

Equalities, Human Rights and Civil Justice Committee

4th Meeting, 2021 (Session 6), Tuesday, 21 September 2021

Note by the clerk

Petition PE1817: End Conversion Therapy

Background

1. [PE1817: End Conversion Therapy](#) was lodged in August 2020. It calls on the Scottish Parliament “to urge the Scottish Government to ban the provision or promotion of LGBT+ conversion therapy in Scotland”.
2. In the previous session of the Parliament (Session 5) the Public Petitions Committee received written evidence from: [the Scottish Government](#) and jointly from [Stonewall Scotland, Equality Network, Scottish Trans Alliance, and LGBT Youth Scotland](#)
3. In its submission the Scottish Government noted that the UK Government published its LGBT Action Plan in 2018, which included a commitment to ban conversion therapy in the UK.
4. The Session 5 Public Petitions Committee referred the petition to the Session 5 Equalities and Human Rights Committee. That Committee received [further written evidence](#) jointly from Stonewall Scotland, Equality Network, Scottish Trans Alliance and LGBT Youth Scotland and agreed to keep the petition open and to refer it to its successor committee for this parliamentary session.
5. In May 2021 the UK Government announced measures would be brought forward to ban conversion therapy in the [Queen's speech](#). This was followed by a commitment to [launch a consultation and then introduce legislation banning conversion therapy in the UK](#).
6. On 30 June 2021, Committee clerks sought an update on the Scottish Government’s position. In its [response of 12 August 2021](#), the Scottish Government notes:-

- Scottish Government officials have met five times with the UK Government Equalities Office (GEO) and the devolved administrations of Wales and Northern Ireland
 - the public consultation announced in the Queen’s Speech on 11 May
 - the Minister for Equalities and Older People wrote to the UK Government’s Minister for Women and Equalities, Liz Truss, on 14 July.
7. Kemi Badenoch MP, Minister for Equalities, [replied on 31 August](#).
8. Further to this, [the Scottish Government and Scottish Green Party draft shared policy programme](#) (published on 20 August; updated 25 August) states the parties will—

“aim to bring forward legislation to implement a ban on conversion therapy in Scotland, which is as comprehensive as is possible under currently devolved powers by the end of 2023, unless sufficiently comprehensive proposals are brought forward before then by either the UK Government or through the Scottish Parliament.”

Call for views

9. To further inform its consideration of the issues raised and the actions called for in the petition, the Committee issued a [Call for Views](#), which ran from 6 July to 13 August 2021.
10. Around 1400 submissions were received. The majority of these were from individuals in support of the petition. All submissions will be reviewed and, where consent has been granted, published over the coming weeks.
11. A summary of submissions from organisations is included at Paper 3.
12. [Published submissions](#) are available on the Citizen Space platform and can also be accessed via the Committee’s [website](#).

Oral evidence

13. The Committee is taking evidence over the coming weeks and months, to reflect the range of views expressed in the responses to its Call for Views. This will include hearing from people and groups who support the action called for in the petition, as well as those who have expressed concerns.

14. The Committee also wants to engage with and hear from individuals who have lived experience of conversion therapy. It will consider its approach to this later in this meeting.

15. On [7 September](#) the Committee took evidence from —

- Tristan Gray and Blair Anderson, on behalf of End Conversion Therapy Scotland

16. On [14 September](#) the Committee heard from—

- Megan Snedden, Policy and Campaign Manager, Stonewall Scotland
- Dr Rebecca Crowther, Policy Co-ordinator, Equality Network
- Vic Valentine, Manager, Scottish Trans Alliance
- Paul Daly, Policy and Research Manager, LGBT Youth Scotland.

17. At this meeting the Committee will take evidence from two panels—

Panel 1

- John Wilkes, Head of Scotland, Equality and Human Rights Commission Scotland
- Barbara Bolton, Head of Legal and Policy, Scottish Human Rights Commission
- Luis Felipe Yanes, Legal Policy Development Officer Scottish Human Rights Commission

Panel 2

- Dr Igi Moon, CPsychol, AFBPsS Independent Chair, Memorandum of Understanding Coalition Against Conversion Therapy (MOU)
- Jen Ang, Director of Development and Policy, JustRight Scotland.

Committee Clerks 16 September 2021

Annexes

The following documents are included for this meeting—

- Annexe A: [Petition 1817 as lodged \(considered from 13 August 2020\)](#)
- Annexe B: [Scottish Government letter of 12 August 2021](#)
- Annexe C: [UK Government letter to Scottish Government of 31 August 2021](#)
- Annexe D: [Equality and Human Rights Commission response to the Committee's Call for Views](#)
- Annexe E: [Scottish Human Rights Commission response to the Committee's Call for Views](#)

- Annexe F: [Memorandum of Understanding on Conversion Therapy Coalition \(MOU\) response to the Committee's Call for Views](#)
- Annexe G: [Amnesty International UK, Human Rights Consortium Scotland and JustRight Scotland response to the Committee's Call for Views](#)

Annexe A

Petition 1817 as lodged (considered from 13 August 2020)

Calling on the Scottish Parliament to urge the Scottish Government to ban the provision or promotion of LGBT+ conversion therapy in Scotland.

Previous action taken

We have contacted Ben Macpherson MSP and Maree Todd MSP.

Background information

Despite much progress around LGBT+ rights over the past decade, there is a real threat to LGBT+ people throughout their lives from conversion therapy. Conversion therapy, the forced conditioning against a person's sexuality or gender identity, has damaged generations of LGBT+ young people and adults and continues to do so. This incredibly harmful practice especially targets LGBT+ people when they are at their most vulnerable.

Stonewall's [Unhealthy Attitudes report \(2015\)](#) found 10 per cent of health and care staff had witnessed colleagues expressing that lesbian, gay and bi people can be "cured" of their sexual orientation. This leads to poor treatment of lesbian, gay, bi and trans people within health and social care services.

A [2009 survey](#) of over 1,300 accredited mental health professionals found that more than 200 had offered some form of conversion therapy, with 35 per cent of patients referred to them for treatment by GPs and 40 per cent treated inside an NHS practice.

As recently as 2018, the Catholic Diocese of Paisley's online resources included several resources developed by advocates for gay 'cure' therapy on its website. One pamphlet hosted on the church website encourages parents to consider sending homosexual children for conversion therapy.

The [2018 Faith & Sexuality Survey from the Ozanne Foundation](#) found:

Over one in five respondents (20.7%) had "been advised to consider attempts to change" their sexual orientation and just over one in seven (14.9%) had "voluntarily considered" it.

Concerningly, 3.5% of LGBT+ respondents had "been forced to go through attempts to change" their sexual orientation. In total, 11.4% of respondents said they had actual experience of attempting to change their sexual orientation. This was most

common amongst those who defined themselves as "lesbian" (25.1%), "gay" (21.4%) and "same-sex attracted" (23.2%).

However, 74% who attempted to change their sexual orientation said that "it did not work for me and I do not believe it works for others".

Of those respondents with experience of attempting to change their sexual orientation, only 30.1% said they had "gone on to live a happy and fulfilled life"; 69.9% were unhappy and unfulfilled, and 46.1% stated that "I have found it hard to accept myself for who I am".

Significantly, almost two-thirds, 58.8%, had "suffered from mental health issues" as a result of the conversion therapy, and nearly a third, 31.2%, said, "I have sought counselling to help me recover from it".

Most of those who said they had had mental health issues had suffered from anxiety and depression (a total of 252 people), with women (65.1%) more likely than men (53.8%) to state that they actually "required medication".

The most frequent response under "Other" was the fact that respondents had been diagnosed with "Post Traumatic Stress Disorder".

The most frightening statistic is that nearly a third, 32.4%, had "attempted suicide".

In addition:

- Two-thirds of those with mental health issues, 68.7%, said they had "suicidal thoughts".
- 40.2% "self-harmed"
- 24.6% suffered from "eating disorders"

Over half of respondents said that they thought sexual orientation change therapy "should be made a criminal offence" and a quarter, 24.2%, said that they thought "it should not be made a criminal offence, but should be stopped". Only 5.2% thought "it should be allowed".

These responses clearly show that there is a significant public health case for banning conversion therapy. The experiences of those who were put through this practice show that enforcing this ban should fall under criminal law. Both of these areas fall within the devolved powers of the Scottish Parliament.

