

JUDICIAL REVIEW

R (ISHERWOOD and OTHERS) v WELSH MINISTERS

The Curriculum and Assessment (Wales) Act 2021 imposes a duty on the Welsh Ministers to issue a new sex education curriculum for schools in Wales.

In January the Welsh Ministers therefore published a Code and Guidance dealing with the new sex education curriculum which:

- imposes compulsory sex education for children from the age of 3 upwards;
- promotes sexual lifestyles, gender theory and new sexualities which many parents would consider inappropriate for their children and/or which conflicts with their philosophical or religious convictions;
- is to be “cross-cutting” and subject to a “whole-school approach” so that it permeates all subjects of the curriculum;
- is not subject to any rights of parental excusal/withdrawal as guaranteed both by the common law and by the Education Act 1996.

The legal challenge, which seeks to revoke the new sex education in the Code and Guidance, is being pursued on the following 4 grounds:

- (1) The Code and Guidance incorrectly state that the right of parents to withdraw their children has been removed, in fact the *common law* right of parents to withdraw children from education on religious or philosophical matters of which they disapprove remains.
- (2) The attempt by the 2021 Act to remove the *statutory* right of withdrawal/excusal contained in the Education Act 1996 was ineffective because it was attempted in an underhand way which failed to squarely confront the implications of removal as required by the “principle of legality”.
- (3) The purported removal of the right of excusal is contrary to parental rights under Article 2 of the First Protocol (A2P1) to the European Convention on Human Rights which guarantees parents the right to an education for their children and for this education to be in accordance with their religious and philosophical convictions. The breach of parental A2P1 rights occurs because the Code and Guidance: (i) do not contain a clear basis for the law limiting parental rights; (ii) oblige dissenting parents to remove children from school entirely thus depriving them of an education; (iii) expose children to indoctrination; (iv) do not accord adequate respect to parental views.
- (4) By attempting to re-orient an individual’s beliefs (whether religious or not) by coerced education, the Code and Guidance breach the rights of children guaranteed by Article 9 of the European Convention on Human Rights.

The High Court has given permission to hear the challenge on the basis that:

“[t]he issues raised on behalf of the claimants involve the consideration of complex constitutional matters with potentially very significant consequences for both parents and children.”