

BARONESS BURT'S CONVERSION THERAPY PROHIBITION BILL
EXTRACTS FROM THE ADVICE OF JASON COPPEL KC, 29 NOVEMBER 2023

6. In summary, for the reasons set out below, we consider that:

(1) The Bill is notably broad in scope. It applies both to practices which seek to 'change' sexual orientation or gender identity ("SO/GI") and practices which seek to 'suppress' the 'expression' of SO/GI; i.e., to change conduct. It would apply to acts which cause no injury or distress; and, indeed, to acts to which the person in question consents. It would apply across the whole range of life; including in religious settings, social settings, and in the home. No attempt has been made to craft exemptions or exceptions so as to ensure that any particular conduct, including conduct in domestic settings, or the practice of religion, is not prohibited.

(2) The Bill would, if enacted, interfere with a number of rights protected by the ECHR. It would (by way of example) restrict the ability of gender-critical persons to express their beliefs; the ability of religious organisations to express their beliefs (both to the wider world, and within their own communities); and the ability of parents to counsel and bring up children in the way they believe to be right. Such restrictions are likely to interfere with (at least) the right to respect for private and family life (Article 8 ECHR); the right to freedom of thought, conscience and religion (Article 9 ECHR); the right to freedom of expression (Article 10 ECHR); and the right to freedom of assembly and association (Article 11 ECHR).

(3) Any interference with such rights must be justified and proportionate in order to be lawful. It is very difficult to see how the wide-ranging interference with fundamental rights contemplated by the Bill could be justified. Put shortly, the Bill criminalises expressions of personal conviction even if they are made without expressions of hatred or intolerance, or improper purpose or coercion, or abuse of power. Such an approach runs contrary to the consistent case law of the European Court of Human Rights ("ECtHR").

Analysis of the potential impact of the Bill

22. As we see matters, the following situations (among very many others) would be likely to be caught by the offence created by the Bill:

(1) A gender-critical public figure is invited to public events to speak on gender issues. In the course of her attendance at these events, he or she makes statements such as "Your biological sex is your true gender"; "People who think that they are transgender need to realise who they really are"; and "People who feel they are trans need help, not medication. They shouldn't be taking life-changing measures based on a lie." ...

(2) A 15-year-old teenage girl informs her gender-critical parents that she wishes to change her sex. The parents both hold gender-critical beliefs, and do not support their daughter's wish. The teenage girl repeatedly asks for her parents to support her request for puberty blockers as she believes this is in her best interests based on her interactions with an online transgender charity. Her parents politely but firmly refuse this request several times over the following months. ...

(4) A Christian church requires candidates for adult baptism or confirmation to attend classes over an 8-week preparatory course. These cover 'Christian living', including sexual ethics. A candidate strongly objects to being told that homosexual relationships are wrong – a point he makes on several occasions during course discussions. At the end of the course, he is informed that he cannot be baptised unless he accepts the Bible's teaching as understood and practised by the church. ...

(5) A Christian church teaches that homosexual acts are inherently sinful. The pastor of that church preaches to the congregation to the effect that sex is a gift reserved for marriage between a man and woman and says that singleness is an honourable calling. ...

23. We consider that a criminal prohibition on the conduct summarised above would be highly likely to breach Convention rights. ...