



## **Ending Conversion Practices in Scotland** UNISON Scotland Consultation Response

March 2024

UNISON Scotland is the largest public sector trade union representing over 160,000 workers across public, private and third sector services. UNISON has extensive networks of LGBT+ workers in workplaces, local branches and in the national governance of the union. UNISON has established UK policy in support of measures to ban so-called conversion therapy. This response is based on the insight of UNISON's LGBT+ members and the policies of the union.

### **The Proposed Legislation**

The proposal by Scottish Government will make it an offence to “Engage in a Conversion Practice”. The proposed offence will have four main elements. All four tests must be met before an offence is committed.

The first requirement is using coercion. There are two courses of coercive action that will be unlawful.

- (a) the provision of a “service” that purports to be able to change or suppress people’s sexual orientation or gender identity, or,
- (b) a coercive course of behaviour undertaken with the intention to change or suppress the sexual orientation of a specific individual.

The Second requirement is having the intention to coerce. For an offence to occur, a court will be required to find that the coercive actions (above) were conducted with the intention that the sexual orientation or gender identity of the victim would be changed or suppressed.

The third requirement is causing physical or psychological harm. There will be a requirement that the service, or course of behaviour, has caused the victim physical or psychological harm. Psychological harm will include fear, alarm and distress.

The fourth requirement is that there must be a specific victim. The harm caused by a service or course of behaviour must relate to a specific, identified individual.

### **Intended Safeguards**

By focusing the criminal sanction on intentional, coercive and harmful suppression of identity, Scottish Government seeks to create the following

safeguards:

- Send a clear, unambiguous public message that conversion practices are harmful both to individuals and society, and therefore unacceptable.
- Protect those at risk of conversion practices. Deter those who intend to undertake conversion practices. And punish those who commit harmful conversion practices.
- Provide clarity about what actions are permissible and what are not.
- Protect the rights and dignity of all involved, including LGBTQI+ people, and respect freedom of religion and expression.
- Take a rights-based, victim-centred, and trauma-informed approach informed by the needs and dignity of survivors and victims.
- Neither inhibit nor criminalise and ethical medical, therapeutic psychological, spiritual, and pastoral practices that provide support to individuals who seek help to explore their sexual orientation and gender identity.
- Activities will only be criminalised if they are both intentionally coercive and intentionally harmful.
- Not inhibit nor criminalise legitimate gender transition or regulated medical intervention.
- Not inhibit nor criminalise the exercise of parental responsibilities and rights including guidance for children and conversations about sexual orientation and gender identity.

### **Specific safeguards**

The consultation document asserts that the requirements for intention, coercion and harm will be sufficient to focus the law on criminal conduct. However, the consultation and draft legislation also contain quite specific provisions to address unintended consequences.

The consultation specifically states that “that the intent requirement will not be met in the situation of the provision of healthcare by a healthcare professional in the course of their employment.” This exclusion is intended to encompass practices that are offered through “regulated healthcare services provided in line with the practitioner’s professional opinion, and which comply with relevant medical, ethical and legal rules and guidelines”.

The need for clarity on the prevention of unintended consequences is an issue UNISON addresses in the following submission.

### **UNISON Policy**

UNISON policy supports the human rights and LGBT+ ambition that Scottish Government seeks to advance. The following is an extract from the policy adopted in 2022 by the National Conference of UNISON’s LGBT+ members:

“Conversion therapy is a pseudoscientific practice which attempts to repress or change the sexual orientation or gender identity of a

person to align with heterosexual and/or cisgender 'norms'. It is neither therapeutic or morally just and is often practiced by people who are not licenced mental health professionals.

"This abusive practice must be brought to an end for all LGBT+ people. It is a significant public health and a human rights violation. We call for a total legal ban and the criminalisation of those who undertake any form of conversion therapy immediately. There is no place for conversion therapy in the UK. Such practices are discriminatory and harmful to LGBT+ people."

## **UNISON's Consultation Response**

UNISON's response to the Scottish Government consultation is as follows:

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

Yes.

### **2. Please give a reason for your answer**

UNISON Scotland has campaigned to see an end to conversion practices, which includes medical, psychiatric, psychological, religious, cultural or any other interventions that seek to erase, suppress, or change the sexual orientation and/or gender identity of an individual.

UNISON recognises the importance of criminal intent in avoiding any unintended consequences. UNISON also recognises the challenges in legislating in an appropriate and effective way. However, further work is required to clarify the medical circumstances in which criminal intent will be deemed to be absent.

What will happen if the service user alleges that the required medical guidelines have not been followed?

The exemption refers to "relevant medical, ethical and legal rules and guidelines". Is full compliance with each requirement needed for the exemption to apply?

What consideration has been given to similar wellbeing services that are not delivered in a clinical setting, or not subject to medical, ethical and legal rules?

