

BHA BRIEFING (B): Education Bill

Lords Committee Stage, June-July 2011



Briefing from the British Humanist Association (BHA)

The Education Bill implements proposals set out in the Schools White Paper, *The Importance of Teaching*. We believe that some measures proposed within the White Paper and taken forward in this Bill represent a serious threat to children's rights, while at the same time a number of opportunities to protect those rights seem to have been missed.

Suitably amended, this Education Bill could be an opportunity to make the schools system fairer, more inclusive and more responsive to local communities. This briefing covers the following amendments:

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ADMISSIONS

New Clause: Amendment to prevent state-maintained schools from religiously discriminating in admissions

BARONESS MASSEY OF DARWEN
BARONESS MURPHY

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Page 33, line 33, at end insert—“

() In paragraph 5 of Schedule 11 to the Equality Act 2010 omit paragraphs (a) to (e).”

New Clause: Amendment (a) to the Academies Act 2010 to prevent Academies and Free Schools with a religious character discriminating in admissions.

BARONESS MASSEY OF DARWEN
BARONESS MURPHY

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Insert the following new Clause—

“Discrimination on grounds of religion or belief

In section 1(6) of AA 2010 (Academy arrangements) insert “and—

(e) the admission arrangements for the school make no provision for selection on the basis of religion or belief.””

New Clause: Amendment (b) to the Academies Act 2010 to prevent voluntary controlled ‘faith’ schools which convert to Academy status from increasing the priority of religious criteria in their admissions policies.

BARONESS MASSEY OF DARWEN

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Insert the following new Clause—

“Discrimination on grounds of religion or belief (No. 2)

After subsection 1(9) of AA 2010 (Academy arrangements) insert—

“(9A) Subsection (9B) applies if the school is a voluntary controlled school which is designated by order under section 69(3) of SSFA 1998 as a school having a particular religious character.

(9B) The Academy agreement must include terms imposed for the purpose of securing that no greater percentage of pupils are selected on the basis of religion or belief after, as compared with before, the conversion date.””

Many state-funded ‘faith’ schools use their legal privileges to have highly selective admissions criteria, giving preference to the children of parents with particular beliefs. Academy schools which have ‘converted’ from state-maintained ‘faith’ schools are their own admissions authorities and may religiously discriminate up to 100% in admissions. Free Schools with a religious character may discriminate up to 50% in their admissions.

Discrimination by ‘faith’ schools can cause segregation along both religious and socio-economic lines. Professor Ted Cantle, author of a report into community cohesion in Blackburn, describes religious schools as ‘automatically a

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source of division' in the town.¹ In other areas, 'faith' schools which are their own admission authorities are ten times more likely to be highly unrepresentative of their surrounding area than 'faith' schools where the local authority is the admission authority.² Separating children by religion, class and ethnicity is totally antithetical to aims of social cohesion.

Additionally, voluntary aided 'faith' schools have, on average, 50% fewer pupils requiring free school meals than community schools.³ Pupils starting at 'faith' schools are also, on average, more academically able than pupils starting at inclusive schools.⁴ This is because 'faith' schools' selection criteria mean that they usually take a less than representative sample of deprived children and more than their share of the children of ambitious and wealthier parents.

The BHA wants all schools to include and educate pupils of all beliefs together, so that they can learn about and from each other, instead of being segregated by their religion.

The amendment to the Equality Act 2010 will stop maintained schools (voluntary and foundation schools) with a religious character from discriminating in admissions, by removing the opt-out from the Equality Act 2010 that permits them to do so.

Any religious discrimination in admissions is against the ideal of an open and inclusive school system. It is our firm position that no state-funded 'faith' school including Academies, should be permitted to discriminate in their admissions on religious grounds in any circumstances.

