

## **Ending Conversion Practices in Scotland: Consultation Guide to Responding**

**Prepared by the Free Church of Scotland Public Engagement Group**

The Public Engagement Group has submitted a central Free Church Response to the Consultation with extensive detail which is available at: [bit.ly/fcosCP](https://bit.ly/fcosCP)

However, numbers also matters and so the Public Engagement Group is encouraging all Presbyteries, Congregations and Individuals within the Free Church of Scotland to respond to the Consultation. If you are an office bearer, we would encourage you to invite individuals within your congregation to respond to the consultation.

Please remember to always be polite in your responses to the government. We know that tone has impact on how our responses are received and are commanded by scripture to give appropriate honour and respect those in power (1 Peter 2:17).

The consultation document is available at: [bit.ly/scotcpconsult](https://bit.ly/scotcpconsult)

The response form is available at: [bit.ly/scotcprespond](https://bit.ly/scotcprespond)

Each section of the online response form has its own page.

The penultimate section, 'About you', is the only one with compulsory questions. To submit a response, you must:

- a) give an email address;
- b) say if you are responding on behalf of an organisation;
- c) indicate if you want your response published;
- d) decide whether the Scottish Government can contact you;
- e) consent to the privacy policy.

If you are responding on behalf of a Presbytery or Congregation please make clear it is an organisation response and state clearly "Free Church of Scotland" in the organisation name. For example "Kiltarlity Free Church of Scotland" or the "Free Church of Scotland Presbytery of Inverness, Lochaber and Ross".

If you are responding as an individual and you are an office bearer, Sunday school teacher or have any other role within your local church please make that clear in your response (indicating which congregation you are part of).

**The consultation closes on Tuesday 2 April.**

This guide identifies key questions we believe you should answer and gives suggestions for responding to them. You can of course answer other questions and we would suggest you consult [our full consultation response](#) to assist you with that.

It is important that you use your own words as responses which are essentially the same can be discounted.

After you have answered as much as you want on each page, select 'continue' at the bottom to go back to the Contents page.

The Christian Institute have produced a helpful two page summary of the proposals which is available at <https://www.christian.org.uk/wp-content/uploads/conversion-practices-consultation-overview-of-proposals-web.pdf>

## Questions

### Question 1

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

Please answer "no".

### Question 2

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

Please make some of these points in your own words:

- We oppose all harmful and coercive practices. However these are already illegal under existing legislation.
- There is little evidence that harmful practices are widespread in Scotland, undermining the need for new legislation. The consultation document relies on self-reported surveys or reports that do not define what 'conversion therapy' is.
- The definitions used in the proposals are too broad.
  - Roddy Dunlop KC, the Dean of the Faculty of Advocates, has said the definition of 'conversion practices' is not 'legally coherent'.
  - It is not clear what 'suppression' means when applied to sexual orientation. For example, would preventing or warning against the use of pornography be classified as suppression?
  - The term 'gender identity' is not defined in law and is a contested term in society. It is unwise to write a concept into law without a clear idea of what it is.
- The proposed legislation only specifies that 'non-directive' advice would be legal. Families and churches often give directive advice to people out of love and so this would have a chilling effect on churches and parents.
- There is no requirement that harm must have been intended or foreseen by the accused. Instead a 'motivation' to change or suppress will be sufficient for prosecution. However, given the poor definitions of the terms in the proposals, the only way for someone to be absolutely sure they were not committing an offence would be to adopt an affirming attitude. This contradicts the Scottish government's statement it wants to "respect freedom of religion and expression".
- The Scottish Government does not seem to understand how faith is practised in Scotland and therefore seems likely to ban normal pastoral practices. For example, similar legislation in Victoria, Australia, prohibits "a religious leader meeting one-on-

one and telling a member of their congregation that they are broken and pressuring them to suppress and ignore their feelings of same-sex attraction by practising celibacy...”;

### **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?**

Please answer “**It should not be covered**”

### **Question 4**

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

Please make some of these points in your own words:

- The meaning of ‘suppress’ is not clearly defined in the proposals only a selection of examples are given. This means it could become a very broad term. The guidance for the proposals agree that including suppression widens the scope of the legislation. (para. 56)
- This would have a severe impact on parents. The proposals include “controlling a person’s appearance (e.g. clothes, make-up, hairstyle)” and “restricting where a person goes and who they see” as examples of suppression. But it is normal for parents to have a say on what their child wears and where their child goes.
- The proposals include promoting celibacy as a form of suppression. But celibacy is a normal part of Christian life for those who are unmarried whatever their sexual desires.

### **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?**

Please answer “**Do not support.**”

### **Question 6**

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

Please make some of these points in your own words:

- Abusive acts are already criminal under the law and new legislation is not needed.
- The proposals say they are aimed at criminalising behaviour which “would not be considered to be threatening or abusive” (page 25) but it is not clear why non-abusive acts should be criminalised.
- The definitions contained in the law are too broad to be a good basis for criminal law. Criminal laws should be clear about what is and is not illegal.

- The civil measures are easier to obtain than a criminal prosecution with less safeguards. Judges will have wide discretion in deciding how the law is applied.
- The civil measures result in criminal offences if they are broken. Therefore, leading to a blurring of civil and criminal law.
- This is likely to have an impact on freedom of expression as people self-censor to avoid being caught by an overly broad and unclear law.

