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Precarious provision and mixed messages: religious education, school inspection, and the law in Scottish non-denominational secondary schools

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ABSTRACT

The focus of this article is on the legal requirement for schools in Scotland to ensure Religious and Moral Education (RME) is taught to all children in non-denominational secondary schools. In particular, the article pays attention to the mediating role of inspection in the relationship between the legal requirement and provision in schools. The paper is based on the findings from a documentary research project that uses the inspection documentation from fifty-four schools dating from August 2016 to August 2020. The article makes three main contributions. First, it offers fresh evidence on the degree of compliance with legal requirements. Second, it highlights the inspectorates' role in drawing schools' attention to the legal requirements surrounding RME. Finally, it is argued that the inspectorate's mediatory role in relation to the legal requirements is a significant factor in understanding the continuing precariousness of the position of RME in Scottish non-denominational secondary schools.

KEYWORDS

Religious education; inspection; education in Scotland; education law

Introduction

Attempting to analyse and remedy the perpetually contested and precarious nature of school-based Religious Education (RE) in Europe and beyond is a standout commonality across existing research, with recent work on RE in Scotland sharing in this broad concern (Scholes 2020; Parker et al. 2019; Robinson and Franchi 2018; Gearon and Prud'homme 2018; Gearon 2014; Conroy et al. 2013; Durham 2013; Stern 2007; Jackson 2004). It is a legal expectation that RE is taught in Scottish state-funded schools, but such legislation has not mitigated against highly variable provision and even outright non-compliance by schools (Matemba 2013, 2014b, 2015). This paper will offer a fresh perspective on the influence of the legislation that makes the provision of RE, or more specifically Religious and Moral Education (RME), in Scottish non-denominational secondary schools mandatory. Through an analysis of the inspection documentation of fifty-four schools, dating back to August 2016, the paper will build on previous research by drawing attention to the mediating role of inspection in the relationship between the legal requirements for RME provision and practice in schools (Scholes 2020; Matemba 2015; Nixon 2015; Lyall 2013). After clarifying the legal and curricular position of RME and articulating the research focus, the paper will offer three main contributions. First, data will be provided to suggest something about the dynamics of non-denominational secondary schools' compliance with the law in relation to RME. Second, the paper will draw out that inspectors in Scotland, through their reports, are drawing schools' attention to the legal requirements regarding RME but it will be suggested that the inspectorate's approach is not

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consistent. Finally, the paper will argue that the inspectorate's mediatory role in relation to the legal requirements is a significant factor in understanding the continuing precariousness of the position of RME in Scottish non-denominational secondary schools.

Religious Education in Scotland: Schooling, the Law and Curriculum

The focus of this study is on the ways in which the law surrounding RE provision interacts with what goes on in the 304 state-funded non-denominational secondary schools in Scotland. There are thirty-two local authority councils in Scotland, each with devolved responsibility for providing state-funded primary and secondary schooling. With respect to education, the councils are in-part funded by and directed in their work by central government decision-making, either in the form of legislation or policy (Hamilton 2020; McGinley 2018). They seek to deliver on the expectations through the work of the schools in their charge, teachers in their employ and, since late 2017, through working in one of six forums of councils organised geographically, called Regional Improvement Collaboratives (RICs) (Humes 2020). The schooling offered by local authorities can be further defined by its denominational status, referring to its affiliation, or not in the case of non-denominational schools, to a particular faith tradition in aspects of its teaching, ethos, and values (Franchi 2018; McKinne). Of the 357 secondary schools in Scotland, fifty-three are denominational and all of these are Roman Catholic denominational schools.

The Law and Religious Education

Chiefly a consequence of the historical legacies of religious and political developments in Scotland, RE continues to hold the unique position of being the only aspect of school curricula that is required by legislation to be offered to pupils (Scott 2018; Stevenson 2015, 2012; McKinney 2012). The relevant legislation remains the [Education \(Scotland\) Act 1980, c. 44 \(\)](#) and section 8 therein (Lyall 2016, 2013).

Section 8 is concerned with both the provision of 'religious observance' (RO) and 'religious instruction' (RI) or, as referred to in the relevant sub-sections, 'instruction in religion'. RO should be understood as something which is a separate element of school practice and distinct from RI (Younger 2018; Brown, Green, and Mair 2016). RI in practice has been commuted to be understood as RE, even before the 1980 Act, and this RE has been understood to be that which is detailed in the curriculum guidance used by schools (Franchi, Conroy, and McKinney 2016). The central legal point for current arrangements made in the Act is found in sub-section 2 of section 8, wherein it is noted that 'it shall be unlawful for an education authority to discontinue religious observance or the provision of instruction in religion', unless 'a majority' of 'the local government electors for education' approve the 'discontinuance'. This means that schools, as instruments of the local education authorities, must ensure provision of RI, understood as RE, for all pupils.

