

Ending conversion practices in Scotland

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?

- Yes
 No X
 Don't know

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

The approach is inconsistent, incoherent and intolerant.

a) For example, it claims not to "inhibit nor criminalise the exercise of parental responsibilities and rights" (p14) but requires parents to give only non-directive advice to their children or face the possibility of prosecution. A parent who sees their child in danger, and does not warn them about, and intervene to direct them away from, that danger is failing in their responsibility of care. It would be as unloving as it would be irresponsible.

b) The consultation document holds up the conversion therapy law in the Australian state of Victoria as the model for a Scottish law. But the Australian law says that parents who refuse to support their child's request to begin treatment with puberty blockers could be guilty of conversion therapy. A similar law in Scotland could hardly be described as protecting parental rights and responsibilities. It would almost certainly breach Article 8 of the ECHR.

We also note that the UK Government does NOT support a policy that allows children to be given puberty blockers.

c) A law that invests a 10-year-old with rights that trump the wishes and direction of parents who have only the best interests of that child at heart, defies common-sense. It appears from the consultation document that parental direction, unless it is trans-affirming, could be interpreted as conversion therapy and hence liable to prosecution.

d) Evidence suggests that at least 80% of gender-questioning children will choose to identify with their natal sex by the time they emerge from puberty, if a 'wait and see' policy is adopted. Introducing trans-affirming legislation designed to silence opposition voices and parental concern, will inevitably set many more children on the path to puberty blockade, trans-sex hormone treatment and possible reassignment surgery who otherwise would have desisted naturally. Given the growing number of 'detransitioners' seeking reversal, and the findings of the Cass Report, we should surely be calling for a moratorium on this experimental treatment, not passing legislation that will promote it.

e) Pastors, like parents, are bound by their beliefs and duty, to advise and direct those in their care away from harm. Their intention is to safeguard from harm, but the approach taken in the consultation document, though laying emphasis on 'intention,' says that the giving of any direction or advice (for example, by promoting celibacy outside marriage), that seeks to support change in a person's sexual orientation or gender identity is, by definition, harmful to that person. How is intention or motivation to be measured? No test is proposed. It seems there will be no requirement to prove

that harm was intended by the person accused. The very direction they have given, of falling short of being wholly 'trans-affirming,' is presumed proof of guilt.

f) In our opinion, such a law is not required. No evidence is supplied to support the charge that coercive and horrendous sex or gender conversion practices are widespread in Scotland. We believe that existing laws capture harmful behaviour and that a new law, shaped by that in effect in Victoria, Australia, would criminalise normal, responsible practice in parenting and pastoring.

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 be covered
- It should not be covered X
- Don't know

4. Please give reasons for your answer to Question 3.

Christians believe that humans flourish, individually and in society, when they live in alignment with the will and the ways of the God who created them. Teaching and encouraging others to live this way is thus part of 'loving your neighbour.' Mainstream Christian belief and practice affirms marriage (between one man and one woman) as the only good and right context for sexual activity, views celibacy outside marriage as a good and high calling and holds that gender is revealed in a person's biology. Christians affirm that living out these beliefs promotes human flourishing.

Conscientiously held belief is a protected characteristic under the 2010 UK Equality Act (EA). Certain things follow:

- 1) To coerce Christians to collaborate with policies that undermine those convictions could be seen as discriminatory under the terms of the EA. It would also set them up with a conflict of conscience that produces moral harm.
- 2) Promoting celibacy outside marriage, whether from the pulpit or in personal pastoral settings could be interpreted as an act of suppression (para 56) that falls foul of the new law. But this would be to outlaw traditional Christian beliefs, precious to many in Scotland.
- 3) Parents who wish to encourage their children to follow God's ways must not be prosecuted for ordinary, age-appropriate acts of parenting such as preventing their child from dressing as a member of the opposite sex, or spending time on trans-promoting social media sites, or attending after-school LGBT groups or Gay Pride rallies.
- 4) Adding 'suppression' to the wording of these proposals will, as you say, 'widen the scope of the legislation' and, in our opinion, undermine further the rights of parents and increase the hostility of the environment for expressing traditional Christian beliefs.

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?

- Support
- Do not support X
- Don't know

6. Please give reasons for your answer to Question 5.

1. Existing laws already protect LGBT+ individuals from abusive language and from assault. A new law is not needed. Activists are pressing for legislation that will criminalise normal parenting and pastoral conduct. If they succeed, then people who experience unwanted same sex attraction or gender incongruence will be unable to receive the support they need and want to live their lives in accordance with their faith.

