

## Proposals to amend the legislation on religious observance and religious education in schools

### About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 600 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Views expressed separately should also be taken into account.

### Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to comment on Scottish Government's proposals to amend the legislation on religious observance and religious education in schools. Our response focuses on proposals relating to only religious observance. Together supports provision of religious and moral education (RME) as part of an education which helps to:

*"prepare the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national, religious groups and persons of indigenous origin".<sup>1</sup>*

Under current legislation, schools are under a statutory duty to provide 'religious observance' to pupils.<sup>2</sup> Parents and carers have the right to withdraw their child from religious observance but children do not have an equivalent right.<sup>3</sup> This means that religious observance becomes *de facto* compulsory if children take a different view from their parent/carer. Likewise, a child has no recourse if they wish to engage in religious observance but their parent/carer has withdrawn them.

Our response draws upon the UN Convention on the Rights of the Child (UNCRC), alongside guidance from the UN Committee, namely General Comment 12, General Comment 20 and recent Concluding Observations made in 2023. The response also draws upon evidence from children and young people, as gathered for our State of Children's Rights Report 2024 (SOCRR),<sup>4</sup> and additional calls from our members.

As such, our response offers a children's human rights perspective in line with the commitment Scotland has recently made to the realisation of children's human rights through the *UNCRC (Incorporation) (Scotland) Act 2024* ('2024 Act').<sup>5</sup> Our response demonstrates that the proposed amendment on religious observance does

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<sup>1</sup> *Convention on the Rights of the Child (UNCRC): Article: 19(c).*

<sup>2</sup> *Education (Scotland) Act 1980. Section: 8.* <https://www.legislation.gov.uk/ukpga/1980/44/section/9> [Date accessed: 23.01.2025].

<sup>3</sup> *Education (Scotland) Act 1980. Section: 9.* <https://www.legislation.gov.uk/ukpga/1980/44/section/9> [Date accessed: 23.01.2025].

<sup>4</sup> *Together (2024). State of Children's Rights in Scotland (SOCRR).* [https://www.togetherscotland.org.uk/media/3800/socrr2024\\_final.pdf](https://www.togetherscotland.org.uk/media/3800/socrr2024_final.pdf) [Date accessed: 21.01.2025].

<sup>5</sup> *UNCRC (Incorporation) (Scotland) Act 2024.* <https://www.legislation.gov.uk/asp/2024/1/contents/enacted> [Date accessed: 20.01.25].

not align with the UNCRC requirements set out in section 1 of the 2024 Act as it fails to respect children and young people's rights to freedom of religion and belief,<sup>6</sup> and to be heard in decisions that affect them<sup>7</sup>. We urge Scottish Government to reconsider this proposal and introduce the child's right to withdraw from religious observance. Scottish Government should also ensure that children are able to *opt-in* to religious observance where they wish to do so, but where their parents have sought to withdraw them.

In line with Scotland's commitment to children's rights, we would urge Scottish Government to put children and young people at the centre of any proposed changes to the current legislation.

#### **We call on Scottish Government to:**

- **Commit to legislative change to ensure children can independently exercise the right to withdraw from (or opt-in to) religious observance.**
- **Ensure that children and young people are at the heart of any discussions on changes to the legislation and that engagement opportunities are fully rights-based.**
- **Ensure that any changes made to the legislation *fully* reflect the UNCRC and UN Committee's guidance, including General Comments and Concluding Observations.**

## **Consultation questions**

### **1. What are your views on the proposed changes, including in terms of practicality for schools and ease of implementation?**

Scottish Government's proposed amendments to the legislation do not achieve the stated aim to "*ensure clarity and put the position in relation to UNCRC compliance beyond doubt*". The proposals contradict the UN Committee's guidance and recommendations, which are clear that Scottish Government must give pupils the right to opt out of religious observance. The UNCRC Act places a duty on Scottish Government to act compatibly with the UNCRC requirements.<sup>8</sup> Courts are invited to consider the text of *all* UNCRC articles, guiding principles, general comments and concluding observations when interpreting the meaning of the UNCRC requirements.<sup>9</sup>

Together appreciates Scottish Government effort to align legislation closely to Article 12 of the UNCRC by adding a requirement to give children and young people's views "due weight" in exercise of the parental right to withdraw their child from religious observance. Further guidance can be found in General Comment 12, General Comment 20 and the Concluding Observations.<sup>10</sup>

The UN Committee's guidance recognises children's evolving capacities and demonstrates how their responsibilities and influence over their own decisions should increase along with their development:

*"the child's views must be given due weight, whenever the child is capable of forming her or his own views. In other words, as children acquire capacities, so they are entitled to an increasing level of responsibility for the regulation of matters affecting them."*<sup>11</sup>

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<sup>6</sup> UNCRC: Article: 14.

