

# Written evidence submitted by the Christian Legal Centre (CWSB135)

## Children's Wellbeing and Schools Bill

### LEGAL BRIEFING

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### EXECUTIVE SUMMARY

- *Article 9 of the ECHR requires that any public authority remain neutral towards the sacred beliefs espoused by Christian learning centres and other faith based education providers that offer support to home schooling families, and that they do not disproportionately interfere with in the internal workings of such entities.*
- *Article 9 of the ECHR, taken in conjunction with Article 8, recognises the intimate relationship between a child's religious upbringing and the right of his parents to guide that upbringing. This is not taken into account in the bill.*
- *Clause 25 of the bill is both discriminatory towards home schooling families and raises serious questions under Article 8 of the Convention regarding data privacy and proportionality.*
- *The failure of the bill to provide thresholds when defining out-of-school educational facilities that are to be regulated and independent schools which are to be regulated breaches the most elementary principles of Convention interpretation and the requirement that laws be defined precisely and clearly.*
- *History has shown that where religious organisations are forced by legislation to choose between being true to their ethos or closing, that disastrous consequences follow.*
- *No amendment could successfully neutralise the discrimination inherent in the premises behind this bill, and the practice which will inevitably result through local authority or inspection enforcement. Nor can amendments cure the compatibility issues with the Convention detailed in this submission.*

### *Introduction*

1. Christian Legal Centre is an organisation dedicated to promoting the gospel message and protecting the rights of others to manifest their Christian faith in the public square. For more than a decade, Christian Legal Centre has been at the cultural forefront of supporting Christian freedoms through the courts and tribunals. Christian Legal Centre has played an integral role in precedent setting cases, including representing 3 of the 4 Claimants in their domestic and European Court of Human Right proceedings in *Eweida and Others v the United Kingdom*. It also has a legal and policy team dedicated to education and parental rights.

2. The following submission focuses on Part II of the Children’s Wellbeing and School’s Bill, specifically the proposed homeschool register, the expansion of the definition of independent schools and the regulation of out-of-school education. Should the bill become law, Christian Legal Centre will explore all legal avenues, including judicial review, to ensure that home educating parents, as well as Christian learning centres and other faith based education providers, will not be subjected to the discriminatory and Convention incompatible treatment proposed by the bill.

*The Importance of Religious Freedom and Parental Rights in the Area of Religious Upbringing*

3. Article 9 of the European Convention on Human Rights [hereafter: Convention] requires that any restriction to freedom of religion be narrowly tailored and proportionate to serving a legitimate government aim.<sup>1</sup> Article 9 stands alone in that it is the only fundamental right which recognizes the relationship between the individual and the transcendent. It therefore protects the most profound and deeply held conscience and faith-based beliefs.<sup>2</sup>
4. It considers that freedom of religion is one of the foundations of a democratic society.<sup>3</sup> The European Court, in the *Manoussakis and Others v. Greece* judgment, has also ruled that any interference with freedom to manifest one’s religion must be reviewed with very strict scrutiny.<sup>4</sup>
5. The second sentence of Protocol 1, Article 2 constitutes the *lex specialis* in relation to Article 8 (private life), 9 (religion and conscience) and 10 (expression) of the Convention in matters of education and teaching.<sup>5</sup> Protocol 1, Article 2 creates a legal requirement that the government at all levels in the United Kingdom respect, and neither undermine nor interfere with, the ability of parents to bring up their children in accordance with their own religious or philosophical convictions. It further requires the government to regulate

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<sup>1</sup> (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

<sup>2</sup> See e.g., *Eweida and Others v. the United Kingdom*, 48420/10, 36516/10, 51671/10, 59842/10, HEJUD [2013] ECHR 37 (15 January 2013), dissenting opinion of Judges Vučinić and De Gaetano, §2ff.

<sup>3</sup> ECHR, 25 May 1993, *Kokkinakis v. Greece*, Series A No. 260-A, § 31: AFDI, 1994, p. 658.