Amendment (a) would rule out religious discrimination in admissions in all new Academies. If the complete prohibition of religious discrimination in the new Academy and free schools system cannot be achieved and Amendment (a) does not pass, Amendment (b) would ensure that voluntary-controlled schools which had not previously been permitted to discriminate cannot begin discriminating on conversion to Academy status.

Part 5, Clause 34: Amendment to reverse reduction in scrutiny of admissions practices

LORD AVEBURY

101

Page 33, line 25, leave out subsection (3)

In 2008 a report by the schools adjudicator found that 3,500 'faith' schools were in breach of the admissions code. Allegations included families being asked questions about their family situation as well as being asked by the school for money. The ongoing need for scrutiny was demonstrated in evidence to the Education select committee in February 2011 by the Chief Schools Adjudicator that reported on continuing discrimination against poorer families, as published in the Office of the Schools Adjudicator's annual report in 2010, which was critical of the complexity of some 'faith' schools admissions criteria as favouring white middle-class areas.

¹Comment reported in

http://www.lancashiretelegraph.co.uk/news/blackburn/4351852.Cantle_report_Blackburn_a_divided_town

² Sara Tough and Richard Brooks, 'School Admissions: Fair choice for parents and pupils', IPPR (2007)

<https://www.ippr.org.uk/publicationsandreports/publication.asp?id=546>

³ Prof Rebecca Allen in corrected transcript of oral evidence taken before the Children, Schools and Families Committee on 'Diversity of Schools: Faith Schools', 12 march 2008

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmchilsch/c311-iii/c31102.htm>

⁴ Stephen Gibbons and Olmo Silva, 'Faith Primary Schools: Better Schools or Better Pupils?', IZA Discussion Paper No. 4089 (2009) <http://ssrn.com/abstract=1369835>

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Discrimination against pupils of the 'wrong' or no religion infringes their rights by assuming their beliefs are identical to their parents'. It is well evidenced and established that discriminatory admissions practices lead to segregation along religious and socio-economic lines – 'faith' school populations are often far from representative of their local communities.

In light of the push by government to increase vastly the numbers of religious Academies and Free Schools which can all discriminate in their admissions, it is particularly remarkable that the Education Bill contains provisions which will actually decrease scrutiny of school admissions policies.

We believe that, at a time of a potentially large expansion in the numbers of state-maintained 'faith' schools, that there should be more scrutiny of admissions arrangements, not less.

This amendment will take out the proposal in the Bill to weaken scrutiny of school admissions by the Schools Adjudicator.

COMMUNITY COHESION

Part 5, Clause 40: Amendment to reverse the removal of the duty for Ofsted to inspect community cohesion

BARONESS FLATHER

116

Page 36, line 28, at end insert—

“() the contribution made by the school to community cohesion.”

It is disappointing that the Bill will remove the requirement for Ofsted to inspect on how schools contribute to community cohesion. Although difficult to achieve meaningfully by schools that segregate students along religious lines, it must be remembered that the requirement was introduced in response to evidence, reported in research such as the 2001 Cattle report, which suggested segregated schools were contributing to increased tensions across cultural lines in some communities.

This amendment will reintroduce the duty for the Chief Inspector to report on the contribution made by schools to community cohesion.

COMPULSORY COLLECTIVE WORSHIP

New Clause: Amendment to repeal compulsory collective worship

BARONESS MASSEY OF DARWEN

BARONESS MURPHY

BARONESS GOULD OF POTTERNEWTON

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Before Clause 30

Insert the following new Clause—

“Entitlement to spiritual, moral, social and cultural education in inclusive assemblies

“Entitlement to spiritual, moral, social and cultural education in inclusive assemblies

