



Policy on Religious Education in Academies

This policy relates to academies which have not been designated with a religious character. Academies, which have been designated with a religious character, will be covered by Atheism's policy on "faith" schools.

"Academies" stand in contrast to "maintained schools", and the conversion of the latter into the former is the Coalition Government's¹ "flagship" education policy. A very significant and increasing number² of maintained schools have already converted to academies since the Coalition came to office. Academies are independent schools, but are funded by central government and are free of charge to parents at the point of delivery. Maintained schools are "maintained"³ by the local authority. Academies are free from most education legislation, which applies mainly to maintained schools only. In particular, they are free from the following laws:-

In relation to any community, foundation or voluntary school⁴:-

- (a) the local education authority and the governing body shall exercise their functions with a view to securing, and
- (b) the head teacher shall secure,

that **religious education** is given in accordance with the provision for such education included in the school's basic curriculum by virtue of section 80(1)(a) of the Education Act 2002.⁵

...

The curriculum for every maintained school in England shall comprise a basic curriculum which includes⁶ provision for **religious education** for all registered pupils at the school ...⁷

Therefore *Atheism's* central policy on Religious Education:-

It should not be compulsory for a maintained school to give religious education as a discrete subject.

is irrelevant to academies.

However, academies are funded by central government under a "funding agreement". There is a model funding agreement which contains the following provisions:-

The Academy Trust shall make provision for the teaching of religious education

...

¹ The policy originates with Michael Gove and the Conservative Party, although the concept of the academy originated with the previous Labour administration.

² As at 1 November 2011, there was a total of 1,419 open academies in England. The number of pre-existing maintained schools in England was 3,127 secondary and 16,971 primary. It is not stated what proportion of academies are secondary or primary, but it is believed that they are largely the former. In the month to 1 June 2011, 179 schools applied to become academies.

³ To "maintain" means, in simple terms, to defray the cost of maintaining. It is rather more complex than that, having different meanings for different types of schools: community, foundation and voluntary (sub-divided into voluntary-aided and voluntary-controlled). Academies, not being maintained by a local authority but funded by central government, are not maintained schools.

⁴ Generically, a maintained school.

⁵ School Standards and Framework Act 1998, Section 69(1).

⁶ Among other things: the National Curriculum and provision for sex education.

⁷ Education Act 2002, Section 80(1)(a).

The Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998.

In other words, although there is no statutory requirement for the provision of Religious Education, there is an equivalent contractual requirement, framed by analogy with statute. The model funding agreement is not prescribed by statute but the Secretary of State treats it as non-negotiable under a self-made rule.

Such self-made rule is contrary to administrative law. If Parliament had intended that Religious Education should be taught in all academies without exception, it would have imposed a statutory requirement to that effect, but did not see fit to do so. Rather, it enacted Section 1(1), of the Academies Act 2010, which provides:-

The Secretary of State **may** enter into Academy arrangements with any person ...

This confers a discretion on the Secretary of State, as to whether or not to enter into a funding agreement and, if so, upon what terms, and such discretion is not unlimited but must be exercised according to law.

In particular, although the Secretary of State may adopt a general policy on the matter, he may not fetter the exercise of his own discretion by a self-made rule so as to preclude himself from applying his mind to the merits of an individual case before him, and he must be prepared to make an exception in such a case. Therefore, the model funding agreement properly exists under a policy and not under such a self-made rule. It must not be treated as non-negotiable.

An academy, by definition, must (*inter alia*) have:-

a curriculum satisfying the requirements of section 78 of EA 2002⁸.

Section 78(a) requires that the curriculum:-

promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society.

The Secretary of State's rationale, for the statutory imposition of Religious Education in maintained schools, is as follows:-

Section 78 (1) of the 2002 Education Act states that all pupils should follow a balanced and broadly based curriculum which 'promotes the spiritual, moral, cultural, social⁹, mental and physical development of pupils and of society, and prepares pupils for the opportunities, responsibilities and experiences of later life'. Learning about and from religions and beliefs, through the distinct knowledge, understanding and skills contained in RE within a broad-based curriculum, is **essential** to achieving these aims.¹⁰

The same rationale applies to the contractual imposition of Religious Education in academies.

