



## BRIEFING PAPER

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# Relationships and Sex Education in Schools (England)

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## One page briefing

### **Current position: What must be taught and the parental right to withdraw their children**

Local authority maintained schools in England are obliged to teach sex and relationships education (SRE) from age 11 upwards, and must have regard to the Government's [SRE guidance](#). Academies and free schools do not have to follow the National Curriculum and so are not under this obligation. If they do decide to teach SRE, they also must have regard to the guidance.

Parents are free to withdraw their children from SRE if they wish to do so. The only exceptions to this are the biological aspects of human growth and reproduction that are essential elements of National Curriculum Science.

### **From September 2020: statutory RSE**

On 1 March 2017, the then Education Secretary, Justine Greening, [announced](#) her intention to put 'Relationships and Sex Education' – rather than SRE – on a statutory footing. She also announced her intention to create a power to make personal, social, health and economic education (PSHE) statutory in future. Section 34 of the [Children and Social Work Act 2017](#) provides for relationships and sex education to be taught in all schools in England.

Following consultation, the RSE proposals are intended to be in place for teaching to start in September 2020, with schools able to begin with the relevant teaching a year earlier if they wished.

The proposals involve:

- All primary schools in England teaching 'Relationships Education'
- All secondary schools teaching 'Relationships and Sex Education'
- Reformed statutory guidance, following consultation
- Retaining the parental right of withdrawal from sex education, with new rights for children to 'opt-in' as they approach age 16
- Flexibility for schools in their approach, including for faith schools to teach within the tenets of their faith

A [consultation](#) was opened on [draft regulations](#) and [draft statutory guidance](#) to implement the changes in July 2017. The [Government response a previous call for evidence](#) on RSE was published alongside the consultation. The [announcement](#) included the introduction of statutory health education alongside statutory RSE. The consultation was open until 7 November 2018.

The Government published its [response to the consultation](#), alongside updated [draft regulations](#) and [draft guidance](#), on 25 February 2019. If the regulations pass through both Houses of Parliament, the regulations will be made and the final guidance and regulations will be published.

# 1. Current position: Sex and Relationships Education

All maintained secondary schools must provide sex and relationships education as part of the basic curriculum, and must meet the requirements of National Curriculum Science. Governing bodies and head teachers of maintained primary schools must decide whether sex and relationship education, beyond that set out in National Curriculum Science, should be included in the school's curriculum, and if so what it should consist of and how it should be organised.

The Department for Education (DfE)'s popular questions website provides the following [information](#) on the current position relating to sex and relationship education (SRE) in schools:

Sex and relationship education (SRE) is compulsory from age 11 onwards. It involves teaching children about reproduction, sexuality and sexual health. It doesn't promote early sexual activity or any particular sexual orientation.

Some parts of sex and relationship education are compulsory - these are part of the national curriculum for science. Parents can withdraw their children from all other parts of sex and relationship education if they want.

All schools must have a written policy on sex education, which they must make available to parents for free.

In delivering sex education, schools are currently required to have regard to the [Sex and Relationship Education Guidance](#), published in 2000.<sup>1</sup>

The current statutory provisions on sex education are contained in sections 403 and 405 of the [Education Act 1996](#) as amended.

The previous Government's Education White Paper, [The Importance of Teaching](#), published in November 2010, stated:

Children need high-quality sex and relationships education so they can make wise and informed choices. We will work with teachers, parents, faith groups and campaign groups, such as Stonewall to make sure sex and relationships education encompasses an understanding of the ways in which humans love each other and stresses the importance of respecting individual autonomy.<sup>2</sup>

## Parents' rights to withdraw a child from SRE

Section 405 of the *Education Act 1996* enables parents to withdraw their children from sex education other than the sex education that is in the National Curriculum (such as the biological aspects of human growth and reproduction that are essential elements of National Curriculum Science).

All schools must have an up-to-date policy on SRE which is made available for inspection and to parents. It must include information about parents' right to withdrawal. The [SRE guidance](#) states:

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<sup>1</sup> DfE, [Sex and relationship education guidance](#), July 2000

<sup>2</sup> DfE, [The Importance of Teaching](#), November 2010, Pp. 46

**5.7** Parents have the right to withdraw their children from all or part of the sex and relationship education provided at school except for those parts included in the statutory National Curriculum...Schools should make alternative arrangements in such cases. The DfEE will offer schools a standard pack of information for parents who withdraw their children from sex and relationship education.<sup>3</sup>

### 1.1 Sex and Relationship Education Guidance: what must be taught

As stated in the previous section, schools are currently required to have regard to the [Sex and Relationship Education Guidance](#), published in 2000. For quick reference, some key guidance included within it is reproduced below. This information is not meant to be comprehensive, but instead to give a brief introduction to what the guidance recommends.

#### Primary schools

**1.12** The Department recommends that all primary schools should have a sex and relationship education programme tailored to the age and the physical and emotional maturity of the children. It should ensure that both boys and girls know about puberty and how a baby is born – as set out in Key Stages 1 and 2 of the National Science Curriculum. Section 3 gives further information on what should be taught at these stages and how this should be rooted in the PSHE framework.

**1.13** All children, including those who develop earlier than the average, need to know about puberty before they experience the onset of physical changes. In the early primary school years, education about relationships needs to focus on friendship, bullying and the building of self-esteem. [...]

#### Secondary schools

**1.17** Secondary schools should include in their policy details on how they provide a programme as part of the PSHE framework in addition to the National Science Curriculum topics. Schools should set sex education within a broader base of self-esteem and responsibility for the consequences of one's actions.

**1.18** Schools should set a framework for establishing what is appropriate and inappropriate in a whole-class setting and how to deal with individual questions. [...]

#### Relationships

**1.21** Young people, when asked about their experiences of sex education at school, often complain about the focus on the physical aspects of reproduction and the lack of any meaningful discussion about feelings, relationships and values. Sex and relationship education set within the framework for PSHE across the four key stages will significantly redress that balance. It will help young people to respect themselves and others, and understand difference. Within the context of talking about relationships, children should be taught about the nature of

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<sup>3</sup> *Ibid*, Pp. 26



marriage and its importance for family life and for bringing up children. The Government recognises that there are strong and mutually supportive relationships outside marriage. Therefore, children should learn the significance of marriage and stable relationships as key building blocks of community and society. Teaching in this area needs to be sensitive so as not to stigmatise children on the basis of their home circumstances. [...]

## Sexual identity and sexual orientation

**1.30** It is up to schools to make sure that the needs of all pupils are met in their programmes. Young people, whatever their developing sexuality, need to feel that sex and relationship education is relevant to them and sensitive to their needs. The Secretary of State for Education and Employment is clear that teachers should be able to deal honestly and sensitively with sexual orientation, answer appropriate questions and offer support. There should be no direct promotion of sexual orientation.

