



Ending Conversion Practices Bill

Consultation Response



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02/04/2024

Defining Conversion Practices for this Legislation

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

Yes.

2. Please give the reason for your answer to Q1.

As an LGBT+ organisation working directly with the LGBTQ+ community here in Scotland (including those who have been subjected to, are being subjected to or are concerned about being subjected to conversion practices) we are in support of a definition of conversion practices which focuses on behavior motivated by the intent to change or suppress a person's sexual orientation or gender identity. It is critical that a definition of conversion practices should be clear and inclusive in order to protect all LGBTQ+ (Lesbian, Gay, Bisexual, Trans, Asexual, Queer+) people living in Scotland from the potential harm caused by such abhorrent practices.

As highlighted by the then United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI), Victor Madrigal-Borloz's "Report on Conversion Therapy", conversion practices lead to psychological and physical pain and suffering, and are in opposition to the core tenets of international human rights law. The Report highlights "*practices of conversion therapy target a specific group on the exclusive basis of sexual orientation and gender identity, with the specific aim of interfering in their personal integrity and autonomy. In that sense these practices are inherently discriminatory* [violating one's right to non-



discrimination]. *These practices also violate the prohibition of torture and ill-treatment... these practices also violate the right to health, including freedom from non-consensual medical treatment*¹. A further report from the then United Nations IESOGI highlights instances where conversion practices violate an individuals' right to freedom of conscience and freedom of expression, and the rights of the child (in instances where those under the age of 18 are exposed to conversion practices).² Human rights law is guided by fundamental principles of universality, equality and non-discrimination. Human rights are inalienable, and inherent to all human beings. It's imperative that conversion practices, which cause profound and long-lasting harm to LGBTQ+ people subjected to them, are banned here in Scotland to ensure that all LGBTQ+ people can truly have our rights realised and respected.

We'd note that we are in support of the approach set out by the Scottish government and are satisfied that the proposed legislation aims to outlaw abusive practices with the intent to suppress, change or "fix" a person who is LGBTQ+. We are satisfied that the legislation does not aim to criminalise non-directive support, and only aims to outlaw serious instances of abuse where a perpetrator is attempting to alter or change an LGBTQ+ persons' sexual orientation or gender identity to a "desirable" or "preferred" orientation/identity.

Suppression

¹ Madrigal-Borloz, V, United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI) (2020) *Report on Conversion Therapy (short)*
<https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/ConversionTherapyReport.pdf>

² Madrigal-Borloz, V, United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI) (2020) *Practices of so-called "conversion therapy" Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.*
<https://documents.un.org/doc/undoc/gen/g20/108/68/pdf/g2010868.pdf?token=WqTZfYAsPimFZdL9N6&fe=true>



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

It should be covered.

4. Please give reasons for your answer to Q3

It's imperative that the proposed legislation should cover acts or courses of behaviour intended to suppress another person's sexual orientation or gender identity. LGBTQ+ people should be able to live our lives freely and authentically - exactly as we are. Without the explicit inclusion of suppression within the Bill there remains room for LGBTQ+ people to be subjected to practices aimed to suppress, repress or hide who we are.

As recommended by the Expert Advisory Group on Ending Conversion Practices, it is important to explicitly include suppression within the definition as perpetrators of conversion practices may claim they are aware that they cannot "change" someone's sexual orientation or gender identity, but they believe that they can indeed "suppress it"³. It should be recognised that suppression is equally as harmful to LGBTQ+ people, and violates our human rights (e.g. freedom of conscience and freedom from torture and inhumane treatment).

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?

Support.

6. Please give reasons for your answer to Q5.

³ Expert Advisory Group on Ending Conversion Practices (2023) *Report and Recommendations*.

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/10/expert-advisory-group-ending-conversion-practices-report-recommendations/documents/expert-advisory-group-ending-conversion-practices-report-recommendations/expert-advisory-group-ending-conversion-practices-report-recommendations/govscot%3Adocument/expert-advisory-group-ending-conversion-practices-report-recommendations.pdf>



We are in support of protecting LGBTQ+ people from profound and long-lasting physical and emotional harm and believe that an approach that uses a package of both criminal and civil measures to address conversion practices will make Scotland a safer place for LGBTQ+ people.

Alongside others in the LGBTQ+ sector, we strongly support the introduction of civil measures proposed within the legislation and view them as essential to the protection of LGBTQ+ people from harm. Civil measures, such as protection orders, have demonstrably protected people from experiencing abuse / further abuse here in Scotland (e.g. the Domestic Abuse (Protection) (Scotland) Act 2021) and should be included in any legislation which hopes to protect LGBTQ+ people from experiencing conversion practices.

