

# Gay Men's Network **G**

## ENDING CONVERSION THERAPY PRACTICES IN SCOTLAND: CONSULTATION

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GMN Consultation Response

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I am one of the directors of the Gay Men’s Network. One of the things that prompted me to get involved in setting up GMN was my experience as a young boy growing up in Dunbartonshire in the late 80s and early 90s.

As a child I was what we would today call “gender non-confirming” meaning I didn’t perform the expected behaviours of a boy in Scotland at that time. I couldn’t play football, I had no interest in watching it, I preferred the company of the girls; I was thin, weak, physically awkward and I didn’t have the easy physicality of the other boys. I played with my sister’s toys.

Of course, I was bullied relentlessly about being gay before I even knew what that meant. When I did begin to understand and realised that all those awful things they were saying about me were true, I would have done anything for it not to be true.

At some point during that turbulent and vulnerable time, the thought began to creep into my head that it would have been so much easier had I been born a girl. I knew that the way I felt about boys would not change, so I wished that I could have been born differently so that somehow, I could be “right”.

Luckily, I was born long before the internet and even longer before social media that those ideas in my head remained just that. Had I been a child today, I’m convinced I would have been seduced by the lies filling social media that I could really change sex and become the girl I felt I should have been and escaped the shame of being gay. That’s why I, along with my fellow directors and members of GMN, will do everything we can to oppose legislations that seeks to use the spectre of gay conversion therapy – something happily consigned to history in the UK – to introduce the nebulous and fluid concept of “gender identity” into UK law.

My internalised homophobia would, today, have led me to the doors of a gender clinic where I would have gladly taken the drugs I thought might fix me, so desperate was I to escape the shame I was feeling. Most children who, like me, were “gender non-confirming”, grow up to be homosexual. This bill which, as we will argue in our response, will endorse the “affirmation only” approach to helping confused, young people where their own self-diagnosis is accepted without question by clinicians and the necessary drugs provided on demand. Vulnerable young people are being set upon a lifetime of irreversible medicalisation and surgery. If the bill passes, the only conversion therapy that will be happening will be the state sanctioned

conversion of young people who might otherwise have grown up to be healthy homosexuals into a simulacrum of heterosexuality.

It is with this in mind that we offer you our response to the consultation.

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# Introduction, Summary and Concerns Regarding Evidence

## Introduction

1. The Gay Men’s Network is an independent not for profit organisation established to fight modern forms of homophobia. We are a group of gay men from diverse backgrounds with a range of life and professional experiences and our primary focus is the interests and legal protections of homosexual men. We respond to “Ending Conversion Practices in Scotland<sup>1</sup>” consultation with this focus in mind and based on an established history of raising serious legal and policy critiques in this area<sup>2</sup>.
2. So called “Conversion Practices bans” have been enacted globally on the basis of highly questionable evidence. We consider it preposterous to imagine the gay rights movement would have secured the repeal of Section 28 or gay marriage while conversion practices occurred contemporaneously. The reality is that conversion legislation such originates from the gender identity ideology movement and the consequence is to limit clinical inquiry into gender distress which disproportionately affects gay youth.
3. Gender medicine is philosophically homophobic, and it construes gender nonconformity in youth as diagnostic evidence that a child is born into the wrong body and requires chemical or surgical correction. This is a new form of gay conversion therapy, and the proposed legislation state mandates the practice by criminalising any attempt to “supress” a “gender identity”. We refer to the evidence of the Secretary of State for Women and Equalities to the relevant select committee on this point<sup>3</sup> and we particularly cite this passage: *“Dr Natasha Prescott, a former GIDS clinician reported in her exit interview from the Tavistock that ‘there is increasing concern that gender affirmative therapy, if applied unthinkingly, is reparative therapy against gay individuals, i.e. by making them straight’ and Dr Matt Bristow, a former GIDS clinician, reported to Hannah Barnes that he came to feel that GIDS was performing ‘conversion therapy for gay kids.’<sup>4</sup>”*

<sup>1</sup> <https://www.gov.scot/publications/ending-conversion-practices-scotland-scottish-government-consultation/>

<sup>2</sup> <https://www.gaymensnetwork.com/letters-and-responses>

<sup>3</sup> <https://committees.parliament.uk/publications/43255/documents/215243/default/>

<sup>4</sup> Time to Think: The Inside Story of the Collapse of the Tavistock’s Gender Service for Children. Hannah Barnes, Swift Press, 2023.