<sup>4</sup> ECHR, 26 September 1996, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 749, § 44.

<sup>5</sup> *Lautsi v Italy* [GC], application no. 30814/06, judgment of 18/03/2011, para 59.

education in a form which respects the right of children to either believe or not to believe in different religious, moral or philosophical precepts and to develop their own opinions.<sup>6</sup>

6. The European Court of Human Rights [hereafter: ECHR] has repeatedly held that “*it is in the discharge of a natural duty towards their children- parents being primarily responsible for the ‘education and teaching’ of their children- that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.*”<sup>7</sup> The United Nations Convention on the Rights of the Child reinforces this principle by calling on public authorities to provide a higher level of deference to parents with younger children in allowing them to guide their children in relation to their moral and religious development.<sup>8</sup>
7. The notion of respect for family life, as protected by Article 8, includes the parental right to make decisions about the upbringing of their children.<sup>9</sup> The younger the child, the more indistinguishable is his/her freedom of religion from that exercised collectively by his family. This does not diminish the importance of that child’s Article 9 rights – those rights, seen through the lens of Article 8, must be protected as vigorously as the individual Article 9 rights of an adult.

*Clause 25: Inserting 436B into the Education Act 1996*

8. Clause 25 of the bill proposes to introduce a register for children who are not registered pupils in a recognised school (436B(5) Education Act 1996). 436C, as proposed, would empower the local authority to include deeply personal details about home schooling families, encroaching on their private lives within the meaning of Article 8 of the Convention. This would include:
  - 436C(2)(a) details about a child’s protected characteristics including their religious affiliation. The provision would almost certainly be incompatible with the

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<sup>6</sup> *Id.*, para 78.

<sup>7</sup> *Kjeldsen, Busk Madsen and Pedersen v Denmark*, Judgment, Merits, App No 5095/71 (A/23), [1976] ECHR 6, IHRL 15 (ECHR 1976), 7th December 1976, European Court of Human Rights [ECtHR], § 52.

<sup>8</sup> *Convention on the Rights of the Child*, UN General Assembly, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 14(2) [ratified by the United Kingdom on 16 December 1991].

<sup>9</sup> *Kjeldsen, Busk Madsen and Pedersen v Denmark*, *op. cit.*, para 52.

Convention as the ECHR has already twice found violations of Protocol 1, Article 2 for similar privacy incursions relating to religious identity in Norway and Turkey.<sup>10</sup>

- 436C(2)(f) requiring parents to provide a reason as to why their child(ren) are not registered in a recognised school. Where a parent refuses to provide such information, this fact will be placed in the registry. For the same reasons cited above, this provision would almost certainly run afoul of Protocol 1, Article 2 or Article 8 because of the disproportionate and unnecessary incursion into a family's private reasons for wishing to home educate.
- 436C(3) is a catch-all, allowing the Local Authority to collect whatever information they consider appropriate. This type of unfettered discretion has already been soundly rejected by the ECHR:

*In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.*<sup>11</sup>

9. 436C(1)(e) is among the most egregious proposals in the bill, requiring parents to inform the local authority of every person or institution, other than the parents themselves, who provide their child(ren) education. The bill provides no qualifying guardrails to protect private life, and therefore would demand, as a matter of law, that parents provide details about their children's religious education including Sunday school at their church. Details about the names and postal addresses of everyone who provides education to that family's children must be included, as well as the amount of time they spend with the children in question.

10. The ECHR has held that “*a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.*”<sup>12</sup> This type of

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<sup>10</sup> ECHR, *Folgero and Others v. Norway* [GC], App. No. 15472/02, judgment of 29 June 2007; ECHR, *Hasan and Eylem Zengin v. Turkey* (no. 1448/04, §§ 25-34, 9 October 2007).

<sup>11</sup> *Metropolitan Church of Bessarabia v. Moldova*, 2001-XII Eur. Ct. H.R. 81, 111.