The other important legal point for RE from the [Education \(Scotland\) Act 1980, c. 44 \(\)](#) comes from section 9 and is known as the 'Conscience clause'. This makes it clear that 'any pupil may be withdrawn by his parents from any instruction in religious subjects and from any religious observance'. Whilst Nixon's (2018) work has highlighted that very small numbers each year exercise their right to withdraw from RE and RO, the continued existence of the 'conscience clause' and the actions of parents in respect to it does highlight that the law can play an active part in schools' work around RE. A further example of this is the legal requirement for schools to provide details of RE provision and highlight the parental right to withdraw their children from RE and RO in their handbooks (Scottish Government 2012).

Legally, then, schools must ensure that RI, understood as RE, is provided as part of their taught provision to ensure that their local authority is compliant with the requirements of the [Education \(Scotland\) Act 1980, c. 44 \(\)](#). Moreover, as it requires a statutory poll, schools are legally not permitted to cease delivering RE. In addition, schools must be aware of and accommodate, when required, the

long-standing right for parents to withdraw their children from provision in RE, as well as RO. In addition, schools have a duty to communicate the nature and extent of their RE provision to parents in their handbooks and accompany this with an acknowledgement of the 'conscience clause'. The legal framework explored here is, however, developed further by curriculum and government advice.

Curriculum

In contrast to RI, the curriculum in state-funded schools in Scotland, currently *Curriculum for Excellence* (CfE), is not 'prescribed by law' (Scott 2018, 162). Rather, accountability and inspection regimes have worked to institute the key principles and practices of CfE across the system (Humes and Priestley 2021; Priestley, Biesta, and Robinson 2015; Priestley 2014). Central to CfE are eight curriculum areas, with Religious and Moral Education (RME) being one of these. In denominational schools there is a distinct curriculum for RE, known as Religious Education – Roman Catholic (RERC). RME in non-denominational schools can be accurately considered the current curricular incarnation of RI.

CfE is understood as a curriculum that frames learning at all stages of secondary education, across both the 'broad general education' (BGE) phase that comprises S1, S2 and S3 (pupils aged 11 or 12 to 15) and the 'senior phase' extending over S4, S5 and S6 (covering ages 16 to 18). The latter has a focus on examinations, but the guidelines for CfE RME, or 'core RE' as it is sometimes referred to, remain the relevant guidance for this stage in the curriculum too. RME, as with other curriculum areas, has its own set of *Experiences and Outcomes* (Es & Os) and *Benchmarks* structured across the five levels of CfE (Early, First, Second, Third and Fourth), providing broad and non-directive statements of the learning that is to be overtaken. The Es & Os are structured by three 'organisers', with 'Christianity', and 'World Religions selected for study' standing as distinct aspects of learning and 'Development of Beliefs and Values' 'intertwined' with the former two (Education Scotland 2009, 8).

When exploring RME in Scottish secondary schools it is important to recognise that there are also certificated qualifications and standalone courses that, whilst distinct, do link directly to the curriculum area. These are accredited by the Scottish Qualifications Authority (SQA) and aligned to the Scottish Credit and Qualifications Framework (SCQF) levels 2–7. The most common SQA courses in the subject area offered by schools are those in Religious, Moral and Philosophical Studies (RMPS) at National 3, 4 & 5, Higher and Advanced Higher (SCQF level 7) levels. Such courses are used in two main ways. Students in the senior phase can elect to study the subject for a qualification at a particular level, where offered by individual schools. The other approach is that elements of these courses, usually at National 3 or National 4 level, are completed by senior phase, and sometimes S3, learners within core RME classes as a way of accrediting learning. Other SQA courses and awards, such the Religion, Belief and Values Award, are also used in this way (Scholes 2020). As the government guidance examined below makes clear, the provision of RMPS courses in the senior phase should be distinct from and in addition to provision in RME.

Government Guidance

The introduction of CfE led the Scottish Government to issue advice on how the legal requirements surrounding RE should be met by schools in February 2011 (Scottish Government 2011). The advice delineated the distinctions between RME and RERC, as detailed above, and for RME made three significant points. First, headteachers and directors were reminded that 'schools and local authorities must provide religious and moral education in non-denominational schools to every child and young person ... and includes those in S5 and S6' (*ibid*: 3), thus regardless of what SQA qualifications are on offer schools are expected to deliver RME as a distinct element of the curriculum from S1 to S6. Second, it was observed that it was important to have specialist teachers of RME in secondary schools. Third, schools were advised that 'in order to meet statutory requirements ... schools should

plan and deliver religious and moral education as both a specific subject discipline and one which contributes to high quality interdisciplinary learning' (*ibid*: 3, emphasis in the original). It was also made clear that coverage of the RME *Es & Os* up to Third level should be sufficiently broad in the BGE phrase and built on in the senior phase where Fourth-level *Es & Os* should be covered. Ultimately, then, the advice from the government tied together the curriculum expectations and legal requirements that schools have been and are currently expected to meet with regard to RME.