Despite committing to ending this practice years ago, the British Government has not acted. Instead recently women's and equalities minister Elizabeth Truss MP has adopted, what we believe is, the anti-trans rhetoric of hate groups in a way that will only ensure the expansion of providers and efforts to pressure people with trans identities to undergo this horrific practice.

It is clear this issue isn't going away, even as a redoubled campaign against transgender identities ensures that practices such as conversion therapy are as much of a threat than ever.

Given this information, it is clear that conversion therapy is a risk to public health, especially the mental health of vulnerable young adults and children. There is broad support for its criminalisation by those who have been subjected to it, and, as healthcare and criminal justice matter, we believe it to be within the scope of the Scottish Government's powers to ensure this practice is brought to an end.

Created by

Tristan Gray, Ely Kearney, Erin Lux, Benjamin Butler, Sophie Duncan

Annexe B

PE1817 – End Conversion Therapy

Scottish Government letter of 12 August 2021

Thank you for your email of 30 June, which sought an update from the Scottish Government on banning the provision or promotion of conversion therapy in Scotland.

The Scottish Government is clear conversion therapy is an abhorrent practice that has no place in Scotland. We are therefore strongly supportive of the UK Government's commitment to ban conversion therapy.

Since the Scottish Government's submission to the previous Committee on 17 July 2020, Scottish Government officials have met 5 times with the UK Government Equalities Office (GEO) and the devolved administrations of Wales and Northern Ireland – in varying meeting combinations - to discuss LGBTI equality issues, including plans to ban conversion therapy. At the meeting in May, officials agreed that the four administrations would continue to meet regularly to discuss matters, including banning conversion therapy.

In the Queen's Speech on 11 May 2021, it was announced that a period of public consultation would be undertaken prior to enacting legislation to ban the practice of conversion therapy. Scottish Government officials have asked for the opportunity to feed in to the consultation's development and for assurance that stakeholders in Scotland are aware of this development.

We have noted to GEO colleagues our understanding that their research to date and the subsequent consultation are likely to have significant influence on establishing the contexts in which conversion therapy is occurring. This will help to frame the development of policy and help to inform discussions around the extent of reserved and devolved responsibility.

The UK Government's 2018 LGBT Action Plan¹ states that some commitments, "for example on ending conversion therapy, will require a UK-wide approach". However, we note that as yet no detailed proposals on this 2018 commitment have been brought forward to enable us to consider the extent to which they cover Scotland, and the interactions between reserved and devolved powers.

The Minister for Equalities and Older People, Christina McKelvie MSP, wrote to the Minister for Women and Equalities, Liz Truss MP, on 14 July 2021 requesting information about the UK Government's approach and current thinking in relation to the scope, impacts and likely timescales of the ban. A response is yet to be received.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721367/GEO-LGBT-Action-Plan.pdf

Scottish Ministers are clear that if the UK's proposals do not result in banning conversion therapy in Scotland, we will bring forward our own legislation, in so far as is possible within the powers of the Scottish Parliament.

The Scottish Government recognises the importance of ensuring that LGBTI equality is protected and promoted and will continue to support and engage with the Committee in relation to their inquiry on this matter.

I hope this information is helpful in supporting the Committee's considerations.

Annexe C

UK Government letter to Minister for Equalities and Older People, Scottish Government, 31 August 2021

Dear Christina,

CONVERSION THERAPY

I am writing to follow up on our announcement that we will be legislating to ban conversion therapy and that we will be making funding available to support victims. I know you have a strong interest in this important issue and I wanted to update you on our plans.

Our National LGBT Survey in 2017 found that 2% of respondents had undergone conversion therapy, and a further 5% of respondents had been offered it. This Government has also heard many first-hand accounts of the harm which these abhorrent practices cause. In July 2020, the Prime Minister reiterated our commitment to tackling conversion therapy, and we have been working hard to identify the best way to do so.

I am pleased to confirm that we will be introducing legislation to ban conversion therapy practices for good, when Parliamentary time allows.

We will be launching a consultation aimed at hearing a range of views so we can ensure our legislative proposals are informed, balanced and effective in tackling this issue. The consultation will seek further views from the public and key stakeholders to ensure that the ban can address these abhorrent practices while protecting the medical profession, defending freedom of speech, and upholding religious freedom. The evidence we gather from this consultation, will be considered alongside the results of the research we have commissioned on the prevalence, nature and impact of conversion therapy, which will be published. I will set out more details on next steps in due course.

I am also pleased to announce we will be funding a package of support for victims of conversion therapy. This package will fund a helpline for victims, as well as, providing resources for those in safeguarding positions, such as teachers, to identify and report conversion therapy cases.

Conversion therapy must end and legislating will allow us to put a stop to these abhorrent practices for good.

Yours sincerely

Kemi Badenoch MP
Exchequer Secretary to the Treasury &
Minister for Equalities

FAQs

Why do we need to end the practice of conversion therapy?

- There is a growing body of evidence that conversion therapy is harmful, and that exposure to conversion therapy is associated with poor mental health outcomes, including suicidal thoughts.
- 2% of 108,000 respondents to the National LGBT Survey 2017 said they had undergone conversion therapy, and a further 5% of respondents said they had been offered it.
- 51% of respondents who had undergone conversion therapy said that it had been conducted by faith groups, while 19% said that it had been conducted by healthcare providers or medical professionals.

Will there be a ban?

- Yes. We are looking to bring forward measures to ban conversion therapy as soon as Parliamentary time allows.

Will there be a consultation?

- Yes. We want to ensure that a ban on conversion therapy works for those who need to be protected most whilst also protecting the medical profession, defending freedom of speech, and upholding religious freedom.
- This is a very complex issue and we want to engage with stakeholders to ensure any action we take is proportionate and effective.
- We will be engaging with stakeholders to shape the ban on conversion therapy and ensure any action we take is informed, proportionate and effective.

Will the legislation be for England only?

- The territorial application of the ban will largely apply to England and Wales only but there may be some measures that are reserved to the UK Government and which will apply to the UK as a whole.
- We will remain in close contact with the devolved administrations as we finalise these measures to find constructive solutions to end this abhorrent practice for good.

Are you going to ban conversion therapy for children and adults?

- Our ambition is to protect all those affected by conversion therapy whilst making sure the action we take is proportionate and effective, with no unintended consequences.

- That is why we will be launching a consultation to hear a range of views on the scope of the ban and engage with stakeholders to ensure we achieve a ban that works for those who need it most.

Will a ban stop trans people accessing legitimate support for their gender identity?

- No. We want to ensure anyone can access the support they need.
- We will be engaging with a wide range of experts and stakeholders, including the healthcare sector.
- We also want to ensure medical professionals seeking to offer advice to individuals with gender dysphoria within clinical and legal guidelines are able to continue practicing as normal.

Will you also ban conversion therapy based on gender identity of minors?

- We are considering how best to protect anyone from attempts to change their gender identity or sexual orientation, while ensuring parents, teachers and medical professionals are able to support and protect young people.
- This ban must not impact on the independence and confidence of clinicians to support those who may be experiencing gender dysphoria. This is a complex issue and we must take account of the wider work going on in this space, in particular the ongoing Cass review.

Will you stop young people from having conversations over their sexual orientation?

- No. We will be working with relevant stakeholders to ensure any proposals will ensure medical professionals, teachers and parents continue to have open and honest conversations with young people.

How will you support victims of conversion therapy?

- We will be making funding available to ensure victims of conversion therapy can find and access the support they need. This support will be available to whoever considers themselves to be at risk of- or have undergone- conversion therapy, whatever the circumstances.

Will you stop people who want conversion therapy from undergoing it?

- We do not want to prevent people from seeking legitimate medical or spiritual support should they wish to do so. However, this does not mean we will tolerate the use of coercive or abusive practices under the guise of support, whatever the setting.
- We understand this is a complex issue and we will be working with stakeholders to ensure we do not unduly inhibit people seeking genuine support.

- Given the broad range of acts that are often associated with conversion therapy, we will need to consider how consent operates for each individual act. Where it is clear that the act may cause demonstrable harm, there is a stronger case for us intervening regardless of consent.

Will a ban stop people accessing spiritual support?