### **Question 7**

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

Please answer “**Do not support.**”

### **Question 8**

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

Please make some of these points in your own words:

- The proposals do not define what ‘provision of a service’ means beyond the examples given.
- The proposals say that ‘pseudo-medical’ services would be covered but does not define what these are.
- Having an ‘informal conversation with someone about doctrinal views’ would be excluded from the ban, this implies that having a formal conversation or giving pastoral prayer and advice would be included in the ban. Ministers do not simply discuss doctrine but disciple Christians in how to live.
- Although counselling “that does not have a pre-determined outcome or preference towards their sexual orientation or gender identity” would not be banned, the proposals appear to be saying that counselling (or pastoral advice) which begins from the Christian belief that sex is only to be had in a monogamous marriage between a man and a woman should be illegal.

### **Question 9**

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

Please answer “**Do not support.**”

### **Question 10**

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

Please make some of these points in your own words:

- As Christians, we oppose coercive practices as abusive. However, the proposals definition for ‘coercive course of behaviour’ is too broad.

- Decisions over church membership and who can serve in leadership positions could be seen as ‘coercive’.

### **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)?**

Please answer “**Do not agree.**”

### **Question 12**

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

Please make some of these points in your own words:

- Christians oppose harmful behaviours. However, the terms physical or psychological harm are too broad.
- Categories such as fear, alarm, or distress are highly subjective and impossible to disprove. This subjectivity is increased as the guidance states that “the proposed offence does not require it to be proven that the perpetrator intended to cause harm to the victim or to be reckless as to whether harm would occur”. In other words, it will be entirely dependent on the word of the accuser, regardless of the intent of the accused.

### **Question 13**

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

Please answer “**Agree.**”

### **Question 14**

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

Please make some of these points in your own words:

- Reasonable behaviour should never be criminalised.
- The proposed defence is needed but is too narrow to be helpful.
  - The example given “to prevent a child from engaging in illegal or dangerous behaviour” does not adequately describe the activities of parents which should not be criminalised by this law.

### **Question 15**

Do you agree or not agree with the proposed penalties for the offence of engaging in conversion practices?

Please answer “**Do not agree.**”

### **Question 16**

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

Please make some of these points in your own words:

- The offence is too vaguely defined for it to lead to the proposed penalties, i.e. up to seven years in prison and an unlimited fine.
- The ‘comparable offences’ listed in the guidance (para 127) all require threatening, abusive, coercive activity or other serious actions to have been involved for a prosecution. These activities are explicitly not needed for a conviction under the proposed conversion practices ban.

### **Question 17**

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

Please answer “**No**”

### **Question 18**

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

Please make some of these points in your own words:

- Individuals should be free to engage in non-abusive practices of their choice.
- Freedom of religion includes the right to practice your beliefs as you wish and to receive support from your faith community in doing so.
- No one should be afraid that answering someone's request for prayer and support will lead to prosecution.

### **Question 19**

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

Please make some of these points in your own words:

- These proposals would criminalise non-abusive prayers, conversations and teaching.
- Detransitioners (who regret changing gender) must be free to tell their own stories without fear of the criminal law.
- The only practices which are named as not being criminalised are non-directive practices and affirming practices. This implies that any other approach to sexuality and gender identity would be illegal.
- Any proposed legislation should be explicit that Christian teachings on sexuality and gender identity and consensual prayer and support will not be made illegal, even if these teachings and practices are disagreed with by others in Scotland.

### **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?**

Please make some of these points in your own words:

- The proposals do not appear to be compatible with the European Convention of Human Rights, particularly Article 8 – private and family life and Article 9 – Freedom of Religion.
  - The proposals do not respect parents' right to hold religious convictions and raise their children in accordance with them.
  - The proposals do not protect a person's right to practice their religion for themselves or bring up their children in their religion.

### **Question 27**

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

Please answer “**Do not support.**”

### **Question 28**

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

Please make some of these points in your own words:

- The protection orders do not have the (already limited) safeguards applied to the proposed criminal offences.
  - The definition of conversion practices is already vague in these proposals.
  - A protection order requires no proof of actual harm only 'potential harm'. Neither does it require a proof 'beyond a reasonable doubt' but only proof on the 'balance of probabilities'. This means that claims will not be properly tested in court.
  - The protection orders do not need to have a clearly identified victim but can be created 'to protect the wider community'. This opens them up to being abused to shut down speech which others disagree with.
  - The proposals empower the courts to grant almost any order they believe will reduce the likelihood of harm. This has the potential to violate the human rights of the accused and place significant burdens on churches and parents.
- As breaking protection orders results in criminal proceedings, it is disingenuous to claim these are entirely separate from criminal law. The proposed protection orders can result in criminal convictions without the safeguards or burden of proof needed in a normal criminal trial.

### **Question 29**

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

Please answer “**Do not agree.**”

### **Question 30**

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

Please make some of these points in your own words:

- The proposals would allow protection orders to be requested by a third party in order to protect a named individual whether or not the named individual wanted the protection order. This could lead to a serious breach of the human rights of the person named.
  - For example, if a family member got a protection order to prevent someone from attending a church whose teaching on human sexuality they disagreed with.
- 

### **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**

Please select ‘**Religion and belief**’

Please make some of these points in your own words:

- These proposals would have a serious impact on religion and belief.
- They would prevent normal church practices such as prayer and pastoral support.
- These proposals would mean the state deciding which parts of church doctrine are correct or false. This is not the role of the state.

When you have finished your response, select ‘Finish’ at the bottom of the Contents page.