**1.31** Sexual orientation and what is taught in schools is an area of concern for some parents. Schools that liaise closely with parents when developing their sex and relationship education policy and programme should be able to reassure parents of the content of the programme and the context in which it will be presented.

**1.32** Schools need to be able to deal with homophobic bullying. Guidance issued by the Department (Social Inclusion: Pupil Support Circular 10/99) dealt with the unacceptability of and emotional distress and harm caused by bullying in whatever form – be it racial, as a result of a pupil's appearance, related to sexual orientation or for any other reason. [...]

## Puberty

**2.5** Boys and girls need to be prepared for puberty. Schools will need to plan the appropriate age to do so, in consultation with parents. [...]

## Menstruation

**2.7** The onset of menstruation can be alarming for girls if they are not prepared. Research shows that about a third of girls are not told about periods by their parents and 10% receive no preparation at all before their first period. As with education about puberty, programmes should include preparation for menstruation.

**2.8** Schools should also make adequate and sensitive arrangements to help girls cope with menstruation and with requests for sanitary protection. [...]

## Contraception

**2.10** Knowledge of the different types of contraception, and of access to, and availability of contraception is a major part of the Government's strategy to reduce teenage pregnancy. Effective sex and relationship education in secondary schools has an important role to play in achieving this.

**2.11** Trained staff in secondary schools should be able to give young people full information about different types of contraception, including emergency contraception and their effectiveness. Pupils may wish to raise further issues with staff arising from discussion in the classroom. Trained teachers can also

give pupils – individually and as a class – additional information and guidance on where they can obtain confidential advice, counselling and, where necessary, treatment. [...]

### Abortion

**2.14** 38% of teenage pregnancies ended in abortion in 1998 – almost 39,000 abortions. There are strongly held views and religious beliefs about abortion and some schools will apply a particular religious ethos through their sex and relationship education policy to the issue which will enable pupils to consider the moral and personal dilemmas involved. The religious convictions of pupils and their parents should be respected.

**2.15** It is all too easy to create a classroom debate in which pupils' views become polarised and miss the purpose of sex and relationship education in preparing pupils for the responsibilities and challenges of adult life. When abortion is covered within a programme, the challenge is to offer young people the opportunity to explore the dilemmas, enable them to know and understand about abortion, and develop the communication skills to discuss it with parents and health professionals.

**2.16** However, the key task for schools is, through appropriate information and effective advice on contraception and on delaying sexual activity, to reduce the incidence of unwanted pregnancies.<sup>4</sup>

## 1.2 Academies and Free Schools

Academies and Free Schools do not have to follow the National Curriculum and so are not under the same statutory obligations as maintained schools. As such, academies are not obliged to teach sex and relationship education, although if they do, they must have regard to the SRE guidance issued by the Secretary of State. This issue was raised in the House of Lords in 2013:

Asked by **Baroness Scotland of Asthal**

To ask Her Majesty's Government what is the current position with regard to ensuring primary and secondary school pupils receive comprehensive sex education. [HL2614]

**The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con):** Sex and relationship education (SRE) is compulsory in maintained secondary schools. When teaching sex education, it is a statutory requirement for schools (including academies through their funding agreements) to have regard to the Secretary of State's Sex and Relationship Education Guidance. Schools should use the guidance to build on the content outlined in the national curriculum for science. Primary schools are not required to provide SRE beyond that which is outlined in the national curriculum for science, but many primary schools do so—and they must have regard to the guidance.<sup>5</sup>

The following exchange and response from Lord Nash, from a Lords debate earlier in that year provides further clarification:

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<sup>4</sup> DfEE, [Sex and relationship education guidance](#), July 2000, Pps.9-13

<sup>5</sup> [HL Deb 21 Oct 2013: Column WA124](#)

**Baroness Brinton:** My Lords, I am sure that the House is pleased that the Government have put more about sex and relationships into the curriculum, but surely some concerns must remain if academies can choose not to teach it. How are the Government going to ensure that academies teach young people about sex and relationships?

**Lord Nash:** My noble friend is quite right that academies are not obliged to teach sex education, although, if they do, they have to have regard to the Secretary of State's guidance on these matters. I repeat the point that Ofsted inspects for all social, moral and cultural provision in schools, and we will be ensuring that it focuses on this point.<sup>6</sup>

The [Model Funding Agreement for Free Schools](#) provides an example of the arrangements set up by Academies and Free Schools regarding SRE. It states that:

The Academy Trust shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

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<sup>6</sup> [HL Deb 8 July 2013 c6](#)



## 2. Children and Social Work Act 2017: statutory Relationships and Sex Education

### 2.1 Secretary of State Announcement and legislation

On 1 March 2017, the then Education Secretary, Justine Greening, [announced](#) her intention to put 'Relationships and Sex Education' – rather than SRE – on a statutory footing. She also announced her intention to create a power to make personal, social, health and economic education (PSHE) statutory in future, following further work and consultation. The necessary legislation was passed shortly before the dissolution of parliament for the 2017 General Election.

The relevant sections of the [Children and Social Work Act 2017](#) require:

- All primary schools in England to teach age-appropriate 'relationships education'; and
- All secondary schools in England to teach age-appropriate 'relationships and sex education'

These changes apply to all schools in England – local authority maintained, academies and independent.

The Education Secretary stated:

The statutory guidance for Sex and Relationships Education was introduced in 2000 and is becoming increasingly outdated. It fails to address risks to children that have grown in prevalence over the last 17 years, including cyber bullying, 'sexting' and staying safe online. [...]

Schools will have flexibility over how they deliver these subjects, so they can develop an integrated approach that is sensitive to the needs of the local community; and, as now, faith schools will continue to be able to teach in accordance with the tenets of their faith.<sup>7</sup>

It was intended that these changes be implemented from September 2019, although that has subsequently been moved back to 2020.