4. We consider it surprising that the Scottish Government appears not to have taken this evidence into account and we are concerned that its refusal to consider data is of a piece with a decision to ignore an English evidence-based decision regarding the prescription of puberty blockers. This lack of familiarity with basic concerns regarding homophobia in gender medicine suggests that the pre-consultation process prior to the present exercise is flawed and ideologically biased.
5. Our position is that the proposed legislation presents risks of serious harm to homosexual men and wider society. We draw attention to the following well-known passage from the Secretary of State's letter: *"The most recent reported data from GIDS in England demonstrates that older patients expressing a sexual orientation were overwhelmingly not heterosexual. 67.7% of adolescent female patients were recorded as being attracted to other females only, 21.1% were bisexual, and only 8.5% were listed as heterosexual. Among adolescent male patients, 42.3% were attracted only to other males, 38% were bisexual, and only 19.2% said they were attracted only to females"*.
6. In summary, we raise the following serious concerns:
  - a) No satisfactory evidence base is provided that would justify this legislation.
  - b) The legislation is so widely drafted that it is draconian, particularly in respect of clinicians and parents.
  - c) The legislation proposes to enshrine the politically contested and dubious mind/body dualist concept of "gender identity" into criminal law with no recognition of the philosophical homophobia inherent to gender identity ideology.

## The evidence that Conversion Practices are taking place is poor and biased.

7. The Scottish Minister for Equalities is of the view that conversion practices *"happen today, and they have absolutely no place in Scotland."*<sup>5</sup> We see no evidence that conversion practices are currently happening in Scotland, and we question the evidence supporting this suggestion. In the first instance, given the composition and lengthy term in office of the current governing party, we consider it highly unlikely that a practice akin to torture might be permitted for well over a decade in Scotland without governmental action.

<sup>5</sup> E. Roddick, Minister for Equalities, Ministerial Forward, <https://www.gov.scot/publications/ending-conversion-practices-scotland-scottish-government-consultation/>

8. We note the consultation document opines *“Due to the often-private nature of conversion practices, evidence is often based on self-reporting.”*<sup>6</sup> We consider that this statement should in and of itself raise concern as to sufficiency of evidence that might justify legislation. We note with concern that paragraph 24 of the consultation cites the 2017 National LGBT Survey and repeats a long-discredited claim<sup>7</sup> *“that 5% of respondents had been offered so called ‘conversion’ or ‘reparative’ ‘therapy’ (but did not take it up) and a further 2% had undergone it. These figures were higher for trans respondents (9% of trans men been offered it and 4% had undergone it).”*
9. The 2017 survey is not regarded as a credible or sensible evidence base for legislation because:
  - a) All key terms in the survey (“conversion therapy”, “undergone” and “offered”) were undefined which is an irregularity of an extraordinary nature.
  - b) The methodology producing these results was highly irregular as it consisted of activist organisations motivated by a desire to promote Conversion Therapy legislation recruiting respondents at Pride events.
  - c) No statistically sound quality standard was identified or adhered to.
10. The discredited 2017 survey was regarded as an insufficient basis for comparative UK wide legislation leading the UK Government to commission data from Coventry University which featured in the UK Government’s own consultation on this matter. The Coventry data struggled to find examples of conversion practices and located 30 people in the entire UK population, 6 of those identified as trans and non-binary and 3 claimed to have undergone a conversion practice. We raised significant concerns at the time regarding this data showing as it does that the suggestion conversion practices are widespread, or routine is simply not borne out by the evidence<sup>8</sup>.
11. We note the Scottish Government consultation completely omits the Coventry data while elevating the significance of the discredited 2017 survey. In doing so, the Scottish Government is attempting to cast around for even low-quality data to support a nakedly ideological statute.

<sup>6</sup> Para 22, <https://www.gov.scot/publications/ending-conversion-practices-scotland-scottish-government-consultation/pages/4/>

<sup>7</sup> See M. Clark “The lies behind the ‘conversion therapy’ panic” <https://www.spiked-online.com/2024/01/25/the-lies-behind-the-conversion-therapy-panic/>

<sup>8</sup> <https://static1.squarespace.com/static/6200252604e9795287de2ada/t/621ff167d49b731100b1b248/1646260583939/Gay+Men+UK+Consultation+Response+Branded+9.pdf>



12. The poor evidence base justifying this legislation lends strong support to the conclusion that the legislation is in fact a subterfuge designed to place the concept of “gender identity” onto the statute books and it will have the effect of regulating clinical practice in a manner which will harm young homosexuals. The proposition that gay conversion practices are widespread or frequent is absurd. The proposition that “gender identity” conversion practices can be divorced from clinical practice or normal parenting cannot be reconciled with the wide drafting of the statute. There is no need for this legislation, and it can only sensibly be regarded as a deeply ideological measure which risks serious harm homosexuals presenting at gender clinics.

# Answers to Consultation Questions

## Question 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?*

**GMN answers: No**

## Question 2

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

### Issues with enshrining the contested concept of “gender identity” into criminal law

13. Questions 1 and 2 focus on the *mens rea*<sup>9</sup> for the proposed new offence without adequately defining what “gender identity” is or adequately considering how wide the scope of the offence would be in practice. Gender Identity is a politically contested mind/body dualist theory which posits that some human beings have gendered souls born into the wrong body. We consider that theory to be ludicrous and entirely religious in nature and we are surprised the Scottish Government considers it right or proper to introduce it into any statute, let alone a criminal statute. We would point out that the (widely held) disbelief in persons having a gendered soul amounts to a “belief” protected characteristic following the judgment in *Forstater v GCD*<sup>10</sup>. Any Scottish person accused of the new offence would thus be placed in the absurd position whereby their disbelief would be protected in a civil court yet compelled by a criminal one.
14. We are concerned that insufficient thought has been given to how a “gender identity” prosecution might play out in practice, and we consider that the offence will be unworkable for the following reasons:
  - a) No adequate definition of “gender identity” can be given to a jury that is not circular or spiritual in nature, nor can a claim to having a “gender identity” be

<sup>9</sup> The mental state element necessary for the vast majority of criminal offences

<sup>10</sup> [https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya\\_Forstater\\_v\\_CGD\\_Europe\\_and\\_others\\_UKEAT\\_0105\\_20\\_IQJ.pdf](https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT_0105_20_IQJ.pdf)

measured against any third-party evidence because the concept is a self-reported spiritual phenomenon.

- b) Members of juries with (protected) gender critical beliefs would have to either suspend them (a grotesque act of state compulsion) or be forbidden from participating in a trial (contrary to the principle of trial by peers and the Article 6 right to an independent tribunal).
  
- c) The ability of the defence to challenge a claim to possession of a "gender identity" would result in absurdities. The court would be faced with either (a) allowing Prosecution and Defence to call competing academic evidence on the subject leaving the jury with a political decision as to the existence of this concept or (b) the Court would direct parties no such evidence is admissible which would place the defence in the unfair position of not being able to question the existence of a politically contested concept. We consider that juries returning verdicts on political questions and courts becoming embroiled in this area of debate to be a highly irregular and undesirable outcome as a basic matter of criminal law.

### Potential breadth of the *mens rea*

- 15. The proposed *mens rea* is described at paragraph 45 in the following terms (emphasis added) "It does not include non-directive and ethical guidance and support to a person who might be questioning their sexual orientation or gender identity or experiencing conflict or distress, whether that is provided by a healthcare practitioner, a family member, or a religious leader."
  
- 16. The suggestion a "directive" conversion aimed at supporting a person might incur criminal liability is a draconian and deeply concerning one. A concerned parent of an autistic teenage girl might have a perfectly proper "directive" conversation asking her not to wear a breast binder for the sake of her health, for example, yet be criminalised for intended to suppress a gender identity. A doctor dealing with a youth presenting with gender distress and serious co-morbidities might refuse to prescribe puberty blockers

having made a confident and clear diagnosis yet be criminalised for the “directive” nature of a consultation based on that view.