- No. We will engage with relevant stakeholders and seek a wide range of views within the consultation to ensure a ban does not stop people accessing legitimate spiritual guidance.
- If an act of conversion therapy causes demonstrable harm and would also be considered spiritual support, then we will need to consider whether it is appropriate to act on this. During the consultation phase we would like to hear from a wide range of voices on important issues such as this.

Are you going to ban prayer?

- No.

Will a ban impact free speech?

- Free speech underpins our democratic society and we will protect that as we develop policy to end conversion therapy practices.
- We are working to understand the impact on wider rights and freedoms of any Government action to tackle conversion therapy.

Annexe D

PE1817 – End Conversion Therapy

Equality and Human Rights Commission response to the Committee's Call for Views

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is the national equality body for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected characteristics set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

We are an "A Status" National Human Rights Institution and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

How we have approached this response

We welcome the opportunity to respond to this call for views by the Equalities, Human Rights and Civil Justice Committee.

We are aware that the SHRC is also responding to this call for views and so we have focused our response on equality issues.

What are your views on the action called for in the petition?

The Commission supports calls for the ending of conversion therapy, which both the Scottish and UK governments regard as a harmful practice.² We agree with the Scottish Government that conversion therapy – which needs to be defined clearly, as we discuss below – has no place in Scotland.

The UK Government's [2017 National LGBT survey](#)³ shows that conversion therapy is experienced by and offered to people in Scotland of different ages and in relation to both sexual orientation and gender identity. Policies intended to end conversion therapy should cover practices relating to both sexual orientation and gender identity, and offer protection to people of all ages.

² See the Scottish Government's [submission of 17 July 2020](#) to the then-Public Petitions Committee regarding this petition; and the UK Government's 2018 [LGBT Action Plan](#).

³ Although based on a substantial sample, including almost 9,000 people in Scotland, there are some limitations to this evidence, including a lack of definition of what is meant by 'conversion therapy' and the fact survey respondents were self-selecting and thus not representative of the population.

The definition of what is and is not conversion therapy is critical. The target of policies to end conversion therapy should be **harmful** practices intended to **change or suppress**, in any way, someone's sexual orientation or gender identity.⁴ These can include practices ranging from pseudo-psychological treatments to, in more extreme cases, surgical interventions and 'corrective' rape. They can also include individual or group talking, behavioural or aversion therapies, religious interventions or medical or drug-induced treatments. Conversion therapy can look very different in medical, therapeutic, commercial or faith-based contexts. Encouraging followers to comply with religious doctrine that requires refraining from certain types of sexual *activity* should not in and of itself fall within the definition of conversion therapy.

Given the harm that can be caused, it is important that legislative measures to ban conversion therapy are based on strict liability and are targeted at all such practices that are harmful to those subjected to them, even if those carrying out or subject to them believe they are in the subject's best interests. Conversion therapy carried out in the claimed best interests of the person experiencing the practices can still be deeply damaging to that person even if that is not the intention of those carrying out the practices.

Practices that enable individuals to explore, reflect on or understand their sexual orientation or gender identity are not conversion therapy because they do not seek to change or suppress that person's sexual orientation or gender identity. Such practices should not be caught by measures designed to end conversion therapy. We are aware of concerns that measures to end conversion therapy may impact parents or guardians who have concerns about their child's perceived sexual orientation or gender identity. Proposals should not be designed to police how parents or guardians respond if their child identifies as LGBT but rather to prohibit harmful practices that attempt to change or suppress a person's sexual orientation or gender identity.

We think it is important that the policy aim is to end, rather than just ban, conversion therapy. This will likely require a suite of measures beyond legislation, sustained over time. These measures should be identified through a harms-based approach, with practices causing the most harm attracting the most robust interventions. Some of these, such as rape, are already criminalised. It may be appropriate to criminalise other practices that are not already illegal, or to modify the penalties for existing offences where they have occurred in the context of conversion therapy. Civil law measures could also be used in relation to some practices, including the regulation of medical and other professional groups. There may also be a role for a public body to provide regulatory mediation, intervention, investigation and sanction. The

⁴ Any legislative proposals to ban conversion therapy that included gender identity would need to consider a statutory definition. We note that section 11(7) of the Hate Crime and Public Order (Scotland) Act 2021 offers a model that provides that "a person is a member of a group defined by reference to transgender identity if the person is:

- a) a female-to-male transgender person,
- b) a male-to-female transgender person,
- c) a non-binary person, or
- d) a person who cross-dresses."

success of any measures introduced will depend on clear definitions of the matters raised throughout this response.

Evidence from the UK Government's 2017 National LGBT survey shows that people from certain religious backgrounds are more likely to have experienced or been offered conversion therapy. A harms-based approach, which disregards benign intent or justification, should support the identification of conversion therapy practices no matter where they take place. This will engage issues around religious freedom. We understand our colleagues at the SHRC are also responding to this call for views and the Committee should consider their views on how Article 9 of the European Convention on Human Rights on freedom of thought, conscience and religion may be engaged in this context. Any measures should not prevent LGBT people from seeking spiritual support from their faith leader in the exploration of their sexual orientation or gender identity.

What action would you like to see the Scottish Government take, within the powers available to it?

The UK Government's 2017 LGBT survey shows that this is an issue across the United Kingdom. The [UK Government has previously committed to bringing forward proposals to end conversion therapy](#), and a commitment to ban it was included in this year's [Queen's speech](#).

Whether measures to end conversion therapy are within the Scottish Parliament's competence depends on the measures identified. An approach based on discrimination would be outwith competence owing to the reservation of equal opportunities in [Head L2 of Schedule 5 to the Scotland Act 1998 \(as amended\)](#).

Criminal law is of course devolved and the Scottish Government could take action on that basis, but, as noted above, we believe that a suite of measures will be necessary to comprehensively end conversion therapy, and the regulation of bodies active in but based outwith Scotland may also be beyond the competence of the Scottish Parliament.

We therefore await the UK Government's proposals with interest, and would urge the Scottish Government to engage with the UK Government to ensure that proposals brought forward reflect both governments' shared objective of ending conversion therapy. If there is no consensus for change across Great Britain, we would also support the Scottish Government acting within its own powers.

Do you have suggestions on how the Committee can take forward its consideration of the petition?

The Committee should ensure that it is engaging with a broad range of stakeholders, including those with experience of conversion therapy, medical professionals and religious stakeholders. The National LGBT Survey identified a number of groups who appear to experience conversion therapy to greater or lesser extents and the Committee should therefore engage with organisations that represent people in

relation to age, sex, ethnicity, gender identity, religion and belief, and sexual orientation.

The Committee should seek evidence to understand the harm caused by conversion therapy and in doing so may want to obtain evidence from medical professionals and academics with expertise in this area. This may include international expertise. It could also seek evidence from the Scottish Government on its views regarding what is possible within devolved competence, and from the UK Government on its proposals.

Annexe E

PE1817 – End Conversion Therapy

Scottish Human Rights Commission response to the Committee's Call for Views

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

www.scottishhumanrights.com

1. Introduction

This briefing responds to a call from the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament to submit views on a petition regarding ending “conversion therapy”.

In order to secure a fair and inclusive Scotland, effective measures need to exist to ensure that LGBT+ people have the opportunity to find happiness through the fulfilment of aspirations connected to the orientation and identities that are inherent to them. LGBT+ people should be able to live a life of dignity in a society that welcomes diversity and does not force anyone to hide or change who they are.

As the United Nations (UN) Independent Expert on Sexual Orientation and Gender Identity has noted:

“attempts to pathologize and erase the identity of individuals, negate their existence as lesbian, gay, bisexual, trans or gender diverse and provoke self-loathing have profound consequences on their physical and psychological integrity and well-being.”

Practices such as “conversion therapy,” that are founded on the incorrect and harmful notion that LGBT+ identities are disorders to be corrected, are discriminatory in nature.

It is well documented that the injury caused by practices of “conversion therapy” are grounded on the premise that LGBT+ people are sick, diseased, and abnormal and must therefore be treated. Some practices can potentially amount to cruel, inhuman and degrading treatment towards specific LGBT+ people, while the very existence of “conversion therapy” practices in our society promotes a culture in which LGBT+ people are seen as needing to be fixed, thereby undermining the dignity of all LGBT+ people.