### 2.2 DfE Policy Statement and call for evidence

The Department for Education [Policy Statement](#), also published in March 2017, gave an indication of the intended focus of RSE and the issues that would be focused on in its teaching:

- **Different types of relationships**, including friendships, family relationships, dealing with strangers and, at secondary school, intimate relationships;

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<sup>7</sup> [HC Deb 1 March 2017, HCWS509](#)

- How to recognise, understand and build **healthy relationships**, including self-respect and respect for others, commitment, tolerance, boundaries and consent, and how to manage conflict, and also how to recognise unhealthy relationships;
- How relationships may affect **health and wellbeing, including mental health**;
- Healthy relationships and **safety online**; and
- Factual knowledge, at secondary school, around **sex, sexual health and sexuality**, set firmly within the context of relationships.<sup>8</sup>

### Call for evidence

On 19 December 2017, the Department for Education published a [call for evidence on changes to teaching of sex and relationship education, and PSHE](#). The call for evidence was open until 12 February 2018.<sup>9</sup>

In relation to RSE, the [call for evidence](#) asks for the subjects interested parties believe should be priorities for teaching relationships education at primary level and relationships and sex education at secondary level, as well as online issues that might be important to include, and how best to provide information for parents. A separate call for evidence for young people was also published, asking them for information based on their experiences of existing relationships and sex education, in terms of what was most important and what they would like to have been taught about but were not.

### Appointment of adviser

In November 2017 the Government [announced](#) that Ian Bauckham, formerly a headteacher and President of the Association of School and College Leaders from 2013-14, had been appointed as an adviser to the Department for Education on how relationships education, including relationships and sex education for older children, should be taught in schools.<sup>10</sup>

## 2.3 Draft guidance and regulations

### Consultation

In July 2018, the Department for Education published draft statutory guidance and regulations for the implementation of the reformed Relationships and Sex Education. The changes would become compulsory from September 2020, with schools able to begin implementing the changes from September 2019.

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<sup>8</sup> Department for Education, [Policy Statement: Relationships Education, Relationships and Sex Education, and Personal, Social, Health, and Economic Education](#), March 2017

<sup>9</sup> Department for Education, [Education Secretary launches RSE call for evidence](#), 19 December 2017

<sup>10</sup> Department for Education, [Relationships and Sex Education for the 21st Century](#), 6 November 2017

The [announcement](#) included the introduction of statutory health education alongside statutory RSE.<sup>11</sup>

A [consultation](#) was opened on [draft regulations](#) and [draft statutory guidance](#) to implement the changes. The [Government response to the December 2017 call for evidence](#) was published alongside the consultation.

The consultation was open until 7 November 2018. In November 2018, the Schools Minister, Nick Gibb, told the House that more than 40,000 individuals had responded to the consultation.<sup>12</sup>

### Consultation response

The Government published its [response to the consultation](#), alongside updated [draft regulations](#) and [draft guidance](#), on 25 February 2019. If the regulations pass through both Houses of Parliament, the regulations will be made and the final guidance and regulations will be published.

### Draft guidance: curriculum content

The draft statutory guidance for [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education](#) provides the requirements intended to be compulsory from September 2020.

The draft guidance confirms that the requirements on Relationships Education and RSE would apply in all schools. The new requirements on health education would apply in state schools but not independent schools – this is because the broader subject of Personal, Social, Health, and Economic Education (PSHE) is already required under the independent school standards. The statutory requirements would not apply to sixth form colleges, 16-19 academies or Further Education colleges.<sup>13</sup>

Under the draft guidance, all schools must have in place a written policy for Relationships Education and RSE. It would become **mandatory** to provide:

- Relationships education at primary school
- Relationships and sex education at secondary school

Primary schools may offer age-appropriate sex education if they wish, but this is not a requirement.

### What must be taught

The draft guidance provides an overview of what children must learn by the end of primary and secondary school, as part of Relationships Education and RSE respectively, in tables provided on pages 20-22 and 27-29 of the guidance.

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<sup>11</sup> Department for Education, [New relationships and health education in schools](#), 19 July 2018

<sup>12</sup> [HC Deb 12 Nov 2018 vol 649 c9](#)

<sup>13</sup> Department for Education, [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education: Draft statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers](#), February 2019, p10

To summarise, at **primary** level, children would learn about subjects including:

- Families and people who care for me
  - Including: the importance of families for children growing up; characteristics of healthy family life; varieties in family life, and how to recognise if family relationships are making them feel unhappy or unsafe; and how to seek help or advice from others if needed
- Caring friendships
  - Including: the importance and characteristics of friendships; and how to recognise who to trust and who not to trust
- Respectful relationships
  - Including: the importance of respecting others and of self-respect; about different types of bullying (including cyberbullying); and the importance of permission-seeking and giving in relationships with friends, peers and adults.
- Online relationships
  - Including: the rules and principles for keeping safe online. that people sometimes behave differently online, sometimes pretending to be someone they are not; and awareness of the risks associated with people they have never met.
- Being safe
  - Including: appropriate boundaries in peer friendships; the concept of privacy and implications for relationships; that each person's body belongs to them; how to respond to adult strangers, including online; and how and where to ask for advice or help for themselves and others.

At **secondary** level, building on primary-level Relationships Education, pupils should learn about topics including:

- Families
  - Including: that there are different types of committed, stable relationships, and the importance of those relationships in raising children; what marriage and civil partnerships are; why marriage is an important relationship choice for many couples and why it must be freely entered into; the characteristics and legal status of other types of long-term relationships; the role of parents; how to assess the safety of a relationship
- Respectful relationships, including friendships
  - Including: the characteristics of healthy friendships on and offline; the damaging effect of stereotypes; different types of bullying (including cyberbullying); criminal behaviour within relationships; what constitutes sexual harassment and sexual violence; legal rights and responsibilities regarding equality

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- Online and media
  - rights, responsibilities and opportunities online; online risks; not to provide material to others that they would not want shared further; the impact of viewing harmful content; that specifically sexually explicit material often presents a distorted picture of sexual behaviours; that sharing and viewing indecent images of children (including those created by children) is against the law
- Being safe
  - the concepts of, and laws relating to, sexual consent, sexual exploitation, abuse, grooming, coercion, honour-based violence and FGM, harassment and domestic abuse and how these can affect current and future relationships; how people can actively communicate and recognise consent from others, including sexual consent, and how and when consent can be withdrawn (on and offline)
- Intimate and sexual relationships, including sexual health
  - the characteristics and positive aspects of healthy one-to-one intimate relationships; that all aspects of health can be affected by choices they make in sex and relationships, positively or negatively; the facts about reproductive health; managing sexual pressure, including understanding peer pressure; choice to delay sex or to enjoy intimacy without sex; contraception; facts around pregnancy including miscarriage; choices in relation to pregnancy (with medically and legally accurate, impartial information on all options, including keeping the baby, adoption, abortion and where to get further help); information about sexually transmitted infections (STIs), including risk reduction and testing; how the use of alcohol and drugs can lead to risky sexual behaviour; how to get further advice, including how and where to access confidential sexual and reproductive health advice and treatment.

### **Sex education at primary level**

As previously noted, sex education is not compulsory in primary schools. It is for primary schools to determine whether they need to cover any additional content on sex education to that provided under Relationships Education or as part of the science curriculum.

