

THE CHRISTIAN INSTITUTE

re

**the Conversion Practices
(Criminalisation) Bill which was
introduced before the Northern Ireland
Assembly by Eóin Tennyson MLA on 30
June 2026.**

FURTHER ADVICE

September 2026

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FURTHER ADVICE

1. INTRODUCTION

- 1.1 I refer to the E-mails of 14 and 15 July and 3 September 2026 from my instructing solicitor, Sam Webster of The Christian Institute.
- 1.2 I am asked to review and, if so advised, revise and update the advice previously given by me to The Christian Institute in March 2025 in relation to what was then a proposed individual Member's Bill before the Northern Ireland Assembly being promoted by Eóin Tennyson MLA (Alliance Party) in relation to the outlawing in Northern Ireland of "Conversion Practices" related to individuals' sexual orientation and separately to their "gender identity".

2. DEVELOPMENTS IN THE UK SINCE MY MARCH 2025 ADVICE

Northern Ireland

- 2.1 On 30 June 2026 the Conversion Practices (Criminalisation) Bill was introduced before the Northern Ireland Assembly by Eóin Tennyson MLA. The NI Conversion Practices (Criminalisation) Bill proposes a legal framework to prohibit and criminalise in Northern Ireland "conversion practices" which are aimed at "changing or suppressing" an individual's "sexual orientation or gender identity", including through "conversion therapy", "coercive behaviour", or removing a person from Northern Ireland for such purposes.

2.2 At the time of writing, this NI Bill was awaiting Second Stage consideration by the Northern Ireland Assembly. Should the NI Conversion Practices (Criminalisation) Bill pass Second Stage, it will be referred to the Committee for Communities for scrutiny during Committee Stage.

2.3 At its meeting on 2 July 2026, the Committee for Communities agreed to launch its call for evidence. The Committee is seeking views from stakeholders on the objectives, proposals and potential consequences of the NI Conversion Practices (Criminalisation) Bill and welcomes the public's views and comments on its content. The call for views takes the form of an online survey, hosted on the NI Assembly's Citizen Space website. The Committee states that the public's views will help to inform the Committee's consideration of the NI Conversion Practices (Criminalisation) Bill and any recommendations it may suggest as it moves to the next stage of the legislative process. The closing date for completing the survey is 1 October 2026.

England and Wales

2.4 Separately from developments in Northern Ireland, on 25 June 2026 (during the premiership of Sir Keir Starmer) the UK Government published what it calls a "draft bill" which it was "sharing" with the Westminster Parliament to undergo "pre-legislative scrutiny." This draft bill sets out measures which would:

- (1) prohibit the carrying out of criminal conversion practices on individuals
- (2) create an offence of encouraging or assisting conversion practices against a UK national/resident abroad
- (3) make provision for conversion practice protection orders – civil orders which can be used to pre-emptively protect individuals from these practices

2.5 On 30 June 2026 the UK Government also published a "draft final stage impact assessment" in relation to this draft Bill. And on 27 August 2026 the UK Government published its "draft equality impact assessment" of this draft Bill.

2.6 This draft Westminster Bill is intended to apply only to England and Wales. In its Clause 1(2) it defines a "a conversion practice" as meaning "any conduct carried out by a person towards an individual with the intention of—

- (a) causing the individual—

- (i) to have or not to have,
- (ii) to believe that they have or do not have, a sexual orientation or a particular sexual orientation; or
- (b) causing the individual—
 - (i) to have or not to have,
 - (ii) to believe that they have or do not have, a transgender identity or a particular transgender identity.”

2.7 The Explanatory Notes published by the UK Government which relate to the Conversion Practices Bill as published in draft on 25 June 2026 (Bill CP 1604) give the following gloss:

“28. The definition applies where the person carrying out the conversion practice had a particular outcome in mind, for example, where the person intended to cause an individual to have or not have a particular sexual orientation.

It also applies where the person did not have a particular outcome in mind. That means it applies where, for example, an individual identifies as a lesbian and a person intended to ensure they did not identify that way, although they did not intend to make them believe they had another *specific* sexual orientation such as heterosexual or bisexual.

29. The definition also includes conduct that was intended to make an individual *believe* they have or do not have a sexual orientation or transgender identity, even if the person did not intend to cause the individual to in actual fact have or not have a sexual orientation or transgender identity.

This also means that it does not matter whether the person carrying out the conversion practice believed their act would in fact cause a person to have or not have (or believe they have or do not have) a sexual orientation or transgender identity.

It also does not matter if the person carrying out the conversion practice is mistaken as to an individual’s actual sexual orientation or transgender identity.

30. The reference to causing an individual to have or *not* have a sexual orientation means that these provisions also include asexual people.

A “sexual orientation” for the purposes of the draft Bill means those who are attracted to the same sex, the opposite sex or both sexes. Therefore causing someone to be or not to be attracted to the same sex, the opposite sex or both sexes, has the effect of bringing asexual people within the scope of the draft Bill, if they are subjected to conduct aimed at causing them to be, or causing them to believe they are, attracted to persons of the same sex, the opposite sex or both sexes.”

2.8 Thus “sexual orientation” for the purposes of this draft Bill encompasses not only sexual orientation within the current definition of the Equality Act 2010 (attracted to opposite sex, same sex or to both sexes) but extends also to “asexual people”, that is those who say

that they do not have (the capacity for) any form of sexual attraction to other people. In its draft Equality Impact Assessment for this Bill the UK Government gives the following further explanation for this approach:

“As the Equality Act defines sexual orientation as an orientation toward persons of the same, opposite, or both sexes, it is our assessment that those who are *pansexual* (whose sexual orientation is not defined by binary sex alone) would only enjoy partial protection under said definition.

As such wording has been included in the draft bill that enables those without a sexual orientation to be included under the scope of the offence without changing the definition of sexual orientation in the Equality Act.

The draft bill is also framed in terms that refer to practices that cause a person ‘to have or not to have’ a sexual orientation.

As a ‘sexual orientation’ for these purposes means being attracted to the same sex, the opposite sex or both sexes, this framing extends to protection to those who are not attracted to the same sex, the opposite sex or both sex, meaning to asexual people. Our evidence base makes clear that *asexual people experience conversion practices at a higher rate than gay, lesbian and bisexual people. ...*

Using the existing legislative definition of sexual orientation (Equality Act 2010), and implementing symmetrical drafting will ensure that protections apply to LGB and asexual individuals *as well as heterosexuals*. [T]he symmetrical nature of the draft bill ... means that everyone benefits from equal protection regardless of their sexual orientation.”

2.9 The term “transgender identity” under this draft Bill reference how that term is defined under Section 66(6)(e) the Sentencing Act 2020. This states that

“references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”

This reference to undergoing or having undergone “a process or part of a process of gender reassignment” is alluding to Section 7 of the Equality Act 2010 which provides the following definition of the protected characteristic of gender reassignment:

“7 Gender reassignment

(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

(3) In relation to the protected characteristic of gender reassignment—

(a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;

(b) a reference to persons who share a protected characteristic is a reference to transsexual persons.”

2.10 The draft Westminster Bill goes further than the Equality Act 2010 protections of those claiming the protected characteristic of “gender reassignment” by containing wording intended to ensure that if its provisions came into law, it would also provide protections against “conversion practices” “for those who identify as neither male or female, or not solely male or female”. And it will also protect against “conversion practices” those who say that they are *not* transgender. In its draft Equality Impact Assessment for this Bill the UK Government gives the following explanation:

“The symmetrical nature of the legislation ensures that everyone, regardless of their sexual orientation, sex or transgender identity, will be protected from conversion practices. The aim of the ban is to protect everyone from the abusive practices and prevent others from changing a person’s innate identity.

These symmetrical protections may help foster improved relations between: those who are concerned with protecting sex-based rights and/or who may be concerned about *conversion practices that are targeted at cisgender/non-transgender people or individuals who may have reversed their gender identity transition ...*”

Scotland

2.11 Meanwhile in Scotland, in January 2024 the Scottish Government set out proposals for legislation by the Scottish Parliament “to ban the provision or promotion of LGBT+ conversion therapy in Scotland”.

2.12 The Scottish Government then held a public consultation into its legislative proposals. This consultation was open between January and April 2024. It received over 5,800 responses. The Scottish Government published the consultation analysis report in October 2025, prefaced by the following trigger warning:

“While we have tried to publish all responses in full, we have moderated responses to remove vulgar and defamatory language and to safeguard personal data. However, to maintain the integrity of responses, some contain language and opinions which may be considered offensive or discriminatory. Reader discretion is advised.”

