

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

Organisation: The Catholic Education Service

1. The Bill's general principles

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

Partly

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 Catholic Education Service

The Catholic Education Service ('CES') exists to represent the collective view of the Catholic Church on matters of National education policy. The Catholic Church provides 87 schools across Wales, educating 28,491 pupils and employing 2,626 staff. Catholic schools offer a distinctive, education and formation of the whole person within a moral framework for the good of Welsh society. Our schools welcome pupils from all backgrounds and are an important factor in ensuring real choice for parents. Catholic schools are the most diverse in the country ethnically, linguistically and culturally. This is partly due to the diverse and universal nature of the Catholic faith, and partly due to our schools' popularity with parents of all faiths and none. Catholic schools are also religiously diverse, with almost half (46%) of our pupils come from families outside the Catholic community who have chosen a Catholic education. Of those pupils, about 16% are from other (non-Christian) faiths and about one-third have no faith. Our schools also take higher proportions of children from the poorest and most disadvantaged neighbourhoods than other schools.

The Catholic faith has been an integral part of Welsh culture, language and story since about the third century, and today the Catholic community is the largest religious minority

in Wales, making up just over 5% of the population. The Catholic community faced brutal persecution in Wales in 16th-18th centuries, but rebuilt its infrastructure of schools and churches from the 19th century, when it made the education of the poor and disadvantaged its first priority. The last of the major legal disabilities imposed on Catholics were repealed in 1926, and discrimination against Catholics on the basis of their religion was made illegal in 2006. Catholic schools today are high-performing and are popular with parents from all backgrounds. True to their origins, Catholic schools continue to give a high priority to providing excellent education to those from the poorest and most disadvantaged backgrounds.

Support for the new Curriculum

We have always supported the implementation of a broad and balanced curriculum that is purpose led. We agree that learner progression should be the principal focus, and that this should be supported by assessment. The curriculum must be suitable for pupils or children of differing ages, abilities and aptitudes. We agree that the curriculum must make provision for teaching and learning that encompasses the AoLEs and addresses the mandatory elements. We agree with the establishment of a broad set of duties where practitioners are given the freedom to use their professionalism and creativity to create a curriculum that connects meaningfully to the local community and the experiences of the learners.

Support for the Rights of Parents

We believe that parents are the primary and principal educators of their children, and that the role of the State, the Churches and other organisations is to support parents in that responsibility, whether by providing schools or otherwise, and not to usurp them. This position is supported by the European Convention on Human Rights (ECHR) and reflected in section 7 and 9 of the Education Act 1996. In relation to the delicate subjects of Religious Education and Sex education, this is further reflected in parents' rights to withdraw their children (Education Act 1996 s.405 and School Standards and Framework Act 1998 s.71(1)). This Bill attacks this fundamental principle by proposing the removal of the right of withdrawal (Schedule 2, paragraphs 20 and 36).

Religious Education as the Foundation for Formation in Values, Virtues and Ethics

All schools currently have the obligation under the Human Rights Act 1998 and case law to teach RE in an objective, critical and pluralistic manner. Schools also have the freedom to teach RE as a rigorous academic subject at the heart of the curriculum, in a way that both it and the whole curriculum support the whole school's formation of pupils in values, virtues

and ethics. Catholic schools already do all of these things, and do them well. The proposed change of the name of the curriculum subject from Religious Education to Religion, Values and Ethics potentially undermines that freedom and could lead to a position where schools are encouraged to view the instilling of values and ethics as something to be compartmentalised within a single subject area, rather than being the wider responsibility of the whole curriculum supported by the whole school.

