

Ending conversion practices in Scotland: Consultation

Response from The Christian Institute, April 2024

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.

Christians condemn abuse of every kind and believe everyone should be protected. However, we are not convinced that the case for a new criminal offence has been made. Coercive behaviour should already be caught by existing law.

In his legal analysis of the consultation document, Aidan O’Neill KC states:

“The proposals which the Scottish Government has consulted on would, if passed into law, effect radical changes in the current law. They will also involve a marked intrusion and expansion in the powers of the State into the private realm of families, and over the expression of orthodox religious teaching by faith groups.”¹

He adds:

“if passed this legislation would criminalise parents who sought to exercise any form of parental authority or guidance in relation to their children as regards issues around sexuality and gender which conflicted with the official position now adopted by the State.

“Separately if these proposals were passed into law, then the law would have a chilling effect on the ability and willingness of religious bodies - and separately, among others, gender critical feminist activist individuals or groups - to teach and preach and lobby and proselytise, on any matters relating to sexuality and/or gender, which conflicted with any of the official positions now adopted by the State.”²

Any ban on conversion therapy must not damage the ordinary work of churches or the ability of Christian parents to raise their children in the faith. We want to be clear from the outset that we oppose a ban criminalising innocent actions in these areas in the strongest possible terms. We are on record as saying that we would seek to take legal action against any such proposals on human rights grounds, and we reiterate that here.

¹ THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”: Advice, Aidan O’Neill KC, 2 February 2024, para. 4.1

² *Ibid*, paras 5.1 and 5.2

THREAT TO THE ORDINARY WORK OF CHURCHES

Attack on protected beliefs and practice

The law must not ban praying with people who ask for prayer about sexual temptation. This would make a routine church activity illegal if the person being prayed with happened to be same-sex attracted. Leading activist Jayne Ozanne claims the orthodox concept of Christian transformation³ is “code for ‘go through conversion therapy’”.⁴ She has also called for “gentle, non-coercive prayer” to be subject to a conversion therapy ban:

*“I’m very grateful to Bishop David for his clear support for a ban, although **I would strongly refute that ‘gentle non-coercive prayer’ should be allowed.** All prayer that seeks to change or suppress someone’s innate sexuality or gender identity is deeply damaging and causes immeasurable harm, as it comes from a place – no matter how well meaning – that says who you are is unacceptable and wrong.”⁵*

Jayne Ozanne also believes that praying for someone who asks for prayer to live a celibate life in line with their deep religious convictions should be banned.⁶

Giving evidence alongside Jayne Ozanne before the Scottish Parliament’s Equalities, Human Rights and Civil Justice Committee, Revd Fiona Bennett of Augustine United Church in Edinburgh said:

“A ban on conversion therapy ... from a theological point of view – from my perspective – would affirm that all are divinely created, and that all gender identities and sexual orientations are intentional. It would be very helpful and life-affirming for all of us in the church who stand in that perspective.”⁷

Revd Bennett appears to want a conversion therapy ban that affirms her particular theology and outlaws certain traditional beliefs. But the criminal law should not be used to settle theological disputes.

Humanists UK has also called for “verbal communications” including “confessions/repentances” to be covered by a conversion therapy ban.⁸

Such demands are unreasonable and repressive, and must be rejected by the Scottish Government. It does not matter if Ozanne and others do not like our theology – they cannot criminalise it. Simply praying with a friend should not be a matter for the police, procurators fiscal and the criminal courts. The Government should be very concerned indeed if its proposals create any risk of innocent Christians being dragged through the criminal justice system for praying ‘the wrong kind of prayer’. Even if they are not ultimately convicted, their human rights will have been breached and the law will have been brought into disrepute.

³ Transformation is a fundamental part of Christianity. The word appears in the New Testament to describe what Christian life looks like (for example in 2 Corinthians 3:18 and Romans 12:2).

⁴ LBC post, X, 11 February 2023, see <https://twitter.com/LBC/status/1624382960588685313?s=20&t=9PpWkrL1VnxBN8xkvlnL1A> as at 21 March 2024; *Let Us Pray*, 24 March 2023, see <https://letuspray.uk/latest/ozanne-christian-transformation-is-code-for-conversion-therapy> as at 21 March 2024

⁵ *The Guardian online*, 9 June 2021, see <https://www.theguardian.com/world/2021/jun/09/conversion-practices-church-of-england-bishop-backs-prosecution> as at 21 March 2024 [Emphasis added]

⁶ *Premier Christianity*, 1 December 2021, see <https://www.premierchristianity.com/interviews/jayne-ozanne-the-christian-campaigner-explains-why-she-wants-to-ban-hate-prayer/5807.article> as at 21 March 2024

⁷ Scottish Parliament, Official Report, 2 November 2021, col. 6

⁸ *Government Equalities Office Consultation: Banning Conversion Therapy – Response from LGBT Humanists*, LGBT Humanists UK, January 2022, page 7

The courts have consistently held that mainstream traditional Christian beliefs on marriage and sexual ethics are protected by equality and human rights law and worthy of respect in a democratic society.⁹

Teaching, preaching, prayer and pastoral advice are protected expressions of these beliefs. Clearly there are theological liberals who do not agree with the historic position of churches on sexual ethics and would like to see these beliefs eradicated. Rather than focusing on protecting people from pseudo-medical abuses, many proponents of a ban are now openly attacking churches for their mainstream beliefs about sexual ethics and salvation. They are entitled to their own beliefs, but they are not entitled to use the criminal law to settle their theological arguments and punish those who disagree with them. Churches that teach the biblical sexual ethic also teach that we must love our neighbour. They welcome LGBT people into their churches just as they would welcome anyone else. They are not a threat to LGBT people and do not deserve to be criminalised as if they were.

A central Christian doctrine is the universal sinfulness of the human race. This sinfulness affects every aspect of our lives, including our sexuality and our understanding of maleness and femaleness. In the Gospel of Matthew 19:4-5, Christ says:

“Have you not read that he who created them from the beginning made them male and female, and said, ‘Therefore a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh’?”

For a Christian to embrace same-sex marriage or the idea that a man can become a woman or vice versa, requires them to reject this clear teaching and the many other parts of Scripture which affirm it.

Our sin manifests in many ways. The Ten Commandments, for example, warn against idolatry, blasphemy, violence, adultery, stealing, dishonesty and covetousness. It may be unfashionable to say so, but sexual conduct is there on the list. The Bible is abundantly clear that the only right context for sexual expression is marriage between a man and a woman. It condemns adultery and sex before marriage.

It is within this context that Christians believe same-sex sexual acts are sinful. This orthodox Christian belief is, as we have said, held by the courts to be worthy of respect in a democratic society. The manifestation of this belief in teaching, practice and observance is also protected by human rights law. Contrary to the caricatures, Christians do not believe they are better than other people. We believe we all sin in many ways, including in relation to our sexuality, whether we are same-sex attracted or not. The refrain of the Lord’s Prayer “forgive us our sins” tells us that we all fall short in the sight of God. There is much more we could say about this, but suffice it to say this is a deeply theological issue. And it is not the job of the State to dictate doctrine. A conversion therapy law must not criminalise Christian beliefs.