2.13 At the time of writing there is no post-consultation Scottish draft Bill nor any proposal from the Scottish Government for legislation from the Scottish Parliament. The Scottish Government’s stated position in its Programme for Government 2026-2031 (published on 1 September 2026) is that:

“Starting now and across 2026-27, we will: ... continue our work to end conversion practices in Scotland in partnership with the Welsh and UK Governments, strengthening our collective efforts to end these harmful practices and protect LGBTQI+ people from the lasting harms they cause.

Should the UK Government fail to deliver we will not hesitate to bring forward Scottish legislation.”

2.14 It is not at all clear what is meant by this reference to the Scottish Government’s on-going “collective efforts” in “partnership with the Welsh and UK Governments to end these harmful practices and protect LGBTQI+ people from the lasting harms they cause”. Referencing the possibility of the UK Government “fail[ing] to deliver” being the trigger before the Scottish Government might bring forward any Scottish legislation is again somewhat surprising. These claims are being made at a time when the UK Government published proposals for new legislation from the Westminster Parliament that would extend to England and Wales only and *not* to Scotland or to Northern Ireland (on the basis, presumably from the UK Government’s respect for the devolution settlement).

2.15 Why the Scottish Government would wish the Westminster Parliament to ignore or countermand the devolution settlement’s distribution of powers on this issue and not to legislate for Scotland within an area in which the Scottish Parliament claims legislative competence is also left unexplained.

2.16 In any event what can be taken from this is that, following its consultation on its earlier draft Bill, the Scottish Government is no longer currently seeking to have the Scottish Parliament enact legislation to outlaw conversion practices in Scotland.

3. THE MEMBER’S BILL TO OUTLAW CONVERSION PRACTICES IN NI

3.1 The NI Conversion Practices (Criminalisation) Bill as introduced is termed the “Conversion Practices Criminalisation (NI) Bill”. Its avowed intent is simply to “criminalise conversion practices”.

3.2 Importantly for the statutory offences under this proposed legislation to be established in court it will not be necessary to show that the perpetrator had any *intention* to cause any form of harm to the victim (or to be reckless as to whether harm would occur).

3.3 And indeed, even if the person charged with a statutory offence positively proves that they had no intention to cause harm of any sort and were instead acting from wholly benevolent motives of seeking to help the individual whom they had counselled in relation to issues around their claimed sexual orientation and/or gender identity they can still be found guilty of an offence under this proposed legislation.

Sexual orientation/gender identity defined *both* by self-ID *and* by the eye of the (even mistaken) beholder

3.4 Clause 6(1) of the NI Conversion Practices (Criminalisation) Bill provides that a reference to an individual's sexual orientation or gender identity *includes*:

- what that individual *considers it to be*, and
- what the person seeking to change or suppress that other's sexual orientation or gender identity *considers it to be*.

3.5 For the purposes of this proposed legislation an individual may have a particular "sexual orientation" or "gender identity" by reason of that individual's own self-identification or assertion.

3.6 But the same individual may have – according to this legislation – a different sexual orientation or gender identity from their own self-ID, determined instead by another's ascription or assumption about the gender identity or sexual orientation of that individual.

3.7 What this means – and presumably is intended by the drafter of the legislation – is that a person will be found to be committing an offence under this Act (if it comes into force) if they seek to "direct" another individual towards heterosexuality on the mistaken assumption that that individual is gay; or if they seek to have an individual disavow a transgender identity, which that individual does not in fact claim for themselves.

Criminalising attempts even at the impossible

3.8 What is being criminalised is any action which the perpetrator intends will change or suppress another sexual orientation or gender identity even if such attempt is unsuccessful and even, indeed, if it is regarded as being impossible.

3.9 That this is the intent of the proposed legislation is made clear beyond peradventure by the provisions of its Clause 7(2) which specifies that:

"(2) For the purposes of determining whether there is an intent to change or suppress sexual orientation or gender identity, it is immaterial whether the conversion therapy or coercive behaviour changes, suppresses, or is *capable of changing* or suppressing, the victim's sexual orientation or gender identity."

3.10 Criminal conversion practices under this proposed legislation can therefore be carried out even by those who genuinely believe that the relevant change in another sexual orientation or gender identity is impossible (even if desirable) but who are content,

instead, to encourage that for the other's claimed sexual orientation or gender identity not to be acted upon (and instead suppressed).

Broadening definition of sexual orientation to encompass “asexuals”

3.11 Clause 6(2) of the NI Conversion Practices (Criminalisation) Bill specifies that “a victim's sexual orientation includes the victim having no sexual orientation towards other persons”.

3.12 The NI Conversion Practices (Criminalisation) Bill's definition of “sexual orientation” to encompass those who claim to be “asexual” therefore goes beyond the definition employed heretofore in Northern Ireland. Regulation 2(2) in both the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 and Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 provide that “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

3.13 The approach taken in the 2003 and 2006 NI Regulations is consistent with the definition used in the Equality Act 2010 (which applies in England, Scotland and Wales) and which in Section 12(1) provides that:

- (1) Sexual orientation means a person's sexual orientation towards—
 - (a) persons of the same sex,
 - (b) persons of the opposite sex, or
 - (c) persons of either sex.

No definition in the NI Conversion Practices (Criminalisation) Bill of “gender identity”

3.14 More startlingly, the NI Conversion Practices (Criminalisation) Bill itself does *not* give *any* definition of what is said constitute under this proposed legislation “gender identity” which, if passed into law, will make a criminal offence to “change or suppress”.

3.15 The term “gender identity” is not one which is currently used within equality legislation applicable within Northern Ireland.¹

¹ Paragraph 7B of the Schedule to the Census Act (Northern Ireland) 1969 (as amended) lists “gender identity” among the matters in respect of which particulars may be required in census in Northern

3.16 Instead the Sex Discrimination (Northern Ireland) Order 1976 - which largely parallels the provisions of the Sex Discrimination Act 1975 which then applied in England, Wales and Scotland - was amended in 1999 by the Sex Discrimination (Gender Reassignment) (Northern Ireland) Order 1999 (SR 1999/311). This 1999 Order introduced new Regulation 4A and 4B into the 1976 Order dealing respectively with direct and indirect discrimination “on the grounds of gender *reassignment*”. “Gender reassignment” was and is defined in Regulation 2(2) of the amended 1976 Order as “a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process.”

3.17 It may be noted that Section 7(1) of the Equality Act 2010 (“EA 2010”) – an Act which applies in England, Wales and Scotland, but *not* in Northern Ireland – provides that “a person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex”. This definition removes the previous reference in the Sex Discrimination Act 1975 to the need for any such gender reassignment process to be done under medical supervision (which is retained in the NI legislation). This means the definition of what it is to have the protected characteristic of “gender reassignment” now differs as between Northern Ireland and the rest of the United Kingdom. And Section 7(2) EA 2010 specifies that a person who has the protected characteristic of gender reassignment is to be referred to as “a transsexual person”. There is no corresponding provision in the applicable NI regulations.

3.18 There is, in fact, no UK or devolved legislation or regulation in which the term “gender identity” is defined. The nearest that one can find is that certain devolved Scottish legislation has used the term “transgender identity”.

3.19 For example, the (since repealed) Offences (Aggravation by Prejudice) (Scotland) Act 2009 - which provides for the prejudicial context (i.e. either the motivation or the demonstration of malice or ill will) of an offence to be taken into consideration when an offender is sentenced, when that prejudicial context has been one of hatred towards persons within certain groups – lists, among these groups, those individuals said to have a “transgender identity”. Section 2(8) of the 2009 Scottish Act provided as follows:

Ireland, but provides no definition of this concept. Section 7(3) of the 1969 NI Act (as amended) removes any penalty for refusing to answer any NI Census question as regards one’s gender identity or sexual orientation or religious profession.

“reference to transgender identity is reference to—

- (a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004, changed gender, or
- (b) any other gender identity that is not standard male or female gender identity.”

3.20 The Explanatory Notes to the 2009 devolved Scottish Act expanded on this further as follows:

“Subsection 2(8) provides the definition of “transgender identity” for the Act. The definition gives four specific examples:

- transvestism (often referred to as ‘cross-dressing’);
- transsexualism;
- intersexuality; and
- where a person has changed gender in terms of the Gender Recognition Act 2004.

However, the definition also extends expressly to cover other persons under the generality of broad reference to non-standard gender identity. For example, those who are androgynous, of a non-binary gender or who otherwise exhibit a characteristic, behaviour or appearance which does not conform with conventional understandings of gender identity.”

