

Submitted to Ending conversion practices in Scotland: consultation  
Submitted on 2024-03-27 11:42:42

## Defining conversion practices for this legislation

1 Do you support our approach to defining conversion practices which focuses on behaviour motivated by the intention to change or suppress a person's sexual orientation or gender identity?

No

2 Please give the reason for your answer to Question 1.

Please give us your views:

We don't support the approach because we don't think there should be a prohibition on voluntary and consensual conversations around people's handling of sexuality and gender confusion whatever their age. There is no need for new legislation to tackle abuse, as the existing civil and criminal law already captures this. See e.g. Article 3 ECHR (prohibition on torture and inhumane or degrading treatment), personal injury law, the Protection from harassment Act 1997, among other statutes or common law provisions.

The proposed definition will result in criminalising certain types of consensual conversations. Someone who desperately wants to have a conversation about exploring changing their sexual orientation or gender identity should be allowed to do so. Someone who offers to have a conversation with a person who desperately wants to have such a conversation ought not to risk being convicted of a criminal offence for the conversation.

The definition assumes that sexual orientation or gender identity never change. In fact, there are thousands of people who testify that their sexual orientation or gender identity has changed. You can read some of these stories on these websites:  
<https://changedmovement.com/>; <https://xoutloud.com/>

The identification of being 'ex-gay' has been recognised in law as a protected characteristic, but the proposed definition of conversion practices discriminates against such people by denying that they even exist. [The Queen on the Application of Core Issues Trust and Transport for London & Anor., [2014] EWCA Civ 34, para. 98]

Criminalising consensual conversations will be a breach of human rights, including the right to freedom of expression (Article 10 ECHR) and, dependent on the circumstances, freedom of thought, conscience and religion (Article 9 ECHR), as well as the right to respect for privacy and family life (Article 8). The consultation document asserts that "We believe that any effort to change a person's sexual orientation or gender identity is harmful." No evidence is provided for this assertion. This assertion is not supported by the evidence. The best academic research shows that talking therapies for people wishing to change their sexual orientation are not harmful. There is no good evidence for the claim of harm. This removes the government's justification for a ban. For more about the false claims of harm from conversion practices see here:  
<https://www.freetotalk.org/talking-doesnt-harm>

The proposed definition even includes intention to "suppress another individual's sexual orientation". This could include advising someone to remain celibate/abstinent outside of heterosexual marriage. It may even criminalise advising a paedophile not to act on his sexual desires. Criminalising advising abstinence from sexual activity is perverse and a breach of human rights.

The right to both self-determination and sexual self-determination have been defined as aspects of one's private life within the meaning of Article 8 of the European Convention on Human Rights. [ECHR, Case of Van Cuck v Germany, application no. 35968/97, judgment of 12 June 2003, §77] Restrictions on the right to explore one's sexuality or gender identity cannot be interfered with disproportionately, which is what these proposals would do. The proposed approach is therefore not Human Rights Act compliant.

## Suppression

3 Do you think that legislation should cover acts or courses of behaviour intended to 'suppress' another person's sexual orientation or gender identity?

It should not be covered

4 Please give reasons for your answer to Question 3.

Please give us your views:

We do not agree because we do not think there should be any new legislation. This would criminalise "therapy or counselling that requires a person not to act on their same-sex attraction, including through celibacy." Christians believe that all people should remain celibate or abstinent outside of heterosexual marriage. This criminal offence would violate the human rights of Christians to express their religious beliefs.

No evidence is cited that it is ever harmful to someone to be advised to remain celibate or abstinent. There are many known benefits of celibacy or abstinence such as: avoiding any risk of pregnancy or of STIs, waiting for public commitment in the relationship before engaging in sexual activity, lack of guilt for sexual immorality, enabling increased focus on other life activities, enabling healing from past harmful relationships (including porn or other sexual addiction). The government should not criminalise advising sexual abstinence without any evidence to support the harm of abstinence.

Outlawing suppression would criminalise advising a paedophile not to act on his sexual desires. The same could apply to other sexual predators or abusers. Criminalising advising people not to abuse others is absurd. It could even criminalise advising some people not to engage in criminal activity. Such a ban would make some religious doctrines unlawful in practice. See e.g. Catechism of the Catholic Church, para. 2359: "Homosexual persons are called to chastity. By the virtues of self-mastery that teach them inner freedom, at times by the support of disinterested friendship, by prayer and sacramental grace, they can and should gradually and resolutely approach Christian perfection." We note for clarification that while this is the position of the Catholic Church, we, as with many other Christians, people of faith, and secular people, do not accept that sexual orientation is an identity. Nevertheless, the point still stands as to how such a religious doctrine, and teaching of it, could run afoul of conversion practices ban,

Moreover, there is an issue of legislative competency and the possibility that any proposed legislation would infringe upon a reserved legislative power therefore violating the existing devolution agreement, and/or violating rights recognised at common law.

