

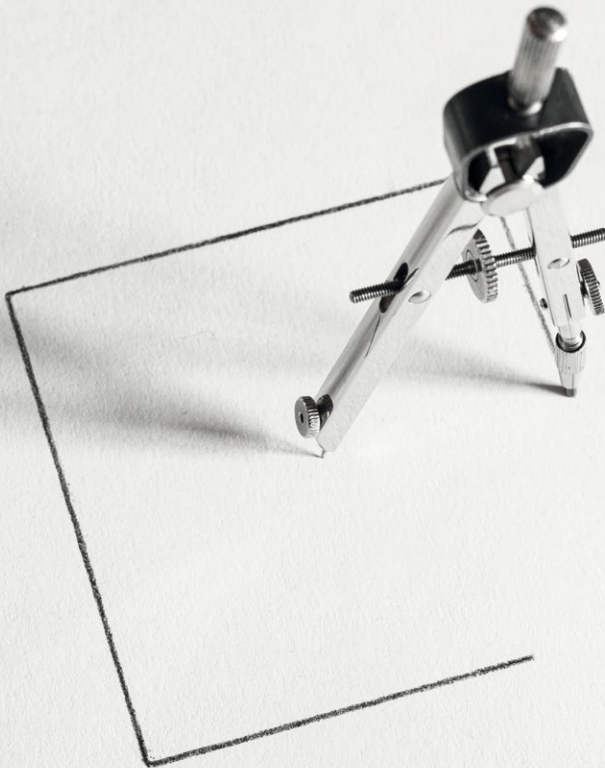


THE CHRISTIAN
INSTITUTE

“Proving tricky”

Stories of jurisdictions that have tried and failed to introduce legislation against so-called conversion therapy

MARCH 2025



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Introduction

The Scottish Government has been trying to produce a legislative ‘ban’ on conversion therapy for several years. If what is meant by conversion therapy is verbal or physical abuse, then there is already a ban. The problem is that there is no agreed definition. Activists routinely conflate abuses that are criminal under existing law with legitimate, everyday activities which cannot be criminalised, such as conversations between parents and children about sexuality or gender identity. It has proven extremely difficult.

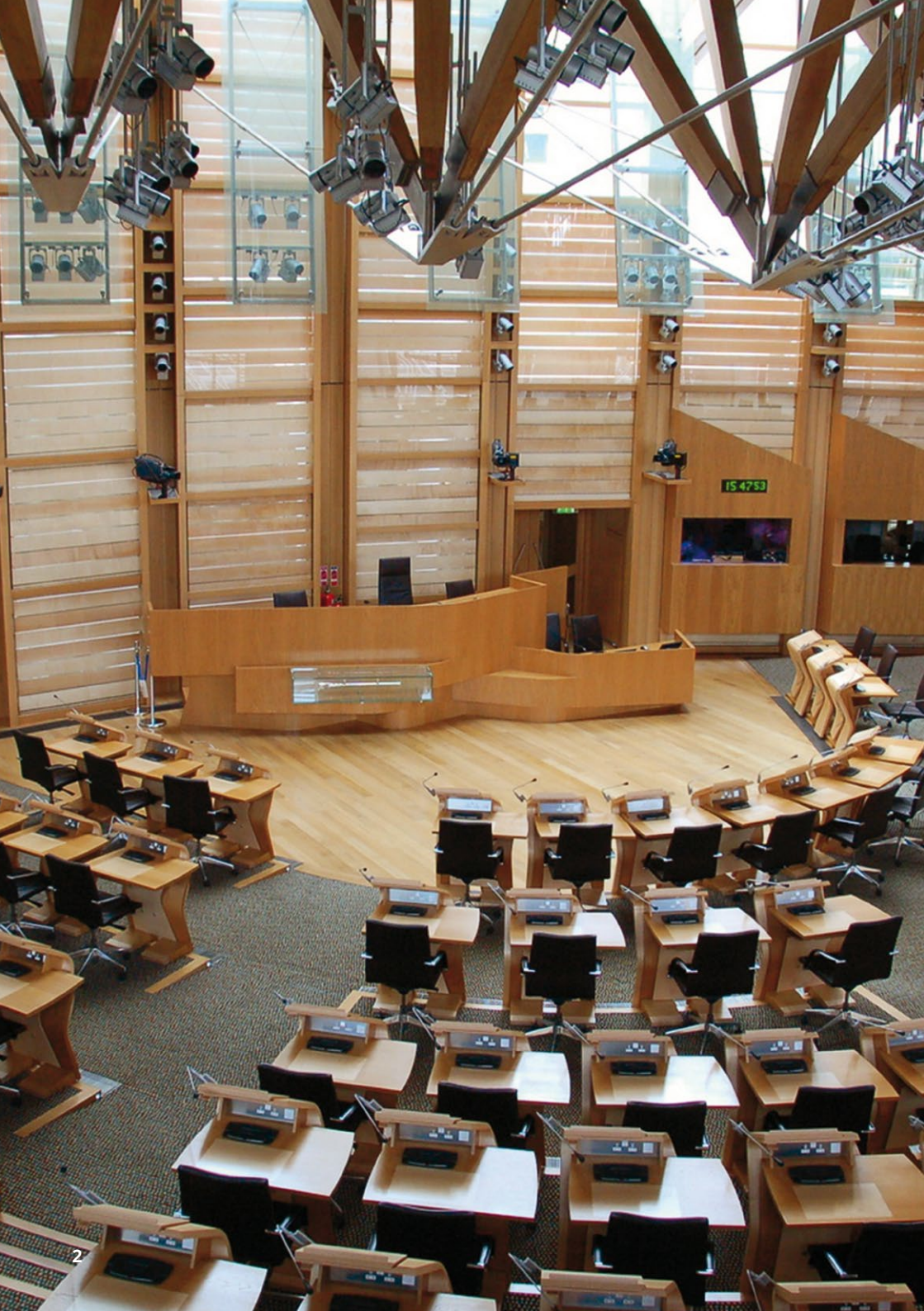
The problem is created by activists. They don’t want a traditional criminal law to prevent objectively abusive behaviour. Instead, they want a broad ‘speech crime’ law to catch the everyday activities of church leaders and parents who do not affirm LGBTQ ideology.