3.21 This provision of the 2009 devolved Scottish Act was repealed with effect from 1 April 2024. It was replaced by the provisions of the Hate Crime and Public Order (Scotland) Act 2021. This 2021 devolved Scottish statute also make provision about offences relating to stirring up hatred against a group of persons defined by, among other listed characteristics, their “transgender identity”. And this concept of “transgender identity” is further explained in subsections 11(7) and 11(8) of the 2021 Act of the Scottish Parliament as follows:

“(7) A person is a member of a group defined by reference to transgender identity if the person is—

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

and references to transgender identity are to be construed accordingly.

(8) A person is a member of a group defined by reference to variations in sex characteristics if the person is born with physical and biological sex characteristics which, taken as a whole, are neither—

- (a) those typically associated with males, nor
- (b) those typically associated with females,

and references to variations in sex characteristics are to be construed accordingly.”

3.22 Again, the Explanatory Notes to this 2021 Scottish Act seek to give further explanation to the terminology used in this Act in this regard, noting

“72. Section 11(7) defines what is meant by ‘transgender identity’. This definition does not only include people with a Gender Recognition Certificate or who have undergone, are undergoing, (or propose to undergo) medical or surgical interventions, *but includes people whose gender identities are different from their sex at birth*. This includes those who identify as male, but were registered as female at birth, those who identify as female but were registered as male at birth, non-binary people and cross-dressing people.

73. Section 11(8) defines what is meant by ‘variations in sex characteristics’. The existing definition of ‘transgender identity’ in section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 includes ‘intersexuality’ (section 2 is repealed by section 18 and paragraph 5 of schedule 2).

It is now recognised that intersexuality (or a person being born with physical or biological variations in sex characteristics) is separate to a person's transgender identity.

The definition of ‘variations in sex characteristics’ includes people that are born with characteristics not typically associated with males or females. There is a variety of terminology used with reference to variations of sex characteristics and intersex status. For example, some people prefer to use the term ‘differences in sex development’ and some prefer to simply describe their specific variation.”

3.23 Alas, the devolved Scottish legislation gives no further definition or guidance on what a non-binary person might be; or what it might mean to “identify as male” having been “registered as female at birth”; or to “identify as female” having been “registered as male at birth”.

3.24 But what the devolved Scottish legislation does at least illustrate is that the concept of “(trans)gender identity” is not self-evident, and required further definition. For example, does having a “transgender identity” encompass a person who “cross-dresses”? If so, does that include occasional transvestites (whether such transvestism is done for fetishistic reasons or otherwise), and/or where no claim is made of a mismatch or disjunction between the cross-dresser’s sex and their asserted “gender identity”? Does having a “transgender identity” include within its scope professional “drag queens” (or, indeed, “drag kings”) who cross-dress, in a self-conscious parody of femininity or masculinity, for the purposes of public entertainment, whether on the stage or elsewhere?

3.25 And what the devolved Scottish legislation also tells us is that the meaning of “transgender identity” is not one which is stable over time. Between 2009 and 2021, according to the Scottish Government having a “transgender identity” included those born with physical or biological variations in sex characteristics. Now, however, it appears that the Scottish government considers that the concept of “being intersex” is quite separate to

the issue of whether a person claims to have a “transgender identity”² and quite different again from claiming to be non-binary³ or to be non-gendered.⁴ A research paper from

² See e.g. *Semenya v. Switzerland* [2023] ECtHR 10934/21 (Third Section, 11 July 2023) at paras 54, 196-199:

“54. ... [T]he applicant noted that the emphasis on legal sex was to adopt the language used in respect of transgender athletes, whose situation was fundamentally different from hers, as she had already stated. She argued that the emphasis should be placed on her actual sex, that is, female, which was an immutable characteristic which had never changed and would never change.

...

Comparison with the situation of transgender athletes

196. Lastly, the Court would refer to another aspect of its Article 14 ECHR caselaw according to which the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

197. In the present case the applicant submitted that the respondent State and World Athletics had erred in comparing her situation with that of transgender athletes, since the weighing-up of interests in those two situations the Court notes that the content of the World Athletics regulations pertaining to female transgender and intersex athletes was essentially the same at the relevant time (see paragraphs 59 et seq. above).

198. It is not clear to the Court why the applicant and transgender athletes who have undergone a male-to-female transition were treated equally. Without wishing to prejudge cases that could be brought before it, the Court simply notes at this juncture that, in the case of female transgender athletes, the advantage they possess stems from the inequality inherent in their having been born male (see Matthieu Perruchoud, op. cit., p. 225). The advantage they have arises from their initial biological make-up, and moreover, the treatment they are asked to undergo in order to decrease their testosterone level is simply an adjustment of the treatment they are already undergoing (*ibid.*). Moreover, in a decision which took effect on 31 March 2023, World Athletics put an end to the equal treatment of transgender athletes and those athletes coming under the scope of the DSD Regulations (see paragraphs 40 and 67 above).

199. The Court considers that the Federal Supreme Court, even in the context of its limited examination, should have addressed this lack of differentiation.”

And see in *Semenya v. Switzerland* [2025] ECtHR 10934/21 (Grand Chamber, 10 July 2025) partly dissenting joint opinion of judges Bošnjak, Zünd, Šimáčková and Derenčinović at para 13:

“13. We welcome the fact that, under Article 6 ECHR, the Grand Chamber took an approach in the present judgment which made it possible to identify certain shortcomings in the Federal Supreme Court’s judgment. Recognising jurisdiction under Article 8 ECHR and Article 14 ECHR would, however, have enabled it to draw attention to, first, the interferences with the applicant’s private life and, secondly, the confusion made by the respondent Government and World Athletics in comparing the applicant’s situation with that of transgender athletes. As the Chamber rightly pointed out, the advantage enjoyed by transgender athletes arises from their initial male biological make-up, and the treatment imposed on them by the DSD Regulations in order to decrease their testosterone level corresponds to treatment that they undergo voluntarily, whereas the applicant was forced to follow medically unnecessary treatment against her will (see the Chamber judgment, §§ 196-99).”

³ *R (Castellucci) v Gender Recognition Panel* [2025] EWCA Civ 167 [2025] KB 577 per Singh LJ at §§ 48-50:

“48. ... [T]he concept of ‘gender’ in the Gender Recognition Act 2004, when referred to in the context of the domestic law route, is confined to two genders. Mr Buttler submits that, nevertheless, when used in the context of the foreign law route, the concept of ‘gender’ includes the possibility of a non-binary status. If Mr Buttler were correct, the effect would be that, silently and by a sidewind, Parliament introduced what would otherwise be a fundamental change to

2015 by the Council of Europe Commissioner for Human Rights “*Human rights and intersex people*” makes the following observations in that regard:

“1.1. Understanding intersex people

the law. It could easily have done so expressly and, in my view, one would have expected it to do so, especially given the sensitive and potentially controversial nature of that change: see the evidence of Miss Thompson, which I have summarised above.

49 That is not to say that Parliament could not introduce the concept of non-binary gender into the foreign law route or even the domestic law route, no doubt after appropriate public consultation and consideration of advice from authoritative bodies such as the Law Commission. That is not, however, what Parliament has done in the Gender Recognition Act 2004. And it has not done so even in the case of foreign countries or territories under whose law such a non-binary concept is recognised.”

⁴ *R (Elan-Cane) v Home Secretary* [2021] UKSC 56 [2023] AC 559 per Lord Reed at §§ 52-54, 61-62: “52. ... [T]here is no legislation in the United Kingdom which recognises a non-gendered category of individuals. On the contrary, legislation across the statute book assumes that all individuals can be categorised as belonging to one of two sexes or genders (terms which have been used interchangeably). Some rights differ according to whether a person is a man or a woman: for example, rights of succession to hereditary titles. There are criminal offences that can only be committed against persons of a particular gender: for example, female genital mutilation. There is a raft of legislation which assumes that only a woman can give birth to, or be the mother of, a child, including legislation relating to maternity rights and benefits, health provision and fertility treatment, and nationality. The legislation governing the registration of births requires the sex of children to be recorded. Legislation relating to marriage and civil partnership (including legislation permitting same sex marriages) assumes that everyone is either a man or a woman. The Gender Recognition Act 2004 enacted following the judgment of the European Court of Human Rights Grand Chamber in *Goodwin v United Kingdom* (2002) 35 EHRR 18 likewise assumes that all individuals belong to one of two genders, albeit not necessarily the gender recorded at birth. Equality legislation protects people from discrimination if it arises from their being a man or a woman.

53 A binary approach to gender also forms the basis of the provision of a wide variety of public services. The prison estate, for example, is divided into male and female prisons. Hospitals have wards where patients can only be of a single sex. Local authorities may fund rape crisis centres or domestic abuse refuges which offer their services only to women. Many schools only admit pupils of a particular sex. Much of this is underpinned by, or permitted by, legislation.

