

## Consultation on the Curriculum and Assessment (Wales) Bill

Evidence submitted to the [Children, Young People and Education Committee](#) for Stage 1 scrutiny of the Curriculum and Assessment (Wales) Bill.

### About you

Professor Russell Sandberg

Professor of Law, School of Law and Politics, Cardiff University

### 1. The Bill's general principles

#### 1.1 Do you support the principles of the [Curriculum and Assessment \(Wales\) Bill](#)?

Yes

#### 1.2 Please outline your reasons for your answer to question 1.1

*(we would be grateful if you could keep your answer to around 1500 words)*

The Curriculum and Assessment (Wales) Bill will transform the way in which religion is taught in Welsh schools as part of the new curriculum. The changes are bold but are both long-overdue in terms of updating an outdated legal framework and are necessary for the new curriculum to flourish.

Both of these reasons also mean, however, that attention needs to be afforded to whether the provisions are bold enough, in order that the new law will facilitate the Welsh Government's vision of universal pluralistic Religion Values and Ethics teaching and also to ensure that the law is human rights compliant.

There are a number of concerns with the current proposals as articulated in the Bill:

[1] The requirement that agreed syllabi must 'also reflect the fact that a range of non-religious philosophical convictions are held in Great Britain' and the inclusion of groups to represent non-religious philosophical convictions on Standing Advisory Councils is welcome and long over-due. However, how this change is made needs considerable care in four respects.

First, it is questionable whether referring to the ECHR jurisprudence for the definition will give the conceptual clarity needed. The ECHR has taken a broad brush approach to the issue of definition. Just referring to that will not be of any practical help for those designing local syllabi or those planning and teaching lessons in schools.

Second, it is questionable whether the term ought to be 'belief' rather than 'convictions' to be in line with Article 9 of the ECHR as well as domestic human rights and discrimination laws.

Third, it would be advisable to enshrine the pluralistic requirement in legislation. Retaining the statutory requirement that the RVE syllabus 'must reflect the fact that the religious traditions in Great Britain are in the main Christian while taking account of the teaching and practices of the other principal religions represented in Great Britain' is likely to encourage both a Christian bias and a conservative approach.

Fourth, the risk of conservatism is even more concerning given the localism at the heart of the new curriculum. This makes it all the more important that due emphasis is given to the pluralistic requirement.

[2] The proposal that agreed syllabus conferences must have regard to Welsh Government guidance is welcome but it does not go quite far enough and that (i) this should apply to Standing Advisory Councils generally and (ii) agreed syllabus conferences should have to develop their syllabi in accordance with the regulations.

Indeed, given the nature of the new curriculum (which will be created as a school level) and the fact that there will be statutory guidance, it is questionable whether there is a need for locally agreed syllabi at all.

The current system dates back to a time when it was thought that religious diversity differed on a regional basis. Affording power and discretion to the local authority level made sense in that context. It does not make sense now. Given financial pressures, it is now questionable whether Standing Advisory Councils now need to exist. A case could be made for one such council to serve the whole of Wales.

[3] The proposed changes to schools with a religious character do not facilitate the Welsh Government's vision of universal pluralistic Religion Values and Ethics teaching and run the risk of not being human rights compliant.

In schools with a religious character an element of the parental opt-out remains and there is a risk that pupils at these schools will not have access to the pluralistic RVE which the Welsh Government seeks to make universal. A preferable approach would be to permit denominational religious education in addition (rather than in place of) RVE in schools with a religious character.

[4] There is an anomaly in Schedule 2 of the Curriculum and Assessment (Wales) Bill. Paragraphs 34 and 35 provide that the duty to provide religious education under section 69 of the School Standards and Framework Act 1998 Act applies only to England. Paragraph 36 amends section 71(1) of the 1998 Act to provide that the parental right to opt out of religious education only applies in England. The right of parents and sixth formers to opt out of religious worship under 71(1A-1B) are not amended.

The anomaly is that section 71(3) is not amended. This provides that pupils who have been excused from RE under section 71(1) or religious worship under section 71(1A-1B) can in certain circumstances be withdrawn from the school for the purpose of receiving religious education. This has a curious effect. The explanatory notes suggest that this means that a

pupil withdrawn from religious worship could still receive RE elsewhere under this provision but that this would be in addition to the RVE that they received at their school (para 187). This seems an odd provision to retain. It should be removed.

[5] The provision under Schedule 19 to the School Standards and Framework Act 1998 that the agreed syllabus cannot provide for the teaching of RE by catechism or formulary should also be retained in Wales.

[6] The Bill also makes a significant change in relation to sixth-formers – under clause 62 RVE is only to be provided for those who request it. This is a welcome change. However, the Explanatory Memorandum states that ‘A school may make the study of RVE compulsory for all pupils if it wishes. As with pupils under 16 there is no right to withdraw’ (para 3.104). This is not expressed in clause 62 and would go against the rights for sixth-formers where Wales led the way.

The proposed changes would transform the teaching of religion especially in schools without a religious character and the boldness of the Welsh Government is to be applauded but there is need for an even bolder and clearer approach, especially in relation to the status of Welsh Government guidance and most importantly in relation to schools with a religious character – pluralistic RVE should be compulsory there too with denominational religious instruction taught in addition to rather than instead of pluralistic RVE.

### **1.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?**

*(we would be grateful if you could keep your answer to around 500 words)*

Yes, this is a matter that needs legislation.

## 2. The Bill's implementation

### 2.1 Do you have any comments about any potential barriers to implementing the Bill? If no, go to question 3.1

*(we would be grateful if you could keep your answer to around 500 words)*

N/A

### 2.2 Do you think the Bill takes account of these potential barriers?

*(we would be grateful if you could keep your answer to around 500 words)*

N/A

## 3. Unintended consequences

### 3.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

*(we would be grateful if you could keep your answer to around 500 words)*

Please see my answer above, especially points 1, 4 and 5.

## 4. Financial implications

### 4.1 Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the [Explanatory Memorandum](#))? If no, go to question 5.1

*(we would be grateful if you could keep your answer to around 500 words)*

N/A

## 5. Powers to make subordinate legislation

### 5.1 Do you have any comments on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the [Explanatory Memorandum](#)). If no, go to question 6.1.

*(we would be grateful if you could keep your answer to around 500 words)*

N/A

## **6. Other considerations**

### **6.1 Do you have any other points you wish to raise about this Bill?**

*(we would be grateful if you could keep your answer to around 1000 words)*

N/A