<sup>12</sup> *Chassagnou and Others v. France*, 29 EHRR 615, 28331/95, § 112.

government abuse of home schoolers goes to the very heart of the ECHR's warning against heavy-handed government measures.

11. Moreover, the right to privacy is a fundamental freedom protected by Article 8 of the Convention. Article 8 extends to data protection and freedom from unlawful government surveillance. Exceptions to the basic principles for data protection are limited to those which are necessary for the protection of fundamental values in a democratic society. The Grand Chamber of the European Court of Human Rights recently found the United Kingdom to be in breach of Article 8 in how its surveillance methods are overly broad and not in accordance with the law. *Case of Big Brother Watch and Others v the United Kingdom* [GC], application nos. 58170/13, 62322/14, and 24960/15, judgment of 25 May 2021. Given this ruling, it strains credulity to create new measures which would only serve to further interfere with the private lives of those residing in England and Wales.
12. The Grand Chamber has been clear that any storage of personal data is a *de facto* interference with Article 8 and must serve a legitimate aim and be subjected to a proportionality assessment:

*The mere storing of data relating to the private life of an individual amounts to an interference within the meaning of Article 8 [of the European Convention on Human Rights, which guarantees the right to respect for private and family life, home and correspondence] ... The subsequent use of the stored information has no bearing on that finding ... However, in determining whether the personal information retained by the authorities involves any ... private-life [aspect] ..., the [European] Court [of Human Rights] will have due regard to the specific context in which the information at issue has been recorded and retained, the nature of the records, the way in which these records are used and processed and the results that may be obtained ...*<sup>13</sup>

13. While the Convention does not confer a right to home education, the ECHR has been clear that when a High Contracting Party enacts legislation granting a right not recognized by the

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<sup>13</sup> ECHR, *S. and Marper v. the United Kingdom* [GC], application nos. 30562/04 and 30566/04, judgement of 04 December 2008, § 67.

Convention, then that right becomes subject to the supervisory authority of the Court. In essence, a positive obligation is created whereby the public authority in question must provide an accessible and effective procedure allowing that right to be enjoyed.<sup>14</sup> The burdensome and intrusive reporting requirements, the onerousness of which is highlighted by the fact that the family must report any change in circumstances on an ongoing basis (including how many hours a child is taught by a particular person or entity) violates the aforementioned positive obligation.

14. The discriminatory effect of the register is highlighted by the fact that families with children in recognized schools are not required to provide any details about their religious affiliation, reasons for choosing a particular school, or personal details and addresses where their children receive any alternative form of education.

#### *436E Out-of-school Education*

15. The insertion of 436E would subject ‘out-of-school’ educational providers to a level of scrutiny and suspicion which is totally out of step with the public benefit such entities provide their local communities. The freedom to home school must also include the right to seek learning opportunities from like-minded educationalists, particularly in niche areas like religion. As Lord Frost rightly notes in a recent op-ed in the Telegraph, home education is the last refuge from failing state schools and empowers families to resist political and moral indoctrination.<sup>15</sup>
16. While the term ‘suitable education’ is nowhere defined by statute, case-law has been clear that special religious educational facilities can provide a suitable education and need not be viewed with hostility or distrust. The High Court has upheld the principle that schools catering to the special religious or cultural tradition of minority groups do constitute suitable education:

*Where a school caters for the special traditions and characteristics of a minority sect within the community, it is suitable within Education Act 1944 s.71 and s.76 if it primarily equips children for a place in the community within which they live, rather than the way of life of the*

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<sup>14</sup> Cf. ECHR, *A., B., C. v. Ireland* [GC], application no. 25579/05, judgement of 16 December 2010, § 267.

<sup>15</sup> David Frost, “Home-schooling helps us resist indoctrination,” Telegraph, 16 January 2025, available at: <https://www.telegraph.co.uk/news/2025/01/16/home-schooling-helps-us-resist-indoctrination-education/>.