The draft guidance states that the Department for Education recommends age-appropriate sex education at primary level, to prepare children for adolescence:

67. It is important that the transition phase before moving to secondary school supports pupils' ongoing emotional and physical development effectively. The Department continues to recommend therefore that all primary schools should have a sex education programme tailored to the age and the physical and emotional maturity of the pupils. It should ensure that both boys and girls are prepared for the changes that adolescence brings and – drawing on knowledge of the human life cycle set out in the national curriculum for science - how a baby is conceived and born. As well as consulting parents more generally about the

school's overall policy, primary schools should consult parents before the final year of primary school about the detailed content of what will be taught.<sup>14</sup>

### **Faith schools**

The draft guidance states that all schools should take the religious background of their pupils into account when planning teaching, but notes that faith schools may use their faith to inform what is taught:

21. All schools may teach about faith perspectives. In particular, schools with a religious character may teach the distinctive faith perspective on relationships, and balanced debate may take place about issues that are seen as contentious. For example, the school may wish to reflect on faith teachings about certain topics as well as how their faith institutions may support people in matters of relationships and sex.<sup>15</sup>

### **LGBT issues**

The draft guidance states that schools are free to determine how they address LGBT specific content, but the Department expects "all pupils to have been taught LGBT content at a timely point," and that:

At the point at which schools consider it appropriate to teach their pupils about LGBT, they should ensure that this content is fully integrated into their programmes of study for this area of the curriculum rather than delivered as a standalone unit or lesson.<sup>16</sup>

### **Female Genital Mutilation (FGM)**

The draft guidance states that, at secondary level, schools should address the physical and emotional damage caused by female genital mutilation (FGM), make children aware that FGM is against the law, and where they can find support. The guidance further states:

As well as addressing [FGM] in the context of the law, pupils may also need support to recognise when relationships (including family relationships) are unhealthy or abusive (including the unacceptability of neglect, emotional, sexual and physical abuse and violence, including honour-based violence and forced marriage) and strategies to manage this or access support for oneself or others at risk. Schools should also be mindful that for pupils who are or have experienced unhealthy or unsafe relationships at home or socially, the school may have a particularly important role in being a place of consistency and safety where they can easily speak to trusted adults, report problems and find support.<sup>17</sup>

### **Pupils with special educational needs and disabilities (SEND)**

Relationships Education, RSE and Health Education must be accessible for all pupils. The draft guidance notes that these subjects may need to

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<sup>14</sup> Department for Education, [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education: Draft statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers](#), February 2019, p23

<sup>15</sup> As above, p12-13

<sup>16</sup> As above, p15

<sup>17</sup> As above, p26



be tailored to the needs of particular pupils with SEND at different stages, and states that

34. Schools should be aware that some pupils are more vulnerable to exploitation, bullying and other issues due to the nature of their SEND. Relationships Education and RSE can also be particularly important subjects for some pupils; for example those with Social, Emotional and Mental Health needs or learning disabilities. Such factors should be taken into consideration in designing and teaching these subjects.<sup>18</sup>

### Right to withdraw children from sex education

Currently, as set out in section 1, parents have the right to withdraw their children from sex education outside of National Curriculum Science.

However, the Department for Education noted in its March 2017 policy statement that clarification was being sought on “the age at which a young person may have the right to make their own decisions,” and that a blanket right for parents to withdraw their child from sex education was no longer consistent with English caselaw (or with the ECHR and UNCRC).<sup>19</sup>

The [draft guidance](#) published in February 2019 provides that, while under the revised rules head teachers would automatically grant a request to withdraw a pupil from any sex education delivered in primary schools, other than as part of the science curriculum, the current position would alter at secondary level.

At secondary level, parents would be able to *request* that their child be withdrawn from sex education, a request that head teachers would grant in all but exceptional circumstances. This would apply until three terms before a child turned 16, at which point a child would be able to opt-in to sex education if they so choose.

This right to withdraw applies to “sex education delivered as part of statutory RSE” rather than the subject as a whole.

The relevant section of the draft guidance states:

45. Parents have the right to request that their child be withdrawn from some or all of sex education delivered as part of statutory RSE. Before granting any such request it would be good practice for the head teacher to discuss the request with parents and, as appropriate, with the child to ensure that their wishes are understood and to clarify the nature and purpose of the curriculum. Schools will want to document this process to ensure a record is kept.

46. Good practice is also likely to include the head teacher discussing with parents the benefits of receiving this important education and any detrimental effects that withdrawal might have on the child. This could include any social and emotional effects of

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<sup>18</sup> As above, p15

<sup>19</sup> Department for Education, [Policy Statement: Relationships Education, Relationships and Sex Education, and Personal, Social, Health, and Economic Education](#), March 2017

being excluded, as well as the likelihood of the child hearing their peers' version of what was said in the classes, rather than what was directly said by the teacher (although the detrimental effects may be mitigated if the parents propose to deliver sex education to their child at home instead).

47. Once those discussions have taken place, except in exceptional circumstances, the school should respect the parents' request to withdraw the child, up to and until three terms before the child turns 16. After that point, if the child wishes to receive sex education rather than be withdrawn, the school should make arrangements to provide the child with sex education during one of those terms.<sup>20</sup>

## 2.4 Health education

The Department for Education announced alongside the publication of the consultation on RSE that it would not be proceeding with the introduction of statutory Personal, Social, Health, and Economic Education, but that statutory Health Education would be introduced alongside the RSE changes.

Guidance on physical health and wellbeing is included as part of the draft statutory guidance for [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education](#).

More information on health education is provided in the Library briefing on [Personal, Social, Health and Economic Education in schools](#) (England), CBP 7303.

