

Gay Men's Network G

GMN RESPONSE

Conversion Practices (Criminalisation) Bill (NI)

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Executive summary

The Gay Men's Network opposes the Conversion Practices (Criminalisation) Bill NI because its central concepts are undefined, its harm threshold is unusually low, its statutory defences place reverse burdens on defendants, and its provisions risk criminalising ordinary parenting, therapeutic practice and protected expression.

Existing Northern Ireland criminal law already provides substantial penalties for violence, abuse, sexual offending, unlawful detention and child cruelty. For the reasons set out below, we consider that the Bill does not satisfy the requirements of legal certainty, proportionality or compatibility with Convention rights and should not proceed.

Criminal statutes are not a vehicle for ideological point-scoring or an opportunity to embed contested identity-politics concepts into law; they are serious measures, and they have far-reaching effects. Poor legislation should not be waved through on the basis of good intentions when wholly innocent people could face criminalisation.

We are acutely concerned that the draft Bill gives insufficient consideration to the struggles of parents dealing with children claiming cross-sex identities, and we are also concerned about the Bill's implications for free speech and public debate. This Bill cannot be reconciled with basic human rights.

We believe that gay people are better served by existing criminal law, which has higher maximum sentences, than by the poorly defined main offence proposed by the Bill. We believe the Bill is not about protecting gay people. It is about striking a blow in a culture war.

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Introduction

1. The Gay Men's Network is a not-for-profit company. Our central objective is to provide detailed policy guidance on questions affecting male homosexuals. We have previously commented on draft bills directed at "conversion therapy/practices" and expressed concerns about the breadth and unintended consequences of such legislation. We have similar concerns about a private member's bill called the "Conversion Practices (Criminalisation) Bill" (hereafter "the Bill"/"this Bill"), introduced by Eóin Tennyson MLA in the Northern Ireland Assembly.
2. Gay Men have a real and evidenced history of actual conversion therapy/practices in the UK, perhaps the most famous example is the prescription of chemical castration agents to war hero and father of modern computing, Alan Turing. Thankfully, such barbaric attitudes and practices like electroshock "treatment" visited on gay men are now a thing of the past. The modern evidence for anything like these torture-like practices is now effectively non-existent. Such evidence as proponents of conversion legislation manage to locate is generally of very poor quality and in some cases difficult to take seriously, (such as a suggestion by Stonewall that 10% of gay people have experienced an exorcism¹).
3. Modern conversion legislation is not about protecting gay men or lesbians. It is principally used as a vehicle in a "culture war" between those who believe society should be ordered on the basis of biological sex and those who subscribe to the dualist, and quasi-religious, belief that each person has a separate sexed soul referred to as a "gender identity". Conversion legislation is generally characterised by poor drafting, low maximum sentences and draft Bills that "smuggle" contested identity concepts into criminal law that are not present in civil law. The NI Bill fits this description: core terms are left completely undefined, the maximum sentence is a paltry two years, and the Bill amounts to what Sarah Vine KC recently described² as a "secular blasphemy law" compelling belief in gender identity.
4. Proponents of this legislation often speak in urgent and emotive terms and tend to frame the debate so that any opposition is cast as support for the abuse of gay people. This framing is childish and reductionist. It is a tactic designed to evade legitimate scrutiny of the legislation and its evidence base, and to cast opponents as pariahs. The call for conversion legislation in 2026 makes little historical sense. It is frankly absurd to imagine that the gay rights movement would have secured gay marriage and an equal age of consent before addressing the day-to-day, torture-like practices we associate with the term "conversion therapy". That indisputable historical sequence alone should prompt any reasonable person to be sceptical about the need, scope and true purpose of this legislation.

¹ <https://sex-matters.org/posts/updates/exercising-caution-over-stonewalls-exorcism-claims/>

² FilIA Webinar – The Conversion Practices Bill: Everything You Need To Know <https://www.youtube.com/watch?v=l79tPDpjYcl&t=3991s>

