



# Scottish Government 'conversion practices' consultation

## GUIDE TO RESPONDING

The consultation document is available at: [bit.ly/scotcpconsult](https://bit.ly/scotcpconsult)

The response form Contents page is available at: [bit.ly/scotcpconsult](https://bit.ly/scotcpconsult)

Each section of the online response form has its own page. The penultimate section, 'About you', is the only one with compulsory questions. To submit a response, you must:

- a) give an email address;
- b) say if you are responding on behalf of an organisation;
- c) indicate if you want your response published;

- d) decide whether the Scottish Government can contact you;
- e) consent to the privacy policy.

### The consultation closes on Tuesday 2 April.

THIS GUIDE IDENTIFIES THE KEY QUESTIONS AND GIVES TIPS ON HOW TO RESPOND.

(Page and paragraph references are to the consultation document at [bit.ly/scotcpconsult](https://bit.ly/scotcpconsult))

**Please use your own words.** After you have answered as much as you want on each page, select 'continue' at the bottom to go back to the Contents page.

## 'DEFINING CONVERSION PRACTICES FOR THIS LEGISLATION'

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

Please answer 'No'.

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

You could draw on the following points, in your own words:

- Saying that 'non-directive' guidance will not be outlawed is not reassuring. 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 a fundamental attack on their roles.
- The Scottish Government says it wants the law to "respect freedom of religion and expression" (page 14). But the requirement to be 'non-directive' in order to avoid prosecution does nothing of the sort. It shows no awareness of how faith is expressed in practice.
- The Scottish Government says it does not want the law to "inhibit nor criminalise the exercise of parental responsibilities and rights" (page 14). But the proposals cut right across parents' rights by expecting them to be 'non-directive' in conversations with their own children about some of life's biggest issues.
- The consultation admits the offence can be committed even where the alleged perpetrator is "driven by a desire to help or protect the person" (para. 83).
- The motivation test is weak. There will be no requirement to prove harm was intended or foreseen by the accused.
- The consultation document does not support its claim

that conversion practices deserving criminalisation are happening in Scotland beyond the reach of existing law. It refers only to anecdotal or self-reported evidence, and an unrepresentative UK Government LGBT survey that did not define 'conversion therapy'.

- Failing to be 'trans-affirming' could be caught by the ban. Only pro-trans advice would be allowed. This would push many more people down the route of life-changing drugs and surgery which they may later come to regret.
- The consultation document praises the conversion therapy law in the Australian state of Victoria. But official guidance there says a parent "refusing to support" their child receiving puberty-blocking drugs is guilty of conversion therapy.
- Official guidance in the Australian state of Victoria – whose conversion therapy law the Scottish plans are based on – gives instructions on how religious people should pray. It says prayers "about a person's brokenness or need to repent" are probably illegal.
- Roddy Dunlop KC, the Dean of the Faculty of Advocates, has said the definition of conversion practices in the consultation document is not "legally coherent".

## 'SUPPRESSION'

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

Please answer 'It should not be covered'.

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

You could draw on the following points, in your own words:

- The proposals say that suppression includes "restricting where a person goes and who they see" (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.

- The consultation admits that including suppression would “widen the scope of the legislation” (para. 56).
- The consultation says celibacy could be an act of suppression (para. 56). But this is mainstream Christian practice for the unmarried.
- Whichever way the Government defines the ban, activists will try to use it to prevent church ministers teaching about celibacy or the Christian view of marriage. They need to recognise the hostile environment in which the new law will operate.
- Parents must not be at risk of prosecution simply for discouraging their child from taking damaging puberty blockers.
- The consultation says that suppression includes “controlling a person’s appearance (e.g. clothes, make-up, hairstyle)” (para. 50). But parents often give strong advice to their children about how to dress.

## ‘OVERVIEW OF PROPOSALS’

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

Please answer ‘Do not support’.

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

You could draw on the following points, in your own words:

- The definition of conversion practices is too vague to be used as a basis for either criminal or civil measures. It will create a lack of legal certainty over how far the law extends. People will be unsure what is legal and what is not, leading to a chilling effect on legitimate behaviour.
- If the Scottish Government wants this law to protect people from abuse there is no need for it because LGBT people are, rightly, already protected from verbal and physical abuse by existing laws such as those criminalising abusive language and assault.
- 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 doing legitimate things.
- The consultation admits that the Scottish Government wants a law to cover behaviour that is not threatening or abusive (page 25).