*country as a whole, so long as it leaves the children an option to adopt some other way of life in the future if they wish to do so.*<sup>16</sup>

17. The failure of the bill to provide a prescribed threshold for such entities is particularly dubious as MP's will be asked to vote on a controversial measure with wide-reaching consequences without knowing what the law actually prescribes.

18. In order to be prescribed by law, the law in question must be accessible and foreseeable in its effects.<sup>17</sup> It thus cannot suffer from vagueness. The "quality" of the law must clearly and precisely define the conditions and forms of any limitations on basic Convention safeguards and must be free from any arbitrary application.<sup>18</sup> The clause as proposed, presumably leaving the definitional thresholds to the Secretary of State for Education, is wholly incompatible with the Convention or principles of legislative transparency. The role of the government should be to foster religious and cultural diversity, which includes viewpoint diversity, rather than seeking to eliminate any competing forms of education.

*Clause 30: Substituting Definition of 'Independent Educational Institutions' S. 90 Education and Skills Act 2008*

19. Similar to the proposal to insert 436E, Clause 30 fails to provide any specific details about how an independent educational institution will be defined in relation to the number of hours per week for which children at the institution are expected to attend; the number of weeks in an academic year for which children are expected to attend; and the time of day at which children are expected to attend.

20. Whether intended or not, the effect of the Clause 30 will be to diminish religious freedom and destroy out-of-school religious education, decimating the ability of Christian learning centres and other faith based education providers from being true to their ethos in their support of home schooling. Such centres, if they are designated as independent educational institutions, will be forced to choose between introducing teaching into their

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<sup>16</sup> *R v Secretary of State for Education and Science ex p. Talmud Torah Machzikei Haddass School Trust*, [1985] 1 WLUK 778 Times, April 12, 1985, [1985] C.L.Y. 1110.

<sup>17</sup> *Sunday Times*, 30 Eur. Ct. H.R. (ser. A) at 31.

<sup>18</sup> *Olsson v. Sweden*, 130 Eur. Ct. H.R. (ser. A) at 30 (1988); see also *S.W. v. United Kingdom*, 335 Eur. Ct. H.R. 28, 42 (1995) (discussing how the development of criminal law by the courts should be reasonably foreseeable).

centres, required by inspectors of independent schools, which directly opposes their missions, or to shut down. History shows that such policies are incredibly harmful for the religious entities involved. By way of comparison, when the Sexual Orientation Regulations were adopted in 2007, requiring Christian adoption providers to facilitate adoptions with same-sex couples in breach of deeply held Christian doctrine, 13 of the 14 Christian adoption agencies in the country were either forced to close or to secularise.<sup>19</sup>

21. The ECHR has concluded that a state may not interfere with the internal workings of a religious organization and may not impose rigid conditions on the practice or functioning of religious beliefs.<sup>20</sup> So strong is this principle that it has been upheld three times by the Grand Chamber of the European Court of Human Rights.<sup>21</sup> Yet requiring such learning centres to register as independent educational institutions, teach relationships education and be subjected to inspection on how they teach relationships education would be doing just that.

22. It is a settled principle of law that the state must maintain a stance of strict neutrality towards the content of religious beliefs.<sup>22</sup> This will include beliefs about renouncing worldliness, homosexuality, gender identity belief, marriage definition or other elements which the government has made mandatory through sex and relationships education. Yet forcing religious learning centres to teach concepts that oppose their doctrinal statements has exactly this effect.

23. The Department for Education [hereafter: DfE] has at times fed into the problem by its narrow focus on celebrating LGBT equality. While the Department was developing its RSE guidance, it did not shy away from showing its glowing support towards LGBT campaigning. The Westminster office of the DfE, for example, had large LGBT flags decorating several floors of the building which were prominently seen from the main

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<sup>19</sup> For a summary of the adoption agency situation, see “Adoption agencies shut under ‘equality’ laws”, The Christian Institute, April 2009: <https://www.christian.org.uk/wp-content/uploads/adoption-agencies-shut.pdf>.