The Balanced Nature of the Current (1944) Arrangements

The Education Act 1996 embodies the delicate and balanced arrangements for the provision of RE in different types of schools which date back to the 1944 Education Act and have worked smoothly in practice. Alongside the parental right of withdrawal, except in cases where it would be unreasonable:

- schools without a religious character provide RE in accordance with the locally agreed syllabus, but parents can request alternative (denominational) RE which can be arranged (without any expense being incurred by the school);
- voluntary controlled and foundation schools with a religious character provide RE in accordance with the locally agreed syllabus, but parents can opt for RE in accordance with the school's denomination; and
- voluntary aided schools with a religious character provide RE in accordance with the school's denomination, but parents can opt for RE in accordance with the locally agreed syllabus.

These arrangements successfully balance the rights of parents and pupils with different beliefs, and the rights of schools provided by different communities in a way which does not create insurmountable practical obstacles or unreasonable expense. The proposals in the Bill destroy this delicate balance in favour of an unequal framework which unjustifiably discriminates against parents with religious convictions in non-denominational schools and against voluntary aided schools in designing their curriculum. It threatens to be unworkable and create huge additional expense for certain types of schools.

The proposal (in Schedule 2, paragraph 4 of the Bill) that voluntary-aided schools with a religious character should be the only ones required to teach in accordance with the agreed syllabus alongside its existing syllabus where a parent requests it, fails to recognise the professionalism of staff in Church schools and fails to acknowledge the context of the Catholic community.

The proposal (in Schedule 2, paragraph 2 of the Bill) That parents in non-denominational schools can no longer request RVE in accordance with their own religious or philosophical convictions discriminates unjustifiably against those with strong convictions whose children are unable to attend a Church school (or whose community does not provide schools). We oppose the ending of this further parental right, as we oppose the removal of the wider right of parents to withdraw their children from RE and RSE.

The Requirement for Pluralistic RE

Catholic schools offer a distinctive and coherent Catholic Religious Education. This teaches pupils about the Catholic Faith, fosters an awareness of the tenets of other faiths, and engages in dialogue with non-religious interpretations of the human person and history. Catholic schools commit at least 10% of curriculum time to this rigorous academic subject which is at the core of, and related to, the whole curriculum. As required both by the teachings of the Church and by law, it is taught in an objective, critical and pluralistic manner. The amount of time dedicated to the subject ensures pupils are religiously literate: for example, as well as the depth of Catholic RE, pupils in Catholic schools will typically spend more time studying other faiths than in other types of school. The approach of Catholic schools to RE could not in any way be characterised as 'indoctrination' as some commentators have sought to imply.

All schools are already required by law to teach RE in a way which is pluralistic, and all schools, including Catholic schools already comply with this requirement. If in future any school were to breach this requirement, there are legal remedies available to parents and to the government, which include court proceedings and the existing direction making powers under the Education Acts.

Not only is the legislation in the Bill not necessary, it actually decouples the law from the ECHR caselaw by adding an additional requirement which only protects those philosophical convictions recognised by the Convention if they are 'non-religious' (whatever that is held to mean). This brings a new, unwelcome and unnecessary element of uncertainty for schools and SACREs in designing their curricula.

Religious Freedom

The Catholic Church agreed to be part of the State education system 173 years ago, on the basis that it would retain its hard-won freedom from State interference in Catholic RE. The proposed changes set out in the Bill breach this long standing commitment, and are unacceptable. Clause 66 of the Bill gives power for Ministers to issue statutory guidance to

schools on all aspects of RVE, without excluding denominational RE, and Schedule 2, paragraph 10(2) extends the functions of SACREs for the first time to include advising on denominational RE, including Catholic RE. SACREs have never had any advisory functions in relation to denominational RE. These provisions usurp the proper role of denominational religious authority (in our case the Diocesan Bishop) to be the determiner of denominational religious education. We greatly value and support the work of SACREs in setting an appropriate local framework for non-denominational RE, but neither they nor the Government have the competence to give guidance on Church teachings, and we do not believe that SACREs wish to be given such a power.