5. We take the view that this is a poorly written Bill which does not satisfy basic quality-of-law requirements, either at common law or as required by Article 7 of the Convention. Multiple core terms are left undefined or open-ended. Specifically, there is no definition of the potentially very broad word “suppress”. The terms “sexual orientation” and “gender identity” are not defined at all. There is no statutory guidance on the “reasonableness” defence in clauses 1 and 2. Clause 1 is intended to deal with “conversion therapy” but is wide enough to cover any manner of non-medical situation so long as “coaching or instruction” occurs. Clause 2, concerning coercive behaviour, borrows heavily from the Northern Ireland controlling and coercive behaviour offence, but that offence is designed for adults, not for relationships between parents and children. For both offences, the harm requirement is the lowest known to criminal law: fear, alarm or distress. The last two concepts feature in low-level public-order offences applying in England and Wales and are not present in the equivalent Northern Ireland legislation.
6. It is not obvious that Article 8, the right to respect for private and family life, has been considered. Yet parents could be prosecuted for difficult conversations with their children. Nor is it obvious that Articles 9, 10 and 14, concerning belief, expression and discrimination respectively, have been adequately considered, particularly insofar as the Bill impinges on gender-critical thought and manifestations of belief. It raises the legally unusual prospect of gender-critical speech uttered by a parent at the dinner table being simultaneously protected for the purposes of NI equality legislation yet constituting a criminal offence. That is incoherent. The fact that this Bill cannot be reconciled with basic Convention rights gives rise to serious concerns under section 6 of the Northern Ireland Act 1998.
7. This Bill criminalises a person who “suppresses” another person’s sexual orientation or “gender identity”. At no point does it explain what suppression is or is not. We ask rhetorically whether a parent who tells a child not to contact an online “gender medic” seeking to provide cross-sex hormones is “suppressing” a gender identity; whether a therapist who counsels a child against obtaining puberty blockers on the dark web does the same; or whether a teacher who refuses a boy access to a female changing room at a school commits the relevant criminal act. We note the extensive expert opinion of Aidan O’Neill KC on this subject and his wider expertise in analysing equivalent Scottish legislation. We agree with his assessment that this is “jellyfish legislation”: impossible to grasp and with a sting in the tail.
8. This Bill features strikingly low maximum sentences. The main offences in clauses 1, 2 and 3 have maxima of 2 years. By way of comparison, the maximum for statutory fraud contrary to the 2006 Act³ is 10 years. The maximum for administering an electroshock “treatment” charged as s.18 GBH is life. It is difficult to reconcile some of the rhetoric around the Bill regarding pseudo-

³ Fraud Act 2006 <https://www.legislation.gov.uk/ukpga/2006/35/contents>

torture like practices with such a low maximum. For this reason, we question the basic drafting and true purpose of the bill.

9. The Bill differs substantially from the UK draft Bill currently subject to pre-legislative scrutiny. As the NI Bill radically impinges on family life, this is a particularly acute concern because clause 3 makes it an offence to take a person from Northern Ireland for the purpose of committing one of the two main offences in the Bill. As the criminal mechanism, “suppressing”, and the harm threshold, fear, alarm or distress, are so low, the Bill risks criminalising in Northern Ireland acts that would be lawful in the rest of the UK.
10. There is no right to jury trial contained in the Bill where a Defendant is charged with the summary variant of the offence and so liable to a sentence no longer than 12 months. This is odd where a bill clearly engages convention rights and a test of reasonableness likely to be in a pastoral/familial/therapeutic or loco parentis setting. We take the view that the exclusion of trial by peers on such a fact sensitive question is unnecessary and oppressive.

Homophobia as an ignored issue in gender medicine

11. We have consistently drawn attention to evidence suggesting that gender medicine is a modern form of gay conversion therapy. We mention this when commenting on conversion legislation precisely because draft legislation tends to entrench and promote this form of gay conversion. The UK evidence for this proposition is overwhelming. In early 2024 the Rt. Hon. Kemi Badenoch MP (then Secretary of State for Women and Equalities) said in a letter:

“The most recent reported data from GIDS in England demonstrates that older patients expressing a sexual orientation were overwhelmingly not heterosexual. 67.7% of adolescent female patients were recorded as being attracted to other females only, 21.1% were bisexual, and only 8.5% were listed as heterosexual. Among adolescent male patients, 42.3% were attracted only to other males, 38% were bisexual, and only 19.2% said they were attracted only to females.”⁴

If trans identification is naturally occurring across a population, there is no good reason for the figure of same sex attracted youth to be this high.

12. The then Secretary of State, rightly in our view, went on to draw attention to what staff at the Tavistock GIDS were saying about this matter:

⁴ Holt V, Skagerberg E, Dunsford M. Young people with features of gender dysphoria: Demographics and associated difficulties. *Clinical Child Psychology and Psychiatry*. 2016;21(1):108-118. doi: 10.1177/1359104514558431

“Dr Natasha Prescott, a former GIDS clinician reported in her exit interview from the Tavistock that ‘there is increasing concern that gender affirmative therapy, if applied unthinkingly, is reparative therapy against gay individuals, i.e. by making them straight’ and Dr Matt Bristow, a former GIDS clinician, reported to Hannah Barnes that he came to feel that GIDS was performing ‘conversion therapy for gay kids.’⁵”

“In a survey of 100 detransitioners, the experience of homophobia or difficulty accepting themselves as lesbian, gay, or bisexual was expressed by 23% of respondents as a reason for transition and subsequent detransition⁶. As German gender clinicians have noted:

It must be understood that early hormone therapy may interfere with the patient's development as a homosexual. This may not be in the interest of patients who, as a result of hormone therapy, can no longer have the decisive experiences that enable them to establish a homosexual identity.⁷”

We would add only to the then Minister’s remarks by noting that the concerns expressed by Dr Prescott and Dr Bristow were shared by the head of safeguarding at GIDS, Mrs Sonia Appleby, and were also the subject of public concerns raised by Dr David Bell.