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- (1) Chapter 6 of SSFA 1998 (religious education and worship) is amended as follows.
- (2) For section 70(1) (requirements relating to collective worship) substitute—
- “(1) Each pupil in attendance at a community, foundation or voluntary school or an Academy shall on each school day take part in an assembly, which shall be directed at least in part towards furthering the spiritual, moral, social and cultural education of the pupils.”
- (3) For section 70(3) substitute—
- “(3) Subject to subsections (4) and (5) below, such assemblies should not include any religious worship.”
- (4) After section 70(3) insert—
- “(4) Subject to section 71, in the case of a voluntary aided school with a religious character, the foundation governors or governing body may make arrangements for religious worship as a part of assemblies.
- (5) The religious worship referred to in subsection (4) shall be in accordance with the trust deed relating to the school or, where provision for that purpose is not made by such a deed, in accordance with the tenets and practices of the religion or religious denomination specified in relation to the school under section 69(4).
- (6) Subject to subsection (7), the religious worship referred to in subsection (4) shall take place on the school premises.
- (7) If the governing body of a voluntary aided school with a religious character are of the opinion that it is desirable that an act of religious worship should, on a special occasion, take place elsewhere than on the school premises, they may, after consultation with the head teacher, make such arrangements for that purpose as they think appropriate.
- (8) The arrangements for the assembly required by subsection (1) may, in respect of each school day, provide for a single assembly for all pupils or separate assemblies for pupils in different age groups or in different school groups.
- (9) For the purposes of subsection (8) a “school group” is any group in which pupils are taught or take part in other school activities.”
- (5) For section 71(1) (exceptions and special arrangements; provision for special schools) substitute—
- “(1) If the parent of a pupil at a community, foundation or voluntary school or at an Academy requests that the pupil may be wholly or partly excused—
- (a) from receiving religious education given (in the case of a maintained school) in the school in accordance with the school’s basic curriculum or (in the case of an Academy) in accordance with arrangements made by the governing body or head teacher of the Academy,
- (b) from attendance at any religious worship in (as the case may be) the school or Academy, or
- (c) both from receiving such education and from such attendance, the pupil shall be so excused until the request is withdrawn.”
- (6) In section 71(2)(b) for “paragraph 2(6) of schedule 20” substitute “section 70(7)”.
- (7) For section 71(7)(a) and (b) substitute—
- “(a) receives religious education and attends assemblies (and, in the case of schools with a religious character, such religious worship as is provided), or
- (b) is withdrawn from receiving such education or from attendance at such religious worship as is provided in accordance with the wishes of his parent.”
- (8) Schedule 20 (collective worship) to SSFA 1998 is repealed.”

We are disappointed that, despite high profile opposition from education practitioners as well as a government commitment to freeing schools from prescriptive rules and regulations, a repeal of the duty for all schools to participate in a daily act of worship that is ‘broadly Christian’ in character is not included in the Bill.

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This law impedes schools' ability to provide good inclusive assemblies, is prescriptive and in practice is widely flouted by schools. In addition, the rule violates the human right of freedom of belief of children.

This Bill is an ideal opportunity for the repeal of this outdated and restrictive law and as such we support this amendment.

This amendment would straightforwardly replace the requirement to conduct 'collective worship' with a requirement to hold assemblies that will further pupils' 'spiritual, moral, social and cultural education' and guidance issued under the reformed law should ensure that assemblies take due consideration of pupils' religions or beliefs.

Teachers, including non-religious teachers, can and do use assemblies to demonstrate that moral values and responses to ultimate questions of existence can be inclusively framed on shared values found in our different religion and beliefs, building on the common ground of our humanity. A reform in the law would encourage this good practice.

If the law on worship and assemblies is changed, new guidance issued under the new law would doubtless contribute to a better sharing of good practice in the provision of inclusive and educational assemblies, and would represent a new entitlement for pupils that could command wide consensus – quite unlike the current requirement to provide 'collective worship'.

EMPLOYMENT

In addition to the amendments below, a number of amendments have been tabled by Baroness Turner which seek to address and restrict discrimination against teachers in state-maintained 'faith' schools. We endorse the aim of these amendments.