Squaring this circle, and safeguarding fundamental rights, has proven tricky. In the words of former Westminster Equalities Minister Stuart Andrew, himself a strong advocate for a new legislative ban, this is “a very challenging issue to get right”.¹

The Westminster Government is not alone in coming to this conclusion. The Irish Government admitted that drafting a law is “proving tricky in terms of getting those clear legal definitions”.²

The Labour administration in Western Australia said in February 2024 that it was proving “very difficult to define” what they wanted to allow.³ Government lawyers in Sweden and the Netherlands have pointed to serious problems with drafting a new law.

Perhaps now is the time to learn from other countries. Going around in circles trying to create an unworkable law helps no one. If the Government is serious about supporting victims of genuine abuse, it should be helping them to access justice under the existing legal framework, which already outlaws verbal and physical abuse.



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Scotland

FEAR OF JUDICIAL REVIEW

A ‘conversion therapy’ law first appeared on the political agenda in Scotland in 2020. Five years later, the Scottish Government has asked Westminster to legislate on its behalf.

Initially, a Bill seemed inevitable. MSPs on the Equalities Committee called for a ban. Plans to introduce “comprehensive” conversion therapy legislation were included in the Bute House Agreement in August 2021.⁴ The following month’s ‘Programme for Government’ promised to bring “forward legislation that is as comprehensive as possible within devolved powers by the end of 2023”.⁵

Controversy over the Government’s Gender Recognition Reform Bill and growing public concern around the conversion therapy plans themselves contributed to significant delay. A public consultation on a draft ‘conversion practices’ Bill was only published in January 2024.⁶

Its publication was met with immediate backlash in the press. Major newspapers ran banner frontpage headlines like: “Scottish parents face jail if they stop children changing gender”.⁷ There was pushback from within the SNP, with nearly a quarter of SNP MSPs said to be prepared to oppose their own party.⁸

COMMENTARY
by **SUSAN DALGETY**

FEW weeks ago, I sat with the parents of a teenage girl who is convinced she is a boy. They have spent the past four years struggling to terms with their daughter's identity.

Half-baked plan from the Scottish Government cannot even define 'gender identity' properly. Earlier this week, Ms Roddie insisted on different things to other people 'yet she is prepared to criminalise caring mothers and dads on the basis of a concept

once they reveal health issues and serious mental health issues and that the child may well be often overlooked in counselling!

Scottish Government cannot even define 'gender identity' properly.

