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NOT WHAT IT SAYS ON THE TIN

REPORT ON THE DRAFT CONVERSION PRACTICES BILL 2026

Akua Reindorf KC and Baroness Kishwer Falkner

Policy Exchange

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Contents

About the Authors 2
Introduction 5
The Prevalence of Conversion Practices 8
The Purpose of the Draft Bill 10
Analysis of the Draft Bill 12
- Definitions of "conversion practice", "sexual orientation" and "transgender identity" 12
- The health care exemption 14
- The principal offence 17
- The offence of encouraging or assisting an offence committed abroad 21
- Corporate & institutional liability 21
- Private prosecutions 23
- The lack of statutory defences 23
- Schedule: Conversion Practices Prevention Orders 24

Interaction with other Jurisdictions 25
- Human rights law 25
- Discrimination law 29
- Family law 31

Conclusions 33

Introduction

1. In its manifesto for the last general election, the current Labour government pledged to introduce "a full trans-inclusive ban on conversion practices". Its attempt to honour that commitment is the draft Conversion Practices Bill, published on 25 June 2026 by the then Minister for Equalities, Olivia Bailey MP.

2. Conversion practices—often referred to as "conversion therapy"—have historically been understood to consist of cruel, coercive or violent attempts to persuade same-sex attracted people to change their sexual orientation. Familiar examples from the past include electric shock therapy, "corrective rape", exorcisms and compelled prayer healing. Naturally, there exists almost universal opposition to these practices, and they are already unlawful under existing criminal legislation.

3. The scope of the draft Bill which is now awaiting pre-legislative scrutiny is far from clear, but it is certain that it extends well beyond these sorts of obviously harmful and unjustifiable practices.

4. Any attempt to legislate against the uniquely fraught and rancorous backdrop of the sex and gender debate ought to be approached with great care. Malicious weaponisation of the law is not a rare occurrence in this context. In too many cases, it has resulted in lives being shattered, relationships destroyed and livelihoods lost. All the more restraint is called for when adding criminal law into this volatile mix, and still more when placing parents under threat of criminal sanction—including imprisonment—for their childrearing choices. Using the criminal law to moderate the parent/child relationship demands the utmost caution and seriousness of purpose.

5. Unfortunately, this draft Bill falls at the first hurdle. It is ideological, authoritarian, unworkable and wholly unsuitable legislation for a democratic and pluralistic society. The problem it purports to address is almost entirely unevidenced, and where it might exist, is already covered by existing criminal law. It is a barely disguised collateral attack on essential legal protections enjoyed by those who do not subscribe to a specific narrow set of beliefs about gender identity. Those beliefs are held by a small minority of the

population and are heavily contested. It follows that the draft Bill represents a threat to the liberties of the majority of citizens, as well as to their fundamental human rights. The draft Bill is highly unlikely to be compatible with Articles 6, 7, 8, 9, 10 or 14 of the European Convention on Human Rights.

6. If enacted, the draft Bill will criminalise parents just when they are grappling with a uniquely challenging and high-stakes quandary. A child who declares a transgender identity may be embarking on a one-way path of experimental medicalisation and surgical body modification which will imperil their long-term physical and mental health, impair their sexual function and destroy their fertility. A parent considering whether to try to dissuade their child from this course of action, or to refuse to pay for it, should not have hanging over their head the possibility of criminal conviction and imprisonment at the behest of an angry and frustrated adolescent. Yet those are outcomes which are heralded by the draft Bill.

7. In its totality, the draft Bill represents an attempt to legislate gender self-ID into UK law. Gender self-ID is the practice of treating people as men, women, boys or girls in society according to their "gender identity" rather than their biological sex. It is based on the belief that "gender identity" is a real phenomenon defined as an internal sense of being male or female (or neither) which may or may not coincide with a person's sex. Gender identity ideology holds that this internal feeling should override sex in all situations, including for the purposes of entry into single-sex services and facilities, sports, prisons and everywhere else in society in which males and females have separate provision. This does not depend on a person having any surgery or hormonal treatment, having any diagnosable medical condition like gender dysphoria or even changing their appearance in any way. Only a small proportion of people who identify as transgender undergo genital surgery, and there is a wide variety of preference in terms of personal presentation.

8. People who hold gender critical beliefs reject the notion that gender self-ID should replace sex as an organising principle in social life. They believe that sex is a real and immutable fact of life, that gender identity is a belief rather than a reality and that there are situations in which sex matters for the safety, dignity and privacy of women and the dignity and privacy of men. Those situations include single-sex services and facilities, such as toilets, changing rooms, sexual violence services, prisons and sports.

9. Enacting gender self-ID in UK law has been a long-term project of proponents of gender identity ideology. This would involve root and branch reform of the Gender Recognition Act 2004, which is

the legislation which regulates the grant of Gender Recognition Certificates. A GRC is currently the only mechanism by which a person can acquire some of the legal rights of the opposite sex. The 2004 Act requires GRC applicants to show that they have "lived in the acquired gender" for two years and to have a medical diagnosis of gender dysphoria. Applications are determined by a "Gender Recognition Panel". A self-ID model would replace this regime with a simple formal declaration subject to few or no qualifying criteria.

10. In January 2016, the Women and Equalities Select Committee reported on its Inquiry into Transgender Equality, recommending updating the GRA to introduce a self-ID model. As a result the Conservative government announced GRA reform plans in July 2017, with Prime Minister Theresa May publicly supporting the demedicalisation of gender recognition. A formal consultation was launched in July 2018, but May's apparent support for self-ID was abandoned in the government's consultation response of September 2020.

11. Meanwhile, both the SNP's 2016 manifesto and Labour's 2019 manifesto pledged to enact self-ID. In December 2022 Holyrood passed the Gender Recognition Reform (Scotland) Act, which would have introduced a system of gender self-ID in Scotland. However, that Act was prevented from receiving Royal Assent by Scottish Secretary Alaistair Jack, who invoked section 35 of the Scotland Act 1998 (for the first and only time) to block it in January 2023. At that time, political and public understanding of the problems posed by gender self-ID was informed by the housing of the rapist Isla Bryson in a Scottish women's prison on the basis of his post-arrest self-declaration as a transgender woman. Very quickly after the blocking of the Scottish Act, Labour's self-ID pledge quietly disappeared from its policy handbook in favour of promises to build consensus on modernising the GRA and to uphold the single-sex exceptions in the Equality Act 2010 (which are inconsistent with a self-ID model of gender recognition). Shadow Minister for Equalities Anneliese Dodds MP formally abandoned Labour's self-ID policy in July 2023. In government, Labour has taken no steps towards Gender Recognition Act reform, and self-ID is firmly off the table.

12. If the draft Conversion Practices Bill is enacted, it will have the effect of criminalising those who object to the practice of gender self-ID in certain circumstances. It is likely that its chilling effect, reaching well outside the contexts in which it applies, will be such that self-ID is all but positively lawful, and those who legitimately resist its manifestation will be subject to or at risk of criminal sanctions.

The Prevalence of Conversion Practices

13. The draft Bill is not supported by a robust evidence base. There is no reliable data to show that incidents of attempted conversion, properly so-called, are a feature of modern life in the UK, other than in vanishingly small numbers. The evidence upon which the drafters of the Bill rely is of low quality.

14. For example, a Rapid Review conducted by Coventry University academics and published by the government in 2021[1] analysed 46 research papers and interviewed 30 individuals. The source material suffered from various methodological limitations, and the vast bulk of it related only to sexual orientation and not to transgender identity. For these reasons, amongst several others, the report is of virtually no probative value. One failure is that it appears to include in the category of "conversion therapy" any form of therapy which does not adopt the "affirmation only" model in relation to transgender identity (see further §§33 – 39 below). It is thus based on strongly ideological assumptions which, for example, do not correspond to the findings in the UK government's 2024 Cass Report on gender services for children and young people[2] to the effect that children with transgender identities should receive exploratory therapy rather than unquestioning "affirmation".

15. Research carried out in 2024 by Opinium on behalf of Stonewall under the title *Culture Wars and Hate*[3] said that 10% of "LGBTQ+" people and 30% of transgender people claimed to have been subjected to exorcism in an attempt to change their sexuality or gender identity. The worst affected appeared to have fallen into younger age groups: over 16% of 18 – 34 year olds said they had been exorcised, by comparison to less than 1% of those aged 55 or above. If exorcisms were being performed at the rate suggested in this paper, there would be 24,600 taking place every year in the UK.

16. It ought to be immediately obvious that these figures are wildly improbable. Nonetheless, in the draft Bill's Impact Assessment the government extrapolates from this research that there is a prevalence of 4.2% to 5.2% amongst what is referred to as the

1. *Conversion therapy: an evidence assessment and qualitative study*, Adam Jowett & ors, 2021 https://www.google.com/url?sa=t&source=web&rct=-j&opi=89978449&url=https://www.gov.uk/government/publications/conversion-therapy-an-evidence-assessment-and-qualitative-study/conversion-therapy-an-evidence-assessment-and-qualitative-study&ved=2ahUKEwjHocZtZeXAxXz7sIHXmtLuQQFnoECB0QAQ&usg=AOvVaw2d8WQ9AnKfhWCVX2wpDmn
2. https://webarchive.nationalarchives.gov.uk/ukgwa/20250310143642/https://cass.independent-review.uk/; and see also *Bell v The Tavistock and Portman NHS Foundation Trust* [2021] EWCA Civ 1363
3. https://www.opinium.com/stonewall-press-tables/

"LGBT+" population of conversion practices consisting of "being told to ingest 'purifying' substances" and/or "being given 'pseudo-scientific counselling sessions'". On that basis it estimates that 75,000 to 93,000 people will be protected by the draft Bill every year if it is enacted.

17. In making this estimation the government does not appear to have taken on board the lessons to be learnt from the Conversion Practices Helpline which was operated on its behalf by the LGBT+ anti-abuse charity Galop for three years from 2022. It had been predicted that the Helpline would receive up to 15,000 calls per year. In the event, it received 371 calls over three years, of which 29 raised potential conversion practices – fewer than ten per year. Even that number must be taken with a pinch of salt, given the examples cited in the 2026 report *Still not illegal: Evidence of modern-day conversion practices from Galop's frontline services*. These include "intentional refusal to use a chosen name or pronouns (repeatedly, or in a derogatory or controlling way)". There is only so much harm that can reasonably be said to arise from "misgendering" (referring to a transgender person by sex-based pronouns) or "deadnaming" (using a transgender person's pre-transition name), even if malicious. Placing these into the same category as electric shock therapy or corrective rape is not helpful. The inclusion of such a wide range of conduct under the "conversion practices" umbrella is a recurring feature of the scant and poor quality research that exists in this area—and upon which the draft Bill and Impact Assessment are premised—and it drastically undermines the credibility of any headline figures derived from that research.

18. Furthermore, such evidence as there is which relates to jurisdictions with similar or comparable conversion practices bans is equally specious. There is no properly compiled data to show that bans are working well elsewhere.

The Purpose of the Draft Bill

19. The draft Bill's Explanatory Notes state that the purpose of the legislation is to "fill gaps in the criminal law"[4]. Hence in the House of Lords debate on 1 July 2026, Lord Collins described the draft Bill as follows:

> *"right now, gaps in the law are allowing a very specific form of abuse to occur: abuse driven by the false belief that being LGBT+ is shameful, that it can be forcibly changed, and that if you cause someone enough pain, you will somehow stop them being who they are. We are talking about people being shamed in front of a congregation, and pushed to the ground in an effort to remove the devil; about families threatening to rape and murder people if they do not change their identity; and about people being beaten or sexually assaulted by those trying to 'correct' who they are. These are real stories, real people, and real abusers getting away with it. Today, with this legislation, that stops"*[5]

20. Clearly, threats of rape and murder, pushing, beating and sexual assault are all already criminally unlawful. Furthermore, any specific homophobic or transphobic element to these crimes can be reflected in increased sentences by virtue of section 66 of the Sentencing Act 2020, which applies where an offence has been aggravated by hostility related to sexual orientation or transgender identity. See also section 45 of the Crime and Policing Act 2026 (not yet in force), which will have the effect of creating an offence of common assault motivated by hostility towards transgender identity.

21. The government has not yet offered coherent details of the "gaps in the criminal law" which the draft Bill is said to be designed to close. The Impact Assessment says that there is a gap concerning criminal prohibition of "verbal and non-physical acts" such as "psychological abuse which degrades or manipulates an individual, and coercive control over an individual's everyday movements and finances". In fact, if any gap does exist in this area, it is very much narrower than suggested; the overwhelming majority of conduct which could fall within this description is already criminal. Sections 1(3)(c) and (d) of the Domestic Abuse Act 2021 prohibit controlling or coercive behaviour and economic abuse between adults who are personally connected to each other. As the Impact Assessment acknowledges, distress, abusive behaviour in public

4. Conversion Practices Draft Bill Explanatory Notes, p.3 §2
5. https://hansard.parliament.uk/lords/2026-07-01/debates/C5C2A2F3-FB5B-4580-A214-4765AE3B4359/Draft-ConversionPracticesBill

and repeated abuse are also covered by the Protection from Harassment Act 1997, the Public Order Act 1986 and the Serious Crime Act 2015. In many cases these existing statutes have higher maximum sentences than the five years intended for conversion practices, and these sentences may be increased by the sentencing aggravators referred to above.

22. The Impact Assessment says that the draft Bill goes further than these existing statutory provisions because it covers "instances in all settings, and one-off acts regardless of whether victim and perpetrator are 'connected'"[6]. This phrasing elides separate perceived lacunae in the existing legislation. Harassment under the Protection from Harassment Act 1997 does not require a close connection between the victim and the perpetrator, though it does require more than one incident. Conversely the offence of controlling or coercive behaviour in section 76 of the Serious Crime Act 2015 (read with section 1(3)(c) of the Domestic Abuse Act 2021) does require a close connection, but expressly includes one-off incidents. Neither offence is restricted to domestic environments, as implied by the Impact Assessment.

23. Remarkably, the only concrete example of a legislative gap identified by Lord Collins in the 1 July debate was the fact that the offence of controlling or coercive behaviour can only occur within close relationships. He said "[t]here are many other examples of gaps in the law that need to be addressed", but he named none. When asked again later in the same debate, he was reduced to saying that he thought the pre-legislative scrutiny would be able to identify the gaps. It is concerning that a government Minister would make the statement set out above—strongly implying that the law somehow omits to criminalise sexual assault, assault occasioning actual bodily harm, grievous bodily harm and threats of murder when they occur in a "conversion" context—without being able to offer more than the slightest information about where and how the existing law falls short.

24. There is no evidence that the well-established body of existing criminal law has been found wanting on any occasions when complaints of conversion practices have been made to the police. In any event, the draft Bill does not limit itself to closing a gap of the description given in the Impact Assessment or one which matches Lord Collins' account. Rather, its principal offence is wide-ranging and open-ended, and is capable of capturing anything from rape and GBH to misgendering and deadnaming. As with the research referred to in §15 above, the extremely wide and diffuse potential coverage of the draft Bill undermines any utility it might have.

6. Conversion Practices Bill, Draft final stage impact assessment, updated 1 September 2026, p.32

Analysis of the Draft Bill

Definitions of "conversion practice", "sexual orientation" and "transgender identity"

Conversion practice

25. Clause 1 of the draft Bill states what amounts to a "conversion practice": any conduct carried out towards an individual with the intention of causing them to have or not to have a sexual orientation or transgender identity or to believe that they have or do not have a sexual orientation or a transgender identity. "Conduct" is undefined and therefore unconstrained. The requirement as to "intention" is of note: the alleged perpetrator must intend to change the alleged victim's sexual orientation or gender identity or the alleged victim's belief about his or her sexual orientation or transgender identity.

Sexual orientation & transgender identity

26. Previous attempts to construct a "trans-inclusive" conversion practices ban have faltered on the question of how to define the concept of "gender identity" or "transgender identity". This definitional problem has not been solved in the current draft Bill.

27. In clause 1(7) of the draft Bill, sexual orientation is straightforwardly defined by the incorporation of section 12(1) of the Equality Act 2010. This defines the concept as a person's sexual orientation towards people of the same sex, the opposite sex or both sexes. It should be noted that this piggy-backing onto the Equality Act will, naturally and appropriately, import the Supreme Court's decision in *For Women Scotland v The Scottish Ministers*[7] into the draft Bill. This means that sexual orientation is defined by reference to biological sex and not any concept of "gender" or certificated sex. Thus a lesbian (for example) is a woman who is attracted to women, not "a person who identifies as a woman who is attracted to people who identify as women" or "a woman or a man with a Gender Recognition Certificate who is attracted to women or to men with Gender Recognition Certificates".

7. [2025] UKSC 16

28. There is substantial potential for this definition of sexual orientation to conflict with the description of "transgender identity" given in the same clause of the draft Bill. This description cannot properly be termed a definition. Clause 1(8) of the draft Bill sets out three possible suggestions for "circumstances in which an individual has a transgender identity", but is expressly non-exhaustive. Thus, it is written into the face of the draft Bill that a transgender identity could be anything.

29. As to the three suggestions in the subclauses of clause 1(8):

29.1 Clause 1(8)(a) provides that a person might have a transgender identity if he or she is "undergoing, is proposing to undergo or has undergone a process of gender reassignment". This is an abridged version of the protected characteristic of gender reassignment in section 7 of the Equality Act 2010. It omits the part of section 7 EqA which requires the "process" to be undertaken "for the purpose of reassigning the person's sex by changing physiological or other attributes of sex". Post-*For Women Scotland*, it is clear that the omitted part of section 7 EqA can only refer to a process of reassignment from one biological sex to the other, and cannot include those who take on non-binary gender identities such as genderfluid, genderqueer and so on[8]. That is perhaps why it has been omitted from the draft Bill. Its omission leaves the draft Bill without any indication of what is meant by "a process of gender reassignment".

29.2 The second suggestion, in clause 1(8)(b) of the draft Bill, is that "the person is transsexual". How this is said to differ from the suggestion in clause 1(8)(a) is not explained: in both the Equality Act 2010 and in the Sentencing Act 2020 the term "transsexual" is used to refer to "a person with the protected characteristic of gender reassignment". The Explanatory Notes state only that "transsexual" may be thought outdated but is used in the draft Bill "for consistency", but offers no explanation beyond that.

29.3 The third suggestion in the draft Bill is that "the individual identifies as neither male nor female or as not solely male or female". This is an extraordinarily broad category. It is obviously intended to encompass non-binary identity, a concept otherwise unknown to UK law[9] and, post-*For Women Scotland*, wholly inconsistent with the binary understanding of sex which underpins the Equality Act 2010. "Non-binary" identity is, conventionally, an identity which does not fit into either "male/man" or "female/woman". Those

8. See *Lockwood v Cheshire and Wirral NHS Foundation Trust & others* Cases 2401211/2024 & 2407178/2024 (6 October 2025, unreported) ET

9. See *R (Elan-Cane) v Secretary of State for the Home Department* [2021] UKSC 56

with non-binary identities often ask to be referred to with "they/them" pronouns. Yet the description in clause 1(8)(c) of the draft Bill is capable of encompassing much more than just conventional "non-binary" identity. There are hundreds of alternative gender identity labels which may satisfy the description, ranging from "genderqueer" (a label for people who identify as "queer"[10]) to "demigirl" (a label describing a person who partially identifies as a woman or girl, while also feeling a connection to another gender identity or to gender neutrality[11]) and even "catgender" (a gender involving a very strong connection to cats or other felines, including people who experience delusions of being a cat[12]).

30. These labels are quite obviously a manifestation of an internet-based youth sub-culture which is unlikely to amount to more than a passing fad. A sensible adult might indulge them, but would not regard them as worthy of the protection of the criminal law. However, it is not an overstatement to say that, under the draft Bill, a person may face imprisonment for trying to persuade another that they are not, in fact, a cat. It should be understood additionally that the alleged perpetrator in this scenario would not need to have intended to cause the alleged victim any harm (see further §43 below).

The health care exemption

31. The draft Bill contains only one carve-out: the health care exemption in clause 1(3). This clause provides that conduct which is carried out with the intention of changing a person's gender identity or sexual orientation in the course of providing health care services to the individual is not a conversion practice unless the person acts in a way which falls far below the standards reasonably expected of a person in their position.

32. The scope of this exemption is unclear, in particular as regards the question of what standards are reasonably to be expected of those who provide gender identity "health care" services. This issue is a key facet of the dispute between proponents of gender identity ideology and gender critical campaigners.

33. Until recent years, the medical standard for children and young people with gender dysphoria was "watchful waiting", but over time this was almost entirely replaced with an "affirmation only" approach. The latter enjoins medical professionals to accept without question that anybody who presents with a cross-sex identity or claiming to have gender dysphoria, itself very widely defined[13],

10. https://lgbtqia.fandom.com/wiki/Genderqueer
11. https://www.gendergp.com/blog/demigirl-a-complete-guide-to-understanding-this-non-binary-gender-identity/
12. https://lgbtqia.wiki/wiki/Catgender
13. See https://www.nhs.uk/conditions/gender-dysphoria-and-incongruence/

is transgender and is entitled unquestioningly to be provided with the means to medically and then surgically transition, if that is their wish. The affirmative approach is premised on the unevidenced notion that a child's risk of suicide is increased if they are not immediately affirmed in their cross-sex identity. Its rise has coincided with a surge in the numbers of young people seeking to medically transition. Girls and young women are heavily overrepresented amongst their number, as are same-sex attracted young people, those with autism or mental health conditions and looked after children.

34. The affirmative approach is promoted vigorously by the World Professional Association for Transgender Health (WPATH), which produces and updates a set of "standards of care" for the treatment of gender distress. Similarly, many counselling organisations have signed up to a 2024 "Memorandum of Understanding on Conversion Therapy in the UK"[14] which commits them to adopt an affirmative approach.

35. It is the view of many within the gender critical movement that the widespread use of the affirmative approach supported by these organisations is a medical scandal on a par with lobotomy, and that it amounts in its most extreme consequences to the surgical sterilisation of a generation of disproportionately female, autistic, LGB and vulnerable young people, especially those who are gender non-conforming. Affirmation of transgender identities is seen as a gay conversion practice in itself; offering to young people concerned or disturbed about their emerging sexuality the means to cure themselves of homosexuality and become heterosexual people of the opposite sex. This is a view shared by a number of former members of staff at the Gender Identity Service at the Tavistock and Portman NHS Trust[15].

36. The WPATH standards of care are the locus of particular criticism. For example, the 8th edition of its Standards of Care (2022)[16] contains a chapter promoting medical and surgical treatment on those who identify as "eunuchs", and sets no lower age limit for hormonal or surgical intervention. The Memorandum of Understanding is similarly the site of extensive critique. Both documents are regarded by many specialist medical professionals as deeply damaging, activist-led propaganda, and not as serious medical or therapeutic tools.

37. For proponents of gender identity ideology, anything falling short of affirmation amounts to a transgender conversion practice, including the practices recommended in the Cass Report (see §14 above and §38 below). Hence Amnesty UK's 2026 report *A growing*

14. https://www.google.com/url?sa=t&source=web&rct=-j&opi=89978449&url=https://www.bacp.co.uk/media/21242/memorandum-of-understanding-on-conversion-therapy-in-the-uk-july-2024.pdf&ved=2ahUKEwiz9I6yuJ2XAxVvQUEAHUpsN4QQFnoECBwQAQ&usg=AOvVaw0DVjM9PCWqvHCwxSPETGNE

15. See https://www.thetimes.co.uk/article/it-feels-like-conversion-therapy-for-gay-children-say-clinicians-pvsckdvq2

16. https://www.google.com/url?sa=t&source=web&rct=-j&opi=89978449&url=https://wpath.org/publications/soc8/&ved=2ahUKEwi5I5zGuZ2XAxWuQEEAHRHJK-1kQFnoECA8QAQ&usg=AOvVaw3Lcx-2ernZZJ5do32ueQDre

threat: the anti-rights movement in the UK[17] accused 12 gender critical "actors" of conversion practices, including the Society for Evidence Based Gender Medicine, Therapy First, Genspect and the Clinical Advisory Network on Sex and Gender. These are bodies made up predominantly of therapy and counselling professionals whose practice is to advocate for or adopt watchful waiting techniques in the treatment of gender dysphoria in children and young people, in line with the Cass Report, and to support detransitioners.

38. The Cass Report itself decries the "polarised debate about conversion practices"[18] which has overshadowed the role of psychological therapy in treating gender distress. The Report concludes that children and young people with gender dysphoria "may have a range of complex psychosocial challenges and/or mental health problems impacting on their gender-related distress" and that "Exploration of these issues is essential to provide diagnosis, clinical support and appropriate intervention"[19]. The Report states that it is "harmful" to equate psychological exploration with conversion therapy[20]. It notes the lack of "developmental rigour" in WPATH guidelines[21], and expresses concern about WPATH's very significant influence on guidance produced by other professional bodies such as the Endocrine Society[22].

39. Against this background it can be seen that the seemingly innocuous provision in clause 1(3) of the draft Bill, which on its face exempts only competent health care providers from criminal responsibility for conversion practices, is in fact yet another battleground in the sex and gender debate. Absent a clear definition of the phrase "far below the standards reasonably expected", this clause is destined for bitter and prolonged dispute over even the most basic components of competent and ethical healthcare for people with transgender identities. This part of the draft Bill seems designed to litigate the allegations and counter-allegations of engagement in conversion practices which are habitually exchanged between proponents of affirmation and supporters of watchful waiting.

40. Meanwhile, medical and therapeutic professionals who do not wish to get caught in that crossfire—and who wish still less to risk imprisonment for doing their job—are likely to avoid offering treatment for gender distress altogether. The curbing of accessible care for fear of litigation and criminalisation will further reduce accessibility for those in need of medical assistance. The scope for the draft Bill to produce a chilling effect in the health care sector is explored in a recent report produced by Sex Matters[23].

17. Withdrawn from publication
18. Independent Review of Gender Identity Services for Children and Young People Final Report, April 2024, para 11.4, p.150
19. Ibid, para 11.5, p.150
20. Ibid, para 11.6, p.150
21. Ibid, para 47, p.28
22. Ibid, **Paras 9.20–9.22, p.130:**
23. https://sex-matters.org/posts/updates/criminalising-conversations/

The principal offence

41. A "conversion practice" within clause 1 of the draft Bill (see §25 above) will not be unlawful *per se*. For the purposes of the principal offence in clause 2, a conversion practice will only be unlawful if it is "abusive" as described in clause 2(1) and if it causes "serious harm" or "serious alarm or distress" to the alleged victim as described in clause 2(1)(a).

42. Every part of clause 2(1) is either insufficiently coherent or insufficiently predictable to constitute an element of a competent criminal law.

Abusiveness & harm need not be intended

43. Vitally, clause 2 does not contain any requirement that the alleged perpetrator intends to be abusive or to cause harm or distress. It does not even require the alleged perpetrator to have constructive knowledge that the conduct is abusive or harmful. The only intention required is that described in clause 1: namely, the intention to change a person's sexual orientation or transgender identity, or their beliefs about their sexual orientation or transgender identity. Therefore the principal offence could capture acts done in perfectly good faith and without criminal intent. This means that it is an offence of strict liability. This is highly unusual, and it is difficult to imagine what justification there could be for its use in this context.

No definition of "abusive"

44. The term "abuse" is not defined in the Act. Rather, by clause 1(5) the question of whether conduct is abusive is left as a question of fact to be determined by reference to all the circumstances including the nature of the conduct. There is a wide divergence of opinion between those who subscribe to gender identity ideology and those who reject it about what sort of conduct can reasonably be said to be "abusive". The use of sex-based language is often regarded as abusive by the former, but as an essential red line in the manifestation by the latter of gender critical beliefs. Disputes over the extent to which particular uses of language are abusive have already led to litigation and regulatory investigations in numerous cases in various jurisdictions. Institutional support for extreme or counter-intuitive positions in this area is far from unknown. For example, from 2022 until mid 2024 the Crown Prosecution Service's guidance on domestic abuse included "Refusing to use preferred name or pronouns" as an example of potential domestic abuse against trans and non-binary people[24]. If this key term is

24. Crown Prosecution Service, "Legal Guidance, Domestic Abuse" Annex D, 5 December 2022

left undefined in the draft Bill, there is considerable scope for inconsistency of interpretation between courts and juries about its meaning.

Non-exhaustive examples of "abuse"

45. Clause 1(6) gives a non-exhaustive list of types of conduct which may be abusive. These are broadly similar to the elements of domestic abuse listed in section 1(3) of the Domestic Abuse Act 2021. However, the DAA does not (in large part) create criminal offences, and moreover the list in section 1(3) DAA is exhaustive. A criminal law should not be open-ended.

No threshold for abusiveness

46. The list of types of abuse in clause 1(6) only describes what sort of words or behaviour might be abusive. It does not give any indication of the gravity required to render these types of purported abuse criminal. It is notable that the comparable list in section 1(3) of the Domestic Abuse Act 2021 (see §45 above) refers only to "behaviour", not also to "words". As is clear from the Galop report discussed at §17 above (relied upon by the government in drafting the Bill), it is not uncommon amongst those who subscribe to gender identity ideology for "misgendering", "deadnaming" or merely the accidental absence of their preferred pronoun to be perceived as abusive. There is every chance that the principal offence in the draft Bill will be used to attempt to cause punitive consequences for those who fail or refuse to use preferred pronouns or names.

Examples of abuse are already criminal

47. As discussed more generally at §§20–23 above, the list of types of abusive behaviour in clause 1(6) overlaps substantially with existing criminal laws, most of which have higher sentencing maxima. Thus:

    47.1 "behaviour of a sexual nature", if sufficiently serious, can already be prosecuted as sexual assault under the Sexual Offences Act 2003 or as rape or assault by penetration;

    47.2 "violent or threatening behaviour" can be prosecuted as grievous bodily harm under sections 18 or 20 of the Offences Against the Person Act 1861 or as assault occasioning actual bodily harm under section 47 of the same statute;

    47.3 "controlling or coercive words or behaviour", where they

occur between adults in an intimate family relationship, can be prosecuted as controlling or coercive behaviour contrary to section 76 of the Serious Crime Act 2015 (which is supplemented by the *Controlling or coercive behaviour: statutory guidance framework*[25]) or, where perpetrated by an adult to a child, as child cruelty contrary to section 1 of the Children and Young Persons Act 1933;

47.4 "use of economic pressure" may already be prosecuted as fraud or theft if it involves "behaviour that severely limits an individual's ability to earn, manage, or use their own money and property", as stated in the Explanatory Notes;

47.5 "words" falling into any of the descriptions can be prosecuted as harassment contrary to section 2 of the Protection from Harassment Act 1997 if they form part of a series of more than one incident and the requisite knowledge is proved.

Categories of abusive behaviour include normal family interactions

48. It is a matter of very great concern that the categories of words or behaviour which are exemplified in clause 1(6) of the draft Bill are, in many cases, of types which routinely occur within parent/child relationships, particularly in fraught situations.

49. It is common sense that a child is in many ways "subordinate" to and/or "dependent" on a parent and that a parent is entitled to "punish" a child, within reason. Yet these are words used in the Explanatory Notes to describe potentially criminal controlling or coercive words or behaviour. Many teenagers will experience their parents' imposition of proper and ordinary boundaries as amounting to almost constant "psychological or emotional pressure". With no requirement of intentional abusiveness, a low harm threshold (see §§51–53 below) and no reasonableness or consent defence (see §68 below), the draft Bill puts responsible parenting directly into the realm of potential criminalisation.

50. The Explanatory Notes also state that "economic pressure" might include preventing a person "from accessing essential goods and services" including "healthcare". This opens up the possibility of a parent being subjected to criminal sanction for refusing to finance a child's private medical or surgical gender reassignment or to pay for "gender affirming" items such as breast binders.

Low & uncertain harm thresholds

51. Clause 2(1) requires the impugned conduct to cause either (a)

25. https://www.gov.uk/government/publications/controlling-or-coercive-behaviour-statutory-guidance-framework/controlling-or-coercive-behaviour-statutory-guidance-framework-accessible

"serious harm to the individual's physical or mental health" or (b) "serious alarm or distress to the individual which has a substantial adverse effect on their usual day-to-day activities". The draft Bill contains no objective standard for either of these harm thresholds.

52. The Explanatory Notes—which are not considered by a court interpreting an Act, save in exceptional circumstances—state that the threshold in clause 2(1)(a) "is comparable to the degree of harm required for actual bodily harm" and that it "does not need to be permanent but must be more than transient and trifling". As for clause 2(1)(b), the Explanatory Notes say this includes the kind of alarm or distress which might result in "social isolation, a noticeable decline in physical or mental health that lead to self-harm, an inability to work, and an inability to care for oneself". This is similar to the harm threshold in the offence of controlling or coercive behaviour.

53. Both of these thresholds are low, and neither is suitable for discerning whether a child or teenager has been harmed to an extent which ought to result in criminal sanction. Children and young people commonly suffer from genuine psychological distress which is objectively disproportionate. That is particularly so if the child is suffering from pre-existing mental or psychological distress or has a neurodevelopmental condition such as autism. It is difficult to obtain consistent data showing the extent of comorbidity and neurodivergence amongst children and young people who identify as transgender, but the studies identify that both are high[26].

No age limits, duty of care or relationship between parties

54. The draft Bill contains no minimum age under which a person will not be liable to prosecution. The age of criminal responsibility is 10. Thus, even children who are still at primary school may be liable to criminal prosecution for abusive conversion practices against their schoolmates where they have made comments or asked questions without malice or harmful intent. Moreover there is no requirement that the accused be a person who has any duty of care to the alleged victim or that they be in any kind of relationship to the alleged victim. Indeed there is no need for the accused to be a person known to the purported victim or in any way connected to them. There seems no reason why an individual might not be prosecuted in respect of material published on social media, which is already the principal battleground of the sex and gender debate. The only factor limiting such a prosecution would appear to be the requirement in clause 1(2) that the conversion practice be carried out "towards an individual", though this, too,

26. See, for example: *Young people with features of gender dysphoria: Demographics and associated difficulties*, **Holt, Skagerberg & Dunsford (2016)** (https://www.google.com/url?sa=t&source=web&rct=-j&opi=89978449&url=https://pubmed.ncbi.nlm.nih.gov/25431051/&ved=2ahUKEwiDt7PEu52XAxXeRUEAHcPbMEkQFnoECB4QAQ&usg=AOv-Vaw3V8BAp9pTOfIuC_MuUA-sw)

is undefined.

The offence of encouraging or assisting an offence committed abroad

55. Clause 3 contains the secondary offence of encouraging or assisting an abusive conversion practice committed outside England and Wales. This applies only to "a United Kingdom person", which includes any national or habitual resident of any part of the UK or any body which is incorporated or constituted under the law of any part of the UK.

56. The offence consists of conduct carried out within England or Wales that is capable of encouraging or assisting somebody who is abroad to carry out an abusive conversion practice on a UK national or habitual resident. Notably, there is an intention condition in this offence: the alleged perpetrator must intend to encourage or assist the carrying out of an abusive conversion practice, and is not to be taken to have had the requisite intention merely because an abusive conversion practice was a reasonably foreseeable consequence of his or her conduct.

57. The inclusion of an intention requirement in this clause strongly suggests that the lack of any such requirement in the principal offence is deliberate. The extent of the intention required is somewhat unclear, however. It would be strange if a person prosecuted under this section must be shown to have intended that the ultimate conversion practice carried out by another person be "abusive", when no such intention would be required under the principal offence.

58. Otherwise, since this offence imports the concept of an "abusive conversion practice" from clause 2, it contains the same flaws as the principal offence.

Corporate & institutional liability

59. Clause 5 extends liability to corporate and unincorporated bodies. Thus the draft Bill casts an extremely wide net. Unincorporated bodies are not usually fixed with criminal liability. There is no reason, on the face of the draft Bill, why a purported victim should not make an allegation of conversion practices against a gender critical charity or campaigning organisation in respect of its published or broadcast materials.

60. This is by no means a far-fetched idea in the context of the sex and gender debate. The Amnesty "anti-rights" report (see §37

above) identified 117 organisations which it accused of various infringements of "rights". These included registered charities, at least one legal professionals' organisation, a women-only sexual assault support centre, employee networks, parent groups and more. These are organisations which are already forced routinely to take steps to avoid violence or disruption at their events and meetings. Examples are too numerous to list, but include the release of thousands of crickets at the LGB Alliance's conference in October 2024 and the smashing of the windows of the Brighton Centre in October 2025 in a protest against the FiLia women's rights conference. Even the Equality and Human Rights Commission was subjected to several protests in which criminal damage was inflicted on its premises, including a "piss protest" in September 2022 during which activists poured urine on themselves outside the regulator's offices.

61. There are no reports of similar vandalism or disruption by activists defending sex-based rights of events held by supporters of gender identity ideology: this is a one-way activity. All gender critical groups—and those who are perceived to be such—are vulnerable to malicious or misguided attacks.

62. Furthermore the draft Bill will render religious organisations and communities vulnerable to prosecution. This appears to be one of its principal purposes. Given the lack of clarity as to the parameters of the offences, religious organisations are very likely to be significantly restricted in their interactions with anybody who identifies as transgender or LGB. In fact, they would be well advised not to interact with such persons at all if the draft Bill is brought into force, were it not for the discrimination law issues this could raise.

63. By clause 5(2) of the draft Bill, a person acting or purporting to act as a relevant officer of a corporate or unincorporated body must take all reasonable steps to prevent the commission of the offence by the body. A failure to do so will constitute an offence in itself. It is difficult to know what this very broad crime of omission will mean in practice. The draft Bill does not simply require "reasonable steps" to be taken, but "all reasonable steps". As such, a person working in an institution who takes such preventative steps as they consider appropriate may nonetheless find themselves prosecuted for failing to take other steps, despite the marked absence of any indication in the draft Bill of what these might amount to.

64. At a minimum, a wide range of organisations will be likely to try to head off this liability by putting extremely cautious policies into place. If the quality of the "LGBT" policies habitually produced by

external consultants for private and public sector bodies is any indication, then there is no guarantee that such policies will be lawful or of any assistance in avoiding criminal liability.

Private prosecutions

65. It is more concerning still that the offences in the draft Bill will be susceptible to private prosecution without any need to obtain the consent of the Attorney General or the Director of Public Prosecutions. This is extremely unusual. Combined with clause 5 (see §§59–63 above), it amounts to an invitation to campaigning organisations to use the criminal courts to pursue individuals or organisations to which they are ideologically opposed.

66. The sex and gender debate is marked by litigiousness on both sides. Transactivist civil actions and regulatory complaints include, for example: *Mermaids v (1) The Charity Commission for England and Wales, (2) LGB Alliance*[27]; *R (Good Law Project) v EHRC*[28]; *Hayden v Dickinson*[29]; *R (Watson) v Chief Constable of Manchester Police*[30]; and numerous complaints made to professional regulators about gender critical individuals. There is no reason to presume that the opportunity to extend this activity into the criminal sphere would not be welcomed.

67. At the same time, gender critical civil litigation is common, and there is a widespread opinion amongst gender critical campaigners that gender reassignment amounts to conversion therapy for gay and lesbian young people (see §35 above). Whilst the health care exemption in the draft Bill (see §§31–40 above) would prevent much of the private criminal prosecution that gender critical campaigners might wish to pursue in this regard, it would not prevent all of it. The Bill as drafted would accommodate a private prosecution of an organisation which purports to support transgender young people in their social transition outside the health care field.

The lack of statutory defences

68. It is remarkable that the draft Bill contains no statutory defences, save for the health care exemption in clause 1(3). One would expect a Bill of this sort to allow an accused to argue that their conduct was reasonable. The absence of a defence of reasonableness is a glaring omission given the intrusion of this draft Bill into the family sphere and the parent/child relationship. An alternative or additional appropriate defence would be that the alleged victim consented to the conduct. This absence is likely most acutely to affect religious institutions or individuals, and to embed still further the chilling effect of the draft Bill on their ordinary and lawful activities. The

27. [2023] UKFTT 563 (GRC)
28. [2026] EWHC 279 (Admin)
29. [2020] EWHC 3291
30. [2025] EWHC 954 (Admin)

knock-on effect may be to alienate transgender or LGB people from their families, communities and support systems.

Schedule: Conversion Practices Prevention Orders

69. The draft Bill contains provision for a civil or criminal court to make a Conversion Practices Protection Order in order to protect a person from abusive conversion practices or in order to protect a victim of abusive conversion practices. There are no statutory restrictions on the terms of such an order, save that it must specify the period for which it is to subsist. It may take the form of either a prohibitory or a mandatory injunction. In certain circumstances an order may be made of the court's own motion or without notice. Failure without reasonable excuse to comply with a CPPO will be a criminal offence.

70. This is, again, a very broad power. The deficiencies in the rest of the draft Bill are replicated in the CPPO regime. There will be no need to prove that a person is guilty of an abusive conversion practice in order to obtain a CPPO, and thus it will be more readily available than a private prosecution as a tool of lawfare, whilst being arguably more effective. It will be wide open to weaponisation by activists who wish to close down the activities of their opponents, whether those are parents exercising ordinary parental control and discipline, gender critical organisations engaging in legitimate political debate and campaigning or religious communities offering pastoral care in good faith. It is an entirely unsuitable mechanism to enact in the midst of a raging cultural and political dispute in which positions are irretrievably entrenched on both sides.

Interaction with other Jurisdictions

Human rights law

71. It is scarcely credible that the Explanatory Notes state the government's conviction that the draft Bill is compatible with the European Convention on Human Rights. The best that can be said for the draft Bill in this respect may be that, if enacted, it would have extremely poor prospects of surviving an application for a judicial declaration of incompatibility with the Convention under section 4 of the Human Rights Act 1998. It is plainly incompatible with a swathe of Convention rights.

Article 6: the right to a fair trial

72. An element of the right to a fair trial in Article 6 of the Convention is the right to an independent and impartial tribunal. The draft Bill, if enacted, will not permit of this possibility, because the language and conceptual framework of gender identity ideology is baked into it. Whatever individual judges and jurors may think of the ideas that make up gender identity ideology, they will be forced inside its parameters. The draft Bill takes as a given that gender identity exists and is meaningful, though the concept has no empirical foundation and is rejected by most, if not all, people with gender critical beliefs. From there, all else follows, and ultimately the draft Bill seeks to criminalise the free expression of gender critical beliefs as a whole across a wide range of contexts. There is no discernible basis upon which a person with a passing understanding of these two vehemently contested systems of thought about sex and gender could conclude that the draft Bill does not adopt a heavily partisan position. For a person with gender critical beliefs, being prosecuted under this draft Bill would be close to Kafkaesque.

73. Moreover the lack of defences in the draft Bill raises a further question about its compatibility with the right to a fair trial.

Article 7: no punishment without law

74. The right not to be punished without law in Article 7(1) of the Convention is an absolute right. That is, there are no qualifications which may dilute or adapt the right depending on the circumstances. It includes the right to "quality of law"[31], which means that a criminal law must be defined with sufficient precision to be accessible and foreseeable. The scope of an offence must be "clear, precise and adequately defined"[32], such that it is not arbitrary and a person can regulate their conduct (with advice, if necessary). A measure is arbitrary if it is so vague or general that it has the effect of authorising power "unconstrained by law". Article 7(1) sits alongside the English common law principle of legal certainty and the principle against doubtful penalisation.

75. The draft Bill is very likely to violate Article 7(1) because all of its key definitions are either non-existent or non-exhaustive: "conduct", "transgender identity", "a process of gender reassignment", "transsexual", "identifies as neither male nor female", "abusive", "controlling or coercive words or behaviour", "economic pressure", "far below the standards reasonably expected", "serious harm", "serious alarm or distress", "all reasonable steps to prevent" and so on. As a result, the draft Bill offers no firm basis upon which a person might be able to predict whether or not their words or conduct are criminal. It is therefore arbitrary.

Article 8: the right to respect for private & family life

76. Article 8 of the Convention is a qualified right, but nonetheless provides robust protection for the intimacies of family life. Parents have a right to bring up their children as they think best, subject (in England and Wales) to not causing them "significant harm" contrary to the Children Act 1989. That is a very different threshold to the harm thresholds in the draft Conversion Practices Bill.

77. Although the European Court of Human Rights tends to give states a wide margin of appreciation in relation to Article 8 matters, the draft Bill's incursions into family life are such that they are likely to exceed that margin by some distance. On the face of it, the draft Bill makes provision for parents to be jailed for up to five years for refusing to allow their child to dictate what language may be used to refer to them, for refusing to finance a child's gender reassignment or for trying in good faith and with love and care—and without any malice or bad intention—to prevent their child from pursuing a course of action which is demonstrably likely to cause grave damage to their health. It places parents at the mercy of usually troubled and distressed but passionate children

31. *See, generally, Del Río Prada v Spain* **(2013) 58 EHRR 37 (GC)**

32. *R v McCafferty* **[2026] UKSC 20 (14 July 2026)**

and adolescents who are convinced that they are being prevented from acquiring the answer to all their problems. Furthermore, these very real possibilities illustrate the depth and breadth of the chilling effect that the draft Bill as a whole would be likely to cast over parenting choices. It is difficult to conceive of more serious infringements of the rights of parents to raise their children as they see fit, or even to perform the most fundamental parenting function of protecting their children from harm.

Article 9: freedom of thought, conscience & religion

78. Article 9 is a partially qualified right to freedom of thought, conscience and religion. The right to hold a particular religious or philosophical belief is absolute. The right to manifest it is qualified, and gives way, broadly speaking, to the reasonable interests of society where appropriate and necessary. In *Forstater v CGD Europe*[33], the Employment Appeal Tribunal held that gender critical beliefs are protected beliefs for the purposes of section 10 of the Equality Act 2010 by reference to the requirements of Article 9.

79. Notwithstanding the existence of the qualifications to Article 9, the draft Conversion Practices Bill is not a justifiable restriction to the rights for which the Article provides. The draft Bill patently seeks to restrict in a wholly disproportionate manner the conduct of religious communities and of those who hold protected philosophical beliefs. It is entirely inconsistent with a pluralistic society. See further §§88–90 below for an analysis of the interaction of the draft Bill with the principles developed in the *Forstater* line of case law.

Article 2 of Protocol 1: education in accordance with religious and philosophical convictions

80. The Convention expressly requires the state to respect the right of parents to ensure that the education of their children is in conformity with their own religious and philosophical convictions. This entails a positive obligation[34]. A2P1 is treated as a *lex specialis* under Article 9. The concept of "philosophical convictions" largely coincides with the concept of "belief" in Article 9. Thus the obligation imposed on the state in A2P1 is not limited to the teaching of religion in schools.

81. The specific obligation in A2P1 is to "take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner". The state must not "pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions"[35]. The Article

33. [2022] ICR 1 EAT
34. See *R (Isherwood and others) v Welsh Ministers* [2022] EWHC 3331 (Admin)
35. *Folgerø v Norway* (2008) 46 EHRR 47 (GC)

does not "guarantee the right not to be confronted with opinions that are opposed to one's own convictions"[36].

82. As discussed above, the draft Bill is capable of placing educational institutions and individual teachers under threat of criminal sanction for failing to teach students about matters of sex and gender in accordance with the tenets of gender identity ideology. It is arguable that this amounts, in effect, to an instruction to indoctrinate children into that ideology, and that if curricula are designed with that in mind they will be inconsistent with the rights of parents with gender critical or particular religious beliefs under A2P1. At the least, it is arguable that A2P1 will be engaged in those circumstances, and that therefore the Article 14 right not to suffer discrimination in the enjoyment of Convention rights will be in play (as to which see §§86–87 below).

Article 10: freedom of expression

83. Though there is no hierarchy of rights in the Convention, Article 10 may be regarded as the first amongst equals. It contains the right to freedom of expression, without which citizens would be unable to advocate for their other rights and freedoms.

84. A detailed exposition of Article 10 case law is not required in order to conclude that the draft Bill is not compatible with it. It is sufficient to consider two cases: *Redmond-Bate v DPP*[37] and *Trimingham v Associated Newspapers*[38]. In the former, Lord Justice Sedley said that Article 10 protects "the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative", for otherwise it would not be a freedom worth having. In *Trimingham*, Mr Justice Tugendhat said:

> *"pluralism requires members of society to tolerate the dissemination of information and views which they believe to be false and wrong. This can be difficult for people to understand, especially if the subject is an important one and they are so convinced of the rightness of their views that they believe that any different view can only be the result of prejudice. Welcoming pluralism cannot be justified by logic. But in a society where people in fact hold inconsistent views about important matters, pluralism is a practical necessity if that society is to be free."*

85. Article 10 is a qualified right, but again, as can be seen from the quotes above, its parameters are comfortably exceeded by the restrictions which the draft Bill would place upon children as young as 10, complete strangers, teachers, parents, grandparents, colleagues, managers, public sector workers, elected representatives, religious leaders, volunteers and anybody else with whom a transgender or LGB person might ever come into contact or encounter in

36. *Dojan v Germany* (2011) 53 EHRR SE24
37. (1999) 7 BHRC 375
38. [2012] 4 All ER 717

person or remotely. The vagueness and ambiguity of the draft Bill combined with its draconian sanctions for inadvertent perceived slights of language are very likely to create a widespread chilling effect which itself would be capable of violating Article 10.

Article 14: discrimination in the enjoyment of Convention rights

86. Article 14 provides that the enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground. If the facts of a case fall within the ambit of one of the substantive Convention provisions, there must be no unjustified differential treatment in respect of that right between the complainant and a suitable chosen comparator, if that treatment is on a proscribed ground[39]. It is important to note that there need not be a breach of the substantive Convention right in order for discrimination within Article 14 to occur. Furthermore, the grounds upon which discrimination may occur are much wider than those in the Equality Act 2010, though for present purposes they do not need to be.