Our concerns about the dangers of getting legislation like this wrong have been echoed by the UK Equality and Human Rights Commission. It said:

“The legislation must be carefully drafted in order...to avoid criminalising mainstream religious practice such as preaching, teaching and praying about sexual ethics.” (para. 3)

⁹ *Forstater v CGD Europe and Others* [2021] at para 116; *Judicial Review by The Christian Institute and others* [2007] NIQB 66 at para. 50; *Johns v Derby City Council* [2011] EWHC 375 paras. 4 and 47; *Ferguson v Kintail Trustees Ltd and Agnes Lawrie Addie Shonaig MacPherson* [2021] 4103321/2020 para. 188

“Encouraging people to comply with religious doctrine that requires refraining from certain types of sexual activity should not fall within the definition of conversion therapy”. (para. 6)

“...conversion therapy will need to be carefully defined in any legislation in order to ensure that harmful practices are caught whilst mainstream religious practices such as preaching, teaching and praying about sexual ethics or gender roles, including in relation to children and young people under 18, are not criminalised”. (para. 16)¹⁰

Language of conversion

Activists have popularised the term ‘conversion practices’. We are concerned by the use of ‘conversion’ in this context. The Bible uses “conversion” to describe becoming a follower of Jesus Christ (e.g. Acts 15:3). Central to conversion is faith in Christ and repentance from sin, and gospel preaching often involves challenging specific sins. The use of the word conversion appears designed – by those who do not believe that Christianity requires repentance from sin, including sexual sin – to attack the Christian doctrine of conversion. Again, the criminal law must not take sides in a theological dispute. The Scottish Government must therefore find an alternative to the term ‘conversion’ to make clear that it is not singling out or discriminating against Christians.

WHAT ARE THE ‘GAPS IN THE LAW’ THAT HAVE BEEN IDENTIFIED?

There is huge uncertainty around what conduct the Scottish Government is actually targeting with the new conversion practices offence. The consultation document says “not all types of conversion practices can be addressed by existing offences” (para. 74). However, the examples it gives of behaviour that is currently lawful that it believes should be criminalised are too general to be helpful. It refers to “talking therapy” and “coaching someone to change or suppress their sexual orientation or gender identity”.

In UK jurisprudence and in international human rights law, the principle of certainty is vital for those whose conduct is to be constrained by the criminal law. Given that the proposals would result in criminal prosecutions for actions taking place within the family and within religious settings, we would have expected detailed examples of the kind of behaviour that the Government does wish to criminalise, and equally detailed examples of behaviour which it does not wish to criminalise. Without such examples, the proposals are likely to remain fundamentally unclear.

The consultation paper’s discussion of existing law (Part 7) is weak. The table on page 25 only considers stalking, threatening or abusive behaviour and domestic abuse. This suggests that there are only three existing laws applicable to non-physical conversion practices, and the Government concludes that they provide insufficient coverage. Yet in his legal analysis, Aidan O’Neill KC states:

“...it is *already* the case in Scotland that conduct towards another which constitutes degrading treatment and which results in the infliction of psychological suffering on that other, is already illegal and in breach of the criminal law. Such conduct could include insulting, degrading or belittling persons on account of their sexual orientation.

...

It is also a civil wrong – actionable before the civil courts – for private individuals to inflict on another inhuman and degrading treatment (which may include physical abuse and emotional abuse) in contravention of the standards set out in Article 3 ECHR. And individuals who have been subject to conduct which amounts to harassment and/or domestic abuse also have the

¹⁰ Response submitted to UK Government consultation: *Banning conversion therapy*, Equality and Human Rights Commission, January 2022

right to take a civil action before the courts to obtain among other remedies a non-harassment order, breach of which constitutes a criminal offence.”¹¹

This confirms that the new proposals are unnecessary. In proposing to go further than the current law, the Scottish Government is putting forward something with an extraordinary reach. After considering paras 74-75 of the consultation, Aidan O’Neill comments:

“The Scottish Government is here indicating that it is intending to promote a Bill which will criminalise what it describes as ‘generally reasonable *and non-harmful* everyday actions’ (such as talking therapy or counselling). Such behaviour will be criminalised in situations where there is *no* subjective intention to cause another fear or alarm, and indeed where no fear or alarm results.”¹²

LACK OF EVIDENCE CONVERSION PRACTICES ARE TAKING PLACE IN SCOTLAND

The consultation document admits that with conversion practices “evidence is often based on self-reporting”. Indeed, “anecdotal” evidence or similar phrases such as reports from those with “lived experience” are referenced at least 10 times in the document. This is a completely unacceptable basis for criminal law.

Such evidence as the consultation document does cite is deeply flawed. It claims that the UK Government’s National LGBT Survey in 2017 “gives us a picture of the prevalence of conversion practices in the UK” (para. 24). Yet the survey included no definition of conversion therapy. The relevant questions simply asked “Have you ever had so-called ‘conversion’ or ‘reparative’ therapy in an attempt to ‘cure’ you of being LGBT?” and “Have you ever been offered this so-called ‘conversion’ or ‘reparative’ therapy?”¹³ Respondents were left to interpret the key terms themselves. An analysis commissioned from Coventry University by the Westminster Government (“the Coventry study”) observed: “respondents will have responded with their own view of what they consider to be conversion therapy”.¹⁴ Without a definition of the key term, it is impossible to know what the respondents were considering to be “conversion therapy”. As such, there is no way of telling if it was covered by existing law or, if it was not, whether it deserves to be legislated against. The Equality and Human Rights Commission noted in its response to the Westminster consultation that this flaw means there are “significant challenges in drawing conclusions from the survey”.¹⁵

Respondents to the National LGBT Survey did not have to state where or when they had experienced these undefined practices: it could have been in other countries or decades ago. The Coventry study pointed out that, because the survey did not ask when the alleged conversion practice took place, “some of the findings are based on older evidence and therefore may not be reflective of current practice”.¹⁶ The possibility that the experiences were in the distant past is increased by the fact that the highest figures for reported experience of conversion therapy were amongst those aged over 55. This does not establish that conversion therapy is a current problem in Scotland. The fact that it was

¹¹ *THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”*: Advice, Aidan O’Neill KC, 2 February 2024, paras 2.26 and 2.29

¹² *Ibid*, para. 3.10

¹³ *Ending Conversion Practices in Scotland: A Scottish Government Consultation*, Scottish Government, December 2023, paras 22, 23, 29, 36, 39, 42, 100, 143, 167, 184, 206

¹⁴ *The prevalence of conversion therapy in the UK*, Government Equalities Office, 29 October 2021

¹⁵ *Response submitted to UK Government consultation: Banning conversion therapy*, Equality and Human Rights Commission, January 2022, page 5

¹⁶ *Conversion therapy: an evidence assessment and qualitative study*, Government Equalities Office, 29 October 2021

described by the Coventry study as the “best evidence available on the extent of conversion therapy in the UK” demonstrates the paucity of the evidence base.¹⁷

The sample for the survey was also not representative. It was self-selected, with respondents being drawn from LGBT events and online. The Coventry study concluded that it was “not representative of all LGBT people in the UK”.¹⁸

The consultation also references the work of the Expert Advisory Group on Ending Conversion Practices. This was hardly an impartial or objective group. It describes itself as “trans-inclusive” and drew on input from: “LGBT+ organisations, faith and belief organisations and communities, [...] mental health professionals, legal professionals, human rights advocates, academics and people with personal lived experience of conversion practices.”¹⁹ Input from desisters/detransitioners or from parents of trans-identified children and young people is not mentioned. Clinicians who are critical of puberty blockers as a treatment for gender dysphoria or who are sceptical about the evidence for the gender affirmation model do not appear to have been asked to contribute.