2. The consultation document fails to provide an adequate definition of activities deemed to be conversion practices. It says that the Scottish Government wants a law to cover behaviour that is not threatening or abusive (page 25), but does not make clear what behaviour is does want such a law to cover. The language is vague, too vague to be the basis for criminal or civil proceedings. Vague laws are open to elastic interpretations and inevitably create a climate of anxiety - will my behaviour be considered illegal or not? It would have a needlessly chilling effect on behaviour that is perfectly legal.

3. In its present form, the proposed legislation is not fit-for-purpose because it lacks sufficient definition. We suggest it would be improved by including a number of 'scenarios' in the 'grey area' between what a new law would consider legal and illegal. In particular, such scenarios should make clear the boundaries of parental rights and normal pastoral activities foreseen under the proposed law.

4. We are very concerned about the introduction of civil proceedings, where the bar of proof is lower than in criminal proceedings. We strongly request that the category of civil measures be dropped from the proposed legislation.

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

- Support
- Do not support X
- Don't know

8. Please give reasons for your answer to Question 7.

It is not at all clear what the consultation means by a 'service,' other than 'pseudo-medical acts.' It does seek to reassure churchgoers that it does not mean church services, nor 'informal conversations about doctrinal views' relating to sexual orientation or gender identity. But then it also says that 'coaching and instruction' could be deemed a 'service.' This language is simply too vague and leaves pastoral counsellors reaching for a thesaurus.

It is a normal part of Christian pastoral responsibility to teach, encourage and exhort believers in the ways of God. Such behaviour will sometimes include warnings against deliberately disobeying God. Christian caring sometimes includes loving rebuke and restoration. This is mainstream, not cultish; it is traditional pastoral care. It is care based on the fundamental conviction that certain behaviours are right, and others are wrong. Freedom of religion must include the freedom to teach/coach/instruct accordingly, and lovingly.

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

- Support
- Do not support X
- Don't know

10. Please give reasons for your answer to Question 9.

Coercion is normally defined as 'the use of force or threats to make someone do something they don't want to do.' Christians will always oppose coercion defined in this way. But the consultation appears to adopt a much softer definition of coercion, that we fear could easily capture the exercise of normal parental and pastoral activity.

Words such as 'pressurising' and 'controlling' are only used with a negative connotation in the consultation document, but every parent rightly applies pressure to, and control over their child for the safety and wellbeing of that child.

And every pastor seeks strongly to influence and guide those in their care to align their behaviour with their beliefs. It is possible to issue 'emphatic directives accompanied by forceful statements' without the intent to 'pressurise' people in a coercive manner, and this distinction needs to be recovered in the text.

We strongly urge the Scottish Government to more closely define the terms 'conversion practices' and 'coercion' in ways that retain the sense of 'behaviour that forces another to do something against their wishes,' but that does not inadvertently capture normal parenting and pastoral behaviour in ways that could overzealously criminalise ordinary behaviour.

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)?

- Agree
- Do not agree X
- Don't know

12. Please give reasons for your answer to Question 11.

We appreciate the intention behind the inclusion of this requirement. The problem is with the subjective nature of 'fear', 'alarm' and 'distress.' Self-reporting of 'distress' is impossible to refute. It would open the door to malicious accusations.

We suggest that for the conduct of the perpetrator to fall foul of the proposed new law by causing psychological harm, it should be necessary to prove the intent to cause fear, alarm or distress. In other words, it is the motivation behind the 'perpetrator's' conduct that should be weighed, not its effect upon the 'victim.'

Consideration of intentionality is key to finding just outcomes in many areas of life, yet para.83 expressly states that 'the proposed offence does not require it to be proven that the perpetrator intended to cause harm to the victim or to be reckless as to whether harm would occur.' As it stands, this is a charter for frivolous or malicious accusations, and will be unworkable in practice.

We strongly request that the Scottish Government think again.

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

- Agree
- Do not agree
- Don't know X

14. Please give reasons for your answer to Question 13.

It is difficult to understand from the consultation document precisely what defence is covered by the term 'objective reasonableness.' Para.121 suggests that it 'includes a broad range of potential conduct that could occur in a wide range of circumstances.' But para.122 suggests that 'there could be [only] a very small number of circumstances where it could be argued it was 'reasonable' to act in a certain way, for example, when there was another overriding motivation or the exercise of other rights is involved.'