## Overview of proposals

5 Do you support or not support an approach which uses a package of both criminal and civil measures to address conversion practices in legislation?

Do not support

6 Please give reasons for your answer to Question 5.

Please give us your views:

We don't support this approach because we do not think there should be any new legislation because it is unnecessary.

Consensual conversations should never be criminalised. To do so is a clear breach of the human rights of freedom of expression and the right to privacy. There is no evidence that conversations are so harmful that they need to be criminalised. In fact, the evidence shows that such conversations are not harmful and therefore there is no justification for criminalisation:

<https://www.freetotalk.org/talking-doesnt-harm>

The proposed legislation also fails to recognise the rights of people identifying as 'ex-gay' or as having detransitioned. Ex-gay has been recognised in law as a protected characteristic. The proposed legislation would clearly discriminate against people who have experienced change in their sexual orientation or gender identity. Telling their stories could be deemed a criminal offence. Advising others to also identify in this way would be a criminal offence.

There is no evidence for the need for Civil Protection Orders for conversion practices.

In order to be compliant with the Human Rights Act, the law in question must be accessible and foreseeable in its effects. Sunday Times, 30 Eur. Ct. H.R. (ser. A) at 31. It cannot suffer from vagueness. The "quality" of the law must clearly and precisely define the conditions and forms of any limitations on basic Convention safeguards and must be free from any arbitrary application. Olsson v. Sweden, 130 Eur. Ct. H.R. (ser. A) at 30 (1988); see also S.W. v. United Kingdom, 335 Eur. Ct. H.R. 28, 42 (1995) (discussing how the development of criminal law by the courts should be reasonably foreseeable). This is the key problem when trying to define what is and what is not a conversion practice, and which makes legislating on this issue beyond existing criminal and civil prohibitions a public law minefield.

## Offence of engaging in conversion practices: the provision of a service

7 What are your views on the proposal that the offence will address the provision of a service?

Do not support

8 Please give reasons for your answer to Question 7.

Please give us your views:

The consultation document asserts that there is "a clear medical consensus that it is not possible to bring about such a change." No evidence is provided to support this assertion which contradicts the testimonies of thousands of ex-gay people and those who have detransitioned from transgender identities. Ex-gay is recognised as a protected characteristic in law, but the proposals deny that anyone can ever have changed their sexual orientation thus denying the very existence of ex-gay people.

People who are desperately seeking someone to talk to about their sexual orientation or gender identity should not be prevented from finding such help. People who offer conversations, even free of charge, to those who desperately want them should not be criminalised for offering such a service. To do so would be a breach of the human right of freedom of expression. People who offer prayer ministry, even at no charge, to those who desperately want prayer ministry for their sexual or gender identity issues should not be criminalised. To do so would be a breach of the human right to freedom of religion.

The Scottish government has yet to provide compelling evidence that there are conversion practices being undertaken in the jurisdiction which are not currently subject to criminal law and which actually cause a level of harm that would justify new and extensive legislation. The government has also failed to provide any details on how it intends to protect the legal rights of those legitimately seeking treatment and those who carry out such therapy. A poorly worded ban will, in fact, have extensive and damaging unintended consequences to parents, teachers, therapists, pastors, minors with legitimate interests in receiving the therapy, and any number of other people who might get caught up in an overly broad ban.

Moreover, there is no scientific evidence that so-called 'conversion therapy' harms individual therapeutic clients who attend voluntarily, even if the desired goal of change in sexual attraction does not happen. See e.g.: Sullins DP (2022) Absence of Behavioral Harm Following Non-efficacious Sexual Orientation Change Efforts: A Retrospective Study of United States Sexual Minority Adults, 2016–2018. *Front. Psychol.* 13:823647. doi: 10.3389/fpsyg.2022.823647. Available at: <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.823647/full>

Therapists and counsellors as a profession are non-directive and can only work with clients who choose to seek them out.