Research Focus

A legislative mandate and a clear position in the curriculum, both tied together in explicit guidance from the government, can easily be assumed to have positioned RME in rude health in schools (McKinney and McCluskey 2017). However, the available scholarship has consistently noted concerns around the extent, form, and quality of RME provision in non-denominational secondary schools (Scholes 2020; Robinson and Franchi 2018; Matemba 2015, 2014a, 2014b, 2013). Scholars focusing specifically on RME, RE in other contexts and a recent report, the *Impact Report*, by Her Majesty's Inspectors of Education (HMIE) on the progress of *CfE* implementation have offered many insights into why this paradox emerges in practice (Education Scotland 2014).

Teaching time for RME, particularly for senior-phase learners, has been found to be lacking, predicated on previous curricular models and constantly under threat as new developments fight for space in timetables (Matemba 2014b; Education Scotland 2014, 27). There is the problem too of a lack of subject specialists and the use of non-specialist teachers that limits informed professional discussion regarding curricular provision and leads to a lower quality of teaching (Matemba 2015; Conroy et al. 2013; Lundie 2010). Further, formal curricular leadership roles for RME are dwindling, with single-subject departments increasingly giving way to multi-subject faculties wherein RME is managed by non-specialists. This in turn demands more of class teachers and can limit the subject-specific mentoring and learning opportunities available for beginning RME teachers (Education Scotland 2014; Anderson and Nixon 2010). Moreover, there is evidence of non-specialist teachers delivering RME (Scholes 2020). The wider contestations over what RME should prioritise in terms of approach and content and the in-school use of proxies to deliver RME due to a lack of curriculum space have also been identified as factors that lead to a confused identity and role for the subject (Matemba 2015, 2013; Gearon 2014; Nixon 2012, 2009, 2008). The subsequent ambiguity also enables the subject to be easily side-lined, although some have highlighted that well-planned cross-curricular or interdisciplinary learning can be beneficial for demonstrating the value of RME to stakeholders (Matemba 2014b; McKinney et al. 2014). Much more research on the teaching practices deployed in RME classrooms is needed but from what is available it is possible to note, in places, poor pedagogy and poor assessment practice too (Grant and Matemba 2013; Conroy et al. 2013). Though, this may be explained by issues around timetabling, staffing and curriculum design, as noted. These problems may also partly explain the less positive attitudes of pupils, school leaders, other teachers and parents that have been identified in some studies (Scholes 2020; Conroy et al. 2013; Riddell et al. 2013). In particular, Nixon, Smith, and Fraser-Pearce (2021, 18) have highlighted that existing legal safeguards, such as the conscience clause, may lead to negative parental attitudes as they potentially support 'an intergenerational memory that RE is confessional'. On this last point regarding attitudes, the role of headteachers has emerged as particularly important.

When reflecting on the possible changes that the implementation of *CfE* from 2010 onwards would bring about Matemba (2015, 91) observed that the 'autonomy over the curriculum' that schools would have under the new guidelines would not necessarily be a positive development for RME. The principal factor sitting behind this concern was the role school leaders, chiefly headteachers, have in shaping the curricular offerings, deciding on staffing and how their decisions can directly influence the fortunes of RME in a school (Matemba 2015; Davies 2001).

Research on curriculum enactment in Scotland has highlighted that the pressures on headteachers to maximise attainment outcomes has indeed shaped decision-making around curriculum, at a time when headteachers have increased control on shaping their curriculum offering (Humes and Priestley 2021; Priestley, Biesta, and Robinson 2015). Moreover, this work has drawn attention to the continued influence of inspection on schools' curriculum design. Despite a narrative of reduced regulation in terms of specifications regarding what schools must do in terms of the curriculum, there is continued regulation of the final product via inspections (Priestley 2014). Matemba (2015, 90–91) makes this point for RME specifically and recognised the potential of inspection as a safeguard for RME provision, as 'given that legislative policy empowers the state to monitor RE, it is expected that HMIE will have a robust inspection regime for the subject'. However, Matemba was not optimistic that inspection would operate as a sufficient safeguard and suggested that 'mismatches between legislative policy and school practice will likely remain a pervasive structural problem for Scottish RE' (*ibid*: 91). The mediatory role played by the inspectorate in relation to the legal requirements surrounding RME and school practice is identified here as an important one and one that is examined further in this paper through a documentary research project that used school inspection reports as the primary source material.

Methodology

Inspection reports and other documentation, such as thematic reports have been used in other studies on RME in Scotland (Catling 2017; Matemba 2015) and beyond (Orchard 1991, 1993) and this work provided the original impetus for a systematic examination of inspection documentation. This study has therefore adopted documentary research as its methodology. Informed by Kipping, Wadhwani, and Bucheli (2013) approach, documentary research is understood as prioritising source criticism, triangulation, and the interpretation of documents. In this study, the documents are those produced and published publicly following the inspection of an individual school and, following McCulloch (2004 & 2011) and Rury (2006), this study considers such documentation as primary source material that both captures snapshots of practice and is itself evidence of educational processes. In this study, the process under examination is the role of the inspectorate with respect to the interplay between school practice and the legal requirements surrounding RME.

