

## Scottish Government Response to the EHRCJ Report on Petition PE1817: End Conversion Therapy.

COMMITTEE FINDING	SCOTTISH GOVERNMENT RESPONSE
<p><b>1. Definition of conversion therapy/practice.</b></p> <p>The Committee agrees that conversion practices are abhorrent and are not acceptable in Scotland. They should be banned. The Committee has heard that current protective legislation is insufficient to prevent these harms taking place.</p>	<p>The Scottish Government agrees that conversion practices are abhorrent and that current legislative is insufficient. There is no credible evidence to suggest that conversion practices can change a person’s sexual orientation or gender identity and we are aware of the serious harm that these practices cause.</p> <p>That is why in the 2021-22 <a href="#">Programme for Government</a> (PfG), we made the commitment that “we will protect LGBT people from harm by banning the damaging promotion and practice of conversion therapy, bringing forward legislation that is as comprehensive as possible within devolved powers by the end of 2023, if UK Government proposals do not go far enough.” This was mirrored in the Bute House Agreement. We are also considering what non-legislative steps we can take to end conversion practices, and support survivors.</p> <p>The UK Government have consulted on banning conversion therapy proposals for England and Wales. Therefore we are actively pursuing legislation which will fit the legislative needs for ending conversion practices in Scotland. As a start to the process, we have established an Expert Advisory Group to Ban Conversion Practices (“the Group”).</p> <p>The Group will help to inform our approach to banning this abhorrent practice. The first meeting of the Group is planned for the end of March 2022. This will be a short life Group which will run until Summer 2022. The Scottish Government will consolidate the Group’s recommendations and begin a public consultation period which will run through Autumn 2022.</p>

	<p>The Remit of this Group will include:</p> <ul style="list-style-type: none"> <li>• recommending what practices should be prohibited and considering a definition of conversion practices drawing together existing data and evidence on conversion practices, including international practice;</li> <li>• advising on potential actions to ban, end, or reduce conversion practices;</li> <li>• advising on support for victims and survivors;</li> <li>• advising on aligning any ban with commitments to protect freedom of expression and freedom of religion, in line with existing legislation;</li> <li>• advising on how mental health services, religious bodies and other professionals should be supported to provide appropriate services to people seeking help and advice</li> </ul>
<p>The Committee agrees, based on the evidence taken, that the term “conversion therapy” or “practices” requires more clarity and should be explicitly defined in any proposed legislation. For that reason, it recommends that the definition used in the Report on Conversion Therapy by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, should be adopted for use in the legislation, namely “an umbrella term to describe interventions of a wide-ranging nature, all of which have in common the 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”.</p>	<p>The Scottish Government accepts the Committee’s comments regarding the need for clarity on what is meant by ‘conversion practices’. We acknowledge that the proposed legislation must make this clear so both individuals and organisations understand their protections and responsibilities. The remit of the Group includes recommending what practices should be prohibited and they will consider evidence, including the Committee’s recommended definition and established international definitions, to inform their recommendation. This will be considered by the Scottish Government during the development of legislation.</p>

<b>2. Religious Freedom.</b>	
<p>The Committee notes from evidence that the majority of religious organisations we heard from are in favour of a ban on conversion practices. It agrees that legislation should not pose any restrictions on ordinary religious teaching or the right of people to take part in prayer or pastoral care to discuss, explore or come to terms with their identity in a non-judgmental and non-directive way. However, it heard evidence that most conversion practices take place within a religious setting including in the form of “talking therapy” which is used with the intention to “correct” sexuality or gender. The Committee believes and recommends that such practices should fall within a ban.</p>	<p>The Scottish Government recognises the existing legal protections of the rights to freedom of religion, expression and private and family life, amongst others. The Group will explore how we can best protect and support those who need it, while ensuring that freedoms are safeguarded.</p>
<p>The Committee heard persuasive evidence that, for many survivors of conversion practices, their faith is part of their identity and they have felt forced to choose between faith and their sexual orientation or gender identity which can have a devastating impact. The Committee believes it is vital to involve religious and community leaders as a Bill progresses, and that education and awareness is crucial to promote acceptance of diversity. It recommends that the Scottish Government, when considering legislation, engages with a wide range of faith and belief organisations in order both to protect LGBT people and protect religious freedom. The Committee agrees that there is no conflict in protecting religious freedom and preventing harm by putting a ban in place.</p>	<p>The Scottish Government is clear that the advancement of LGBT rights and protections through ending conversion practices, does not mean regression of religious freedoms - which remain protected under existing laws.</p> <p>The Scottish Government recognises the importance of engaging with faith and belief organisations and representatives are part of the membership of the Group.</p> <p>Any legislation taken forward be carefully considered and we will hold a full public consultation period to allow all views to be expressed and considered.</p>