There is no credible evidence showing widespread support for a therapy ban from ordinary therapists and counsellors. The only random survey of this profession in the UK found that most thought therapy to help clients who experience unwanted same-sex attraction should be available to them. This was admitted by the authors of the study, who favoured a ban. Evidence published by three academic gay activists back in 2009 in the *British Journal of Psychiatry* found 17% of mental health professionals in the UK had helped a client or patient diminish or change same-sex attraction. The researchers had taken a random sample from the complete membership of the British Psychological Society, British Association for Counselling and Psychotherapy, United Kingdom Council for Psychotherapy and the Royal College of Psychiatrists. Roughly three quarters of questionnaires were returned, and of those 222 professionals (17%) said they had helped clients or patients deal with unwanted same-sex attraction. Together these 222 professionals described a total of 413 clients or patients. Interestingly 35% of these were referred by their GPs but the largest number – 45% - referred themselves. The survey found that 159 (72%) quarters of those mental health professionals who had seen clients for unwanted same-sex attraction agreed that such therapy should be available to them. This is a very clear majority of those who had been approached. Only 23 (13%) believed such therapy should not be available. Interestingly a further 35 (15%) gave no answer, perhaps smelling a rat, as the survey was subsequently used to argue for banning therapy. The study is available at: <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/1471-244X-9-11>

Eventually this resulted in the publication of the Memorandum of Understanding on the subject. Available at: <https://www.psychotherapy.org.uk/wp-content/uploads/2016/09/Memorandum-of-understanding-on-conversion-therapy.pdf>

There is also the problem of the likelihood of the definition of 'conversion practices' being stretched to absurdity. First of all, the international shift from 'conversion therapy' to 'conversion practices' is one such major shift, intended to capture religious and spiritual practices and teachings, and secondly to attack parental and school responsibility and authority over children in such matters as dress codes. Thus, any social customs acknowledging widespread and traditional norms as regards sex and sexual behaviour could become reinterpreted as 'conversion practices' to be prohibited and punished.

#### Offence of engaging in conversion practices: coercive course of behaviour

9 What are your views on the proposal that the offence will address a coercive course of behaviour?

Do not support

10 Please give reasons for your answer to Question 9.

Please give us your views:

The definition used in the consultation, found at paragraph 42, is highly problematic. It assumes guilt by defining the recipient of the practice as the "victim". Terms such as "humiliation" and "intimidation" are highly subjective, and can vary immensely depending on how sensitive, vindictive or angry the complainant might be. The term "or other abuse" is woefully vague. For example, a competent adult with full capacity to consent to counselling aimed at suppressing unwanted sexual desires or gender incongruity could make a vexatious complaint of being intimidated or harassed because they are not satisfied with the outcome of the treatment. Campaigners could weaponise the loosely worded definition of "coercive behaviour" and go after well-meaning counsellors or ministries with no intent to cause harm and where no actual harm has been caused.

The proposals would inadvertently create a culture of control and micromanagement of individuals in positions of trust and care of children, adolescents, vulnerable adults and voluntary clients as well as members of religious communities. They are likely to result in a culture of surveillance of therapists, counsellors and religious leaders and volunteers, as well as parents, teachers and social workers. This is very much in line with the revelation made by GEO civil servants to POST staff in the UK Parliament in 2021, that the UK government had adopted many of the suggestions of the Ozanne Foundation's Cooper Report, which was published on 1 October 2021. We detailed below at the time how the Cooper Report effectively recommended state surveillance: [https://ozanne.foundation/cooper\\_report/](https://ozanne.foundation/cooper_report/); and <https://christianconcern.com/comment/ozanne-foundation-wants-state-surveillance-of-christian-ministries/>

The proposals will end up coercing therapists, counsellors, religious leaders and volunteers, parents, teachers and social workers to change behaviour and adjust their expression of beliefs and values accordingly to avoid criminalisation and ostracism. Of course, this is the real purpose of a ban on 'conversion practices', to be a means of intimidation.

#### Offence of engaging in conversion practices: harm

11 What are your views on the requirement that the conduct of the perpetrator must have caused the victim to suffer physical or psychological harm (Including fear, alarm or distress)?

Do not agree

12 Please give reasons for your answer to Question 11.

Please give us your views:

Any action that causes physical harm is already a criminal offence, so no new laws are required. Any action that causes psychological harm is already a criminal offence, so no new laws are required.

Psychological harm is not easy to define and may be somewhat subjective. There is a danger that someone may claim psychological harm out of spite in order to get someone convicted when at the time there was no evidence of actual harm.

