

# The Legal Basis for Religious Education in Schools

(An overview of relevant statute.)

## **Introduction**

Politics and religion are both deemed to be contentious, but they are properly so. It is in these spheres that we try to articulate the differing purposes of life and negotiate with each other about shaping the character of our community, which would help us to realise the goal[s] of life, individually and collectively. In a democratic society a careful balance is struck between the will of the majority and the rights of minorities. The law will reflect that balance as it was properly judged to be the case at the time. Educational statute cannot, therefore, be lightly set aside or ignored by any one person or group since such statute represent the will of our society.

Education is one of the important means by which a society conserves and transforms itself. Through schooling with its planned curriculum the young come to share the existing cultural and other resources of society and are prepared for the future. Every child, but also every other individual and social institution, has a stake in the educational enterprise. These varying interests normally comport but sometimes compete, so legal prescription is particularly pertinent in setting the parameters of the enterprise, defining the various duties and entitlements. The statute and related advice set out below, which delineate the specific activity of religious education, have guided the deliberations of the Agreed Syllabus Conference.

## **Statutes**

### **The 1944 Education Act [Butler Act]**

The main provisions of the 1944 Education Act relevant to religious education are set out below. It prescribed (section 25):

1. that there shall be a daily act of collective worship for all pupils together at the start or end of the school day.
2. that religious instruction shall be given.
3. that having a place at school shall not be conditional on attending a Sunday school or a place of worship.
4. that a pupil may be withdrawn from religious instruction or religious worship in whole or in part by his or her parent[s].
5. that parents may withdraw pupils at the start or end of the school day for alternative instruction or worship which should be facilitated by the school on the condition it does not incur any additional cost for the school.

For county schools the Act prescribed (section 26)

1. That collective worship shall not be distinctive of any denomination.
2. That religious instruction shall be given in accordance with an Agreed Syllabus.

For voluntary controlled (section 27) and aided schools (section 28) the Act prescribed a number of special arrangements. For voluntary schools these included:

1. that religious instruction shall be in accordance with any provisions of the trust deed but that pupils who have no reasonable alternative to the aided school may require that they be taught in accordance with the Agreed Syllabus.
2. that a teacher specifically employed to teach religious instruction in accordance with the trust deed and who fails to do so efficiently or suitably may be dismissed by the governors without the consent of the LEA.

The Act further prescribed (section 29) that:

1. the Agreed Syllabus shall be prepared, adopted and reconsidered by a Statutory Conference.

2. a Standing Advisory Council on RE [SACRE] may be created to advise the LEA on teaching methods, teaching material and on the in-service training of teachers.
3. the LEA shall determine the method of appointment and conditions of service of the members of these bodies.
4. the bodies shall be made up of FOUR committees representing: 1. The LEA, 2. The Teachers, 3. The Church of England, 4. Other Denominations.

The Act also prescribed certain safeguards for teachers (section 30), namely, that:

1. teachers may withdraw from religious worship or from giving religious instruction.
2. the teachers withdrawal from these activities shall not affect their career or their remuneration.

It is important to note that whilst *schools* are bound to provide collective worship and religious instruction, with respect to these activities the freedom of teachers and pupils are properly safeguarded within the Act.

### **1988 Education Reform Act [Baker Act]**

This act importantly introduced the National Curriculum. For the first time, other school subjects were now also legally required to be taught. With respect to RE and collective worship the '88 ERA re-affirmed the basic requirements and entitlements of the '44 Act but left responsibility for these activities with LEAs. RE (and collective worship) remained mandatory and a part of what is called the 'Basic Curriculum' and is to be regarded as of equal standing in relation to other National Curriculum subjects. Yet the Act also specified some significant additional demands.

It speaks of *Religious Education* rather than *Religious Instruction* and required that:

1. any new Agreed Syllabus must reflect that the religious traditions in the country are in the main Christian whilst taking account of the teachings and practices of other principal religions.