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<sup>20</sup> Department for Education, [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education: Draft statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers](#), February 2019, p18

## 3. Reports, inquiries and earlier proposals for change

### 3.1 POSTnote on Relationships and Sex Education

In June 2018, the Parliamentary Office of Science and Technology published a [briefing on the impact of RSE](#). The briefing included the following key findings:

- Relationships and Sex Education (RSE) can increase knowledge about sexual risk, lead to increased use of contraceptives, and reduce young people's number of sexual partners. Some evidence suggests that it may delay the point at which young people first have sex and decrease rates of teenage pregnancy. However, it is difficult to isolate the effect of RSE programmes on teenage pregnancy rates as studies often examine multiple interventions at the same time.
- There are few high-quality studies on how RSE affects prevalence of sexually transmitted infections (STIs). However, available evidence suggests that RSE does not reduce STI rates among young people.
- Evidence shows that RSE can increase young people's knowledge about, and change attitudes towards, sexual abuse and partner violence. There is less evidence to show that RSE programmes change young people's relationship behaviour.
- RSE's role in improving awareness of the risks of sharing nude images and using pornography has not yet been evaluated.
- RSE is most effective when it is taught by trained professionals in regular sessions, delivers age-appropriate content, is inclusive of different sexual and gender identities, is embedded into school policy, and involves the input of young people and their families.<sup>21</sup>

### 3.2 2008 Review of SRE and the Children, Schools and Families Act 2010

A review of [sex and relationship education in schools](#) took place in 2008. As the webpage for the report states, an external steering group was established to take forward the commitment in the Children's Plan to: 'Review the delivery of Sex and Relationships Education (SRE) in schools'. It summarises how the review was organised, what evidence was considered to inform the decisions, the key challenges that were identified and the recommendations that are being made to improve SRE delivery.<sup>22</sup>

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<sup>21</sup> Parliamentary Office of Science and Technology, [Relationships and Sex Education](#), 25 June 2018, PN 0576

<sup>22</sup> External Steering Group, [Review of Sex and Relationship Education \(SRE\) in Schools](#) [A report by the External Steering Group](#), 2008

The report's recommendation that PSHE be made part of the curriculum was part of the *Children, Schools and Families Bill*, Session 2009-10. The [Library research paper 09/95](#) on the Bill sets out the proposals of the then Labour Government. The PSHE provisions and sex education generally were discussed during the Public Bill Committee – pp 13 and 14 of the [Library research paper 10/12](#) give an account of the debates. However, many of the key provisions of the Bill were removed during the consideration of Lords Amendments on 8 April 2010 immediately before the dissolution of Parliament for the general election. The provisions removed included the introduction of compulsory PSHE, and the provision that all children receive at least one year of sex and relationship education. Incidentally, the provisions in the Bill that did survive are now contained in the [Children, Schools and Families Act 2010](#).

### 3.3 Ofsted report on PSHE and the teaching of SRE (2013)

In May 2013, Ofsted published a report on PSHE in primary and secondary schools in England, [Not yet good enough](#).<sup>23</sup> The report raised concerns about the teaching of SRE:

Sex and relationships education required improvement in over a third of schools. In primary schools this was because too much emphasis was placed on friendships and relationships, leaving pupils ill-prepared for physical and emotional changes during puberty, which many begin to experience before they reach secondary school. In secondary schools it was because too much emphasis was placed on 'the mechanics' of reproduction and too little on relationships, sexuality, the influence of pornography on students' understanding of healthy sexual relationships, dealing with emotions and staying safe.<sup>24</sup>

### 3.4 Proposals for compulsory SRE and to update Sex and Relationship Education Guidance (2013-16)

#### **Amendment to *Children and Families Bill* (2013)**

During Report Stage of the *Children and Families Bill* in the House of Commons in June 2013,<sup>25</sup> an amendment (New Clause 20) was tabled by Lisa Nandy, Sharon Hodgson, Stella Creasy, Diana Johnson and Caroline Lucas, to ensure that sex and relationship education be made available to all children across the country. Speaking to the new clause, Lisa Nandy said that:

Research by the Children's Commissioner has found that far too many young people—boys and girls—do not know what a good relationship looks like. Worryingly, it also found that many of

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<sup>23</sup> Ofsted, [Not yet good enough: personal, social, health and economic education in schools](#), May 2013

<sup>24</sup> *Ibid*, p6-7

<sup>25</sup> Now the *Children and Families Act 2014*.

them did not even understand the concept of consent. Our view is that we are failing to equip young people with the knowledge, skills and resilience they need to keep themselves safe. We must do much more to tackle child abuse, but more importantly we must prevent it from happening in the first place.

Young people are increasingly exposed to risks online. We think that the question is not whether we can afford to talk to them about issues as difficult as this, but whether we can afford not to. We think that all children should have the opportunity to access age-appropriate sex and relationship education. In a departmental report on personal, social, health and economic education, young people said that they valued the chance to express views safely and ask questions, and felt that that had improved their relationship with others. We believe that parents should retain the right to withdraw children aged 15 or under because they know their children best, but equally we know that the vast majority of parents would like their children to have access to sex and relationship education. For children whose parents do not talk to them about these issues, this could be critical in keeping them safe, especially given that a third of girls say that they have experienced unwanted touching. We are keen for the Government to support our proposed new clause 20.<sup>26</sup>

Responding for the then Government, Edward Timpson said that

On personal, social and health education, we all recognise that this is an important issue, but we do not have unanimity on what constitutes the best approach. The expectation that all schools should teach PSHE is outlined in the introduction to the framework of the proposed new national curriculum. It is not a statutory requirement, however, as we strongly believe that teachers need the flexibility to use their professional judgment to decide when and how best to provide PSHE in their local circumstances. The Government do not believe that the right of parents to withdraw their children from sex and relationship education should be diminished in the way proposed. We see no need to amend the existing legislation, which provides a clear and workable model for schools and parents. Moreover, the new provision would place a disproportionate burden on teachers, who would have to make and defend decisions on what constitutes “sufficient maturity”—<sup>27</sup>

New clause 20 was defeated on a division by 303 votes to 219.<sup>28</sup> An amendment to the Bill to require a review and update of SRE guidance was also been tabled during the Bill’s Report Stage in the House of Lords.<sup>29</sup>

### **Calls for updated guidance**

In September 2013, there were calls reported in the press from several MPs, including the then Deputy Prime Minister, Nick Clegg, for the SRE statutory guidance to be updated. The guidance has been in place since

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<sup>26</sup> [HC Deb 11 June 2013, col 255](#)

<sup>27</sup> *Ibid.*, c267

<sup>28</sup> *Ibid.*, c270

<sup>29</sup> House of Lords, [Amendments tabled to the Children and Families Bill](#) [accessed 12 December 2013]

2000 and the calls for it to be updated focused on the rise of the internet and social media since that time. See:

- [More Conservative MPs back Telegraph better sex education campaign](#), *Telegraph*, 4 September 2013
- [Update sex education guidance to schools, says Clegg](#), *BBC News Online*, 5 September 2013
- [Dame Tessa Jowell supports The Telegraph's Wonder Women better sex education campaign](#), *Telegraph*, 6 September 2013

There were also calls in December 2013 for NICE to develop [modernised sex education programmes](#) that encompassed the role of sex in a loving relationship.<sup>30</sup>

### Private Member's Bills and other parliamentary activity

During an adjournment [debate](#) on 14 October 2014, Caroline Lucas raised the issue of updating the existing SRE guidance. The Minister, Nick Gibb, responded:

The hon. Lady said that the guidance on sex and relationships education is becoming outdated. I welcome the supplementary advice for schools, "[Sex and relationships education \(SRE\) for the 21st century](#)", which was published recently by the PSHE Association, the Sex Education Forum and Brook. The advice helpfully addresses the changes in technology and legislation since 2000, and equips teachers to help protect children and young people from inappropriate online content and online bullying, harassment and exploitation.<sup>31</sup>

In October 2014, Diana Johnson presented the [Sex and Relationships Education \(Curriculum\) Bill 2014-15](#), to include SRE in the National Curriculum. The full Bill was not published and did not receive a Second Reading.