The four members of the ‘Expert Group’ appointed by the Scottish Government to be “representative” of a religious viewpoint and perspective were identified as being: Pritpal Bhullar of Sarbat LGBT+ Sikhs; the Very Reverend Dr Susan Brown of the Church of Scotland; Rev Jide Macaulay of House of Rainbow; and Reverend Elder Maxwell Reay of Metropolitan Community Church. The Scottish Catholic Bishops’ Conference and the Free Church of Scotland subsequently made a joint public complaint about the “religious” representation on this group, noting:

“[A]ll of those religious representatives had previously pledged their support for a broad ban on conversion practices, whereas religious organisations that had expressed reservations about a broad ban were not included in the group. The Free Church of Scotland and the Catholic Bishops’ Conference of Scotland are opposed to abusive and coercive conversion practices; however, we have expressed concerns about the impact a broad ban would have on religious freedom and the normal activities of churches (especially prayer).”²⁰

FAILURE TO ACHIEVE OBJECTIVES OF INTRODUCING LEGISLATION

The objectives of introducing legislation on page 14 include the important aims to “respect freedom of religion and expression” and “[n]ot inhibit nor criminalise the exercise of parental responsibilities and rights”. However, the proposals are too broad and far-reaching to achieve these objectives.

The draft clauses also fail, by some distance, in the aim to “Provide clarity about what actions are permissible and what are not”. As Aidan O’Neill KC observes:

“This is perhaps best described as ‘jellyfish legislation’. The concepts it uses are impossible to grasp; its limits are wholly undefined; it contains a sting in the tail in the form of criminal sanction of up to 7 years and unlimited fines; and thus it will have an undoubted and intended effect of dissuading persons from ever even entering the now murky waters of what may or may not constitute unlawful ‘conversion practices’.”²¹

¹⁷ *The prevalence of conversion therapy in the UK*, Government Equalities Office, 29 October 2021

¹⁸ *Conversion therapy: an evidence assessment and qualitative study*, Government Equalities Office, 29 October 2021

¹⁹ *Expert Advisory Group on Ending Conversion Practices Report and Recommendations*, Scottish Government, October 2022, pages 3 and 9

²⁰ *The Times online*, 7 October 2022, see <https://www.thetimes.co.uk/article/times-letters-boosting-benefits-could-avoid-real-hardship-2gwhb295b> as at 21 March 2024

²¹ *THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to*

Sadly, the proposals betray a distinct lack of religious literacy: they fail to appreciate how churches (and other religious organisations) work. They also lack understanding of how many parents of strong conviction, religious or otherwise, will seek to raise their children.

For example, paragraph 46 tries to give reassurances about the scope of the plans:

“the legislation does not apply to non-directive or non-coercive discussions, questioning, guidance or general parental direction, guidance, controls and restrictions. The distinction here is that these allow the individual to come to their own decision, whatever that may be, and does not direct them to a particular pre-determined sexual orientation or gender identity that is considered ‘preferable’. Such instances will not be considered a conversion practice within the legislation.”

This is no comfort at all to religious organisations and many parents, whose discussions on these topics will be inherently and necessarily directive. Parents and religious leaders who believe someone they care for is about to make a mistake will warn against it. That is their job. Expecting them to merely offer suggestions and pretend that what the other person does is a matter of indifference is utterly unrealistic and unreasonable.

Examining the proposals in detail, Aidan O’Neill KC observes:

“This means that ‘any discussions, questioning, guidance or general parental direction, guidance, controls and restrictions’ in relation to a person’s sexuality and/or their claimed or presumed gender identity which the Scottish Government deems to be ‘directive’ or ‘coercive’ will be criminalised. Thus *all* and *any* attempt by parents to direct their children towards any sexual orientation or gender identity which a child’s parents consider to be ‘preferable’ will be outlawed in Scotland under this legislation. This is on the basis that under the proposed legislation such parental intervention will be regarded as evidencing an intention to change or suppress their child’s identification or development of their own sexual orientation or gender identity (of which they may still be questioning or unsure).”²²

Failure to respect freedom of religion

Most religions make exclusive claims about truth based on a body of teaching to which followers must adhere. In traditional religions at least, any religious advice will be determined by that teaching. Such advice ought to be communicated sensitively and with respect for the person and their freedom of choice, but, unlike therapy, it is not ‘non-directive’ or ‘exploratory’. Religious people invite other people to ‘convert’ to their religion. They invite co-religionists to embrace their interpretation of shared sacred texts. Places of worship urge their followers to think, speak and act in certain ways that to the hostile outsider might appear to constitute “suppression”. Therapists, on the other hand, help clients to explore their feelings and experiences through the lens of their own values, whatever they may be, and are professionally obliged to keep their own beliefs and opinions to themselves.

The major world religions, including Judaism, Islam and Christianity, teach doctrines that are likely to fall foul of the proposals. It could criminalise the giving of harmless religious advice that is in line with such beliefs.

Orthodox, mainstream biblical teaching is certainly that it is ‘preferable’ to live according to your birth sex and to only engage in sexual activity within a heterosexual marriage. Christian ministers

individuals’ “sexual orientation” and separately to their “gender identity”: Advice, Aidan O’Neill KC, 2 February 2024, para. 5.3

²² *Ibid*, para. 3.26

seeking to faithfully reflect its teachings will most definitely be ‘directive’. They will encourage those who ask their advice to follow these teachings. The consultation proposals risk banning religious teaching, prayer or other talking directed at an individual or group of individuals if it does not accept their view of their gender identity or sexual ethics.²³ This is extremely repressive.

Cutting across parenting

Language about being ‘non-directive’ makes sense when applied to talking therapies such as cognitive behaviour therapy, where the therapist must be non-directional. But applying such language to family life could have very troubling implications for parenting. The use of this language reflects the profound lack of religious literacy in the proposals, and the astonishing lack of consideration of rights under Article 8 of the European Convention on Human Rights (ECHR). Parents must not be at risk of prosecution simply because they direct their children to the path they believe is best for them. This is what parents do. It is an inevitable part of exercising parental responsibility, which the consultation purports to want to protect. Parents who fail to provide their children with direction in life are, arguably, neglecting them. And, in a free society, there will always be a wide spectrum of views on what constitutes ‘the right path’. The Supreme Court has emphasised the importance under Article 8 of families being “left to bring up their children in their own way”.²⁴

The proposed ban even risks limiting the right of parents to protect their children from harm. Parents who talk informally to their own children about why they do not think they should take life-changing drugs, such as experimental puberty blockers, could be accused of ‘conversion therapy’ if someone else regards the child as trans. If informal parental advice that fails to affirm claims of ‘trans’ identity were banned, this would be a gross invasion into private family life. It would also mean that even more young people experiencing crises over their gender identity (often caused by misleading and manipulative online material) would be pushed down a path of lifelong medicalisation and irreversible surgery. And those who do later regret changing gender – detransitioners – could risk prosecution for advising others not to repeat their mistakes. This would be an appalling state of affairs.

A disproportionately large percentage of children diagnosed with gender dysphoria also have Autism Spectrum Disorder. Many of these children are heavily dependent on their parents’ judgement. A ban reaching into the home would severely limit the ability of parents to help their own children.

Requiring parents to be non-directive when they speak to their children about some of life’s biggest issues is a fundamental attack on their role. The job of parents includes instructing and guiding children on the path they believe to be best for them. They will base their decisions on what they know about the child, and also their wider experiences and outlook. This applies in every area of life, and would extend to them counselling, for example, a trans-identifying teenager. If a 14-year-old girl suddenly begins identifying as a boy, having never said anything about it or shown any indications in the past, it would be natural for many parents to have serious reservations – particularly if puberty blockers were in the discussion. This does not have to be based on any religious or gender-critical belief, but could be simply a matter of safety concerns.