Given the central ambition to prevent human rights abuse, UNISON favours precision around relevant and necessary exemptions that are clearly defined.

### **3. Do you think that legislation should cover acts or courses of behaviour intended to 'suppress' another person's sexual orientation or gender**

## **identity?**

It should be covered.

### **4. Please give reasons for your answer**

The damage that these practices have had on generations of LGBT+ young people and adults which especially targets them when they are their most vulnerable with many experiencing self-harm, eating disorders, mental ill health and attempted suicide as a result. We must be allowed to live freely as our true selves, nobody should be forced to keep who they are buried or out of sight.

### **5. Do you support or not support an approach which uses a package of both criminal and civil measures to address conversion practices in legislation?**

Yes, we support.

### **6. Please give reasons for your answer**

These abusive practices must be brought to an end; it is a significant public health and human rights violation therefore a total legal ban and criminalisation of those who undertake conversion therapy are called for. However, we question whether, by focusing exclusively on the criminal conduct of individuals, the legislation overlooks measures required to address the corporate conduct of organisations and institutions. Organisations that systematically arrange for the intentional, coercive and harmful abuse of human rights should, surely, face legal sanction.

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

We support this proposal.

### **8. Please give reasons for your answer**

Any form of conversion practice which seeks to change or suppress an individual's sexual orientation or gender identity should not be permissible, we must recognise that the offence should cover providing a service (counselling or treatment, or where it involves coaching or instruction) done with the intention to change a person's gender identity or sexual orientation and causes harm or distress. The observation, above, on the need to regulate the conduct of organisations and institutions is particularly relevant when the proposed crime is "provision of a service".

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

We support this proposal.

### **10. Please give reasons for your answer**

Any form of conversion practice that seeks to change or suppress an individual's sexual orientation or gender identity should not be permissible, especially where manipulation, coercion, pressurising, violent, frightening or

degrading behaviour occurs.

**11. What are your views on the requirement that the conduct of the perpetrator must have caused the victim to suffer physical or psychological harm (Including fear, alarm or distress)?**

We agree.

**12. Please give reasons for your answer**

Due to the nature of most conversion practices being inherently harmful, they should be banned. Most of these practices cause harm on an individual's mental health. It is vital that the definition of harm includes physical, and psychological harm including fear, alarm, and distress. We must be clear that harm may not be initially apparent or visible and may take time to present itself in the individual affected.

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

Don't know.

**14. Please give reasons for your answer**

Reasonableness is used in other areas of criminal law, but the concern is that allowing conversion practices to happen so long as they are reasonable is far too vague. It leaves the way open for those who claim that prejudice against the LGBT+ community and trying to convert them is reasonable.

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

We agree with the proposed penalties.

**16. Please give reasons for your answer**

They equate with other offences of abuse which cause harm mentally or physically.

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

We agree there should be no defence of consent for conversion practices.

**18. Please give reasons for your answer**

These practices are done to LGBT+ people in the belief that we are wrong or broken and need to be fixed. They can cause lifelong harm and people are often pressured or coerced into them. There should be no loophole allowing conversion practices that have been consented to as this still stipulates a crime.

**19. Do you have any other comments regarding the criminal offence? These are set out in parts 7 and 8 of our full consultation document.**

As we say in response to question 5, the proposed legislation focuses on the actions of individuals. It is clear that there is an organisational or institution

element to the provision of purported “therapy”. We question whether it is proportionate or effective to focus exclusively on the criminal actions of individuals when some organisations are actively promoting and facilitating conduct that might be criminal. Without degrading the proposed individual sanctions, we suggest Government consider what legal measures might be used to address the organisational or institutional dimension of intentional coercion and harm.

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

We support this being a criminal offence.

**21. Please give your reasons for your answer**

Any form of conversion practice wherever it is undertaken that seeks to change or suppress an individual’s sexual orientation or gender identity should not be permissible. Citizens of Scotland should be protected from harm whether actions are local or abroad. Same legislation should apply such as forced marriage of FGM.

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

We support these penalties

**23. Please explain your answer**

It is right that the level of sentences will be appropriate and that the vast majority will likely receive a substantial fine to deter them for facilitating these abhorrent practices.

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

We support the proposal.

**25. Please explain your answer.**

Sometimes the conversion practice is severe and would constitute an existing crime, for example physical and sexual assault. In those cases, it is vital that the perpetrator can be charged with an existing offence. Making the motive of conversion practice an aggravating factor ensures that motive is considered at sentencing.

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

## **Convention of Human Rights?**

Applying criminal sanctions to any course of conduct clearly has human rights implications. The proposed law challenges a profound example of discrimination and, in doing so, focuses on the prohibition of actions that are intentionally coercive and intentionally harmful. This appears to limit any adverse human rights impact on a narrow range of circumstances. Although we expect the number of convictions will be low, a ban on conversion therapy is an obvious human rights benefit for LGBT+ people. Furthermore, it would appear that that this narrow focus will ensure that the interference with the rights of freedom of expression is no more than that necessary to prevent harm.