13. While the Bill purports to have considered the issue of healthcare and includes an apparent carve-out for medical practitioners at clause 4(3), it is in fact very narrow. The broader point concerns the cohort presenting at gender services, the majority of whom are likely to be same sex attracted. While there is a medical carve-out on the face of this Bill, there is no such carve-out for parenting. As we will go on to explain, the Bill risks creating a position in which affirmative gender medicine may be practised without a realistic prospect of conviction, but parental attempts to dissuade a child from irreversible medical procedures will be prosecuted.

⁵ Time to Think: The Inside Story of the Collapse of the Tavistock’s Gender Service for Children. Hannah Barnes, Swift Press, 2023.

⁶ Littman L. Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners. Arch Sex Behav. 2021 Nov;50(8):3353-3369. doi: 10.1007/s10508-021-02163-w. Epub 2021 Oct 19. PMID: 34665380; PMCID: PMC8604821.

⁷ Korte, A, Goecker, D, Krude, H, et al, Gender Identity Disorders in Childhood and Adolescence: Currently Debated Concepts and Treatment Strategies, Dtsch Arztebl Int 2008; 105(48):834-41. <https://www.doi.org/10.3238/arztebl.2008.0834>

1 General remarks on criminal law

14. Criminal statutes follow the rule in *Pepper v Hart*⁸ which holds that a resort to explanatory memorandum or parliamentary material such as speeches may only be made where there is some serious ambiguity on the face of the Bill as drafted. We mention this point because MLAs should not fall into the trap of thinking explanatory notes or campaign material will ever be considered by a criminal court, experience has shown it generally is not, and the courts will attempt to apply laws as drafted.
15. The explanatory and financial memorandum reads as follows (emphasis added): “There is currently no legislation in Northern Ireland to specifically prohibit conversion practices, although some actions may already be captured by existing criminal offences, such as those involving physical assault or domestic abuse.” This understates the position in Northern Irish law, which provides far more severe sentences for the sort of conduct described by proponents of this legislation. For example, a victim of a conversion practice who was held against their will and assaulted would have recourse under NI law to the offences of false imprisonment, for which the maximum sentence is life imprisonment, and GBH, for which the maximum ranges from seven years to life depending on the type of GBH.

This illustrates that gay people are better protected by laws designed for everyone than by this Bill, which risks turning us into second-class victims in NI.

A schedule of NI laws illustrating the point follows:

Conduct	Existing NI law	Maximum on indictment
Rape or “corrective” sexual penetration	Sexual Offences (Northern Ireland) Order 2008, Arts. 5-6 ⁹	Life
Sexual assault	2008 Order, Art. 7 ¹⁰	10 years
Causing sexual activity without consent	2008 Order, Art. 8 ¹¹	Life if penetrative; 10 years otherwise
GBH / wounding with intent	Offences Against the Person Act 1861, s.18 ¹²	Life
Malicious wounding / GBH	OAPA 1861, s.20 (as amended in NI) ¹³	7 years

⁸ *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3; [1993] AC 593

⁹ <https://www.legislation.gov.uk/nisi/2008/1769/contents>

¹⁰ <https://www.legislation.gov.uk/nisi/2008/1769/contents>

¹¹ <https://www.legislation.gov.uk/nisi/2008/1769/contents>

¹² <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/18>

¹³ <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/20/ni>

Assault occasioning actual bodily harm	OAPA 1861, s.47 (as amended in NI) ¹⁴	7 years
Common assault	OAPA 1861, ss.42 / 47 as amended; Justice Act (NI) 2011 ¹⁵	2 years indictment / 6-12 months summary depending on route
Threats to kill	OAPA 1861, s.16 ¹⁶	10 years
Course of abusive behaviour by a personally connected person, including controlling, coercive, psychological and economic abuse	Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, s.1 ¹⁷	14 years
Child aggravation of that offence	2021 Act ¹⁸	uplift on the 14-year offence
Non-fatal strangulation	Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 ¹⁹	14 years
Harassment / putting in fear of violence	Protection from Harassment (Northern Ireland) Order 1997 ²⁰	2 years / 7 years
False imprisonment, kidnapping	common law	at large, commonly very high
Cruelty to a person under 16	Children and Young Persons Act (Northern Ireland) 1968	10 Years

16. It is notable that the controlling and coercive behaviour offence, even where aggravated by the presence of a child, specifically excludes children under 16 where the defendant has parental responsibility. This was a policy decision made when the legislation was passed, so that such cases would be treated as child-cruelty cases and prosecuted instead under section 20 of the Children and Young Persons Act (Northern Ireland) 1968. That offence has a maximum sentence of 10 years. The rationale for treating child-cruelty cases in this way was no doubt informed by detailed consideration of Article 8 and the balance between state interference and the right to respect for private and family life.

¹⁴ <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/20/ni>

¹⁵ <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/42>

¹⁶ <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/16>

¹⁷ <https://www.legislation.gov.uk/ni/2021/2/enacted>

¹⁸ <https://www.legislation.gov.uk/ni/2021/2/enacted>

¹⁹ <https://www.legislation.gov.uk/ni/2022/19>

²⁰ <https://www.legislation.gov.uk/nisi/1997/1180/contents>

17. Given the formidable array of available NI criminal offences to protect gay people, it is crucial that sponsors identify precisely what they say “the gap in the law” is. If the true gap is non-affirmative therapy or difficult discussions between families, we struggle to see how there could ever be a proper role for the criminal law and what those situations have to do with the abuse of gay people. Criminal law is not a vehicle for ideological point scoring or embedding in statute highly contested beliefs. It is too serious for that.

2 Criminal law Analysis of the Bill

18. The Bill comprises 11 clauses and creates three criminal offences: providing conversion therapy under clause 1; engaging in coercive conversion behaviour under clause 2; and removing a person from Northern Ireland for the purposes of conversion practices under clause 3. Common to all three offences are the concepts of “suppression”, “sexual orientation”, “gender identity” and “psychological harm”. It will be necessary to consider these foundational concepts before examining the trigger mechanisms for the offences.

Suppression

19. Limb 2 of the offences in clauses 1 and 2 is satisfied where the prosecution proves that a defendant “has the intent of changing or suppressing the sexual orientation or gender identity of the victim”. Clause 3(1)(a) requires a person to remove, or facilitate the removal of, a person from Northern Ireland for an offence under clause 1 or 2 and therefore similarly requires an intent to suppress. There is no definition at all of what the word “suppress” means in this Bill. Clause 7 gives three examples of what it does not mean, but the basic meaning of the term is otherwise entirely vague. That is a basic and striking omission, which means that any parent reading the Bill would be unclear as to whether their conduct was criminal. This is highly unusual in a criminal statute.
20. A criminal statute ordinarily contains a number of requirements called “elements of the offence”. To take an example, in the offence of theft, the prosecution must prove a defendant (1) dishonestly (2) appropriated (3) property (4) belonging to another (5) with intent to permanently deprive them of that property²¹. So far as intention is concerned, the prosecution must prove the relatively intuitive mental state of dishonesty and that the defendant was not simply borrowing an item, but they intended to keep it (permanent deprivation requirement).
21. The only circumstance in which the word “suppress” has historically been used in NI criminal statutes is where the prosecution alleges that a defendant has improperly suppressed a document relevant to an official purpose. There are no existing criminal

²¹ Section 1, Theft Act (Northern Ireland) 1969

offences that define the suppression of a contested identity concept such as “gender identity”.

22. Clause 7 offers little assistance on the meaning of the word “suppress” when applied to ordinary day to day situations. By clause 7 (1) (a) there is no suppression where there is no intent to direct a victim towards a particular sexual orientation or gender identity. That captures clear statements as to purpose, but it fails to grapple with the ambiguities of everyday life. A parent saying, “I do not believe in non-binary status; everyone is a man or a woman” could be said to be impliedly guiding their child to reject a “non-binary identity”. Alternatively, a parent might in fact wish to guide their child to such an understanding of themselves and therefore not fall under the exclusion in 7 (1) (a). That would potentially render the parent a criminal, despite their understanding of sex being coherent with UK Supreme Court authority on the organisation of sex categories in UK law²². It is not clear that prosecuting a parent for agreeing with our apex court would be a proper use of criminal law.
23. Clause 7 (1) (b) holds that suppression does not occur where a parent’s intent is “solely to express beliefs or opinions, without directing a victim towards a particular sexual orientation or gender identity”. This repeats the problem of 7 (1) (a) discussed above while adding a fig leaf in the form of a purported protection for the expression of beliefs or opinions. This makes little practical sense in the context of parenting. A parent saying “I do not believe in cross sex identities and I am worried about you wearing a breast binder because I want you to grow up to be a happy lesbian and accept your body and not make a lifelong medical commitment” might simultaneously be expressing a belief and properly directing their child. They may be successful or not, but where they are guided by their child’s best interests and consideration of their welfare, it is a strange proposition to think the right response is to prosecute the parent.
24. Clause 7 (1) (c) says that suppression does not occur where “the intent is to affirm a sexual orientation or gender identity which the victim considers is, or may be, their sexual orientation or gender identity”. To take the example above, a concerned parent who allows their 13-year-old daughter to wear a breast binder despite their concerns enjoys complete protection from prosecution because they have affirmed. The parent who does not and forbids it and acts on their concerns (even by discussing the matter) is prosecuted. This is a fundamental unfairness in the bill. It is tipped in favour of affirmation. That is a key objective of gender identity ideologues who wish for there to be no questioning of nascent and often fast changing adolescent identity claims. It is hard to understand this

²² See For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent) UKSC/2024/0042 <https://www.supremecourt.uk/cases/uksc-2024-0042>

tipping of the bill in favour of affirmation as anything other than the ideological misuse of criminal legislation to seriously chill parenting, therapy and loco parentis roles.

25. While a NI court grappling with the meaning of the word “suppress” could turn to clause 7 for three examples of what it is not, the fact remains that the core term is undefined. This is bad law because a parent reading this Bill has no clear idea as to what conversations they can have with their own children. That suspends a sword of Damocles over every kitchen table in Northern Ireland. Those families now face the full force of the criminal law if they do anything other than affirm identity claims, even if they think those claims are unwise or a terrible mistake. This is a full-frontal assault on basic parenting, and it is a misuse of the real history of gay pain in relation to conversion.

“Sexual Orientation”

26. By clause 6 sexual orientation is defined as a concept which “includes” (a) what the victim considers it to be and (b) what the person considers it to be”. By Clause 6 (2) sexual orientation is said to include “the victim having no sexual orientation towards other persons”. These concepts are entirely unknown to modern NI law and represent a radical and difficult to understand expansion of the category.
27. The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, reg. 2(2)²³ define sexual orientation as follows:

“(2) In these Regulations “sexual orientation” means a sexual orientation towards –

- (a) persons of the same sex;
- (b) persons of the opposite sex; or
- (c) persons of the same sex and of the opposite sex”.

This same formulation is repeated in the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, reg. 2(2)²⁴ and both provisions replicate section 12 of the Equality Act 2010.

²³ <https://www.legislation.gov.uk/nisr/2003/497/regulation/2/made>

²⁴ <https://www.legislation.gov.uk/nisr/2006/439/contents/made>

28. It is unclear why this category is left open ended in the Bill or what possible other sexual orientations the sponsor has in mind that might justify leaving the category open ended by the word “includes”. We observe that it is not good for the general coherence of law to use one easy to understand, intuitive definition of sexual orientation in equality law but to legislate for a vague and open-ended category in a criminal statute. Good law should be coherent.
29. The inclusion of a provision covering “asexuality” in clause 6(2) is difficult to reconcile with the suggestion that this Bill is principally motivated by genuine concern arising from the history of gay conversion practices. Asexuality is not recognised as a protected characteristic in Northern Ireland or wider UK law, yet the Bill proposes to enshrine the concept in criminal law. Given the low threshold of “suppression”, we genuinely question how this provision is to be implemented in practice. Would any conversation with a person about their reticence in this area, unless wholly affirmative, be deemed “suppressing”? If that is the case, we ask what it has to do with gay rights.

“Gender identity”

30. The concept of “gender identity” is a contested and dualist belief claim about a person. In UK law the case of *Forstater*²⁵ established that persons are free not to believe in this quasi-religious claim. The principles of *Forstater* were accepted as sound law in NI in *O’Gorman (Morrison) v Belfast Film Festival Limited*²⁶. The position in England, Wales, Northern Ireland is therefore that a person is free to believe in gender ideology and the existence of “gender identity” if they so wish, but they are also free not to believe in it. In this way, equality law strikes a balance between competing sides in a fiercely contested debate.
31. This Bill drives a coach and horses through the law’s impartial approach by state mandating belief in gender identity. That is reinforced by clause 7 (1) (c)’s complete protection for the position of affirming a gender identity (but not the opposite). This amounts to a criminal statute taking a side in an ideological dispute. That is particularly egregious when the settled law of the UK in *For Women Scotland* holds that sex for the purposes of the Equality Act is to be understood as biological sex, rather than gender identity. This Bill thus imports a fiercely contested identity concept and treats it as a fact to be affirmed on pain of prosecution. That is a very unusual use of the criminal law.

²⁵ <https://www.gov.uk/employment-appeal-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-ukeat-slash-0105-slash-20-slash-joj>
Maya Forstater v CGD Europe and Others: UKEAT/0105/20/JOJ

²⁶ *Sara O’Gorman (Morrison) v Belfast Film Festival Limited* CASE REFS: 83/23FET, 17/25FET, 14943/25

32. There are further difficulties with the “gender identity” concept specific to this bill that can be summarised in this way: the bill contains no definition of what a “gender identity” actually is, yet a defendant is expected to know what one is and not to suppress it. By clause 6 (1) (a), a “gender identity” is simply whatever a person or “victim” considers it to be. This is an extraordinarily wide definition, and we take the view it is wholly inadequate for a criminal statute. It is basic and trite law that a person ought to be able to read a statute and work out where the line is between ordinary discussions versus criminal conduct and prosecution.
33. A parent who does not believe in “gender identity” has no defence under the Bill and no right to do anything other than affirm a child who claims such. That is a serious incursion into basic freedom of belief and expression and a grotesque infringement of basic family life.