2. RE must be non-denominational in county schools whilst making it clear that teaching about denominational differences is permitted.
3. now Standing Advisory Councils for Religious Education (SACREs) *must* be established and granted this body extended functions, notably:
  - To grant determinations to lift the requirement regarding the *character* of collective worship in school which the act had introduced.
  - To require an LEA to set up a statutory Agreed Syllabus Conference to review the Locally Agreed Syllabus and which it must do every five years.
4. the committee [A], representing denominations other than the Church of England, must also reflect the principal religious traditions in the area.

With respect to collective worship, the ERA:

1. permitted collective worship to be held at any time during the school day and it no longer required that that the whole school should be gathered together but that worship might now be organised for separate groups of pupils as taught in school.
2. required worship in county schools to be “wholly or mainly of a broadly Christian character” , that is to say, they must reflect “the broad traditions of Christian belief.”
3. the character of worship must have regard to the *family background, ages* and *aptitudes* of the pupils involved.
4. where these requirements are irreconcilable, the headteacher in consultation with the governors may apply for a *determination* from SACRE which would lift the requirement that the worship be of a Christian character.

Later education acts, e.g. 1996 Education Act, incorporated all the main provisions concerning RE and collective worship established earlier but attempted to recognise other changes in the educational world e.g. with respect to the categories of school. The current Act is the School Standards and Framework Act 1998; it speaks of community schools instead of county schools and of foundation or voluntary schools instead of controlled and aided schools. The formal sections are set out in appendix A.

### **The European Convention of Human Rights**

The European Convention of Human Rights has been incorporated into British law and has become directly applicable in UK domestic law through the implementation of the Human Rights Act 1988 and it grants every citizen some basic entitlements. The one most relevant to religious education is article 2 of the protocols, debated and signed in (1951-52). It states:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.<sup>1</sup>

The article could be interpreted either positively or negatively. In the Netherlands, for example, this has been interpreted positively so that the state enabled and empowered parents to develop schools in accordance with their convictions. However, in the Belgians Linguistics case and X v UK the court held that there is no positive obligation on the state to fund or subsidise any particular form of education in order to respect the religious and philosophical convictions of parents. It is enough if the relevant authorities respect such convictions within the existing system of education. This is what the authorities seek to do in the United Kingdom. On the basis of this article of the ECHR, parents may reasonably expect that the education their children receive in school, at a minimum, does not undermine or subvert their religious and philosophical convictions. This is, of course, no easy task for schools that

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<sup>1</sup> It may be of interest to note that Anthony Eden, on behalf of the British government signed the protocols on condition that the second sentence in the above article was 'compatible with the provision of efficient instruction and training, and [did not incur] unreasonable public expenditure.' There is always the need to accommodate our expectations to what can reasonably be delivered.

serve a society that is both religiously plural and, in some respects, deeply secular. Nevertheless, given the declared allegiance of many people in our city to a religious tradition, schools should cultivate a basic ethos of sympathy and respect for those traditions and provide pupils with a critical appreciation of them. It is part of the task of RE to serve these ends and so it can never be entirely neutral about religious faith. From an essentially positive and appreciative position it will seek to develop the judgements of pupils and help them to distinguish between what is true and false, good or bad, deep or shallow, profound or trite and what is socially constructive and destructive. RE will in this way support the religious traditions' own strong commitment to what is True, Right and Beautiful and to what is a harmonious society and world.

### **Other Statute**

The answerability of teachers and schools to parents and to the wider society is clearly expressed in statute. Schools have a duty to report to parents on the attainment and progress of their children in RE whilst the *Schools Inspection Act 1996* requires inspectors to report on the standards of attainment, progress of pupils and quality of teaching in RE. Each in their turn underlines the co-operative nature of the educational enterprise, the respective duties and entitlements. For this to be effective there must be a form of communication that is accessible to all and, as far as it is possible, employs discourse that avoids jargon, circumlocutions and specialised terms.

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