The ECHR has found that in rare circumstances, psychological treatment for mental health that does not rise to the level of cruel and degrading treatment as defined by Article 3 of the Convention, may nonetheless violate Article 8 of the Convention. ECHR, *Bensaid v the United Kingdom*, application 44599/98, judgment of 06 February 2001, §46. However, that threshold is a particularly high one and the treatment would have to create sufficiently adverse effects on physical and moral integrity to engage Article 8. ECHR, *Costello-Roberts v the United Kingdom*, judgment of 25 March 1993, Series A no 247-C, pp. 60-61, § 36. As the Court has stated, such circumstances must be fairly extraordinary if the Convention is to be engaged. Any such harm would already be subject to criminal and civil law as de facto breaches of human rights. Creating a ban for perceived harm that does not reach the threshold of Articles 3 and 8, or existent criminal law, is problematic as it unduly interferes with personal freedoms in a manner which has no place in a democratic society governed by the rule of law.

### Offence of engaging in conversion practices: defence of reasonableness

13 Do you agree with the inclusion of a defence of reasonableness?

Agree

14 Please give reasons for your answer to Question 13.

Please give us your views:

It would be absurd for it to be a criminal offence to counsel someone at risk of committing suicide because they are distressed about their sexual orientation or gender identity. Nor should parents be at risk of committing a criminal offence for preventing their children from socially transitioning or from taking puberty-blocking medication. This should come under the defence of reasonableness.

A person who offers to have a conversation with someone who desperately wants to talk about their gender identity or sexual orientation ought to be able to claim a defence of reasonableness since they were only seeking to help. Of course, it should be deemed 'reasonable' for anyone to counsel someone not to engage in illegal or dangerous behaviour. It should also be deemed 'reasonable' to help someone who is suffering depression because of concerns about their sexual orientation or gender identity.

Individuals suffering from gender dysphoria have higher rates of psychological problems and psychiatric disorders, such as negative self-image, low self-esteem, adjustment disorders, depression, suicidality, and personality disorders compared to other segments of the population. D. Duisin, B. Batinic, J. Barisic, et. al., *Personality Disorders in Persons with Gender Identity Disorder*, *The Scientific World Journal*, (2014); 2014: 809058, doi: 10.1155/2014/809058. Given the clinical difficulties in diagnosing genuine cases of gender dysphoria because of the significant number of comorbidities associated with it, any law which would create a chilling effect for those clinicians seeking to determine whether the cause of gender dysphoria was something unrelated to transgenderism, would be doing actual harm to those with underlying conditions not being treated out of fear of breaking the law.

We would like to caution that defining reasonableness may prove challenging and counterproductive, as the criminal law would be used to infringe upon the good judgment of trained therapists and counsellors.

Potential therapy clients and those desirous of help from religious groups would have to wait for their mental health to deteriorate to the point of serious suicidal ideation before feeling they could access help without fear of putting therapists, counsellors or religious leaders at risk. This is hardly a satisfactory situation for mental health services or religious groups.

### Offence of engaging in conversion practices: proposed penalty

15 Do you agree with the proposed penalties for the offence of engaging in conversion practices?

Do not agree

16 Please give reasons for your answer to Question 15.

Please give us your views:

We do not agree because there are no scientific grounds for this legislation to begin with. In addition, the international history of such legislation shows that the meaning of terms has been stretched over time. This means that once a law has been passed, the groundwork has been laid for further restriction of existing liberties and responsibilities, and further erosion of quality mental healthcare and religious and personal freedoms.

It should not be a criminal offence to engage in consensual conversations. An overly broad or overzealous ban on such conversations does violence to personal liberties, privacy rights and is an affront to the rule of law. It is not clear why any new offence is needed. Harmful practices are already illegal. The supposed need for a new offence rests on false claims of harm from consensual conversations: see e.g.: <https://www.freetotalk.org/talking-doesnt-harm>

### Criminal offences – additional considerations

17 Do you agree that there should be no defence of consent for conversion practices?

No

18 Please give reasons for your answer to Question 17.

Please give us your views:

Prohibiting consensual conversations, or care, is a fundamental invasion of privacy and civil liberties which has the effect of harming the individual seeking care far more than it does the individual providing the care and/or advice. Removing the defence of consent would have the effect of ending all conversations related to confusion or distress about one's gender or sexuality apart from those advocating embracing homosexuality or transgenderism, whether it is in the best interests of the individual seeking help or not. In essence, it creates a monopoly on conversion practices which embrace LGBT identity by eliminating an alternative care.

The law allows for the defence of consent for a wide range of contentious/controversial behaviour including terminating pregnancies, unlimited alteration of physical attributes through plastic surgery, harmful behaviour such as mass alcohol or tobacco consumption. Eliminating this defence for alleged conversion practices is arbitrary and capricious.