Putting an end to “conversion therapy” is therefore necessary to uphold and protect the fundamental rights of life, health, equality, and freedom from cruel, inhuman and degrading treatment of LGBT+ persons. In this briefing we provide a detailed analysis of some of the domestic and international legal obligations that Scotland is subject to and that support an end to “conversion therapy”.

The Scottish Human Rights Commission recommends that legislation be brought forward prohibiting the provision and the promotion of all forms of “conversion therapies.” Such legislation will require to contain relevant and appropriate safeguards to ensure that LGBT+ persons can still access non-judgmental physiological or spiritual support that is not aimed at changing their orientation or identity. The legislation will also have to be drafted in such a way as to ensure that there is no disproportionate interference with the rights to freedom of thought, conscience and religion or freedom of expression. The Commission also recommends other measures that are essential for a holistic end of “conversion therapy” and the effective protection of LGBT+ people in Scotland.

2. Background

2.1 “Conversion Therapy”

The United Nations Independent Expert on Sexual Orientation and Gender Identity (“the UN Independent Expert”) defines “conversion therapy” as an:

“umbrella term [used] to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person’s sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse. Such practices are therefore consistently aimed at effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender.”

In his seminal report, the UN Independent Expert concluded that there are at least three modalities of “conversion therapies”, based on the current available information. These are:

- **Psychotherapeutic:** this is based on the belief that sexual or gender diversity is a product of an abnormal upbringing or experience. Providers of this practice claim to rectify deviations and support the development of desire for members of the opposite sex by having subjects work through past experiences. Another frequent practice, is that of aversion, through which a person is subjected to a negative, painful, or otherwise distressing sensation while being exposed to a certain stimulus, under the premise that the stimulus will become associated with the negative sensation.
- **Medical:** These practices function on the postulation that sexual orientation and gender identity is the by-product of an inherent biological dysfunction which can be treated exogenously, relying on lobotomies or the removal of

sexual organs. Current medical practices mostly rely on pharmaceutical approaches, such as medication or hormone or steroid therapy.

- Faith-based: These practices act on the premise that there is something inherently evil in diverse sexual orientations and gender identities. In many faith-based settings, approaches are often aimed at treating a person's sexual orientation and gender identity as an addiction that can be overcome by following the tenets of a spiritual advisor. Faith-based interventions are sometimes combined with exorcism.

The evidence received by the UN Independent Expert demonstrated that practices of "conversion therapy" are conducive to psychological and physical pain and suffering. Such practices can include: beatings, rape, forced nudity, force-feeding or food deprivation, isolation and confinement, forced medication, verbal abuse, humiliation and electrocution.

The Independent Forensic Expert Group of the International Rehabilitation Council for Torture Victims have strongly expressed that 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.

Those who have been subject to "conversion therapy" may experience permanent and irreparable harm. This is confirmed by a survey performed in 2018 by the Ozanne Foundation which determined that 58.8% of those who had been subject to such practice within the UK had been left with mental health issues. Of those:

- 68.7% having had suicidal thoughts
- 59.8% were left with depression requiring medication
- 40.2% indicated having committed self-harm
- 32.4% indicated having attempted suicide
- 24.6% were left with eating disorders

Furthermore, the Pan American Health Organisation ("PAHO") has expressed that practices of "conversion therapy" have no medical justification and represent a severe threat to the health and human rights of LGBT+ people. It indicated that efforts aimed at changing non-heterosexual sexual orientations lack medical justification since homosexuality cannot be considered a pathological condition. Consequently, PAHO recommended that:

- "Reparative" or "conversion therapies" and the clinics offering them should be reported and subject to adequate sanctions.
- Institutions offering such 'treatment' at the margin of the health sector should be viewed as infringing the right to health by assuming a role properly pertaining to the health sector and by causing harm to individual and community well-being.

- Victims of homophobic ill-treatment must be treated in accordance with protocols that support them in the recovery of their dignity and self-esteem. This includes providing them with treatment for physical and emotional harm and protecting their human rights, especially the right to life, personal integrity, health, and equality before the law.

Given the overwhelming medical evidence, in 2017 NHS Scotland, NHS England, the Royal College of General Practitioners, the Royal College of Psychiatrists, and the UK Council for Psychotherapy, among others, signed a memorandum of understanding in which they acknowledge that the practice of “conversion therapy,” whether in relation to sexual orientation or gender identity, is unethical and potentially harmful. The memorandum also recognises that ethical practice in cases where people seek support in relation to their sexual orientation and gender identity requires the practitioner to have adequate knowledge and understanding of gender and sexual diversity and to be free from any agenda that favours one gender identity or sexual orientation as preferable over other gender and sexual diversities.

So far as the Commission is aware, no detailed investigation has been carried out to determine the extent of the use of “conversion therapy” practices in Scotland. Evidence shows that these practices are often undertaken within the private sphere, making it more difficult to ascertain their prevalence. However, according to a UK National LGBT+ Survey, at least 2.2% of respondents in Scotland had been subject to “conversion therapy” and 4.8% had been offered it, with a further 1.5% unsure if they had been offered or been subject to it. Overall in the UK, those who indicated that they had been subject to “conversion therapy” said that it was performed by the following:

- 46.5% Faith organisation or group
- 19.2% Parent, guardian or other family member
- 15.7% Healthcare provider or medical professionals
- 12.6% Other individual or organisation not listed
- 16.2 % Preferred not to say

In the absence of a detailed investigation into the prevalence of “conversion therapy” practices in Scotland and data regarding its prevalence here, it is all the more critical for the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament to carefully consider evidence brought to it by those with lived experience and organisations speaking on their behalf.

2.2 International Human Rights Standards

The Scottish Parliament must pay careful attention to its international human rights obligations, particularly those enshrined in the European Convention on Human Rights (“ECHR”); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; and the International Covenant on Economic Social and Cultural Rights. All of these treaties have been ratified by the UK and so are

binding on the UK and in turn the Scottish Government. Under the Scotland Act 1998, responsibility for observing and implementing international obligations, including international human rights obligations, is devolved to the Scottish Government and Scottish Parliament.

The Scotland Act also specifically requires the Scottish Government and Scottish Parliament to act in compliance with the human rights contained in the ECHR. Indeed, any act of the Scottish Parliament or Scottish Government that does not comply with ECHR rights is out with their competence. Consequently, compliance with ECHR obligations is part of the fabric of the Scottish legislative process.

As will be explained below, these international instruments, read harmoniously, impose a clear duty on the state to take positive steps to effectively protect LGBT+ people from practices such as “conversion therapy.”

3. The prohibition of torture and inhuman or degrading treatment

3.1 Article 3 – European Convention on Human Rights

Article 3 of the European Convention on Human Rights (“ECHR”) enshrines that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. It is an absolute guarantee as ill-treatment within the terms of Article 3 is never permitted, even for the most pressing public interest reasons.

Torture has been defined by the European Court of Human Rights (“ECtHR”) as “deliberate inhuman treatment causing very serious and cruel suffering”. For ill-treatment of an individual to amount to inhuman treatment under Article 3, it must attain a minimum level of severity. In particular, inhuman treatment must cause “either actual bodily injury or intense physical or mental suffering”. The threshold is relative:

“It depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.”

It is also relevant to consider whether the victim is within a further category of people who are “vulnerable”, including older people, children and young people, asylum seekers and people in detention.

In contrast with torture, inhuman treatment does not need to be intended to cause suffering and the suffering does not have to be inflicted for a purpose. The crucial distinction between torture and inhuman treatment is in the degree of suffering caused. It is not always necessary for the ECtHR to distinguish between the different types of ill-treatment listed in Article 3.

It is important to note that the Convention is a “living instrument” which “must be interpreted in light of present-day conditions”. This means that treatment could now reach the minimum level of severity needed for Article 3, where

those same practices may not have been considered a violation when the Convention was first drafted or even 20 years ago.

As discussed above, there is a wide range of treatment falling under the term “conversion therapy”. The Commission is of the view that many of these practices or types of treatment could foreseeably engage Article 3. For a complete assessment, however, the individual facts and circumstances of each particular case would have to be considered.

Positive obligations under Article 3

In addition to the negative obligation not to subject a person to torture or to inhuman or degrading treatment, Article 3 contains positive obligations to protect against ill-treatment and the obligation to investigate and to enforce the law.