Could it be deemed 'objectively reasonable' for a parent to forbid their biologically male, 10-year-old child from dressing as a girl to attend school? Parental rights are in question, with their overriding motivation being to protect their child from an unfounded and harmful ideology.

We also note that the UK Department of Education Guidance to Schools and Colleges concerning gender-questioning children has come out strongly against encouraging social transitioning.

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

- Agree
- Do not agree X
- Don't know

16. Please give reasons for your answer to Question 15.

The definition of what constitutes 'conversion practices' is vague and, in its present form, likely to capture legitimate parental and pastoral activities. To apply prison terms of up to 7 years, or unlimited fines, is out of all proportion for an offence with such a low threshold.

The penalties proposed are compared with those applied to criminal behaviour where intent and recklessness are clearly proven. Are the proposed penalties intended to intimidate responsible parents and pastors from holding to their convictions and guiding their children or church members in their Christian faith? If so, then, ironically, those charged with protecting people from coercion would have become the perpetrators of it.

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

- Yes
- No X
- Don't know

18. Please give reasons for your answer to Question 17.

The bias in the consultation document is never more clearly seen than in this section. It patronises those who intentionally and voluntarily seek the help and guidance of others to align

their behaviour with their religious convictions, by suggesting they are unable to differentiate manipulation, coercion and abuse from sensitivity, wisdom and kindness.

Para.133 states the Scottish Government's opinion that 'consulting a spiritual advisor' is a conversion practice act. The scenario described is 'where an individual has actively sought out support to explore or navigate struggles with their sexual orientation or gender identity.' The State has decided that it knows better than the individual concerned and will penalise those to whom that individual reaches out for help. The questions must be asked: 'Who are the perpetrators of coercion in this scenario?' 'Who is undermining personal autonomy?'

Para.135 contradicts para.133 by saying that 'non-harmful support and conversations provided to people who may feel uncomfortable with their sexual orientation or gender identity will not be criminalised.' The proposals cannot have it both ways: either consulting a spiritual advisor amounts to conversion therapy and should therefore be unlawful, or non-harmful support will not be criminalised. This is another example of the vague and ambiguous wording of the proposals, and the need for greater clarity.

Para.132 supplies no robust evidence base to support its sweeping generalisation about consent and goes on confidently to assert that 'conversion' is not, in fact, possible, and that conversion practices (still only vaguely defined) will likely cause 'serious lifelong harm.' Without supportive evidence, this is nothing more than scaremongering, and should be omitted.

We agree that it should not be possible to consent to a harmful practice, but our contention is that supportive conversations, advice, direction and prayer are not harmful and should not be characterised as such.

We respectfully request that the Scottish Government makes clear that praying with people at their request and with their consent will not be regarded as conversion therapy; that supporting people who wish to live a celibate lifestyle does not amount to conversion therapy; and that a church that provides such support and encouragement to LGBT people has nothing to fear from this legislation, if passed.

19. Do you have any other comments regarding the criminal offence as set out in Parts 8 and 9?

Christians believe that individuals and society flourish when they live according to the will and the ways of God, as expressed in traditional, mainstream Christian beliefs about sex and sexual ethics.

In their concern for the wellbeing of their children, parents will seek to inculcate these beliefs in age-appropriate ways. They will teach those beliefs in their churches and defend them in the marketplace of ideas out of their concern that all should flourish. If someone seeks their advice because they are experiencing confusion about their gender identity or sexual orientation, then naturally they will encourage them that they will flourish best by living in God's way in these (and all other) areas of their life.

Christians also respect the freewill of individuals to choose their own path and will never condone coercive or abusive behaviour.

Supporters of this Bill are frequently hostile to traditional Christian beliefs and some activists want the Bill effectively to force Christian churches to adopt LGBT ideology. They appear to want a Bill that would criminalise normal pastoral practice, intimidate pastors from teaching traditional beliefs and threaten parents who wish to bring up their children in accordance with their own beliefs - all freedoms protected by human rights legislation.

We appeal to the Scottish Government to respect these freedoms and define unambiguously just what is meant by 'conversion practices' that are not already

unlawful. In particular, please make clear the place of 'intent,' how it would be assessed, and against what yardsticks it would be measured.

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?

- Support
- Do not support X
- Don't know

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

Again, the vagueness of the draft proposals is a problem here. Of course, it would be wrong to take someone out of the country against their will. But if an adult wants to engage services that are legal in England, then would it be wrong to tell them about those services? To travel with them? To help them make the necessary bookings, etc?