Learning from Best Practice in Relationships and Sexuality Education (RSE)

The Catholic Church is the only National body to have developed a comprehensive and holistic RSE curriculum for ages 3 to 19, which is publicly available, and which has been in place in Catholic schools for some years. We are keen to share the huge amount of good practice taking place in our schools for the benefit of all pupils. However, we are extremely concerned about the proposal (set out in Schedule 2, paragraph 18 of the Bill) to repeal s.403 of the Education Act 1996 which currently provides for sex education to include moral considerations and the value of family life, that pupils learn the nature of marriage and its importance for family life, and that they are protected from inappropriate teaching and materials, having regard to their age and religious and cultural backgrounds. We see no justification for simply removing these important safeguards.

Regulation-Making Powers

We have concerns about the wide powers given to Ministers to amend the curriculum in the future.

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)

There is a need for legislation to implement the new curriculum. However, there is no need for that legislation to disturb the existing balanced and equitable settlement in relation to the delivery of different types of RE, nor any need to remove long-standing rights of parents which have a very long track-record of working extremely well. Likewise, there is no need for legislation to compel schools to comply with the ECHR and its caselaw when

this is already a legal requirement under the Human Rights Act 1998 and with which all schools currently already comply.

The proposed legislation treats schools with a religious character differently to schools without a religious character. It discriminates unfairly against such schools and families who want their children educated in conformity with their own religious and philosophical convictions (unless those convictions are 'non-religious' philosophical convictions).

VA schools with a religious character will have an additional burden in having to provide two parallel curricula, potentially at considerable additional cost. There is no provision, as in the existing legislation, for the alternative curriculum to be provided by the local authority, particularly in circumstances where it would be impossible, unlawful or unreasonable for the school to provide it.

The current legislation takes into account the fact that in many schools with a religious character the Trust Deed which established the school contains specific requirements about the provision of RE. To require the Governing Body to provide agreed syllabus RE in a Catholic school is likely to place the Governing Body in breach of its legal duty to comply with the requirements of the Trust Deed.

The changes to legislation extend the functions of Government Ministers and SACREs to include advising (or issuing guidance) in relation to denominational RE, including Catholic RE. This is an extremely significant change with serious ramifications. This usurps the proper role of denominational religious authority (in our case the Diocesan Bishop) to be the determiner of denominational religious education.

The right of parents, to request withdrawal from RE has been in place in legislation for many years. This right, and the underpinning requirements of the legislation about the provision of RE are very finely judged providing an appropriate balance between ensuring that this essential part of the curriculum is delivered, and allowing a 'conscience clause' for parents where they might have genuine concerns to ensure that their children are provided with RE in accordance with their own religious beliefs or philosophical convictions.

Having the right to withdraw clearly does not mean that it will be exercised, but provides the opportunity for important dialogue with parents.

The proposed amendments to the section 403 of the Education Act 1996 remove important protections for all children. The law currently provides for pupils to learn the nature of marriage and its importance for family life and the bringing up of children, and ensures that they are protected from teaching and materials which are inappropriate

having regard to their age and religious and cultural background. The Bill repeals these provisions without any replacing them with any equivalent safeguards. The current legislation enables Church schools to continue to provide sex education, but to do so in a way that places it within the teachings of the relevant Church. The Catholic church is very clear that the provision of sex education is vital for the development and protection of young people, and it is provided in accordance with a national RSE curriculum 3-19. However, it is also important for the Church to be able to continue to provide important moral background. The existing protections enable that to happen and we would urge that they are retained.

Cl. 25 provides that regulations may specify further requirements for pupils over 14 and may specify what provision must or must not be in a curriculum and may be by reference to courses of study. This does not exclude requirements relating to RE.

Any future Welsh Government could specify content and teaching of Catholic RE for pupils above the age of 14 which is contrary to the schools' Trust Deeds and which is unlawful for them to teach.