Consensual conversations should not be criminalised. If someone desperately wants to have a conversation about their sexual orientation or gender identity they ought to be able to have it. It therefore stands to reason that it should not be a criminal offence to help someone who desperately wants to be helped.

The consultation document asserts "the fact that change is not, in fact possible." This flies in the face of all the evidence. There are thousands of people who identify as 'ex-gay' or as having 'detransitioned'. Ex-gay is a protected characteristic in law.

In addition, the question about consent does not fit with the available evidence. On 19 May 2021, Jayne Ozanne admitted to the Women and Equalities Committee of the House of Commons that consent had been given in most cases. In response to an MP's question (Q35) she said this: "Far more importantly, the vast majority of people, like me, chose willingly to go through this. We were not coerced in that sense. We did it because we truly believed it was the right thing to do."

Note that Jayne Ozanne went on to say this about coercion in legislation:

"We cannot introduce the concept of coercion. It is legally dubious and, most importantly, does not cover the vast majority of people who are going through this."

Available at: <https://committees.parliament.uk/oralevidence/2217/html/>

The dogma that informed consent is not possible was subsequently expressed in the Ozanne Foundations' Cooper Report, Section VII, published later that year on 1 October 2021.

It is clear that for the Ozanne Foundation and its supporters, such as Stonewall and others, the handling of consent in relation to banning 'conversion practices' is always being changed in reaction to the appeal to consent or lack of by different parties opposed to bans.

19 Do you have any other comments regarding the criminal offence? These are set out in parts 7 and 8 of our full consultation document.

Please give us your views:

It is interesting to see that healthcare professionals will be exempt from being accused of conversion practices if they provide a "medical treatment intended to align a persons' physical characteristics with their gender identity." These medical interventions are irreversible and harmful. The simple fact is that biological gender cannot be changed. These interventions are the real conversion practices that are actually harmful and should be criminalised. It is absurd that the Scottish government wants to allow objectively harmful and irreversible medical practices while it wants to criminalise consensual conversations that are objectively not harmful.

Moreover, it should not be an offence to advertise conversion practices. In Malta, Matthew Grech who identifies as ex-gay, is facing a criminal prosecution for sharing his story about how he left his former gay lifestyle in a radio interview. No one should be at risk of committing a criminal offence for sharing their story of how their sexual orientation or gender identity was changed. Ex-gay is a protected characteristic in law and this offence will clearly discriminate against those who identify as ex-gay.

Although criminal law is devolved to Scotland, there is a question as to how independent this consultation is from Westminster's consultation on the same topic in 2021. We say this because the GEO-funded Conversion Therapy Victims Helpline promised by Liz Truss was always intended to apply across the UK and was linked to the consultation on a ban for England and Wales.

That consultation said that responses for England and Wales would be shared with the Scottish Government.

"In the development of our approach we have liaised closely with the devolved administrations. Our approach is for England and Wales only, however, we welcome responses to this consultation from the whole of the UK and will share these with the respective administrations."

Available at: <https://www.gov.uk/government/consultations/banning-conversion-therapy/banning-conversion-therapy#how-to-respond>

Removing a person from Scotland for conversion practices

20 What are your views on it being a criminal offence to take a person out of Scotland for the purpose of subjecting them to conversion practices?

Do not support

21 Please give your reasons for your answer to Question 20.

Please give us your views:

People who wish to engage in consensual conversations without risk of prosecution should be allowed to leave Scotland in order to do so. The proposed prohibition is illogical, discriminatory and arbitrary and creates a political barrier allowing some people to go abroad freely for services not legal in Scotland, while criminalising it for others. For example, while assisted suicide is criminal in Scotland, it is not unlawful to bring someone with capacity and who consents, to a jurisdiction where it is legal to end their lives. In another example, when abortion was largely illegal in Northern Ireland, women were encouraged to go to England to end their pregnancies and organisations existed to facilitate such efforts. Criminalising assisting someone to get assistance abroad may very well breach the Convention. See e.g.: ECHR, Case of Open Door and Dublin Well Woman v Ireland, application nos. 14234/88 and 14235/88, judgment of 29 October 1992.

It is of note that the consultation document states that “[i]t would not matter whether the conversion practice was carried out.” This would make some people guilty for the mere intention of having a consensual conversation, even though the conversation itself did not actually take place. Such state of affairs would be despotic.

Would it actually be an offence to drive to England in order to have a consensual conversation? How would this be policed?