54 Against this background, it is apparent that the questions whether other gendered categories should be recognised beyond male and female, including a non-gendered category, and if so, on what basis such recognition should be given, raise complex issues with wide implications.

...
61. [T]he question in this case raises sensitive moral and ethical issues, especially in so far as it impinges on the broader question of gender determination on the basis of an individual’s feelings or choice, regardless of biological sex and physiology, and unconfined by the categories of male and female.

62 Drawing these various considerations together, the courts below were right to conclude that the considerations relating to the appellant’s interest in being issued with an ‘X’ passport were outweighed by the considerations relating to the public interest put forward by the Secretary of State. In that regard, the importance of a coherent approach across government to the question whether, and if so in what circumstances and on what basis, any gender categories beyond male and female should be recognised, is of particular importance. In addition, it is clear that the matter is one in relation to which the member states should be permitted a wide margin of appreciation, having regard to the absence of any consensus within the member states, the complexity and sensitivity of the issue, and the need for a balance to be struck between competing private and public interests.”

It is important to note the distinction between intersex and trans people.

Intersex individuals are persons who cannot be classified according to the medical norms of so-called male and female bodies with regard to their chromosomal, gonadal or anatomical sex. The latter becomes evident, for example, in secondary sex characteristics such as muscle mass, hair distribution and stature, or primary sex characteristics such as the inner and outer genitalia and/or the chromosomal and hormonal structure.

Differences can include the number of sex chromosomes and patterns (e.g. XXY or XO), different tissue responses to sex hormones (e.g. having one ovary and one testis, or gonads that contain both ovarian and testicular tissue) or a different hormone balance.

The genitalia of some intersex persons may not be clearly identifiable as male or female, and are hence easily identifiable as intersex at birth; however, for others the detection only occurs later in life during puberty or sometimes even later (e.g. due to the absence of menstruation or physical development that is not in line with the assigned sex).

Although they do not usually face actual health problems due to their status, intersex people are routinely subjected to medical and surgical treatments – often while very young – to align their physical appearance with either of the binary sexes without their prior and fully informed consent.

Conversely, trans people externalise an innate gender identity which does not correspond with society's gender expectations in relation to their assigned sex, and often encounter various forms of discrimination, especially following their decision to undertake a process of transition to align their body, appearance and mannerisms with their gender identity.”⁵

⁵ This 2015 research paper from the Council of Europe Commissioner for Human Rights “Human rights and intersex people” also notes as follows:

“1.2. Diversity of intersex people

It is important not to lump all intersex people into one new collective category, such as a ‘third sex’, perhaps running in parallel to female and male. Such a classification would be incorrect due to the great diversity among intersex people and the fact that many intersex individuals do identify as women or men, while others identify as both or neither.

In effect, intersex is an umbrella term including people with ‘variations in sex characteristics’, rather than a type *per se*. The term ‘hermaphrodite’ was widely used by medical practitioners during the 18th and 19th centuries before ‘intersex’ was coined as a scientific and medical term in the early 20th century.

Before the current medical classification of the disorder of sex development (DSD) was developed, variations in intersex sex characteristics were classified under different categories, the most common being: congenital adrenal hyperplasia (CAH), androgen insensitivity syndrome (AIS), gonadal dysgenesis, hypospadias, and unusual chromosome compositions such as XXY (Klinefelter Syndrome) or XO (Turner Syndrome). The so-called ‘true hermaphrodites’ referred to those who had a combination of ovaries and testes.

Importantly, variations in sex characteristics are different than sexual orientation and gender identity, even though the three layers interact in the formation of a person's personality. The Office of the United Nations High Commissioner for Human Rights' (OHCHR) *Free & Equal* campaign points out that: ‘*Intersex people experience the same range of sexual orientations and gender identities as non-intersex people.*’ In this vein, reference to intersex people as ‘intersexuals’ is wrong since intersex sex characteristics are unrelated to sexual orientation.

3.26 In any event, in using the undefined “gender identity” rather than the elsewhere defined (at least in devolved Scottish legislation and Westminster sentencing legislation) term of “transgender identity” it may reasonably be presumed that the proposed NI legislation as contained in this Bill is intended to go wider, and criminalise not only attempts to change or suppress an individual’s claim to have a “transgender identity”, but also any claims *not* to be “transgender”, whether that be

- assertions to be “non-gendered” (that one’s “gender identity” is *neither* male nor female), or
- a declaration of being “non-binary” (that one’s “gender identity” is *being not solely* male or female), or even
- confirming that one is just “cisgendered” (which is to say that there is *no* asserted mismatch or disjunction between one’s actual sex and one’s “gender identity”).

“Conversion practices” as a portmanteau term under the NI Conversion Practices (Criminalisation) Bill

3.27 The NI Conversion Practices (Criminalisation) Bill contains no definition of “conversion practices”.

3.28 The Explanatory Notes which have been published alongside the NI Conversion Practices (Criminalisation) Bill by its promoter, Eóin Tennyson MLA, narrates the following under “Background and Policy Objectives” (at §§ 3-5, 17):

“3. Conversion practices” are measures or efforts intended to suppress or change a person’s sexual orientation or gender identity, based on the belief that such aspects of a person are pathological.

They can take many forms, including but not limited to, talking “therapy”, physical abuse, sexual abuse, the prescription of medication, aversion methods and coercion.

4. The NI Conversion Practices (Criminalisation) Bill aims to clearly signal that practices attempting to change or suppress an individual’s sexual orientation and/or gender identity are wrong, that they are harmful to the individuals subjected to them and to society as a whole.

Criminalising conversion practices is also intended to support ending stigmatisation of LGBTQIA+ people.

5. The NI Conversion Practices (Criminalisation) Bill seeks to end conversion practices in Northern Ireland by creating three new criminal offences:

Similarly, reference to ‘intersex identity’ is also incorrect as intersex is not necessarily a matter of identity or self-perception but mostly refers to physical aspects of the body.”

- i. An offence of providing conversion therapy
- ii. An offence of engaging in coercive conversion behaviour.
- iii. An offence of removing a person from Northern Ireland for the purposes of conversion practices.

...

17. 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.

The [NI Conversion Practices (Criminalisation)] Bill intends to give specific and targeted expression to the need to ban conversion practices, with necessary safeguards for medical advice and *expressions* of belief.”

3.29 “Conversion practices” as used in the NI Conversion Practices (Criminalisation) Bill is then intended as a portmanteau term to encompass all and any of the following (if done with “the intent” of “changing” or of “suppressing” the “sexual orientation” - or the “gender identity” - of another person):

- **“Conversion therapy”**, which the NI Conversion Practices (Criminalisation) Bill defines as
 - (a) counselling or any form of talking therapy,
 - (b) coaching or instruction,
 - (c) a treatment, or purported treatment
- **“Coercive behaviour”** which the NI Conversion Practices (Criminalisation) Bill defines as behaviour on two or more occasions (which may include the same behaviour on a number of occasions, or different behaviour on different occasions) and which is.
 - (d) behaviour directed at that other person that is *violent*,
 - (e) behaviour directed at that other person that is *threatening*,
 - (f) controlling, regulating or monitoring that other person’s day-to-day activities,
 - (g) depriving or *restricting* that other person’s freedom of action, or
 - (h) making the other person feel frightened, humiliated, degraded, punished or intimidated.⁶

⁶ Cf Section 2 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 provides as follows:

“2.— What amounts to abusive behaviour

(1) This section contains provision for determining for the purposes of this Chapter when behaviour of a person (‘A’) is abusive of another person (‘B’).

(2) Behaviour that is abusive of B includes (in particular)—

3.30 The NI Bill also makes it an offence to cause or to “facilitate” (which might include say paying travel and accommodation costs and/or making travel arrangements for) an individual to leave Northern Ireland for the purposes of their being subject to what the NI Conversion Practices (Criminalisation) Bill has defined as “conversion therapy” and/or “coercive behaviour” with “the intent that the therapy or behaviour has the *effect* of changing or suppressing the sexual orientation or gender identity of the victim”.

3.31 So the drafting technique of the NI Conversion Practices (Criminalisation) Bill in employing a portmanteau of “conversion practices” is consciously (and misleadingly) to lump together (and implicitly to equate) behaviours which are already criminal offences (such as threats of violence, physical abuse, sexual abuse, coercion and abusive control) with the heretofore non-criminal provision of therapies such as counselling or any form of talking therapy, coaching or instruction, or the provision of treatment including the prescription of medication.