Part 6, Clause 58: Amendment to prevent increased religious discrimination against teachers in Voluntary Controlled and Foundation schools with a religious character which have converted to Academy status

BARONESS MASSEY OF DARWEN
BARONESS MURPHY

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Page 49, leave out lines 1 and 2

The Education Bill effectively imports the rules governing the employment of teachers at voluntary controlled and foundation schools with a religious character, allowing those schools to discriminate on religious grounds and have 'reserved teachers', up to a fifth of staff including the principal.

However, Clause 58 introduces a new power for the Secretary of State to override by order those rules (which we believe are unnecessary and unjustified in any case) and permit new and wider discrimination, so that the Academy school may apply preference in the appointment, promotion or remuneration of all teachers at the school in accordance with the tenets of the religion or religious denomination of the school.

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As 15% of primary schools in England and 3% of secondary schools are voluntary controlled schools with a religious character⁵, this clause has the potential to have profound implications on the employment situation of potentially thousands of teachers.

Minister of State for Schools Nick Gibb has stated that ‘As with maintained schools, the Secretary of State would only allow this change when a strong proposal was made and a thorough consultation was carried out.’⁶ However, we do not agree that any state-maintained school, including Academies and free schools, should be able to discriminate against teachers or staff on grounds of religion, and there is no statutory guarantee that future Secretaries of State will not simply allow all schools to make this change. We urge that the Bill be amended to prevent such unnecessary and unjustified discrimination.

We can see no legitimate justification for permitting potentially wide and new discrimination against teachers in an Academy school which has transferred from a voluntary controlled school with a religious character. The new power to remove the one-fifth religiously reserved teacher cap allows the Secretary of State for Education to grant permission to extend discrimination on religious grounds to many posts where such restrictions had never previously applied.

This amendment excises this new power from the Bill.

PROLIFERATION OF UNACCOUNTABLE ‘FAITH’ ACADEMIES AND FREE SCHOOLS

Schedule 11: Amendments to end the proliferation of unaccountable ‘faith’ Academies and Free Schools

BARONESS MASSEY OF DARWEN

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Page 85, line 10, leave out “an Academy” and insert “a school”

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Page 85, line 16, leave out “an Academy” and insert “a school”

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Page 85, line 21, leave out “Academy” and insert “school”

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Page 85, line 22, at end insert—

“(5) A local authority may make proposals of its own for the establishment of a school to be considered alongside other proposals.

(6) Proposals submitted to the local authority shall be considered by an adjudicator who, having regard to such matters as may be prescribed, will decide which ones can proceed.”

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Page 89, line 34, at end insert—

“12 In section 9 of AA 2010 (impact: additional schools) after subsection (4) insert—

⁵ DfE *Statistical First Release: Schools, Pupils and their Characteristics*, January 2010

⁶ Letter from Nick Gibb to MP following representations by a supporter of the BHA, May 2011

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“(5) If the proposal for the additional school is not one which was put forward as a proposal for the purposes of section 6A(1) of EIA 2006, the Secretary of State will direct the local authority for the area in question to invite proposals pursuant to that section.””

The Education Bill amends the Education and Inspections Act 2006 to require local authorities which think a new school needs to be established to seek proposals for the establishment of an Academy. In effect, this introduces a presumption that when local authorities set up new schools they will be Academies or Free Schools.

This new requirement to prefer Academies and Free Schools is likely to aid a proliferation in the setting up of state-funded religious Academies and Free Schools. Academies and Free Schools are particularly attractive not only to mainstream religious groups but also to minority groups. This is because they are largely unregulated and there is nothing to stop groups with extreme agendas from applying to run these state-funded schools.

Academies and Free Schools with a religious character are able to discriminate against students and parents in admissions, and against staff on the grounds of religion or belief. They can also opt out of the national curriculum and choose not to provide even the most basic sex education in biology or choose to teach creationism.

We are concerned that this new requirement on local authorities to prefer Academies and Free Schools when creating new schools will lead to a proliferation in largely unregulated and unaccountable state-funded religious schools.