UNISON's view is that the any "adverse" human rights impacts are lawful. For example, the rights of freedom of expression, belief, religion and assembly all permit restrictions that are necessary and proportionate on the grounds of public health and the protection of the rights and freedoms of others.

One person's right to freedom of religion could not and should not be interpreted as a right to inflict physical or psychological injury on another person.

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

We support these purposes.

### **28. Please explain your answer**

Prevention of conversion practices would enable intervention to stop actions which could cause harm.

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

We disagree with the proposals.

### **30. Please explain your answer**

The proposals need to go further to consider health (gender dysphoria clinics etc.) and third sector (advocacy groups).

### **31. Do you have any other comments regarding the civil order? (These are set out in parts 12–14 of the full consultation document)**

Proposals for a civil order are good as far as they go. However, there is a concern as to whether in practice people who need to protect themselves from conversion practices, but don't want police involvement to have a course of action or option which allows them to do so safely. We must ensure that 3rd sector organisations and social services have the right information to give good

direction to those individuals.

**32. Do you have any views on the potential impacts of the proposals in this consultation on equality by:**

**Age:** Children are entitled to the same human rights protections as adults. One adult's right to freedom of religion should not be interpreted as a right to inflict physical or psychological injury on a child.

If anything, the risk to children is more pressurised. The consultation locates the protection against conversion therapy within the established child protection system in a way that is balanced, proportionate and lawful.

**Disability:** The principle issue for disabled people is access to criminal justice services. By which we mean access in the broadest sense. For example, all criminal justice agencies will require first rate disability awareness, communication support and LGBT+ awareness to ensure that disabled people encounter no discrimination whatsoever when seeking the protection the Bill purports to offer.

**Gender reassignment:** The proposed Bill contains important protections for people who choose to engage with gender reassignment services. While that is very welcome, it should not conceal the fact that the scope of people at risk is defined by the prejudice of the offender, which can be wider than the identity of the protected group. Protection against intentional and coercive harm should be universal, regardless of protected characteristic.

**Civil partnership:** This is particularly important where a partner may be coercive, have previous abuse on record, and particularly where one partner may disagree with the choices of the other in a lifestyle/gender/sexual choice and may attempt to prevent / coerce that freedom of choice.

**Pregnancy/maternity:** Government should have regard to circumstances where an individual may be forced to return to the gender identity assigned at birth for reasons linked to pregnancy and maternity.

**Race:** Government should have particular regard for circumstances where there may be some cultural issues in specific ethnicities where conversion practices are seen as acceptable.

**Religion / belief** UNISON supports the basic right of freedom of thought, conscience and religion. However, this has to be qualified by the requirement to protect the fundamental rights of others. Including, in this case, the requirement to ensure adequate protection from intentional and coercive harm. The proposed legislation offers an appropriate balance. As we have said, one person's rights and freedoms should not be interpreted as a right to inflict



physical or psychological injury on another.

**Sex:** should apply equally.

**Sexual orientation:** same as gender reassignment.

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

Everyone is entitled to protection from human rights abuse, regardless of age. The ongoing debate about Gender Recognition should not deflect Government from the need to protect children. The issue with conversion therapy is not the age or capacity of the victim, it is the coercion and harmful intent of the assailant. Although special measures, services and procedures may be required to support the needs of children in a holistic way, the right to protection from intentional and coercive harm should be a fundamental right, regardless of age.

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

For those who can afford private legal assistance, the current system offers a degree of protection. However, current legal protections for people facing coercion and harm are remote, expensive and largely hypothetical. Using the criminal law in the way proposed extends a minimum level of legal protection to all, regardless of socio-economic status. This is very welcome.

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

UNISON has concerns regarding the access to support services given the logistics of the Scottish Islands. In terms of the Fairer Scotland Duty, there would be the need for further resources in place to avoid any disadvantage to people in those communities.

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

The rights in question are sensitive personal data. Data security is required at the highest possible standard. This should include full access to the benefits of reporting restrictions at all stages of the criminal justice process.

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

UNISON would have concern where third sector business's providing legitimate support services to LGBT+ people may find themselves targeted by anti-LGBT+ groups, we would expect hate crime legislation to be used in any planned action

by these groups to protect those business's/workers.

There would only be an impact on organisations where they are implicated in the intentional and coercive injury of people entitled to basic human rights protections. Given the proposed law is a narrowly defined and proportionate in its approach to the protection of basic rights, we would not see that impact on organisations as adverse or unjustifiable in any way.

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

No

**UNISON Scotland, March 2024**

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