Carve-out for therapy carried out by doctors/medical professionals and pharmacists

3.32 But the NI Conversion Practices (Criminalisation) Bill *does* distinguish between “conversion therapy” and the professional provision of therapy (whether paid for or

-
- (a) behaviour directed at B that is violent,
 - (b) behaviour directed at B that is threatening,
 - (c) behaviour directed at B, at a child of B or at someone else that—
 - (i) has as its purpose (or among its purposes) one or more of the relevant effects,
 - or
 - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects.

(3) The relevant effects are of—

- (a) making B dependent on, or subordinate to, A,
- (b) isolating B from friends, family members or other sources of social interaction or support,
- (c) controlling, regulating or monitoring B's day-to-day activities,
- (d) depriving B of, or restricting B's, freedom of action,
- (e) making B feel frightened, humiliated, degraded, punished or intimidated.

(4) In subsection (2)—

- (a) the reference in paragraph (a) to violent behaviour includes both sexual violence and physical violence,
- (b) in paragraph (c), ‘child’ means a person under 18 years of age.

(5) None of the paragraphs of subsection (2) or (as the case may be) (3) is to be taken to limit the meaning of any of the other paragraphs of that subsection.”

provided free of charge) by providing a carve out from criminalisation of the latter if and only if:

- (1) the therapy at issue is provided or carried out in accordance with the standards and code of ethics of any relevantly authorised regulatory body that apply at the time the therapy is carried out.
- (2) the therapy at issue is provided by an individual who is registered by, or subject to regulation by such regulatory body which the NI Department of Health may by order specify or allow.

3.33 The relevant regulatory bodies under the legislation as specified in the NI Bill include the General Medical Council, the Health and Care Professions Council, ⁷ the General

⁷ The professions which are regulated by the Health and Care Professionals Council (HCPC) have one or more designated titles that are protected by law. To use one of these titles, an individual must be registered with the HCPC:

- (1) An arts therapist (that is a psychological therapist who has arts-based experience and training in psychological interventions using drama, music or art as their primary mode of communication)
- (2) A biomedical scientist (who analyses specimens from patients to provide data to help doctors diagnose and treat disease)
- (3) A chiropodist/podiatrist (who diagnoses and treats disorders, diseases and deformities of the feet)
- (4) A clinical scientist (who oversees specialist tests for diagnosing and managing disease and advise doctors on tests and interpreting data, and carry out research to understand diseases)
- (5) A dietitian (who uses the science of nutrition to create eating plans for patients to treat medical conditions and seeks to promote good health by helping to facilitate a positive change in food choices)
- (6) Hearing aid dispensers (who work in private practice to assess, fit and provide aftercare for hearing aids)
- (7) Occupational therapists (who use specific activities to limit the effects of disability and promote independence in all aspects of daily life)
- (8) Operating department practitioners (who provide individualised care and skilled support alongside medical and nursing colleagues during the anaesthetic, surgical and recovery phases of a surgical procedure)
- (9) Orthoptists (who specialise in diagnosing and treating visual problems involving eye movement and alignment)
- (10) Paramedics (who provide specialist care and treatment to patients who are either acutely ill or injured and can administer a range of drugs and carry out certain surgical techniques)
- (11) Physiotherapists (who deal with human function and movement, and help people to achieve their full physical potential. They use physical approaches to promote, maintain and restore wellbeing.)
- (12) Registered/practitioner psychologists (who use psychology - the scientific study of people, the mind and behaviour - to attempt to understand the role of mental functions in individual and social behaviour)
- (13) Prosthetists/orthotists (who supply prostheses and orthoses to patients. A prosthesis is a device that replaces a missing body part. An orthosis is fitted to an existing body part.)
- (14) Radiographers, whether therapeutic radiographers (who plan and deliver treatment using radiation) or diagnostic radiographers (who produce and interpret high-quality images of the body to diagnose injuries and diseases)
- (15) Speech and language therapists (who assess, treat and help to prevent speech, language and swallowing difficulties)

Pharmaceutical Council, and the Pharmaceutical Society of Northern Ireland. This list of authorised regulatory bodies may, by order of the NI Department of Health, be removed, or modified to or added to from among the following regulatory authorities listed in Section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, namely:

- (a) the General Medical Council,
- (b) the General Dental Council,
- (c) the General Optical Council,
- (d) the General Osteopathic Council,
- (e) the General Chiropractic Council,
- (f) the General Pharmaceutical Council,
- (g) the Pharmaceutical Society of Northern Ireland,
- (ga) the Nursing and Midwifery Council,
- (gb) the Health and Care Professions Council,
- (gc) Social Work England, and
- (j) any other regulatory body within the meaning of Schedule 3 to the Health Act 1999 established by an Order in Council under section 60 of that 1999 Act.

3.34 So duly registered pharmacists and doctors (among other medical and health and social care professionals) fall outside the scope of the legislation, but only if and when providing therapy, counselling, guidance, coaching, instruction or treatment in accord with their respective professional bodies' ethical codes.

3.35 But the legislation does not provide for any carve out for any other professional counselling, whether carried out by, or under the auspice of, say, religious bodies by ministers of religion or other counsellors. And it provides no carve out for parents counselling their own children.

3.36 Outside of therapy carried out under the auspices - and in accordance with the professional ethical standards - of and only of, the relevant NI Department of Health approved regulatory body, only the expression of beliefs or opinions intended "to *affirm* a sexual orientation or gender identity which the victim considers is, or may be, their sexual orientation or gender identity" is permitted by this legislation.

3.37 Otherwise, the draft legislation purports to criminalise *any* form of counselling or talking therapy, non-coercive coaching or instruction done - or any expression of beliefs

or opinions where these beliefs or opinions are expressed - with the intention of “directing” any other person “towards a particular sexual orientation or gender identity”.

No trial by jury

3.38 The right to seek trial by jury for any of the three new offences created under this proposed legislation has been expressly excluded. Each of the three new offences carry the same maximum penalties:

- on summary conviction (i.e. in a magistrates’ court) – imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).
- on conviction on indictment (i.e. in the Crown Court) – imprisonment for a term not exceeding two years or a fine (or both).

Statutory defences against conviction under this proposed legislation

3.39 The offences of either providing conversion therapy or engaging in coercive conversion behaviours are constituted only if the victim suffers physical or psychological harm as a consequence of the behaviour complained of. For the purposes of the NI Conversion Practices (Criminalisation) Bill “psychological *harm*” is defined as including “fear, alarm or distress”.⁸

3.40 The offence of removing a person from Northern Ireland for the purposes of conversion practices (whether or not any “conversion practice” actually occurs) is constituted only if it can be established that the remover is reckless as to whether the victim suffers physical or psychological harm (which includes fear, alarm or distress) as a consequence of the therapy or behaviour.

⁸ Compare with Sections 1 and 6 of the Protection from Stalking Act (Northern Ireland) 2022 provide, so far as relevant, as follows:

1.— Offence of stalking

(1) A person (‘A’) commits an offence (in this Act referred to as the offence of stalking) where—

(a) A engages in a course of conduct,

(b) A’s course of conduct—

(i) causes another person (‘B’) to suffer *fear, alarm or substantial distress*, or

(ii) is such that a reasonable person, or a reasonable person who has any particular knowledge of B that A has, would consider to be likely to cause B to suffer fear, alarm or *substantial* distress ...

...

6.— Meaning of act associated with stalking and risk associated with stalking

...

(6) A reference to being a victim of acts associated with stalking is a reference to being a target of the acts *or to suffering physical or psychological harm* because of, or otherwise being a victim of, the acts

3.41 Each of the three proposed new offences has a defence of “reasonableness”. If an accused person can satisfy the court that their “provision of therapy” or their “coercive behaviour” or their “facilitating the removal of a person from Northern Ireland” was in all the circumstances “reasonable”, then they will be not guilty of any offence under the Act. The view of Eóin Tennyson MLA as the sponsor of the NI Conversion Practices (Criminalisation) Bill is that the reasonableness defence is unlikely ever to be made out but has been included in the Bill “as an additional safeguard against unintended criminalisation”.