As evident by our support for the inclusion of civil measures in the proposed legislation, our priority is to protect and prevent LGBTQ+ people from ever experiencing harmful and abusive conversion practices. In instances where LGBTQ+ people are subjected to such practices, and the relevant legal thresholds are met, we support criminalisation. Additionally, we support the criminalisation of offering, promoting, advertising or referring a person for the purpose of conversion practices (as highlighted by the Expert Advisory Group on Ending Conversion Practices)⁴ and view this as essential to the protection of LGBTQ+ people here in Scotland.

Offence of Engaging in Conversion Practices: The Provision of a Service

⁴ Expert Advisory Group on Ending Conversion Practices (2023) *Report and Recommendations*.

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/10/expert-advisory-group-ending-conversion-practices-report-recommendations/documents/expert-advisory-group-ending-conversion-practices-report-recommendations/expert-advisory-group-ending-conversion-practices-report-recommendations/govscot%3Adocument/expert-advisory-group-ending-conversion-practices-report-recommendations.pdf>



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

Support.

8. Please give reasons for your answer to Q7.

We are in support of the proposals set to ban the provision of a service related to conversion practices. Conversion practices are abusive, damaging and violate the human rights of LGBTQ+ people - it's important that all in our community are protected from this harm. The criminalisation of services which aim to change or suppress a persons' sexual orientation or gender identity is aligned with international human rights law which affords protections to LGBTQ+ people (freedom from torture and inhumane treatment). We support the inclusion of a definition which names services providing guided counselling, talking therapy, coaching, instructing or treatments. We welcome the recognition of the coercive element within the provision of services related to conversion practices, and agree that services provided by perpetrators deemed to hold authority, power or "expertise" can mean a victim of conversion practices is more likely to trust, accept or feel obliged to follow their advice. Likewise, we welcome the proposed inclusion of both services which are paid for, and those provided for free within the Offence of Engaging in Conversion Practice and view this as essential within the definition of a service.

We are satisfied that the provision of services intended to support an LGBTQ+ person to explore their sexual orientation or gender identity, without the intent to suppress or change who they are, will not be criminalised within the proposed legislation. As an organisation providing LGBTQ+ mental wellbeing support and counselling for LGBTQ+ people here in Scotland, we believe it is critical that LGBTQ+ people can continue to access non-guided support to explore our identity in safe, non-judgmental environments with no predetermined or preferred outcome.

We'd welcome further information from the Scottish government on the parameters of what constitutes a service that falls within the criminal offence of engaging in conversion practice.



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 behavior?

Support.

10. Please give reasons for your answer to Q9.

It is essential to include coercive courses of behaviour within the offence of engaging within conversion practices to ensure LGBTQ+ people will be protected from harm. As highlighted by the Expert Advisory Group on Ending Conversion Practices, many victims of conversion practices experience a series of controlling or coercive behaviours and acts which accumulatively constitute conversion practice(s).⁵ Galop's 2023 "There Was Nothing to Fix" Report (hereafter Galop's 2023 Report) highlighted the thematic occurrence of the use of coercive behaviours to suppress or change someone's sexual orientation or gender identity, noting that individuals who took part in the study highlighted sustained instances of coercion which happened throughout the life course and the detrimental impact this had on wellbeing.⁶ We know from actively delivering support to LGBTQ+ people who have experienced or are experiencing conversion practices that coercive behaviours, and sustained acts aimed to change or suppress a person's sexual orientation or gender identity, often have a detrimental impact on the mental health and wellbeing of LGBTQ+ people.

⁵ Expert Advisory Group on Ending Conversion Practices (2023) *Report and Recommendations*.

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/10/expert-advisory-group-ending-conversion-practices-report-recommendations/documents/expert-advisory-group-ending-conversion-practices-report-recommendations/expert-advisory-group-ending-conversion-practices-report-recommendations/govscot%3Adocument/expert-advisory-group-ending-conversion-practices-report-recommendations.pdf>

⁶ Galop (2023) "There was nothing to fix" LGBTQ+ survivors' experiences of conversion practices. <https://galop.org.uk/resource/there-was-nothing-to-fix-lgbt-survivors-experiences-of-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)?

Agree.

12. Please give reasons for your answer to Q11.

Conversion practices are inherently harmful to LGBTQ+ people subjected to them. Galop's 2023 Report highlighted the prevalence of LGBTQ+ people being able to recognise that the abuse they were subjected to was harmful when stating *"all of these methods of abuse were described by the LGBT+ conversion practice survivors as harmful or hurtful. Many survivors themselves described how they felt the behaviours and abuse they were subjected to were aimed at policing, pathologising, correcting or erasing their LGBT+ orientation or identity."*

Additionally, conversion practices are inherently harmful to the collective LGBTQ+ community. The then United Nations IESOGI observes that all conversion practices *"take as a point of departure the belief that sexually diverse or gender-diverse persons are somehow inferior - morally, spiritually or physically - than their heterosexual and cisgender siblings"*.