These amendments remove the assumption that new schools will be Academies, and allow greater consideration of local opinion about what type(s) of school are created in an area.

INCREASED ROLE FOR RELIGION IN SCHOOL CONVERSIONS

Part 6, Clause 54: Amendment to reverse an increased role for religious bodies in Academy conversion process

BARONESS MASSEY OF DARWEN
BARONESS MURPHY

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Page 44, leave out lines 24 and 25

The Bill introduces a new requirement for the government to consult ‘the appropriate religious body’ when converting a maintained school with a religious character into an Academy, despite an existing provision to ensure that trustees and others in charge of the management of the school will be consulted.

This clause serves exclusively to hand further control over education to religious authorities and stands in stark comparison with the lack of provision to consult the wider community when transforming a community school into an academy or when opening a new Free School or Academy.

This amendment removes this new requirement.

PSHE

New Clause: Amendment to ensure entitlement of all pupils to statutory PSHE

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BARONESS MASSEY OF DARWEN
LORD KNIGHT OF WEYMOUTH

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“Personal, social, health and economic education in maintained schools

**(1) In section 84 of EA 2002 (curriculum requirement for first, second and third key stages), in subsection (3), at the end insert “, and
(i) personal, social, health and economic education.”**

**(2) In section 85 of EA 2002 (curriculum requirements for the fourth key stage), in subsection (4), at the end insert “, and
(d) personal, social, health and economic education.”**

**(3) In section 74(1) of EIA 2006 (curriculum requirements for the fourth key stage) in subsection (4) of the new section 85 to EA 2002, at end insert “, and
(d) personal, social, health and economic education.”**

**(4) Before section 86 of EA 2002 (power to alter or remove requirements for fourth key stage) insert—
“85B Personal, social, health and economic education**

(1) For the purposes of this Part, personal, social, health and economic education (“PSHE”) shall comprise—

- (a) education about alcohol, tobacco and other drugs,**
- (b) education about emotional health and well-being,**
- (c) sex and relationships education,**
- (d) education about nutrition and physical activity,**
- (e) education about personal finance,**
- (f) education about individual safety, and**
- (g) careers, business and economic education.**

(2) The Secretary of State may by order amend subsection (1).

(3) The National Curriculum for England is not required to specify attainment targets or assessment arrangements for PSHE (and section 84(1) has effect accordingly).

(4) It is the duty of the governing body and head teacher of any school in which PSHE is provided in pursuance of this Part to secure that the principles set out in subsections (5) to (7) are complied with.

(5) The first principle is that information presented in the course of providing PSHE should be accurate and balanced.

(6) The second principle is that PSHE should be taught in a way that—

- (a) is appropriate to the ages of the pupils concerned and to their religious and cultural backgrounds, and**
- (b) reflects a reasonable range of religious, cultural and other perspectives.**

(7) The third principle is that PSHE should be taught in a way that—

- (a) endeavours to promote equality,**
- (b) encourages acceptance of diversity, and**
- (c) emphasises the importance of both rights and responsibilities.””**

New Clause: Amendment to require the Secretary of State to ensure all schools teach a balanced curriculum

BARONESS MASSEY OF DARWEN
LORD KNIGHT OF WEYMOUTH
BARONESS GOULD OF POTTERNEWTON

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Insert the following new Clause—

“Curriculum

The Secretary of State shall ensure that, in maintained schools, city colleges and Academies, all pupils shall be entitled to a balanced curriculum which includes sport, the arts, information technology, diversity of cultures, and of faiths and of no faith and personal, social and health education.”

The BHA supports the teaching of PSHE in all state-funded schools. PSHE includes Sex and Relationships Education (SRE), and good SRE is known to reduce unwanted pregnancies, to reduce the spread of sexually transmitted infections, and equip young people with the language and tools to be clear about personal boundaries, understand appropriate and inappropriate behaviour, to know who to talk to and how to ask for help if and when they need it. For older children it helps them resist pressure, make safe choices and be able to challenge and be critical of misleading and inappropriate messages about sex in the media.