<b>3. The medical profession.</b>	
<p>The Committee is 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.</p>	<p>The Scottish Government will consider the issue of ‘consent’ during the development of legislation and will take into account the views of the Group.</p>
<p>The Committee notes that the majority of healthcare bodies in the UK have signed the Memorandum of Understanding which prohibits conversion practices. However, it heard evidence that further clarity on the type of practice that is acceptable, and the type that is not, would be helpful for the medical profession and counselling services. Specifically, the Committee heard evidence that there is confusion and misunderstanding around the term “affirmative therapy” and it would be helpful for there to be a clarity provided to the medical profession, counselling services and wider society of what that is. The Committee recommends that a review of the development of the curriculum and training and further guidance on this issue would be helpful. Reference to how other countries in the world have addressed this within their legislation could also be helpful.</p>	<p>It is essential that there is a clear understanding of what conduct is prohibited to ensure a clear distinction between harmful practices and ‘affirmative therapy’ and other medical interventions as well as to ensure a universal and uniformed application of any prohibition and, consequently, universal protection for those who need it.</p> <p>Representatives from healthcare services, with expertise on mental health, will sit on the Group and will be able to offer their views on the capacity building and support needed by the healthcare sector to support implementation of the measures to ban conversion practices. They will also explore the measures taken by other jurisdictions and consider the application in Scotland. They may also help advise on possible curriculum updates and training required to provide confidence and support for educational professionals to enable them to do their jobs effectively and comfortably.</p>

<p>The Committee agrees that any proposals should not pose restrictions on parents or schools to provide a safe space for discussion and exploration but should prohibit harmful practices which attempt to change a person’s sexual orientation or gender identity, including trans identity. The Committee agrees that “affirmative therapies” should be protected under any ban.</p>	<p>The Scottish Government is clear that the aim of a ban on conversion practices is to bring an end to abhorrent practices that seek to ‘correct’ a person’s sexuality or gender identity. Practices that support and assist individuals as they explore and/or accept their gender identity or sexual orientation at their own pace should be encouraged.</p> <p>The Government has made significant progress embedding LGBT inclusive education across the school curriculum in order to promote equality, reducing bullying and improve the educational experiences of LGBT children and young people. Subjects across age groups now include LGBT identities, issues and history. We have also published guidance for schools to support their transgender pupils.</p>
<p><b>COMMITTEE FINDING</b></p>	<p><b>SCOTTISH GOVERNMENT RESPONSE</b></p>
<p><b>4. Evidence of conversion therapy/practice.</b></p>	
<p>The Committee is satisfied that sufficient research and evidence is already available to conclude that the introduction of legislation is necessary. However, it is keen to emphasise the importance of positive and proactive engagement with diverse communities to accurately reflect the prevalence of conversion therapy and ensure protection can be provided to those who need it.</p>	<p>The Scottish Government agrees that the introduction of legislation is necessary; and recognises there is a wealth of research on the harmful effects of conversion practices. We expect that in informing their recommendations, the Expert Advisory Group will critically analyse available evidence in order to strengthen the evidence base.</p> <p>The Scottish Government understands the importance of diverse and inclusive engagement and ensuring that minorities and marginalised communities are part of informing the work to end conversion practices including hearing from those with lived experience.</p> <p>To ensure this is reflected in the Group, the membership includes individuals who are experts in their field from: LGBTI organisations; faith and belief organisations and communities; mental health; the law; human rights; academia; and people with personal lived experience of conversion practices.</p>

	<p>To ensure the Group’s work is developed as collaboratively as possible with stakeholders and partners across diverse communities, the Group will therefore engage with a diverse range of stakeholders and communities and take into account the outcomes of all stakeholder engagements in developing its proposals.</p>
<p>The Committee is anxious to ensure that time is not wasted gathering identical evidence from the same victims it heard from during its private evidence sessions. It is concerned that such evidence gathering may have the unintended consequence of re-traumatising victims. The Committee asks that the Scottish Government works with it to ensure that this exercise does not require to be repeated. It would be happy to seek consent from those individuals who engaged with the Committee so existing transcripts could be provided as evidence in a future consultation.</p>	<p>The Scottish Government is keen that survivors and people with lived experiences of conversion practices are heard from and are involved at each stage of this process to ensure any measures adopted to end conversion practices provide the correct protections for those who need them. Discussions will be undertaken mindfully and with sensitivity so as to not re-traumatise survivors and those with lived experiences.</p> <p>The Scottish Government welcomes the Committee’s willingness to share the evidence it gathered, and will work closely with the Committee to enable that.</p>
<p>Having considered all the evidence presented to it, the Committee agrees 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 and include “consensual” conversion practices. The Committee recommends that any ban should also include a ban on advertising and promotion of conversion practices.</p> <p>The Committee recognises that there are international human rights instruments that impose a duty on states to protect people from conversion</p>	<p>The Scottish Government is clear about ensuring that everyone, regardless of their sexual orientation or gender identity, is safe from harm and acknowledges the international human rights instruments which protect people from conversion practices.</p> <p>We understand that ensuring internationally-recognised human rights have meaningful, everyday effect is our core function, and we are committed to working with the whole of Scottish society to deliver a shared vision for a Scotland where everyone can live a life of human dignity.</p> <p>The Scottish Government will take into consideration the recommendations of the Expert Advisory Group and our human rights obligations to inform our views on the legislative and non-legislative steps needed to ban conversion practices and support survivors whilst being mindful of our powers within our devolved competencies.</p>