The notion that LGBTQ+ people are morally inferior and should or can be changed is in opposition to international human rights law, which views LGBTQ+ people as equal to others in society.⁷ Additionally, the then IESOGI concluded that conversion practice(s) *"comprise treatment that is degrading, inhuman and cruel in its very essence and on the risks that it creates for the perpetration of torture"*. Treatment which is degrading, inhuman, cruel and can be paramount to torture is characteristically harmful; both in instances where it can be proven that a victim experienced harm (including fear, alarm or distress) and in instances where it cannot.

⁷ Galop (2023) *"There was nothing to fix" LGBTQ+ survivors' experiences of conversion practices*. <https://galop.org.uk/resource/there-was-nothing-to-fix-lgbt-survivors-experiences-of-conversion-practices/>



Offence of Engaging in Conversion Practices: Defence of Reasonableness

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

Do not agree.

14. Please give reasons for your answer to Q13.

We hold deep reservations about the inclusion of a defence of reasonableness within the proposed legislation. Whilst we understand that there is precedent for the inclusion of a reasonableness clause (as in similar legislation e.g. Domestic Abuse Act, Hate Crime and Public Order Act) within the legislation, we are concerned that it's inclusion in this legislation could weaken the protections the legislation aims to afford to LGBTQ+ people. We'd also highlight that human rights experts have recognised conversion practices as inherently abusive, inhumane and degrading in nature and have highlighted the multiple human rights violations that engaging in conversion practices constitutes - it is difficult to surmise an instance where engaging in conversion practices could be deemed reasonable. Relatedly, we do not find the examples provided within paragraph 124 of the consultation document to be remotely realistic, and note that they do not credibly demonstrate justification for subjecting an individual to harmful conversion practices which aim to suppress or change their sexual orientation or gender identity.

Offence of Engaging in Conversion Practices: Proposed Penalty

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

Agree.

16. Please give reasons for your answer to Q15.

We take this opportunity to reaffirm that our priority is protecting LGBTQ+ people from experiencing harmful conversion practices in the first instance. In instances where an LGBTQ+ person has experienced conversion practices, has the desire to pursue criminal prosecution, and the legal threshold is met with regards to intent and harm we are in



support of the proposed penalties.

Criminal Offences - Additional Considerations

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

Yes.

18. Please give reasons for your answer to Q17.

We agree that there should be no defence of consent for conversion practices as conversion practices are demeaning, discriminatory, torturous, inhumane and abusive. It is not possible to consent to abuse.

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

No.

Removing a Person from Scotland for Conversion Practices

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

Support.

21. Please give reasons for your answer to Q20.

We are in support of the criminalisation of taking a person out of Scotland for the purpose of subjecting them to conversion practices. As evidenced in Galop's 2023 Report, it is not uncommon for an LGBTQ+ person to be removed from, or be threatened with removal from, the country (in the report's instance, the United Kingdom) to undergo conversion practices.⁸

⁸ Galop (2023) "There was nothing to fix" LGBTQ+ survivors' experiences of conversion practices. <https://galop.org.uk/resource/there-was-nothing-to-fix-lgbt-survivors-experiences-of-conversion-practices/>



We recognise that the legislation will not criminalise acts of conversion practice which take place outside of Scotland, but in fact aims to prevent the act of causing someone to leave Scotland for the purposes of undergoing conversion practices within another part of the United Kingdom or other countries. We welcome this, and would highlight until there is significant progress in LGBTQ+ equality across the world, this is a measured and necessary approach to protect people resident in Scotland from harm.

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

Support.

23. Please explain your answer to Q22.

We reiterate that our priority is protecting LGBTQ+ people from ever experiencing conversion practices. We support the proposed penalties for taking a person outside of Scotland for the purposes of conversion practices and hope that the penalties help to protect LGBTQ+ people resident in Scotland from harm.

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

Support.

25. Please explain your answer to Q24.

We support the proposal to create a new statutory aggravation for conversion practices. In instances where the most severe kinds of conversion practices are carried out against a person (for example physical assault and/or sexual assault) it is important to consider the role conversion practices played as a motive for the existing criminal offence. As an organisation working to support LGBTQ+ people who are survivors of conversion practices, we are aware of the violent nature of crimes committed against members of our community with the specific intent to change or suppress their sexual orientation or gender identity. Conversion practices as a motivating factor for committing existing criminal offences was also highlighted in Galop's 2023 Report which states *"some survivors of conversion practices described being*



subjected to existing offences (e.g. physical violence, sexual abuse, forms of coercive control).⁹

The new statutory aggravation will also allow for the collection of data on criminal acts which have been undertaken with the motive of conversion practices, which will provide us with a more thorough view of conversion practices here in Scotland, and highlight the need for affirming, person-centred and trauma informed support for survivors.