States must have a framework of law in place, which is effectively enforced, that provides adequate protection against ill-treatment by either state officials or private parties. States must take practical measures in order to avoid a known risk. Article 3 also carries a procedural obligation to conduct a thorough and effective investigation where a person raises an arguable claim of ill-treatment in breach of Article 3.

Given developing understanding and evidence around the harmful impacts of various types of “conversion therapy,” while acknowledging that some of the more “extreme” practices are already criminalised (such as so called ‘corrective rape’), the Commission considers specific legislative action to ban certain practices would aid Article 3 compliance.

3.2 UN Convention Against Torture

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the UK in 1988, requires States to take legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

The prohibition of torture, as a peremptory norm of international law (*ius cogens*), also signifies that under no circumstances – regardless of how exceptional they might be – can torture can be justified.

As part of the necessary legislative measures that a State needs to implement, the Convention is clear that States are required to ensure all acts of torture – as well as an attempt to commit torture and to be complicit in an act of torture – are criminal offences under its domestic law. For such purposes, States are also required to make such criminal offenses punishable by appropriate penalties.

The UN Committee Against Torture has expressed its grave concern in relation to reports about the existence of “conversion therapies.” It has particularly expressed concern regarding practices that include the administration of

electroshocks and, sometimes, involuntary confinement in psychiatric and other facilities, which could result in physical and psychological harm. Based on the obligations set forth in the Convention, the Committee has determined that States are required to:

- a) Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of lesbian, gay, bisexual, transgender and intersex persons and prohibit the practice of so-called “conversion therapy,” and other forced, involuntary or otherwise coercive or abusive treatments against them;
- b) Ensure that health professionals and public officials receive training on respecting the human rights of lesbian, gay, bisexual, transgender and intersex persons, including their rights to autonomy and physical and psychological integrity; and
- c) Undertake investigations of instances of forced, involuntary or otherwise coercive or abusive treatments of lesbian, gay, bisexual, transgender and intersex persons and ensure adequate redress and compensation in such cases.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has indicated that there is an abundance of accounts and testimonies of persons who have been subject to so called “reparative therapies” and “conversion therapies.” Testimonies indicate that some of these practices can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticised as being unscientific, harmful and contributing to stigma.

Based on such considerations, the Special Rapporteur has called for States to repeal any law allowing intrusive and irreversible treatments “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned.

4. Non-discrimination

4.1 Article 14 – European Convention on Human Rights

Article 14 protects the right not to be discriminated against in “the enjoyment of the rights and freedoms set out in the Convention”. This means that the right not to be discriminated against does not exist independently under the ECHR; it must be connected to the fulfilment of another Convention right, such as Article 3, the right to freedom from torture and inhuman or degrading treatment discussed above. This does not mean that there must be a violation of another Convention right before Article 14 applies, simply that the right must be engaged.

The ECtHR has defined discrimination as “treating differently, without an objective and reasonable justification, persons in relatively similar situations”.

Issues relating to sexual orientation and gender identity have been considered consistently by the Court under Article 14 in conjunction with other applicable Convention rights. A full discussion of Article 14 is beyond the scope of this briefing, particularly as discrimination matters in Scotland must also be considered under relevant equality law. That said, when examining an approach to ending “conversion therapies,” discrimination should be a key consideration given the practices by their very nature impact on LGBT+ people.

4.2 Article 2 – International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights

Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights enshrine the guarantee that the rights enunciated in those treaties will be exercised without discrimination of any kind. Non-discrimination and equality are fundamental components of international human rights law and are essential to the exercise and enjoyment of all human rights.

The UN Committee on Economic, Social and Cultural Rights has stressed that eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice, instead of merely comparing the formal treatment of individuals in similar situations. For such purposes, States are required to immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.

Under that premise, the UN Independent Expert on Sexual Orientation and Gender Identity has determined that practices of “conversion therapy” are per se discriminatory. This is because they target a specific group on the exclusive basis of sexual orientation and gender identity, with the specific aim of interfering in their personal integrity and autonomy. The Special Rapporteur has also indicated that the existence of “conversion therapies” creates an societal environment of discrimination, as LGBT+ are perceived as being of lesser value and in need of cure and treatment. This environment of discrimination can then lead to the further human rights violations, including torture.

The UN Human Rights Committee has also stressed that states should clearly and officially state that they do not tolerate any form of social stigmatisation of, or discrimination against, persons based on their sexual orientation or gender identity, including the propagation of “conversion therapies.”

Therefore, and in order to comply with their international legal obligations, states should:

- Strengthen their legal framework to protect lesbian, gay, bisexual, transgender and intersex individuals;
- Develop sex education programmes that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities;

- Develop and carry out public campaigns and provide training for public officials to promote awareness and respect for diversity in respect of sexual orientation and gender identity.

5. Right to the Highest Attainable Standard of physical and mental health

Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. This right is closely related to and dependent upon the realisation of other human rights, including education, human dignity, life, non-discrimination, and the prohibition against torture, among others. The right to health is not the right to be healthy, but a right to both conditions and services that are conducive to a life of dignity and equality, and non-discrimination in relation to health.

The right to health implies that all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, as well as being designed to improve the health status of those concerned.

In order to guarantee the acceptability of the provision of health services, States are required to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct. This obligation must be read in connection with the obligation to take measures to protect all vulnerable or marginalised groups of society, such as LGBT+ persons.

The right to health also encompasses the right to sexual and reproductive health, as an integral part of the right. Particularly, the right to health protects the right of lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. Therefore, the UN Committee on Economic, Social and Cultural rights determined that regulations requiring that LGBT+ persons be treated as mental or psychiatric patients, or requiring that they be 'cured' by so-called 'treatment', are a clear violation of their right to sexual and reproductive health.

States are also obliged to restrict the marketing and advertising of certain goods and services in order to protect public health, as well as regulating other business activities in order to combat discrimination effectively. States should impose criminal and administrative sanctions when the activities of non-state actors result in breaches of the right to health.

As its name indicates, the right also encompasses the protection of mental health. The right acknowledges that everyone, throughout their lifetime, requires an environment that supports their mental health and well-being. The right recognises that attaining positive mental health and well-being is a product of, and a path to, the full realisation of the rights enshrined in international law.

Protecting mental health requires taking the adequate and effective measures necessary to prevent third party interference. The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has indicated that harmful practices such as

“conversion therapy” require positive, protective action from the State in order to prevent their occurrence.

The Special Rapporteur has highlighted that any attempt to “cure” those who engage in same-sex conduct are not only inappropriate, but have the potential to cause significant psychological distress and increase stigmatisation of these vulnerable groups. The pathologization of LGBT+ persons reduces their identities to diseases, which compounds stigma and discrimination. Diversity must be broadly understood, recognizing the diversity of human experience and the variety of ways in which people process and experience life.

Overall, the Special Rapporteur has emphasised that practices such as “conversion therapies” reflect a failure to fulfil right to health obligations, as they demonstrate a lack of political will to “support, replicate and sustain evidence-based social interventions that foster well-being, prevent discrimination and promote community inclusion”.

6. Freedom of thought, conscience, and religion

As discussed above, some “conversion therapy” practices are faith based and some have suggested that measures to counter such “conversion therapy” practices, and thereby protect LGBT+ people from their harmful effects, may interfere with their right to freedom of religion. The right to freedom of thought, conscience and religion is protected under the ECHR and other international human rights treaties. However, as discussed in more detail below, the right to manifest religious beliefs, to act in accordance with those beliefs, is not an absolute right.

Manifestation of religious beliefs may lawfully be restricted by the state where necessary to secure a legitimate aim and provided it goes no further than necessary to do so. It is therefore possible to introduce appropriate measures to protect LGBT+ people from the kinds of harmful practices referred to above without unlawful interference with this right. This is set out in more detail in the following paragraphs.

6.1 Article 9 – European Convention on Human Rights

The right to freedom of thought, conscience and religion is very important to the functioning of a democratic state. As was stated by the ECtHR in the case of *Leyla Sahin v Turkey*:

“Freedom of thought, conscience and religion is one of the foundations of a democratic society within the meaning of the Convention. The freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, inter alia, freedom to

hold or not to hold religious beliefs and to practise or not to practise a religion.”