3.42 That the supposed reasonableness defence is little more than a fig-leaf to present the legislation as being less extensive in its effects than its opponents fear become clear from the fact that the legislation also states that no defence (whether of reasonableness or otherwise) can be made out to any charge of a criminal offence under the Act (if passed) that the individual in question consented (and may continue to consent) to the therapy or the behaviour in question. ⁹

4. IMPLICATIONS AND PRACTICAL IMPACT IF THIS NI CONVERSION PRACTICES (CRIMINALISATION) BILL IS PASSED INTO LAW

4.1 As we have noted there is no definition given in this NI Conversion Practices (Criminalisation) Bill of “gender identity”. However the scheme of this NI Conversion Practices (Criminalisation) Bill is predicated on “gender identity” being a specific

⁹ See for argument by way of justification for this approach Richard Wagenlaender “The [UK] Government's proposals on banning conversion therapy: the danger of the informed consent loophole” [2022] *European Human Rights Law Review* 49-64 at 54:

“Allowing an ‘informed consent’ exception will in practice place a far higher burden of proof on victims to not only prove the act and *mens rea* of the perpetrator, but to also prove a lack of consent to a criminal standard of proof. Under a total ban, the victim would only have to prove that a person conducted a practice that was directed at an individual with the purpose of changing that person’s sexuality or gender identity. Contrastingly, the [UK] Government’s approach would entail the weight and focus being on the issue of consent in settings in which societal coercion and threats often occur verbally and in a close-knit environment.

A profound worry is that this could lead to ‘therapists’ or ‘healers’ requiring patients to sign liability waivers and forms which explain the risks, whilst verbally reassuring the efficacy of their treatment. This, again, would place the burden on victims, who may be coerced to sign liability waivers, to prove a lack of consent retrospectively, which is unlikely to be too successful. As such, providers of conversion therapy could continue as usual, just with liability waivers briefly outlining the risks. Victims would be left having to prove to a criminal standard that they did not consent, fighting an uphill battle to achieve minimal justice. It is this likely outcome which illustrates the real risks in the [UK] Government’s proposed informed consent exception. The idea of truly free and informed consent in relation to conversion therapy is flawed and would risk a great number of potential victims.”

characteristic of individuals, which is distinct (and identifiable) from that person's actual sex.

4.2 This NI Conversion Practices (Criminalisation) Bill also proceeds on the basis that others may make (right or wrong) presumptions about what another's gender identity is, or may be.

4.3 This NI Conversion Practices (Criminalisation) Bill is also drafted on the basis that any individual may be unsure or uncertain as to what their own current "gender identity" might, or might not, be, in taking outside the scope of the criminalisation of therapy or coercive behaviour anything intended to *affirm* a sexual orientation or gender identity which an individual "considers is, or *may be*, their sexual orientation or gender identity".

4.4 But the failure in the NI Conversion Practices (Criminalisation) Bill to define "gender identity" and/or to give any indications as to how "gender identity" might be identified (whether by the courts or by the police or relevant local authorities or by individuals) immediately raises particular concerns since the NI Conversion Practices (Criminalisation) Bill, if enacted into law, criminalises behaviour which is said to be intended to "change" what is or may be or is presumed by another to be a person "gender identity".

4.5 The NI Conversion Practices (Criminalisation) Bill would criminalise, within the context of a person's expression of belief or opinion to another all and any instances of any person non-coercively saying to, or otherwise communicating with, another (even just once) with the intention (however vainly) of changing *or* suppressing that other's (lack of) sexual orientation and/or gender identity, provided that it can be established that this talk or communication made the addressee afraid, alarmed and/or distressed, even presumably after the event (and how long after the event?). The Scottish Government has after all claimed that

"36. The impact of conversion practices on people can be lifelong. *Often, the harm is not immediately apparent.* People who have experienced conversion practices have reported severe mental health consequences, including suicidal ideation, depression, and anxiety. As pointed out in the EAG report, undergoing these practices can result in feelings of shame, self-loathing and a crisis of identity. Survivors have also reported a negative impact on their relationships, work and career. The EAG report stressed that this negative impact can affect every aspect of life, stating that 'survivors have difficulty building a life after conversion practices.

...

40. The trauma associated with conversion practices can present itself at different times for each person. Often, trauma can appear in adulthood despite the practices happening in childhood.

...

75. ... [T]he 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.”¹⁰

4.6 The criminalisation of conduct under the NI Conversion Practices (Criminalisation) Bill would extend to a situation where a parent – without any relevant professional background or purported recognised expertise – offers their own child parental counselling or coaching or instruction which does not positively affirm their child’s claim to be transgender. A parent will be criminalised for advising against their child denying their actual sex. A parent will be criminalised by directing their child against any attempts by that child to “transition” (whether socially and/or medically) to a new “gender identity” inconsistent with their child’s basic biology.

4.7 Similarly any minister of religion who has (informal) conversations or even formal counselling sessions (including, for example, within the context of the confessional, within Roman Catholic practice) with someone setting out orthodox doctrinal views in relation to, say, their religion’s views on the “proper” expression of sexuality and/or the (non-) existence of the concept of “gender identity” distinct from biological sex will be criminalised under this proposed *legislation*.

4.8 So statements of belief or opinion such as:

- sexual activity outside of the bonds of a lifelong monogamous marriage between two individuals of the opposite sex is sinful or
- transgender identity does not exist, or
- people who claim to be bisexual people are in denial, because they are ashamed of being gay, or
- people who claim to be asexual are just confused and have not met the right person yet

which are made in relation to any particular individual outside of a state-approved regulated professional therapeutic environment and context, with a view to directing the person being counselled towards a particular sexual orientation or gender identity will be criminalised under this legislation.

¹⁰ Scottish Government *Ending Conversion Practices in Scotland: A Scottish Government Consultation* (January 2024 publication) at paras 36, 40, 75

- 4.9 There would be no need in the case of any individual counsellor (be they parent or priest) for it to be alleged that any form of *coercion* was also applied in their provision of counselling for this to become a criminal offence. So advice that was *non-violent*, *non-threatening*, which did not amount to an attempt to control, regulate or monitor that other person's day-to-day activities, or to deprive or restrict that other person's freedom of action, and which was not experienced by the recipient at the time as humiliating or intimidating or intended to punish, would still be criminalised. Nor would it be any defence for the parent to say that the individual child or congregant specifically sought their advice.
- 4.10 Instead any advice, even if sought by an individual, which included reference to a parent's or religious leader's "traditional" or orthodox faith beliefs and/or their statement of sexual ethics - and any guidance, instruction or counselling consistent with this position - would be criminalised under this proposed legislation if it could be said to have been intended to have the individual change or at least not to express the claimed sexual orientation or gender identity which they then avowed. All that would have to be established for a crime to be committed would be that the person who had (sought and) received this parental and/or religious counselling subsequently considered the advice/counselling given to cause them distress.
- 4.11 But perhaps the most fundamental problem with this proposed NI Conversion Practices (Criminalisation) Bill is that it leaves it entirely open and undefined just what it might mean to seek to *suppress* another's sexual orientation or gender identity, when you are not seeking to change it. Including suppression is intended to widen the scope of this proposed legislation, by including restrictions or limitations imposed on someone specifically to repress or prevent the development of another's sexual orientation or gender identity, even if they accept that this cannot fundamentally be changed.
- 4.12 Suppression is then clearly a key term in this proposed legislation. Yet the NI Conversion Practices (Criminalisation) Bill contains no guidance or definition as to what is meant by behaviour which is intended to "suppress" an individual's gender identity. And the draft legislation contains no guidance or definition as to what is meant by behaviour which is intended to "suppress" an individual's (lack of) sexual orientation towards another person. It presumably means any behaviour which might be said to thwart or inhibit or discourage an individual from *expressing* their sexual orientation or gender identity in all and any such manner as they might otherwise choose or wish to.

4.13 Thus the NI Conversion Practices (Criminalisation) Bill, subject only to a vague and unspecified reasonableness defence in Clauses 1(2), 2(2) and 3(3), in principle outside a regulated professional therapeutic environment, criminalises all of the following (on the assumption that physical or psychological harm results):

- (i) All and any behaviour by a person or persons which is intended to effect a change in, or of, what another person considers *to be* their own sexual orientation
- (ii) All and any behaviour by a person or persons which is intended to effect a change in, or of, what another person considers *to be* their own lack of sexual orientation
- (iii) All and any behaviour by a person or persons which is intended to effect a change in, or of, what another person considers may be their own sexual orientation
- (iv) All and any behaviour by a person or persons which is intended to effect a change in, or of, what another person considers may be their own *lack of* sexual orientation
- (v) All and any behaviour by a person or persons which is intended to effect a change in, or of, what they presume to be another person's sexual orientation
- (vi) All and any behaviour by a person or persons which is intended to effect a change in, or of, what they presume to be another person's *lack of* sexual orientation
- (vii) All and any behaviour by a person or persons which is intended to effect a change in, or of, what another person considers *to be* their own gender identity
- (viii) All and any behaviour by a person or persons which is intended to effect a change in, or of, what another person considers may be their own gender identity
- (ix) All and any behaviour by a person or persons which is intended to effect a change in, or of, what they presume to be another person's gender identity
- (x) All and any behaviour by a person or persons intended to suppress what another person considers to be their own sexual orientation
- (xi) All and any behaviour by a person or persons intended to suppress what another person considers to be their own *lack of* sexual orientation
- (xii) All and any behaviour by a person or persons intended to suppress what another person considers may be their own sexual orientation

- (xiii) All and any behaviour by a person or persons intended to suppress what another person considers may be their own *lack of* sexual orientation
- (xiv) All and any behaviour by a person or persons intended to suppress what they presume to be another person's sexual orientation
- (xv) All and any behaviour by a person or persons intended to suppress what they presume to be another person's *lack of* sexual orientation
- (xvi) All and any behaviour by a person or persons intended to suppress what another person considers *to be* their own gender identity
- (xvii) All and any behaviour by a person or persons intended to suppress what another person considers may be their own gender identity
- (xviii) All and any behaviour by a person or persons intended to suppress what they presume to be another person's gender identity

4.14 This means that any discussions, questioning, guidance or general parental direction, guidance, controls and restrictions in relation to a person's sexuality and/or their claimed or presumed gender identity which the Police Service of Northern Ireland or all and any who might seek to mount prosecutions under this proposed legislation would deem to be "directive" or "coercive", will in principle be able to be criminalised.