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)

The unprecedented challenges presented by the world pandemic will have an inevitable impact on the implementation of the Bill. The current climate has added additional work and strain onto teaching staff, school leaders, Directors of Education and Welsh Government officials. There is insufficient capacity in the system at all levels of the education sector to effectively engage with the historic changes this legislation will seek to bring.

The timetable for the new Curriculum for Wales has not been altered but the time available for staff to prepare for its implementation has been eroded. The CES is aware that head teachers and senior leaders have been under considerable strain throughout this period already and many teaching and support staff are reporting increased anxiety about returning to school. In the current emergency situation the focus of staff will be on negotiating the return to school, wellbeing and catch-up. Preparation for the new

curriculum and the professional learning required will not be a primary concern for schools and may be seen as an additional burden.

Staff availability in schools may be a major barrier to the Bill's implementation as the situation will remain volatile as the second wave of the disease progresses. Schools may have to manage staff and school resources which support remote learning whilst delivering teaching in class at the same time.

The ongoing emergency situation presents professional learning challenges for schools. As the Covid-19 situation progresses, staff will have to continue to develop their knowledge and skills with regards to blended learning approaches. This is essential if schools are to facilitate effective catch-up for students and mitigate the effects of future lockdowns, and will have a significant impact on the time available for the increased level of professional learning, planning and preparation time required for the successful implementation of the Bill.

The additional workload that will be associated with the planning and preparation for the new curriculum may become an issue with teaching unions and therefore a potential barrier.

The requirement for the governing bodies of VA schools (including all Catholic schools) to provide RE in accordance with the agreed syllabus will prove to be an additional barrier for the Bill's implementation within the context of our schools. In a Catholic school this requirement of the Bill is likely to place the Governing Body in breach of its legal duty to comply with the requirements of the Trust Deed. Schools with a religious character will have to provide two parallel curricula, potentially at considerable cost to the school.

Opposition from parents may provide a barrier to the implementation of the Bill. In this Bill, those with strong religious or philosophical convictions whose children are unable to attend a Church school (or whose community does not provide schools) will lose the right to request RE which is in accordance with their religious convictions. Also, the removal of the parental right of withdrawal from RSE was highlighted as a concern by some parents who contributed to the consultation on the draft Curriculum for Wales 2022 as summarised in the Wavehill Report. This is likely to lead to an increase in unrest among parents, with unfortunate consequences of protests and increases in removal of children from school and greater home education.

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)

The Bill does not take these barriers into account. The timeframe for the passage of the Bill has remained unaltered despite the extraordinary demands placed upon schools and governing bodies as a result of the Covid 19 pandemic.

There is no account taken of the level of planning and preparation required in order for head teachers to meet their statutory duty to implement and publish a curriculum for their school. There is no indication of the potential impact on the opportunities for the professional learning required over the next two years in order to implement fully the duties imposed on head teachers and governing bodies.

Trust in the legislative process has certainly been damaged by the lack of engagement and involvement so far of the State's partners in delivering education to the nation. Repeated assurances over a number of years that Catholic schools' ability to continue to teach Catholic RE would not be threatened have been undermined by the contents of the Bill. The unprecedented letter of concern sent to the First Minister signed by every single one of our head teachers has effectively been ignored.

The Regulatory Impact Assessment (RIA) has provided insufficiently robust data to analyse and monetise the requirements of schools to develop the AOLE's. The school-based evidence in the RIA have been taken from the feedback of 14 of the 15 Innovation schools. Despite the fact that it is highly likely that these schools have had a high level of engagement with preparations for the new curriculum, the RIA reports variation in the feedback regarding workload and resources required.

In addition, the Bill has been published before the distribution of draft statutory guidance for the implementation of the mandatory elements of the curriculum.

The Bill has been published prior to the closure of the consultation on RVE and takes no account of the concerns raised during the consultation and the worries expressed by the head teachers and governors of Church schools.

The draft Bill was published without any consultation on its content, and there were no opportunities for dialogue about the legal framework that has been adopted to implement the new curriculum. The contents of the Bill have certainly not been 'co-constructed'.

