

Submission to the Scottish Government consultation on **ending conversion practices in Scotland**

2nd April 2024

Organisational response from Sex Matters, a human-rights organisation campaigning for clarity on sex in law and policy in the UK, to the [Scottish Government's consultation](#).

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

Banning practices which include supporting people to consider their "gender identity" by creating civil and criminal offences is both unnecessary and dangerous. There is no evidence of acts of violence aimed at changing or suppressing people's sexual orientation or gender identity taking place in Scotland. Any instances that are taking place would be covered by existing criminal law.

The proposed approach to defining conversion practices risks putting vulnerable individuals, particularly children and young people, struggling with gender distress in danger by either

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criminalising or deterring from legitimate therapeutic practitioners who do not take an unquestioning affirmative approach to gender medicine.

Most gender-questioning children have complex histories of trauma featuring abuse, and often manifest comorbidities such as depression, anxiety and eating disorders. Some may be autistic; many have an emergent gay sexual orientation or are experiencing discomfort at impending sexual maturity. Such children need neutral exploratory spaces to explore their gender dysphoria, and a range of psychological treatments that might help alleviate their distressed alienation from their own sexed body. Such therapy also ensures that if they do pursue medical transition, they do so with informed consent and a realistic idea of likely outcomes.

To unquestioningly affirm a child's transgender identity, without wider exploration of their distress, is an abrogation of professional responsibility and at odds with standard practice in all other UK clinical encounters. In the absence of proper exploration, a child can end up on a medicalised pathway towards puberty blockers, cross-sex hormones and surgery, without understanding the risks and likely outcomes, which may not alleviate their distress. A growing number of "trans" identified young people who have undergone medical intervention are now deciding to "detransition". Young people who have decided on medical transition as the solution to their distress have the right to be given the space to explore all the options. Although the outcome of an exploratory approach could be that a patient comes to accept their body and no longer wishes to have medical or surgical intervention, the intention is not to "change" or "suppress" a person's identity. But unfortunately these approaches are being labelled and widely misunderstood as "conversion practices" by proponents of an affirmative model.

Further, it must be recognised that some people do not believe in the metaphysical concept of gender identity at all – and do not identify as having a "gender identity".

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.

Legislation should not cover acts or courses of behaviour with reference to either the term "suppress" or to "gender identity". To do so risks criminalising legitimate and therapeutic conversations with individuals who have gender dysphoria or are distressed about their gender. Attempting to legislate against "suppressing" gender identity is highly problematic.

The definition of “suppression” being used – to “repress” or “prevent the manifestation of” – means that including these “acts” or “courses of behaviour” would create a dangerously low threshold for criminal liability. For example, a parent raising concerns with a teenage daughter who is autistic, about her wearing a breast-binder would be at risk of accusation of ‘suppression’.

We can also see highly problematic scenarios arising for “trans-widows”. For example, a woman going through an acrimonious divorce from a husband who is newly identifying as trans becoming at risk of unfair criminalisation on the basis of suppression of gender-identity for refusing to share her shoes, tights, dresses and skirts with him. Indeed, in such a scenario it is not hard to see the many ways the husband could tactically deploy allegations of conversion practices on the basis of “suppression” in the course of a contested divorce to pressure the wife into agreeing a settlement that is more favourable to him.

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.

We do not support this package of criminal and civil measures because existing Scottish and UK laws already address coercive, abuse, violent or otherwise harmful conversion practices.

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.

The consultation gives an example of a service as “counselling or any other form of talking therapy...”. This is extremely concerning. If services providing exploratory therapy to children and young people who are distressed in relation to gender become fearful of prosecution, even if the law excludes them from prosecution in practice, new and intense pressure will be put on professionals who are working in an already sensitive and culturally fraught area. We could see an acceleration in the flight of practitioners in this field working in Scotland, and a further detrimental impact on standards of care.

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.

The definition of “coercion” that the proposed legislation appears to be using risks overstepping inappropriately into parent-child relationships. It is essential that consideration is given as to how this could conflict with Article 8 rights to a private and family life.

We also see serious potential problems arising in contentious divorce proceedings between “trans widows” and their former male partners. Accusations of “coercive conversion practice” in this scenario could be levelled by the now trans-identifying husband against the wife in order to compel her into a less favourable settlement.

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.

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

We do not consider it reasonable to create an offence at all. But if such an offence is created, policy-makers need to reconsider the wisdom of using “fear, alarm and distress” as a threshold for criminal culpability.

Much of the political discourse around conversion practices likens them to torture causing lifelong harm, and it is difficult to reconcile this harm threshold with the justification offered for these offences, which refer to what are essentially self-reported emotional states. There are significant consequences of such a low harm threshold for parents and clinical practitioners either being at risk of, or in fear of risk of prosecution, when dealing with a child or young person for whom medical transition is not deemed safe or appropriate for them, given for example comorbidities, and is disappointed and angry.

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

Do not agree.

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

The creation of a reverse burden for the defendant to prove their reasonableness is incoherent and disproportionate. It would entail criminal juries inappropriately returning verdicts on both family and therapeutic professional spheres.

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

Do not agree.

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

The proposed penalties are disproportionately high. And the threshold for criminal liability for the proposed offence is disproportionately low. We do not agree that there is a need for the creation of any new civil or criminal offences to stop harmful conversion practices. Existing legislation already criminalises harmful conversion practices.

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.

Consent from patients is essential in treatment of people presenting with gender distress, and this proposed defence appears to target and deter clinicians from providing care for people with gender distress which takes anything other than an affirmative approach.

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

The decision to take a “multi-faceted” approach to addressing conversion practices, combining new criminal offences and civil protection orders, creates unnecessary burdens – including cost burdens – on an already stretched criminal justice system.

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

Do not support.

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

The existing legislation regarding taking victims out of Scotland for harmful practices should continue to apply. No new criminal offences are needed.

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

Do not support.

23. Please explain your answer to Question 22

The existing legislation penalties for taking victims out of Scotland for harmful practices should continue to apply. There is no need to introduce new laws or penalties.

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

Do not support.

25 . Please explain your answer to Question 24.

No new form of aggravation is required for existing offences.

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?

Gender identity is a belief. It is subject to contest from a number of different philosophical and political positions. Insufficient consideration seems to have been given to how this legislation, which criminalises attempts to change someone's belief, could involve serious infringement of Articles 9 (freedom of conscience) and 10 (freedom of expression).

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.

The existing laws in Scotland which provide for individual and community protection orders to protect individuals and prevent harmful conduct are fully adequate for protecting individuals from conversion practices.

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.

Only the person that is “to be protected” or the police should be able to apply for a conversion practices civil order. Local authorities do not have the appropriate expertise to make balanced judgements on these matters, and opening the application to third parties risks malicious prosecutions.

31. Do you have any other comments regarding the civil order?

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 X**
- i. Sexual orientation X**

If you wish, please expand on your answer.

First, the protected characteristic of sexual orientation has not been adequately considered in these proposals. On sexual orientation in particular, the introduction of this legislation would have a serious impact on young homosexuals, who are disproportionately represented in numbers presenting at gender clinics with gender dysphoria or distress, and who will be denied the opportunity to be treated by clinicians who offer exploratory therapy.

Second, no regard has been given to Scottish citizens with gender-critical beliefs. This would put the Scottish government in breach of Articles 9 and 10 of the Human Rights Act. Legislators need to consider, for example, what approach the judiciary would need to take if an individual who was prosecuted under this legislation for conversion practices to change someone's "gender identity" did not share the belief that people have "gender identities".

Questions 33 to 38 were left blank.