4.15 Thus *all and any* attempt by parents to direct their children towards any sexual orientation or gender identity which a child's parents consider to be "preferable" will be outlawed in Northern Ireland under this proposed NI legislation. This is on the basis that under the proposed legislation such parental intervention will be regarded as evidencing an intention to change or suppress their child's identification or development of their own sexual orientation or gender identity (of which they may still be questioning or unsure).

4.16 It is clear that it will be no defence for a parent to say that they acted out of love and with a view to help their child and that they had no intention by their intervention to cause their child to suffer fear or alarm or distress or any kind of harm. Clause 5(1)(c) of this NI Conversion Practices (Criminalisation) Bill includes in its definition of a coercive course of behaviour in the context of conversion practices, acts that are "controlling of the victim's day-to-day activities".

- 4.17 It is clear that what might fall within this definition would be acts by a parent which might be said to regulate, restrict, or monitor their own child's behaviour or otherwise deprives them of their own freedom of action. For example, this might include forbidding their child from dressing in a way that the child claims reflects their sexual orientation or their gender identity; or warning their child against associating with certain people or undertaking certain activities considered to be linked to their sexual orientation or gender identity.
- 4.18 Such parental actions would be considered to be criminal controlling actions within the context of the conversion practices which will be outlawed under this proposed legislation should it become law because it can be characterised as deliberately to restrict, prevent, or limit the child from living or acting in accordance with what the child currently claimed to be their sexual orientation or gender identity and giving the child no choice other than to regulate their behaviour in accordance with their parent's wishes.
- 4.19 This definition of coercion would clearly therefore include parents seeking to control how their child "presents" in terms of, say clothes, make-up, and hairstyle or imposing restrictions on where their child might go and whom they might see. Thus parents who actively and consistently and directly oppose their child's decision to, for example, present as a different gender from that given at birth would be committing a criminal offence.
- 4.20 Were the NI Conversion Practices (Criminalisation) Bill to be passed into law by the NI Assembly, this would have the undoubted effect of criminalising much mainstream pastoral work of churches, mosques, synagogues and temples. Prayers and pastoral discussions could be criminalised if their content did not conform to the new state requirements only to affirm, validate and support the identity and lived experience as expressed and stated by an individual from time to time (but never to question or give direction or raise concerns about an individual's expression of their sexuality, or their "gender expression" or assertion of their "gender identity").
- 4.21 The proposals, if they came into law, could also criminalise medical and other health practitioners who express their own professional opinion – if and insofar as contrary to their profession's own position - seeking to dissuade an individual against undergoing or undertaking medical procedures (such as puberty blockers, hormone treatment and/or surgeries) which are associated with, and intended to further, gender reassignment.

- 4.22 Indeed these proposals could also criminalise parents who, lovingly and in good faith and in accordance with their own best judgment and conscience, seek to caution and direct their children against acting on any stated intention to embark on “gender affirmatory”/“gender transition” treatment in respect of their currently experienced discomfort or dysphoria in relation to their sex and/or sexuality.
- 4.23 The NI Conversion Practices (Criminalisation) Bill will also, from its terms, include *suppression* efforts directed at those who are heterosexual or “cisgender” (i.e. those who do not claim that there is any asserted mismatch or disjunction between their sex and their “gender identity”). Thus this Bill if passed into law will also directly impact not just parents faced with their children identifying as trans and/or gay and/or queer/questioning, but also those parents of those children identifying as straight and as happy and comfortable in their actual biological sex.
- 4.24 This is at least consistent with the UK Government’s draft Equality and Impact Assessment for the current draft Conversion Practices Bill intended to extend to England and Wales only, which notes:
- “[T]he previous government’s public conversion practices consultation, just over a half (51%) of consultation respondents who had experienced conversion practices were gay or lesbian (of these, 67% were male and 28% were female, the remainder did not say), 19% were heterosexual, 15% were bisexual, and 10% had an ‘other sexual orientation’”
- 4.25 Accordingly, any child who wishes to explore and express their sexual/gender identity as they (and not their parents) wish in their behaviour and clothing and comportment and associations may be able to pray in aid the provisions of this Bill if brought into law against their parents.
- 4.26 Thus, for example, a parent’s inflexible and absolute ban forbidding, say, their 14 year old daughter, going out publicly dressed in what might be regarded by her parents as an overly sexualised and sexually provocative and explicit way could, in principle, be criminalised under this proposed legislation on the basis that the parental action is stopping the child from living or acting in accordance with how their child wishes to express their (hetero)sexual orientation and/or (cis)gender identity.
- 4.27 Similarly, the actions of parents engaging in a course of conduct such as forbidding their heterosexual adolescent son from displaying on his bedroom wall pornographic images of women (which images his parents consider to be demeaning of and for women), and/or seeking systematically to police and block his online access to hardcore

heterosexual pornography and/or directing him from or against downloading and listening to podcasts by, say, Andrew Tate could also all, in principle, be criminalised under this legislation.

4.28 The parents would have difficulty in essaying or praying in aid the possible carve out set out in Clause 7(1)(c) of the Bill which provides that “for the purposes of this Act, there is no intent to change or suppress sexual orientation or gender identity if...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” since their action are not intended either positively to “affirm” or “change” their child’s heterosexuality or “cisgender identity” but to police its expression. The parents may not be seeking to change their child’s currently avowed sexual orientation or gender identity but they are seeking to control their child’s sexuality and/or gender identity by preventing or impeding that child from expressing the sexual orientation and/or gender identity with which the child currently identifies in a way which feels most authentic to that child.

4.29 The parental actions outlined above are precisely about parents directing their children. They are not simply giving their opinions or offering counselling. They are telling their children what to do in matters which undoubtedly relate to their children’s experience and expression of their sexuality and/or gender identity. The parents’ actions are seeking to suppress their children’s choices as to how they might wish to express and experience their proclaimed (hetero)sexual orientation and/or (cis)gender identity in how they dress or comport themselves or who they associate with or what they watch online.

4.30 And if the parents’ actions constitute a course of conduct seeking to question, impede or change their children’s choices on how they wish to express, explore and develop their proclaimed (hetero)sexual orientation and/or (cis)gender identity then the parental action *could* be judged under this proposed legislation to constitute coercive control against their daughter or son.

4.31 Thus decisions made by parents which relate to and seek to direct their children on matters of sexuality and gender identity could then in principle be brought before the courts under this proposed legislation such as to require the parents, in order to avoid criminal liability for their decision, to satisfy the court that their behaviour was, in the particular circumstances, what the court would regard as being “reasonable”.

5 CONCLUSION ON THE PROPOSED NI LEGISLATION TO CRIMINALISE “CONVERSION PRACTICES”

5.1 If legislation as proposed by Eóin Tennyson MLA in his Bill were passed into law by the NI Assembly this would criminalise parents who sought to exercise any form of parental authority or guidance in relation to their children as regards issues around sexuality and gender which conflicted with the official position which may be adopted from time to time by the NI state authorities. But as has been noted:

“[L]egislation achieved through the advocacy of the transgender movement does not necessarily convey a consistent understanding of gender. On the one hand, it is an identity that exists in a person from birth and awaits discovery when they are old enough. On the other, it is socially constructed. On the one hand, gender is fluid, but on the other, it is immutable.”¹¹

5.2 Separately if these proposals were passed into law by the NI Assembly, then the law would have a chilling effect on the ability and willingness of religious bodies - and separately, among others, gender critical feminist individuals or groups - to teach and preach and lobby and proselytise, on any matters relating to sexuality and/or gender, which conflicted with any of the official positions now adopted by the state. But as has also been noted:

“[M]any of the claims of the transgender movement are based upon beliefs and values that are discordant with medical and scientific understanding of sexual dimorphism. They involve issues about the particular use of language, or views about categorization.