The consultation incorrectly quotes GEO-commissioned research published in 2020 claiming that ‘some victims of conversion practices’ may be taken abroad. The GEO-commissioned research does not make this allegation. At two points it talks of individuals attending events abroad but provides absolutely no evidence of having been taken by others.

The push for travel bans in relation to allegedly taking people abroad to ‘undergo conversion practices’ is not evidence-based. It is a recent dogma found in some recent pieces of legislation in other jurisdictions, specifically Victoria, Australia and Australian Capital Territory. No evidence was ever adduced to justify the clauses in these pieces of legislation. It has also been promoted by the Ozanne Foundation’s Cooper Report, which given the GEO has accepted many of its suggestions is likely to be the source for the recommendations for Scotland. The proposal to criminalise taking a person out of Scotland is simply a form of intimidation. It is unlikely to hold up legally given that Scotland is not an independent country but part of the United Kingdom. It is also unlikely to be credible in the courts given that most countries in the world do not ban ‘conversion practices’. It is also highly likely to lead to deterioration of good relations between Scotland and independent countries that do not have bans on ‘conversion practices’, which includes most UN member states. See: <https://content.legislation.vic.gov.au/sites/default/files/2021-02/21-003aa%20authorised.pdf> and <https://perma.cc/LJP9-UE4R>

22 What are your views on the proposed penalties for taking a person outside of Scotland for the purposes of conversion practices?

Do not support

23 Please explain your answer to Question 22.

Please give us your views:

We do not support such penalties because there has never been a single piece of evidence demonstrating the need for such legislation. Nor do we do not support penalties for leaving Scotland to engage in a consensual conversation. The police should not be checking whether people who drive, travel by train or fly to England may be intending to have a consensual conversation. This principle applies across the United Kingdom. The proposed penalties, at their core, punish and undermine the fundamental freedom of movement enjoyed by all Britains and Europeans alike.

Conversion practices as an aggravating factor for existing offences

24 What are your views on the proposal that conversion practices should be an aggravating factor for existing offences?

Do not support

25 Please explain your answer to Question 24.

Please give us your views:

Given that we do not support the proposed legislation we do not think the proposals should be extended to include making ‘conversion practices’ an aggravating factor. This would only encourage further stretching the meaning of ‘conversion practices’ to cover ever more social customs and behaviours.

Offences may already be aggravated by prejudice on the grounds of sexual orientation or gender identity. No new aggravating factor is needed.

The consultation document recognises that those engaging in ‘conversion practices’ in many cases will “not bear malice or ill-will towards the specific victim, but is motivated by helping them.” Yet the Scottish government still proposes that even with a motivation of helping someone conversion practices should still be an aggravating factor in a criminal offence.

The proposal will be abused by overzealous prosecutors who wish to score political points in how they charge those they suspect of conversion practices, whatever the intent or outcome of those practices may have been. It further creates this straw man of anyone who engages in this type of counselling or ministry, even with the best of intentions, or those motivated by faith, as monsters. Inevitably, because of the malleability of language, those not using coercive methods and where consent has been freely given, will get caught up in unnecessary prosecutions. Lives and reputations will be ruined.

## Consideration of Convention Rights

26 Do you have any views on the steps we have taken to ensure the proposals are compatible with rights protected by the European Convention of Human Rights?

Please give us your views :

Our international law expert has provided a legal opinion arguing that bans on 'conversion practices' amount to a breach of the European Convention of Human Rights. Available here:

<https://christianconcern.com/wp-content/uploads/2018/10/CC-Resource-Briefings-Conversion-Therapy-Ban-Opinion-Roger-Kiska-220407.pdf>

We further submit that criminalisation of consensual conversations would clearly breach of Article 10 rights to freedom of expression. That criminalisation of consensual private conversations would breach Article 8 rights to respect for private and family life. As ex-gay is recognised as a protected characteristic under the Equality Act 2010 so a law which claims that it is not possible to change sexual orientation would breach Article 14 rights not to be discriminated against.

Christians believe that sexual activity should be reserved for heterosexual marriage. Expressing this belief in a private conversation or counselling someone to abstain from engaging in sexual activity outside of heterosexual marriage could be a criminal offence under the proposed legislation and this would breach Article 9 rights to freedom of thought, conscience and religion.

Many people seek to move away from LGBT identification for reasons of conscience. Criminalising anyone who offers to help them would breach Article 9's right to freedom of conscience.

Christians should be free to clearly express their religious belief that sexual activity outside of heterosexual marriage is immoral without fear of criminalisation. Any risk of criminalisation would breach Article 10 rights to freedom of expression.