The right to freedom of thought, conscience and religion under the ECHR contains two separate strands. The ‘internal’ dimension guaranteeing freedom of thought, conscience and religion is absolute and unconditional and cannot be interfered with. The state cannot dictate what a person should believe. The right also protects an ‘external’ element: the right to manifest a belief or religion in ‘worship, teaching, practice and observance’.

Not every act that is influenced by a belief or religion will constitute a manifestation of it and the ECtHR has stated that the “existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on an applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question.” The ECtHR generally avoids being drawn on substituting their own views on what does and does not constitute a requirement of a religion.

Whether or not any particular practice constituting “conversion therapy” would be considered by the ECtHR to be a manifestation of religious belief would depend on the facts and circumstances of the particular case.

The right to manifest religious beliefs is not absolute. A restriction or interference with a person’s manifestation of their religion or belief may be justified by the state if the restriction is:

- prescribed by law: any law interfering with a right must be ‘adequately accessible’ and ‘formulated with sufficient precision to enable the citizen to regulate his conduct’;
- in pursuit of a legitimate aim: interferences with the manifestation of religion or belief must be in ‘the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others’; and
- necessary in a democratic society: there must be a genuine pressing social need for the measures and they must go no further than is necessary to achieve the legitimate aim.

The ECtHR has granted member states a wide margin of appreciation in deciding to what extent interferences are justified. This means that the ECtHR generally views the national authorities as well placed to evaluate local needs and conditions, while exercising supervision to ensure that the interference is proportionate, taking into account all of the circumstances of the individual case balanced against the fundamental importance of preserving the right to freedom of thought, conscience and religion.

Given the clear and mounting evidence around the harmful effects of various practices collectively labelled “conversion therapy”, together with the recent clarity provided by various international human rights bodies and actors on the human rights implications of such practises, the Commission considers that a “conversion therapy” ban can be a proportionate inference with Article 9. As no legislation or concrete plans have yet been put forward, a full assessment of the legislation together with safeguards in place protecting appropriate and consensual religious activity would have to be undertaken in due course.

6.2 Article 18 – International Covenant on Civil and Political Rights

Similar to the protection afforded through the ECHR, the International Covenant on Civil Political Rights protects the right to freedom of thought, conscience and religion. The right protected in the Covenant is far-reaching and profound, as it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. As with the ECHR, the right contained in the Covenant distinguishes between the right to hold beliefs, which is absolute, and the right to manifest those beliefs, which may be limited where prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

As all rights are interrelated and interconnected, the UN Human Rights Committee has indicated that “[i]n interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination.” In other words, a State is not only permitted to limit the enjoyment of the right to freedom of religion and belief, but is also obliged to do so to the extent lawfully permitted in order to guarantee the full enjoyment of all other rights.

In his seminal report in relation to gender-based violence and discrimination in the name of religion or belief, the UN Special Rapporteur on freedom of religion or belief reaffirmed that traditional, historical, religious or cultural attitudes must not be used to justify violation of human rights. The Special Rapporteur also called on states to:

- Review all laws and practices and ensure that all uphold the principles of universality of human rights and respect the right to equality and non-discrimination and do not create, perpetrate, or reinforce gender-based violence, discrimination or inequalities; and
- Combat all forms of violence and coercion perpetrated against women, girls and LGBT+ persons justified with reference to religious practice or belief, ensure their personal safety and liberty, and hold accountable perpetrators of such violence and ensure victims obtain redress.

In relation specifically to “conversion therapies,” the Special Rapporteur has concluded that manifesting a belief by targeting LGBT+ persons with attempts to change or suppress their sexual orientation or gender identity is not a practice protected by international human rights law. He indicates, particularly in relation to the UK, that the fact that “conversion” practices are conducted within almost all major faith communities within the country cannot be an excuse for the state to treat it differently from other practices already prohibited in the country, such as female genital mutilation and forced marriage.

The Special Rapporteur has also indicated that there are several safeguards that can be put in place to both protect LGBT+ persons *and* the enjoyment of the right to freedom of religion and belief, such as:

- To include in legislation a definition of “conversion” practices that requires that:
 - i. a specific person or class of persons is targeted;
 - ii. on the basis of their sexual orientation or gender identity; and
 - iii. for the purpose of changing or suppressing their sexual orientation or gender identity.
- Individuals would not be prohibited from discussing or exploring their sexuality or gender identity with their faith leaders (or a therapist) in a non-judgmental manner.

7. Freedom of expression

In order to effectively protect LGBT+ people, countries that have banned the practice of “conversion therapies,” such as Germany, have also prohibited the advertisement or promotion of “conversion therapy” practices. In order to comply with the international human rights standards set out above the Commission recommends that legislation is brought forward banning the practice of “conversion therapy” and its promotion. This may engage the right to freedom of expression, which is protected under the ECHR and the International Covenant on Civil Political Rights.

However, the right to freedom of expression is not absolute. As with freedom of thought, conscience and religion, the right may be restricted by the state where necessary to secure a legitimate aim and provided it goes no further than necessary to do so. It is therefore possible to introduce appropriate measures to protect LGBT+ people from the promotion of the kinds of harmful practices referred to above without unlawful interference with this right. This is set out in more detail in the following paragraphs.

7.1 Freedom of expression is protected under Article 10 of the ECHR.

The ECtHR has held that “freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every[one].”

Freedom of expression applies “not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”

However, the right to freedom of expression is not an absolute right. It may be restricted where such restriction is prescribed by law, in pursuit of a legitimate aim and necessary to achieve that aim, going no further than is required. This is the same test as referred to above in relation to lawful interference with the right to freedom of thought, conscience and religion.

The ECtHR has recognised that in the pursuit of ensuring tolerance and respect for the equal dignity of all human beings it may be necessary in a democratic society to prevent or sanction “forms of expression which spread, incite, promote or justify hatred based on intolerance.” For example, the ECtHR has upheld restrictions on freedom of expression in relation to homophobic expression.

7.2 Article 19 – International Covenant on Civil and Political Rights

Freedom of expression is also protected under Article 19 of the ICCPR. The Human Rights Committee has noted that freedom of opinion and expression are “indispensable conditions for the full development of the person. They are essential for any society.”

However, Article 19 also provides that the exercise of the right to freedom of expression carries with it special duties and responsibilities, and it may therefore be subject to certain lawful restrictions, provided by law and necessary to protect the rights or reputations of others, national security, public order, public health or morals. The Human Rights Committee has confirmed that such restrictions must also be proportionate, going no further than necessary to achieve the legitimate aim.

UN human rights experts have therefore confirmed that “incitement to violence and discrimination on the basis of personal characteristics ... constitutes hate speech and is protected neither by freedom of expression nor by freedom of religion or belief.”

Given the evidence about the harmful effects of “conversion therapies” and of the existence and promotion of those practices in society, the Commission considers that a ban on the promotion of “conversion therapy” can be a proportionate interference with the right to freedom of expression, provided adequate safeguards are put in place. As no legislation or concrete plans have yet been put forward, a full assessment of the legislation would have to be undertaken in due course.

8. Recommendations

Given Scotland’s international human rights obligations, and the effects that “conversion therapies” have on LGBT+ people, the Scottish Human Rights Commission recommends that the Equalities, Human Rights and Civil Justice

Committee of the Scottish Parliament encourage the Scottish Government and Scottish Parliament to:

1. Bring forward legislation that prohibits the provision and the promotion of all forms of “conversion therapy.” Such legislation should contain appropriate safeguards to ensure that LGBT+ persons can still access non-judgmental physiological or spiritual support that is not aimed at changing their orientation or identity, and that there is no disproportionate interference with the rights to freedom of thought, conscience and religion or freedom of expression.
2. Establish clear sanctions for those who do not comply with the prohibition of providing and promoting “conversion therapy”. This should take into account appropriate sanctions that reflect the gravity of the practice in question. Measures will also need to be put in place to ensure that future practice is investigated, prosecuted and held to account and that victims have a right to an effective remedy, in accordance with international human rights law.
3. Provide clear and unambiguous guidance for health professionals, counsellors, and spiritual guides, regarding appropriate ways to provide support for LGBT+ people.
4. Consider all appropriate and effective measures to support those who have been subject to this practice in the past and ensure measures of non-repetition are put in place, in accordance to international human rights law.
5. Develop educational programmes that provide comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities.
6. Develop and implement public campaigns and provide training for public officials to promote awareness and respect for diversity in respect of sexual orientation and gender identity.