The Christian Institute threatened judicial review and significant legal figures criticised the plans. Some said the proposals were “beyond the legislative competence of the Scottish Parliament” (see next page). But more fundamental points were also raised:

“ *New laws, particularly criminal legislation, must be shown to be necessary and a fair and reasonable means of addressing a clearly identified problem. Such laws must be clear and meticulously drafted to ensure that innocent conduct is not criminalised... This proposed legislation currently does not meet these fundamental requirements.*”⁹

John Mulholland, Law Society of Scotland

“ *...no coherent definition of CT has been proposed...*”¹⁰

Roddy Dunlop KC, Dean of the Faculty of Advocates

“ *In sum, these proposals from the Scottish Government for legislation are ill-thought out, confused and confusing, and fundamentally illiberal in intent and effect. I conclude therefore that there are very strong arguments indeed that these legislative proposals of the Scottish Government are beyond the legislative competence of the Scottish Parliament, 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 internal incoherence.*”¹¹

Aidan O'Neill KC



The Cass Review

Independent review
of gender identity
services for children
and young people



The publication of the Cass Review into NHS gender services in England in April 2024 also shaped the debate. The report highlighted concerns from clinicians that they may be open to “potential accusations of conversion practice when following an approach that would be considered normal clinical practice when working with other groups of children and young people”.¹²

First Minister John Swinney acknowledged the Scottish Government would need “to listen to clinical opinion very carefully”.¹³

When the Scottish Programme for Government for 2024-25 was published in September, conversion therapy was absent from the Bills the Government pledged to introduce. Instead, the Programme for Government hands responsibility for a Bill to Westminster, with the proviso that it will “prepare legislation for introduction to the Scottish Parliament should a UK-wide approach not be achievable”.¹⁴

The Scottish Government indicated to LGBT group Out for Independence that the reason for the U-turn is to ensure they “don’t end up facing judicial review”.¹⁵



Ireland

“PROVING TRICKY”

In April 2018, a Private Member's Bill to outlaw 'conversion therapy' was introduced into the Oireachtas. The Government wanted to support the legislation but cited legal advice suggesting the Bill was “not clear enough in its language”.¹⁶

After the Bill fell in 2020, then Equalities Minister Roderic O'Gorman announced his intention to pass a Government Bill by the end of 2023.¹⁷

But in July 2024, Mr O'Gorman indicated that it was unlikely that a law would be enacted before the next election. Whilst promising to continue to engage with the Attorney General on the matter, he acknowledged that aspects of the new law had proven to be “extremely complex”,¹⁸ adding:

“ I wanted to make sure it covered quasi-religious practices and quasi-therapeutic practices, and to ensure those very necessary conversations that take place when someone is exploring their gender identity or sexual orientation wouldn't be impacted.

Balancing those elements is proving tricky in terms of getting those clear legal definitions. We want legislation that is effective and robust and safe from legal challenge. ”¹⁹

An Exploration of Conversion Therapy Practices in Ireland



Trinity College Dublin
Coláiste na Tríonóide, Baile Átha Cliath
The University of Dublin



An Roinn Leanaí, Comhionannais,
Micchumais, Lánphairíochta agus Oige
Department of Children, Equality,
Disability, Integration and Youth

O’Gorman was not alone in identifying problems. In 2023, the clinical lead at the National Gender Service, Dr Karl Neff, highlighted the dangers of a vague definition for medical practitioners talking to gender-confused children.

Responding to a Government-commissioned report into ‘conversion therapy’, Dr Neff said:

If ‘conversion therapy’ is:

“ ...not well defined as a specific clinical intervention aimed at changing someone’s sexuality or gender, then it could have unintended consequences. ”²⁰

A new Draft Programme for Government was agreed in January 2025, following the election. It falls short of pledging to “enact legislation to ban conversion practices”²¹ (as contained in the manifesto of the largest party, Fianna Fáil) and instead merely promises to “advance legislation”.²²



Sweden

AGAINST LEGAL ADVICE

In 2022, the then Social Democrat Government asked for the terms of a special investigation into 'virginity checks' to be extended to include 'conversion therapy'.²³ The investigation was headed by Court of Appeal judge Maria Hölcke and supported by legal experts.²⁴

