

Ending Conversion Practices in Scotland

A Scottish Government Consultation

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Ministerial Foreword

Conversion practices, which aim to change or suppress a person's sexual orientation or gender identity, are damaging and destructive acts that violate the human rights of those who undergo them. Sadly, these practices happen today, and they have absolutely no place in Scotland. We are committed to bringing an end to conversion practices, and to protect LGBTQI+ people from the trauma and harm they can cause.

In 2020, the United Nations Independent Expert on Sexual Orientation and Gender Identity called for a global ban on conversion therapy. Across the world, a number of national and sub-national governments have already taken steps to eradicate these harmful practices, including in New Zealand, Canada, Germany, and the Australian state of Victoria. Scotland is proud to make its contribution to this growing international momentum.

Scots law already addresses a range of harmful behaviour often associated with conversion practices, including situations involving physical violence or threatening conduct. There is, however, a significant gap in our law – which can allow forms of conversion practices to fall through the cracks. Our approach, set out in this consultation, aims to bridge this gap while ensuring that fundamental rights already enjoyed by people in Scotland, such as freedom of religion and the right to family and private life, are upheld. Our focus is on protecting people from harm.

From our knowledge of conversion practices through expert advice, data gathering, and analysis, it is clear that limiting legislative action to sexual orientation does not go far enough. Conversion practices relating to gender identity are equally damaging. We have committed to encompassing both sexual orientation and gender identity in our proposals, to limit the negative effects of conversion practices as far as possible.

Your responses to this consultation are of great interest, as I am keen to understand the range of views and consider what steps we in Scotland must take. The practices addressed in these proposals are not only harmful, but a violation of the human rights and dignity of the people of Scotland. I am committed to join world leaders in developing progressive legislation that promotes equality and protects people from harm.



Emma Roddick,
Minister for Equalities,
Migration and Refugees

Part 1: Consultation

Why we consult

1. Consultation is an essential part of the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work. You can find all Scottish Government consultations online. Responses are analysed and used as part of the policy-making process, along with a range of other information and evidence. Responses to this consultation will help to shape legislation designed to address harmful conversion practices.

Deadline

2. The consultation was published on 9 January 2024 and closes at midnight on 2 April 2024.

How to respond

3. You can respond to this consultation online via [Citizen Space](#) or by post. Our preference is to receive responses online.

Respond online

4. To respond online, please use the Scottish Government's Consultation Hub, [Citizen Space](#). You can save and return to your response at any time while the consultation is open, but please ensure that your response is submitted before the consultation closes at midnight on 2 April 2024. You will automatically be emailed a copy of your response after you submit it. If you choose this method, you will be directed to complete the Respondent Information Form.

This lets us know how you wish your response to be handled, and in particular whether you are happy for your response to be made public.

Other ways to respond

5. If you prefer, you can also submit a written response in hard copy to Equality Division, 3H-North, Victoria Quay, Edinburgh EH6 6QQ. Please ensure that you complete the Respondent Information Form provided separately on the main consultation page as a supporting document and attach it alongside your response. This lets us know how you wish your response to be handled, and in particular whether you are happy for your response to be made public. It is helpful if you can be clear which questions you are responding to so that we can make sure that we take your views into account in the right place.

Next steps

6. After the consultation has closed, we will analyse all the responses received and use them to help inform policy in this area. Where permission has been given, we will seek to publish responses where possible.

Part 2: Introduction

7. In the 2022-23 Programme for Government (PfG), the Scottish Government reaffirmed its commitment to introduce a Bill on ending conversion practices in Scotland, including both sexual orientation and gender identity. The same commitment forms part of the **Bute House Agreement**, which details the agreement and shared policy programme between the Scottish National Party (SNP) and the Scottish Green Party.
8. The UK Government committed in its **2018 LGBT Action Plan** to end the practice of conversion therapy and published **a consultation** in October 2021. However, a Bill has not been included in the UK Government's legislative programme for the UK 2023-2024 parliamentary session. A Private Members' **Bill**, originating in the House of Lords, 'The Conversion Therapy Prohibition (Sexual Orientation and Gender Identity) Bill' proposed by Baroness Burt had its first reading on 20 November 2023. The Scottish Government intends to take forward its own legislation in Scotland which will most appropriately meet the needs of the Scottish people, also taking into account the unique Scottish legal system.
9. The work to develop legislation in Scotland builds on the **report of the Equalities, Human Rights and Civil Justice (EHRCJ) Committee** published in January 2022. This report responded to Petition PE1817: 'Calling on the Scottish Parliament to urge the Scottish Government to ban the provision or promotion of LGBT+ conversion therapy in Scotland'. The Committee heard evidence from 22 people from 21 organisations and received around 1,400 submissions. The majority of these submissions were received from individuals in support of the petition. Seventy-six submissions were received from organisations.
10. In March 2022, the Scottish Government set up an independent Expert Advisory Group on Ending Conversion Practices (EAG) which was made up of LGBTQI+ organisations, faith and belief organisations, mental health professionals, legal professionals, human rights advocates, academics, and people with personal lived experience of conversion practices. The EAG's purpose was to advise the Scottish Government on its approach to ending conversion practices. It published a **report and recommendations** in October 2022.

Legislation refers to a law or a set of laws that have been passed by parliament.

Part 2: Introduction

11. In this consultation document, the term “conversion practices” is used to refer to acts which are intended to change or suppress a person’s sexual orientation or gender identity. This is defined later in the document. It is not intended to reflect other common uses of the term “conversion”, for example, from one or no religion to another.

We use the term **conversion practices** rather than ‘conversion therapy’ throughout this consultation to reflect the variety of forms that practices can take. This also recognises that conversion practices are not a legitimate form of ‘therapy’.

Part 3: Background

Policy context

12. The Scottish Government is committed to tackling marginalisation and discrimination in Scotland. This Bill sits within a programme of Scottish Government policies that seeks to ensure that the rights of everyone in Scotland are respected, protected and fulfilled. We continue to promote equality and human rights and support strong communities that are inclusive, empowered, resilient, and safe, where human rights are respected. This, of course, includes the rights of LGBTQI+ people.
13. Conversion practices are harmful to individuals subjected to them. They are promoted within an ideology that views LGBTQI+ identities as wrong and believes that they can be changed. Their existence contributes to this way of thinking even further. This legislation specifically aims to protect people from the harm of conversion practices and, in doing so, contributes to the broader protection of human rights and respect for the dignity of LGBTQI+ people.

Throughout this document, we have chosen to use the term **LGBTQI+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, plus)** except when referencing the work of others where different terminology has been used.

14. The Scottish Government is committed to ensuring that this legislation also upholds all existing rights protected in our law including freedom of thought, conscience, and religion; freedom of expression; and the right to family and private life. Further detail on the protection of these rights is provided in Part 12 below.

Part 3: Background

Growing international momentum to tackle conversion practices

15. A number of countries and regions have passed laws to outlaw conversion practices, or aspects thereof. The first country to introduce legislation of this type was Brazil, as early as 1999. Over the last decade international momentum has grown, with laws passed in Malta, Ecuador, Germany, Spain, France, Greece, Cyprus, Belgium, Iceland, New Zealand, and Canada, as well as several states and territories in Australia, Mexico, and the USA.
16. The Welsh Government announced in April 2022 that it intends to establish a dedicated campaign to address conversion practices. In Northern Ireland, a Stormont Assembly debate in April 2021 resulted in a 59-24 vote in favour of banning 'conversion therapy'. Additionally, in the Republic of Ireland, the Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman, announced in January 2023 that the Irish Government is committed to bringing forward a ban on the use of 'conversion therapy' and legislation is being prepared, with **priority drafting in Autumn 2023**.

Part 3: Background

Timeline

17. The timeline below sets out the journey so far, which has led the Scottish Government to this consultation.

October 2017	The Memorandum of Understanding (MOU) on Conversion Therapy (2017) which is a commitment to end the practice of conversion therapy in the UK was published. This was signed by 25 health, counselling and psychotherapy organisations. The MOU makes it clear that conversion therapy in relation to gender identity and sexual orientation is unethical, potentially harmful and is not supported by evidence.
July 2018	The UK Government committed to ending conversion therapy in its LGBT Action Plan (2018) with a UK-wide proposal: “We will bring forward proposals to end the practice of conversion therapy in the UK”. The Action Plan stated that “commitments, for example on ending conversion therapy, will require a UK-wide approach”.
July 2018	The UK Government undertook a UK-wide, self-selecting ‘LGBT Survey’ in 2017 and received over 100,000 responses. It provided some useful statistics regarding the prevalence of conversion ‘therapy’ in the UK.
June 2020	The United Nations (UN) Independent Expert on Sexual Orientation and Gender Identity called for a global ban .
August 2020	Petition PE1817: End Conversion Therapy was launched, “Calling on the Scottish Parliament to urge the Scottish Government to ban the provision or promotion of LGBT+ conversion therapy in Scotland”.
June 2021	The Scottish Parliament’s Equalities, Human Rights and Civil Justice (EHRCJ) Committee agreed to undertake an Inquiry on the Petition to End Conversion Therapy in Scotland.
November 2021	The Cabinet Secretary for Social Justice, Housing and Local Government announced the formation of The Expert Advisory Group on Ending Conversion Practices.
December 2021	The UK Government launched its public consultation, Banning Conversion Therapy .
January 2022	The EHRCJ Committee published its report on Petition PE1817: End Conversion Therapy which concluded that conversion practices should be banned and that current protective legislation is insufficient.
October 2022	The Expert Advisory Group (EAG) on Ending Conversion Practices published its report and recommendations . The group found that “conversion practices infringe upon the human rights of individuals, in particular the victims’ freedom from discrimination and freedom from non-consensual medical treatment”.

Part 3: Background

What are conversion practices?

18. There is no international, universal definition of the term “conversion practices”, which is sometimes referred to as “conversion therapy”, “sexual orientation and gender identity change efforts”, “reparative therapy” or “gay cure therapy”.
19. The United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity [report](#) states that “conversion therapy” is used as an umbrella term to describe interventions of a wide-ranging nature, all of which have the common belief that a person’s sexual orientation or gender identity (SOGI) can and should be changed. Such practices aim (or claim to aim) at changing people from gay, lesbian or bisexual to heterosexual, and from trans or gender diverse to cisgender.
20. The Expert Advisory Group (EAG) on Ending Conversion Practices defined conversion practices as “any treatment, practice or effort that aims to change, suppress and/or eliminate a person’s sexual orientation, gender identity and/or gender expression”.
21. Our specific proposal for defining conversion practices for the purposes of this legislation is set out below in Part 5.

What is the scale of conversion practices in Scotland?

22. Due to the often-private nature of conversion practices, evidence is often based on self-reporting. While there is currently no established figure on the size of the LGBTQI+ population in Scotland, the [Office of National Statistics](#) (ONS) found that, in the UK, an estimated 1.8 million people aged 16 years and over (3.3% of the UK population) identified as lesbian, gay or bisexual in 2022. In the 2019 [Scottish Surveys Core Questions 2019](#) (SSCQ), 2.7% of respondents self-identified as lesbian, gay, bisexual or other. Data collection on other sexual and gender minorities is currently insufficient to characterise the number of trans and non-binary people in Scotland.
23. Studies, surveys, reports, and qualitative evidence from individuals with lived experience provide some helpful data and information to support analysis of the types of conversion practices that exist, and the damage and trauma that such practices cause to individuals and society.
24. The UK Government’s [National LGBT Survey](#), conducted in 2017, gives us a picture of the prevalence of conversion practices in the UK. The survey found 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).

Part 3: Background

25. The survey also found that while older cisgender respondents were more likely to have undergone 'conversion therapy' than those in younger age groups, there was a relatively consistent pattern in the proportions of respondents who had undergone, or been offered, 'conversion therapy' amongst all of those aged 16-64. This suggests that it is a live issue, and not just one that affected older generations. Ten per cent of those aged 65 or above said that they had undergone or been offered 'conversion therapy', compared to 8% of 16-17-year-olds and 7% of 18-34-year-olds.
26. In terms of sexual orientation, bisexual respondents were the least likely to have undergone or been offered conversion therapy (5%), and asexual respondents the most likely (10%).
27. The **National LGBT Survey** identified that, in Scotland, 7% of 'LGBT' respondents had either undergone or been offered 'conversion therapy'. Transgender people were targeted the most with 10% of transgender respondents in Scotland having either undergone or been offered conversion therapy.
28. Across the UK, faith organisations were the most likely group to have conducted 'conversion therapy' (51%), followed by healthcare professionals (19%). Other people identified as carrying out 'conversion therapy' included 'parent, guardian, other family members' (16%), 'person from my community' (9%), 'any individual or organisation not listed' (14%), and 'prefer not to say' (11%). Respondents could select multiple responses.
29. As the above evidence indicates, conversion practices often happen in religious, community and family settings. This makes it even harder to obtain information on their prevalence as individuals may be reluctant to criticise their family or community members. However, through the collection of anecdotal evidence and engagement with key organisations, we know that LGBTQI+ people in Scotland are affected by harmful conversion practices and that they need to be addressed through legislation, alongside other measures.

Transgender/trans refers to people whose sense of personal identity and gender does not correspond with the sex assigned to them at birth.

Cisgender refers to a person whose sense of personal identity and gender does correspond with the sex assigned to them at birth.