### Question 3

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

**GMN answers: It should not be covered**

### Question 4

Please give reasons for your answer to Question 3.

17. The consultation envisages a wide ranging and draconian definition of suppression that will criminalise ordinary interactions between young people and their parents, teachers and any person engaged in a support role. The consultation defines suppression<sup>11</sup> as acts that (emphasis added) "*seek to repress, and/or prevent the development or manifestation of another person's sexual orientation or gender identity. Repress means to prevent or subdue something (often through force). Manifest means to show, through acts or appearance.*" It goes on to provide the following examples (at para 50):

- prescribing medication to suppress a person's sex drive.
- therapy or counselling that requires a person not to act on their same-sex attraction, including through celibacy.
- controlling a person's appearance (e.g. clothes, make-up, hairstyle)
- restricting where a person goes and who they see.

18. Suppression, much like the "directed conversation" examples above, is an extremely low threshold for criminal liability. In proposing to criminalise acts directed to "*controlling a person's appearance*" this consultation criminalises basic parenting and would catch the breast binder example offered above. Similarly, "*restricting where a person goes and who they see*" is another basic safeguarding duty most parents will exercise. As the suppression trigger is common to any and all sexual orientations, truly absurd results are inevitable. This was certainly the view of respected King's Counsel Aidan O'Neill who argued that a parent who refuses to allow a teenage boy to put up posters of nude women in his bedroom might be culpable for "suppressing" a heterosexual sexual

<sup>11</sup> Para 49 and 50 <https://www.gov.scot/publications/ending-conversion-practices-scotland-scottish-government-consultation/pages/6/>

orientation as they had acted to subdue a manifestation of it. We regard that outcome as ludicrous and a sure sign that such wide-ranging legislation is potentially dangerous, open to abuse and likely to bring the law into disrepute.

19. Our principal concern is the increasing numbers of young homosexuals presenting with gender distress at clinics. The low threshold of “suppression” will chill clinical practice forcing doctors to accept a child’s self-diagnosis lest they risk prosecution for taking any action that might be construed as “suppression”. This is entirely contrary to the best interests of children, and it fundamentally shifts the power relationship in clinical practice from one in which a highly trained professional safeguards the best interests of a vulnerable young patient to one in which that patient, often presenting with serious co-morbidities, is left on their own to make potentially life changing decisions. We take the view that is reckless and will do harm to young homosexuals.

### Question 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?*

**GMN Response: Do not support**

### Question 6

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

20. In keeping with our observations as to the non-existent evidence base justifying this legislation, we regard the vast array of proposed new civil and criminal measures as legislative subterfuges designed to enshrine “gender identity” into law which will harm homosexuals.

### Question 7

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

**GMN Response: Do not support**

## Question 8

Please give reasons for your answer to Question 7

21. The “service” provisions in this consultation are ideologically inspired and will effectively state-mandate “affirmation only” gender medicine because they proceed on the false premise that clinicians cannot remedy “gender confusion” (and must presumably make no attempt to resolve it). We take the view that statement is remarkable given clear evidence that most children, if left to explore gender distress, will desist from cross sex identification. We develop this point below with reference to the framing of the consultation.
22. Paragraph 92 of the consultation reads *“We do not wish to interfere with the provision of medical or psychological care that is conducted ethically by a healthcare professional according to relevant rules and guidelines<sup>12</sup>”*. However, it also says the following (emphasis added), *“for example, services that claim to provide a remedy for “unwanted same-sex attraction” and “gender confusion”. This conflicts with a clear medical consensus that it is not possible to bring about such a change and that conversion practices do not work<sup>13</sup>.”* While all available evidence shows that sexual orientation is fixed and attempts at conversion inevitably fail, this is not true of the concept of “gender confusion”. It is unscientific and medically illiterate to make the claim that gender confusion does not resolve and adopting this approach would mean Scottish children were left with nothing but their own self-diagnosis in the field of gender medicine. This is an irresponsible and ideologically driven position that ignores the fact that gender distress abates for the vast majority of children with the onset and completion of puberty.
23. We are particularly concerned that the consultation provides the following examples of a “service”, “counselling or any other form of talking therapy, coaching or instructing, a purported treatment” and we draw attention to the fact that these are specifically the sorts of interventions Dr Hilary Cass concluded, in her interim report, were in the best interests of children<sup>14</sup>.
24. Taken together, the consultation makes clear that a child’s self-diagnosis is to be regarded as definitive and that clinicians should not even attempt to explore a child’s “gender confusion”, a statement we regard as cruel. For the avoidance of doubt, we

