



CONSULTATION

**Scottish Government**  
**Ending conversion practices in Scotland: consultation**  
**2 April 2024**

**Introduction**

NASUWT welcomes the opportunity to comment on the Ending conversion practices in Scotland consultation.

NASUWT is the Teachers' Union, representing teachers and school leaders in all sectors of education.

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

Yes.

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

NASUWT has existing policy supporting a ban on conversion therapy, as exemplified in our 2022 motion to the STUC LGBT Conference:

*Ban Conversion Therapy*

*Conference opposes all forms of conversion therapy and considers it to be an abhorrent practice which has no place in Scotland.*

*Conference agrees that urgent action is required to implement a full, legislative ban which makes conversion therapy illegal and, therefore, welcomes the recent Equalities, Human Rights and Civil Justice Committee report on the 'End Conversion Therapy' petition introduced by End Conversion Therapy Scotland.*

*Conference believes that:*

- any ban must be comprehensive and cover all forms of conversion therapy on the basis of sexuality or gender identity, without exception;*
- a comprehensive criminal ban on conversion therapy must be subject to public and parliamentary scrutiny and be drafted to cover the promotion, provision and causing of a person to undergo conversion therapy or removing a person from the UK to undergo conversion therapy abroad and*
- there is a significant public health case for banning conversion therapy, and this can be achieved via a criminal ban.*

*Conference agrees that the views of LGBTI communities and those who have experienced conversion therapy should be prioritised and must continue to direct and inform the work of the Government.*

*Conference calls on the STUC to monitor and lobby the Government to ensure the views of LGBTI communities are heard and to further push for implementation of a legislative ban without delay, noting in particular the challenges which can result from any cross-nation approach to implementation.*

*Conference further calls on the STUC to campaign to ensure that any ban must:*

- be robust, covering both public and private interventions, whether undertaken through healthcare or religious and cultural mechanisms;*
- protect both children and adults, whether coerced or where consent has been given and*

- *be comprehensive and include all forms of conversion therapy on the basis of sexuality or gender identity without exception.*

Conversion practices are harmful and all LGBTI people should be protected. NASUWT is content that the proposed definition will provide clarity around what actions are permissible and what are not.

**Question 3: Do you think that legislation should cover acts or courses of behaviour intended to ‘suppress’ another person’s sexual orientation or gender identity?**

NASUWT agrees it should be covered.

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

It is clear that suppression can cause long-term harm. Having legislation which covers both conduct motivated by an intention to change or to suppress an individual’s sexual orientation or gender identity would provide the greatest protection.

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

NASUWT would support this approach.

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

NASUWT believes this will provide a consistent approach to that utilised for female genital mutilation (FGM) as one example. Civil orders provide an important avenue to prevent harm.

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

NASUWT would support the proposal that the offence will address the provision of a service.

**Question 8: Please give reasons for your answer to Question 7.**

NASUWT opposes all forms of conversion therapy. It is an abhorrent practice which has no place in Scotland. The Union considers the practice of conversion therapy to be both unethical and harmful. It is unacceptable that conversion therapy, the practice of forced conditioning against a person's sexuality or gender identity, remains permissible in Scots Law.

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

NASUWT would support the proposal that the offence will address a coercive course of behaviour.

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

The use of shame, verbal abuse and aversion therapy, particularly with young people, can have a profound and long-lasting impact on people's lives – leading to depression, feelings of isolation, fear and self-loathing.

The proposal to address a coercive course of behaviour is consistent with the approach taken to tackling domestic abuse and is necessary, given the evidence of those with lived experience that this is the most common form of conversion practice in Scotland.

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

Don't know.

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

NASUWT believes that conversion therapy is a risk to public health, especially the mental health of vulnerable young adults and children. There is clear evidence of the damage this practice has had on generations of LGBTI young people and adults, which often targets those at their most vulnerable, with many experiencing self-harm, eating disorders, and attempted suicide as a result.

However, it may take years for that harm to manifest fully; this fact is acknowledged within the consultation paper:

*'the harmful effect of conversion practices is less likely to be fear and alarm but more often resemble post-traumatic stress which may manifest in different ways and over a longer period.'* (Paragraph 75).

In addition to acknowledging the fact that physical or psychological harm may take some time to manifest, it may also be difficult for the 'victim' to prove the harmful effect that conversion therapy has had on them: the onus should not be put on the victim to prove the harm.