<sup>7</sup> UNCRC: Article: 12.

<sup>8</sup> UNCRC (Incorporation) (Scotland) Act 2024: Para: 6. <https://www.legislation.gov.uk/asp/2024/1/contents> [Date accessed: 21.01.2025].

<sup>9</sup> UNCRC (Incorporation) (Scotland) Act 2024. Section: 4.

<sup>10</sup> CRC/C/GBR/CO/6-7: Para: 26(d)

<sup>11</sup> CRC/C/GC/12: Para: 85.

On the transformative nature of the relationship between the parent's right and the child's agency, the UN Committee says that as children develop, the parent/carer's role changes, transforming into guidance and advice, and the child should be encouraged to decide for themselves:

*"The more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child's development, but will steadily increase as the child is encouraged to contribute her or his views."*<sup>12</sup>

When it comes to participation in religious observance, the UN Committee elaborated in General Comment no. 20, emphasising the importance of the child's agency in deciding whether they participate:

*"it is the child who exercises the right to freedom of religion, not the parent, and the parental role necessarily diminishes as the child acquires an increasingly active role in exercising choice throughout adolescence. Freedom of religion should be respected in schools and other institutions, including with regard to choice over attendance in religious instruction classes, and discrimination on the grounds of religious beliefs should be prohibited."*<sup>13</sup>

In its latest Concluding Observations (2023), the UN Committee made a clear recommendation around the right of children to withdraw from religious observance by calling on the UK and devolved governments to:

*"Guarantee the right of all children to freedom of expression and to practise freely their religion or belief, including by...Repealing legal provisions for compulsory attendance in collective worship and establishing statutory guidance to ensure the right of all children, including children under 16 years of age, to withdraw from religious classes without parental consent".*<sup>14</sup>

Accordingly, the UN Committee guidance is clear that it is the *child* who should decide whether or not they participate in religious observance, and *not* the parent (as the current legislation and proposals state). Therefore, the proposed amendment to section 9 of the Education Act 1980 does *not* support the alignment with the UNCRC, despite Scottish Government's stated aim. To fully align with the UNCRC, children and young people must be able to exercise their right to freedom of religion, including being given the right to withdraw from religious observance without parental consent. Further, Scottish Government should also ensure that children are able to *opt-in* to religious observance where they wish to do so, but where their parents have sought to withdraw them.

Children and young people's views can be found in the answers to the below questions.

## **2. What do you anticipate being the main positive and negative implications of these changes, including for schools, pupils, parents and any financial implications? How might any negative implications best be addressed?**

Not answered.

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<sup>12</sup> CRC/C/GC/12: Para: 84.

<sup>13</sup> CRC/C/GC/20: Para: 43.

<sup>14</sup> CRC/C/GBR/CO/6-7: Para: 26(d).

### **3. What insights or experiences do you have regarding how the right to withdraw from religious observance and RME/RE currently works in schools, including how schools communicate with parents, the pupil's voice and the practical application of the withdrawal process?**

Together's recent research report, SOCRR 2024, highlights issues that children and young people are facing in Scotland, including in relation to their education.

The right to freedom of religion is very important to children and young people and they have called for more to be done to ensure this right is respected:

*"More religious places...Right to practice own religion". (MSYP) <sup>15</sup>*

Children and young people also often feel frustrated when adults *don't* listen to them when making decisions about their lives:

*"Decisions by the adults in charge of Scotland are not the best. I feel they don't listen. They could listen to what people want". (Anonymous SOCRR 2024 participant, age 16, supported by Circle)<sup>16</sup>*

Children and young people feel like they don't have much of a say when it comes to educational settings and decisions that are being made and would like more of a say when it comes to what they learn in school. They also feel that schools do not always respect their evolving capacities. They call for schools to recognise and support their development in an age and stage appropriate way, which would help to foster a culture of mutual respect and trust.

