

**RCN Scotland response to the Scottish Government's  
consultation on:  
Ending Conversion Practices in Scotland**

23 April 2024

## Introduction

The Royal College of Nursing (RCN) is the world’s largest nursing union and professional body. It is the leading national and international authority in representing the nursing profession. We represent over half a million nurses, student nurses, midwives, nursing associates and nursing support workers in the UK and internationally.

The RCN has over 48,500 members in Scotland. We campaign on issues of concern to nursing staff and patients, influence health policy development and implementation, and promote excellence in nursing practice.

## Background

In the 2022-23 Programme for Government (PfG), the Scottish Government reaffirmed its commitment to introduce a Bill on ending conversion practices<sup>1</sup> in Scotland, including sexual orientation and gender identity. The same commitment forms part of the Bute House Agreement, which details the agreement and shared policy programme between the Scottish National Party (SNP) and the Scottish Green Party. This consultation outlines the proposal to ban conversion practices, including draft legislative provisions to achieve this.

At the RCN’s 2022 Congress, members voted overwhelmingly to support a full ban on conversion practices in all four UK nations. Members called for a LGBTQ+ inclusive ban on all forms of conversion practices.

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<sup>1</sup> Previously the term used was “conversion therapy”. Throughout the consultation and this response the term used is “conversion practices” to acknowledge the fact that these practices are not therapeutic.

## Consultation questions and RCN Scotland responses

**Q1. Do you support our approach to defining conversion practices which focuses on behaviour motivated by the intention to change or suppress a person's sexual orientation or gender identity?**

**Q2. Please give reasons.**

Yes.

RCN Scotland's response to this consultation focuses on ensuring conversion practices are banned in health and care settings.

The RCN is opposed to all forms of conversion practices based on sexual orientation or gender identity. At the RCN's 2022 Congress, members voted overwhelmingly to support a full ban on conversion practices in all four UK nations. Members called for a LGBTQ+ inclusive ban on all forms of conversion practices.

During the resolution debate, RCN members expressed a range of views including:

- that a ban ought to be inclusive and protect all LGBTQ+ people
- that conversion practices is understood as going against any form of ethical or evidence-based nursing practice, and could be understood as breaching human rights, and
- that all patients need to be cared for in line with core pillars of nursing practice.

RCN Scotland is supportive of the Memorandum of Understanding on Conversion Therapy and notes that NHS Scotland has been a signatory of that MoU since 2017.

RCN Scotland is clear that conversion practices have no place in healthcare, they go against nursing practice and may be in breach of the NMC Code. RCN Scotland therefore supports the Scottish Government's proposal to end conversion practices in Scotland.

Notwithstanding the above, there is a need to acknowledge that there is a lack of evidence that conversion practices are widespread in the NHS in Scotland. The UK Government's National LGBT Survey, referred to in the consultation, suggests that 19% of respondents who had received 'conversion therapy' had it conducted by a healthcare professional. However, this represents 501 individuals, across the whole of the UK, who have received 'conversion therapy' at some point in their lifetime. The survey also did not distinguish between

recent and historic cases and as such, there is little evidence that it is widespread in NHS services in Scotland at this time.

While RCN Scotland supports a ban, we would wish to see due care taken to ensure that any proposal does not inadvertently or indirectly affect legitimate, evidence-based healthcare services across Scotland. It is important that all LGBTQ+ individuals can access services and support that they need. RCN Scotland members may be involved in providing legitimate services; for example, as specialist nurses working in Gender Identity Clinics, or mental health nurses offering talking therapy, or community practice nurses offering support outwith formal therapeutic settings.

RCN Scotland therefore welcomes the clear policy objective, outlined in the Bill to “Provide clarity about what actions are permissible and what are not” and to “Not inhibit or criminalise non-coercive and ethical medical, therapeutic psychological, spiritual and pastoral practices that provide support to individuals who seek help to explore their sexual orientation and gender identity.” We are, however, concerned that the proposals as outlined in the consultation do not, yet, provide this clarity.