Psychological harm

34. Common to both the conversion therapy offence in clause 1 and the coercive behaviour offence in clause 2 is a harm threshold of “psychological harm”. This term is defined in clause 8 as including (and therefore not limited to) “fear, alarm or distress”. This is self-evidently a very low harm threshold to trigger a criminal offence.
35. We have remarked up to this point that the alarm and distress concepts are unknown to NI criminal law but that they are present in low level E&W public order offences. Any NI court looking to E&W for assistance on these words would be forced to consider a line of authorities mainly directed towards public order situations in which police officers have been sworn at²⁷. These are unlikely to be helpful in determining a harm threshold for family disputes.
36. This threshold also markedly differs from the UK draft Conversion Practices bill which requires “serious alarm or distress to the individual which has a substantial adverse effect on their usual day-to-day activities.”²⁸ It is not clear why similar conduct in different parts of the country should attract different harm thresholds or what rationale there could possibly be for pitching the harm requirement so low.
37. This has potentially very serious ramifications. Parents dealing with children who are distressed about their bodies may often, sadly, have very difficult interactions that cause alarm and distress. Many would no doubt say that raising a teenager can be fraught at times and involve plenty of situations in which both the teenager and the parent are alarmed or distressed. Distress is a normal part of the difficulties that any family may face,

²⁷ See *Southard v DPP* [2006] EWHC 3449 (Admin) where conviction upheld in the case of a defendant shouting “fuck you/fuck off” to a police officer <https://www.bailii.org/ew/cases/EWHC/Admin/2006/3449.html>

²⁸ <https://www.gov.uk/government/publications/draft-conversion-practices-bill/conversion-practices-draft-bill>

whether over gender or any number of other teenage issues. It is profoundly unclear that there is a proper role for the criminal law in such situations, and setting the threshold this low will seriously chill normal parenting.

The clause 1 offence and medical “carve out”

38. Clause 1 is directed towards conversion therapy. It requires the prosecution prove the following three limbs:
- (a) the person provides or carries out conversion therapy in relation to another person (“the victim”),
 - (b) the person has the intent of changing or suppressing the sexual orientation or gender identity of the victim, and
 - (c) the victim suffers physical or psychological harm as a consequence of the therapy
39. The term “conversion therapy” is defined in clause 4 in broad terms. It includes “(a) counselling or any form of talking therapy, (b) coaching or instruction and (c) a treatment, or purported treatment”. It will be immediately apparent that this definition of conversion therapy is much wider than the provision of therapy, and it does not require the act to take place in a medical setting. That is particularly concerning given the potential breadth of terms such as “(b) coaching or instruction”: the word “instruction” is wide enough to capture the exercise of parental authority. This creates a serious tension with the offence in clause 2 because it would be easier to prosecute a parent, and to prove that the parent instructed a child to do something, than to prove the coercive behaviour required under clause 2. We question whether clause 1 was intended principally to deal with medical situations and whether poor, overly broad drafting has unintentionally brought parents within its scope.
40. Clause 4(3) introduces a prosecution bar (hereafter “the medical carve-out”) for certain professionals when:
- (1) they are providing therapy (which is not defined)
 - (2) it is carried out by a person registered by, or subject to regulation by,

- (i) the General Medical Council,
- (ii) the Health and Care Professions Council,
- (iii) the General Pharmaceutical Council, or
- (iv) the Pharmaceutical Society of Northern Ireland

(3) The action in question is carried out in accordance with the standards and code of ethics of that regulatory body that apply at the time the therapy is carried out or provided

41. This is a narrow list of professionals exempted from criminal liability. The persons excluded from liability are likely to be doctors regulated by the GMC; pharmacists regulated by the GPhC or PSNI; and HCPC-regulated professionals, among whom the only group adjacent to talking therapy is practitioner psychologists using a protected title, such as clinical, counselling or educational psychologist, together with a small number of arts therapists.
42. The people not covered by the exclusion include the large majority of those who practise as “counsellors” or “psychotherapists” in Northern Ireland, such as members of BACP, UKCP, NCPS, ACC and similar voluntary registers; those titles are not statutorily protected in the UK, and those bodies are not listed. Nurses, social workers and occupational therapists are also excluded unless they happen to be on one of the four listed registers. Nor are pastoral counsellors, clergy, life coaches, unregistered therapists or anyone offering “coaching or instruction” under clause 4(1)(b) covered.
43. The effect of this very narrow carve-out in the therapy sector will be profound. To avoid prosecution or the risk of a report to the PSNI, a therapist engaging in non-affirmative, Cass Review-approved exploratory therapy is faced with one of two realistic choices. They can refuse to see children and teenagers presenting with gender distress and avoid the risk of prosecution, which is no service to such young people, or they can completely reverse their approach and affirm those children to avoid criminal liability. This is a very unusual use of the criminal law, and we consider it revealing of the true objectives of this legislation.