<sup>12</sup> Para 92 <https://www.gov.scot/publications/ending-conversion-practices-scotland-scottish-government-consultation/pages/9/>

<sup>13</sup> Para 91 <https://www.gov.scot/publications/ending-conversion-practices-scotland-scottish-government-consultation/pages/9/>

<sup>14</sup> <https://cass.independent-review.uk/publications/interim-report/>

regard the combined effect of these paragraphs as deeply homophobic because the vast majority of children and young people presenting to these services are same sex attracted.

## Question 9

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

**GMN Response: Do not support**

## Question 10

*Please give reasons for your answer to Question 9*

25. The legislation proposes a wide definition of “coercion” which includes “person A controlling person B’s day-to-day activities<sup>15</sup>”. This is a common experience in parenting often connected to safeguarding a child or young person and criminalising it is wholly undesirable and a likely breach of the Article 8 right to a private and family life. It is a concern (and unusual) that there is no actual definition for the word “coercion” in the draft legislation which proceeds by way of examples at s. 112(2)(3) rather than define a key term which features in the offence itself.
26. We are further concerned that ideological language aimed at the state promotion of an “affirmation only” clinical approach is present in the draft “avoidance of doubt” section 118. We note that “affirmation only” medical treatment is explicitly exempt from criminalisation at s.118 (4) (1) (a) (i) in the following terms which exempt “*medical treatment intended to align person B’s physical characteristics with person B’s gender identity*”. This creates a clear ideological imbalance and bias in the legislation, clinicians offering Cass compliant exploratory therapy for children in gender distress might be at risk of prosecution for suppressing gender identity, but those who believe in the contested concept of “gender identity” and seek to alter physical characteristics are exempt. For the avoidance of any doubt, we regard this as homophobic, and an example of what Neale Hanvey MP described in the House of Commons as a state mandated law to “trans away the gay”. We are fortified in this conclusion by the fact draft s.118 (4) (1)

<sup>15</sup> Draft Provision 112 (2) <https://www.gov.scot/publications/ending-conversion-practices-scotland-scottish-government-consultation/pages/9/>



(b) (i) explicitly uses the word “affirm” indicating support of the discredited and homophobic “affirmation only” approach in terms that exclude from criminal liability clinical practice that “affirms a sexual orientation or gender identity which person B considers is (or may be) person B’s sexual orientation or gender identity.”

## Question 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)?*

**GMN Response: Do not agree**

## Question 12

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

27. Fear, alarm and distress are among the most easily triggered and lowest threshold for criminal culpability, so much so they feature in non-imprisonable public order act offences such as might be brought where one party swears at another in the street<sup>16</sup>. Given much of the political discourse around conversion practices likens them to torture causing lifelong harm, it is difficult to reconcile this harm threshold with the supposed justification for these offences. The harm threshold proposed is far below grievous bodily harm, lower than actual bodily harm and even lower than a simple common assault. This means that the offence is, (again), extremely broadly drawn and easily triggered.
28. The inclusion of “distress” is of particular concern as this is a self-reported emotional state and it is self-evidently common in those presenting with gender distress. This low harm threshold could have disastrous consequences for clinicians in practice, a disappointed child or young person might report distress at not being assessed as suitable for puberty blockers or other interventions and that state of harm might be relied upon by a prosecution to prove the proposed offence. We regard such outcomes as draconian and dystopian.