It is clear from the consultation that it is not the Scottish Government’s intention or desire to criminalise legitimate services, including those which seek to help individuals explore their sexuality and gender identity. We welcome the focus on behaviour which is intended to change or suppress a person’s sexual orientation or gender identity as well as the inclusion of an ‘avoidance of doubt’ clause (see question 10 below).

Paragraph 45 of the consultation explains that to fall under the definition of conversion practices, there must be an intention to change or suppress a person’s sexual orientation or gender identity. It then goes on to state “This means that the legislation will not apply to a situation where a person is providing advice, guidance or support for an individual to explore their thoughts, feelings and options or for these to be questioned.” This definition is useful; however, it remains unclear to what extent a healthcare professional can ‘test’ or ask questions about a person’s understanding of their sexual orientation or gender identity without that being classed as conversion practices.

Paragraph 95 notes that conversion practices can be distinguished from counselling or therapy “in which an individual is supported with their unwanted or confusing thoughts and feelings through an open, explorative and even challenging approach...”. The consultation document therefore appears to acknowledge that some services can still be legitimate even when they veer towards challenging an individual’s thinking, as long as the purpose of this is to explore feelings rather than to necessarily change or suppress a sexual

orientation or gender identity. RCN Scotland supports this approach but believes that ensuring the legislation achieves this aim and is clear to staff may be challenging. The draft 'avoidance of doubt' clause (see question 10 below) does not appear to clearly implement this policy objective.

We would make one further point in relation to this question. Feedback from RCN members suggests that some staff find conversations about gender identity difficult because they are concerned about saying the wrong thing. The result is that some avoid talking about and exploring issues related to gender identity with colleagues and with patients and service users. There is a risk that a conversion practice ban will compound this problem, as individuals may be concerned that something they say could be classified as conversion practice (whether or not that fear is accurate) and staff may therefore avoid having conversations with patients. It is important that alongside any legislation, greater efforts are made to ensure staff are fully informed and, in particular, aware the intention is not to ban legitimate, patient-led, exploration of either sexual orientation and gender identity.

**Q3. Do you think that legislation should cover acts or courses of behaviour intended to 'suppress' another person's sexual orientation or gender identity?**

**Q4. Please give reasons.**

It should be covered.

As we have said in response to Q1, there is a need to ensure that legitimate services are not inadvertently restricted and this would apply equally to a ban on acts intended to suppress. As discussed above, such a ban must not limit the provision of ethical, evidence-based, services including those which seek to discuss, explore and even challenge gender identity and sexual orientation.

In addition, the consultation proposes that acts of suppression freely undertaken by a person themselves, such as celibacy, would not be criminalised. Given the proposal is to not allow for a defence of consent to conversion practices, this would appear to open the possibility of an inconsistency in the ban. RCN Scotland would welcome clarity on how this will be implemented in practice.

**Q5. Do you support or not support an approach which uses a package of both criminal and civil measures to address conversion practices in legislation?**

**Q6. Please give reasons.**

No comment on the sanctions themselves, beyond that the creation of a criminal offence makes it even more important to ensure that legitimate activity isn't banned.

It is also important to note that Registered Nurses have a professional and regulatory duty to follow the NMC Code. A breach of this code can have professional implications which will exist alongside (and indeed in the absence of) any new offences created by the proposed legislation.

**Q7. What are your views on the proposal that the offence will address the provision of a service?**

**Q8. Please give reasons.**

Support.

The definition of a provision of service would appear to cover, for example, discussions with healthcare professions which fall short of a formal therapy session, such as an appointment with a mental health nurse at a GP practice. This is worth noting because it means it is important to ensure that the definition of the ban is clear and does exactly what is intended.

This section of the consultation notes that "evidencing an individual's internal motivation can be challenging and the requirement for corroborated evidence increases this challenge." This is clearly a challenge in a healthcare setting, where conversations happen on a one-to-one basis and in a confidential setting.

**Q9. What are your views on the proposal that the offence will address a coercive course of behaviour?**

**Q10. Please give reasons.**

Support.

RCN Scotland notes that this is an alternative to the provision of service offence and that the examples of a coercive course of behaviour listed in para 104 are so serious they should never be taking place in a healthcare setting.

**Q11. What are your views on the requirement that the conduct of the perpetrator must have caused the victim to suffer physical or psychological harm (including fear, alarm or distress)?**

**Q12. Please give reasons.**

Agree.

RCN Scotland is of the view that this would clarify the offences in an appropriate way.

**Q13. Do you agree with the inclusion of a defence of reasonableness?**

**Q14. Please give reasons.**

Agree.

RCN Scotland is of the view that this would clarify the offence in an appropriate way. We note that in terms of actions by a healthcare professional, RCN Scotland is of the view that it would be very unlikely that there would be any circumstances where it would be “reasonable” for them to be involved in conversion practices.

**Q15. Do you agree with the proposed penalties for the offence of engaging in conversion practices?**

**Q16. Please give reasons.**

No comment, beyond noting the professional implications of a Registered Nurse in terms of any potential breach of the NMC Code, as noted in response to question 5.

**Q17. Do you agree that there should be no defence of consent for conversion practices?**

**Q18. Please give reasons.**

Yes.

RCN Scotland is of the view that as a practice with no ethical or evidence basis, an individual cannot consent to conversion practices.

**Q19. Do you have any other comments regarding the criminal offence as set out in Parts 8 and 9?**

As noted above, RCN Scotland supports the inclusion of “avoidance of doubt” clause in relation to practices that are offered through regulated healthcare.

Our reading of the draft section in para 118 is that the approach taken is to list examples which, if engaged in without the intention mentioned in section 1(2), do not fall foul of the new offences. RCN Scotland would question why this approach has been proposed, rather than simply saying the below examples do not meet the intent requirements of the legislation. It would also be beneficial to make it clear that, even challenging a person’s view of their sexual orientation or gender identity does not, in itself, fall within the intent requirements of the offences with draft s4(b)(ii) and to include provision to that effect in any proposed Bill.

**Q20. What are your views on it being a criminal offence to take a person out of Scotland for the purpose of subjecting them to conversion practices?**

**Q21. Please explain your answer.**

Don't Know

No comment on this issue.

**Q22. What are your views on the proposed penalties for taking a person outside of Scotland for the purposes of conversion practices?**

**Q23. Please explain your answer.**

Don't know.

No comment on this issue.

**Q24. What are your views on the proposal that conversion practices should be an aggravating factor for existing offences?**

**Q25. Please explain your answer.**

Don't know.

No comment on this issue.



**Q26. Do you have any views on the steps we have taken to ensure the proposals are compatible with rights protected by the European Convention of Human Rights?**

Ensuring that any legislation passed by the Scottish Parliament is compatible with the ECHR is, as the consultation notes, a legal necessity. RCN Scotland supports the desire to make sure that any proposal respects all of the rights involved not least because this is the best way to avoid any legal challenges, presuming legislation is passed.

**Q27. What are your views on the purposes of the proposed conversion practices protection order?**

**Q28. Please explain your answer.**

No comment on the merits of this approach, but the impact of a Protection Order being granted against a healthcare professional and the implications and practicalities for professional registration and fitness to practice need to be considered. The implications of a Protection Order being granted against a registered staff should be considered.

**Q.29 Do you agree or disagree with the proposals for who should be able to apply for a conversion practices civil order?**

**Q.30 Please explain your answer.**

Don't know.

No comment.

**Q.31 Do you have any other comments regarding the civil order as set out in Parts 13 - 15?**

No further comments on parts 13-15.

The consultation does not ask for views on Part 16: Wider Recommendations, so comment on that section has been included here. RCN Scotland agrees that there is a need to improve understanding and awareness of gender identity services amongst healthcare staff. We have welcomed the development of new Gender Identity Healthcare Standards by Healthcare Improvement Scotland, including a Standard around the need to ensure staff have the training and skills to deliver the right care and support for people accessing gender identity services. Included in the need to raise awareness of the ban on conversion practices and the legislative actions, is a need to ensure that healthcare staff

understand what the legislation isn't intending to do (i.e. that the intention is not to ban or restrict legitimate support being provided in a healthcare setting).

### **Q32-38 Impact assessment**

RCN Scotland has no comments on the impact assessment section of the consultation (Questions 32-38).