Bisexual refers to a person who is sexually or romantically attracted to more than one gender.

Asexual describes a person who does not experience sexual attraction.

Part 3: Background

Experiences of LGBTQI+ racialised minorities

30. **The National LGBT survey** found that, within the UK, there was a substantial variation by ethnic group amongst cisgender respondents. For example, Black/African/Caribbean/Black British (13%) and Asian/Asian British (14%) respondents, and respondents belonging to an 'other' ethnic group (15%), were up to twice as likely to be offered, or to have undergone, 'conversion therapy' than White (7%) respondents.
31. The survey report also noted that "there are legitimate concerns and feelings of apprehension around reporting of conversion practices where people belong to communities which have experienced historical prejudice and discrimination within the criminal justice system".
32. The EAG's specific **report** on 'LGBT+ POC & Minority Ethnic Faith Experiences of Conversion Practices' noted that conversion practices in many racialised minorities often take the form of coercing someone into suppressing their identity. It was also noted that in some racialised minorities, people were more likely to 'self-refer' to conversion practices because of anti-LGBTQI+ sentiment within communities. Victimisation from immediate and extended family members and the involvement of the broader community in conversion and suppression efforts was also highlighted.
33. The report also emphasised that many LGBTQI+ people in the UK have roots in other countries where conversion practices and other psychological therapeutic practices are the norm. The report found this to be significant in people's experiences.
34. The Scottish Government has taken into account how an individual's culture and race may play a part in their experience of conversion practices. The EAG received advice from a range of organisations during the development of its report to ensure cultural considerations were understood.

What harm do conversion practices cause?

35. Conversion practices are inherently harmful. They deny people's right to be themselves and send a message to the LGBTQI+ community as a whole that their identity is wrong and can and should be fixed or suppressed.
36. The impact of conversion practices on people can be lifelong. Often, the harm is not immediately apparent. People who have experienced conversion practices have reported severe mental health consequences, including suicidal ideation, depression, and anxiety. As pointed out in the EAG report, undergoing these practices can result in feelings of shame, self-loathing and a crisis of identity. Survivors have also reported a negative impact on their relationships, work and career. The EAG report stressed that this negative impact can affect every aspect of life,

Part 3: Background

stating that “survivors have difficulty building a life after conversion practices”.

37. Research from **Australia** has found complex forms of post-traumatic stress disorder (PTSD) can result from the internalised conflicts between, on the one hand, sexual orientation and gender identity and, on the other hand, attempts by family, faith, or other close communities to change or suppress that orientation or identity. The research outlines the following harm that can result from conversion practices:
 - major anxiety and depression, including suicidal ideation
 - difficulties forming and maintaining relationships
 - difficulty with sexual function
 - guilt, shame and grief
 - deep spiritual harm at being rejected by their families, communities or losing their faith
 - financial impact from costs of ‘conversion’ practices, lost earnings and opportunities, and later recovery
 - significant delays in pursuing a career or vocation
38. A **report** from the United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI), titled ‘Report on Conversion Therapy’, highlights that “all practices attempting conversion are inherently humiliating, demeaning and discriminatory. The combined effects of feeling powerless and extreme humiliation generate profound feelings of shame, guilt, self-disgust, and worthlessness, which can result in a damaged self-concept and enduring personality changes.”
39. **Testimonies** provided to the EHRCJ committee by individuals with lived experience of conversion practices describe PTSD, nightmares, bulimia, self-harm, shame, and panic attacks as some of the long-term effects caused by being subjected to conversion practices.
40. The trauma associated with conversion practices can present itself at different times for each person. Often, trauma can appear in adulthood despite the practices happening in childhood. In taking a trauma-informed approach we are mindful of where an individual may be affected by trauma, and the need to respond in ways which minimise distress and support recovery through a safe and compassionate response. We are also mindful of the importance of not re-traumatising those who have suffered harm from conversion practices or expecting them to denounce their families, communities or loved ones.

Part 4: Objectives of Introducing Legislation

41. In developing proposals for legislation on conversion practices, we have been guided by the following policy objectives. These are that the legislation should:

Send a clear, unambiguous public message that conversion practices in relation to an individual's sexual orientation and/or gender identity are unacceptable in Scotland and that they are harmful both to individuals and society.

Protect those at risk of conversion practices, deter those who intend to undertake conversion practices, and punish those who commit harmful conversion practices.

Provide clarity about what actions are permissible and what are not.

Protect the rights and dignity of all involved, including LGBTQI+ people, and respect freedom of religion and expression. Take a rights-based, victim-centred, and trauma-informed approach informed by the needs and dignity of survivors and victims.

Not inhibit nor criminalise non-coercive and ethical medical, therapeutic psychological, spiritual, and pastoral practices that provide support to individuals who seek help to explore their sexual orientation and gender identity.

Not inhibit nor criminalise legitimate gender transition or regulated medical intervention.

Not inhibit nor criminalise the exercise of parental responsibilities and rights including guidance for children and conversations about sexual orientation and gender identity.

Part 5: Defining Conversion Practices for this Legislation

42. The conduct associated with conversion practices can vary greatly from case to case and those who have experienced conversion practices report a broad range of conduct being carried out against them. Common forms of conversion practices described by victims include the use of talk-therapy, counselling, and certain faith-based practices. It can extend to physical abuse and practices such as forced marriage, and may also take the form of cumulative, coercive behaviour over a longer period.

Coercive behaviour refers to an act or a pattern of acts of assault, threats, humiliation and intimidation, or other abuse that is used to harm, punish, or frighten a victim.

The intention to change or suppress a person's sexual orientation or gender identity

43. Our proposals are informed by the definitions used by different bodies, and in other countries as set out in Part 3. Taking these into account, we consider that core to the definition of conversion practice is a purpose or intention to change or suppress another individual's sexual orientation or gender identity. In order for any act or course of behaviour to fall within the scope of this legislation, it will have to meet this intent requirement.

An equal and universal approach

44. We believe that any effort to change a person's sexual orientation or gender identity is harmful, regardless of how an individual identifies. Although the proposals are mainly intended to address harmful practices that affect LGBTQI+ people, they will apply to everyone equally. This includes change efforts directed at those who are heterosexual or cisgender. The legislation will be clear that the provision of medical care by a healthcare professional relating to a person's gender identity is not a conversion practice.

What does this mean in practice?

45. Conversion practices must have an intention that another person's sexual orientation or gender identity will be changed or suppressed. This means that the legislation will not apply to a situation where a person is providing advice, guidance or support for an individual to explore their thoughts, feelings and options or for these to be questioned. 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.

Part 5: Defining Conversion Practices for this Legislation

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

47. This core intention, to change or suppress another person's sexual orientation or gender identity, also distinguishes conversion practices from general statements of belief or opinion. For example, other acts, including general statements, which may be upsetting, offensive, or harmful, would not be considered to be a conversion practice if there is no intention to change or suppress a specific person's sexual orientation or gender identity.

48. The intention to change or suppress the sexual orientation or gender identity of another person will not require proof that the perpetrator had specific knowledge of that person's sexual orientation or gender identity. The intention can be based on what the victim considers their sexual orientation or gender identity to be, or may be (if they are questioning or unsure). Or it can be based on the presumption of the perpetrator as

to the sexual orientation or gender identity of the victim. For example, a person may undertake a conversion practice on someone else to change them to be heterosexual, based on a presumption that they are homosexual, even though the victim in fact identifies as bisexual. Or a conversion practice may be directed against a person who states that they are unsure of, or exploring, their gender identity, to change them to have a fixed identity.

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?

Yes

No

Don't know

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

Suppression

49. Most international legislation, as well as the [MoU](#) and the reports of the EAG and the EHRCJ Committee, define conversion practices to include both the intention to change a person's sexual orientation or gender identity, and the intention to suppress it. While the underlying act may be the same, any difference lies in the motivation behind the act.

Part 5: Defining Conversion Practices for this Legislation

In this context we define **suppression**, as acts that 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.

50. Some examples of the types of acts that could be motivated by an intention to suppress another person's sexual orientation or gender identity are:
- 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
51. Most studies and surveys dedicated to understanding the harm caused by conversion practices have considered change and suppression together. It is therefore difficult to understand the harmful effects of suppression or change on an individual level.
52. The EAG report notes that "the practice of suppression is equally as harmful. In addition, the intention behind the practice might change over time. For example, someone may begin with trying to convert and/or change another individual and then move to suppression." Evidence provided to the EAG and EHRCJ Committee highlighted that actions which cause an individual to suppress themselves cause long-term harm. As noted in the **Cooper Report**, recommendations on legislating effectively for a ban on conversion practices, from the ban 'conversion therapy' legal forum, "it makes little difference to the harmful effect on LGBTI+ individuals whether the practices are carried out with the goal of "suppressing" their sexuality or to "change" their orientation."
53. The EAG's **report** on 'LGBTI+ POC & Minority Ethnic Faith Experiences of Conversion Practices' noted that conversion practices in many racialised minorities often take the form of suppression. It explores some of the harms that this can cause, noting internalised shame, fear, rejection, or honour-based violence. Therefore, legislation which does not account for suppression may fail to address conversion practices that are more prevalent in racialised minorities.

Part 5: Defining Conversion Practices for this Legislation

Should we include suppression in legislation?

54. Including suppression means that there would be a wider net of protection for LGBTQI+ people. Legislation would address harmful conduct that was motivated by both an intention to change, or to suppress an individual's sexual orientation or gender identity. For example, talking therapy designed to suppress an individual's sexual orientation which acknowledges that changing sexual orientation is not possible would be included, where other legal tests were met.
55. Some organisations have expressed concerns that removing suppression from legislation would simply allow those carrying out conversion practices to shift their focus and messaging from trying to 'change' a person's sexual orientation or gender identity, to trying to suppress it. In either a civil or criminal process, they could argue that they know that it is not possible to change a person's sexual orientation or gender identity, and this change was therefore not their intention. This would create a potential loophole in our legislation.
56. Including suppression would widen the scope of legislation, by including restrictions or limitations imposed on someone specifically to repress or prevent the development of their sexual orientation or gender identity. However, our proposed approach to legislation will not

criminalise acts of suppression freely undertaken by a person themselves, such as celibacy. The legislation will be carefully developed to ensure the exercise of parental responsibilities and rights, such as direction and guidance which place limits on a child, will not be impacted.

57. If the intention to suppress is included in the legislation, other requirements would still have to be met for the acts to be considered a criminal offence or the basis of a civil order. These tests would not be met in circumstances where the individual has made a personal choice to live in a certain way and has not been coerced into this decision.

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 be covered
- It should not be covered
- Don't know

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

Part 5: Defining Conversion Practices for this Legislation

Sexual orientation and gender identity

58. The EHRCJ Committee concluded that a ban on conversion practices should be fully comprehensive and cover sexual orientation and gender identity, including trans identities, for both adults and children in all settings without exception.
59. In practice, we envisage that acts falling within the legislation will most often take the form of changing or suppressing a non-heterosexual person, transgender person, or non-binary person. However, we believe it is important that legislation relates to any conversion practice that seeks to change someone from one sexual orientation or gender identity to another or suppress that sexual orientation or gender identity. We also intend to include conversion practices undertaken against asexual people.
60. For example, a bisexual or asexual person may experience a type of conversion practice based on cultural perceptions, often referred to as bisexual or asexual erasure, that these orientations do not really exist and that the individual is 'confused' or ashamed of being gay.