<sup>20</sup> See: ECHR, *Serif v. Greece*, No. 38178/97, Reports 1999-IX, 14 December 1999, par. 51-53; ECHR, *Manoussakis v. Greece*, No. 18748/91, Reports 1996-IV, 26 September 2000, para. 82.

<sup>21</sup> ECHR, *Hasan and Chaush v. Bulgaria* [GC], No. 30985/96, Reports 2000-XI, 26 October 2000, para. 82; ECHR, *Case of Fernandez Martinez v. Spain* [GC], No. 56030/07, Judgment of 12 June 2014; ECHR, *Case of Sindicatul “Pastorul Cel Bun” v. Romania* [GC], No. 2330/09, Judgment of 9 July 2013.

<sup>22</sup> *R (Williamson and Others) v Secretary of State for Education and Employment* [2005] UKHL.



atrium.<sup>23</sup> The signature line of the Department’s email at the time was emblazoned with a highly visible rainbow flag with the tagline “*I am an LGBT+ Champion*” and additional text extolling gender identity belief: “*We cannot tell by looking at someone or by their name how they self-identify their gender.*”<sup>24</sup> Nor have any other protected characteristics been singled out in Government guidance, apart from gender reassignment and sexual orientation, to be “*fully integrated into their [schools] programmes of study*” rather than taught as a standalone lesson.<sup>25</sup>

24. The Guidance also notes that key aspects of Relationships Education and RSE are within the scope of Ofsted inspection, citing as examples the inspectorate’s consideration of pupils’ personal development, behaviour and welfare; and pupils’ spiritual, moral, social and cultural [SMSC] development.<sup>26</sup> Ofsted, in turn, has demonstrably used its inspection powers to downgrade schools on the basis of the quality of LGBT education and the personal feelings of how LGBT students perceive they have been welcomed in their sexual orientation. A survey of 50 Ofsted inspection reports of single-characteristic ethos schools inspected between 2017-2021 provided to Christian Legal Centre by the campaign group Positive Ofsted Reform<sup>27</sup> evidences that 38 of the 50 schools were downgraded either explicitly or implicitly for perceived failures in LGBT education. Twenty-nine Jewish schools were explicitly downgraded on this basis, with another four implicitly so. Three Christian schools were downgraded on findings which implied a failure to properly engage LGBT promotion as a protected characteristic. One Muslim school and a Japanese school were both explicitly downgraded for failing to properly integrate LGBT education into their schools.

25. Precisely stated, there is an institutional bias at both the DfE and inspectorate level that any educational facility under its purview, including those with a religious ethos, must robustly promote morals and lifestyles anti-thetical to deeply held religious belief. This

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<sup>23</sup> Roger Kiska, *Izzy Montague, “Parents are Part of the Problem “ and Why RSE is so Controversial*, Christian Concern (29 March 2019), found at: <https://archive.christianconcern.com/our-issues/education/izzy-montague-parents-are-part-of-the-problem-and-why-rse-is-so-controversial>.

<sup>24</sup> *Id.*

<sup>25</sup> Department for Education, *Relationships Education, Relationships and Sex Education (RSE) and Health Education: Statutory Guidance for Governing Bodies, Proprietors, Head Teachers, Principals, Senior Leadership Teams, Teachers*, 25 June 2019 (last updated 13 September 2021), para. 37. Found at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1090195/Relationships\\_Education\\_RSE\\_and\\_Health\\_Education.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1090195/Relationships_Education_RSE_and_Health_Education.pdf).

<sup>26</sup> *Id.*, para. 126.

<sup>27</sup> <https://www.positiveofstedreform.com/>.

would be the death knell of educational choice for many parents and a ground for closure for religiously based education centres that support home schooling.

*Conclusion*

26. For all of the reasons detailed above, this Bill suffers from serious incompatibility issues with Articles 8 and 9 of the Convention, as well as Protocol 1, Article 2. In addition, the Bill will have a discriminatory effect on homeschooling families, Christian learning centres and other faith-based education providers.

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