School Inspection Documentation

Inspection of schools in Scotland is the responsibility of Her Majesty's Inspectorate of Education (HMIE). Since 2011, HMIE has been an integral but distinct part of Education Scotland, an executive agency of the Scottish Government. Since 1996 the inspectorate has developed, published, promoted, and framed much of its work around the self-evaluation framework for schools *How Good is Our School?* (HGIOS), with the fourth and current edition published in September 2015 (Education Scotland 2015; Baxter, Grek, and Segerholm 2015).

In June 2016, it was announced by the inspectorate that the inspection of schools would now involve either a 'full' model or a 'short' model inspection (Education Scotland 2016). Schools who were to be inspected on a 'full', usually week-long, model inspection would be evaluated on the following four quality indicators (QIs) from HGIOS: QI 1.3 *Leadership of Change*; QI 2.3 *Learning, Teaching and Assessment*; QI 3.1 *Ensuring Wellbeing, Equality, and Inclusion*; and QI 3.2 *Raising Attainment and Achievement*. In addition, themes from other HGIOS QIs would also be incorporated with the 'Learning Pathways' theme from QI 2.2 *Curriculum* and aspects of QI 2.7 *Partnership* noted. In addition, schools could choose a further QI for review. Schools that were to experience the 'short' three-day model would be evaluated on two QIs. It is within these arrangements that inspections have been conducted since August 2016, with the chosen QIs for the 'short' model being changed from August 2018 to QI2.3 and QI 3.2 being the most substantial change since (Education Scotland 2018; Hutchison 2018).

The letter from the inspectorate also noted that the outputs from inspection would change. Now, an initial inspection of a school, on either the ‘full’ or ‘short’ models, normally leads to the publication of three separate but related documents on Education Scotland (n.d.) online public database. First, there is the *Inspection Report (IR)* itself, which takes the form a two- to three-page letter that provides summary statements of the strengths and areas for improvement for a school and notes what will happen next depending on the outcome of the inspection. The outcomes are noted in a table within the *IR* with each evaluated QI given an ‘evaluation’ on a six-point scale going from Excellent, to Very Good, to Good, to Satisfactory, to Weak, to Unsatisfactory. The name of the lead inspector is also noted on the *IR*. Second, there is the *Summarised Inspection Findings (SIF)* document that provides a fuller account of inspectors’ findings and judgements. This document gives information about the situation of the school, including the duration of the headteacher’s tenure and contextual socio-economic information that is compared to national averages. The *SIF* document then reports on each QI in turn, as noted above. The final document is a quantitative collation of pre-inspection questionnaire responses from staff, pupils, and parents, known as the *Evidence Report (ER)*. In cases where inspectors continue to engage with a school and publish follow-up reports due to poor performance in initial inspections, there are also *Continuing Engagement Reports (CER)* or *Follow-Up Reports (FUR)* published. These are similar in form to the *IR* but use the specific next steps detailed in original *IRs* to structure the information reported and to provide a focused update on progress.

Gathering the Documents

To identify the documentation for this study, Education Scotland’s online database was systematically searched. The database currently stores reports for a five-year period, with some older reports remaining available beyond this as they are linked to more recent follow-up visits. August 2016 was chosen as the start date for the timeframe of this study as this aligns with the introduction of the new approaches to inspection and allows for all the reports considered in this study to have been written under the same framework. At the time of writing the most recent reports provided the end date of August 2020, with the lack of any further reports explained by the cessation of inspections due to the coronavirus pandemic.

An initial search identified that between August 2016 and August 2020 eighty-five non-denominational secondary schools were inspected and had their *IRs*, *SIFs* and *ERs* published online. Each of these were then screened using ‘religious’, ‘religion’, ‘RME’, and ‘RMPS’ as the keywords to identify the schools with documentation that contained comments relating directly to RME. Some fifty-four schools had relevant documentation for analysis and were selected as the sample for this study (Table 1).

As the timeframe is very recent and all the schools, bar one, are still active, and individuals could be identified from the documents, I have anonymised the data. This is intended to minimise any potential for reputational or emotional harm (McCulloch and Richardson 2000) and led to each school and inspector in the sample being allocated a unique identifier. For example, School 1 or Inspector 4.

Table 1. Inspection documents with comment on RME by academic session.

Academic Year of Published Comment	No. of Schools with RME/RE Comments
Aug. 2016 – July 2017	15
Aug. 2017 – July 2018	16
Aug. 2018 – July 2019	9
Aug. 2019 – July 2020	13
August 2020 – July 2021	1

Analysing the Documentation

First, the documentation from the fifty-four schools was read, re-read and coded, focusing specifically on the themes of provision and references to legislation and guidance, with orientation as to possibly relevant themes offered by the research on RME in Scotland (Tight 2019). The coding was also supported via triangulation with elements of HGIOS, legislation and the government guidance surrounding RME detailed above. Through this process it quickly became clear the *ERs* were not relevant to this study and only the *IR* and *SIF* documents and one *CER* were analysed.