<p>practices and recommends that this framework is followed when drafting any legislation.</p>	<p>They will take into account international examples of best practice from countries and territories/ states who have already banned conversion practices.</p>
<p><b>6. UK wide or Scottish approach.</b></p>	
<p>The Committee welcomes the Scottish Government’s commitment to banning conversion practices and the proposed work of the Expert Advisory Group. However, it has noted witnesses’ frustrations at the pace of progress and that more is not being done now to protect those at risk. The Committee notes that the Scottish Government plans to bring forward legislation before the end of 2023 if it considers that either UK or other legislation does not go far enough.</p> <p>The Committee agrees that Scotland should not wait for UK legislation to be brought forward and considers that, within the powers available to the Scottish Government and Parliament, Scotland-specific legislation be brought forward as soon as possible. It recognises that work will be necessary to ensure the development of cross-border frameworks and calls on the UK Government to work with the Scottish Government and Scottish Parliament on a ban</p>	<p>The UK Government proposals do not extend to Scotland though we recognise some measures may involve matters reserved to the UK Government and be UK wide.</p> <p>The Scottish Government has been in regular contact with the UK Government and devolved administrations to discuss plans to ban conversion practices and are keen to work collaboratively. We expect to receive the Scottish responses to the UK Government’s consultation to inform the work of the Group. The Scottish Government is committed to legislation that will be comprehensive in banning conversion practices as far as possible within devolved competence. We recognise the need to work at pace on this issue but also the need to take care in doing so to bring about meaningful change.</p>

<b>7. Further supportive measures.</b>	
<p>The Committee heard strongly expressed views that legislation alone will not be sufficient to address conversion practices and that non-legislative measures will also be necessary to protect and support victims. The Committee heard a broad range of suggestions for support measures which could complement legislation. The Committee recommends that the Scottish Government makes resources available to address gaps in support services for survivors and victims of conversion practices.</p> <p>The Committee urges the Scottish Government to review these in detail. The Committee heard strong views that prioritising a helpline, a whistle-blowing mechanism and a campaign to raise awareness including information in schools and more widely, would go a long way in ensuring victims know what conversion practices are, how to identify them and enable individuals to seek help. Consideration should also be given to providing a separate and distinct reporting mechanism for children.</p>	<p>The Scottish Government agrees that considerations should be given to all measures, legislative and non-legislative, to end conversion practices. We have therefore asked the Expert Advisory Group to consider a plurality of measures to end conversion practices, including support for victims and survivors of this practice and expect them to also consider awareness raising exercises, and support mechanisms needed.</p>
<b>8. International examples.</b>	
<p>The Committee found it helpful to hear international approaches to restricting and banning conversion practices and heard evidence that the Victoria legislation in Australia provides one of the best practice examples.</p>	<p>The Scottish Government is keen to learn from the experiences of other countries and territories/states who have already banned conversion practices where appropriate.</p>



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<p>The Committee noted concerns around how enforcement of a ban could be effective and believes that consideration should be given to how this role could be fulfilled by a public body in ensuring investigation, enforcement and accountability is possible. The Committee notes that this enforcement role in Victoria, Australia is carried out by the Equal Opportunity and Human Rights Commission. The Committee urges the Scottish Government to consider this issue at this stage to ensure the correct mechanism for investigation and enforcement could be put in place.</p>	<p>The Group will take account of international best practice, existing research, and lived experience. In doing this, we expect them to give consideration to implementation, enforcement and accountability measures and mechanisms which may be required.</p>
<p>In conclusion, the Committee is mindful of the volume of evidence that is already available, including the written and oral evidence it has received and considers it is important to bring forward legislation promptly. While noting the respective positions of the UK and Scottish Government and their commitments to bring forward legislation, the Committee is concerned that progress has been slow. It will therefore explore the merits of alternative options which might speed up the process. It would welcome discussions with the Scottish Government on the role of the Expert Advisory Group and the potential options of the Committee and the Scottish Government working together to bring forward a ban as quickly as possible.</p>	<p>The Scottish Government recognises the wealth of available evidence which clearly shows the harms caused by conversion practices. The work of our Group will bring us closer to ending conversion practice and to protecting those who need this protection. We will consider their recommendations carefully, alongside their legislative implications and consider the structures which will underpin effective implementation of the measures to ban conversion practices.</p> <p>We recognise the need to work at pace and welcome the Committee's willingness to work in partnership. We would welcome further engagement with the Committee on the potential to work together on legislation to introduce a ban and will begin discussions with the Committee on next steps.</p>

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