<sup>16</sup> For example, an offence contrary to Section 5 of the 1986 Public Order Act <https://www.legislation.gov.uk/ukpga/1986/64/section/5>

## Question 13

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

**GMN Answers: Do not agree**

## Question 14

*Please give reasons for your answer to Question 13*

29. We start from the premise that the proposed offence is so easily triggered and draconian it should not exist so logically nor should any defences to it.
30. That said, draft section 125(5) imposes a reverse burden on a defendant to “raise an issue” as to whether their conduct is reasonable which the Crown must then disprove to the criminal standard. This is undesirable and incoherent. In the first place, reverse burdens are generally considered undesirable as they place the onus on a defendant to prove an aspect of the presumed innocence. In the second place the drafting requires that a defendant prove to the civil standard that they have raised an issue. That is an unnatural and a difficult requirement for Defendants and juries to understand. This defence would have the effect of putting clinical practice, parenting or any support or pastoral work on criminal trial with juries returning verdicts as to spheres of private and professional life the state has no legitimate business in criminalising. The Defence is thus onerous, unclear, and unfair to defendants inasmuch as it involves a draconian reverse burden.

## Question 15

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

**GMN Answers: Do not agree**

## Question 16

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

31. The question of whether penalties for a proposed offence are fair and proportionate is intimately bound up with the gravity of the offence itself and how easily criminal liability may be incurred. Given our analysis to the effect that a concerned parent or doctor not engaged in the affirmation only approach could plausibly be prosecuted we consider the spectre of 7 years maximum imprisonment to be another example of the draconian nature of this statute.
32. We also wish to raise a concern as to the effect such draconian measures might have on young gay people and their families. Many gay men experience parental or familial alienation and many in our community work, over the course of our lives, to establish happy and healthy connections with wider family even where a period of rejection occurs after coming out. We urge the Scottish Government to consider this aspect of this proposed legislation closely. Very few gay men from religious conservative background, for example, would wish to see their own parents jailed for 7 years. Some people change and learn to accept us for who we are, and it can take time.
33. We are further concerned that a gay teenager from such a background would be placed in an awful position by this legislation knowing that he faces religiously inspired homophobia at home, but that any word of this to an authority figure might see his own parents prosecuted. Such a course would likely fracture a family beyond repair, and we urge the Scottish Government in the strongest possible terms to consider this unintended consequence.

## Question 17

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

**GMN Answers: No**

## Question 18

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

34. We again start from the premise that the proposed offence is so easily triggered and draconian it should not exist so logically nor should any defences to it.

35. The absence of a consent defence given the offence specifically envisages state encroachment on parenting, clinical practice and support work is extraordinary, particularly in view of a harm requirement as low as the occasioning of “distress”. From a gay rights point of view, the sad reality is that some men unable to reconcile themselves to their sexuality do seek out religious or therapeutic guidance which often involves counselling directing them towards sexual abstinence and this is the position of many mainstream churches. We do not wish for a world where any gay man feels like this, but equally we do not wish for a world where the state interferes with the free will of that gay man, no matter how troubled or misguided we think he is. There are powerful arguments that a criminal prosecution is not the right or proportional answer to this situation, and we take the view that the state should be very slow to interfere in circumstances where parties consent.
36. In the field of “gender identity” the absence of a consent defence is more problematic involving as it does a complete disregard of a doctor’s obtaining of consent from a patient presenting with gender distress and we suspect the absence of this defence is principally directed to this situation. It would be remarkable, (and inconsistent with the proposed “reasonableness” defence) for a doctor or other clinician not to be able to point to properly secured and informed consent in a professional setting as a complete defence, but we repeat that we find the prospect of doctors adopting standard exploratory methods being prosecuted a grim one.

## Question 19

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

37. We regard the proposed criminal offence as draconian and homophobic since affirmation only medical practice is exempt from prosecution but not Cass compliant exploratory therapy, we regard it as a state mandated effort to “trans away the gay” on pain of criminal liability.

## Questions 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?*

**GMN Answers: Do not support**

## Question 21

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

38. As we have reached the conclusion the proposed offence is draconian and homophobic we naturally regard any forms of criminal liability parasitic on that offence (such as this) to be objectionable for the same reasons.

## Question 22

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

**GMN Answers: Do not support**

## Question 23

*Please explain your answer to Question 22.*

39. While the proposed penalties are lower than the substantive offence with a maximum sentence of three as compared to seven years, we regard the substantive offence as objectionable and draconian and accordingly we take the same view of the proposed punishment for this parasitic form of criminal liability.