The resulting 372-page 'Swedish Government Official Report' was published in July 2023. It concluded that the Government should not introduce a new criminal law on 'conversion therapy'. It warned against introducing 'conversion therapy' as an aggravating factor for sentencing purposes, and that a law should not be introduced merely to 'send a signal'.²⁵



The report explains that, in relation to any actual abuse:

“ *Current regulations provide good opportunities to intervene under criminal law...* ”²⁶

In particular, it identifies a number of existing laws that could be used to prosecute harmful activities that supporters of a ‘conversion therapy’ law are concerned about, including:

“ *unlawful coercion, assault, unlawful deprivation of liberty, unlawful threats, forced marriage or molestation... acts that constitute slander, insult or incitement against a group of people... [and even] repeated unwelcome attempts to verbally influence someone...* ”²⁷

It concludes:

“ *The acts that fall outside the punishable area [that are not already illegal] are not serious enough to justify criminalisation.* ”²⁸

Since its publication, the Government has said:

“ *The process [towards a new law] has been delayed...* ”²⁹

It has turned to non-legislative action, such as setting up a review to consider additional support for young people who report to have experienced ‘conversion therapy’.³⁰



Netherlands

A QUESTION OF NECESSITY

Conversion therapy has been part of the political agenda since 2019, when the Dutch House of Representatives called on the Government to outlaw conversion therapy.

Subsequent research commissioned by the Government suggested several non-legislative options, alongside possible legislation. It acknowledged that a ban which does “not clearly state which forms of [conversion therapy] it is aimed at” would create a legal “grey area”. However, the researchers did suggest a law would be good for “symbolic effect” and to ‘send a signal’.³¹

In response, a series of non-legislative policy initiatives were published. These included a joint ‘code of conduct’ by religious communities on combatting conversion practices, and the establishment of support centres to assist individuals with filing complaints based on existing law.³²

A Private Member’s Bill to create a new law on conversion therapy was published in 2022. It was sent to the Council of State for legal consideration.



Its advice in January 2023 raised significant questions around necessity and enforceability.³³

“ *The initiators do not provide any examples of conversion acts that are not yet punishable, but which in their view should be punishable.*”

It concluded that the value of the proposal is therefore

“ *unclear*”

It went on to criticise the notion of legislating to ‘send a signal’, saying:

“ *The confidence of citizens in criminal law is damaged if criminal offences cannot be [or are not] enforced in practice.*”

A revised version of the Bill was brought forward in October 2023. However, this also received heavy criticism. Further official legal analysis identified several unresolved problems, including lack of clarity around terms such as ‘gender identity’ and ‘gender self-determination’.

The analysis also highlighted:

“ *uncertainty about the harmfulness of different types of conversion acts [which] also has an impact on the possible justification of the restriction of fundamental rights, such as freedom of expression and freedom of religion.*”³⁴

Supporters of the Bill have now conceded that it is very likely to be voted down at the end of its first debate in the House of Representatives.³⁵

Western Australia

“DIFFICULT TO DEFINE”

The Labor administration in Western Australia pledged a conversion therapy law in 2022. This followed a report into a disgraced Christian rehabilitation centre accused of horrific acts including sexual and psychological assault, illegal restraint and the withholding of medication, alongside the charge of ‘conversion therapy’.³⁶



However, in its response to the report, the Government chose to define 'conversion therapy' in much broader terms, including:

*“ teachings, counselling, spiritual care activities, or other psychological or medical interventions based on the ideology that there is something wrong or broken about people with diverse sexualities or gender identities. ”*³⁷

This broader definition has created difficulties. In a press conference in February 2024, Labor Premier Roger Cook admitted the troubles the Government were having in legislating. He said:

*“ We continue to look at how we can legislate to make sure gay conversion therapies are outlawed, but it is very difficult to define in a statutory sense because you have to define what a therapeutic activity is. ”*³⁸

He still pledged to legislate in this parliamentary term. But in September 2024, Attorney General John Quigley conceded “there will not be enough time”³⁹ before the state elections in March 2025.

It is understood that a significant reason for the delay has been in trying to draw up a civil response scheme to address incidents where harm does not meet the criminal threshold, or where the individual does not want to go through criminal proceedings.