The clause 2 offence concerning coercive behaviour

44. Under clause 2, it is an offence for a person to engage in coercive behaviour in relation to another person where the person acts with the requisite intent and causes the relevant

harm. Coercive behaviour must occur on two or more occasions under clause 5(3)(a) and is defined as follows:

- (a) behaviour directed at the victim that is violent,
- (b) behaviour directed at the victim that is threatening,
- (c) controlling, regulating or monitoring the victim's day-to-day activities,
- (d) depriving or restricting the victim's freedom of action, or
- (e) making the victim feel frightened, humiliated, degraded, punished or intimidated.

By clause 5 (2) Coercive behaviour does not include failure to do a thing.

- 45. In respect of behaviour that is violent or threatening under clause 5(3)(a)–(b), we ask why the prosecution would ever charge a conversion offence, with its two-year maximum sentence, rather than a conventional offence of violence or an offence dealing with threats, such as threats to kill. Gay men and lesbians should not become second-class victims. There is no good reason to charge conduct qualifying as violent or threatening under this Bill as a conversion offence rather than under the available statutes.
- 46. Clause 5(3)(c), “controlling, regulating or monitoring the victim’s day-to-day activities”, is directly imported from the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021, which introduced the domestic abuse offence. This is also true of clause 5(3)(d), “depriving or restricting the victim’s freedom of action”, and clause 5(3)(e), “making the victim feel frightened, humiliated, degraded, punished or intimidated”. The domestic abuse offence was designed for relationships between adults in which one adult was behaving unacceptably. It was not designed for parent-child relationships. The Domestic Abuse and Civil Proceedings Act specifically excludes certain parent-child relationships under section 11. The reason for that exclusion is that different considerations apply to relationships between parents and children than to relationships between adults. It is a normal function of parenting—and, we would go so far as to say, of good parenting—that a parent must sometimes control, regulate or monitor a child’s day-to-day activities. This is inherent in safeguarding and keeping a watchful eye over those one loves.

47. It is therefore wholly inappropriate for the Bill to take a provision designed to address abuse between adults and transplant it into legislation that would affect parenting. Parents do sometimes restrict a child's freedom of action, and they do sometimes punish their children. As for conduct that frightens, humiliates, degrades or intimidates a child, we suggest that such matters are better dealt with in precisely the way the 2021 Act addresses them: as child-protection or child-cruelty matters under the 1968 legislation.
48. To give a worked example of how inappropriate these terms are when applied to children experiencing distress in relation to gender, consider a parent who is worried that their teenage daughter is spending too long on the internet with people whom the parent considers unsuitable. That parent is now at risk of prosecution. If the parent suspends the child's internet access, the parent has potentially fallen foul of clause 5(3)(c) by regulating the child's day-to-day activities. If the parent checks which chat groups the child has entered, the parent similarly risks falling foul of the "monitoring" provision in the same subsection. If the parent does both things, there may be a course of conduct involving two occasions; if the parent acted with the intention that the child reconsider a new identity and the conduct caused distress, the offence may be complete. The state has thus assumed the role of parent. The parent's only remaining freedom is to acquiesce and affirm, which is no real freedom to parent properly at all.

The "reasonableness" defence

49. Clauses 1(2), 2(2) and 3(2) contain similar, but not identical, statutory defences of reasonableness. In the case of clause 1(2), the therapy must be reasonable. In clause 2(2), it is the coercive behaviour that must be reasonable. In clause 3(2), the person's actions must be reasonable. All three defences place reverse burdens on a defendant. Ordinarily, in criminal law, the prosecution must prove its case so that the jury is sure, while the defendant need not prove anything; it is enough for the defendant to raise a reasonable doubt. Under the Bill, however, a defendant relying on any of the defences bears the burden of proving that the therapy, coercive behaviour or actions were reasonable. Criminal courts generally treat a reverse burden as discharged where a defendant has satisfied the civil standard, though the Bill is silent on this point.
50. Article 6(2) of the European Convention (presumption of innocence) is *prima facie* engaged whenever the court encounters a reverse burden²⁹. The reason for this is that a

²⁹ R v Lambert [2001] UKHL 37; [2002] 2 AC 545 <https://www.bailii.org/uk/cases/UKHL/2001/37.html> see also Sheldrake v DPP; Attorney General's Reference (No 4 of 2002) [2004] UKHL 43; [2005] 1 AC 264 <https://www.bailii.org/uk/cases/UKHL/2004/43.html>

Defendant might narrowly fail to satisfy the civil standard of proof by only making a jury 49% sure the conduct was reasonable. In these circumstances a therapist could be convicted even though a reasonable doubt as to the reasonableness of the therapy remained. This is a very heavy burden to put on defendants, and it assumes that a non-affirming therapist, parent, teacher or person in loco parentis is prosecuted.