VA schools with a religious character will have an additional burden in having to provide two parallel curricula, potentially at considerable additional cost. There is no provision, as

in the existing legislation, for the alternative curriculum to be provided by the local authority, particularly in circumstances where it would be impossible, unlawful or unreasonable for the school to provide it.

The Bill has failed to respond to consultation responses and removes the right for parents to withdraw their children from RE/RSE.

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)

There appear to be a number of unintended consequences which threaten to have a significant impact upon Church schools (and particularly Catholic schools).

Changes to existing legislation in the Bill threaten to usurp the proper role of denominational religious authority (in our case the Diocesan Bishop) to determine the content of denominational religious education.

The current legislation takes into account the fact that in many schools with a religious character the Trust Deed which established the school contains specific requirements about the provision of RE. To require the Governing Body to provide agreed syllabus RE in a Catholic school is likely to place the Governing Body in breach of its legal duty to comply with its Trust Deed.

The changes to the legislation in the Bill extend the functions of Ministers and SACREs to include giving guidance and advising in relation to denominational RE.

The Welsh Government could specify content and teaching of Catholic RE for pupils above the age of 14. The Welsh Government could require pupils in Catholic schools to engage in courses of study which do not meet the requirements of the Catholic Bishops.

The Bill discriminates unfairly against such schools and against families who want their children educated in conformity with their own religious and philosophical convictions.

A child of faith in a school without a religious character will not be able to access RE which is in conformity with their religious beliefs. However, a child from a family without the

religious belief of the school they are attending will be able to access alternative RE which is in accordance with the agreed syllabus. There is no rationale as to why different treatment of those of faith is warranted.

Schools with a religious character will have an additional burden in having to provide two parallel curricula, potentially at considerable cost to the school. There is no provision, as in the existing legislation, for the alternative curriculum to be provided by the local authority, particularly in circumstances where it would be unreasonable for the school to provide it.

The Bill creates a negative perception of Catholic schools

The proposals create the false impression that the arrangement for the dual curricula is required because RE in Catholic schools is not balanced in its content and manner of teaching as non-denominational RE. As already explained, this is an untrue and unjustifiable slur on the professionalism of teachers in our schools.

The Bill fails to recognise the integrity of RE in Catholic schools as a rigorous academic subject.

The removal of the parental right to withdraw from RE/RSE may have a negative impact on the partnership with parents and schools.

The right to withdraw provides a safety net for those who may have genuine concerns to ensure that their children are provided with RE in accordance with their own religious beliefs or philosophical convictions.

The right to withdraw facilitates a positive dialogue between parents and schools and helps to ensure that this rarely happens. Without the right to withdraw it would be a concern that there would be an increase in the number of students who are withdrawn from schools to be home educated because of their parents' discontent with the removal of their rights under the new arrangements.

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)

It is a grave concern that it is very difficult to assess the financial implications of the Bill especially as the country faces the financial strictures of a recession as a result of the Covid 19 pandemic. There are a number of key issues concerning the RIA:

The small sample of schools used in the RIA do not provide robust enough data to analyse the impact on all schools across the country.

There is considerable variation in the feedback from this small sample of schools regarding the impact of getting up to speed with the new curriculum.

The evidence to quantify benefits is not available.

The RIA does not reflect information on costs from a number of strategic delivery partners due to Covid 19.

The CES was unable to contribute to the RIA because detailed information on the impact of the Bill on Catholic Schools was not forthcoming from officials or Ministers. Most of the additional costs touched on in this answer derive from provisions in the Bill which had not been revealed to or discussed with us at the time the RIA was carried out.