⁸ Academies Act, section 1(6)(a).

⁹ *Sic*; the word "social" does not appear in the statute quoted.

¹⁰ "Religious education in English schools: Non statutory guidance 2010".

However, academies are independent schools (albeit state-funded and free at the point of delivery) and are subject to the general law and non-statutory guidance relating to independent schools (which is minimal compared to the law relating to maintained schools). Independent schools are required to register with the Secretary of State and, as a condition of registration, must meet the standards prescribed in the Education (Independent School Standards) (England) Regulations 2010. These contain no requirement that Religious Education be provided. However, they contain the following standard¹¹ (which is also a requirement of the model funding agreement):-

Spiritual, moral, social and cultural development of pupils

The standard about the spiritual¹², moral, social and cultural development of pupils at the school is met if the proprietor ensures that principles are promoted which:-

- (a) enable pupils to develop their self-knowledge, self-esteem and self-confidence;
- (b) enable pupils to distinguish right from wrong and to respect the law;
- (c) encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute to community life;
- (d) provide pupils with a broad general knowledge of public institutions and services in England; and
- (e) assist pupils to acquire an appreciation of and respect for their own and other cultures in a way that promotes tolerance and harmony between different cultural traditions.

These aims (the “SMSC aims”) are elaborated upon by the Secretary of State’s non-statutory guidance for independent schools “*Spiritual, Moral, Social and Cultural (SMSC) Development of Pupils*”¹³ which also sets out desired outcomes and possible actions schools can take. It states:-

Personal, social and health education, and religious education, usually make a positive contribution to pupils’ development, although pupils’ SMSC can be developed through most areas of the curriculum. Each school must decide how it will choose to meet the regulations and every school is expected to make sure that it provides effectively for every pupil’s SMSC development.

The SMSC aims and the guidance, while compatible with Religious Education, in no way demand it.

If the SMSC aims can be achieved in fee-paying¹⁴ independent schools without Religious Education (as, according to the Secretary of State’s own Independent School Standards and guidance, they can), then the word “essential”, in the Secretary of State’s above rationale for Religious Education in state-funded independent schools (i.e. academies), is disingenuous and the rationale is false. The mere fact of state funding cannot make Religious Education essential.

Furthermore, academies are free from legislation imposing the National Curriculum and the only “secular” curriculum requirement, imposed by the model funding agreement, is:-

The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.

¹¹ Standard 5.

¹² See also *Atheism’s “Policy on the Word “Spiritual” in Education Legislation”*, including these regulations.

¹³ :-

<http://media.education.gov.uk/assets/files/doc/i/improving%20the%20spiritual%20moral%20social%20and%20cultural%20development%20of%20pupils.doc>

¹⁴ I.e. non-academy.

The Academy Trust shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.

Therefore, it is inconsistent that, on the one hand, the only prescribed “secular” subjects are English, Mathematics and Science and, even in these, there is no prescription of the content of the curriculum but, on the other hand, Religious Education is not only a prescribed subject but the content of the curriculum is also prescribed.

Having regard to the foregoing, *Atheism’s* central policy on Religious Education in non-faith academies is as follows:-

- 1. The giving of Religious Education is not essential to the spiritual, moral, social and cultural development of pupils at any school.**
- 2. An academy’s funding agreement is negotiable.**
- 3. If an academy can meet the prescribed standards, about the spiritual, moral, social and cultural development of its pupils, without giving Religious Education, it should renegotiate its funding agreement to remove any requirement that Religious Education be given to its pupils.**

Atheism seeks to work with academy trusts, which share its position on Religious Education and regard it as wasteful of staff and pupils’ time and of the school’s resources which could which could better be employed in other subjects, in the development of principles to promote the SMSC aims without Religious Education.