In July 2016, Caroline Lucas presented the [Personal, Social, Health and Economic Education \(Statutory Requirement\) Bill 2016-17](#), in favour of statutory PSHE including SRE and education on ending violence against women and girls, and to provide for initial and continuing teacher education and guidance on best practice for delivering and inspecting PSHE and SRE education.

Caroline Lucas also presented bills in favour of compulsory PSHE during both the 2014-15 and 2015-16 parliamentary sessions, neither of which received a second reading.

## 3.5 Education Committee Inquiry (2014-15)

The House of Commons Education Select Committee launched an inquiry into PSHE and also SRE in schools on 23 April 2014. The [call for evidence](#) requested views on the following topics:

<sup>30</sup> British Medical Journal, [Experts call for NICE to resume work on sex education halted by the coalition government](#), 3 December 2013

<sup>31</sup> HC Deb 14 Oct 2014 c280



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- Whether PSHE ought to be statutory, either as part of the National Curriculum or through some other means of entitlement.
- Whether the current accountability system is sufficient to ensure that schools focus on PSHE.
- The overall provision of Sex and Relationships Education in schools and the quality of its teaching, including in primary schools and academies.
- Whether recent Government steps to supplement the guidance on teaching about sex and relationships, including consent, abuse between teenagers and cyber-bullying, are adequate.
- How the effectiveness of SRE should be measured.

The Committee published its report, [Life lessons: PSHE and SRE in schools](#), on 17 February 2015. The report made the following key recommendations relating to SRE:

- The Department for Education should develop a work plan for introducing age-appropriate PSHE and SRE as statutory subjects in primary and secondary schools.
- All schools should be required to run a regular consultation with parents on the school's SRE provision.
- The parental right to withdraw their child from elements of SRE should be retained.
- The Government should formally endorse and issue the SRE guidance produced by Brook, the Sex Education Forum and the PSHE Association. It should also promote this more actively to schools and governors.
- SRE should be renamed Relationships and Sex Education – RSE – to emphasise the relationships element of the subject.<sup>32</sup>

The [Government response](#) to the report was published in July 2015. In particular:

- The Government did not indicate that it would make PSHE or SRE statutory, although it intended to make “significant progress” in improving PSHE during this Parliament, and would “consider in full” the arguments put forward by the Select Committee as part of this work before reporting back later in 2015.
- The Government said there was a “range of good quality advice that has been developed by the voluntary sector in relation to PSHE and SRE”, and that it would continue to work with the sector to review the advice and guidance that currently exists.
- The Government did not believe it necessary to change the “well understood” label of SRE.<sup>33</sup>

The Chair of the new Education Committee, Neil Carmichael, was [critical](#) of the response:

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<sup>32</sup> House of Commons Education Select Committee, [All schools should have to provide PSHE and SRE](#), 17 February 2015

<sup>33</sup> Department for Education, [Government response: Life lessons: PSHE and SRE in schools](#), Cm 9121, July 2015

Ministers entirely sidestep the call made by MPs in the closing months of the last Parliament to give statutory status to PSHE.

They also reject or brush over nearly every other recommendation made by the previous Education Committee in their key report published five months ago.<sup>34</sup>

### Letter from select committee Chairs (January 2016)

In January 2016, the Chairs of four Commons select committees – education, health, home affairs and business, innovation and skills – [wrote](#) to the Education Secretary, citing committee reports and statements from the Children’s Commissioner and the Chief Medical Officer, in support of statutory PSHE and SRE.

The letter stated that it was “clear to the four of us that there is a need to work towards PSHE and SRE becoming statutory in all schools.”<sup>35</sup>

The Chair of the Women and Equalities Committee, Maria Miller, was also quoted in a *Times* [article](#) in support of compulsory SRE.<sup>36</sup>

### 3.6 Government decision not to make PSHE statutory (February 2016)

In February 2016, the then Education Secretary Nicky Morgan [wrote](#) to the Education Committee Chair to state that PSHE would not be made statutory:

The vast majority of schools already make provision for PSHE and while the Government agrees that making PSHE statutory would give it equal status with other subjects, the Government is concerned that this would do little to tackle the most pressing problems with the subject, which are to do with the variable quality of its provision, as evidenced by Ofsted’s finding that 40% of PSHE teaching is less than good. As such, while we will continue to keep the status of PSHE in the curriculum under review, our immediate focus will be on improving the quality of PSHE teaching in our schools.<sup>37</sup>

The letter also stated that the DfE would be working with a group of leading headteachers and practitioners in the following months to produce an action plan and recommendations for improving PSHE, including publishing a comprehensive PSHE toolkit for schools.

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<sup>34</sup> House of Commons Education Select Committee, [Government response to sex education report is “feeble”](#), 16 July 2015

<sup>35</sup> Education Committee, [Letter from Neil Carmichael MP, Dr Sarah Wollaston MP, Rt Hon Keith Vaz MP, and Iain Wright MP, to Rt Hon Nicky Morgan MP](#), 8 January 2016

<sup>36</sup> Times, [Schools hit by sexting epidemic](#), 12 March 2016

<sup>37</sup> Education Committee, [Letter from Rt Hon Nicky Morgan MP to Neil Carmichael MP](#), 10 February 2016

## Subsequent Government comment and reconsideration

In September 2016, the newly appointed Education Secretary, Justine Greening, [indicated to the Education Committee](#) that she was open to reconsidering the position of PSHE and SRE.<sup>38</sup>

A subsequent [response to a Parliamentary Question](#) by the Education Minister Edward Timpson confirmed:

As the Secretary of State said at the Education Select Committee hearing in September 2016, we need to look again at how schools deliver high quality PSHE including SRE. We are considering all the options and will come to a view soon.<sup>39</sup>

During the [Second Reading debate](#) in the Commons on the *Children and Social Work Bill [HL]* in December 2016, the Minister indicated that he had asked officials to “accelerate” their work on PSHE and SRE, so that he could report on the Department’s conclusions at a later point during the passage of the Bill.<sup>40</sup>

## 3.7 Labour commitment to statutory PSHE

In March 2016, the then Shadow Education Secretary, Lucy Powell, in an article prompted by concerns about sexting in schools, [announced](#) that making PSHE statutory in all state schools would be “one of the first things Labour does in government” and stated that:

Improving [PSHE’s] status would help reverse the downward trend in lesson quality. It would ensure there was a broad and balanced framework of standards, with up-to-date guidance that reflects the world we live in. Alongside this, we want a new generation of PSHE leaders in every school, sharing best practice.<sup>41</sup>

## 3.8 Women and Equalities Committee inquiry into sexual harassment and sexual violence in schools (2016)

On 19 April 2016, the Commons Women and Equalities Select Committee launched an [inquiry](#) into sexual harassment and sexual violence in schools.