There are however a number of financial implications for schools which have been touched upon in the RIA;

1. The financial resources required for the investment in time for the design and implementation of the new curriculum.
2. The release of staff for curriculum development and professional learning requirements and the ensuing costs of supply cover.
3. The financial resources requires to facilitate collaboration across schools.
4. The potential increase in fees for new qualifications.
5. The financial resources required to develop the digital infrastructure to overcome the problems caused by restrictions in working patterns a result of Covid 19.
6. In the longer term, the emphasis on experiential learning will have budgetary implications.
7. VA schools will have the additional financial burden of resourcing the preparation and delivery of 2 separate RE curricula. This is a financial cost that is not borne by other schools.

8. If the agreed syllabus is incompatible with the school's Trust Deed, the agreed syllabus will not be able to be taught on schools' premises. There will then be the additional costs of the securing of suitable premises elsewhere, transporting children and staff to and from the alternative premises, and the added disruption that will add to the organisation of the school, and the resulting loss of curriculum time.

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)

At various points in the Bill powers are provided for Welsh Ministers to amend primary legislation through regulation:

- (i) Cl 5 provides for regulations to amend s.3 which includes RVE as a mandatory element of the curriculum. This would allow for a future government to remove RVE as a mandatory element of the curriculum or make changes that would impact on RE without the appropriate scrutiny and opportunity for challenge by the Senedd;
- (ii) Cl 25 provides that regulations may specify further requirements for pupils over 14 and may specify that provision must or must not be in a curriculum and may be by reference to courses of study. It does not exclude requirements relating to RE which would allow for future government to impose requirements that would impact on denominational RE;
- (iii) Cl 70(1) provides that regulations may make supplementary, incidental or consequential provisions, or transitory or saving provisions that Welsh Ministers think necessary or appropriate. Cl 70(2) provides that the regulations may modify this Act or any other enactment. This provides quite wide ranging powers for changes to be made to provisions across education legislation, which might have implications for RVE and RSE in Catholic schools without the appropriate scrutiny and opportunity for challenge by the Senedd;

(iv) Cl 71 provides that Regulations under ss. 5 or 33 (BUT NOT 25 and 70) are subject to affirmative resolution.

This raises a number of concerns:

1. The ability of the Welsh Government to make changes to legislation, including to primary legislation, through regulation is extremely concerning. It would allow for RVE to be removed as a mandatory element of the curriculum and for other important changes to be made that would impact on the provision of RE.

2. For Catholic schools, RE is at the core of the core curriculum. Any proposed changes to RE would be of such significance that may well impact on the ability of Catholic schools to remain Catholic. Therefore, any proposed changes which would have such a fundamental impact on the existing dual system that has been in place since 1944 need to be taken forward in a transparent way that is open to appropriate levels of scrutiny and challenge at Senedd level.

3. For other schools also, RE is vital to ensuring that all pupils, whichever school they attend, become religiously literate – something which is becoming increasingly important in an increasingly diverse and multi-cultural Wales and to understand the wider world.

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)

Support for the Rights of Parents

We urge the Welsh Government to take a holistic view of parental engagement, for it is when parents feel they are excluded from educational decision-making that they are most likely to voice their discontent or exercise their right to withdraw entirely from State education. The preservation of parental choice in education is essential for maintaining parental trust in the Welsh Government, particularly from minority faith communities with strong and legitimate beliefs about religious and moral issues as they affect the sanctity of family life.

The removal the right of withdrawal is an erosion of parental rights and represents a regressive step in the trust and relationship between parents and the State, and parents and schools. It may be that the removal of the right of withdrawal is being suggested merely as a matter of convenience due to the integrated nature of the new curriculum. This is not a sound basis or reason for making such a fundamental change to legislation which will have the effect of removing a parent's right to exercise a conscientious objection whereby they can ensure that the education that their children are receiving in the school they are attending is suitable. We fear that removing these rights will spark protests from groups of parents and stimulate an unfortunate increase in families wishing to home educate their children.