The Union considers that so-called 'treatments' for sexual orientation or gender identity are based on the false and offensive idea that being LGBTI is an illness or disorder and that conversion therapy exploits and abuses vulnerable LGBTI people by offering counselling that is never in their best interests. As a result, no counsellor or therapist should be offering conversion therapy and anyone found to do so should be prevented from continuing to practice.

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

Don't know.

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

The proposal is that there would be included in the legislation a statutory defence of reasonableness. That is to say that even if the elements of the offence:

- that there was intent in the mind of the accused to engage in conversion practices;
- that an identifiable act of conversion or attempted conversion, either the provision of a specific conversion service or a course of coercive behaviour whereby the accused has engaged in repeated behaviour aimed to convince an individual of a certain course of action in relation to their gender, or to apply pressure to persuade an individual to take a certain course of action;
- that there is an identifiable victim; and
- that harm was caused to the victim by the act/s;

are made out, then it would still be possible for an accused person to mount a successful defence if they could argue that their actions were reasonable in the circumstances.

NASUWT agrees with the comment in the proposal which acknowledges that it is difficult to envisage circumstances in which behaviour meeting each of the four tests set out above would ever be 'reasonable'. The consultation suggests there may exist a '*very small number of circumstances*' where such a defence would be successful and that the defence is envisaged as potentially arising when:

*'there was another overriding motivation or the exercise of other rights is involved'*

And

*‘For example, where someone is at immediate risk of suicide as a result of distress related to their sexual orientation or gender identity, requests and is supported to find a short-term coping mechanism. It could also potentially apply in situations where the specific day-to-day controls implemented by a parent were to prevent a child from engaging in illegal or dangerous behaviour.’*

NASUWT is concerned with the way the identified act interacts with the reasonableness defence. The proposal identifies two types of act under the legislation; provision of conversion or attempted conversion services and a course of coercive behaviour. While it is very difficult to imagine, it may be possible in an extreme edge case to envisage a scenario where it might be reasonable to temporarily coerce a suicidal person (via advice or counselling) into a course of action that may contradict/ignore/minimise their gender preferences if that person was at imminent risk of harming/killing themselves in order to prevent that harm/death whilst alternative solutions were identified.

However it is harder to see, nor is it well exemplified in the Scottish Government documentation, how it could be possible for the provision of conversion services to be deemed to ever be reasonable. With an edge case, it is expected that the proposals are envisaging responses to urgent emergency situations. A conversion service cannot be set up and run as a response to an individual’s urgent needs or to protect the rights of third parties. Therefore, how could the provision of an actual service reasonably benefit from the potential of a statutory defence of reasonableness which, in the words of the Scottish Government, is intended to be reserved for those acting reasonably to protect those at imminent risk or to protect the rights of others?

In what scenario could the head of a conversion service say that “yes, we intended to engage in conversion practices,” “yes, there was an actual act of conversion or attempted conversion,” “yes, there was an identifiable victim” and “yes, harm was done,” but that running the conversion service was

objectively reasonable to prevent harm to an individual or to avoid infringing on the rights of others?

Given that the proposal specifically differentiates between coercive behaviour and the provision of services, the legislation could specify that the defence of reasonableness cannot be used if the act one is accused of is providing an actual conversion service.

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

Yes, NASUWT is content with the proposed penalties.

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

NASUWT would note that for the most serious courses of behaviour, there may be secondary or multiple charges brought which will impact the overarching sentencing range.

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

Yes, NASUWT agrees there should be no defence of consent.

**Question 18: Please give reasons for your answer to Question 17.**

The Union agrees the approach should be similar to the protection afforded by domestic abuse or FGM legislation – where it is clear that consent can never be informed and should not be available as a defence.

NASUWT has consistently campaigned to ensure any ban will be robust. It must cover both public and private interventions, whether undertaken through healthcare or religious and cultural mechanisms. It must protect both children and adults, whether coerced or where consent has been given. The ban must



be comprehensive and include all forms of conversion therapy on the basis of sexuality or gender identity without exception.

**Question 19: Do you have any other comments regarding the criminal offence as set out in Parts 8 and 9?**

Sufficient support, including counselling, must also be provided to survivors and communities impacted by these practices. It is important that criminal justice agencies and the police receive appropriate training and are empowered to signpost victims to appropriate services for ongoing support.

