Further written evidence submitted by the British Rabbinical Union (CWSB143)

Dear Members of the Public Bill Committee,

Children's Wellbeing and Schools Bill: Call for Evidence

Supplementary Legal Submission to the Call for Evidence – 27 January 2025

Dear Sirs,

Children's Wellbeing and Schools Bill: Supplementary Submission on the ECHR

1. This is a Supplementary Submission submitted by Rabbi Asher Gratt, on behalf of the British Rabbinical Union, to the call for evidence in relation to the Children's Wellbeing and Schools Bill 2025. It should be read alongside our earlier submission of 20 January.

2. The present submission clarifies points of law in relation to recent case law of the European Convention on Human Rights, which assists the arguments made by the Haredi community.

3. The Government's ECHR memorandum and explanatory notes do not address this recent case law.

The *Konrad* Case (2006)

4. The Government has submitted an ECHR Memorandum where it outlines its analysis of the Human Rights aspects of the Bill ('Memorandum'). We believe that the Memorandum does ot reflect the legal position with sufficient accuracy. It does not sufficiently recognise the particular position of the Haredi Community as an ethnic, religious and cultural minority in a Christian or secular United Kingdom. Some of these issues have been addressed in recent case law of the Strasbourg court.

5. The ECHR Memorandum (at paragraph 149-162 and 176-180) relies on the *Konrad v Germany* case as a guide to the main human rights issues arising under the Bill. Although the *Konrad* case sets out various important principles about home schooling in general, principles that are still good law, the material facts of that case were entirely different from the case of the Haredi communities in Britain.

6. The *Konrad* case is distinct in the following ways:

    a. Germany does not generally allow parents to choose home schooling for their children. By contrast, the United Kingdom allows for home education *in princple.*

b. The parents in *Konrad* were Christian, not an ethnic and religious minority, such as the Haredi Jews in the United Kingdom.

c. The court found in *Konrad* that in the case of the German measures the interference was not severe:

> *'Compulsory primary-school attendance does not deprive the applicant parents of their right to "exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions".*
>
> This is not the case with the measures proposed by the Bill, which will fundamentally interfere with traditional Haredi education and drive some families away from the United Kingdom.

7. These are material differences. The traditional system of Haredi education will be very seriously undermined or disrupted by the Bill's reforms (as we showed in our first submission).

8. By way of summary, the bill provides that Haredi children will be 'registered' by local authorites, Haredi families will be subject to a continuous supervision and review by local authorities on the basis of unspecified criteria of 'suitable education' (that in all likelihood reflect secular priorities and will not take into account the value of religious education). Finally, the Bill provides that traditional Yeshivas will have to be converted to state registered educational institutions so that they will be subject to state, supervision and inspection on the basis of secular 'independent school standards' that have been designed with secular purposes in mind.

9. As a result, many members of the community may be compelled to send their children abroad if this Bill becomes law. The consequences of the Bill as it stands, will be extremely severe for Haredi communities in ways that were never at issue in *Konrad v Germany*.

The test of 'Indoctrination' – *Kjeldsen* (1972)

10. The key to ECHR's law on religious minority education is the prohibition of 'state indoctrination' which is implicitly created by Article 2, second sentence of Protocol No 1, which reads:

> *"... 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."*

11. Parental responsibility for religious education is a key principle according to the ECHR.

12. The most central case on these matters is the case of *Kjeldsen v Denmark (Application no. 5095/71; 5920/72; 5926/72*), which determined at par. 53 that the limits to the state's powers are at the 'indoctrination' of children:

> *The second sentence of Article 2 (P1-2) implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded.*

The test at *Papageorgiou* (2019)

13. The principle has been restated in various cases, most recently in *Papageorgiou v Greece*, (Applications nos. 4762/18 and 6140/18) as follows:

> *75. The first sentence of Article 2 of Protocol No. 1 provides that everyone has the right to education. The right set out in the second sentence of the Article is an adjunct of the right to education set out in the first sentence. Parents are primarily responsible for the education and teaching of their children; it is in the discharge of this duty that parents may require the State to respect their religious and philosophical convictions (see Kjeldsen, Busk Madsen and Pedersen v. Denmark, 7 December 1976, § 52, Series A no. 23). The second sentence of Article 2 of Protocol No. 1 aims at safeguarding the possibility of pluralism in education, a possibility which is essential for the preservation of the "democratic society" as conceived by the Convention. It implies that the State must take care that information included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (see Folgerø and Others, § 84, and Lautsi and Others, § 62, both cited above).*
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> *76. The word "respect" in Article 2 of Protocol No. 1 means more than "acknowledge" or "take into account"; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see Lautsi and Others, cited above, § 61, and Campbell and Cosans v. United Kingdom, 25 February 1982, § 37, Series A no. 48). Nevertheless, the requirements of the notion of "respect" imply that the States enjoy a wide margin of appreciation in determining the steps to be taken to ensure*

compliance with the Convention with due regard to the needs and resources of the community and of individuals. In the context of Article 2 of Protocol No. 1, that concept implies in particular that this provision cannot be interpreted to mean that parents can require the State to provide a particular form of teaching (see Lautsi and Others, cited above, § 61, and Bulski v. Poland (dec.), nos. 46254/99 and 31888/02, 30 November 2004).

77. In order to examine the disputed legislation under Article 2 of Protocol No. 1, interpreted as above, one must, while avoiding any evaluation of the legislation's expediency, have regard to the material situation that it sought and still seeks to meet. Although, in the past, the Convention organs have not found education providing information on religions to be contrary to the Convention, they have carefully scrutinised whether students were obliged to take part in a form of religious worship or were exposed to any form of religious indoctrination. In the same context, the arrangements for exemption are also a factor to be taken into account (see Hasan and Elyem Zengin, cited above, § 53).

14. In that case, the Court found that the Greek government had breached its obligations under Article 2 of Protocol No. 1 because it had imposed an obligation on the parents who belonged to religious minorities to make a declaration of their children's religious beliefs to the school in order to be granted an exemption from classes where the Christian Orthodox dogma was being taught.

A narrow test of proportionality – *Dzibuti v Latvia* (2023)

15. The most recent discussion of the relevant principles occurred in the case of *Dzibuti and Others v Latvia (*Applications nos. 225/20 and 2 others).

16. The case was the challenge by a Russian speaker in Latvia to the decision of the Latvian Parliament to increase the proportion of subjects to be taught in Latvian by reducing the use of Russian as a language of instruction. The applicants, who considered themselves member of an ethnic (Russian) minority, relied on Article 8 and Article 2 of Protocol No. 1 of the Convention taken alone and in conjunction with Article 14 of the Convention. Importantly the case concerned education of a minority group in private, not state run, institutions.

17. Although Latvia was not found to have breached the convention, the court set out very demanding criteria in relation to the proportionality of state interference with parental responsibility for the education of a minority group.

18. The court stated (par. 126) quite clearly that minorities had clear rights agains the wishes of the majority to promote its own worldview through the regulation of education:

> *126. In the context of the right to education, the Court has reiterated that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. However, the setting and planning of a curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule, and whose solution may legitimately vary according to the country and the era. The State, in fulfilling the functions assumed by it with regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded (see Folgerø and Others v. Norway [GC], no. 15472/02, § 84, ECHR 2007-III).*

19. The court (paras 148-149) also stated that Latvia met very stingent tests of proportionality on the basis of the particular facts of the case (the case, we must add here, was not about religious dissent, but merely ethnic and linguistic differences):