This inquiry focused on:

- establishing the scale of sexual harassment and sexual violence in primary and secondary schools in the UK
- understanding the impact of sexual harassment and sexual violence on pupils and teachers
- making practical recommendations to reduce the levels of sexual harassment and sexual violence in schools

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<sup>38</sup> Education Committee, [Role and Responsibilities of the Secretary of State for Education](#), 14 September 2016, HC 196

<sup>39</sup> [PQ 47734, 18 October 2016](#)

<sup>40</sup> [HC Deb 5 Dec 2016 c84](#)

<sup>41</sup> Times, [Labour will ensure children are taught the dangers of sexting](#), 22 March 2016

As part of its inquiry, the Committee [asked](#) for comments on the strength of the Government's evidence on the current, non-statutory status of PSHE and its work in this area, to inform its questions to Ministers in evidence on 12 July 2016.<sup>42</sup>

The [Committee's report](#) was published in September 2016. It recommended that that PSHE and SRE should be made statutory subjects as part of the Education Bill then planned for autumn 2016.<sup>43</sup> (That Bill was subsequently dropped.)

The [Government's response](#), published in November 2016, did not include a commitment to make either PSHE or SRE statutory. The Government stated that it would consider improvements to the teaching of both subjects:

...we will look at how what is taught in PSHE and SRE can fit into a whole school approach and reflected in codes of practice. We are conscious that the existing SRE guidance was last updated in 2000 and the case for further action on PSHE and SRE delivery is actively under review, with particular consideration to improving quality and accessibility.<sup>44</sup>

The Committee Chair, Maria Miller, was [critical](#) of the response, and in particular the lack of a commitment to statutory SRE:

In particular the Government needs to prioritise action to ensure Sex and Relationship education reflects the realities of the 21st century rather than the pre-smartphone age when guidance was last updated.<sup>45</sup>

## New letter from select committee Chairs (November 2016)

Following the Government's response to the Women and Equalities Committee report, [five select committee Chairs wrote to the Education Secretary](#), to express disappointment at the lack of an announcement of statutory PSHE, and urged the Government either to support a current Private Member's Bill for statutory PSHE (see section 3.4) or bring forward proposals of its own.<sup>46</sup>

The five Chairs were Neil Carmichael (Education Committee), Maria Miller (Women and Equalities), Yvette Cooper (Home Affairs), Dr Sarah Wollaston (Health), and Iain Wright (Business, Energy and Industrial Strategy).

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<sup>42</sup> Women and Equalities Committee, [Personal, Social, Health and Economic education and the curriculum](#), 5 July 2016

<sup>43</sup> Women and Equalities Committee, [Sexual harassment and sexual violence in schools](#), Third Report session 2016-17, HC 91 para 151

<sup>44</sup> Women and Equalities Committee, [Sexual harassment and sexual violence in schools: Government response to the Committee's Third Report of Session 2016-17](#), First special report of 2016-17, para 56

<sup>45</sup> Women and Equalities Committee, [New law needed to protect children from sexual harassment and violence](#), 29 November 2016

<sup>46</sup> Education Committee, [Letter from Neil Carmichael MP and others to Rt Hon Justine Greening MP](#), 29 November 2016

## 4. Reforms to Independent School Standards; teaching about same-sex marriage

### 4.1 Background

During the passage of the *Marriage (Same Sex Couples) Bill* there was considerable debate about the implications of the legislation for teachers in schools. The then Equalities Minister, Maria Miller, made a statement in December 2012 on this issue:

**Mr Julian Brazier (Canterbury) (Con):** Will my right hon. Friend reassure us that whatever is announced tomorrow, no teacher will face prosecution or civil action as a result of espousing a Christian view of marriage?

**Maria Miller:** My hon. Friend is right to raise this issue, which has been a concern for many of our constituents. I can confirm that nothing will change what children are taught. Teachers will be able to describe their belief that marriage is between a man and a woman, while acknowledging that same-sex marriage will be available. It is important to reassure people. There is a great deal of what perhaps one could call scaremongering. It is important that teachers and faith schools are aware that they will continue to enjoy the same situation as they do now.<sup>47</sup>

The Equalities and Human Rights Commission has published a guidance document, [The Marriage \(Same Sex Couples\) Act 2013: The Equality and Human Rights Implications for the Provision of School Education](#). This was updated in June 2014, and states that schools are not required to *promote* same-sex marriage:

Teaching about marriage must be done in a sensitive, reasonable, respectful and balanced way. Teachers are subject to professional requirements, the school curriculum, school policies, and anti-discrimination duties towards colleagues and pupils.

No school, or individual teacher, is under a duty to support, promote or endorse marriage of same sex couples. Teaching should be based on facts and should enable pupils to develop an understanding of how the law applies to different relationships. Teachers must have regard to statutory guidance on sex and relationship education, and to meet duties under equality and human rights law.

Subject to the above, nothing in the Act affects the rights of schools with a religious character to continue to teach about marriage according to their religious doctrines or ethos. Any views expressed about marriage of same sex couples, by governors, teachers, other school staff, parents and pupils, may reflect the religious ethos of the school.

Governors, teachers and non-teaching staff in schools, parents and pupils, are free to hold their own religious or philosophical beliefs about marriage of same sex couples. These rights are not

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<sup>47</sup> [HC Deb 10 December 2012, c 31](#)

limited by anything in the Act, education law, or equality and human rights law.

Pre-existing parental opt-out rights in respect of sex and relationship education remain unaffected by the Act.<sup>48</sup>

## 4.2 Reforms to the independent school standards regulations

The Coalition Government made reforms to the regulatory framework for free schools, academies, and independent schools. Some campaign groups, including the Coalition for Marriage, interpreted the reforms as meaning that schools would be required to actively promote same-sex marriage.