The parental right of withdrawal is the embodiment of an essential principle which incentivises a constructive dialogue between schools and parents. In 2019 hardly any pupils were withdrawn from RE in Catholic schools in Wales, and none from RSE. In the light of the diverse nature of Catholic schools (see above), we see this as a mark of success rather than as an excuse to remove this right or evidence that the right is no longer necessary or useful to parents. It is because of the constructive dialogue between schools and parents that very few parents of children in Catholic schools seek to exercise their rights of withdrawal. On the rare occasions where parents may consider doing so Catholic school leaders encourage parents to discuss with them the reasons why they want to exercise their right and then a constructive dialogue takes place during which parents' fears and/or objections are allayed and a common way forward is agreed. It is this open and honest discussion that leads to the very small numbers of ultimate withdrawals. The existence of the right of withdrawal enables these open and honest discussions to take place and sensitive issues to be resolved. Without the right of withdrawal, no conversation would be started and relationships between parents and schools may be irreparably damaged.

We support the implementation of the United Nations Convention on the Rights of the Child (UNCRC). However, the UNCRC primarily concerns the State in its interactions with the child (Article 3(1)), not the interactions between children and their parents. Therefore, unless the welfare of the child is at risk, parents remain the primary judges of what is in the best interests of their child. This accords with our position that parents are the primary educators of their children. Further, within the right to education under Article 2, Protocol 1 of the ECHR parents are entitled to have their religious and philosophical convictions respected in relation to the education of their children. The Welsh Government appears to have concluded in the consultation document that the rights of parents will be

appropriately respected even if the right of withdrawal is removed, but in our view this cannot be the case.

Religious Education as the Foundation for Formation in Values, Virtues and Ethics

We disagree with the change of name to Religion, Values and Ethics, a view echoed by a large number of responses to the previous consultation on access to the full curriculum. According to the Welsh Government's Access to the Full Curriculum consultation analysis (January 2020), the "suggestions made for changing the name of Religious Education in the new curriculum were not widely supported. The use of the term 'ethics' caused confusion for many". In spite of this user feedback, the Welsh Government has adopted the term Religion, Values and Ethics. . In our schools, values and ethics are instilled in pupils by the whole school: whilst RE as a curriculum subject contributes to this, it is not the exclusive preserve of any part of the curriculum.

Replacing the Balanced Provisions of the Current (1944) Arrangements with Unequal Ones

The proposed legislation treats schools with a religious character in a different way to schools without a religious character. It discriminates unfairly against such schools, and against families of faith who want their children educated in conformity with their own religious and philosophical convictions. Essentially a child of faith in a school without a religious character may not be able to access RE which is in conformity with their religious beliefs. However, a child from a family without the religious belief of the school they are attending will be able to access alternative RE which is in accordance with the agreed syllabus. There is no rationale as to why different (and detrimental) treatment of those of faith is justified.

VA schools with a religious character will have an additional burden in having to provide two parallel curricula, potentially at considerable additional cost. There is no provision, as in the existing legislation, for the alternative curriculum to be provided by the local authority, particularly in circumstances where it would be impossible, unlawful or unreasonable for the school to provide it.

The current legislation was clearly drafted taking into account the fact that in many schools with a religious character the Trust Deed which established the school contains specific requirements about the provision of RE. To require the Governing Body to provide agreed syllabus RE in a Catholic school is likely to place the Governing Body in breach of its legal duty to comply with the requirements of the Trust Deed.

The drafting of the legislation highlights the different treatment afforded to VA schools. Whereas all other types of schools must simply have regard to the agreed syllabus, VA schools must provide RE on request in accordance with the agreed syllabus. The expectation should be that all schools will be treated equitably rather than some schools being treated less favourably on the basis of faith.

We disagree with the proposal requiring only voluntary aided schools with a religious character to provide RE in accordance with the agreed syllabus. The Welsh Government's position will be that voluntary aided schools (including all Catholic schools) will be the only schools in Wales to be obliged to teach RE in accordance with, rather than having regard to, an agreed syllabus. This is unfair and unjustified.