Annexe F

PE1817 – End Conversion Therapy

Memorandum of Understanding on Conversion Therapy Coalition (MOU) response to the Committee's Call for Views

1. What are your views on the action called for in the petition?

We think it is best for the devolved administrations to work together with the UK government to provide a consistent regulatory regime for mental health professionals working in publicly funded health and social care settings, as well as properly registered counselling and psychotherapy practitioners offering services privately.

The MOU Coalition exists to support the UK government and devolved administrations in bringing in a legislative ban, and implementing its provisions effectively - our signatories include NHS Scotland, all the main professional bodies, 3rd sector LGBT+ and mental health organisations, as well as experts by experience and academic researchers.

We held a series of briefing meetings for MPs, including SNP members of the UK Parliament (such as Hannah Bardell MP, Kirsty Blackman MP, and others), and have been working closely with Alicia Kearns MP and the Ban Conversion Therapy Coalition on the wording and provisions of this legislation, prior to the commitment in the Queen's Speech in May. See: <https://www.albanytrust.org/against-conversion-therapy-in-the-uk>

Our view is that a legislative ban should be comprehensive to cover all forms of conversion therapy practices, and that its primary purpose should be to protect all LGBT+ and any other at risk and vulnerable individuals, however identified, from the harms that CT causes; and that support and specific LGBT+ safeguarding measures included within such legislation are needed as a matter of urgency. We also wish to see historic cases provided with redress and compensation, and with support to recover from the harm that has already been caused by CT practices.

Whilst we wish to see a coordinated approach across the UK, we recognise that there is a need for the Scottish Government itself to bring in and take responsibility for elements of these protections and support provisions, without necessarily waiting for either Westminster and / or the other devolved administrations also to do so, in order to prevent any further harm. We believe the legislation needs to strike a careful balance so that it does not expose bona fide practitioners, who are registered and accredited to practice in this area, to any unwarranted risk of litigation or criminal prosecution for continuing to practice ethically in supporting individuals to explore their sexuality and gender issues.

The MOU will be happy to advise officials and Ministers on these matters in more detail.

2. What action would you like to see the Scottish Government take, within the powers available to it?

We should like the Scottish Government to convene and appoint an expert reference group to advise on further actions in more detail, consisting of mental health and counselling and psychotherapy experts, as well as experts by experience and legal and other research academics, ideally drawn from the expertise within the MOU.

The reason for taking this as a next step is because in the Queen's Speech in May, the UK Government committed to bring forward legislation to ban conversion therapy. This will have immediate, direct implications for mental health providers and practitioners across the devolved administrations – ensuring compliance with the new law. There will be additional duties and obligations to update practice across mental health, for example, identifying LGBTQA+ individuals at risk, where existing practices may fall short of criminal prosecution, but are still considered unethical and harmful. Likewise, we expect provision of support services for victims and survivors of CT to be in place.

The proposed ERG, if put in place, can then consider a comprehensive programme of work that will be necessary for any legislative ban to be implemented effectively, including:

- (i) What range, balance and scope of different measures will be required for effective implementation of a legislative ban on the promotion, provision, and / or causing of a person to undergo conversion therapy, and / or removing a person from the UK to undergo conversion therapy abroad, whilst at the same time protecting bona fide practitioners who are registered and accredited to practice in this area, from any unwarranted risk of litigation or criminal prosecution for continuing to practice ethically in supporting individuals to explore their sexuality and gender issues.
- (ii) Training on the introduction and oversight of specific LGBTQA+ safeguarding and awareness measures in the public health and social care services, such as deployment of independent LGBTQA+ Guardian roles, and for all private health and social care providers, including counsellors and psychotherapists and all those who offer pastoral and similar such emotional, spiritual and psychological wellbeing services, to have access to this training and as a requirement for their ongoing registration.
- (iii) Funding and setting up an anonymous reporting system, delivered by a reputable and independent LGBTQA+ community based organisation, with access to counselling and psychotherapy as part of its provision, delivered by properly trained and accredited, Registered practitioners.

- (iv) Deployment of mental health / LGBTQA+ experts by experience to undertake outreach and engagement with religious and community leaders for the purpose of a) increasing awareness and understanding of the potential negative and harmful impact of certain teachings on the mental health of LGBTQA+ members of their communities b) working collaboratively to put in place appropriate LGBTQA+ safeguarding measures, such as the appointment of independent LGBTQA+ Guardian roles for oversight and consultation.
- (v) Deployment of mental health / LGBTQA+ experts by experience to reach survivors and at risk individuals and communities affected by conversion therapy, and a Scottish panel of Independent LGBTQA+ Guardians to oversee a 'truth and reconciliation' process to provide apology, recovery and atonement and, where appropriate, redress and compensation, for victims of harm caused by historic cases of conversion therapy.

The reason we believe that a comprehensive range of measures, including the above, is needed, is based on the findings from the National LGBT Survey (2018), which gathered the views of over 100,000 lesbian, gay, bi and trans (LGBT) people, where it was 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 (Government Equality Office National LGBT Survey Summary Report, 2018, p. 14). This included a substantial proportion of respondents who reported CT experiences in healthcare and in NHS mental health settings. UK Government pledged in their LGBT Action Plan (2018) to fully consider all legislative and non-legislative options to prohibit promoting, offering or conducting conversion therapy (Government Equalities Office, LGBT Action Plan 2018, p.4). The commitment in the Queen's Speech gives us an expectation legislation will be enacted by May 2022. We would wish to see substantial progress on bringing in the above measures prior to this, and as part of the preparation for effective implementation of the provisions within this legislation.

3. Do you have suggestions on how the Committee can take forward its consideration of the petition?

In addition to an Expert Reference Group, ideally drawn from within the expertise offered by the MOU, we would wish to see a wider stakeholder group established to include Scottish LGBTQA+ charities and civil society / community based organisations, as well as representatives from the mental health and professional bodies that are signatories to the MOU, and experts by experience and survivors, as well as legal and academic research experts in this area.

The MOU works closely with the Ban Conversion Therapy Coalition and would wish to see this group of stakeholders also formally recognised in any established stakeholder group for this programme of work. In addition to a role for ongoing consultation, however, we should also like this wider stakeholder group to be given an oversight function in terms of progress monitoring of the Scottish Government commitments to implement a legislative ban effectively and towards complete and permanent eradication of conversion therapy practices, and evidence of improved

safety and mental health outcomes for LGBTQA+ communities (e.g. reduced LGBTQA+ suicide, self-harm and depression, anxiety and alcohol and drug abuse rates, for example) that we should expect to see as a consequence of bringing in and implementing a legislative ban effectively.

The MOU has worked closely with Alicia Kearns MP and with LGBT MPs from across the UK Parliament, and we would encourage sponsorship, leadership and support of this programme of work, as well as from Ministers, by LGBT members of the Scottish Parliament e.g. in an all party group to work alongside the ERG and stakeholders above.

The MOU will be happy to meet with Ministers and officials to advise in more detail.

Annexe G

PE1817 – End Conversion Therapy

Amnesty International UK, Human Rights Consortium Scotland and JustRight Scotland response to the Committee's Call for Views

1. What are your views on the action called for in the petition?

Amnesty International Scotland (AI Scotland), the Human Rights Consortium Scotland (HRCS) and JustRight Scotland (JRS) strongly support the principles of petition PE1817, to urge the Scottish Government to ban the provision or promotion of LGBTI+ “conversion therapy” in Scotland.

“Conversion therapy” as defined by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, is an umbrella term used to describe interventions which have in common the belief that a person's sexual orientation or gender identity can and should be changed.

“Conversion therapy” currently happens in a multitude of countries in all regions of the world and is practiced in the private and public sphere by public mental health-care providers, faith-based organisations, traditional healers and State agents.

The UN Declaration of Human Rights states that people are born free and equal in dignity and rights, without distinction of any kind. International human rights law recognises sexual orientation and gender identity as a fundamental part of our personal integrity. “Conversion therapy” therefore is not a neutral practice but is founded on the belief that being LGBTI+ is wrong and requires correction. On that basis it is a form of violence or discrimination committed against individuals because of their sexual orientation or gender identity and a violation the legal human rights framework.