Given that the issue of gender identity is so much an issue of belief and worldview, inevitably, responses to a person who declares a gender identity different to natal sex are likely to be influenced by a person's own beliefs and ethical positions. Such responses do not, and cannot occur, within a belief or value-free zone.

For that reason alone, religious exemptions need to remain, insofar as they allow faith based organizations the freedom not to have to treat someone as a gender different to their natal sex.”¹²

5.3 Like the (subsequently abandoned) Scottish draft Bill these proposals for NI legislation are perhaps best described as “*jellyfish legislation*”. The concepts they use are impossible to grasp; the limits of the proposed legislation are wholly undefined; the proposed legislation for Northern Ireland contains a sting in the tail in the form of criminal sanction of up to 2 years and steep fines, without the possibility of seeking a trial before a jury of one's peers.¹³

¹¹ Patrick Parkinson “Gender Identity Discrimination and Religious Freedom” (2023) 38 *Journal of Law and Religion* 1 10–37 at 30

¹² Patrick Parkinson “Gender Identity Discrimination and Religious Freedom” (2023) 38 *Journal of Law and Religion* 1 10–37 at 36–37

¹³ The current UK Government's Conversion Practices draft bill propose that for the parallel proposed new offence in England and Wales a person guilty of an offence should be liable— (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court, to a fine

If passed into law, this statute will have an undoubted and intended effect of dissuading persons from ever even entering the now murky waters of what may or may not constitute unlawful “conversion practices”.

5.4 And these criminal sanctions could be imposed, among others:

- on parents who, in bringing up their children, do not conform to the Northern Ireland state authorities’ new dogmas on sex, sexuality and gender identity;
- on religious bodies whose teaching and preaching and religious practices in the area of sex, sexuality and gender identity run contrary to the state’s approved doctrine on these matters;
- on political bodies, feminist groups and associations and NGOs and individuals who publicly disagree with, and seek to challenge and change the Northern Ireland state’s new orthodoxies on sexual orientation and/or gender identity;
- on medical professionals who in their medical practice would dispute and dissent from what the Northern Ireland state authorities would now stipulate as, to use an Orwellian term, “goodthink” in relation to sex, sexuality and gender identity.¹⁴

5.5 If the proposals become law this would involve the Northern Ireland state authorities using the full weight of the state’s coercive powers of expropriation, incarceration and humiliation against individuals and associations in Northern Ireland deemed guilty - even at an individual’s request, or with their consent – of performing, offering, promoting, authorising, prescribing or arranging for any treatment, practice or effort that is deemed to be aimed at changing, suppressing and/or eliminating that person’s (expression of) their avowed sexual orientation (whether heterosexual, homosexual, bisexual or asexual) and/or “gender identity” (whether congruent or incongruent with their actual sex).

or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine or to both.

¹⁴ See too the Gender Recognition Reform (Scotland) Bill, which was passed by a majority in the Scottish Parliament on 22 December 2022. In *Scottish Ministers v. Advocate General for Scotland - re gender recognition reform* [2023] CSOH 89, 2024 SC 173 the Lord Ordinary, Lady Haldane, upheld the lawfulness of the decision of the UK Secretary of State for Scotland to make an order under section 35 of the Scotland Act 1998 to block Royal Assent to this Bill and so prevent it from becoming law. The Scottish Government did not seek to appeal against this decision.

5.6 The proposals have serious consequences for individuals subject to the law, but if passed into law it would suggest the NI legislature has forgotten its duty to take seriously its obligations to maintain the conditions of and for a *liberal* democracy, preferring instead to *impose*, by virtue of its possession of a monopoly on legitimate violence, its own vision of the good life.

5.7 But a *liberal* democracy is one in which the state gives space to, and affords respect for, other forms of life, and visions for society. Such alternative views may be embraced by individuals, embodied in families, and given voice in and by voluntary associations of people choosing to come together with a common purpose. These might be, say, feminist groups; or recreational clubs; or political entities; or religious bodies. A liberal democracy is a society in which a multiplicity of diverse voices can be heard, and where freedom of expression is honoured. It is space in which dissent thrives and where a free and open and ultimately tolerant and pluralist society flourishes because of, not in spite of, contradiction and opposition.¹⁵

¹⁵ For an opposing argument see Kenneth McK Norrie “What level of respect does opposition to same-sex marriage deserve in a democratic society?” (2023) 74 *Northern Ireland Legal Quarterly* 417

“Homophobia, in essence, is the assumption of heterosexual superiority – the spoken or unspoken belief that the holder of the belief, because heterosexual, is morally better and socially more valuable than those who are not, irrespective of any intent to discriminate against or otherwise harm any individual or group. Lady Hale, in *Lee v. Ashers Baking Co. Ltd.* [2018] UKSC 49 [2020] AC 413 spoke to the lived experience of millions when she said that

‘it is deeply humiliating, and an affront to human dignity, to deny someone a service because of that person’s race, gender, disability, sexual orientation or any of the other protected personal characteristics’.

The affront to dignity lies in the necessary implication that a person – or a whole community – is worth less than others, merely on account of their race, gender, disability or sexual orientation. Homophobia in this broader sense, because it denies the dignity of those it assumes to be inferior, offends ‘the very essence of the Convention’ just as much as violent or extreme homophobia does, if in a different (but more insidious) way: it causes real and enduring harm to every LGBT person.

So even if the owners of the Ashers Baking Company Ltd act respectfully to LGBT individuals that they come across in their professional and personal lives, and even when it would not cross their minds (as good Northern Ireland Christians) to encourage violence or hatred against anyone, their belief in their own heterosexual superiority may justly be described as homophobic, and as harmful to those who do not share their sexuality.

Lee v Ashers Baking Company Ltd may not have been about an act of discrimination against someone because of their sexual orientation, but it was fundamentally about the extent to which homophobic belief was worthy of respect in a democratic society. Though obscured by the UK Supreme Court’s focus on the defendants’ right not to express a belief that they did not actually hold, the defendants were in essence asserting their right to deny the equal worth of homosexuality and heterosexuality as aspects of the human condition. This is no different from the claim to racial superiority that lies at the heart of racism, and courts often point to homophobia and racism being regarded in the same light, and as equally unworthy of respect.”

5.8 The criticisms which were voiced in the judgment of Baroness Hale, Lord Reed and Lord Hodge in *The Christian Institute v Lord Advocate* [2016] UKSC 51, 2017 SC (UKSC) 29 (when the UK Supreme Court unanimously struck down Scottish legislation which required the universal appointment of state guardians to children in Scotland - which legislation had been passed without any dissenting votes by the democratically elected and accountable Scottish Parliament) can be applied equally to the proposals at issue in the present case. The UK Supreme Court there noted (at § 73) that:

“The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers’ view of the world. Within limits, families must be left to bring up their children in their own way.”

5.9 As we have noted above, it is not clear from these proposals just what the concept of harm play in them. Are “conversion practices” to be regarded as being “inherently harmful” such that harm inevitably results from them, even if not to the individual subject to them but to the wider community?

5.10 The proposals for this legislation simply fail to define what are to become criminal “conversion practices”. It will thus become impossible for individual parents and faith groups and medical practices and political associations to be able to know how to regulate their behaviour to avoid falling foul of the criminal law. The legislation fails too to define crucial terms as to just what constitute an individual’s “gender identity”, and just what behaviour is to be regarded as (attempted) “suppression” of either sexual orientation or gender identity.

5.11 In sum, if these individual Member’s proposals for a Bill were to be enacted into legislation by the NI Assembly to criminalise “conversion practices”, it would result in legislation which is ill-thought out, confused and confusing, and fundamentally illiberal in intent and effect.

5.12 I conclude, therefore, that there are very strong arguments indeed that, should these proposals for a private Member Bill promoted by Eóin Tennyson MLA before the Northern Ireland Assembly be passed into law in Northern Ireland, they would be beyond the legislative competence of that devolved legislature, primarily because of their over-breadth, their disproportionate intrusion into private and family life and freedom of religion and freedom of expression, but also because of their fundamental internal incoherence.

5.13 I have nothing more to add at this stage. I trust that the foregoing is sufficient at this stage for the purposes of my instructing solicitor and client. Those instructing me should not hesitate to revert to me if there is anything arising from the above on which I might usefully further advise, whether in writing or at a consultation.

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3 September 2026