Consideration of Convention Rights

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

We believe that the proposals are compatible with the European Convention on Human Rights. Article 1 “*Obligation to respect human rights*”, Article 2 “*Right to Life*” and Article 3 “*Prohibition of torture*” highlight the compatibility of the European Convention on Human Rights with legislation which aims to end conversion practices. As we know, human rights experts across the world (including the previous IE SOGEI) have condemned conversion practices; stating they are inhumane, undignified and in opposition to the core principles of human rights and equality. It is imperative that legislation to end conversion practices is introduced here in Scotland to ensure that LGBTQ+ people are protected from the profound harm caused by conversion practices (as per Article 1,2 and 3 of the Convention).

The proposed new offences within this legislation only apply where conversion practices are directed at or carried out against a person and cause them harm, therefore we are of the view the proposed legislation does not infringe upon remaining rights afforded within the Convention.

A new Civil Order Relating to Conversion Practices

⁹ Galop (2023) “*There was nothing to fix*” LGBTQ+ survivors’ experiences of conversion practices. <https://galop.org.uk/resource/there-was-nothing-to-fix-lgbt-survivors-experiences-of-conversion-practices/>



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

Support.

28. Please explain your answer to Q28.

We are of the view that preventing LGBTQ+ people from experiencing conversion practices in the first instance is paramount, the use of criminal law to stop conversion practices should be a last resort. Proposed civil orders are essential in order to effectively protect LGBTQ+ people at risk of conversion practices (and those experiencing them) from harm.

A new Civil Order Relating to Conversion Practices: Additional Considerations

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

Agree.

30. Please explain your answer to Q30.

It's important that conversion practices protection orders can be applied for to the court, by the person themselves, or by the local council or a trusted voluntary organisation. It's imperative that individuals applying for civil protections have choice in the routes they can submit an application, and that they are offered appropriate and culturally competent support by a suitable public body or voluntary organisation of their choosing throughout the process.

Wider Recommendations

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

No.

Impact Assessments



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

We believe that the proposed legislation will have a wholly positive impact on trans and non-binary people living in Scotland, and are hopeful it will protect our community from harmful conversion practices.

- d. Civil partnership
- e. Pregnancy and maternity
- f. Race
- g. Religion and belief

We are of the view that the proposed legislation will have no impact on the protected characteristic of religion and belief. We understand the legislation only criminalises conversion practices directed at or carried out against another person, that cause harm. As highlighted by Victor Madrigal-Boloz's Report to the United Nations Human Rights Council *"the Special Rapporteur on freedom of religion or belief has rejected any claim that religious beliefs can be invoked to justify violence or discrimination against people on the basis of their sexual orientation and gender identity. The Special Rapporteur recommended that States combat all forms of violence and coercion perpetrated against lesbian, gay, bisexual and transgender persons justified with reference to religious practice or belief."*¹⁰

- h. Sex
- i. Sexual orientation

¹⁰ Madrigal-Borloz, V, United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI) (2020) *Practices of so-called "conversion therapy" Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.*

<https://documents.un.org/doc/undoc/gen/g20/108/68/pdf/g2010868.pdf?token=WqTZfYAsPimFZdL9N6&fe=true>



We believe that the proposed legislation will have a wholly positive impact on equality for the protected characteristic of sexual orientation, and are hopeful it will help to protect LGBQA+ people from experiencing conversion practices.

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

No.

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

No.

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

No.

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

No.

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

We are overwhelmingly supportive of the proposals to introduce legislation to end conversion practices here in Scotland. We'd add it is important for the Scottish government to consider the importance of supporting survivors of conversion practices and ensuring that they are able to access LGBTQ+ affirmative, compassionate and culturally competent support services. Supporting survivors at all stages of their journey is critical (including ensuring those who choose to pursue criminal prosecution are supported throughout appropriately). It's important that organisations offering support to those who have experienced, are experiencing or are at risk of experiencing conversion practices are sufficiently resourced so we can continue to offer timely, affirmative and trauma-informed support to all LGBTQ+ people who need it.



We'd also highlight the importance of ensuring there are opportunities for those working in the voluntary sector to undergo training related to civil protection orders and the filing of these on behalf of community members who ask for such support.

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

No.



Respondent Information Form

1. What is your name?

Rebecca Hoffman

2. What is your email address?

Rebecca@lgbthealth.org.uk

3. Are you responding as an individual or an organisation?

Individual

Organisation

4. What is your organisation?

LGBT Health and Wellbeing

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

Publish response with name

Publish response only (without name)

Do not publish response



lgbthealth.org.uk

Scotland's health and wellbeing charity for LGBTQ+ adults (16+)

We welcome the entire diversity of the lesbian, gay, bisexual and transgender (LGBT) community, including non-binary, queer, intersex, asexual people and all identities under the LGBTQIA+ community - this includes those questioning their sexuality or gender identity, or who do not use labels for either.

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