Yet Aidan O’Neill KC states:

“...these proposals could also criminalise parents who, lovingly and in good faith and in accordance with their own best judgment and conscience, seek to caution and direct their

²³ *Report on Petition PE1817: End Conversion Therapy*, Equalities, Human Rights and Civil Justice Committee, Session 6, SP Paper 88, January 2022

²⁴ *The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)* [2016] UKSC 51, para. 73

children against acting on any stated intention to embark on ‘gender affirmatory’/‘gender transition’ treatment in respect of their currently experienced discomfort or dysphoria in relation to their sex and/or sexuality.”²⁵

This ‘treatment’ is increasingly controversial. Objecting to it should not be a breach of the criminal law. Prof Carl Heneghan, Director of the Centre of Evidence-based Medicine at the University of Oxford, called the use of puberty blockers (Gonadotropin-releasing hormone (GnRH) analogues) for gender dysphoria “an unregulated live experiment on children”.²⁶

Puberty blockers have been prescribed off-label in recent years for children diagnosed with gender dysphoria. This became common practice through the Tavistock’s Gender Identity Development Service (GIDS). The capture of GIDS by radical gender ideology has been starkly exposed by whistle-blowers and the BBC Newsnight investigative journalist Hannah Barnes.²⁷ And NHS England has recently confirmed its new policy of not routinely giving puberty blockers to children, precisely because of the uncertainty around such off-label use of the medication and its consequences.²⁸

Having previously claimed “The effects of treatment with GnRH analogues are considered to be fully reversible, so treatment can usually be stopped at any time”²⁹, the NHS website now admits to uncertainty:

“Puberty blockers (gonadotrophin-releasing hormone analogues) are not available to children and young people for gender incongruence or gender dysphoria **because there is not enough evidence of safety and clinical effectiveness.**”³⁰

Dr Hilary Cass, former president of the Royal College of Paediatrics and Child Health, has noted there is “very limited research on the sexual, cognitive or broader developmental outcomes” of puberty blocker use. She warned that the blockers may permanently disrupt adolescents’ brain maturation, potentially irreversibly rewiring neural circuits:

*“It is known that adolescence is a period of significant changes in brain structure, function and connectivity. During this period, the brain strengthens some connections (myelination) and cuts back on others (synaptic pruning). There is maturation and development of frontal lobe functions which control decision making, emotional regulation, judgement and planning ability. Animal research suggests that this development is partially driven by the pubertal sex hormones, but it is unclear whether the same is true in humans. If pubertal sex hormones are essential to these brain maturation processes, this raises a secondary question of whether there is a critical time window for the processes to take place, or whether catch up is possible when oestrogen or testosterone is introduced later.”*³¹

²⁵ THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”: Advice, Aidan O’Neill KC, 2 February 2024, para. 3.31

²⁶ *The Times online*, 8 April 2019, see <https://www.thetimes.co.uk/article/calls-to-end-transgender-experiment-on-children-k792rfj7d> as at 21 March 2024

²⁷ Barnes, H, *Time to Think: The Inside Story of the Collapse of the Tavistock’s Gender Service for Children*, Swift Press, 2023

²⁸ *Clinical Policy: Puberty suppressing hormones (PSH) for children and young people who have gender incongruence / gender dysphoria [1927]*, NHS England, 12 March 2024

²⁹ ‘Gender dysphoria: Treatment’, *NHS Online*, see <https://web.archive.org/web/20200502223746/https://www.nhs.uk/conditions/gender-dysphoria/treatment/> as at 2 May 2020 [Accessed via Internet Archive]

³⁰ ‘Gender dysphoria: Treatment’, *NHS Online*, see <https://www.nhs.uk/conditions/gender-dysphoria/treatment/> as at 21 March 2024 [Emphasis added]

³¹ *Independent review of gender identity services for children and young people: Interim report*, The Cass Review, February 2022, pages 19 and 38

Consultant psychiatrist Dr David Bell notes that puberty blockers cause “considerable damage”, with “serious concerns about bone mineralisation and long-term cognitive effects”. He has cited risks of long-term heart disease, weak bones and compromised brain development.³²

Since there are sufficient concerns for a medical body of such significance to restrict the use of puberty blockers, there must be no question of a parent with similar objections falling foul of the criminal law.

There are also significant safety concerns around girls using breast binders. These can cause damage to developing breast tissue, as well as damaging the skeleton, sometimes resulting in rib fractures, and restricting breathing.³³ Again, parents should be able to object without fear of falling foul of the law.

Even where puberty blockers or breast binders are not in the picture, it should be well within a parent’s rights not to go along with their child’s claimed identity. The Cass Review interim report was clear that social transition is not a neutral act.³⁴ Accepting changes of name, pronouns, clothing and so on could be damaging, perpetuating the child’s gender confusion. Those who believe sex is defined by biology and is immutable do not accept the concept of ‘gender identity’ as a substitute for sex.³⁵ This is a protected belief for the purpose of the Equality Act 2010.³⁶ Some would argue that children who say their gender identity is at odds with their biological sex should be encouraged to accept the bodies they were born with rather than seeking to change them through hormonal or surgical intervention. Parents who earnestly believe this, whether based on religious conviction or not, will seek to do everything in their power to persuade their child of it. They will believe that continuing to identify as the opposite sex will be damaging for them in a multitude of ways. They will not be motivated by malice or hatred, but love. They will not use force or violence, but might well deploy such parental authority as they can to restrict the child’s access to influences, whether online or offline, that they feel are contributing to their confusion. It is not the role of the State to interfere in this area. Again, as the Supreme Court has stated: “Within limits, families must be left to bring up their children in their own way.”³⁷

Of course, “within limits” means that this freedom does not extend to abuse, neglect or other maltreatment of a child. But nothing in the consultation document – in fact, nothing ever said by advocates of a new law in the UK – comes close to showing evidence of genuinely damaging conversion practices going on that deserve to be criminalised but are not covered by existing law. We pose the key question: is there an actual, real-world example of specific behaviour where the police were unable to act?

³² *The Telegraph online*, 26 November 2023, see <https://www.telegraph.co.uk/news/2023/11/26/use-of-puberty-blockers-doubled-since-nhs-clampdown/> as at 21 March 2024

³³ Peitzmeier, S M, Silberholz, J, Gardner, I et al, ‘Time to First Onset of Chest Binding-Related Symptoms in Transgender Youth’, *Pediatrics*, 147(3), 2021, pages 2 and 4

³⁴ *Independent review of gender identity services for children and young people: Interim report*, The Cass Review, February 2022, pages 62-63

³⁵ *The Guardian online*, 30 September 2020, see <https://www.theguardian.com/commentisfree/2020/sep/30/feminists-anti-trans-idea-sex-gender-oppression> as at 21 March 2024; *Forstater v CGD Europe and Others* [2021], para. 1

³⁶ See, for example, *Forstater v CGD Europe and Others* [2021]

³⁷ *The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)* [2016] UKSC 51, para. 73

Threatening to free speech

As we have said, the gap in the law identified by the consultation is wholly unconvincing. The table on page 25 only considers three provisions. The text around it, in its reference to “talking therapy” (para. 74) and admission that physical acts are already covered by existing laws (para. 73), clearly demonstrates that regulating speech is in view.