> *148. As to the applicants' reliance on the conclusions drawn by the Venice Commission (see paragraph 114 above), the Court notes the following. The Venice Commission, in its opinion, pointed out that the new legislation left ample scope for instruction in minority languages in primary education, and some room for such instruction in secondary education. Referring to Latvia's international commitments, it recommended that private schools should be allowed to provide education in minority languages (paragraphs 96 and 118-20 of the opinion, quoted in Valiullina and Others, cited above, § 93). The Court observes that there are legitimate reasons in the context of the present case concerning the applicants' complaint under Article 14 taken in conjunction with Article 2 of Protocol No. 1 to the Convention not to distinguish private schools which in Latvia form part of the State educational system (see paragraphs 135-39 above) from public schools as regards the State language policy. In that respect, the Court has already held that the Government have provided objective and reasonable justification for the need to increase the use of Latvian as the language of instruction in the education system in Latvia, in the case concerning public schools (see Valiullina and Others, cited above, § 213, summarised also in paragraph 140 above).*

> *149. In addition to the above-mentioned considerations on proportionality (ibid.), the Court considers that its conclusions reached in Valiullina and Others are fully relevant to the present case concerning private schools, taking into account that (i) private schools were considered to form part of the State educational system; (ii) general education standards applied to both public and private schools insofar as those schools issued pupils with State-approved certificates attesting to the completion of their studies; (iii) the State is justified in being rigorous in the regulation of the private sector in the field of education in the context such as in the present case; (iv) already prior to the 2018 legislative amendments, the domestic legislation concerning the language of instruction applied to private schools and required that some parts of a curriculum were to be taught in the State language; (v) the 2018 reform did not completely remove the use of Russian as the language of instruction from the curriculum of private schools; and (vi) private schools in Latvia receive State and/or municipal funding.*

20. The tests were exacting. We believe that they will be even more stringent in the case of the education of a religious minority, such as the Haredi minority in the United Kingdom.

The Framework Convention on National Minorities

21. Finally, the ECHR Memorandum does not observe at all that national minorities in England and Wales, such as the Haredi Jews, are protected by the Framework Convention for the Protection of National Minorities which the United Kingdom is a party to since 1998. Article 13 of the Convention states:

> *Article 13*
>
> *Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments. The exercise of this right shall not entail any financial obligation for the Parties.*

22. The Strasbourg Court discussed the Convention in the *Dzibuti v Latvia* case. It noted that the Russian ethnic minority in Latvia enjoyed rights under the Convention.

23. The same should apply to the Haredi community in the United Kingdom.

24. The ECHR Memorandum refers very vaguely and inadequately on this dimension of the proposed Bill. It refers to the needs of religious minorities in paragraph 152, and does not cite the principle nor does it rely on any case law and which gives the erroneous impression that the Government has very wide discretion:

> *152. Any potential for differential impacts on certain groups arising out of assessments of the home environment will be mitigated by guidance, to ensure that local authorities are aware of the potential for any unfairness which could arise and that they carry out assessments ensuring that this does not occur. Local authorities have their own legal obligations and must comply with the Equality Act 2010 and the Human Rights Act 1998.*

25. This statement can be potentially misleading, if it gives the impression that the Government has wide discretion on these matters. The Government does not have such discretion. It is not up to the government to draft 'guidance' as it sees fit. The test of 'indoctrination' is an objective one, deriving from the autonomous concepts of the European Convention. Parental responsibility is the guiding principle.

26. Yet, the Government's memorandum makes no mention of it and appears not to have taken it into account. The legal rights of the Haredi Jews as an *ethnic and religious minority* are much more significant than the Memorandum sets out.

Conclusion

27. For all these reasons, the Government's ECHR memorandum provides a very limited and incomplete picture of the applicable law. It is not a comprehensive guide to the legal position of the Haredi community in the United Kingdom.

28. This is not the place for us to pursue a full legal analysis of the ways in which the Bill might fall foul of the European Convention of Human Rights. Yet, Parliament should be aware that the Government's ECHR memorandum is very significantly incomplete.

37. We are grateful to the Committee for considering this supplementary submission. We remain at your disposal for any further clarifications or any other assistance in this matter.

38. Finally, we have no objection to the publication of this letter.

Yours sincerely,

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President, British Rabbinical Union

I fully endorse this supplementary submission.

Rabbi David Weis
Chief Rabbi, British Rabbinical Union

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