During July and August 2014, the then Government consulted on making changes to the *Education (Independent School Standards) Regulations 2010 (SI 2010/1997)*, as amended. The [consultation document](#) explained the intention behind the planned changes (which are part of wider reforms):

The proposed changes to Part 2 [of Schedule 1 to the 2010 Regulations] are aimed at making it clear to independent schools that the proprietor must actively promote the fundamental British values that are set out in section 1.1(c) above and that schools must actively promote the specified principles, including furthering tolerance and harmony between different cultural traditions and encouraging respect for democracy. A minimum approach, for example putting up posters on a notice board and organising an occasional visit to places of worship would fall short of 'actively promoting'. Schools will be expected to focus on, and be able to show how their work with pupils is effective in embedding fundamental British values. 'Actively promote' also means challenging pupils, staff or parents expressing opinions contrary to fundamental British values.

The new requirement for schools to actively promote principles which encourage respect for persons with protected characteristics (as set out in the Equality Act 2010) is intended to allow the Secretary of State to take regulatory action in various situations: for example where girls are disadvantaged on the grounds of their gender; failure to address homophobia; or where prejudice against those of other faiths is encouraged or not adequately challenged by the school.

We intend to update and reissue the current guidance on this standard to reflect these changes.<sup>49</sup>

Subsequently, the then Government laid amending regulations – the [Education \(Independent School Standards\) \(England\) \(Amendment\) Regulations 2014](#) (SI 2014/2374), which came into force on 29 September 2014. The [Explanatory Memorandum](#) to the amending regulations addresses some of the concerns that were raised during the consultation period:

<sup>48</sup> EHRC, [The Marriage \(Same Sex Couples\) Act 2013: The Equality and Human Rights Implications for the Provision of School Education](#), Pg 2-3

<sup>49</sup> DfE, [Proposed New Independent School Standards](#), 23 June 2014, Pps. 6-7



8.1 The proposed changes made by these Regulations were subject to a six-week consultation from 23 June to 4 August. This resulted in 1462 responses. Of these 909 were in support of a campaign that claimed the effect of the changes would be, amongst other things, to: introduce new values; extend the equality agenda; discriminate against Christianity; and undermine religious freedoms. This is not correct. The fundamental British values are not new. They were defined in the government's 2011 Prevent Strategy and have been part of the Independent School Standards since the beginning of 2013.

8.2 In relation to equality legislation, the proposals are that schools should encourage pupils to respect other people, even if they do not agree with them. This does not extend equality requirements or discriminate against Christianity or religious freedoms. The amended standard would not require a school to do anything that they are not currently required to do by the Equality Act 2010 (which applies to independent schools).

8.3 Of the remaining responses there were 516 on whether the changes to the SMSC [spiritual, moral, social and cultural] standard are required to ensure the active promotion of fundamental British values and respect for other people. A significant number of respondents indicated that they disagreed with the proposed changes, but analysis of the related comments revealed that this was because of misunderstanding the effect or raising issues that were not part of the consultation. For example, some responses questioned the definition of the fundamental British values and requested that this be opened up for further debate; others maintained that the changes extend the equality agenda and will result in the marginalisation of Christianity; and others considered that the changes are not necessary, that the standards were only amended in January 2013, and that many schools are already doing this.

8.4 The Department has not made any changes to the proposed revision to the SMSC standard as a result of the consultation.<sup>50</sup>

Neither the consultation document nor the Explanatory Memorandum to the amending regulations specifically mention the teaching of same-sex marriage.

A [legal advice note](#) on the new regulations prepared by John Bowers QC for the Christian Institute, and published on the Institute's website argues in its conclusion:

- a. It is a small step to elide the respect for a person required by the amended Regulations to respecting the beliefs of the group to which that person belongs, and in effect to become a requirement to promote the protected characteristics themselves.
- b. There is a danger with these proposals that the curriculum in independent school becomes politicized because respect for some protected characteristics may be highly contentious; in effect the seal on the curriculum (created by section 89(2) of the Equality Act 2010) will be thereby broken. To mix the metaphor, a Rubicon preserved by successive governments will be crossed.

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<sup>50</sup> [Explanatory Memorandum to the Education \(Independent School Standards\) \(England\) \(Amendment\) Regulations 2014](#), SI 2014/2374, Pp 2-3

c. The danger of litigation is exacerbated by the vagueness in the proposals arising from the concept of *active* promotion.

41. The inevitable result is to open teachers up to increased scrutiny, pressures and complaints. There is a real risk of major litigation over what happens in the classroom. Further the contents may undermine their academic freedom.<sup>51</sup>

An [Impact Assessment](#) on the regulations was subsequently published by the then Government in December 2014.<sup>52</sup>

### 4.3 Independent school standards consultation (2018)

The Department for Education recently ran a [consultation](#), which closed on 5 June 2018, asking for views on:

- Draft advice for schools on the independent school standards
- A policy statement on regulatory and enforcement action taken by the Department for independent schools not meeting those standards
- Revised regulations governing the information required of independent schools, and those wishing to register such schools

The [consultation and relevant documents](#) have been published by the DfE. The [consultation document](#) stated that the aim of the consultation was to provide advice for schools across the independent school standards, which currently only exists in part.

The [draft advice for independent schools on the independent school standards](#) published alongside the consultation sets out the following on the teaching of PSHE, including same-sex marriage:

20. Everyone has at least some characteristics which are included in this list (for example, age and sex). The standard [on Quality of Education] will not be met if, for example, the PSHE curriculum:

- a. encourages pupils to see those of particular races or religions as being inferior in any way;
- b. suggests to male pupils that women and girls should be treated with less respect than males or that a woman's role is subservient to that of a man - or vice versa;
- c. suggests that same-sex marriages or civil partnerships should not be recognised as being lawful unions under civil law;
- d. teaches that disabled people deserve less equal treatment, for example because of sins they are said to have committed in previous lives;
- e. encourages pupils to believe that women who are pregnant without being married should be punished.

<sup>51</sup> Christian Institute website download, [Advice on the effect of proposed new independent school standards](#), published 3 October 2014, Pp 17-18.

<sup>52</sup> Final Stage IA. [The Education \(Independent School Standards\) \(England\) \(Amendment\) Regulations 2014 and the Education \(Independent School Standards\) Regulations 2014](#)

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21. A school can teach that its particular faith has teachings relevant to these matters, and explain to pupils what those teachings are. However, this does not mean that a curriculum, including that for religious education, can be planned or teaching provided which advocates or otherwise encourages pupils not to respect other people on the basis of a protected characteristic. In that case the standard will not be met and there may also, depending on the exact facts, be a breach of other standards, for example, paragraph 3(i) or 5(b)(vi).<sup>53</sup>

The Government has not yet published a response to this consultation.

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<sup>53</sup> Department for Education, [The independent school standards: advice for independent schools \(Draft\)](#), March 2018, p9-10

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