87. It is very strongly arguable that the draft Bill discriminates against gender critical and certain religious people within the ambit of the Articles discussed above. It may be argued that it is justified in doing so because it protects the rights of transgender and LGB people to be free of torture and inhuman or degrading treatment within Article 3 of the Convention. Any such argument would lack merit. The draft Bill does not provide protections against any treatment which might fall within Article 3 which do not already exist in the criminal law (and which are not already more severely punishable under existing criminal law). The additional treatment criminalised by the draft Bill plainly does not reach an Article 3 threshold; indeed, it does not reach what would ordinarily be regarded as a criminal threshold. It follows that the draft Bill cannot be regarded as necessary for the purpose of preventing Article 3 violations.

Discrimination law

Collateral attack on *Forstater* & the protected characteristic of religion or belief

88. In *Forstater*, the Employment Appeal Tribunal held that gender critical beliefs are philosophical beliefs within the protected characteristic of religion or belief in section 10 of the Equality Act 2010. The original Tribunal had decided that the Claimant's beliefs did not satisfy the relevant test[40] because they were "not worthy of respect in a democratic society".

39. *R (Carson) v Secretary of State for Work and Pensions* [2006] AC 173

40. See *Grainger v Nicholson* [2010] ICR 360 CA

89. Following *Forstater*, the Court of Appeal considered in *Higgs v Farmor's School*[41] the extent to which it is permissible for an Equality Act duty-holder to subject a person to a detriment because they have manifested a gender critical or other protected philosophical or religious belief, for example by speaking about it. The Court held that although it is unlawful in the ordinary course of events for a duty-holder to respond in a discriminatory manner to a manifestation of a protected belief, it is permissible to do so where it is a justified response to something objectively objectionable about the way in which the complainant expressed the belief. This is subject to a high threshold, but that threshold would be lowered if the draft Bill were in force. Its mere existence as a criminal law against gender critical speech would have the knock-on effect of undermining the extent to which gender critical speech is protected in discrimination law.

90. Thus as things stand, while the draft Bill cannot formally reverse *Forstater*, it stands in direct opposition to it. If the draft Bill is enacted, a person could be convicted in a criminal court for using words which, in an Equality Act claim, would currently amount to an unobjectionable manifestation of a protected belief. That outcome would be nothing short of bizarre. It is only a possibility because the draft Bill drastically oversteps the boundaries of Articles 9 and 10. It gives every impression of being a direct assault on the protections afforded to gender critical speech after *Forstater*.

Collateral attack on *For Women Scotland* & the protected characteristic of sex

91. In *For Women Scotland*, the Supreme Court held that the words "sex", "woman" and "man" refer to biological sex where they appear in the Equality Act 2010. The Court also set out a test for determining the meaning of those words where they appear in other legislation. In *R (Good Law Project) v EHRC*, the Administrative Court held that the same principle applies to the Workplace (Health, Safety and Welfare) Regulations 1992, which set down requirements for toilet, washing and changing facilities at work.

92. The decision in *For Women Scotland* contradicted core principles of gender identity ideology, under which "sex" is a disputed concept (though there is little agreement within the ideology as to its meaning or importance), "woman" means "anybody who identifies as a woman" and "man" means "anybody who identifies as a man". Thus proponents of gender identity ideology believe that those facilities and services which are routinely provided separately for women and men—such as public toilets, changing facilities, dormitories or sexual and domestic violence services—

41. [2025] ICR 1172

should be organised by gender identity rather than by sex. As has been amply demonstrated by the reaction of many to the Supreme Court judgment over the past 18 months, any insistence on implementing the decision in *For Women Scotland* is liable to be experienced as a violation of the dignity of transgender people and as an act of outright abuse and discrimination.

93. It can be seen against that background that the draft Bill is a challenge to *For Women Scotland*. It is well within the bounds of possibility that it will be utilised to threaten criminal sanction against those who seek to comply with or enforce the judgment of the Supreme Court. Though the CPS or a judge or jury might not be receptive to the idea that it is abusive to maintain separate or single sex services for victims of sexual violence or for workplace toilets, the main sting of the draft Bill in this respect is in its chilling effect and its susceptibility to weaponisation. Furthermore, if a matter of this sort does come before a court, the lack of a defence of reasonableness, the ambiguous and subjective harm threshold and the unboundaried concept of "abuse" all militate in favour of, at best, confusion as to the scope of the draft Bill and its interaction with *For Women Scotland*. At worst they create a risk of miscarriages of justice.

Harassment related to a protected characteristic

94. The draft Bill will also indirectly fortify claims for harassment related to the protected characteristic of gender reassignment brought under sections 7 and 26 of the Equality Act 2010. This cause of action is subject to an objective test, which would be more easily failed if the conduct complained of amounted to a criminal offence under the draft Bill. The same is true of multiple parts of the Equality Act in which the justification test comes into play.

Family law

95. Should the draft Bill become law, it will impact on families, the child protection system, children's social care and the family justice system in ways which are entirely unaccounted for in the Impact Assessment and Explanatory Notes. Allegations or referrals made to a local authority of conduct by a parent towards a child which could engage the draft Bill's provisions are highly likely to trigger the authority's statutory duty to investigate under section 47 of the Children Act 1989. This much is acknowledged in the Impact Assessment, which refers approvingly to a multi-agency "cascading effect". What is not acknowledged is that, contrary to the Impact Assessment's assertion that there are "no significant

non-monetised costs to households", the potential consequences of a child protection investigation to a family can be devastating, regardless of whether the parent is ultimately exonerated. During the investigation the local authority might impose a Child Protection Plan, apply for a care order or even take the child (and potentially other children in the family) into care. Under the draft Bill, the local authority might also apply for a Conversion Practices Prevention Order.

96. Child protection investigations commonly last for many months, and the cost to the state can be very high. The Impact Assessment does not mention this element of additional cost or the costs of local authorities preparing and bringing Conversion Practices Prevention Order applications, family court time or legal aid in family proceedings (which is automatic and not subject to means testing). The only cost accounted for in this context is 45 minutes of training per social worker for familiarisation with the new law—itself wholly inadequate. The Impact Assessment's silence on this substantial element of potential additional cost is surprising given the current prevalence of transgender and non-binary identification amongst children and young people, the low threshold for triggering a child protection investigation ("reasonable cause to suspect significant harm") and the draft Bill's potential, explored at length above, for criminalising parents' good faith attempts to navigate tensions and disputes with their children.

97. Moreover, there is an obvious and significant danger of conflict between practices and decisions of the criminal courts in respect of prosecutions under the draft Bill and the functioning of the family courts in private and public Children Act disputes. The availability of criminal sanctions for parents who fail or refuse to affirm a child's gender identity will offer a tempting opportunity to gain leverage in family disputes and will encourage vexatious allegations between parents in dispute.

Conclusions

96. The conclusions to this paper can be stated shortly. The draft Bill is a piece of proposed legislation of exceptionally low quality. It amounts to little more than a salvo in the gender wars. As drafted, it would be wholly unreasonable for any competent legislature to enact it. It is highly doubtful that it is susceptible to amendment such that it is lawful, compliant with human rights principles and standards and desirable in a pluralistic society.

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