International human rights law therefore prohibits the practice of “conversion therapy” on the basis of the right to non-discrimination, health, prohibition of torture, the rights of the child and the positive rights to bodily autonomy and free expression. The below is not intended as an exhaustive list of UN and human rights mechanisms which establish “conversion therapy” practices as a violation of the legal rights framework.

In 2020 the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity called for a global ban on “conversion therapy”, stating:

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. The

injury caused by practices of “conversion therapy” begins with the notion that an individual is sick, diseased, and abnormal due to their sexual orientation or gender identity and must therefore be treated. This starts a process of victimization.

Non-discrimination and Equal Protection against Violence

Equality and non-discrimination are at the core of all human rights treaties. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination on a list of grounds. Practices which intervene on the basis that a person’s sexual orientation or gender identity should be changed are inherently discriminatory as established by The Human Rights Committee and the Committee on the Elimination of Discrimination against Women.

The over-arching principle of non-discrimination in the realisation of our legal rights, and equal protection for all people against violence or discrimination is also embedded in our UK domestic legal framework for the protection of our rights: the Human Rights Act 1998 and the Equality Act 2010.

Right to Health

Article 12 of ICESCR sets out the right of every person to enjoy the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights also specifies the right to freedom from non-consensual medical treatment and establishes that any effort to treat LGBTI+ people as psychiatric patients on the basis of their sexual orientation or gender identity violates the right to reproductive and sexual health. In 2018, the Committee expressed concerns about the integrity of lesbian, gay, bisexual, trans or gender-diverse persons who were reportedly subjected to practices of “conversion therapy” in Poland. The Special Rapporteur on the Rights to Physical and Mental health has also cited the psychological pain and suffering inflicted by practices of “conversion therapy” are deep and associated risk of suicide.

Prohibition of Torture and Ill Treatment

Article 3 of the ECHR (freedom from torture and inhuman or degrading treatment) is an absolute right enshrined in UK law. Trispiotis and Purhouse (2021) argue that “conversion therapy”, in all its different forms, spawns the specific kind of degradation that UK and international human rights law prohibit. The Independent Expert concluded that practices of “conversion therapy” comprise treatment that is degrading, inhuman and cruel and called for suspected practices of “conversion therapy” to be promptly investigated and prosecuted. These conclusions are supported by United Nations entities and human rights mechanisms including the Committee on Economic, Social and Cultural Rights, general comment No. 22 which asserts that violation of the right to sexual and reproductive health can constitute cruel and inhuman treatment. The Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have issued explicit reproaches against the treatments that are forced, involuntary or otherwise coercive or abusive. The Committee on the Rights of the Child asserted the rights of all adolescents to freedom of expression and respect for

their physical and psychological integrity, gender identity and emerging autonomy, and condemned the imposition of so-called “treatments” to try to change sexual orientation and forced surgeries or treatments on intersex adolescents.”

Rights of the Child

The Committee on the Rights of the Child has urged States to eliminate “conversion therapy” and cautioned that children and adolescents are especially vulnerable to the practice. The Independent Expert concludes that the imposition of practices of “conversion therapy” on children runs counter to States’ obligation to protect them from violence, harmful practices and cruel, inhuman or degrading treatment, to respect the right of the child to identity, physical and psychological integrity, health and freedom of expression and to uphold the core principle of taking the best interests of the child as a primary consideration at all times.

Right to freedom of conscience and religion and freedom of expression

The international legal framework is robust and well established in effectively balancing rights. The Special Rapporteur on freedom of religion or belief has rejected any claim that religious beliefs can be invoked to justify violence or discrimination against people on the basis of their sexual orientation and gender identity and stated that “international human rights law is clear that the right to freedom of religion or belief does not limit the state’s obligation to protect the life, dignity, health and equality of LGBTI+ persons” and that “banning such discredited, ineffective, and unsafe practices that misguidedly try to change or suppress people’s sexual orientation and gender is not a violation of the right to freedom of religion or belief under international law.”

The Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity recognises that “individuals may choose to engage with forms of support and counselling, some of which may be based on psychological, medical or religious approaches related to the exploration of identity...however, based on the overwhelming evidence, none of those approaches can claim “conversion” as an outcome, just as none can claim that diverse sexual orientation or gender identity is an illness or disorder requiring therapy.”

2. What action would you like to see the Scottish Government take, within the powers available to it?

JRS work in Scotland to protect survivors of violence based on sexual orientation and gender identity here or abroad. Collectively we want to ensure that survivors in Scotland benefit both from legislation which sets out the clear protections required by international law and a package of support for survivors such as that being proposed by LGBTI+ organisations in Scotland.

As shown above, we believe that the international legal framework prohibits the practice of “conversion therapy” and therefore want to see the Scottish Government

bring forward legislation aimed at achieving a comprehensive ban as far as possible within its competence.

We note that the UK Government intends to consult on its own proposals in September 2021. The Scottish Government has stated it will await details of the UK Government's proposals, including in terms of whether they are likely to apply to Scotland and that: "if the proposed actions do not result in the banning of this discriminatory and harmful practice in Scotland, we will consider our next steps in banning conversion therapy, in so far as is possible within the powers of the Scottish Parliament."

We call on the Scottish Government to:

- Ensure any policy and legislation puts LGBTI+ survivors of conversion therapy at the core of investigating and evaluating how to effectively ban harmful practices and provide suitable support for survivors.
- Publish a detailed policy position on how "conversion therapy" practices can be banned in Scotland, and draft comprehensive legislation which meets the international framework as far as is possible within its competence and meets the calls set out below.
- Proceed with a consultation process and introduction of draft legislation
- Work with the UK Government where necessary to ensure any reserved areas are captured by UK wide legislation.
- Lobby the UK Government to ensure its legislation is brought forward in a timely manner; does not fall below standards set by the international framework, and meets our calls set out below.

It is our view that successful legislation and accompanying guidance which meets the international legal rights framework, and related guidance and implementation, must:

- Strongly affirm that LGBTI+ people are not 'broken' or 'disordered'
- Ban practices in both formal (medical/psychology/counselling) and informal (including pastoral care and religious) settings, whether paid or unpaid
- Protect adults, children, and people with impaired agency, including prohibition of the removal of children from a jurisdiction for the purpose of conversion practices
- Target the false, misleading, and pseudoscientific fraudulent claims that drive conversion practices

- Focus on practitioners' intent to facilitate change or suppression of a person's orientation, gender identity or gender expression on the basis of pseudoscientific claims
- Prohibit advertising and promotion of paid or unpaid conversion practices, including promotion of false and misleading claims designed to generate demand
- Prohibit referrals from practitioners, whether in informal or formal contexts
- Provide counselling, rehabilitative support and redress for survivors, including for those who experienced conversion practices in another country
- Provide investigative powers to a suitably advised body or commission, with scope for investigations to be initiated internally or as a response to complaints by third parties, not just by survivors, using strategies that prevent re-traumatisation.

3. Do you have suggestions on how the Committee can take forward its consideration of the petition?

We would recommend the committee keep the petition open until the Scottish Government triggers a public consultation process with the intention of introducing its own legislation. This will be necessary for monitoring and accountability with regards to the Scottish Government's manifesto commitment to take action to ban "conversion therapy."

It is of course vital that LGBTI+ voices are heard during this inquiry, including from those who have experienced "conversion therapy" practices, whether in the UK or abroad. The inquiry must in its processes put LGBTI+ survivors of conversion therapy at the core of investigating and evaluating how to effectively ban harmful practices and ensure suitable support for survivors.

In gathering evidence from survivors the committee should consider taking advice on what special measures it might implement to allow anonymity and avoid re-traumatisation, including taking evidence in private.

The views of LGBTI+ advocacy and campaigning organisations based in Scotland should be called on to give evidence, as should legal experts and human rights organisations.

The Committee may also wish to hear from representatives from jurisdictions that have implemented legal bans on conversion therapy. The Australian State of Victoria's Change or Suppression (Conversion) Practices Prohibition Act 2021²² has been recognised as a world leading piece of legislation. Other states within Spain, Australia and the United States have issued bans. Germany has implemented a national ban and New Zealand and France are considering legislation.