The Free Speech Union has warned that, given the vagueness of the term ‘conversion therapy’, a new law “would inevitably have a chilling effect on free speech”.³⁸ The right to freedom of expression under the European Convention on Human Rights includes things that “offend, shock or disturb”.³⁹ UK case law confirms that free speech encompasses “not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence”.⁴⁰

Warning from Victoria, Australia

The consultation document evidently takes a favourable view of the conversion therapy law in the Australian state of Victoria. Yet official guidance from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), which shares responsibility with the police for enforcement, gives instructions on how religious people should pray. It says prayers “about a person’s brokenness or need to repent” are probably illegal. It may be a crime for a religious leader to have a one-to-one conversation with a member of their congregation in which they urge them to practice celibacy rather than act on their feelings of same-sex attraction. Until changed recently following negative scrutiny, the guidance also said a parent “refusing to support” their child receiving puberty-blocking drugs was guilty of conversion therapy. The guidance continues to say that refusing to allow a trans grandparent to see their grandchild could be unlawful conversion therapy.⁴¹ One individual was contacted by the VEOHRC over a letter written to a younger family member urging them not to ‘transition’.⁴²

Relatives have described the chilling effect that the Victorian law has had on them and their relationships with their children. They fear prosecution if they do anything to stop their gender-confused children pursuing potentially irreversible medical procedures. They are described as having formed a “clandestine network” for mutual support, while others are said to be too scared even to talk to one another. Professional counsellors are afraid to do anything that might be perceived as anything less than ‘affirming’. One mother said she had to go outside Victoria to find a therapist willing to address her teenage daughter’s mental health and autism, rather than just affirming her gender dysphoria.⁴³ Another expressed fear that it is “illegal for me to ask my daughter to really think about why she might feel the way she does” and that her daughter might transition because she can’t be questioned.⁴⁴

³⁸ *Free Speech Union’s response to the Government’s consultation about banning conversion therapy*, The Free Speech Union, 31 March 2022

³⁹ *Hate speech*, European Court of Human Rights, November 2023

⁴⁰ *Redmond-Bate v DPP* [2000] EWHC Admin 733, para. 20

⁴¹ *For people of faith, professionals and other communities*, Victorian Equal Opportunity & Human Rights Commission, see <https://www.humanrights.vic.gov.au/change-or-suppression-practices/for-professionals-institutions-and-communities/> as at 26 March 2024; *Have you experienced a change or suppression practice?*, Victorian Equal Opportunity & Human Rights Commission, see <https://www.humanrights.vic.gov.au/change-or-suppression-practices/have-you-experienced-a-change-or-suppression-practice/> as at 21 March 2024

⁴² Story told to The Christian Institute on condition of anonymity.

⁴³ *Mail Online*, 14 August 2022, see <https://www.dailymail.co.uk/news/article-11101415/Parents-counsellors-face-prosecution-gender-transition-children-suppression-law.html> as at 21 March 2024

⁴⁴ *Women’s Forum Australia*, ‘Mother Pens Powerful Letter Slamming Victoria’s Harmful Approach to Gender Confused Teens’, 9 September 2022, see <https://www.womensforumaustralia.org/mother-pens-powerful-letter-slamming-victorias-harmful-approach-to-gender-confused-teens> as at 21 March 2024

The Scottish Government may consider these consequences of a conversion therapy law to be entirely legitimate. However, Jason Coppel KC concluded that Victoria-style provisions would, if introduced in the UK, breach at least four articles of the European Convention on Human Rights.⁴⁵ Official guidance on the ‘correct’ way to pray is not a good look for any democratic society.

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.*

The consultation is open that suppression is included with the express intention to “widen the scope of [the] legislation” (para. 56).

Aidan O’Neill KC states:

“Suppression is clearly a key term in this legislation. Yet the draft legislation contains no guidance or definition as to what is meant by behaviour which is intended to ‘suppress’ an individual’s gender identity. And the draft legislation contains no guidance or definition as to what is meant by behaviour which is intended to ‘suppress’ an individual’s (lack of) sexual orientation. It presumably means any behaviour which might be said to thwart or inhibit or discourage an individual from *expressing* their sexual orientation or gender identity in all and any such manner as they might otherwise choose or wish to.”⁴⁶

The proposals could make it a criminal offence for a religious leader to tell a member of their congregation that homosexuality is a ‘sin’ or ‘haram’. The consultation document (para. 56) expressly gives celibacy as an example of “acts of suppression”. This is in the context of an attempted reassurance that acts of suppression “freely undertaken by a person themselves” will not be criminalised. It would not be an offence “where the individual has made a personal choice to live in a certain way and has not been coerced into this decision” (para. 57). Yet ‘a personal choice to live in a certain way’ is unlikely to be made spontaneously. In a church context, it is likely to be *in response* to doctrinal teaching and accompanying imperatives. Celibacy outside marriage between a man and a woman is mainstream Christian belief and practice. Those who accept this teaching will do so voluntarily. However, our concern is that the teaching and imperatives will be interpreted as coercing a person into the decision. And where a person rejects the teaching, they might be more inclined to make accusations of (attempted) conversion therapy.

There have already been examples of this, where claims of conversion therapy involve antipathy towards traditional religious teaching. Jayne Ozanne, for example, says that she believed

⁴⁵ *Christian Institute Human Rights Implications of Proposals to Ban “Conversion Therapy” – Advice*, Jason Coppel KC and Rupert Paines, 19 April 2021, page 2, para. 6

⁴⁶ *THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”*: Advice, Aidan O’Neill KC, 2 February 2024, para. 3.24

homosexuality was sinful, and so spent decades trying to change how she felt.⁴⁷ Matthew Hyndman describes being separated from his community and family when he came out.⁴⁸

Considering these situations, Sex Matters noted:

“The experiences of people such as Ozanne and Hyndman are undoubtedly personally upsetting. But it is hard to see how the government could step in to dictate a person’s religious beliefs about the nature of sin, or the attitude of their family towards sexual ethics or their gender identity. These are personal stories of spiritual turmoil, not evidence of abusive practices.”⁴⁹

We agree. The criminal law should catch abusive practices, but not cases of theological disagreement where someone rejects the implications of religious teaching for their lives. The Scottish Government must recognise the hostile climate into which this law would be introduced. A broad law will be used by activists to try to prevent church ministers teaching about celibacy or the Christian view of marriage.

The proposals say that suppression includes “restricting where a person goes and who they see” and “controlling a person’s appearance (e.g. clothes, make-up, hairstyle)” (para. 50). This clearly cuts across parents’ rights and responsibilities. A mum who stops her gender-confused child attending a trans group could be accused of a conversion practice. Parents often give strong advice to their children about how to dress. The State cannot interfere in these matters.

Aidan O’Neill KC has pointed out the extraordinary breadth of the proposals:

“The legislation will also necessarily, from its terms, include suppression efforts directed at those who are heterosexual or cisgender. Thus since the Scottish Government’s proposals are intended, in the name of equality also to cover any efforts to change or suppress the ‘sexual orientation’ or ‘gender identity’ which may be ‘directed at those who are heterosexual or cisgender’ (per § 44 of the consultation document) then the legislation if passed will directly impact not just parents faced with their children identifying as trans and/or gay and/or queer/questioning, but also those parents of those children identifying as straight and as happy and comfortable in their actual biological sex.

“Accordingly any child who wishes to explore and express their sexual/gender identity as they (and not their parents) wish in their behaviour and clothing and comportment and associations may be able to pray in aid this legislation against their parents.

“Thus, for example, a parent’s inflexible and absolute ban forbidding, say, their 14 year old daughter, going out publicly dressed in what might be regarded, by her parents as an overly sexualised and sexually provocative and explicit way could, in principle, be criminalised under this proposed legislation on the basis that the parental action is stopping the child from living or acting in accordance with how their child wishes to express their (hetero)sexual orientation and/or (cis)gender identity.”⁵⁰

⁴⁷ *Attitude online*, 24 November 2021, see <https://www.attitude.co.uk/culture/sexuality/i-went-through-gay-conversion-therapy-for-20-years-which-sadly-took-me-twice-to-hospital-304133/> as at 21 March 2024

⁴⁸ *The Independent online*, 20 February 2021, see <https://www.independent.co.uk/voices/lgbt-conversion-therapy-ban-mental-health-b1805080.html> as at 21 March 2024

⁴⁹ *Why ban talking therapy? How a campaign to criminalise the most effective treatment for gender-distressed children made it from the margins to the mainstream*, Sex Matters, May 2022, page 15

⁵⁰ *THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”*: Advice, Aidan O’Neill KC, 2 February 2024, paras 3.33 to 3.35

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.