## ‘OFFENCE OF ENGAGING IN CONVERSION PRACTICES: THE PROVISION OF A SERVICE’

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

Please answer ‘Do not support’.

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

You could draw on the following points, in your own words:

- The definition of a service is very unclear. The consultation says it “includes acts that are pseudo-medical”, but never clarifies what this term covers (para. 90).

- The consultation says service does not “mean a service of worship or church service” (para. 89), but the fact that they needed to include this assurance in the first place shows how broadly the term could be interpreted.
- The consultation says “coaching or instructing” (para. 94) could be deemed a service. This 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). This suggests that more formal conversations covering, say, membership or a voluntary role in the church, could be covered.

## ‘OFFENCE OF ENGAGING IN CONVERSION PRACTICES: COERCIVE COURSE OF BEHAVIOUR’

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

Please answer ‘Do not support’.

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

You could draw on the following points, in your own words:

- The proposals say that coercion will include “controlling of the victim’s day-to-day activities” and “pressuring the victim to act in a particular way” (para. 104). The words ‘controlling’ and ‘pressuring’ are loaded terms. But they are ways of describing common innocent and necessary features of parenting.
- The consultation says provision of advice and guidance by a religious leader would only be captured where there is coercion. But coercion includes ‘emphatic directives accompanied by forceful statements intended to pressure the individual’ (para. 103). It is easy to see how urging someone to repent because they are endangering their soul could be deemed to meet this threshold.
- Christians oppose coercion and control, but the consultation uses a weak definition of these terms. Ordinary parenting and pastoral practice could well be caught.
- If the Scottish Government insists on legislating for the vague and controversial concept of ‘conversion practices’, there will inevitably be a risk that parents will be prosecuted merely for trying to guide their children to the path they believe is best for them.
- If the Government insists on legislating, it must target the offence much more clearly. It has to ensure that a church which teaches the Christian sexual ethic, and takes steps such as withdrawing membership from people who reject it, cannot be construed as engaging in conversion practices.

## ‘OFFENCE OF ENGAGING IN CONVERSION PRACTICES: HARM’

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

Please answer ‘Do not agree’.

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

You could draw on the following points, in your own words:

- Defining harm to include mere distress is highly subjective. Convictions will be possible based simply on self-reporting by the person making the accusation. It is difficult to disprove someone's claim that they were distressed.
- The Scottish Government claims requiring evidence of harm is a key safeguard. But in reality this threshold is too low. It will result in frivolous or malicious false accusations.
- There is no requirement to prove that the accused intended any harm. Being sure their behaviour was harmless will not help them.
- The consultation openly states; "the proposed offence does not require it to be proven that the perpetrator to intend 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.

## **'OFFENCE OF ENGAGING IN CONVERSION PRACTICES: DEFENCE OF REASONABLENESS'**

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

Please answer 'Agree'.

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

You could draw on the following points, in your own words:

- This defence is too limited. The consultation refers to "a very small number of circumstances" (para. 122) in which it could be used and even suggests they are "difficult to envisage" (para. 123). What is the point of such a narrow defence?
- The defence must extend far beyond the examples given, of someone "at immediate risk of suicide" or "to prevent a child from engaging in illegal or dangerous behaviour" (para. 124).
- The Scottish Government admits that the offence "includes a broad range of potential conduct that could occur in a wide range of circumstances" (para. 121). A reasonableness defence is not enough to offset the breadth and reach of the offence.

## **'OFFENCE OF ENGAGING IN CONVERSION PRACTICES: PROPOSED PENALTY'**

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

Please answer 'Do not agree'.

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

You could draw on the following points, in your own words:

- A maximum 7-year prison sentence for such a vaguely defined offence is extremely dangerous. The media has reacted very strongly against this.
- The consultation document compares its proposals with existing offences. But all the comparisons it cites require

clearer intent or recklessness, and more serious conduct, as necessary elements of the offence.

- A prison sentence of up to 7 years is wholly disproportionate for an offence with such a low threshold. Parents and pastors should not have to fear years in jail merely for trying to guide people in the Christian faith.

## **'CRIMINAL OFFENCES – ADDITIONAL CONSIDERATIONS'**

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

Please answer 'No'.