Some people want therapy for unwanted sexual attractions so that they can get married to someone of the opposite sex. Preventing them from having conversations about this would with Article 12's rights to marry.

Those who believe that it is not possible to change biological gender could be criminalised for expressing this belief and this would breach their Article 10 rights to freedom of expression. It would also breach existing domestic law which has upheld the right to hold and express gender critical beliefs. Church ministers and youth pastors would have their Article 9 and 10 rights breached if they were convicted of a criminal offence for counselling church members to follow Biblical sexual morality.

## A new civil order relating to conversion practices

27 What are your views on the purposes of the proposed conversion practices protection order?

Do not support

28 Please explain your answer to Question 27.

Please give us your views:

It is not clear on what grounds a civil protection order would be granted. The grounds could be entirely subjective. No protection order should be used to prevent someone from engaging in conversations which they desperately want to have. This would amount to a 'must stay gay' order on someone who may wish to move away from a homosexual lifestyle.

It is also not clear how people are made aware that someone has such a protection order. The whole idea of a protection order relies on the false claim that certain types of consensual conversations are harmful.

The standard being proposed of someone who 'may be at risk' or 'may suffer harm', even though they need not present evidence of having engaged in so-called conversion practices is absurd in that it can literally be applied to anyone. The Courts in England, for example, have on a number of occasions come to a judicial finding that members of the LGBT community are a de facto vulnerable minority. Applying the Scottish government's proposal to this judicial finding, anyone who identifies as LGBT would be eligible for a protection order without further procedural requirements. The potential to abuse such orders by campaigners seeking to 'out' conversion practitioners is immense and unacceptable.

The Conversion Practices Protection Order is another idea that has come from the Ozanne Foundation's Cooper Report then been inserted into the Westminster government's consultation for England and Wales in 2021. Section 6.2 of the consultation said this:

"In line with FGM Protection Orders, the government will ensure that the following groups could apply to a court for a Conversion Therapy Protection Order:

- the person who has had or is at risk of conversion therapy
- a local authority
- any other person with the permission of the court for example, the police, a teacher, a charity, a friend or a family member."

The inclusion of someone who 'is at risk' suggests that victimhood is self-defined and subjective. This is undefined and wide open to abuse. Someone who simply did not agree with a church's orthodox teaching could apply for a Protection Order to shut down the church.

## A new civil order relating to conversion practices: considerations

29 Do you agree or disagree with the proposals for who should be able to apply for a conversion practices civil order?

Do not agree

30 Please explain your answer to Question 29.

Please give us your views:

We do not agree that anyone should be able to apply for a protection order to prevent someone from engaging in consensual conversations. Now do we agree with protection orders that amount to 'must stay gay' orders on people who may desperately wish to explore other options.

The thresholds suggested to obtain an order are vague and can be applied to anyone. The orders create an existential threat to well-meaning counsellors and ministries who may be targeted by overzealous individuals on a crusade to end what they believe to be conversion practices, regardless of whether those practices are lawful. The balancing of competing rights, therefore, is unacceptably skewed by the proposal in a way which injures the Article 9 and 10 rights of those who undertake any number of professions, including prayer ministry or ordinary pastoral care.

### A new civil order relating to conversion practices : additional considerations

31 Do you have any other comments regarding the civil order? (These are set out in parts 12-14 of our full consultation document)

Please give us your views:

As we disagree with the need for this legislation we disagree with the creation of a civil order, and thus with designating certain categories of people as permitted to apply for such an order. The proposals as they stand would give the police and local authorities undue powers over the inner workings of religious groups, charities and families.

It is absurd for the government to think that it makes sense to create protection orders to prevent people from engaging in certain types of consensual conversations. The whole proposal relies on the false assumption that certain types of consensual conversations are harmful. There is no evidence to support this and so no evidence to support these protection orders. See e.g.: <https://www.freetotalk.org/talking-doesnt-harm>

### Impact assessments

32 Do you have any views on the potential impacts of the proposals in this consultation on equality by:

c. Gender reassignment, g. Religion and belief, h. Sex, i. Sexual orientation

If you wish, please expand on your answer.:

Paragraph 213 of the consultation says this:

"The Public Sector Equality Duty requires the Scottish Government and other public bodies when they are exercising their functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and people who do not share it"

The category of ex-gay persons is recognised in case law under the Equality Act 2010. The category of detransitioners and people desisting from various stages of gender reassignment is a social fact, now involving numerous individuals going to court having been let down by trans-affirming healthcare. See e.g. *Bell & Anor v The Tavistock And Portman NHS Foundation Trust* [2020] EWHC 3274, which provides a vivid and factually shocking appraisal of the health issues faced by detransitioners.