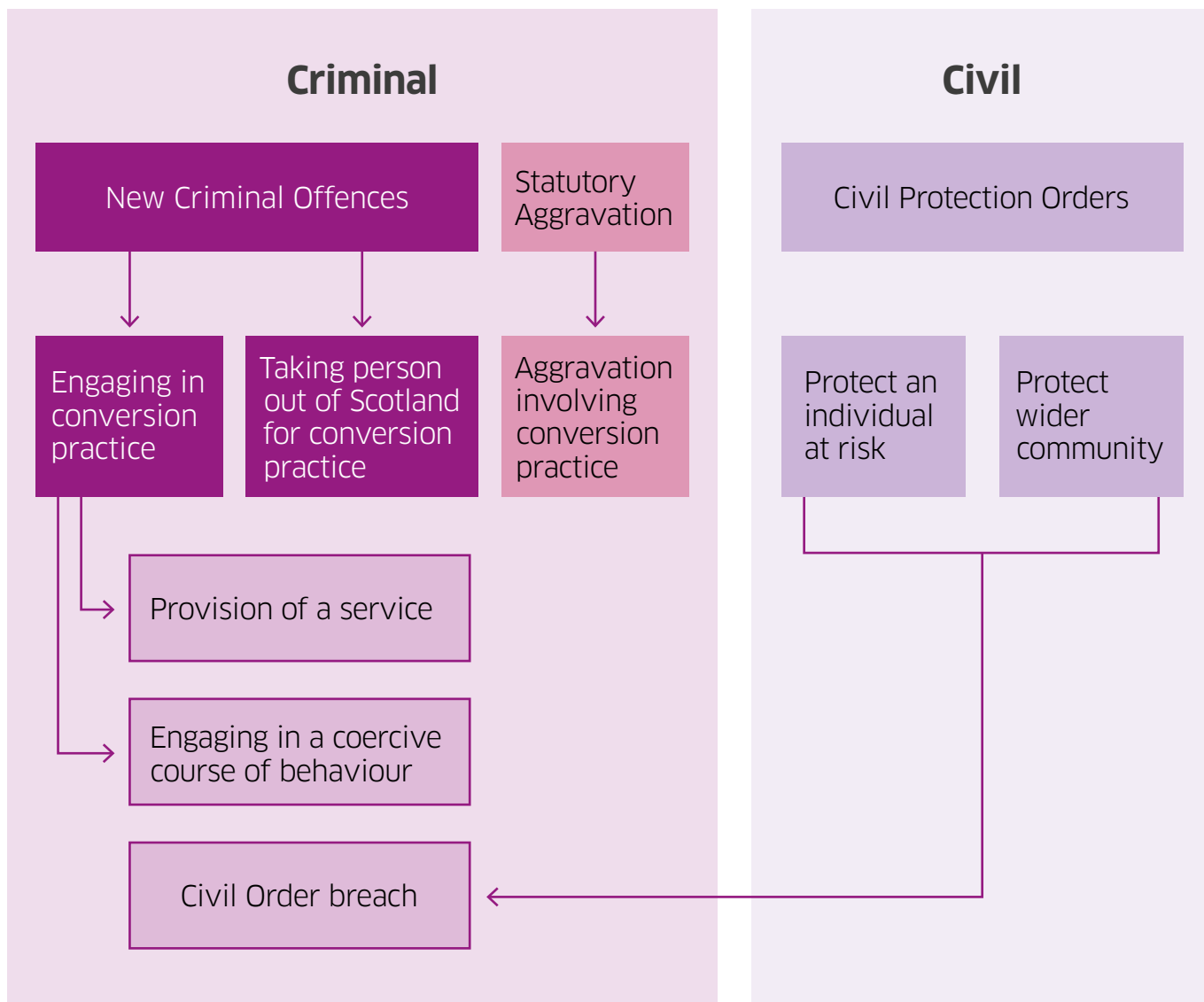
61. In our proposals we have used the ordinary meaning for both the term sexual orientation and gender identity, as found in the Oxford English Dictionary. This is intended to help future-proof the legislation. These are:

Gender Identity: an individual's personal sense of being or belonging to a particular gender or genders, or of not having a gender.

Sexual Orientation: a person's sexual identity in relation to the gender to whom [they] are usually attracted; (broadly) the fact of being heterosexual, bisexual, or homosexual.

62. We propose to explicitly provide that sexual orientation includes the situation where the victim has no sexual orientation towards other persons.

Part 6: Overview of Proposals



Part 6: Overview of Proposals

A package of measures

63. Research and evidence has identified a requirement for a multi-faceted approach to addressing conversion practices in Scotland. Our proposal is to create a package of measures that work together to prevent and respond to conversion practices in Scotland. Depending on the type of conduct that has taken place and/or the specific situation of the victim, there would be three different routes that could be taken to address the issue and protect the victim. This may be through specific criminal offences, a new statutory aggravation, or a civil protection order. A similar package of criminal and civil law measures has been used to address forced marriage, female genital mutilation, and domestic abuse.
64. An overview of each of these measures is provided in more detail below.

New criminal offences relating to conversion practices

65. Our analysis of the existing criminal law shows that there are gaps within the law so that harmful conversion practices are not fully addressed. Proposed new criminal offences will address the most serious and harmful forms of conversion practices. These are aimed at two specific forms of conduct: the provision of a service, and a coercive course of behaviour, which will be criminalised when certain thresholds are met. These thresholds are explained in more detail in subsequent sections.
66. Criminal measures send a strong message that conversion practices are harmful to individuals and society. They will punish those who commit harmful conversion practices that are sufficiently serious, providing redress for victims.
67. Criminalisation has been a key mechanism used by a number of countries to ban conversion practices.

Part 6: Overview of Proposals

A new statutory aggravation relating to conversion practices

68. The statutory aggravation will address conversion practices that fall within existing criminal offences. If a person does something that would already be a criminal offence – for example assault, including sexual assault, or threatening or abusive behaviour – this would be considered more serious if it was committed with the intent that the victim’s sexual orientation or gender identity would be changed or suppressed. This would be specified in the charge, recorded on conviction, and would be taken into account on sentencing.

A new civil protection order relating to conversion practices

69. Civil protection orders provide a preventative and protective approach. They will provide an avenue to protect identified individuals at risk from specific behaviour, or to protect the community.

70. Civil orders are a mechanism that have been used in relation to other practices that cause harm to individuals, such as domestic abuse, forced marriage, and female genital mutilation (FGM). They offer a preventative and non-criminal route to protect a person at risk of harm. They will also be available to the police and local authorities to address situations where conversion practices have already been carried out and an order is required to protect the wider community from this harm. While this is a non-criminal mechanism, the breach of a civil order will be a criminal offence.

Part 6: Overview of Proposals

New Criminal Offence	Statutory Aggravation	Civil Protection Order
<p>This would criminalise harmful conversion practices committed against an individual when certain thresholds are met.</p> <p>It will focus on two types of conduct: the provision of a service, and a coercive course of behaviour.</p> <p>There will be an offence relating to taking a person out of Scotland for conversion practices.</p> <p>Those found guilty will face a fine or imprisonment.</p>	<p>Where the act(s) undertaken as part of a conversion practice are already criminal offences, for example, assault, there would be a new statutory aggravation where the crime was motivated by change or suppression of a person’s sexual orientation or gender identity.</p> <p>Courts will be required to take this motivation into account during sentencing.</p>	<p>A civil protection order is a preventative and protective tool.</p> <p>The civil courts would be able to make an order to protect either a specific victim or the wider community from the harm of conversion practices.</p> <p>Breach of the civil order would be a criminal offence.</p>

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
- Do not support
- Don't know

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

Part 7: The Criminal Law – Overview

71. The Scottish Government believes that the criminalisation of harmful conversion practices is important for several reasons. It sends a clear message that these practices are unacceptable and acknowledges that they are harmful to both individuals and society. Criminalisation allows for the punishment of offenders and provides an avenue for redress. It also deters people from carrying out conversion practices.
72. We believe that the criminal law should be used to address conversion practices which are harmful, and which are not adequately addressed under existing law.
- Existing criminal law**
73. Some forms of conversion practices will already fall within existing criminal offences. The most obvious examples are conversion practices which involve a physical act, such as assault including sexual assault. Some non-physical forms of conversion practices may also be triable as existing criminal offences. For example, threatening or abusive behaviour and stalking are criminal acts.
74. The actions that people take when carrying out conversion practices can be complex and varied. Our analysis has shown that not all types of conversion practices can be addressed by existing offences. For example, talking therapy, or coaching someone to change or suppress their sexual orientation or gender identity are unlikely to be prosecutable under the existing criminal law. While these are generally reasonable and non-harmful everyday actions in the majority of circumstances, when used with the intent to change or suppress the sexual orientation or gender identity of another, they can become harmful.
75. Even where the act that was being carried out might relate to an existing criminal offence, a conversion practice might not meet all of the requirements of that offence. For example, to be convicted of stalking a person must cause their victim to suffer fear and alarm. They must also intend to cause the victim fear or alarm or know, or ought to know in all the circumstances, that their actions would likely have this effect. This would not apply to many cases of conversion practices as the perpetrators often believe that they are helping the victim. In such a case, it may be difficult to prove an intention or recklessness to cause fear and alarm. In addition, the harmful effect of conversion practices is less likely to be fear and alarm but more often resemble post-traumatic stress which may manifest in different ways and over a longer period.
76. New criminal offences will ensure that the legislation adequately protects people from harmful conversion practices by addressing the gaps within the existing criminal law.

Part 7: The Criminal Law – Overview

Table showing existing legislation

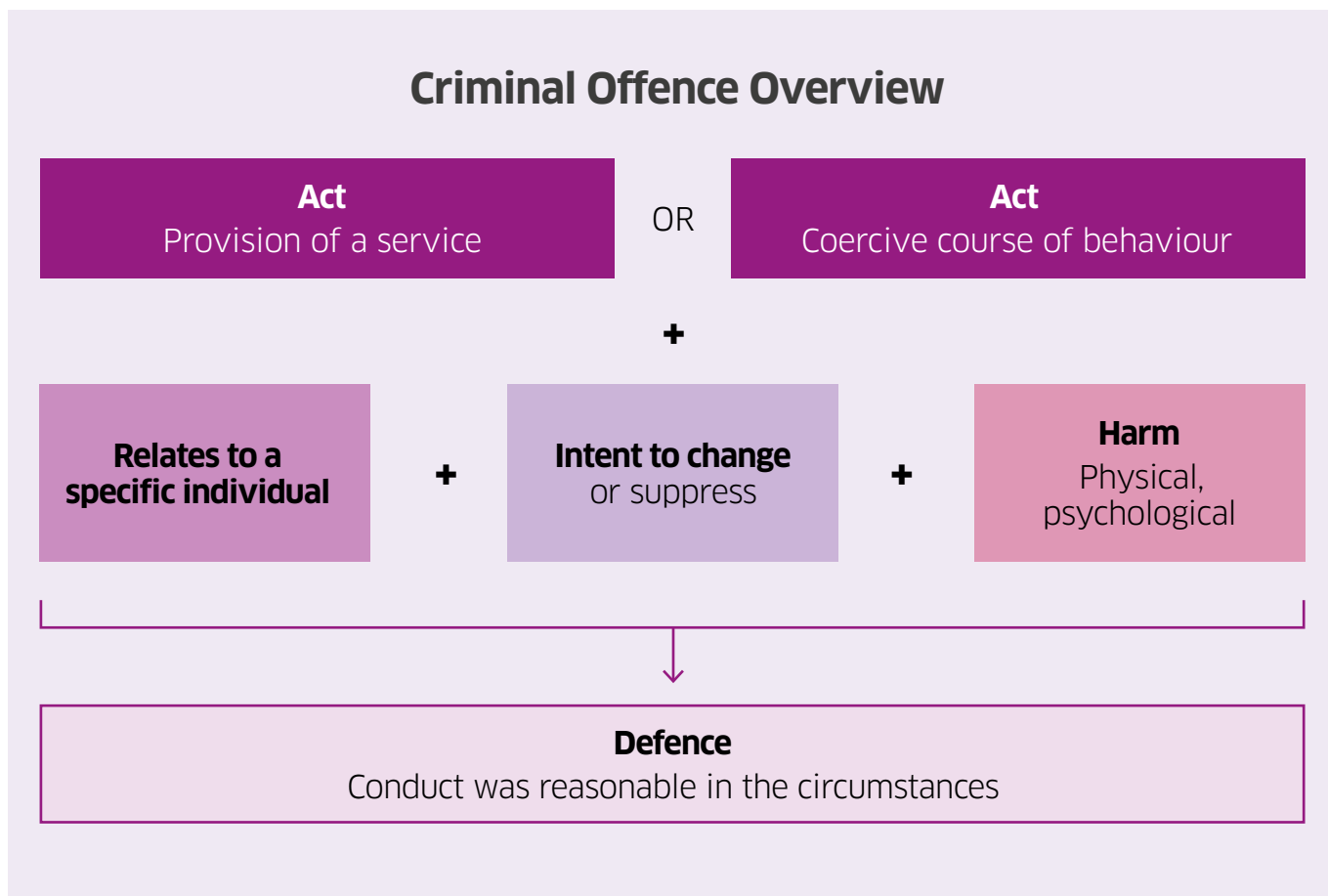
Existing Legislation	Detail	Limitations in relation to conversion practices
Stalking (s.39 Criminal Justice and Licensing (Scotland) Act 2010)	Stalking requires a course of conduct. A person must intend to cause fear and alarm to their victim or know, or ought to know in the circumstances, that the conduct would be likely to have this effect. There is an explicit list of conduct that falls within offence. It also requires the victim to suffer fear or alarm.	The harm of conversion practices may often resemble PTSD or have other harmful effects that would not be considered to be “fear or alarm”. Many forms of conversion practice would not fall within the conduct specified in the offence. It does not cover situations where the perpetrator did not intend or was not reckless as to the causing of fear or alarm.
Threatening or abusive behaviour (s.38 Criminal Justice and Licensing (Scotland) Act 2010)	It is an offence for someone to behave in a threatening or abusive manner. This behaviour must be likely to cause a reasonable person fear or alarm, and either be intended to cause fear or alarm or be reckless as to whether it would cause fear or alarm.	This offence does not capture forms of conversion practices that would not be considered to be threatening or abusive. As with stalking, this offence does not capture situations where the perpetrator did not intend or was not reckless as to causing their victim fear or alarm.
Domestic Abuse (Scotland) Act 2018 (s1)	It is an offence for someone to engage in a course of abusive behaviour towards a partner or ex-partner. A reasonable person must consider the course of behaviour likely to cause the victim harm. The perpetrator must intend to cause them harm or be reckless as to whether harm will be caused.	This legislation only applies to current or former partners, not broader relationships or people who are not connected.

Part 7: The Criminal Law – Overview

New criminal offences relating to conversion practices

77. Our proposal is to create new criminal offences to address a gap in the law relating to harmful conversion practices, protect individuals from that harm, and provide criminal penalties when such conduct has occurred. The new criminal offences will address three forms of conversion practices: the provision of a service; a coercive course of behaviour; and taking someone out of Scotland for conversion practices.

Part 8: Offence of Engaging in Conversion Practice



78. This diagram sets out the key elements of the proposed new offence of engaging in conversion practices.

- **Intent:** that the individual accused of carrying out conversion practices did so with the intention that the sexual orientation or gender identity of the victim would be changed or suppressed.
- **Acts:** that either the provision of a service or coercive course of behaviour took place.
- **Victim:** that the service or course of behaviour relates to a specific, identified individual.
- **Harm:** that the service, or course of behaviour, has caused the victim physical or psychological harm.
- **Defence:** the accused person has a defence if their conduct was reasonable in the particular circumstances.

Part 8: Offence of Engaging in Conversion Practice

79. Draft Bill provisions setting out this proposal as it would be expressed in legislation are below, with the core offence at paragraph 112 and the defence at paragraph 125.

Intent - mental element of the offences

80. Most criminal offences have a mental element that relates to what is in the mind of the person undertaking a criminal act. For the offence of engaging in conversion practices, we propose that the relevant conduct must be undertaken with the intention that it will result in the change or suppression of the sexual orientation or gender identity of the person against whom the act is directed. It would not matter whether the change or suppression of their sexual orientation or gender identity is achieved or is, in fact, possible.

81. Without this specific intention being proven, a service or course of behaviour would not be criminalised, even if harm is caused. For example, providing counselling or advice to help someone to explore and come to their own decision about their sexual orientation or gender identity would not meet this intent. Nor would shouting abuse at someone about their sexual orientation or gender identity, where there was no intention to change or suppress that specific person's sexual orientation or gender identity.

82. As already set out above in Part 5 the intention can be based on what the victim considers their sexual

orientation or gender identity to be or may be (if they are questioning or unsure). Alternatively, it can be based on the presumption of the perpetrator as to the sexual orientation or gender identity of the victim.

83. A notable aspect of conversion practices, is that the intention to change or suppress a person's sexual orientation or gender identity is not always accompanied by an intention to harm the victim. Conversion practices are often driven by a desire to help or protect the person being subjected to them even though harm is ultimately caused. Because of this, 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. However, for the offence of engaging in a conversion practice to be committed, harm will need to have resulted nonetheless (see paragraphs 109-117 below).

84. We recognise that evidencing an individual's internal motivation can be challenging and the requirement for corroborated evidence increases this challenge. However, we consider that this intent is fundamental to the concept of conversion practices and, as a result, it must form the basis of the mental element of any related criminal offence. Without this specific intent, the offence would extend beyond its intended remit and risk criminalising a wider range of behaviour.

Part 8: Offence of Engaging in Conversion Practice

Victim – in relation to a specific individual

85. Conversion practices are used to try to change or suppress a person’s sexual orientation or gender identity. We believe, therefore, that the conversion practices offence must relate to a specific individual. The proposals in this legislation do not target hatred towards sexual orientations and gender identities more generally, for example, statements that being gay is sinful or that transgender identity does not exist, that bisexual people are in denial, or statements of belief which are not made in relation to a particular individual. For the purposes of this legislation, both the intention outlined above, and the criminal act undertaken to achieve that intention, must be in relation to the specific victim.
86. While conversion practices are undertaken in relation to a specific individual, we recognise they can pose a broader risk to the LGBTIQ+ community, particularly where they are being undertaken on a repeated basis. Part 14 of this document contains additional information about how the proposed conversion practices protection order may be used to preventatively protect people in Scotland from the risk of harmful conversion practices.

The acts falling within the criminal offence

87. The criminal offence addresses two different forms of conversion practices, each of which are addressed in turn below.

The provision of a service

88. The first form of conversion practice that the criminal offence will address is the provision of a service, with the intended outcome that a person’s sexual orientation or gender identity will be changed or suppressed. This approach draws on that of some other jurisdictions that have focused legislation on medical interventions or formal treatments or services, such as Canada and Germany.
89. In this context we do not use the term ‘service’ to mean a service of worship or church service.
90. The intention behind this part of the offence is to address the situation where a conversion practice is undertaken by a person who claims to have a particular knowledge, skill or expertise and where the act is purported to be delivered as, or used as, a method to effect a change or suppression. While such an approach broadly aligns with the common understanding of the term “conversion therapy”, it is not focused on a specific setting, such as medical or healthcare settings. We intend for this to include acts that are pseudo-medical.

Part 8: Offence of Engaging in Conversion Practice

91. These acts typically have a high coercive element due to the status or position of the perpetrator and, as a result, have an enhanced potential for harm. They are usually carried out by a person in a position of power, both because the victim is in a position of dependency for that service, and because there is often a related claim of knowledge, expertise and/or experience. A victim is more likely to trust, accept or feel obliged to follow the advice of someone they consider to have expertise. The acts are purported to be healing or reparative in relation to an individual's sexual orientation or gender identity. 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.
92. 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, and we have included a specific provision that recognises that such healthcare will not be done with the intention discussed in paragraphs 80 - 84 above (see below in relation to 'avoidance of doubt' clauses).
93. An act falling within the definition of this part of the offence targeting the provision of a service, will be within the scope of the criminal offence when undertaken either on one occasion or as part of a course of behaviour, in situations where all the other elements of the offence are met.
94. We propose to include a non-exhaustive list of examples in the legislation about what a service will include in this context. Specifically, the types of acts that would be considered a service for this part of the offence will include (where it is intended to change or suppress an individual's sexual orientation or gender identity):
 - counselling or any other form of talking therapy
 - coaching or instructing
 - a purported treatment

Part 8: Offence of Engaging in Conversion Practice

95. This approach would capture scenarios where there is provision of purported expertise, knowledge or skills, such as where a provider professes to have expertise and delivers therapies, online or in-person courses or other forms of purported treatment that are intended to change or suppress an individual's sexual orientation or gender identity. This can be distinguished from counselling or therapy in which an individual is supported with their unwanted or confusing thoughts and feelings through an open, explorative and even challenging approach that does not have a pre-determined outcome or preference towards their sexual orientation or gender identity.
96. It would not matter whether the service or treatment was provided free of charge or for payment of any kind, and it could be carried out against a single specific person or against that person and others at the same time. This ensures that scenarios such as a group therapy are included where there may be a group of individuals present. However, both the act and the intention must relate to a specific individual victim.
97. This approach means that acts that cannot be considered to be a provision of service will not fall within the criminal offence unless they form part of a coercive course of behaviour.
98. In order to convict someone, a court will need to determine, amongst other things, whether their behaviour constituted the provision of a service. This will require a highly fact-specific assessment of the particular circumstances of an individual case. Our intention is that, in order to fall within this part of the offence, the provision of advice, guidance or support will need to reach a level of formality, professionalism or expertise for it to be considered a service. For example, where a parent without any relevant background or purported expertise researches and carries out something they consider to be "therapy", they are not providing a service. Nor is a religious leader who has an informal conversation with someone about doctrinal views in relation to their sexual orientation or gender identity. These situations may fall within the legislation if they form part of a coercive course of behaviour.
- 7. What are your views on the proposal that the offence will address the provision of a service?**
- Support
 - Do not support
 - Don't know
- 8. Please give reasons for your answer to Question 7.**

Part 8: Offence of Engaging in Conversion Practice

Coercive course of behaviour

99. This part of the criminal offence will address conversion practices that take the form of a coercive course of behaviour, where one or more acts are performed in a repeated, continuous, or sustained way and where the behaviour is also coercive.
100. We have focused this offence on a course of behaviour as the evidence from those with lived experience tells us that the most common form of conversion practices in Scotland is that of a series of “informal” actions conducted over a period of time. When such acts are conducted in a repeated or sustained way, they can become harmful. We believe that any legislation that does not include this form of conversion practice would fail to address the harm we are seeking to address.
101. In developing this offence, we have carefully considered and learnt from the approach taken to domestic abuse, through the Domestic Abuse (Scotland) Act 2018 (“DASA”), which addresses behaviour that is abusive and harmful when committed in an ongoing or repeated way, in particular circumstances.
102. This part of the offence requires the behaviour to have been undertaken either repeatedly or continuously with a minimum requirement that the behaviour happens on at least two occasions. The course of behaviour as a whole will need to be coercive, and the other requirements of intent and harm will also need to be met.
103. This means that scenarios, such as the provision of advice and guidance by a religious leader or restrictions and pressure from parents over a period of time, could only be captured by the definition of the course of conduct where coercion is also applied. There would also need to be specific intent to change or suppress the person’s sexual orientation or gender identity and the actions must have caused harm. For example, advice and guidance from a religious leader which includes statements of traditional faith beliefs and sexual ethics would also have to be demonstrably coercive through evidence of emphatic directives accompanied by forceful or threatening statements intended to pressure the individual person into changing or suppressing their orientation or identity.

Part 8: Offence of Engaging in Conversion Practice

104. In the case of conversion practices, we believe coercion to be the defining feature of the course of behaviour and we have targeted the offence on this aspect. Following the approach taken to domestic abuse, we propose to include a non-exhaustive list of examples within the legislation, of the types of behaviour that would be considered to be coercive. We propose that a coercive course of behaviour in the context of conversion practices will include acts that are:

- violent, threatening or intimidating towards the victim
- controlling of the victim's day-to-day activities
- manipulative or pressuring the victim to act in a particular way
- frightening, humiliating, degrading or punishing of the victim

105. By controlling, we refer to actions that regulate, restrict, or monitor a person's behaviour or otherwise deprives them of their own freedom of action. For example, preventing someone from dressing in a way that reflects their sexual orientation or gender identity, associating with certain people or undertaking certain activities considered to be linked to their sexual orientation or gender identity. In the context of conversion practices, controlling actions are used deliberately to restrict, prevent, or limit people from living or acting in accordance with their sexual orientation or gender identity. Controlling actions, by their nature, apply a degree of force and give a person no choice other than to regulate their behaviour accordingly.

Part 8: Offence of Engaging in Conversion Practice

106. These behaviours, such as violent, threatening, frightening, or punishing acts, create fear as to the consequences of the person living in accordance with their sexual orientation or gender identity. They may also compel a person to claim an alternative sexual orientation or gender identity to stop consequences or behaviours being directed at them. Intimidating acts deliberately make someone feel afraid or threatened, to force or pressure them to act in a particular way, such as physical intimidation or threatening their safety or security. Acts of humiliation or degradation are those which promote feelings of shame and self-disgust around a particular sexual orientation or gender identity, such as mocking, bullying, and belittling. Within conversion practices, manipulating behaviour is likely to involve a perpetrator abusing a position of power or trust to play on an individual's anxieties or beliefs. For example, weaponising a person's religious beliefs, or exploiting a person's confusion about their sexual orientation or gender identity. Pressure is a key tool in conversion practices to make a person act in a particular way in relation to their sexual orientation or gender identity.
107. By taking an approach which focuses on repeated, coercive behaviour we ensure only the most serious harmful conduct is criminalised. Behaviour such as general conversations, prayer, guidance and advice, and parental direction, guidance and restrictions are not usually coercive towards the person they relate to. For example, pastoral support provided by a religious leader to an individual, stating traditional faith beliefs and associated guidance, without any of the forms of coercion highlighted above would not meet the requirements of the offence. Similarly, nor would parental advice expressing concerns and advising their child against medical interventions, where it is not coercive towards the child or part of a broader coercive course of behaviour. We also do not consider such actions would meet the intent requirement of the offence.

Part 8: Offence of Engaging in Conversion Practice

108. The acts undertaken must be deliberate actions carried out against a person and a failure to do something, or an omission, would not fall within the offence. By way of example, a parent who did not actively support their child's decision to, for example, present as a different gender from that given at birth is not itself an act that would fall within the legislation.

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

- Support
- Do not support
- Don't know

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

Harm - requirement for harm

109. We intend for the criminal offence of engaging in conversion practices to address conduct that is sufficiently serious and harmful. We therefore propose that the offence will include a requirement that the act or course of behaviour has caused harm to the victim: either physical harm, psychological harm, or a combination of both. The legislation will be explicit that psychological harm includes fear, alarm and distress.

110. In relation to acts that are considered to be a provision of a service, the harm can be caused either by an individual act or a course of behaviour made up of a series of acts taken together. In this context, one session or type of therapy undertaken by the perpetrator may not cause harm (and so will not be criminalised), but several sessions or types, when taken together, may result in harm.

111. Courses of behaviour that do not cause harm will not be criminalised.

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
- Do not agree
- Don't know

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

Part 8: Offence of Engaging in Conversion Practice

112. Draft section - offence of engaging in conversion practice

1. Offence of engaging in conversion practice

- (1) A person (“person A”) commits an offence in relation to another person (“person B”) if—
 - (a) person A engages in—
 - (i) behaviour (whether a course of behaviour or behaviour on a single occasion) which constitutes (or is part of) provision of a service in relation to person B, or
 - (ii) a course of behaviour which is coercive of person B,
 - (b) person A engages in the behaviour with the intention mentioned in subsection (2), and
 - (c) the behaviour causes person B to suffer physical or psychological harm.
- (2) The intention is that any sexual orientation or gender identity which (at any time the behaviour is engaged in)—
 - (a) person B considers is (or may be) person B’s sexual orientation or gender identity, or
 - (b) person A presumes to be person B’s sexual orientation or gender identity,will be changed or suppressed.

2. Further provision in relation to offence of engaging in conversion practice

- (1) Subsections (2) to (5) contain examples and other material to assist in the interpretation of section 1.
- (2) Examples of behaviour which may constitute (or be part of) provision of a service in relation to person B include—
 - (a) person A counselling or providing any other form of talking therapy to person B,
 - (b) person A coaching or instructing person B,
 - (c) person A carrying out a purported treatment in relation to person B.
- (3) Examples of behaviour which, if it forms part of a course of behaviour, may indicate that the course of behaviour is coercive of person B include—
 - (a) person A directing behaviour that is violent, threatening or intimidating towards person B,
 - (b) person A controlling person B’s day-to-day activities,
 - (c) person A manipulating or pressuring person B to act in a particular way,
 - (d) person A frightening, humiliating, degrading or punishing person B.

Part 8: Offence of Engaging in Conversion Practice

- (4) In subsection (3)(a), the reference to violent behaviour includes reference to sexual violence as well as physical violence.
- (5) It does not matter for the purposes of section 1—
 - (a) whether any behaviour engaged in changes, or is capable of changing, person B’s sexual orientation or gender identity,
 - (b) whether behaviour is engaged in free of charge or in exchange for payment (of any kind),
 - (c) whether, on any occasion on which behaviour is engaged in, it is engaged in only in relation to person B or in relation to person B and other persons at the same time.

(Please note that section 2 will also apply for the purposes of the offence of taking a person outside Scotland for conversion practices and conversion practice protection orders.)

3. Interpretation

In this Part—

- (a) references to behaviour—
 - (i) do not include reference to a person failing to do things in relation to another person, but
 - (ii) otherwise include reference to behaviour of any kind (including, for example, saying or otherwise communicating something as well as doing something),
- (b) a course of behaviour—
 - (i) involves behaviour on at least two occasions,
 - (ii) may involve—
 - (A) the same behaviour being engaged in on a number of occasions, or
 - (B) different behaviour being engaged in on different occasions,
- (c) psychological harm includes fear, alarm and distress,
- (d) reference (however expressed) to a person’s sexual orientation includes reference to the person having no sexual orientation towards other persons.

(Please note that section 3 will also apply for the purposes of the offence of taking a person outside Scotland for conversion practices and conversion practice protection orders.)

Part 8: Offence of Engaging in Conversion Practice

For the avoidance of doubt

113. There are a number of situations that we do not intend to fall within the legislation. While we do not consider that these will meet the requirements of the offence, particularly the intent requirement, we propose to include 'avoidance of doubt' clauses to put this beyond doubt.
114. We propose to include a specific provision to recognise that the intent requirement will not be met in the situation of the provision of healthcare by a healthcare professional in the course of their employment. By this we intend to encompass practices that are offered through regulated healthcare services provided in line with the practitioner's professional opinion, and which comply with relevant medical, ethical and legal rules and guidelines. This approach ensures that the legislation does not unnecessarily impact the delivery of medical or psychological care, ensuring ethical practitioners are safeguarded and those who need it can continue to access care and advice.
115. We also propose to include as additional clarification that this healthcare provision includes medical treatment intended to align a person's physical characteristics with their gender identity and medical treatment that causes or addresses a lack of sexual desire.
116. We intend to provide clarity that certain other behaviour will not be carried out with the requisite intention for the offence. These are situations where the service or course of behaviour affirms the sexual orientation or gender identity that another person considers themselves to be.
117. We will also be clear that the intent requirement is not met where there is no intention to direct person B towards any particular sexual orientation or gender identity – particularly where this involves conversations or where the behaviour only involves the expression or opinions or beliefs. The intention requirement ensures that it will not fall under the legislation where a person such as a family member or someone expressing their views in the street states negative views about a particular sexual orientation or gender identity without a specific intention to change or suppress those characteristics of another person. These avoidance of doubt provisions provide additional reassurance in that regard.

Part 8: Offence of Engaging in Conversion Practice

118. Draft section - avoidance of doubt provision

4. Further provision in relation to offence of engaging in conversion practice: intention

- (1) For the avoidance of doubt, examples of behaviour being engaged in without the intention mentioned in section 1(2) include—
 - (a) the provision, by a healthcare professional in the course of employment as such, of healthcare, including—
 - (i) medical treatment intended to align person B's physical characteristics with person B's gender identity,
 - (ii) any medical treatment that causes or addresses a lack of sexual desire on person B's part,
 - (b) person A engaging in behaviour (whether a course of behaviour or behaviour on a single occasion) in relation to person B which consists entirely of behaviour which—
 - (i) affirms a sexual orientation or gender identity which person B considers is (or may be) person B's sexual orientation or gender identity, or
 - (ii) is not intended to direct person B towards any particular sexual orientation or gender identity (including, in particular, any such behaviour which consists entirely of conversation, whether or not extending to the provision of advice and guidance, of a therapeutic, spiritual or any other nature),
 - (c) person A engaging in behaviour (whether a course of behaviour or behaviour on a single occasion) in relation to person B which consists entirely of person A expressing opinions or beliefs, without intending to direct person B towards any particular sexual orientation or gender identity.

(Please note that section 4 will also apply for the purposes of the offence of taking a person outside Scotland for conversion practices and conversion practice protection orders.)

Part 8: Offence of Engaging in Conversion Practice

Defence of reasonableness

119. We propose that the offence will include a defence that the accused's conduct was reasonable in the particular circumstances. This test is whether the accused's behaviour was reasonably objective, meaning that it is not determinative that the accused person considers their behaviour was reasonable based on their own values.
120. A 'defence of reasonableness' is included in a number of criminal offences in Scotland where there is a broad range of conduct that potentially falls within the offence. This includes the offence of Threatening or Abusive Behaviour ([Section 38](#), Criminal Justice and Licensing (Scotland) Act 2010) and the offence of Stalking ([Section 39](#), Criminal Justice and Licensing (Scotland) Act 2010). It acts as a safeguard where the actions of an accused person may meet the technical requirements of the offence but there is a reasonable justification why they should not be convicted of the criminal offence.
121. We are clear that practices that seek to change or suppress the sexual orientation or gender identity of someone else are abhorrent and have no place in our society. In order to address conversion practices, we have proposed a new offence that includes a broad range of potential conduct that could occur in a wide range of circumstances, particularly in the context of a coercive course of behaviour.
122. Although the intent and harms test will have to be met for conduct to be criminalised, because of the breadth of potential conduct involved, we recognise that there could be a very small number of circumstances where it could be argued it was 'reasonable' to act in a certain way, for example, when there was another overriding motivation or the exercise of other rights is involved.
123. While it may be difficult to envisage circumstances in which behaviour meeting each of the four tests set out above (relating to an individual, provision of a service/coercive course of behaviour, intention to change or suppress, cause of harm) would ever be "reasonable", this provision ensures that where someone behaves in an objectively reasonable way, but their behaviour nonetheless technically amounts to the commission of the offence of engaging in conversion practices, they are not criminalised by the offence.

Part 8: Offence of Engaging in Conversion Practice

124. We anticipate this defence may potentially arise where the immediate safety of the victim was at risk, and acts were carried out to protect them from imminent harm. For example, where someone is at immediate risk of suicide as a result of distress related to their sexual orientation or gender identity, requests and is supported to find a short-term coping mechanism. It could also potentially apply in situations where the specific day-to-day controls implemented by a parent were to prevent a child from engaging in illegal or dangerous behaviour.

Part 8: Offence of Engaging in Conversion Practice

125. Draft section - defence of deasonableness

5. Defence of reasonableness

- (1) In proceedings for an offence under section 1, it is a defence for person A to show that person A's behaviour was, in the particular circumstances, reasonable.
- (2) For the purposes of subsection (1), it is shown that person A's behaviour was, in the particular circumstances, reasonable if—
 - (a) evidence adduced is enough to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.

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

- Agree
- Do not agree
- Don't know

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

Part 8: Offence of Engaging in Conversion Practice

Proposed penalty

126. We propose that offences relating to this offence will be able to be tried “both ways” in either summary or solemn procedure.

In **summary procedure**, a trial is held in the Sheriff or Justice of the Peace Court before a judge without a jury. The maximum sentence on conviction is one year of imprisonment. In **solemn procedure**, the trial is held before a judge sitting with a jury in either the Sheriff Court or the High Court. This is used for more serious allegations and consequently attracts higher penalties. The decision on which procedure to use is decided by the Crown Office and Procurator Fiscal Service depending on the seriousness of the alleged offence.

127. Within Scots law, we consider that the following offences have comparable behaviours to those addressed in this offence:

- **Section 38 (Threatening or abusive behaviour)** of the Criminal Justice and Licencing (Scotland) Act 2010 captures a course of threatening and/or abusive behaviour, though with a requirement to cause the person to suffer fear or alarm, carrying a maximum sentence of 5 years;
- **Section 122 of The Anti-social Behaviour, Crime and Policing Act (2014)**, captures the use of violence, threats of coercion – in this case to force a person into marriage or civil partnership, without their full and free consent – carrying a maximum penalty of 7 years; and
- **Domestic Abuse (Scotland) Act 2018** captures complex and coercive physical and psychological behaviour that may be conducted over a period of time, privately, and where there is an imbalance of power. This carries a maximum penalty of 14 years.

Part 8: Offence of Engaging in Conversion Practice

128. While the offence will primarily capture acts that are psychological in nature, it will also include a coercive course of behaviour which may include physical and abusive acts which typically attract higher sentences. However, we do not consider that a conversion practices course of behaviour necessarily demonstrates the level of physical violence associated with domestic abuse. We therefore propose the following sentencing range for convictions under this offence:

- **on summary conviction: imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum (£10,000), or to both**
- **on conviction on indictment (solemn procedure): imprisonment for a term not exceeding 7 years, or to an unlimited fine, or both**

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

- Agree
- Do not agree
- Don't know

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

Part 9: Criminal Offences - Additional Considerations

Defence of consent in a criminal offence relating to conversion practices

129. Evidence suggests that many people who undergo conversion practices agree in some way to do so. For example, they may agree to attend a programme of therapy. However, those people who apparently willingly engage in, or actively seek out, conversion practices are often driven by external pressures and coercions, such as imbalanced power dynamics or being under the guidance of powerful people in their life who are in a position of trust or authority, limiting their autonomy.
130. The EHRCJ Committee in its report was “anxious to ensure that, in a similar way to legislation that exists to protect victims of domestic abuse or female genital mutilation, the definition makes it clear that consent to such practices can never be informed and should not be available as a defence to those undertaking conversion practices”.
131. Because there is often some form of agreement or consent to conversion practices, we have considered whether – in relation to the proposed criminal offence – there should be a defence of consent, where an adult who is not lacking in capacity or otherwise vulnerable, gives informed consent to the conversion practices.
132. Considering the available information and evidence, we believe that it is extremely difficult to ensure that consent in these circumstances is fully informed. Many people have reported consenting to conversion practices without a full awareness of:
- the fact that change is not, in fact, possible
 - what the conversion practices will entail
 - the likelihood that this will cause them serious lifelong harm
133. There may also be scenarios in which a victim is subject to an act which they do not realise at the time is a conversion practice. For example, where an individual has actively sought out support to explore or navigate struggles with their sexual orientation or gender identity – such as by undertaking therapy, or consulting a spiritual adviser.
134. For all of the reasons set out above, we do not propose to include a defence of consent in relation to the new criminal offences.

Part 9: Criminal Offences - Additional Considerations

135. We believe that the requirements of our proposed criminal offences will ensure that non-harmful support and conversations provided to people who may feel uncomfortable with their sexual orientation or gender identity will not be criminalised. We believe that it is not possible to consent to actions that cause harm and the criminal offence requirement that the act has caused harm makes a defence of consent inappropriate. In practice, it will be difficult to prove that harm has been caused in situations where the person has given consent, unless they have later changed their mind.
136. We consider that our current proposals ensure personal freedoms and autonomy remain protected, given that fully informed consent is extremely difficult, or in fact impossible, to achieve; harmful conduct cannot be consented to; and that non-harmful support remains unaffected. We have proposed a defence of reasonableness to the offences which may be relied on in certain situations where an individual asks for assistance. We would welcome your views on the inclusion of a defence of informed consent within the legislation.
137. Including a defence of informed consent will require other changes to be made to the proposals contained in this consultation. In particular, it will be necessary to reconsider the requirement to prove that the act has resulted in physical or psychological harm, as we do not believe that it should be possible to consent to a harmful practice.
- 17. Do you agree that there should be no defence of consent for conversion practices?**
- Yes
- No
- Don't know
- 18. Please give reasons for your answer to Question 17.**
- 19. Do you have any other comments regarding the criminal offence as set out in Parts 8 and 9?**

Part 9: Criminal Offences - Additional Considerations

The promotion and advertising of conversion practices

138. Both the EHRCJ Committee and the EAG recommended that any ban on conversion practices include a ban on advertising of such practices. The EAG has specifically called for offering, promoting, advertising, or referring conversion practices to be criminalised.
139. There is a global precedent for the criminalisation of advertising conversion practices. A number of countries and jurisdictions, including Victoria (Australia), Malta, and Canada, have included a criminal offence within their legislation. Other countries, such as New Zealand, have instead legislated for a civil response.
140. At present, adverts are regulated by Ofcom and the Advertising Standards Authority (ASA). The UK Government has also developed the [Online Safety Act 2023](#). While there is no specific provision for conversion practices, taken together, these regulatory bodies and legislation regulate illegal and harmful content, as well as misleading and inaccurate information, across broadcast, non-broadcast (i.e. print, both physical and electronic), and online material. These are all matters which are reserved to the UK Government which means that the Scottish Government cannot change them or legislate in relation to them.
141. The Scottish Government believes that this does not sufficiently take account of the familial and community-based nature of many forms of conversion practices, and the more personal promotion – often word of mouth – which may take place in these environments. Therefore, we propose that civil protection orders may be capable of addressing the informal promotion and advertising of conversion practices depending on the particular circumstances. These orders are explained in more detail in Part 13.
142. In prosecutions where a victim has undergone conversion practices, the person who advertised or promoted those conversion practices may, depending on the particular circumstances, be found to have aided and abetted in the commission of the offence. This would require the person producing the advert/promotion to have prior knowledge of the situation they were exposing the victim to. In addition, we expect that the creation of a specific criminal offence relating to conversion practices will limit any promotion or advertising of it, because it is not permitted to advertise or promote something that is itself illegal.

Part 10: Removing a Person from Scotland for Conversion Practices

143. Some victims of conversion practices may be taken out of Scotland for these purposes with evidence of such actions detailed in several sources including **Conversion Therapy: An evidence assessment and qualitative study** commissioned by the UK Government and **There was nothing to fix: LGBT+ survivors' experiences of conversion practices** by Galop. We believe that legislation should address this harm. Similar concerns have been addressed in legislation relating to forced marriage and female genital mutilation.
144. We propose that it should be a criminal offence to cause someone who is habitually resident in Scotland to leave Scotland with the intention that they will undergo conversion practices. We propose that the legislation include illustrative examples of things that are likely to demonstrate that a person caused another person to leave Scotland. For example, if they travelled with them, paid all or most of their travel costs or made their travel arrangements. The act of causing someone to leave Scotland would need to be done with the intention that the person was to undergo conversion practices. This would include a person being taken to another part of the UK, or abroad.
145. We do not propose that the legislation should criminalise a conversion practice that takes place outside of Scotland, whether elsewhere in the UK or abroad. So, it would not be possible to prosecute a person in Scotland for a conversion practice that took place outside of Scotland. There would be significant operational difficulties in doing so, particularly in securing the relevant evidence to a high-enough standard. It may also require conversion practices to be a criminal offence in the country where it was carried out.
146. We believe banning the removal of a person from Scotland for conversion will sufficiently address the risk to those resident in Scotland. In this situation, the offence will be the removal of the person from Scotland with the intended purpose of them being subjected to conversion practices. The acts intended to be undertaken while outside of Scotland and intent requirements in this context are proposed to be equivalent to the offence of engaging in conversion practices outlined above, with the exception of the harm requirement.

Part 10: Removing a Person from Scotland for Conversion Practices

147. It would not matter whether the conversion practice was carried out, so long as the person was taken out of Scotland for the purposes of subjecting them to conversion practices. It would not matter whether the change or suppression of their sexual orientation or gender identity is achieved or is, in fact, possible. This offence therefore, does not require any proof of harm having been caused.
148. As with the offence of engaging in conversion practices, we propose that this offence is subject to the defence outlined above that the behaviour was reasonable in the circumstances. This acts as a safeguard because there is no requirement within this offence for the intended conversion act or course of behaviour to actually take place or for harm to have occurred.
149. We propose the following sentencing range for prosecutions under this offence:
- **on conviction under summary procedure: imprisonment for a term not exceeding 12 months, or a fine, or both**
 - **on conviction on indictment (solemn procedure): imprisonment for a term not exceeding 3 years, or a fine, or both**

Part 10: Removing a Person from Scotland for Conversion Practices

150. Draft section – offence of taking person outside Scotland for conversion practice

6. Offence of taking person outside Scotland for conversion practice

- (1) A person (“person A”) commits an offence in relation to another person (“person B”) if—
 - (a) person B is habitually resident in Scotland,
 - (b) person A causes person B to leave Scotland, and
 - (c) person A intends—
 - (i) that, while person B is outside Scotland, behaviour of a type mentioned in subsection (2) will be engaged in (whether by person A or another person) in relation to person B, and
 - (ii) that, by the behaviour being engaged in, the outcome mentioned in subsection (3) will be secured.
- (2) The behaviour is—
 - (a) behaviour (whether a course of behaviour or behaviour on a single occasion) which constitutes (or is part of) provision of a service in relation to person B, or
 - (b) behaviour which is coercive of person B.
- (3) The outcome is that a sexual orientation or gender identity which (at the time person B leaves Scotland)—
 - (a) person B considers is (or may be) person B’s sexual orientation or gender identity, or
 - (b) person A presumes to be person B’s sexual orientation or gender identity,will be changed or suppressed.

7. Further provision in relation to offence of taking person outside Scotland for conversion practice

- (1) Subsections (2) and (3) contain examples and other material to assist in the interpretation of section 6.
- (2) Examples of behaviour which may indicate that person A caused person B to leave Scotland include—

Part 10: Removing a Person from Scotland for Conversion Practices

- (a) person A accompanying person B on a journey outside Scotland,
- (b) person A—
 - (i) paying all, or a substantial portion of, the costs incurred by person B in leaving and being outside Scotland (for example, person B’s travel or accommodation costs), or
 - (ii) making arrangements in relation to person B’s leaving and being outside Scotland (for example, person A booking travel tickets or accommodation for person B).
- (3) It does not matter for the purposes of section 6 whether the behaviour which person A intends will be engaged in in relation to person B while person B is outside Scotland is in fact engaged in.

8. Defence of reasonableness

- (1) In proceedings for an offence under section 6, it is a defence for person A to show that person A’s behaviour was, in the particular circumstances, reasonable.
- (2) For the purposes of subsection (1), it is shown that person A’s behaviour was, in the particular circumstances, reasonable if—
 - (a) evidence adduced is enough to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.

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
- Do not support
- Don’t know

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

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

- Support
- Do not support
- Don’t know

23. Please explain your answer to Question 22.

Part 11: Conversion Practices as an Aggravating Factor for Existing Offences

151. There are forms of conversion practices that can be prosecuted under existing criminal offences. This includes situations where the conduct has a physical element, such as assault, including sexual assault, or forced marriage.
152. In addition to creating two new criminal offences, we therefore propose that conversion practices are made an aggravating factor for existing offences. This would give flexibility to the Crown Office and Procurator Fiscal Service (COPFS) in deciding how best to prosecute a situation of conversion practices, and is particularly important where conduct may not reach the threshold to be captured by the course of behaviour offence, but meets the requirements of an existing criminal offence.
153. The law relating to hate crime in Scotland, currently contained in the [Offences \(Aggravation by Prejudice\) \(Scotland\) Act 2009](#) allows for criminal offences to be aggravated by prejudice on the grounds of sexual orientation or transgender identity. This will be repealed and replaced by the [Hate Crime and Public Order \(Scotland\) Act 2021](#) when it comes into force in 2024 and which provides for a statutory aggravation on similar grounds.
154. While hate crime legislation may capture some conversion practices, the laws require the offender to show or be motivated by malice or ill-will based on the sexual orientation or transgender identity of the victim. The nature of conversion practices means that, in many cases, the offender does not bear malice or ill-will towards the specific victim, but is motivated by helping them. In certain cases, there may be an underlying malice or ill-will towards people of that sexual orientation or transgender identity. However, this is still unlikely to capture all situations.
155. An aggravation 'attaches' to an offence, in certain circumstances, based on the conduct or motivation of the offender. In order for this to be possible there needs to be an underlying criminal offence such as assault. An aggravating factor indicates a more serious degree of harm than if the same crime was committed without that factor being present. In this case, an aggravating factor of an intention to change or suppress the sexual orientation or gender identity of the victim would be an explicit recognition of the harm that is caused when conduct is so motivated. It would apply to any other criminal offence, except the two new offences created by this legislation.

Part 11: Conversion Practices as an Aggravating Factor for Existing Offences

156. Creating a new statutory aggravation for conversion practices would require the courts to explicitly recognise and note the intention of the perpetrator. It would also require courts to take the aggravations into account when determining sentence, stating the extent and reasons why the sentence is greater as a result of the aggravating factor.
157. An additional advantage of doing so would be that it will allow the collection of data on criminal acts that have been undertaken with the intention of conversion practices, providing a more detailed picture of the extent of conversion practices in Scotland. The dual approach of creating a new criminal offence, and a statutory aggravating factor relating to conversion practices, would provide COPFS with a range of prosecutorial tools, and enable prosecutorial flexibility in approaching cases of conversion practices. This approach is similar to that taken in relation to domestic abuse where there is a specific course of behaviour offence, as well as a statutory aggravation relating to abusive behaviour towards a partner or ex-partner to ensure there are no gaps within the law.
158. The statutory aggravation would attach to situations where the underlying offence was undertaken with an intention that the victim's sexual orientation or gender identity would be changed or suppressed. In line with the standard approach in Scots law to statutory aggravations, evidence from a single source would be sufficient to prove the aggravation. This would mean that the victim could provide appropriate evidence that the offender was motivated by conversion practices without the need to support that evidence with another source.

Part 11: Conversion Practices as an Aggravating Factor for Existing Offences

159. Draft section – aggravation of offence involving conversion practice

9. Aggravation of offence involving conversion practice

- (1) This subsection applies where it is—
 - (a) libelled in an indictment or specified in a complaint that an offence committed by a person (“person A”) in relation to another person (“person B”) is aggravated by being committed with the intention mentioned in subsection (2), and
 - (b) proved that the offence is so aggravated.
- (2) The intention is that a sexual orientation or gender identity which (at the time the offence is committed)—
 - (a) person B considers is (or may be) person B’s sexual orientation or gender identity, or
 - (b) person A presumes to be person B’s sexual orientation or gender identity, will be changed or suppressed.
- (3) It does not matter for the purposes of subsection (1)(a) whether person A’s commission of the offence changed, or was capable of changing, person B’s sexual orientation or gender identity.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated as mentioned in subsection (1)(a).
- (5) Where subsection (1) applies, the court must—
 - (a) state on conviction that the offence is aggravated as mentioned in subsection (1)(a),
 - (b) record the conviction in a way that shows the offence is so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - (i) where the sentence imposed in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.
- (6) The reference in subsection (1)(a) to an offence does not include reference to an offence under section 1 or 6.

Part 11: Conversion Practices as an Aggravating Factor for Existing Offences

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

- Support
- Do not support
- Don't know

25. Please explain your answer to Question 24.

Part 12: Consideration of Convention Rights

160. Conversion practices are usually undertaken within an ideology that views LGBTQI+ identities as wrong and believes that they can be changed. The main aim of this legislation is to protect people from the harm of conversion practices and protect the human rights and dignity of LGBTQI+ people.
161. Legislation passed by the Scottish Government must be compatible with the human rights protected by the European Convention on Human Rights (ECHR). In developing the proposals set out in this consultation we have carefully considered their impact on rights protected by the ECHR, in particular the right to family and private life; freedom of thought, conscience and religion; and freedom of expression. In line with the requirements of the ECHR, interference with these rights must be necessary and proportionate to the aim to be achieved, in this case, protection of the rights of LGBTQI+ people.
162. In order to make sure that our proposals respect all of the rights involved, we have taken a number of steps as set out in this consultation. These include ensuring that the criminal law targets those acts that are harmful and coercive, and complementing this with a preventative and protective approach through the use of civil protection orders, which are also required to comply with these rights. There are a number of safeguards in relation to the civil protection orders in order to protect the rights of both persons to be protected and persons on whom prohibitions may be placed. In particular, the proposed civil protection order cannot be granted unless necessary to reduce or prevent harm to other persons.
163. We are clear that conversion practices must be undertaken with a specific intention to change or suppress and in relation to the specific victim. They do not include general statements of opinion without this specific intention, or voluntary practices undertaken by a person themselves in line with a person's own belief and not pushed upon them by someone else (such as individuals who choose themselves to live a celibate life).

Part 12: Consideration of Convention Rights

164. We have included a specific avoidance of doubt provision to put beyond doubt that conversions that do not intend to direct a person towards a particular sexual orientation or gender identity is not a conversion practice and nor is behaviour that consists entirely of expression of opinion or belief.
165. The offence also includes a defence of reasonableness. This acts as an additional protection by allowing, for example, an accused person to put forward a justification as to why their behaviour was reasonable, which could include the exercise of their 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 of Human Rights?**

Part 13: A New Civil Order Relating to Conversion Practices

Background

166. Evidence from survivors of conversion practices, as well as recommendations made by the EAG, suggest that there will be cases where the use of criminal law is not the most suitable course of action. There are many reasons why this might be the case. For example, the circumstances of the victim, the relationship between the accused and the victim, or a difficulty in meeting the standard of proof in the criminal courts. In addition, the criminal law provides a response to a crime which has already taken place, rather than enabling preventative action.
167. Anecdotal evidence from those with lived experience of conversion practices, and data from research, highlights that conversion practices often take place in religious, family, and community settings. As a result, victims may be reluctant to report those responsible to the police, or to give evidence during a criminal trial. This is especially true where the victim comes from a community that may already be unwilling to engage with the police or the criminal justice system.
168. In addition to the criminal law, we believe it is necessary to implement legislation which allows the civil courts to prevent instances of conversion practices from taking place and require protective and preventative actions.

The civil courts are courts that deal with matters that are not criminal, including family issues and civil protection orders.

169. A civil order provides an avenue for conversion practices to be addressed and prevented, including in situations where the Police and COPFS do not consider criminal measures to be appropriate. For example, where there is not enough evidence for a criminal prosecution, an order may nevertheless be able to protect someone who is at risk of harm.
170. Civil orders still require a formal legal process that provides sufficient protection for the person(s) to whom the order applies and some persons may be reluctant to use them. We are also considering other measures that could be used to provide education, awareness, and support outside of the legislative process (see Part 16).

In most civil cases, the party or parties bringing the case forward need to prove it is more likely than not that whatever they are claiming is true. This is known as **'the balance of probabilities'** and is less onerous than the 'beyond reasonable doubt' proof that's needed in criminal cases.

Part 13: A New Civil Order Relating to Conversion Practices

Why do we need a new civil protection order?

171. The law in Scotland provides for several individual and community protection orders which can be used to protect individuals and prevent harmful conduct in a range of different situations.
172. A number of different protection and prevention orders currently exist in Scotland. Some of these focus on specific, and clearly defined, harmful situations. For example: forced marriage, female genital mutilation, domestic abuse, and protecting children from significant harm. Others can be applied more broadly to different kinds of conduct, for example non-harassment orders, and the power of interdict under common law.
173. None of these existing civil orders fully address the problem of conversion practices, nor are they designed to.

Common law is the law established following court cases, rather than a law set down in legislation.

174. An important feature of the proposed civil orders in relation to conversion practices is their ability to protect specific individuals from an identified risk of harm of conversion practices in a tailored and individualised way.
175. We have also identified value in legislating for a civil order that will relate to conduct which puts the public or community at large at risk. In this situation there would not be the requirement of a named victim. This will be particularly useful for preventing harm caused by individuals or institutions that conduct conversion practices on a wider scale.
176. As a result, we have identified the need for a new civil order to be introduced that would include both of these situations.

Summary of proposal

177. Our proposal is to introduce a civil order with the following uses:
 - to protect a specific person from the harm caused by another individual
 - to protect the wider community from the conduct of an individual or organisation that has previously engaged in conversion practices. For example, an individual that has caused harm to multiple people as a result of conversion practices

Part 13: A New Civil Order Relating to Conversion Practices

Civil order to protect both (I) an individual and (II) the wider community

	To protect an individual at risk	To protect the wider community
Who can apply	<ul style="list-style-type: none"> • The person to be protected • The police • Local authority • A third party (with leave of the court) 	<ul style="list-style-type: none"> • The police • Local authority
Purpose of order	<ul style="list-style-type: none"> • To prevent or reduce the likelihood of a specific person being harmed by a conversion practice being done to them. 	<ul style="list-style-type: none"> • To prevent or reduce the likelihood of people in Scotland in general being harmed by conversion practices.
Conditions for granting	<ul style="list-style-type: none"> • The order and (any requirement in it) must be necessary for the above purpose. • There needs to be evidence that a specific individual is at risk of harm from either the provision of a service or a coercive course of behaviour done with the intent to change or suppress their sexual orientation or gender identity. • There does not need to be evidence that conversion practices have already taken place. 	<ul style="list-style-type: none"> • The order (and any requirement in it) must be necessary for the above purpose. • The court needs to be satisfied that the person to whom the order applies has carried out conversion practices before or has previously caused someone to leave Scotland for the purpose of conversion practices. • There needs to be evidence that the public are at risk of harm from the person on whom the order is imposed of conversion practices.

Part 13: A New Civil Order Relating to Conversion Practices

	To protect an individual at risk	To protect the wider community
Example of use	<ul style="list-style-type: none"> • Prevent a person being taken abroad by a family member to undergo conversion practices, including restrictions relating to the removal of passports. • Prevent a specific person contacting or meeting a person where they have attempted to carry out conversion practices on them before. 	<ul style="list-style-type: none"> • Prevent an individual from attending a particular premises or type of premises where they have previously engaged in conversion practices. • Prevent an individual from holding or leading group or individual prayer sessions related to changing or suppressing sexual orientation or gender identity of the individuals attending them. • Prevent an individual from carrying out advertising and promotion of their service which purports to be able to change or suppress people's sexual orientation or gender identity .
Penalties for breaching	<ul style="list-style-type: none"> • On summary conviction, penalty is to be imprisonment for a period not exceeding 12 months, a fine not exceeding the statutory maximum, or both. • On conviction on indictment, penalty is to be for a sentence of imprisonment not exceeding 2 years, an unlimited fine, or both. 	<ul style="list-style-type: none"> • On summary conviction, penalty is to be imprisonment for a period not exceeding 12 months, a fine not exceeding the statutory maximum, or both. • On conviction on indictment, penalty is to be for a sentence of imprisonment not exceeding 2 years, an unlimited fine, or both.

Part 14: The Purposes of a Conversion Practices Protection Order

178. Civil orders will be able to be used to prevent the harmful conduct associated with conversion practices from taking place. The conduct addressed by the civil orders will align with those in the criminal offences, so that they will address the provision of a service or a coercive course of behaviour undertaken with the intention to change or suppress the sexual orientation of a specific individual. The purpose of the civil protection order is to prevent or reduce the likelihood of the harm that arises from this conduct, whether to a specific identified individual or people in Scotland more generally. In situations where the order is being used to protect a specific, identified individual, there does not need to be evidence that conversion practices have already taken place. Instead, there needs to be evidence of a risk of conversion practices taking place, as defined in the conversion practices criminal offences, and a consequent risk of harm to the person to be protected. It will, though, remain possible to apply for a civil order to protect an individual where conversion practices have already taken place.
179. In instances where the order is being used to protect the wider community, it needs to be demonstrated that the person has on one previous occasion either provided in a service or engaged in a course of coercive behaviour or has caused someone to leave Scotland for the purpose of conversion practices.
- The person to be protected** is the individual whom the order is designed to protect from harm. The proposed civil order may also protect the community at large. The person or persons to be protected must be habitually resident in Scotland.
180. In addition to the route for applying for an order set out in paragraph 194 below, an order could also be granted where criminal conduct has been carried out. For example, we propose that an order could be granted at sentencing following a conviction for a criminal offence.
181. Civil orders would be considered by the civil courts on a case-by-case basis looking at the specific risk. The court would need to be satisfied that the order, and any prohibition or requirement in it, was necessary to protect either an individual or the wider community.

Part 14: The Purposes of a Conversion Practices Protection Order

182. The same intent requirement applies to the civil orders as to the criminal offence and the avoidance of doubt provisions set out above at paragraph 118 will also apply to the civil protection order. As with the criminal offences, the civil orders will therefore not include behaviour that is not intended to change or suppress a person's sexual orientation or gender identity. For example, advice, guidance and support for an individual to explore their thoughts, feelings, or manage any distress, and which does not direct a person towards a particular pre-determined outcome. They will not encompass practices offered through regulated healthcare services provided in line with the practitioner's professional opinion, and which complies with medical, ethical and legal rules and guidelines, or practices that are supportive of a person's expressed sexual orientation or gender identity.

Part 14: The Purposes of a Conversion Practices Protection Order

183. Draft section – Conversion Practices Protection Order

10. Conversion practices protection orders

- (1) A “conversion practices protection order” is an order—
 - (a) which, for a purpose mentioned in subsection (2), requires persons specified in the order to do, or prohibits persons so specified from doing, things described in the order, and
 - (b) which is made on an application to a court under section 11.
- (2) A court may make a conversion practices protection order only if satisfied that the order is necessary for one of the following purposes—
 - (a) to prevent, or reduce the likelihood of, a person who is habitually resident in Scotland and who is identified in the order being harmed by behaviour mentioned in subsection (3) being engaged in in relation to the person,
 - (b) to otherwise prevent or reduce the likelihood of persons, who are habitually resident in Scotland, generally being harmed by behaviour mentioned in subsection (3) being engaged in.
- (3) The behaviour is behaviour (whether a course of behaviour or behaviour on a single occasion)—
 - (a) which—
 - (i) constitutes (or is part of) provision of a service to another person, or
 - (ii) is coercive of another person, and
 - (b) which is engaged in with the intention mentioned in subsection (4).
- (4) The intention is that any sexual orientation or gender identity which (at the time the behaviour is engaged in)—
 - (a) the person in relation to whom the behaviour is engaged considers is (or may be) the person’s sexual orientation or gender identity, or
 - (b) the person engaging in the behaviour presumes to be the sexual orientation or gender identity of the person in relation to whom the behaviour is engaged,will be changed or suppressed.

Part 14: The Purposes of a Conversion Practices Protection Order

- (5) A conversion practices protection order may impose a requirement or prohibition on a person only if—
 - (a) the court considers the particular requirement or prohibition to be necessary for the purpose for which the order is made,
 - (b) where the requirement or prohibition is imposed on an individual, the individual is aged 18 or over,
 - (c) where the order is made for the purpose mentioned in subsection (2)(b), the court is satisfied that the person has, on at least one previous occasion—
 - (i) engaged in behaviour mentioned in subsection (3), or
 - (ii) with the intention mentioned in section 6(1)(c), caused a person who is habitually resident in Scotland to leave Scotland.
- (6) The requirements and prohibitions which may be imposed on a person by a conversion practices protection order include—
 - (a) a prohibition on approaching or contacting, or attempting to approach or contact, any protected person,
 - (b) a prohibition on engaging in behaviour mentioned in subsection (3),
 - (c) a prohibition on attending such place as is specified in the order,
 - (d) a prohibition on taking any protected person from, or to, such place as is specified in the order,
 - (e) a requirement to facilitate or otherwise enable any protected person to return or go to such place as is specified in the order within such period as is so specified,
 - (f) a prohibition on causing any protected person to leave Scotland,
 - (g) a requirement to submit to the court such documents as are specified in the order (which may include passports, birth certificates or other documents identifying a person and travel documents),
 - (h) a prohibition on advertising or promoting a service mentioned in subsection (3).

Part 14: The Purposes of a Conversion Practices Protection Order

- (7) A conversion practices protection order may include requirements and prohibitions relating to behaviour outside (as well as, or instead of, behaviour within) Scotland.
- (8) In this Part, “protected person” means a person identified in a conversion practices protection order as mentioned in subsection (2)(a).

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

- Support
- Do not support
- Don't know

28. Please explain your answer to Question 28.

What powers will the courts have?

184. Based on conversations we have had with stakeholders and those with lived experience, we appreciate that each victim's experience is unique. We therefore propose that the courts are given a broad power to impose any requirements and prohibitions that are required to protect the individual. No requirement or prohibition could be imposed on a person by a court where it was not necessary for the protection of another person, or the protection of people in Scotland generally, who are at risk of harm from conversion practices. The court will only be able to place a requirement or a prohibition on a person who is over 18 years old.

185. This flexibility will enable the courts to address the complex and varied nature of conduct associated with conversion practices. For example, an order could put in place certain restrictions on a person who has been identified as posing a risk of harm to another person by undertaking conversion practices, This could include stopping them from engaging in the harmful behaviour, contacting the person at risk, taking them to a certain place, or taking/retaining them outside of Scotland.

Part 14: The Purposes of a Conversion Practices Protection Order

186. Where an order was made to protect the community, the court would be given the power to place any necessary restrictions and/or requirements on an individual whose conduct is considered to place others at risk of harm from the carrying out of conversion practices. This would include refraining from the acts involved, or the advertising and promoting of the conversion practices.
187. It will be necessary to prove on the balance of probabilities that the organisation or individual concerned had carried out conversion practices on at least one occasion before or had caused a person to leave Scotland for the purpose of conversion practices.
188. The court would also have the power to determine the duration of the order or any conditions or requirements within it. However, this will be subject to the necessity of the conditions or requirements. It would also be possible to apply to the court to have the order lifted or varied. We intend for the court to have the power make an interim order where it considers this necessary. This follows the approach of other civil orders, including forced marriage, female genital mutilation and interdicts.
189. The court must hold a hearing before deciding whether to grant an application. This will allow all relevant parties to present their views to the court. In deciding whether to grant an order and what conditions to include, the court must take account of all of the circumstances of the case. It must particularly consider the need to secure the health, safety and well-being of a person to be protected by the order.

Part 15: Civil Orders – Considerations

Breaching a conversion practices civil order

190. We believe that there must be a criminal penalty for breaching a civil order. This will ensure they are effective as a deterrent, therefore working towards our overall goal of ending conversion practices in Scotland.
191. Having this preventative effect and the ability to progress with prosecution if a protection order is breached can empower persons to come forward and to rely on the state to positively end their ordeals. We therefore propose that civil orders relating to conversion practices carry a criminal penalty for a breach to ensure they act effectively as deterrents.
192. In line with [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011](#) and the [Prohibition of Female Genital Mutilation \(Scotland\) Act 2005](#) (as amended by the [Female Genital Mutilation \(Protection and Guidance\) \(Scotland\) Act 2020](#)), we propose the following sentencing range for breaching a conversion practices civil order:
- **on summary conviction: imprisonment for a period not exceeding 12 months, a fine not exceeding the statutory maximum, or both**
 - **on conviction on indictment (solemn procedure): a sentence of imprisonment not exceeding 2 years, a fine, or both**

Who would be able to apply for an order?

193. Due to the nature of conversion practices, persons at risk may be reluctant to come forward and request a protection order. That is why it is essential that family, friends, or a support organisation are able to apply for an order in relation to a person at risk. This is particularly important as individuals may not be aware that they are victims of conversion practices. For example, if the conduct is being carried out by a family member or trusted member of their community.

Part 15: Civil Orders – Considerations

194. Our proposal is that the following people could apply for a new conversion practices civil order when it is in relation to a specific person to be protected:

- the person to be protected
- the police
- local authority
- a third party (only with leave of the court)

Leave of the court means permission of the court. The court would need to establish the applicant's connection to those involved in the case and decide whether or not to grant them permission to apply for an order. **A third party** refers to a person or organisation other than the individuals primarily involved in the case, for example, a friend or support worker.

195. If a third party person or organisation seeks leave of the court in order to apply for a conversion practices protection order the court must take into account their connection with the person to be protected, their wishes and feelings and why they have not made an application themselves. In deciding what weight to give their views, the court will consider their age and understanding. This allows the court to consider all of the information in situations where the protected person may not want an order to be made on their behalf.

196. Where an order is being applied for to address systemic conversion practices, or to protect the community as a whole (rather than a specific individual), we propose that only the following people should be able to apply:

- the police
- local authority

Part 15: Civil Orders – Considerations

197. Draft Section – application for conversion practices protection order

11. Application for conversion practices protection order

- (1) The following persons may apply to the court for the making of a conversion practices protection order—
 - (a) where the application is for an order to be made for the purpose mentioned in section 10(2)
 - (a)—
 - (i) any person who would, were the order made, be a protected person,
 - (ii) a relevant local authority,
 - (iii) the chief constable,
 - (iv) with the leave of the court, any other person,
 - (b) where the application is for an order to be made for a purpose mentioned in section 10(2)
 - (b)—
 - (i) a relevant local authority,
 - (ii) the chief constable.
 - (2) In deciding whether to grant a person (“the applicant”) leave to make an application for a conversion practices protection order as mentioned in subsection (1)(a)(iv), the court is to have regard to all the circumstances, including—
 - (a) the applicant’s connection with any person who would, were the order made, be a protected person,
 - (b) the applicant’s knowledge of that person and the person’s circumstances,
 - (c) the wishes and feelings of such a person so far as they are reasonably ascertainable,
 - (d) any reason why the application is being made is being made by the applicant and not such a person.
 - (3) The court is only required to have regard to a person’s wishes and feelings as mentioned in subsection (2)(c) so far as it considers it appropriate to do so, having regard to the person’s age and understanding.

Part 15: Civil Orders – Considerations

- (4) The court may permit—
 - (a) any person who would, were the order made, be a protected person to be a party to proceedings relating to an application made under subsection (1).
 - (b) any other person mentioned—
 - (i) in subsection (1)(a) to be a party to proceedings relating to an application made, for the purpose mentioned in section 10(2)(a), by another person mentioned in that subsection,
 - (ii) in subsection (1)(b) to be a party to proceedings relating to an application made, for the purpose mentioned in section 10(2)(b), by another person mentioned in that subsection.
- (5) In this Part, a “relevant local authority” is—
 - (a) the local authority in the area of which a person who would, were the order made, be a protected person is present, or
 - (b) any local authority in the area of which there is a risk of behaviour of the type mentioned in section 10(3) being engaged in.

12. Determination of application

- (1) A court to which an application under section 11 is made must hold a hearing prior to determining the application.
- (2) The hearing must include an opportunity for any of the following persons who wish to make representations to the court about the application to do so—
 - (a) the person who made the application,
 - (b) any person who would, should the application be granted, be a protected person,
 - (c) any person on who any requirement or prohibition would be imposed, should the application be granted,
 - (d) any other person who is a party to the proceedings.
- (3) In determining the application (including what requirements and prohibitions to impose, should the application be granted), the court must have regard to all the circumstances, including in particular the need to secure the health, safety and well-being of any person who would, should the application be granted, be a protected person.

Part 15: Civil Orders – Considerations

- (4) In ascertaining the well-being of any such person the court must——
- (a) to such extent as the court considers appropriate having regard to the person’s age and understanding, have regard to the person’s wishes and feelings (so far as reasonably ascertainable), including whether the person wishes the application to be granted, and
 - (b) where the person does not wish the application to be made, any reasons for that view of which the court is aware.

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

- Agree
- Do not agree
- Don’t know

30. Please explain your answer to Question 30.

Part 15: Civil Orders – Considerations

Extra-territorial effect

198. The Scottish Government believes that it is essential for conversion practice protection orders against conversion practices to protect individuals from being taken either elsewhere in the UK, or overseas for the purpose of conversion practice, and also to be based on conduct that took place elsewhere in the UK or overseas. Forced Marriage protection orders and Female Genital Mutilation protection orders allow for individuals to be protected from being taken overseas. They can be based on conduct that took place overseas against someone who is resident in Scotland. Therefore, in relation to the new order, we propose the courts will be able to:

- Include conditions preventing a person from being taken out of Scotland for the purpose of conversion practices
- Include requirements or prohibitions in relation to conduct that takes place outside of Scotland.

Children and young people

199. It is important that any new legislation does not put any child at risk or interfere with the existing multi-agency framework that currently exists to protect children.
200. When dealing with children, multi-agency child protection processes must be followed in-line with the [National Guidance for Child Protection in Scotland](#).
201. We believe that if the facts and circumstances of an act of conversion practices can be demonstrated, a local authority, or other person, will be able to obtain a Child Protection Order under sections 37-39 of the [Children's Hearings \(Scotland\) Act 2011](#) (asp 1). It will be open to the Local Authority, based on the facts of the case, whether to apply for a conversion practices protection order, or a Child Protection Order. If a conversion practices order is chosen, it will likely still be appropriate for multi-agency child protection processes to proceed in instances where there is potential risk to the child.

Part 15: Civil Orders – Considerations

202. We also propose that, as is the case with Forced Marriage Protection Orders and Female Genital Mutilation Protection Orders, a new civil order for conversion practices should be considered 'relevant proceedings' for the purposes of section 62(5) of the [Children's Hearings Act 2011](#). This means that during an application for a conversion practices protection order, the Court itself can refer the case to the Principal Reporter if it considers that one of the grounds for referral set out in that legislation might apply. This can include, for example, situations where the child is at risk of abuse and harm.

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

Part 16: Wider Recommendations

What else is the Scottish Government doing to support the legislation?

203. The Scottish Government is exploring taking additional steps to support the legislation and to provide broader support to ending conversion practices in Scotland, as recommended by the Expert Advisory Group. Ending conversion practices will only be successful if measures which support the legislation are also taken forward.
204. Whilst key areas such as education, support mechanisms for survivors, and research will not be included in proposed legislation, it is equally as important and necessary for an effective and holistic approach to ending conversion practices to consider how to improve these areas. These measures should consider the diverse experiences of potential victims and survivors of conversion practices, including the experiences of LGBTQI+ people of colour and racialised minorities.
205. We will explore how best to educate children and young people as well as the general public on what conversion practices are, and the detrimental impact they have on victim's lives, as part of our wider work on LGBTQI+ visibility. Tailored and targeted community outreach programmes will also be considered to ensure that no area of society is left out.
206. We will look at the scope of current support for victims and survivors of conversion practices, and how this support could be strengthened. It is important that support measures are holistic, person-centred, and trauma-informed, and are shaped by those with lived experience. They should be available across Scotland for everyone who needs them. We are exploring how current schemes could be expanded to ensure victims and survivors in Scotland are fully informed and supported through the legislative process and beyond. We will also look at where further support may be necessary, such as helping those going through the criminal and civil process once the legislation is in place.
207. We will consider raising awareness of conversion practices and the legislative actions, as well as how we can best inform victims and survivors of conversion practices of support services available to them.
208. Finally, we will consider establishing a research project to contribute to informing other work to end conversion practices, both in Scotland and internationally.

Part 17: Impact Assessments

209. As we have developed our policy, and in response to this public consultation, we will carry out impact assessments. The aim of these assessments is to identify issues that may affect some groups more than others and to consider how we will address these issues. The assessments also explore what impacts the proposed measures to address conversion practices will have on matters such as privacy, equality, child rights and wellbeing, and business.
210. This section seeks views on the potential impacts of proposals in this consultation. The questions on the potential impacts of the proposals are broken down in line with the formal assessments carried out by the Scottish Government, which are:
- Equality Impact Assessment
 - Child Rights and Wellbeing Impact Assessment
 - Fairer Scotland Duty Assessment
 - Islands Community Impact Assessment
 - Data Protection Impact Assessment
 - Business and Regulatory Impact Assessment
 - Strategic Environmental Assessment
211. We recognise that the proposed legislation will have a much greater impact in some areas than in others, and that the proposals may have minimal or no impact in some areas.
212. When answering the questions, if your comments relate to a specific aspect of proposals, rather than the whole set of measures to address conversion practices, it would be helpful if you could set this out when describing any impacts which you think should be considered.

Part 17: Impact Assessments

Equalities

213. The Public Sector Equality Duty requires the Scottish Government and other public bodies when they are exercising their functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and people who do not share it

214. For the purposes of the Public Sector Equality Duty, a 'relevant protected characteristic' refers to the following nine protected characteristics set out by the Equality Act 2010:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

215. The Public Sector Equality Duty includes a requirement for the Scottish Government and other public bodies to have due regard to the need to eliminate unlawful discrimination, harassment, victimisation, and other conduct prohibited by the Equality Act 2010.

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

Part 17: Impact Assessments

Children's rights

216. The **UN Convention on the Rights of the Child** (UNCRC) is an international treaty which sets out the fundamental human rights of all children. **Part 1 of the Children and Young People (Scotland) Act** places a duty on the Scottish Ministers to (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements; and (b) if they consider it is appropriate to do so, take any of the steps identified by that consideration.
217. All new legislation and policy that is developed by the Scottish Government must consider the impacts on the rights and wellbeing of children up to the age of 18.
- 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?**

Fairer Scotland Duty

- 218. The Fairer Scotland Duty** came into force on 1 April 2018 and places a legal responsibility on named public bodies, including the Scottish Government, to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions. This means that as well as considering the impact on people with protected characteristics, the Scottish Government must consider how any proposals will impact on people depending on their economic background. For example, if proposals would have a specific impact on people with low incomes, or who live in a deprived area.
- 34. Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?**

Part 17: Impact Assessments

Island Communities

219. Section 7 of the Islands (Scotland) Act 2018 states that a relevant authority – which includes the Scottish Ministers – must have regard to island communities when carrying out its functions.

220. Scotland's islands face particular challenges around distance, geography, connectivity and demography, so it is important that this is considered when developing legislative proposals. It is also important that we ensure the islands receive fair and equitable treatment, and that policy outcomes are tailored to their unique circumstances.

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

Data protection and privacy

221. Data protection and privacy impact assessments help the Scottish Government to assess the risks of proposed legislative changes that are likely to affect the way in which personal data is used.

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

Business

222. A Business and Regulatory Impact Assessment (BRIA) is used to analyse the costs and benefits to businesses and the third sector of any proposed legislation or regulation, with the goal of using evidence to identify the proposal that best achieves policy objectives while minimising costs and burdens as much as possible.

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

Environment

223. In Scotland, public bodies, including the Scottish Government, are required to assess, consult on, and monitor the likely impacts that their plans, programmes, and strategies will have on the environment. This helps to better protect the environment, aims to ensure that any development is sustainable, and increases opportunities for public participation in decision-making.

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

Annex A: 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?

- Yes
- No
- Don't know

Question 2

Please give the reason for your answer to Question 1.

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?

- It should be covered
- It should not be covered
- Don't know

Question 4

Please give reasons for your answer to Question 3.

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?

- Support
- Do not support
- Don't know

Question 6

Please give reasons for your answer to Question 5.

Annex A: Questions

Question 7

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

- Support
- Do not support
- Don't know

Question 8

Please give reasons for your answer to Question 7.

Question 9

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

- Support
- Do not support
- Don't know

Question 10

Please give reasons for your answer to Question 9.

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)?

- Agree
- Do not agree
- Don't know

Question 12

Please give reasons for your answer to Question 11.

Annex A: Questions

Question 13

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

- Agree
- Do not agree
- Don't know

Question 14

Please give reasons for your answer to Question 13.

Question 15

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

- Agree
- Do not agree
- Don't know

Question 16

Please give reasons for your answer to Question 15.

Question 17

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

- Yes
- No
- Don't know

Question 18

Please give reasons for your answer to Question 17.

Question 19

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

Annex A: Questions

Question 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
- Do not support
- Don't know

Question 21

Please give your reasons for your answer to Question 20.

Question 22

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

- Support
- Do not support
- Don't know

Question 23

Please explain your answer to Question 22.

Question 24

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

- Support
- Do not support
- Don't know

Question 25

Please explain your answer to Question 24.

Annex A: Questions

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?

Question 27

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

- Support
- Do not support
- Don't know

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?

- Agree
- Do not agree
- Don't know

Question 30

Please explain your answer to Question 29.

Question 31

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

Annex A: Questions

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

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?



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