The coding process generated questions surrounding the extent of provision and the chronology of developments. Therefore, the data identified as being specific to RME was then extracted and tabulated to allow for a qualitative content analysis to be conducted. Building on Clarke and Baxter (2014, 493), who highlighted that we could note ‘some significant shifts and continuities in understandings and usage of words that are used by the inspectorate’ the approach used here considered the frequency of key phrases and changes in emphasis. In addition to directing attention to further relevant themes, the qualitative content analysis has also provided descriptive statistics to report more fully on the corpus.

Value and Limitations

This study draws attention to inspection documentation from Scotland, and particularly the *SIF* documents, as rich repositories of information about aspects of practice, policy implementation and curriculum enactment in Scottish schools. At a time of ongoing debate regarding curriculum and subject provision in Scotland such an approach is potentially very useful, as it enables a national picture on a focused topic to be offered (Humes and Priestley 2021).

However, the documentation is produced in the very particular context of an inspection linked directly to HGIOS that shapes priorities and perspectives, the style of writing is often reserved, and they date very quickly. Indeed, given that they are part of an improvement process it is likely, though not necessarily the case, that aspects of RME provision deemed unsatisfactory in the earlier part of the sample may have been developed more positively in recent years (Perryman 2010, 2009). Moreover, the reports do not tell the whole story of the inspection. Some elements of inspectors’ judgements, guidance and particular points of information are not communicated in the documentation (Quintelier, Vanhoof, and De Maeyer 2018). This problem is most pointedly demonstrated by highlighting that eighty-five schools were inspected during the timeframe under consideration, but thirty-one received no written comment relating to RME. There is no sure way to know the situation in these schools from these documents. However, this silence is important for what it says about the role of the inspectorate as mediator between the law and RME in schools.

Findings

Commenting on RME

With 63.5% of the eighty-five non-denominational secondary schools inspected between August 2016 and August 2020 receiving comments relating to RME in their reports, RME is an area of focus during inspections. In all but two cases, the comments were found in inspection documentation that came from ‘full’ model inspections. Thus, highlighting a lack of focus on RME in the ‘short’ model and follow-up visits and a limitation in relation to the inspectorate’s work regarding RME and the associated legal requirements. As detailed in Table 2, it is instructive to note where comments appear in the inspection documentation.

Inspectors are most likely to focus on RME in connection with *QI 3.1*. This highlights where inspectors pay attention to RME it is in relation to whether the statutory requirements are being met. As detailed in *HGIOS*, an important part of *QI 3.1* is that it ‘highlights the need for policies and

Table 2. The location of RME comments in inspection documentation.

Document Type(s)	QI/Section Combination	No. of Schools
SIF	Under QI 2.2 Only	15
	Under QI 3.1 Only	20
	Under QI 3.2 Only	1 (Short Model – School 54)
	Both QI 2.2 and QI 3.1	13
	QI 2.2, QI 3.1 and QI 2.7	1
	QI 2.2 and QI 3.2	1
SIF and IR	IR, QI 2.2 and QI 3.2	1
	IR and QI 2.2	1
CER	N/A	1

practices to be well grounded in current legislation’ (Education Scotland 2015, 48). Running a - close second *QI 2.2 Curriculum*, and Theme 3: Learning Pathways specifically, also brought inspectors to focus on RME. The focus on QI 2.2 suggests a wider focus on regulating the output of schools’ work regarding curriculum during the ongoing implementation of *CfE* (Priestley 2014). The comments relating to RME reflect this thematic focus on assessing whether RME in ‘the curriculum provides flexible pathways which lead to raising attainment . . . [and] ensure appropriate progression for all learners’ (*ibid*: 34). Here it can be pointed out that where the inspectorate does examine RME, it has the dual priorities of ensuring legislation is fulfilled and curriculum plans are progressive.

Meeting Requirements

Of the fifty-four schools who received comment on RME, only six schools over the four-year period were meeting the legal requirements, in thirty-nine they were clearly not being met and in nine it was unclear (Table 3). For the schools where it was unclear, only four had documentation that did not contain an explicit comment around provision and for the other four schools the comments pertained only to elements of provision but did not categorically identify any gaps in provision.

Across the six reports that make it clear that the schools were meeting the statutory requirements, phases such as, ‘The school is meeting its statutory duties’ (School 32) were used. In three of the six reports further comment was offered as to what was positive about the full provision, namely clear progression from BGE RME to senior qualifications (School 7), the use of SQA units, internally assessed parts of qualifications, to accredit learning in S4 (School 5) and the general quality of the provision (School 25). Highlighting a focus on creating opportunities for attainment through RME provision. Whilst this is recorded positively, with the word ‘commendably’ being used in the reports for similar efforts in School 29 and School 48, some *SIF* documents do demonstrate that the

Table 3. Breakdown of sample by school session and provision in RME.