Educational experts, children’s rights organisations, parents, teachers and young people themselves have been calling for many years for compulsory SRE that is comprehensive, objective and high quality, and this was also the recommendation of the Government’s review of Sex and Relationships Education in 2008.

The former parliamentary Joint Committee on Human Rights (JCHR) regarded the provision of mandatory SRE as a ‘significant human rights enhancing measure’.⁷

The BHA agrees that pupils have a right to good, comprehensive and objective PSHE. We believe that for as long as the subject is non-statutory many ‘faith’ schools will deny their pupils this right. We were greatly disappointed when the provisions to make PSHE a statutory requirement in all schools was dropped from the Children, Schools and Families Bill last year, not least as it was a provision that had cross-party support in parliament.

PSHE should be provided as a statutory entitlement to children in all state-funded schools. We believe this not only as a matter of principle but because of the proven benefits of such teaching to the health, well-being and safety of children and young people.

Amendment on PSHE with ‘opt out’ for schools with a religious character

An amendment (no. 88) has been tabled which is similar to the one above, except that it includes an ‘opt out’ for ‘faith schools. We urge you not to support this amendment.

BARONESS WALMSLEY and BARONESS TYLER OF ENFIELD

(8) Subsections (4) to (7) are not to be read as preventing the governing body or head teacher of a school within subsection (9) from causing or allowing PSHE to be taught in a way that reflects the school’s religious character.

(9) A school is within this subsection if it is designated as a school having a religious character by an order made by the Secretary of State under section 69(3) of the School Standards and Framework Act 1998 (duty to secure due provision of religious education).

(10) This section is not to be read as requiring the PSHE curriculum for pupils in the first key stage to include paragraphs (a), (c), (e) and (g) of subsection (1).

⁷ Joint Committee on Human Rights (2009) *Legislative Scrutiny: Children Schools and Families Bill; Other bills. Eighth Report of Session 2009-10*. 19 February 2010, HL Paper 57, HC 369.

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(11) In exercising their functions under this Part so far as relating to PSHE, a local authority, governing body or head teacher shall have regard to any guidance issued from time to time by the Secretary of State.””

(8) through to (11) replicates ‘Amendment 70’ made (but which did not pass) to the Children, Schools and Families Bill in 2010. This amendment would mean that while ‘faith’ schools are still required to teach SRE, they will effectively be exempted from having to teach SRE accurately, in ways that are balanced, promote equality and respect for diversity, and reflect different views. The amendment is drafted as such that the right of ‘faith’ schools to teach SRE in ways that reflect the tenets of their religion overrides the human rights-based principles that must guide the teaching of SRE in all other maintained schools. Moreover, it is an unnecessary inclusion as there is nothing in the amendment sponsored by Baroness Massey and Lord Knight which would prevent ‘faith’ schools from teaching SRE in ways that reflect their religious character.

Allowing schools to teach SRE in ways skewed towards their religious character could in practice lead to subjective and narrow teaching and the BHA is particularly concerned how faith schools will teach about crucial issues such as contraception, safe sex, and different sexualities.

We believe that this amendment places the rights and well-being of pupils at a lottery based on where they go to school, and should be opposed.

About the BHA

The British Humanist Association (BHA) is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. It is the largest organisation in the UK campaigning for an end to religious privilege and to discrimination based on religion or belief, and for a secular state.

Our expertise lies in the ‘religion or belief’ equality strand, which includes non-religious beliefs such as Humanism, and how that strand relates to and intersects with other protected characteristics. We also work closely with others on wider equalities issues in a range of forums. The BHA is a member of the National Children’s Bureau Sex Education Forum (SEF) and the Children’s Rights Alliance for England.

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