*"Most teachers don't recognise I am getting older and should have more responsibilities. They still treat me as a child, but not in a good way." (Anonymous participant in SOCRR 2024, supported by SYP and Forces Scotland)<sup>17</sup>*

Denying children and young people their right to withdraw from (or opt-in to) religious observance contradicts their right to freedom of religion and beliefs, and dismisses their agency over what they learn and practise in their own lives. Together members have also been calling for the introduction of a child's right to withdraw or opt-out of religious observance.<sup>18</sup> The Humanist Society Scotland has pointed out that *"the recent census found over 60% of school-age children in Scotland now identify as non-religious, with fewer than one in four belonging to either of the historically dominant churches. It's about time that the secular majority of young people have the choice to opt-out of religious worship."*<sup>19</sup>

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<sup>15</sup> Together (2024). SOCRR. p125.

<sup>16</sup> Together (2024). SOCRR. p169.

<sup>17</sup> Together (2024). SOCRR. P80.

<sup>18</sup> Together (2024). Joint Letter to Cabinet Secretary for Education and Skills.

<https://www.togetherscotland.org.uk/news-and-events/news/2024/08/joint-letter-calls-for-children-s-right-to-opt-out-from-religious-observance-in-schools/> [Date accessed: 20.01.25].

<sup>19</sup> Humanist Society Scotland. (2024) New religious observance bill fails to respect children's rights.

<https://www.humanism.scot/2024/11/14/new-religious-observance-bill-fails-to-respect-childrens-rights/> [Date accessed: 20.01.25].

In 2020, the Children and Young People's Commissioner recommended that Scottish Government conduct a review of religious observance.<sup>20</sup> This review would consider whether it should be offered at all in non-denominational schools, or as an exclusively opt-in activity. Further insight has been given from the UN Committee on the Rights of the Child in General Comments and Concluding Observations as previously stated in the answer to the first question.

#### **4. Do you think the proposed changes offer a reasonable way forward at this time to address questions about UNCRC compliance?**

No. As demonstrated in the answer to the first question, Scottish Government's proposals fall short of recommendations from the UN Committee to ensure pupils have an independent right to withdraw from (or opt-in to) religious observance. As such, we do not believe that the proposals address concerns around UNCRC compliance.

#### **5. What mechanisms do you think would be most effective for ensuring that schools and parents give due weight to pupils' views when considering withdrawal from religious observance or RME/RE?**

As outlined in previous answers, giving children and young people the right to withdraw from (or opt-in to) religious observance is the *only* mechanism that fully aligns with UNCRC Article 12, 14, General Comments and the Concluding Observations.

Article 14 of the UNCRC states that governments should respect the right of the child to freedom of religion (including no religion). It states that governments should respect the rights of parents and carers to provide *only* direction to the child in the exercise of their right to freedom of religion, in a manner consistent to the evolving capacities of the child.<sup>21</sup>

To properly align with the UNCRC, the ultimate decision of religion or no religion must *not* be for the parent or school but must be the decision of the child. Scottish Government should commit to legislative change to ensure children can independently exercise the right to withdraw from (or opt-in to) religious observance. Children should play a central role in informing this change.

#### **6. As part of our work to bring forward amendments to legislation, we will finalise a Children's Rights and Wellbeing Impact Assessment, and an Equality Impact Assessment. To help inform this work, we would welcome your views on the impact of our proposals on children's rights and equalities, as well as any related evidence/research you may be aware of.**

Together welcomes Scottish Government's commitment to aligning legislation with the UNCRC and carrying out this consultation and a Children's Rights and Wellbeing Impact Assessment. We encourage Scottish Government to seek the views of children and young people when making any change to the legislation and to do so in a rights-based way. From our recent research with children and young people, it is clear that

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<sup>20</sup> Children and Young People's Commissioner Scotland (2020). *Religious Observance*.

<https://www.cypcs.org.uk/wp-content/uploads/2020/02/Religious-Observation.pdf> [Date accessed: 22.01.25].

<sup>21</sup> UNCRC: Article: 14.

there is frustration felt around participation and empty promises made by decision makers, one child saying that participation felt like:

*“Tick box/photo opportunity – that’s how we get treated. People especially decisionmakers listen to us, feel sorry for us, promise change then take a photo and never heard from again.” (Anonymous participant in SOCRR 2024, supported by Scottish Youth Parliament and Carers Trust Scotland)<sup>22</sup>*

We hope Scottish Government will bear this mind when seeking the views of children and young people and informing them of the decisions that are made.

**January 2025**

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<sup>22</sup> *Together (2024). SOCRR. p170.*