Academic Year	Yes. Provision Meets Legal Requirements	No. Provision Does Not Meet Legal Requirements.	Unclear. The extent of compliance is unclear.	Total No. Reports per Year
Aug. 2016 – July 2017	0	15	0	15
Aug. 2017 – July 2018	6	9	1	16
Aug. 2018 – July 2019	0	7	2	9
Aug. 2019 – July 2020	0	7	6	13
Aug. 2020 – July 2021	0	1	0	1
Sample Totals	6	39	9	54

inspectorate are having to highlight that provision of certificated learning in related SQA courses in the senior phase is not a substitute for RME. School 10's *SIF* document, for example, notes that, 'as a priority, the school should address statutory requirements for RME in S4, S5 and S6 ... However young people can progress to National Qualifications'.

The report for School 31 illustrates the nature of comments received by schools where there was a lack of provision:

The statutory requirements for religious and moral education (RME) are not being met. The school should review its provision for RME to ensure it fulfils its statutory requirement and provides all young people with meaningful learning throughout the senior phase.

The most significant observation across the reports from those schools who were found not be meeting the legislative requirements was that the issue with provision was to be found in the senior phase. Provision in the senior phase was not only limited but it is evident that RME is less likely to be offered in S6 than in any other stage. In this sample, when broken down by stage of schooling, fifteen schools had no provision in S4, thirty-one had no provision in S5 and thirty-three had no provision in S6. Fifteen schools across the sample had no senior-phase provision at all. It is important to note that this is a summary across a four-year period, but it does demonstrate that compliance with legislation is not ubiquitous. Where schools are not in compliance with the law, it is likely to be a gap in provision for S5 and S6.

Reporting on Compliance

A close reading of the inspection documentation allows for insights into the inspectorate's approach to reporting on compliance. A noticeable aspect of the comments relating to the provision of RME is the variability of the language used in the reports to communicate key messages relating to the extent to which schools have or have not met the legislative requirements. The following ten key phrases appear across the sample: 'government advice'; 'government guidance'; 'entitlements'; 'legislation'; 'legislative requirement(s)'; 'national expectations'; 'national guidance'; 'statutory duty/duties'; 'statutory guidance'; and 'statutory requirements'. This range of terms is itself noteworthy as it draws attention to the variability of the inspectorate's messaging around meeting legislative requirements with respect to RME. Here, it is worth noting that 'legislation' only appears four times and only in reference to a lack of compliance in relation to the requirement to detail RME provision and the right to withdraw in school handbooks.

By mapping these terms over time, it is possible to suggest that there are shifting emphases in the messages given out by inspectors (Table 4). Most notably, the term 'statutory requirement(s)' which features in comments relating to RME more than any other of the above terms in academic years 2016–17, 2017–18 and 2018–19, disappears in session 2019–20. Whilst it is not possible to determine

Table 4. Inspection report word-choice around legislative requirements for RME, August 2016 – August 2020.

Key Term referring to RME Legislation	2016–2017	2017–2018	2018–2019	2019–2020	2020–2021
(Scottish) Government Advice	1	0	0	0	0
(Scottish) Government Guidance	0	1	0	0	0
Entitlement(s)	1	0	2	2	0
Legislation	3	1	0	0	0
Legislative Requirement (s)	3	0	0	0	0
National Expectations	2	4	0	1	0
National Guidance	0	0	0	1	0
Statutory Duty/Duties	4	2	0	0	0
Statutory Guidance	0	0	1	2	1
Statutory Requirement (s)	7	7	4	0	1

if a particular communication strategy has been mandated, there is a detectable softening here with a shift towards other terms, in the same year, that could be considered less directive, with 'requirements' making way for 'guidance' and no mention of legislative requirements since 2016–17.

An alternative explanation of the changes could be the variations introduced by different inspectors. Seven lead inspectors who had previously led on the inspections where subsequent documentation contained comments on RME were not active in session 2019–20 and after. This includes Inspector 15 who led on five reports that included a relevant comment. Moreover, three first-time commentators made their first comments in session 2019–20, with a further inspector joining the sample in 2020–21. The changes in terminology may reflect the changes in personnel and with it less specificity regarding the legislation surrounding RME. It is worth noting that in some cases, such as the report for School 54 noting the lead inspector as Patricia Watson, lead inspectors can be subject specialists in RME. However, from the sample there is no evidence to suggest that such a presence would guarantee any particularly detailed attention for RME during an inspection or that the absence of a specialist would see it ignored.

The comments concerned with whether a school has or has not met the legal expectations surrounding the provision of RME are also made in the context of discussions that concern other curriculum areas. For example, under the reporting for Q13.1 for School 17 it was noted that:

the school does not currently meet the national recommendation for physical activity in S4 and the legislative requirements for Religious and Moral Education in S5 and S6. The school has plans to address this in session 2017/18.