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

The Union would support this proposal.

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

A comprehensive criminal ban on conversion therapy must cover the promotion, provision and causing of a person to undergo conversion therapy or removing a person from the UK to undergo conversion therapy abroad. In all aspects, this abusive practice must be brought to an end. There is a significant public health case for banning conversion therapy and this can only be achieved via a criminal ban which recognises the removal of persons from Scotland for the purpose of subjecting them to conversion practices.

Indeed, while conversion practices currently remain legal in the rest of the UK, banning them in Scotland is simply going to lead to people being taken across the border to another UK nation.

There are also parallels to be drawn with the legislation on FGM, to ensure a coherent and consistent legislative approach is taken.

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

Don't know.

**Question 23: Please explain your answer to Question 22.**

See comments under Question 14 in relation to the defence of reasonable behaviour.

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

NASUWT would be in support.

**Question 25: Please explain your answer to Question 24.**

As was acknowledged in Question 16, there may be instances where conversion practices also constitute an existing criminal offence, such as a physical or sexual assault. NASUWT would anticipate that in those circumstances, the perpetrator would be charged with that existing offence and, acknowledging the motive of conversion practices as an aggravating factor, that motive would also be taken into account both during prosecution and sentencing, as well as supporting the collation of accurate national records.

**Question 26: Do you have any views on the steps we have taken to ensure the proposals are compatible with rights protected by the European Convention of Human Rights?**

NASUWT set out in our response to the Scottish Government consultation on the Human Rights Bill in October 2023 that:

*‘NASUWT is particularly concerned with LGBTI rights because, of course, there is no convention or covenant in play that addresses those rights. The Bill runs the risk of relegating these rights relative to those of others covered by the relevant conventions. Simply positing a question in the consultation papers about what should be done here is rather glossing over important questions about LGBTI rights and is not good enough. It is incumbent on the Scottish Government to come forward with a coherent plan about how equal status would be afforded to LGBTI rights in this context. If part of the aim of the exercise is to promote cultural and attitudinal shifts, then the exclusion of LGBTI rights in this context is deeply problematic and undoubtedly creates a hierarchy of rights...*

*... while the principles on which these conventions are based mean that an appropriate system of incorporation is not objectionable in and of itself, if the Bill doesn't include rights and entitlements for LGBTI people that are as robust and as comprehensive as those that would be introduced for those with other protected characteristics, to use the language of the Equality Act, this disparity would begin to call into serious question the extent to which the Union could support a Bill on the basis proposed.’*

NASUWT believes that the question around compliance with the European Convention of Human Rights above is a misdirection, considering the comments above.

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

NASUWT would be in support.

**Question 28: Please explain your answer to Question 27.**

As set out in Question 6, civil orders can provide an important avenue to prevent harm.

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

NASUWT would agree.

**Question 30: Please explain your answer to Question 29.**

It's important that there are a range of people who can apply for a civil order to protect a person from conversion practices.

**Question 31: Do you have any other comments regarding the civil order as set out in Parts 13 – 15?**

An intersectional approach requires to be adopted at local authority and third sector level, to ensure that minoritised communities are supported and are able to access support. Any relevant barriers to support also need to be identified: these rights must be able to be universally utilised.

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

- a) Age
- b) Disability
- c) Gender reassignment
- d) Civil partnership
- e) Pregnancy and maternity
- f) Race
- g) Religion and belief
- h) Sex
- i) Sexual orientation

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

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

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

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

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

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

Response to Questions 32 to 38:

Listed authorities, such as the Scottish Government, should also be meeting their responsibilities under the Public Sector Equality Duty by collecting and using evidence when developing policies. When undertaking national consultation processes, this should mean that the papers explain the evidence, issues and potential adverse impact, as well as how they plan to mitigate any adverse impact. Respondents to the consultation should be invited to comment on this information as well as any gaps in the evidence base. Unfortunately, in almost all cases, public authorities ask equality impact questions passively, expecting others to identify the issues and the evidence. NASUWT would request that, moving forward, the Scottish Government amends their approach to asking the questions set out in 32 through to 38 and moves to a less passive and more engaging process around impact assessments.

For further information, please contact:

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