## Question 24

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

**GMN Answers: Do not support**

## Question 25

*Please explain your answer to Question 24.*

40. The Scottish Government argues that a new form of aggravation is required because the Hate Crime and Public Order (Scotland) Act 2021 would not capture an offence

motivated by concern and genuine care for an individual. We regard this as a weak argument because the proposed offence features the undefined term “coercive” the examples of which include instilling fear, humiliation, manipulation and causing distress. We cannot conceive of a plausible circumstance in which the extremely widely drafted Hate Crime Act would fail to cover such behaviour such that modification could be justified.

## Question 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?*

41. This legislation is draconian, easily triggered, homophobic and throws the net of criminal liability widely and capriciously. In common with a number of King’s Counsel who have analysed it, we have no doubt that it is wholly incompatible with basic human rights.
42. The legislation is certainly incompatible with article 6 (the right to a fair trial) because it proposes criminalisation on the basis that gender identity exists and any criminal court enforcing that contested belief becomes a de facto religious court (and therefore not an “independent tribunal for the purposes of article 6). The fact that disbelief is protected in the parallel civil sphere renders the law absurd and inconsistent with basic Article 9 and 10 rights to freedom of conscience and expression. Defendants are unlikely to understand the precise charges against them and they will likely be deprived from calling vital evidence that throws the existence of “gender identity” into question. This is a religious statute, and it compels belief in a fiercely contested mind/body dualist belief.
43. This legislation has little or no regard for family life and makes no express provision for parents or family members who, if prosecuted, would be faced with a reverse burden of proving their parenting was reasonable. This is a grotesque breach of the article 8 right to a private and family life and parents are among those likely to be targeted by this law given the explosion in numbers of children presenting in states of gender distress.
44. The low thresholds for liability, particularly acts of “suppression” which cause “distress” where they are accompanied by (the undefined term) of “coercion” present real and credible risks to Article 9 and 10 rights particularly in the sphere of public discourse.

Mainstream church teachings are highly likely to be caught by this law as has been the case where a similar was passed in Victoria in Australia.

### Question 27

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

**GMN answers: Do not support**

### Question 28

*Please explain your answer to Question 27.*

### Question 29

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

**GMN answers: Do not agree**

### Question 30

*Please explain your answer to Question 30.*

### Question 31

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

45. Questions 27-31 concern a civil order regime parallel to the criminal offence and designed to pre-empt the commission of that offence. As with similar criminal/civil cross over structures such as those in place in the UK Protection from Harassment Act 1997 the civil regime and criminal regimes are related and share definitions. We have formed the view the proposed criminal offence is draconian, poorly drafted, homophobic, and not justified. Accordingly, we do not regard a parasitic civil structure built on the foundations of the criminal offence as desirable or necessary.

## Question 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*

### **GMN answers: Yes, in respect of sexual orientation and belief**

46. As will be obvious from our answers up to this point, we consider that sexual orientation has been completely neglected as a consideration in this consultation. Mounting evidence is now available as to institutional homophobia at gender clinics and we have cited the Secretary of State for Women and Equality's letter on this subject. Against that background, the Scottish Government intends to place "gender identity" into criminal law and simultaneously exempt from criminal liability those clinicians taking an "affirmation only" approach to treating gender distress. This is a clear ideological statement that firmly aligns the Scottish Government to the discredited WPATH model of practice adopted in Scotland.
47. This legislation is homophobic, and it fuels the very problem it claims to solve. We note that no gender critical homosexual organisations were consulted, and we note the reliance on a discredited 2017 survey to justify the legislation.
48. This legislation is fundamentally incompatible with the protected status of gender critical beliefs and thus a breach of Articles 9 and 10. A defendant charged with this offence could not rely on their lack of belief in this ideology as the Scottish Government proposes an offence built on the assumption that "gender identity" exists.

## Question 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?*



### Question 34

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

### Question 35

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

### Question 36

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

### Question 37

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

### Question 38

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

49. Save for our remarks as to the devastating effect this legislation would have on the rights of children presenting at gender clinics up to this point we have no comment as to the remaining wider considerations.

## Conclusion

50. The Gay Men's Network regards this proposed legislation as homophobic, ideological, and dangerous to young gay men.

THE DIRECTORS  
GAY MEN'S NETWORK