In the event that an Act based on these draft proposals had been passed into law in Scotland, it is not hard to imagine that a Scottish pastor, approached by someone struggling with unwanted same sex attraction and asking for support and advice to live a celibate lifestyle, would refer that person to a colleague south of the border. Coercion is not in play. Is it intended that such a referral be unlawful?

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

- Support
- Do not support X
- Don't know

23. Please explain your answer to Question 22.

We would have every sympathy with the pastor described above (in answer to 21) who wants to help but does not want to be found guilty of unlawful behaviour by a catch-all piece of legislation, in the event that he is subsequently accused.

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

- Support
- Do not support X
- Don't know

25. Please explain your answer to Question 24.

It is our opinion that a new offence of conversion practices is not required and that existing laws will effectively capture truly unlawful behaviour.

The consultation document states that 'Creating a new statutory aggravation for conversion practices would require the courts to explicitly recognise and note the intention of the perpetrator.' But it does not state just how the courts will recognise and note the intention of the perpetrator. If 'intention' determines criminality, how is intention to be weighed in such cases?

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? We have had sight of the findings of Aidan O'Neill KC following his examination of the proposals. In his view, the proposals would impact four articles of the European Convention on Human Rights and criminalise the mainstream pastoral work of churches, mosques and synagogues and temples, in breach of Article 9.

Despite the steps taken by the Scottish Government, we remain unconvinced that simply teaching biblical truth to a same-sex attracted or trans person will not fall foul of the proposed new legislation.

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

- Support
- Do not support X
- Don't know

28. Please explain your answer to Question 28

The definition of conversion practice is already vague, the harm threshold low and the defences against everyday pastoral and parenting activities weak. It is admitted that a civil order will require a yet lower standard of proof and be easier to obtain. The effect on parents and churches of such easily obtained orders would be chilling.

As we understand it, previous harm does not have to be evidenced; the risk of possible future harm to a specific individual would be enough to obtain an order. A third-party could take out a civil order preventing someone looking for help to cope with unwanted same-sex attraction from accessing a church that offers such help. This measure is draconian, out of all proportion to possible harms. Parents or churches known to hold mainstream Christian views would be targeted by LGBT activists on a 'just in case' basis.

The introduction of civil orders to protect the wider community will set a precedent. Activists who presently campaign to persuade local authorities to create buffer zones around abortion facilities will seek civil orders to ban prayer vigils 'just in case' someone is harmed/offended/upset by their presence.

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

- Agree
- Do not agree X
- Don't know

30. Please explain your answer to Question 29.

We understand that an actual or potential victim might be reluctant to request a protection order, but opening the application process to third parties is not without risk, we suggest. Those with a political or anti-religious, activist agenda could use this approach with malicious intent, all the time masquerading as a victim support organisation.

31. Do you have any other comments regarding the civil order as set out in Parts 13 - 15?

No.

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

- a) Age
- b) Disability
- c) Gender reassignment
- d) Civil partnership
- e) Pregnancy and maternity
- f) Race
- g) Religion and belief X
- h) Sex
- i) Sexual orientation

As stated earlier, we believe that the proposals risk criminalising caring parents, responsible pastors, conscientious healthcare professionals and fair-minded teachers who hold traditional Christian beliefs; beliefs that have been foundational to the understanding of family, marriage and society in the UK for many generations.

Churches must be free to teach and promote the Christian faith, including a traditional sexual ethic based on marriage as between a man and a woman and gender as a biological binary. These are not extremist views, and it is not the role of the State to define doctrine. Churches that hold these biblical beliefs will also teach neighbour love and respect for those who do not share their own convictions.

Some who support this Bill are calling for even 'gentle and non-coercive prayer' to be included within its scope. This is disproportionate, unreasonable and, in itself, coercive. They seek to render unlawful everyday pastoral practice, not (if they exist) abusive exceptions that are already covered by existing laws. Theirs is an ideological agenda - to 'cleanse the land' of religious belief.

Para.85 states that 'Conversion practices are used to try to change or suppress a person's sexual orientation or gender identity.' Expressed in this way, such practices would not chime with Christian values. Yes, Christians believe and teach that for humans to thrive and flourish they must live in harmony with their Creator's design - a design based on sex as a biological binary and marriage as between a man and a woman. However, Christians do not believe that either same sex attraction or transgender identity define or lessen a person's innate value and dignity. Christians also recognise that we are created with freewill - that change in, or suppression of, beliefs cannot be imposed on another. Conversion practices, as defined in para.85, would therefore not characterise Christian activity. The activists have chosen the wrong target!

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?

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

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

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

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

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