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

You could draw on the following points, in your own words:

- It is patronising to tell adults that they cannot consent to taking part in challenging conversations about their own sexuality or gender.
- The Government must make clear that praying with other people, at their request and with their consent, will not be criminalised.
- It is essential that an adult who wants support from her church to live a celibate life should be free to receive that support without other people accusing her church of conversion therapy.
- The offence will have a chilling effect on churches providing LGBT people with everyday spiritual support, for fear that they may later make accusations of conversion practices against the church.

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

You could draw on the following points, in your own words:

- Detransitioners, who regret changing gender, must be free to tell their own stories to others without the threat of criminalisation.
- The proposals would lead to police action against the innocent, ordinary work of churches. This is what activists campaigning for the Bill want. They are hostile to mainstream, traditional beliefs about sex and sexual ethics.
- Some activists want a conversion therapy law to effectively impose LGBT theology on churches. But the criminal law shouldn't be used to settle a theological dispute.
- A catch-all conversion therapy law could turn church ministers into criminals for teaching about celibacy or the Christian view of marriage. You only have to read the words of activists themselves to see that this is what they want. But this would be a serious breach of human rights.
- The Government must respect the freedom of parents to bring up their children in accordance with their beliefs. This is protected under human rights law. The Supreme Court has emphasised the importance of families being "left to bring up their children in their own way".

## **'CONSIDERATION OF CONVENTION RIGHTS'**

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### **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?**

You could draw on the following points, in your own words:

- The Scottish Government overstates the significance of the steps it has taken within the proposals. The harm threshold is low, the coercion requirement is vague and the defences do not explicitly protect everyday pastoral and parenting situations.
- The Scottish Government must do a lot more to reassure Christians that simply explaining biblical teaching to a same-sex attracted or trans person will not constitute conversion therapy.
- The consultation paper's consideration of human rights doesn't even fill two pages, which is wholly inadequate given the importance of this question.
- A leading KC, Aidan O'Neill, has examined the proposals and concluded they would impact four articles of the European Convention on Human Rights.
- Aidan O'Neill KC believes the proposals would criminalise mainstream pastoral work of churches, mosques and synagogues and temples, in breach of Article 9 of the European Convention on Human Rights.

## **'A NEW CIVIL ORDER RELATING TO CONVERSION PRACTICES'**

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

Please answer 'Do not support'.

### **28 Please explain your answer to Question 28**

You could draw on the following points, in your own words:

- It appears that 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 shocking.
- The lack of definition of a conversion practice makes these powers dangerously vague. It will be relatively easy to obtain an order against a church or a parent.
- Existing orders protect people from behaviour with a clear and specific definition, such as forced marriage. But nobody knows what a conversion practice is.
- The consultation admits that one reason for introducing civil orders is that they are easier to obtain than a criminal conviction, requiring a lower standard of proof. But in such a contentious area, it is appropriate that evidence is robustly tested in court.
- 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 evangelistic events at major venues could encourage the authorities to seek a civil order to ban the event.

## **'A NEW CIVIL ORDER RELATING TO CONVERSION PRACTICES: CONSIDERATIONS'**

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

Please answer 'Do not agree'.

### **30 Please explain your answer to Question 29.**

You could draw on the following point, in your own words:

- Allowing third parties to apply for the orders with the leave of the court opens up the potential for politically motivated or anti-religious activism through the courts.

## **'IMPACT ASSESSMENTS'**

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### **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
- h) Sex
- i) Sexual orientation

Please select 'Religion and belief'.

You could draw on the following points, in your own words:

- Anti-religious activists object to biblical teaching about sexual ethics. They are free to do that. But it is not the job of the State to dictate Church doctrine. Repentance from sin of all kinds, including sexual sin, is a basic part of Christian belief. A conversion therapy law must not criminalise Christian beliefs.
- Leading activist Jayne Ozanne has said that even "gentle non-coercive prayer" should be included within the scope of a conversion therapy ban. This is unreasonable and repressive. The Scottish Government must not accept this.
- The consultation says that "statements that being gay is sinful or that transgender identity does not exist" are "hatred" (para. 85). They are not. In fact, they are beliefs that are worthy of respect in a democratic society, and the Scottish Government should not be dismissing them as hatred.
- Churches that teach the biblical sexual ethic also teach that Christians must love their neighbour. They are not a threat to LGBT people and do not deserve to be criminalised.
- The proposals put ordinary Christians, gender-critical feminists, loving parents and sensible teachers at risk of prosecution.

**When you have finished your response, select 'Finish' at the bottom of the Contents page.**