Here there is a clear distinction between the nature of prescription given by the inspectorate, with RME discussed with explicit reference to the 'legislative' demands and not the non-statutory requirements of Physical Education. However, as illustrated by School 2's report, this is not always the case:

Staff need to review their approaches to the provision of religious and moral education (RME), religious observance (RO) and PE to ensure that children and young people across all stages receive their full learning entitlement.

Here, there is the problem of conflating the demands on schools regarding RME, RO and PE under the broad heading of 'learning entitlement' and missing the nuance regarding the nature of the legislation surrounding RME and RO.

Reporting on schools' compliance with the legislation surrounding RME by the inspectorate is not only variable in terms of focus and specificity, but there is too a notable absence of reportage on RME provision in thirty-one schools inspected since August 2016. This can partly be explained by twenty-two of these reports stemming from 'short' model inspections that do not focus on *QI 2.2* or *QI 3.1* where RME normally receives consideration. In the 'short' model, the inspectors prioritise evaluating school leadership and specific attainment outcomes, and thus the extent of schools' compliance with statutory requirements surrounding RME are not reported, and possibly not even reviewed during inspection. The other nine schools were inspected on the 'full' model and the silences in the associated documentation, whilst not proof of a lack of attention to RME, limit the efficacy of any attempts that the inspectorate may be making to influence practice regarding RME through their reporting.

Directing School Leaders

The wording of the comments concerned with RME also draw attention to some of the work that inspectors are engaging with schools when on-site in relation to RME. An obvious, but important point, is to note that school inspectors are discussing and having conversations with schools about

RME and, most notably, these conversations are with senior leaders in schools. As School 42's comment notes, 'HM Inspectors have discussed with senior leaders the need for young people to have continuing element of PSE and RME across the senior phase'.

In addition to noting that conversations about RME are being had, the inspection documentation provides some indication as to what inspectors are asking of school leadership teams when it comes to RME provision. In School 40 inspectors communicated that 'the senior leadership team should explore ways in which it can provide a regular and appropriate experience' of RME for S5 and S6 pupils and in School 52 senior leaders were to 'undertake a review of the delivery of RME ... to ensure compliance with statutory requirements'. This later comment is reflective of much of the direction that is evident across the sample. In the more detailed report of School 16's situation the message was more strongly worded, with the school's leadership being instructed to 'take responsibility to ensure the new PT Social Studies is given the support and adequate resourcing necessary to secure sustainable improvements in RME ...'. In these, admittedly limited, directive comments there is a clear position from the inspectorate that the school leadership are responsible for the provision of RME, and the inspectors appear to direct school leaders to this responsibility and are using the inspection reports to communicate this. However, the inconsistencies in wording, clarity, and focus, as highlighted above, mitigate against the effectiveness of this work.

Discussion

Existing legislation, accompanied by government and *CfE* guidance, should mean that non-denominational schools deliver RME to all pupils. However, the first important point to highlight in this discussion is that this is clearly not the case in all schools. The findings presented in this paper highlight that, in Scottish non-denominational secondary schools, there is not universal provision in RME, that this is most noticeable in the final stages of schooling and most likely to be found to be the case for S6 and S5. This not only supports existing findings but also highlights that this dynamic is a persistent one. Education Scotland (2014) report found that in 'most' non-denominational secondary schools RME provision was lacking in the senior phase and 'only a few' had suitable provision for learners in S5 and S6 between 2012 and 2014. The findings presented here highlight a continuing aspect of legal non-compliance across non-denominational secondary schools and again draw attention to where further action may be required if meeting such legislative requirements is a priority.

The findings in this paper also engage with Matemba's (2015) pessimistic prognostication that the inspectorate would be unlikely to be an effective agent in securing a strong position for RME in schools. Matemba suggested that 'low staff capacity' would be the limitation on the inspectorate's ability to ensure that legislative requirements were being met (*ibid*, 91). However, I argue here that the findings above suggest that inconsistent approaches to and subsequent mixed messaging around the inspection of RME lead to the inspectorate being less effective in mediating the relationship between schools and the legal requirements surrounding RME. In turn, this contributes to the continued precariousness of RME provision in schools.

The inspection documentation does highlight that inspectors are drawing some schools' attention to the legislative requirements surrounding RME and that such direction is given directly to school leaders in certain cases. However, across the sample, the wording used to engage schools in thinking about the associated legislation is variable. Wording such as 'entitlements' and 'guidance' perhaps draws schools' attention more to *CfE* documentation than the specifics of the law. Moreover, in this study, some thirty-one schools that were inspected between August 2016 and August 2020 received no explicit comment on RME. Whilst this cannot be taken as evidence of a lack of engagement with RME by the inspectorate it further suggests an inconsistency of approach. A point that is supported when recognising that nine *SfE* documents that do refer to RME do so in a way that makes it difficult to ascertain the full extent of provision in the subject area.