51. Beyond the reverse burden, it is very difficult to see how it could possibly be right or within the general competence of the criminal division to adjudicate on the reasonableness of parenting or the proper regulation of therapists. Those matters are respectively the provinces of the family court system in Northern Ireland and the equivalent professional regulatory bodies and tribunals. It is also very difficult to reconcile the prospect of a parent pleading the reasonableness of their decisions with basic article 8 rights regarding respect for private and family life.

3 Human rights analysis

52. This Bill is not compliant with Article 6, the right to a fair trial. It places heavy and draconian reverse burdens on defendants, and it places them before a tribunal that cannot properly be said to be impartial in respect of the debate between sex realists and gender-identity ideology. It assumes contested identity concepts to be facts, and the scheme of the legislation is geared towards affirmation and away from even well-intentioned challenges to such identities. This transforms the court from a tribunal evaluating a criminal cause into an adjudicator of ideological compliance.
53. This Bill is not compliant with Article 7, which essentially requires that a person be able to read a criminal statute and know whether their acts are criminal. A parent reading this Bill has no idea what suppression is, only what it is not. They have no way of knowing whether their conduct is reasonable and will satisfy the statutory defence. They have no way of knowing what the outer limits of sexual orientation or “gender identity” actually are. They simply cannot read this statute, even with the help of legal advice, and know definitively where the line is.
54. This Bill reduces Article 8 (the right to respect for family life) to a right in name only. The bill explicitly regulates how parents may raise their children and it proscribes that they must affirm or risk prosecution. It invokes adult concepts around control which are wholly inappropriate to child welfare, and it reframes ordinary parental safeguarding as abuse. This bill is a grotesque breach of Article 8 for all of these reasons, and in combination with Article 7 it raises the appalling prospect that a parent cannot know what the criminal law is in their own house.

- 55. This Bill treats Articles 9 (belief) and 10 (expression) with contempt. It provides lip service to free expression by permitting people to express opinions in clause 7 but imposes swinging limits on those opinions. A parent is not allowed to have the opinion that their child is making a mistake, but they may express the opinion that the child is right. This is not freedom of belief or expression; it is “freedom” only to speak as the Bill requires.
- 56. This bill engages Article 14 (freedom from discrimination) because it treats gender critical points of view as suspect and worthy of prosecution, but affirmation as beyond the scope of prosecution. This is a basic and profound unfairness in the Bill and it suggests the purpose is to tip the balance in an ongoing public debate around sex and gender.

4 Impact on other branches of law (civil/family/public/employment)

- 57. As we have written extensively in respect of the equivalent UK draft Bill, criminal legislation does not exist in isolation, and the introduction of legislation of this kind will have obvious and undesirable knock-on effects. Criminal allegations are easy to make and involve little cost compared with civil litigation. Given that this area of policy and public debate is well known for so-called “lawfare” and for political battles played out through the courts, conversion legislation gives serious leverage to vexatious actors in non-criminal disputes.
- 58. If this bill were to pass, any general civil claim involving discrimination in this field, any employment dispute invoking the equivalent protected characteristics and any financial remedies in family/private children act work would take place in the knowledge that a potential criminal allegation could be made at any time for tactical litigation advantage. Entrenched parties are incentivised to make vexatious claims. The harm thresholds and offence triggers are so low they may succeed. They might do so where civil law remedies would not be available because of the coherence of the protected characteristics in civil as compared to the open ended poorly defined concepts this bill.
- 59. Family law is a particularly grave concern. Local authorities have duties to consider allegations of abuse. By turning difficult but not unusual family conversations into potential criminal offences this Bill threatens to draw families into the family court system who should never be there.

5 Conclusion

60. The wider cause of gay rights is not well served by draconian legislation that, in reality, has nothing to do with the historical torture of gay men or the rape of lesbians, but everything to do with a modern debate about sex and gender. It is not in the long-term interests of the gay rights movement to support poorly drafted and severe legislation that tells parents what they may and may not do or tells people more generally what they may and may not say. This Bill is not about gay rights; it is about putting gender ideology into law.
61. Nor is it a good use of the considerable goodwill enjoyed by the gay rights movement to squander that goodwill by pushing for poorly drafted, overly broad legislation and by telling those who reasonably question it that they are homophobic or in favour of abuse. We stand against this weaponisation of identity at the expense of rational debate. We are gay men, and we consider this legislation to be anti-gay. It prevents a concerned parent from helping a homosexual teenager who is experiencing distress around gender and trying to reconcile the teenager to accepting themselves. The legislation claims to oppose gay conversion; by tilting the balance towards state-mandated affirmation, however, it is in reality homophobic.
62. The NI Assembly should reject this bill. It cannot be reconciled with any number of important human rights and more fundamentally, it places the shadow of the criminal law over every kitchen table in Northern Ireland. That is not a good or proper use of the criminal law, and it is not in any way a proper way to honour the genuine painful history of gay conversion in NI or elsewhere.

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