The Requirement for Pluralistic RE

We contest the need to add additional statutory requirements to Religious Education on top of the existing case law which already provides for the treatment of religious and non-religious beliefs that are philosophical convictions. RE in Catholic schools already complies with the legal requirements set out in case law to teach RE which is balanced in its content and manner of teaching. RE in Catholic schools already engages with a range of religions and philosophical convictions.

The proposed changes to the legislation provide that any reference to philosophical convictions is to philosophical convictions within the meaning of Art. 2 Protocol 1 of the European Convention on Human Rights. This is not a problem as it reflects existing case law. However, the proposed provisions relating to the RE syllabus refer to a requirement that they have to include non-religious philosophical convictions, which is different. This would appear to limit the requirement as it appears not to include any philosophical convictions encompassed in case law, but only those that are non-religious. There does not seem to be any justification for this approach.

Religious Freedom

The proposals in the Bill to extend the functions of Ministers to issue statutory guidance on denominational RE and SACREs to advise on denominational RE, including Catholic RE, usurp the proper role of the denominational religious authority (in our case the Diocesan Bishop) to be the determiner of denominational religious education. We greatly value and support the work of SACREs in setting an appropriate local framework for non-denominational RE, but neither they nor the Government have the competence to give guidance on Church teachings, and we do not believe that SACREs wish to be given such a

power. This proposal breaches the very basis upon which the Catholic Church agreed to be part of the State education system 173 years ago, and is unacceptable.

The Bill allows the Welsh Government to strengthen its role over locally agreed syllabi and we are concerned that this may undermine the autonomy of locally agreed syllabi and the role of SACREs/ASCs. We are concerned about the content and quality of statutory guidance, both immediately and in future iterations.

Learning from Best Practice in Relationships and Sexuality Education (RSE)

We do not believe that any Catholic schools have been called upon to share their good practice in RSE, despite having experience of delivering the only national 3-19 RSE curriculum to a diverse pupil body of 28,491 pupils without a single parent exercising their right of withdrawal. We are alarmed about the repeal of the protections currently set out s.403 without their replacement with equivalent protections. Evidence has consistently shown that family structures make a difference to the outcomes for children and, in particular, the important role marriage plays in improving those outcomes. The recent report by the Centre for Social Justice (Family Structure Still Matters, August 2020) highlights this evidence, and why the impact is greater on the poorest families. The removal of the requirement that pupils are protected against inappropriate teaching materials is also cause for alarm, as there are no proposals in the Bill to enact equivalent protections.

Regulation-Making Powers

Clause 5 of the Bill allows Ministers to amend the lists of subjects in clause 3. This includes, for example, the listing of RVE and RSE as mandatory subject. As the Bill stands, therefore, a future government would be able to remove these subjects from the list of mandatory subjects without going through the full scrutiny of the Bill process. We do not believe there is justification for this approach.

Clause 25 of the Bill provides that regulations may specify further requirements for pupils over 14 and may specify what provision must or must not be in a curriculum and may be by reference to courses of study. This does not exclude requirements relating to RE. This extends the powers of the Welsh Government to specify requirements of the content and teaching of RE generally, ousting the role of the SACRE.

It also means that the Welsh Government could specify content and teaching of Catholic RE for pupils above the age of 14. The Welsh Government could require pupils in Catholic schools to engage in courses of study which do not meet the requirements of the

denominational religious authority (in our case the Diocesan Bishop). The Welsh Government will be able to introduce these requirements by regulation, which means that the changes would be made without the opportunity for appropriate scrutiny and opportunity for challenge.

Government lawyers rely on the proposition that, despite the clear words of the Bill , some of these possibilities would be forbidden by public law constraints. However, even if this were true, it would rely on a third party bringing an expensive judicial review challenge against the Government, and that can hardly be guaranteed.