▲ Premier Roger Cook

Austria

NO KNOWN CASES

A resolution unanimously passed by the National Council, the lower chamber of the Austrian Parliament, in July 2019, called on the Federal Government to immediately submit a Bill which prohibits 'conversion therapy' on children. Introductory remarks to the motion referenced sexual orientation, but not gender identity.⁴⁰

Five years on, no Bill has been brought forward. And the scope of the law has caused political difficulties within the OVP-Green coalition.⁴¹

Initially, only medical settings were in view (as per the law in Germany).





The Ministry of Health's Advisory Council for Mental Health unanimously stated that 'conversion practices' are already classified by medical bodies as 'unethical' and a 'human rights' violation. They clarified that in over 25 years there has been no known case of 'conversion therapy'.⁴² In response, the Government issued a circular making the case that such practices are already illegal (see, for example, the Psychotherapy Act 1990).⁴³

However in 2021, a new resolution called for the inclusion of non-consenting adults⁴⁴ and made clear it should cover other (non-medical) settings, including what it rather disparagingly referred to as 'an arch-Catholic environment'.⁴⁵

Further progress stalled as the Greens also wanted any Bill to cover trans identities – something their coalition partners could not accept.⁴⁶

The OVP's Nico Marchetti – a supporter of a ban and one of the proposers of the 2021 motion – also cited complexity as a reason for delay, particularly around the term 'conversion therapy' and whether a violation would mean an administrative penalty or a criminal sanction.⁴⁷

Any work on a Bill will now fall to the new Government.



Finland

A GOOD USE OF TIME AND MONEY?

The first attempt to introduce a 'conversion therapy' law came through a 'citizens' initiative' in 2021. This lapsed in 2023. A second attempt was referred to the Legal Affairs Committee later that year.⁴⁸

The National Coalition Party is the largest party in the governing coalition and has expressed support for a 'conversion therapy' law.⁴⁹ But in June 2024, the National Coalition Party's lead representative on the Committee, Mari Kaunistola, said legal advice (not yet publicly available) received by the Committee made clear that a Bill should not be rushed.⁵⁰

She suggested the first step would be for Government-commissioned research to establish the scope of the problem and the extent to which practices can already be addressed via the Criminal Code⁵¹ – as happened in Norway and Sweden.

However, other coalition parties have questioned why in a period of austerity, "time and money will be taken for the investigation, which is not even in accordance with the government's program".⁵²

National Coalition Prime Minister Petteri Orpo has recently conceded that any Government steps toward a law now seem unlikely.⁵³ A Bill in line with the 'citizens' initiative' could be pursued in Parliament, independent of Government action.⁵⁴



👤 Prime Minister Petteri Orpo

Conclusion

Around the world, legislators have been finding that creating a ‘conversion therapy’ law is not as easy as people think. At the heart of the struggle has been the question of definition. Activists demand that any law covers prayer, pastoral conversations and parenting. Reconciling their demands with human rights law and identifying any gap in the law have proved elusive.

Governments in Edinburgh and London have faced all the same problems. The Scottish Government has spent years trying to craft a law, only to then hand responsibility to Westminster. And Westminster seems no closer to publishing its long-promised draft Bill.

The fact that a handful of jurisdictions have pushed through activist-style bans does not take away the fundamental problems. It is clear from legal advice by Aidan O’Neill KC, Jason Coppel KC and Sarah Vine KC that such laws applied here would not be compatible with human rights. And to take the approach of Norway, which pushed ahead despite significant warnings from its Director of Public Prosecutions,⁵⁵ merely risks an embarrassing legal challenge in the future.





The difficulties with vague ‘conversion therapy’ laws in those jurisdictions are becoming increasingly apparent. In France, there have been cases of people being wrongly accused of ‘conversion therapy’ because the law is unclear and can be weaponised.⁵⁶ Official guidance in the Australian state of Victoria threatened parents with prosecution for not allowing their children to be prescribed puberty blockers.⁵⁷

The Scottish Government and the UK Government now face a choice: continue with a project that even many ‘progressive’ governments are beginning to see is a dead end; or consider seriously how individuals reporting genuine abuse can be better protected under existing law.

It is striking that in 2022, the then UK Government concluded that the latter was the right approach to take. Recognising after years of work that any Bill would have “unintended consequences” and that the “evidence does not support a need to legislate in this space”, a leaked memo proposed exploring “additional non-legislative steps” to complement existing legal protections for individuals.⁵⁸

Under political pressure, they U-turned and continued with plans for a new law. As a result, there have simply been more years of going around in circles to nobody’s benefit.

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