*, JCHR, October 2009, HL Paper 169, HC 736

⁴ See, for example, 'Scholarly Gove to wage war on bureaucracy', *Children & Young People Now*, April 6 2010

⁵ *Inspecting maintained schools' duty to promote community cohesion: guidance for inspectors*, Ofsted, February 2009

tenets of their own religion, risk violating the rights of pupils, including Articles 13(1) and 29(1d) of the CRC.

13. In many 'faith' schools, RE is confessional instruction from which the competent child should be able to withdraw themselves. In community schools RE is broader but teaching has consistently been found to be patchy⁶ and many syllabuses still exclude secular philosophies such as Humanism, despite the National Framework for RE⁷ and the most recent government guidance⁸ recommending its inclusion.
14. Whereas representatives of Christianity and other religions are guaranteed full membership of SACREs and ASCs, Humanists are often only able to sit on these committees as co-opted members. Many local authorities are under the mistaken belief that to admit Humanists as full members would actually be illegal.
15. The omission of non-religious beliefs from RE syllabuses, and the exclusion of non-religious people from the bodies that set and monitor them, is discrimination on the grounds of religion and belief, contravening both national and European equality law.
16. For these reasons the BHA has strongly urged the government to use this Bill to make RE a National Curriculum subject, which includes impartial and objective study of both religious and non-religious beliefs.

Collective Worship

17. The Bill offers the opportunity to address a very significant violation of children's rights: compulsory collective worship. Currently the law requires all maintained schools in England and Wales to provide a daily act of collective worship which is 'wholly or mainly of a broadly Christian character'. 'Faith' schools can provide these acts of worship in accordance with their own religion. Children under 16 can be withdrawn from these acts of worship, but only at the request of their parents.
18. We believe that the best way to ensure the right of children to freedom of conscience, religion and belief - as articulated in Article 9(1) of the European Convention on Human Rights and Articles 12(1) and 14 of the CRC - would be for the current law requiring collective worship to be repealed and for assemblies not to contain any religious practice. The current opt-out system is not a satisfactory solution as it provides no entitlement to alternative educational provision for those who opt out, is inherently divisive and risks stigmatising children.
19. At the very least the right to withdraw should be transferred from the parent to the child when s/he is of sufficient (i.e. 'Gillick') maturity. As the JCHR has noted, 'provisions which fail to guarantee children of sufficient maturity, intelligence and understanding the right to withdraw from compulsory religious education and collective worship are incompatible with their human rights'.⁹

⁶ See, for example, *Transforming religious education*, Ofsted, June 2010

⁷ *National Framework for RE*, QCDA, 2004

⁸ *Religious education in English schools: Non-statutory guidance*, DCSF, January 2010

⁹ *Legislative Scrutiny: Education and Skills Bill*, JCHR, May 2008, HL Paper 107, HC 553

Sex and relationships education

20. The Bill provides a very valuable opportunity to give all pupils in England and Wales a statutory entitlement to sex and relationships education (SRE).
21. In 2009 the JCHR stated that children's rights to information to help them stay healthy were undermined by the current arrangements whereby parents can withdraw their children from SRE.¹⁰ The JCHR also questioned the objectivity of SRE teaching in 'faith' schools. This view was reiterated in the JCHR's report on its legislative scrutiny of the Children, Schools and Families Bill, which described 'the provision of mandatory sex and relationships education and the removal of the parental right to withdraw children aged 15 or above as significant human rights enhancing measures.'¹¹
22. This Bill offers the opportunity to introduce both these reforms, which are very widely supported by campaigners, academics and practitioners in the fields of sexual health and children's rights. The creation of a compulsory national syllabus for SRE would be a very important and long-awaited enhancement of children's rights.

¹⁰ *Children's Rights*, JCHR, November 20 2009, HL Paper 157, HC 318

¹¹ *Legislative Scrutiny: Children Schools and Families Bill; Other bills. Eighth Report of Session 2009-10*, JCHR, February 19 2010, HL Paper 57, HC 369