Any legal measure in this area, whether criminal or civil, requires a clear legal definition of conversion practices. In the absence of one, there is simply no secure basis for legislation. The proposals as drafted would create a lack of certainty over how far the law extends. If people are unsure what is legal and what is not, there will be an inevitable chilling effect on legitimate behaviour.

LGBT people are, rightly, already protected from verbal and physical abuse by existing laws such as those criminalising abusive language and assault. There is no need for further legislation to tackle genuine abuse.

The civil measures are dangerous because they are easier to obtain than a criminal conviction, which needs proof beyond reasonable doubt. There is a huge risk that orders will be used to prevent innocent people acting lawfully and reasonably. (On this point, see our answer to question 28).

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.

It is extremely unclear what the consultation document means by "a service". The consultation says it includes "acts that are pseudo-medical" (para. 90), suggesting the scope of the term could be broad, but that scope is never clarified.

Aidan O'Neill comments:

"The proposed legislation would criminalise, within the context of the provision of a '(free) service' to another, all and any instances of any person non-coercively saying to, or otherwise communicating with, another (even just once) with the intention (however vainly) of changing *or* suppressing that other's (lack of) sexual orientation and/or gender identity, provided that it can be established that this talk or communication made the addressee afraid, alarmed and/or distressed. The Scottish Government Consultation states (at § 98) that its '*intention*' is that, in order to fall within this part of the offence, the provision of advice, guidance or support will need to reach a level of formality, professionalism or expertise for it to be considered a service. ...'

But there is nothing on the face of the legislation which clarifies what is meant by the provision of a service in the manner set out in this guidance."⁵¹

⁵¹ THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland "Conversion Practices" 'related to individuals' "sexual orientation" and separately to their "gender identity": Advice, Aidan O'Neill KC, 2 February 2024, para. 3.3(3)

The potential breadth of “service” is illustrated by the Scottish Government giving assurance that it does not “mean a service of worship or church service” (para. 89). This is a vital assurance, but it is instructive that it was even necessary. It shows the Scottish Government realises how broadly the term could be interpreted. The consultation goes on to say that “coaching or instructing” (para. 94) could be considered a service, which is extremely vague. Any attempt to encourage someone in a particular direction could be deemed ‘coaching’.

The consultation says that “a religious leader who has an **informal** conversation with someone about doctrinal views” in relation to sexual orientation or gender identity would not be providing a service (para. 98). Does this mean that a more formal conversation, such as about membership or a voluntary role within the church, could be covered?

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.*

In principle a threshold of coercion is exactly where we consider a conversion practices/therapy law should be pitched (setting aside whether it is necessary given the provisions under existing law). Christians oppose coercion. However, the consultation has a disturbingly low definition of coercion, particularly when applied to the parent-child relationship.

For example, paragraph 104 says that coercion will include “controlling of the victim’s day-to-day activities” and “pressuring the victim to act in a particular way”. The words ‘controlling’ and ‘pressuring’ are loaded terms. But they are ways of describing common innocent and necessary features of parenting. Such a weak definition of coercion inevitably risks parents being prosecuted merely for trying to guide their children to the path they believe is best for them.

There is also concern for pastoral practice. The consultation says provision of advice and guidance by a religious leader would only be captured where there is coercion. But paragraph 103 says coercion includes “emphatic directives accompanied by forceful or threatening statements intended to pressure the individual person into changing or suppressing their orientation or identity”. Urging someone to repent because they are endangering their soul, which could well be part of a pastoral conversation in some cases, could easily be deemed to be a ‘forceful statement’ that meets this threshold. Churches that consistently teach the Christian sexual ethic will also take steps such as withdrawing membership from those who refuse to live by biblical standards. It is easy to see how this could be construed as coercion.

Aidan O’Neill states:

“This definition of coercion would clearly therefore include parents seeking to control how their child ‘presents’ in terms of, say clothes, make-up, and hairstyle or imposing restrictions on where their child might go and whom they might see. Thus parents who actively and

consistently and directly oppose ‘their child’s decision to, for example, present as a different gender from that given at birth’ (see § 108) would be committing a criminal offence.”⁵²

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.

The Scottish Government claims requiring evidence of harm is a key safeguard. Yet defining harm to include mere distress sets a low and extremely subjective threshold. It will result in frivolous or malicious false accusations. Convictions will be possible based simply on self-reporting by the person making the accusation. It is difficult to challenge someone’s claim that they were distressed – indeed, it is hard to envisage how defence counsel could go about doing so or what evidence they could possibly adduce.

There is no requirement to prove that the accused intended any harm. The consultation openly states; “the proposed offence does not require it to be proven that the perpetrator to intend [*sic*] to cause harm to the victim or to be reckless as to whether harm would occur” (para. 83). This will criminalise acting with the best of intentions merely because the person making the accusation claims to have been distressed. Being absolutely certain their behaviour was harmless will be no defence.

Even more fundamentally, Aidan O’Neill questions whether the harm test will in fact be an operative requirement for the offence to be committed. He states:

“...on whether there is any need to prove ‘harm’ resulting in order to criminalise conversion practices, the Scottish Government appear also to assert that harm *necessarily* and *always* comes from conversion practices, even if those subject to them are not (immediately) aware of it...

...

“But if conversion practices are indeed (as the Scottish Government stipulates...) ‘inherently harmful’, then the proposed new offence of engaging in a conversion practice may be committed without the need to prove that any ‘harm’ has indeed resulted, since the Scottish Ministers are operating on the basis of what appears to be an irrebuttable presumption that harm inheres in such conversion practices, even if not immediately manifest in or to the individual subject to such conversion practices.

“It appears to be on the basis of an application of irrebuttable presumption that harm inheres in such conversion practices, even if not immediately manifest in or to the individual subject to such conversion practices, that the Scottish Government has proposed that there be no defence of consent available in relation to a conversion practices charge. This is because the Scottish Government considers (at § 136) that ‘*harmful conduct*’ cannot be consented to’.

⁵² THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”: Advice, Aidan O’Neill KC, 2 February 2024, para. 3.28

“The Scottish Government instead *deems* that no individual (regardless of age or capacity) is capable of consenting to undergoing conversion practices: everyone is to be rendered statutorily *incapax* on this matter.”⁵³

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

‘Agree’.

14 Please give reasons for your answer to Question 13.

The consultation document repeatedly emphasises the limits of this defence. It says it could be used in “a very small number of circumstances” (para. 122) and even suggests they are “difficult to envisage” (para. 123). When, on the Government’s own admission, the offence “includes a broad range of potential conduct that could occur in a wide range of circumstances” (para. 121), the proposed reasonableness defence is simply inadequate. Aidan O’Neill KC describes it as “vague and unspecified”.⁵⁴ He adds: “the legislation provides no definition or test or example of what may be considered to be ‘reasonable’ such as to constitute a defence against a prosecution for behaviour otherwise apparently criminalised”.⁵⁵

The examples given of where the defence might apply (para. 124) are conspicuously narrow: someone “at immediate risk of suicide” or “to prevent a child from engaging in illegal or dangerous behaviour”. On the latter example, Aidan O’Neill KC says it “makes no sense in terms of how the proposed legislation is currently drafted”.⁵⁶ He goes on:

“The doctrine of double effect posits that if the primary intention of a parent in implementing any specific day-to-day controls were to prevent their child from engaging in illegal or dangerous behaviour, then it might be said to be a foreseeable (though not necessarily intended) *effect* that the child might subjectively experience these restrictions as what the legislation would term ‘coercive suppression’ of the child’s sexual orientation or gender identity. But that, on the legislation’s own terms, would *not* be sufficient to establish the requisite *mens rea* for the parent to be found guilty of the offence of engaging in ‘conversion practices’. In such circumstances the reasonableness defence would simply not apply.”⁵⁷

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

‘Do not agree’.

⁵³ THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”: Advice, Aidan O’Neill KC, 2 February 2024, paras 3.11 to 3.14

⁵⁴ THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland “Conversion Practices” ‘related to individuals’ “sexual orientation” and separately to their “gender identity”: Advice, Aidan O’Neill KC, 2 February 2024, para. 3.25

⁵⁵ *Ibid*, para. 3.52

⁵⁶ *Ibid*, para. 3.53

⁵⁷ *Loc cit*

16 Please give reasons for your answer to Question 15.

Any offence carrying a maximum seven-year prison sentence must be clearly defined, which is not the case with this proposal. In discussing the penalty, the consultation considers Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, Section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 and the Domestic Abuse (Scotland) Act 2018. It says these offences have “comparable behaviours”. But these offences are not comparable to the proposed conversion practices offence. All of them require clearer intent or recklessness, and more serious conduct, as necessary elements of the offence.

A prison sentence of up to seven years is wholly disproportionate for an offence with such a low threshold. It is draconian to attach a penalty of this potential severity to an offence that could be committed with entirely benevolent motives and with self-declared distress the only resulting harm. Parents and church leaders should not have to fear years in jail merely for trying to guide people in the Christian faith.

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.

Paragraph 129 of the consultation states:

“Evidence suggests that many people who undergo conversion practices agree in some way to do so. For example, they may agree to attend a programme of therapy. However, those people who apparently willingly engage in, or actively seek out, conversion practices are often driven by external pressures and coercions, such as imbalanced power dynamics or being under the guidance of powerful people in their life who are in a position of trust or authority, limiting their autonomy.”

The sweeping assertion that “those people who apparently willingly engage in, or actively seek out, conversion practices are often driven by external pressures and coercions...” is presumably based on anecdotal evidence from those supporting a new law. However, the Scottish Government would undoubtedly find – if it cared to speak to them – that many who seek out what this proposed legislation would class as ‘conversion practices’ would reject this characterisation.

Those who hold to the Christian faith, including biblical sexual ethics, and who want to live consistently with their beliefs should be allowed to receive support to do so. It is patronising of the Scottish Government to tell an adult who wants support from her church to live a celibate life that she is only seeking it because of “imbalanced power dynamics” or because she is “under the guidance of powerful people”. Not allowing a person to seek help on their own terms and according to their own values actually risks – in the consultation’s terms – “limiting their autonomy”. It is an exercise of autonomy to choose to submit to the teaching of the Bible, just as it is to adopt the contemporary attitude of uninhibited self-expression. For some in this category, the proposed law could make it much harder to receive support. Church ministers, counsellors or parents may decide it is better to go nowhere near these topics rather than risk prosecution, particularly when accusations of conversion practices could be made years later. That would be a disservice to all concerned. It is essential that someone who wants support from their church to live a celibate life should be free to receive that support without other people accusing the church of conversion therapy. The Government must

make clear that praying with other people, at their request and with their consent, will not be criminalised.

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

[No comment]

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?

[No answer]

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

Our concerns relate to the core definition of conversion practices.

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

[No answer]

23 Please explain your answer to Question 22.

Our concerns relate to the core definition of conversion practices.

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

[No answer]

25 Please explain your answer to Question 24.

Our concerns largely relate to the substantive offence and civil orders concerning conversion practices directly. There is less of a threat to free speech and religious liberty from conversion practices as an aggravating factor, since the underlying offence would have to be made out before this became relevant.

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?

The consultation document is more than 80 pages long, but Part 12 on Consideration of Convention Rights is not even a page and a half. Given that fundamental human rights are at stake, we would have expected more discussion in the consultation document about the impact on the Article 8 right to a private and family life, the Article 9 right to religious freedom, the Article 10 right to freedom of expression and the Article 11 right to freedom of association. The Scottish Government must be aware that advice from eminent KCs have been published stating that proposals to legislate on conversion practices risk breaching these rights. The lack of discussion of these raises serious doubts about the Scottish Government's engagement with the issues raised.

Aidan O'Neill KC states:

"Were the Scottish Government's proposals adopted by the Scottish Parliament and legislation introduced and passed to give them effect, this would have the undoubted effect of criminalising much mainstream pastoral work of churches, mosques and synagogues and temples. Prayers and pastoral discussions could be criminalised if their content did not conform to the new State requirements *only* to affirm, validate and support the identity and lived experience as expressed and stated by an individual from time to time (but never to question or give direction or raise concerns about an individual's expression of their sexuality, or their 'gender expression' or assertion of their 'gender identity')."

...

"In order to be Convention compatible (and so within the statutorily limited devolved competence of the Scottish Parliament and the similarly statutorily limited devolved competence of the Scottish Ministers) it is *not enough* that passing reference is made, in consultation documents, to the ECHR. The legislation itself has to be 'in accordance with law' in order to be shown to be justified interferences in the identified Convention rights under Articles 8, 9 and 10 ECHR which the Scottish Government agree are engaged by this proposed legislation."⁵⁸

He concludes:

"The proposals in this legislation simply fail to define what are to become criminal 'conversion practices'. It will thus become impossible for individual parents and faith groups and medical practices and political associations to be able to know how to regulate their behaviour to avoid falling foul of the criminal law. The legislation fails too to define crucial terms as to just what constitutes an individual's 'gender identity', and just what behaviour is to be regarded as (attempted) 'suppression' of either sexual orientation or gender identity.

"In sum, these proposals from the Scottish Government for legislation are ill-thought out, confused and confusing, and fundamentally illiberal in intent and effect. I conclude therefore that there are very strong arguments indeed that these legislative proposals of the Scottish Government are beyond the legislative competence of the Scottish Parliament, primarily because of their over-breadth, their disproportionate intrusion into private and family life and freedom of religion and freedom of expression, but also because of their internal incoherence."⁵⁹

⁵⁸ THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland "Conversion Practices" 'related to individuals' "sexual orientation" and separately to their "gender identity": Advice, Aidan O'Neill KC, 2 February 2024, paras. 3.29 and 3.56

⁵⁹ *Ibid*, paras 5.10 and 5.11

In essence, the Scottish Government overstates the significance of the steps it has taken within the proposals to ensure human rights compliance. It puts great store by: a) the requirement for intent; b) the harm threshold, c) that the behaviour must relate to a specific victim; d) the coercion requirement and e) the reasonable defence. It believes that this package of measures constitutes a robust threshold. However, it is easy to meet each of the individual requirements:

- a) Since suppression is defined so broadly (see our answers to questions 2 and 4), intent to suppress will be correspondingly easy to prove;
- b) The harm threshold is low, set at mere distress (see answer to question 12);
- c) The need for there to be a specific victim merely serves to exclude generalised behaviour from the offence. It will not provide any safeguard in most pastoral or parenting contexts. Even in apparently general situations, such as preaching a sermon, it could be possible for a member of the congregation to claim that the preacher 'must have been' directing remarks at them, because of the preacher's personal knowledge of their circumstances;
- d) The coercion requirement is vague (see answer to question 10);
- e) The reasonableness defence does not explicitly protect everyday pastoral and parenting situations and is, as the consultation document emphasises, narrow in comparison to the scope of the offence (see answer to question 14).

A series of easily overcome hurdles do not add up to a legally sound threshold.

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.*

Since the core definition of conversion therapy is so vague, CPPOs would have a dangerously broad scope. Unlike with, for example, forced marriage – which has a clear, specific and objective definition – it is entirely unclear what constitutes a conversion practice. These would be orders to prevent people potentially being harmed by an essentially undefined activity. It is an Orwellian proposal.

It will be relatively easy to obtain an order against a church or a parent. The consultation admits that one reason for introducing civil orders is that they could be more easily obtained than a criminal conviction. But in such a contentious area, it is appropriate that evidence is robustly tested in court. An order could be obtained by a third party, even against the will of the person being 'protected'. It could prevent a church allowing someone to attend who wants to attend. This is a shocking suggestion in any free society.

There is no clear precedent for creating civil orders "to protect the wider community". The same activists who try to persuade local authorities to shut down Christian evangelistic events at major venues could encourage the authorities to seek a civil order to ban the event.

Aidan O'Neill KC comments:

"In addition to placing basic parenting decision under the shadow of potential prosecution before the criminal courts, under these proposals the courts are to be granted sweeping powers to pronounce coercive requirements and prohibitory civil conversion practices protection orders against others (legal persons or individuals). Such requirements or prohibitions may be ordered when the court is satisfied that they are necessary to prevent -

or at least reduce the likelihood of - either an identified individual or people in general in Scotland from being 'harmed' by behaviour intended to change or *suppress* others' (lack of) sexual orientation and/or gender identity.

...

The order-making powers would require evidence to be proved on the balance of probabilities (the civil court standard of proof) which is a much lower threshold than that applied in the criminal courts (beyond reasonable doubt). And yet breach of the terms of such conversion practices protection orders as may be pronounced by the court will be made a criminal offence.

...

Applications to the court for conversion practices protection orders which are specifically to protect an identified individual from 'harm' may be sought, with the leave of the court, by any person (not just by the police or local authorities).

...

The legislation imposes no requirements and specifies no test in the legislation by which the standing of any person to seek such an order in relation to another is to be determined. And the court is empowered to grant such order even against the wishes (and feelings) of the to be 'protected person'.⁶⁰

Disturbingly, we believe CPPOs could be used in each of the following scenarios:

- Chris starts attending church and is converted. The church leadership tell him that faithful Christian living means abstaining from sex outside marriage between a man and a woman, and he can't be a church member unless he abides by this. Distressed and convicted of his sin, he breaks up with his partner Mark and moves out of their flat. Mark believes that Chris is being indoctrinated by the church, and seeks leave to apply for a CPPO to prevent the church leaders contacting or engaging in pastoral discussions with Chris. The court grants leave because Mark knows Chris well. Chris gives evidence that he fully understands what he is doing, and wants to attend the church and commit to a celibate lifestyle. But on the basis that "it is not possible to consent to actions that cause harm" (para. 135 of the consultation document) the court concludes that the order is necessary to reduce the likelihood of Chris being harmed by conversion practices.
- Sarah, a church member, begins a sexual relationship with another woman. Her church leadership removes her from membership until she repents. She does subsequently repent and breaks up with the other woman, and after a period of time is accepted back into membership. This sequence of events is reported to the local authority by Sarah's ex-girlfriend. The local authority views the church disciplinary process as a coercive conversion practice and applies to the court for a CPPO preventing the church from applying its membership rules (in so far as they require evidence of repentance from sin) to LGBT people in the future.
- Charis, a 14-year-old girl, starts identifying as a boy after an LGBT rights organisation runs a session in her school. She wants to change her name and pronouns, and wear a breast-binder. She has never said anything questioning her gender before. Her parents urge her to wait and see if the feelings persist. They refuse to let her get a breast binder, having heard about the health risks. When Charis tells the school, they report her parents to social services on the basis that they are suppressing Charis's expression of her gender identity. The local authority applies for a CPPO requiring the parents to support Charis' social transition.

⁶⁰ THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland "Conversion Practices" 'related to individuals' "sexual orientation" and separately to their "gender identity": Advice, Aidan O'Neill KC, 2 February 2024, paras 3.45 and 3.48 to 3.50

- Franklin Graham is scheduled to visit Scotland as part of an evangelistic tour. A local authority claims that he has previously been responsible for conversion practices, because of his Samaritan's Purse organisation requiring employees and volunteers to sign up to a statement of beliefs that says sex is only for man-woman marriage.⁶¹ The authority also claims that the message of repentance he is bringing to Scotland poses a threat to the LGBT community. The authority applies for an order restricting Graham from publicly saying, anywhere in Scotland, that homosexual practice is sinful.
- A large student weekend is scheduled for a month's time at a well-known venue in northern England. It is being advertised on university campuses on both sides of the border. The theme of the weekend is 'Sexual orientation and gender expression: the biblical view'. One of the advertised speakers is an Edinburgh-based pastor who has published a book calling on same-sex attracted people to live a celibate and chaste life. The book includes accounts of Christians who he has helped over the course of his pastoral ministry, including those who experienced same-sex attraction. Amongst other things, the advertising encourages those who struggle with same-sex attraction or are confused about their gender to attend. A local authority in Scotland is made aware of the weekend by an LGBT group at one of the universities in its area, which hears that several of their ex-members are intending to attend. The local authority applies for a CPPO to prevent the pastor attending the event and to prevent the event being advertised any further on University campuses in Scotland.

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.

See our answer to question 28 for concern about how broadly the orders could be used, particularly if they could be applied for by any person with the leave of the court. This opens up the potential for politically motivated or anti-religious activism through the courts.

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

[No comment]

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

- Age**
- Disability**
- Gender reassignment**
- Civil partnership**

⁶¹ Pink News, 31 March 2020, see <https://www.thepinknews.com/2020/03/31/franklin-graham-coronavirus-relief-volunteers-anti-gay-new-york-samaritans-purse/> as at 21 March 2024

- e) **Pregnancy and maternity**
- f) **Race**
- g) **Religion and belief**
- h) **Sex**
- i) **Sexual orientation**

The proposals would have a disproportionate impact on those holding particular religious or other beliefs that contradict the Scottish Government's understanding of sexual ethics and gender. The consultation document betrays a religious illiteracy and intolerance for mainstream religious belief. It says that "statements that being gay is sinful or that transgender identity does not exist" are "hatred" (para. 85). In fact, they are beliefs that are worthy of respect in a democratic society, and are held by many people in Scotland. It is disturbing that the Scottish Government dismisses them as hatred at the same time as proposing such a broad, poorly drafted law in this area.

As Aidan O'Neill KC states:

"...these criminal sanctions can be imposed, among others:

- on parents who in bringing up their children, do not conform to the State's new dogmas on sex, sexuality and gender identity;
- on religious bodies whose teaching and preaching and religious practices in the area of sex, sexuality and gender identity run contrary to the State's approved doctrine on these matters;
- on political bodies, feminist groups and associations and NGOs and individuals who publicly disagree with, and seek to challenge and change the State's current orthodoxies on sexual orientation and/or gender identity;
- on medical professionals who in their medical practice would dispute and dissent from what the State now stipulates as, to use an Orwellian term, 'goodthink' in relation to sex, sexuality and gender identity.

If the proposals become law this would involve the Scottish authorities using the full weight of the State's coercive powers of expropriation, incarceration and humiliation against individuals and associations in Scotland deemed guilty – even at an individual's request, or with their consent – of performing, offering, promoting, authorising, prescribing or arranging for any treatment, practice or effort that is deemed to be aimed at changing, suppressing and/or eliminating that person's (expression of) their avowed sexual orientation (whether heterosexual, homosexual, bisexual or asexual) and/or "gender identity" (whether congruent or incongruent with their actual sex)

The proposals have serious consequences for individuals subject to the law, but they emanate from a government which appears to have forgotten its duty to take seriously its obligations to maintain the conditions of and for a liberal democracy, preferring instead to impose, by virtue of its possession of a monopoly on legitimate violence, its own vision of the good life."⁶²

⁶² THE CHRISTIAN INSTITUTE re the Scottish Government consultation on its proposals for the Scottish Parliament to legislate with a view to bringing to an end in Scotland "Conversion Practices" 'related to individuals' "sexual orientation" and separately to their "gender identity": Advice, Aidan O'Neill KC, 2 February 2024, paras 5.4 to 5.6