The inspectorate's focus on attainment outcomes can also be detected across the documents in this study, and this has the potential to further confuse their messaging on RME and limit their support of school practice to maximise compliance with the law. As noted, the inspectorate generally praises the use of certification in senior phase RME but in some places is having to highlight that related SQA courses do not replace RME. By focusing on attainment and emphasising the use of RME as a space for accredited learning the inspectorate may be contributing to the blurring of some schools' understandings of what is good, legally sound, practice. Indeed, as I identified elsewhere, some practitioners may see accredited courses as the route to ensuring a place for RME in the curriculum, even if this is only through senior phase provision in SQA Religious, Moral and Philosophical Studies (RMPS) courses (Scholes, 2020). In places where staffing is limited, the choice between RME or RMPS may be necessary and a push on attainment may see RMPS win out over RME as attainment outcomes are the dominant measures of success for schools and the inspectorate.

The inspectorate's 'short' model inspections further prioritise a focus on attainment outcomes, as illustrated by the focus on QI 3.2. However, as the data presented here shows this leads to a noticeable absence of comment on, and potentially attention paid to, RME and the degree of compliance with the legal requirements. The 'short' model may enable the inspectorate to inspect schools more efficiently on some key measures and respond to the regular pressure they face in relation to the number of schools that have not been inspected (for example, Holden 2021). However, the prioritisation of attainment outcomes and away from curriculum 'input' regulation (Priestley 2014), further limits the effectiveness of inspection as a check on schools' compliance with the legal requirements surrounding RME provision. Whilst RME may be discussed it would be very unlikely to be documented (only one instance in four years from a 'short' model inspection in this study) and the sharing of practice and opportunities for system learning with respect to RME provision are further diminished.

There is a limited picture on the extent to which inspection documentation influences practice in Scottish schools, and no specific focus on RME (Baxter, Grek, and Segerholm 2015; Priestley, Biesta, and Robinson 2015). However, the international literature on the impacts of inspection on schools would suggest that inspection reports and associated publications do have some influence on shaping the development work of the particular school they pertain to and perhaps some degree of transfer to different settings (Hofer, Holzberger, and Reiss 2020; Ehren et al. 2015). The mixed messaging around the legislative requirements for RME can therefore be considered as a partial explanation for continued non-compliance in schools. In short, the inspectorates' equivocation on the specifics of the requirements and a prioritisation on attainment enable time-strapped and resource-limited school leaders to flout the legal requirements for RME, especially in the senior phase.

It is worth highlighting here the potential of the situation in Scotland to speak to broader international developments concerning RE. My previous work on practitioners' approaches to RME identified that Willaime's (2007) contention that RE's role in contemporary schooling across Europe was increasingly subsumed under the general objectives of education policy in various jurisdictions, rather than RE being seen as a unique contributor, seemed to hold true in the Scottish context. In other words, the drive to improve and increase attainment outcomes was more significant than the educational contribution RE can make to the formation of children and young people (Scholes 2020). The findings in this paper seem to further support this general point, with the limited space for RME in the senior-phase curriculum and some ambiguity, or at least interest, from the inspectorate around the role of certification, it seems that attainment is the prime mover in the Scottish context regarding RME. Regardless of the legal parameters.

Conclusions

This paper has offered an analysis of inspection documentation with the aim of suggesting something about the relationship between schools, religious education, and the law in Scotland. In sum, the inspectorate does have a mediating role in this dynamic but one that is ultimately not as

effectively executed as it could be to ensure full compliance with the relevant legislation. The question of whether full compliance, or indeed any statutory duty at all, should be prioritised is of course important and is a question that is long overdue serious debate in Scotland. Indeed, with the legislative requirements detailed above, ultimately stemming back to the 1872 Education (Scotland) Act, there is a need to reconsider the appropriateness of the laws surrounding RME provision. However, within the current framing the findings, though limited by the very nature of the documentation itself, suggest that a review of inspectorate policy in relation to RME would be desirable if the current statutory arrangements are to be seen enacted more consistently for RME.

2022 marks the fiftieth anniversary of the publication of *Moral and Religious Education in Scottish Schools*, a report better known as the *Miller Report* and one that prompted a positive transformation for the provision of RME in Scottish schools at the time (Scottish Education Department (SED) 1972). The *Millar Report* based a series of recommendations about the necessary next steps for RME provision on a thorough-going consultation of key stakeholders via a national survey of local authorities, head teachers and teachers and interviews with students. The findings in this paper direct our attention to where further work is, once again, required in the Scottish context and a national survey in line with the *Millar Report* seems timely. There is a need to engage with school leaders to better understand how they engage with legislation, curriculum design and respond to inspection with respect to RME. This is particularly urgent with regard to the senior phase wherein attainment pressures are all too dominant. Documentary sources, although limited, may be good starting points here too. For example, examining school handbooks or subsequent improvement plans following inspection could highlight how leaders respond to comments and direction. Moreover, research with pupils, particularly those in the senior phase, would help to better understand the full dynamics of RME provision and the desirability of the current legal requirements.

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