Note that under the Equality Act 2010 people who have gone down the path of gender reassignment all partake in this protected characteristic.

As such the current proposals would discriminate against these people, as well as encourage others to victimise them. The proposals would deter equality of opportunity for those people, and not contribute to fostering good relations between them and others.

The government's proposal has also not had due regard for the protected characteristic of religion or belief, especially the manifestation thereof, in relation to how any such conversion practices ban would interfere with pastoral care and Christian ministries (and those of other religions) as it applies to religious dogmas about sexuality and gender.

33 Do you have any views on the potential impacts of the proposals in this consultation on children and young people, as set out in the UN Convention on the Rights of the Child?

Please give us your views:

The United Nation's Convention on the Rights of the Child is an unincorporated treaty and therefore its application cannot undermine existing Scottish or British law, including the Human Rights Act 1998. The Courts, including the Supreme Court, have been very clear that unincorporated treaties cannot dictate British law. See e.g. *R (on the application of SC, CB and 8 children) v Secretary of State for Work and Pensions and others* [2021] UKSC 615, para. 84; and *Dance & Anor v Barts Health NHS Trust & Anor (Re Archie Battersbee)* [2022] EWCA Civ 1106, para. 36ff.

This question is unclear. The impacts of these proposals themselves are not set out in the UNCRC, which does not mention sexual orientation or gender



identity. However we note that in its previous consultations on reforming the Gender Recognition Act in Scotland, the Scottish Government has relied upon the interpretation provided in the Third Edition of the UNICEF Implementation Handbook for the UNCRC. This handbook assumes without either textual warrant or scientific evidence that sexual orientation and gender identity are inherent and unchangeable characteristics of children. It must be this interpretation that is being assumed by question 33 in the present consultation. We note that this Third Edition of the UNICEF Implementation Handbook for the UNCRC is nowhere mentioned on the face of Part 1 of the Children and Young People (Scotland) Act 2014, or that of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. This means that there is no warrant for its use in Scots law.

Taking the consultation as a whole we note that it does not have anything to say about children except for noting the recommendation of the EHRCJ Committee recommending a total ban covering children as well as adults. We therefore must assume that the current proposals would also be applied to under-18s. The promise made at the start of the consultation to protect parental rights appear not only insufficient but hollow.

All the principles that we have laid down for protecting the freedom of adults to engage in consensual conversations about problems with sexuality and gender in our response to this consultation also apply to under-18s. We note especially that our objection to travel bans in our responses to questions 22 and 23 applies to families with children.

34 Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

Please give us your views:

35 Do you have any views on potential impacts of the proposals in this consultation on communities on the Scottish islands?

Please give us your views:

36 Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

Please give us your views:

The proposals risk breaching people's privacy by the creation of protection orders involving the police and local authorities. The proposal is to criminalise certain types of private consensual conversations. This constitutes a serious breach of privacy.

The proposed law opens up the possibility of people or the police spying on citizens to see whether their private consensual conversations could possibly be described as conversion practices. This is a serious breach of privacy. The Grand Chamber of the European Court of Human Rights recently found the United Kingdom to be in breach of Article 8 in how its surveillance methods are overly broad and not in accordance with the law. Case of Big Brother Watch and Others v the United Kingdom [GC], application nos. 58170/13, 62322/14, and 24960/15, judgment of 25 May 2021. Given this ruling, it strains credulity to create new measures which would only serve to further interfere with the private lives of Scots and those residing in the jurisdiction.

37 Do you have any views on the potential impacts of the proposals in this consultation on businesses and the third sector?

Please give us your views:

Given that the third sector includes charities and therefore churches, these proposals would have an adverse impact on Christian churches in Scotland. The third sector includes hundreds of churches in Scotland. Christian churches which believe that sexual expression is reserved for heterosexual marriage would be discriminated against by this legislation and risk criminalisation for expressing their religious views.

Church pastors and youth workers would be at risk of criminalisation for counselling church members to follow biblical sexual ethics. This will seriously hinder their work in the community. There are also many Christian charities in Scotland which uphold Christian sexual ethics. All these charities would also be discriminated against by this legislation.

38 Do you have any views on the potential impacts of the proposals in this consultation on the environment?

Please give us your views:

About you

What is your name?

Name:

Tim Dieppe

What is your email address?

Email:

tim.dieppe@christianconcern.com

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:  
Christian Concern

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

## Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly satisfied

Please enter comments here.: