

# Will 'conversion therapy' ban be sneaked into Scottish Hate Crime Bill?

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First Published by Christian Concern: February 5th, 2021

*Carys Moseley comments on new efforts in the Scottish Parliament to ban so-called 'conversion therapy'.*

LGBT activists and their political allies are trying to criminalise 'conversion therapy' through the back door in Scotland. They are behind an amendment by the Green Party to the Scottish Hate Crime Bill which would remove the freedom to criticise homosexual behaviour or to ask someone to refrain from or modify homosexual behaviour. This would have a profound and widespread impact on churches, counsellors, parents, teachers and others across Scotland.

The Christian Legal Centre expressed its profound concern<sup>1</sup> about the bill's impact on free speech to the Justice Committee of the Scottish Parliament at the initial stage back in May 2020. By contrast, Stonewall Scotland openly says in its briefing, which it has shared on Twitter, that it supports Amendment 117 precisely because the law as it stands permits 'conversion therapy'. Stonewall Scotland's bill briefing<sup>2</sup> says that keeping the law as it is could impede work to ban 'conversion therapy' in Scotland. **In reality, we shall see how LGBT activists are stretching the definition of hate crime to include all criticism of homosexual behaviour.**

## What the Bill currently says

Section 12 of the Bill covers freedom of expression on matters of sexual orientation. Currently it allows an exception for free speech on sexual behaviour worded thus:

*"10 (2) Behaviour or material is not to be taken to be threatening or abusive solely on the basis*

*that it involves or includes—*

*(a) discussion or criticism of sexual conduct or practices, or*

*(b) urging of persons to refrain from or modify sexual conduct or practices."*

The section just quoted applies to offences of stirring up hatred on grounds of sexual orientation and possession of inflammatory material (sections 3(2) and 5(2) of the bill respectively).

1

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[15/08/2022]

Section 3(2) of the bill says this about stirring up hatred:

*"A person commits an offence if—*

*(a) the person—*

*(i) behaves in a threatening or abusive manner, or*

*(ii) communicates threatening or abusive material to another person, and*

*10 (b) either—*

*(i) in doing so, the person intends to stir up hatred against a group of persons*

*based on the group being defined by reference to a characteristic mentioned*

*in subsection (3), or*

*(ii) as a result, it is likely that hatred will be stirred up against such a group."*

Section 5(2) says this of the Offence of Possessing Inflammatory Material:

*"A person commits an offence if—*

*(a) the person has possession of threatening or abusive material with a view to*

*communicating the material to another person, and*

*35 (b) either—*

*(i) the person intends, in doing so, to stir up hatred against a group of persons*

*based on the group being defined by reference to a characteristic mentioned*

*in subsection (3), or*

*(ii) it is likely that, if the material were communicated, hatred would be stirred*

*up against such a group.”*

### **Anti-‘conversion therapy’ amendment to Scottish Hate Crime Bill**

On 27 January, John Finnie MSP (Green Party) tabled Amendment 117 to the Hate Party Crime and Public Order (Scotland) Bill<sup>3</sup> in the Scottish Parliament. He is supported by Green Party co-leader Patrick Harvie. They want to change the wording in Section 12 to remove the right to criticise homosexual behaviour and call people to refrain from or modify homosexual behaviour, and replace it with new wording purporting to protect free speech on sexual orientation.

Finnie and Harvie want the following free speech exception in Section 12(2) to be removed:

*“(a) discussion or criticism of sexual conduct or practices, or*

*(b) urging of persons to refrain from or modify sexual conduct or practices.”*

Their amendment<sup>4</sup> proposes to protect speech on sexual orientation from prosecution as hate speech by inserting the following wording:

*“discussion or criticism of matters relating to sexual orientation.*

*(3) In this section, “sexual orientation” means sexual orientation towards—*

*(a) persons of the same sex,*

*(b) persons of a different sex,*

*(c) both persons of the same sex and persons of a different sex.”*

The Stage 2 Amendments Purpose and Effect Notes<sup>5</sup> which were published by the Justice Committee on 1 February make it clear that Amendment 117 reduces freedom of expression.

### **Justice Committee report admits ‘conversion therapy’ ban is intended**

On Wednesday 3 February the Justice Committee published its report on the first meeting it held for Stage 2 of the Bill<sup>6</sup> (which had been held on Tuesday 2 February). Adam Tomkins the convener of the Justice Committee is a Conservative MSP. The report records that he asked John Finnie (Green) not to move Amendment 117.

The report records the words of John Finnie MSP who explicitly refers to wording in the law that is about banning ‘conversion therapy’. His words are quoted in full below:

*“Amendment 117 would make a significant improvement to section 12. It would remove what the Equality Network referred to as the “laundry list”. There are some unpleasant things on that list—I refer to the removal of language relating to conversion therapy, for example.”*

As the bill is still at Stage 2, there is a real need to be vigilant as to what happens to this amendment, and whether an alternative one will be tabled later on.

### **Similar tactic to Maltese law criminalising ‘conversion practices’**

Amendment 117 reduces freedom of expression to criticise sexual behaviour. However it does so deceptively by appearing to extend protection to discussion of heterosexuality as well as homosexuality. The real intention of such wording is to pretend to anticipate criticism that it uniquely favours LGB people over heterosexuals. In reality this is a way of kicking sand in people’s faces.

We can say this because this is **exactly** the tactic used in the law criminalising ‘conversion practices’ in Malta. Section 2(a) of the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act<sup>7</sup> does not prohibit

*“any services and, or interventions related to the exploration and, or free development of a person and, or affirmation of one’s identity with regard to one or more of the characteristics being affirmed by this Act, through counselling, psychotherapeutic services and, or similar services”.*

Sexual orientation is defined in an all-encompassing manner thus:

*“ ‘sexual orientation’ refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, persons of a different gender, the same gender or more than one gender.”*

The Maltese government told churches they would not be affected. As the government’s own subsequent persecution of Matthew Grech shows, this turned out to be untrue<sup>8</sup>.

### **Amendment would criminalise SNP politicians**

Amendment 117 would remove the existing protection for criticism and objection to homosexual behaviour. Clearly as this is a bill advancing hate crime law this means it would open the door to criminalising such speech. Furthermore, given that it proposes wording protecting discussion of heterosexual orientation whilst banning criticism of sexual behaviour, we should be very wary. This amendment could easily be used to criminalise criticism of heterosexual behaviour as well.

There is no doubt that this amendment could criminalise opposition to the new sex education curriculum of the Scottish government<sup>9</sup>. It would also apply to criticism of same-sex ‘marriage’ and parenting. This could criminalise sitting MSPs in the Scottish Nationalist Party who voted against same-sex ‘marriage’ in Scotland in February 2014<sup>10</sup>. Fergus Ewing (Inverness and Nairn) and Alasdair Allan (Na h-Eileanan an Iar) are all constituency MSPs within the Highlands and Islands region. Then there is also Kate Forbes the SNP member for Skye, Lochaber and Badenoch who is the Scottish Finance Minister, and has defended religious freedom in schools<sup>11</sup>. Does the Green Party want to criminalise fellow Scottish Parliament members and Scottish Government cabinet ministers?

### **Green Party population policy**

It isn’t a secret that the Green Party, including the Scottish Green Party<sup>12</sup>, supports a ‘conversion therapy’ ban across the UK. Its co-leader in Scotland Patrick Harvie<sup>13</sup> is openly bisexual, and is a patron of the National

Secular Society, Honorary Vice-President of the Gay and Lesbian Humanist Association and board member of Stonewall (UK). He is also a member of Humanist Society Scotland, Greenpeace and Friends of the Earth.

This list of Harvie’s interests is telling as it points to the Green Party’s well-attested support for a population policy that implicitly requires a low birth-rate<sup>14</sup>. The Green Party supports ‘comprehensive sex education’ (the new ‘anything-goes’ sex ed). It also wants to “encourage debate as to how sustainable lifestyles can be developed to provide meaningful and satisfying lives with or without children.” It also supports the idea of ‘a sustainable or falling population’ as part of its overall commitment to ‘reducing ecological footprint’. It is very obvious that promoting the new sex education and a ‘conversion therapy’ ban which would normalise homosexuality are means to this end. For these things sow sexual confusion into children and young people’s minds, leading to postponement or even abandonment of marriage and childbearing.

### **Why sneak in through the back door?**

It is very telling that an attempt at criminalising ‘conversion therapy’ is being sneaked in surreptitiously. There never appears to have been genuine public appetite for a ‘conversion therapy’ ban in Scotland. So far it has been mostly LGBT activists occasionally ramping up the rhetoric in the press, pushing a petition on the Scottish Government website, with Stonewall Scotland repeatedly targeting the Roman Catholic Church in Scotland<sup>15</sup>. It appears that Stonewall Scotland has learnt nothing from the culture wars over religious sectarianism.

It is clear that the SNP itself would be deeply split by a ‘conversion therapy’ ban. Surely it would not want to see its own politicians criminalised. Yet on 14 January 2021 MSPs discussed<sup>16</sup> the petition on the Scottish Government website to ban ‘conversion therapy’. Joe Fitzpatrick (SNP) said there should be legislation. Mary Fee (Labour) agreed. Everyone needs to be vigilant about these politicians’ response to amendments such as Amendment 117. Free speech and religious freedom are at risk in Scotland.

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- <sup>1</sup> <https://christianconcern.com/news/scottish-hate-crime-bill-over-regulates-free-speech/>
  - <sup>2</sup> <https://twitter.com/StonewallScot/status/1356203222491426819>
  - <sup>3</sup> <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/stage-2/marshalled-list-at-stage-2-hate-crime-and-public-order-scotland-bill.pdf>
  - <sup>4</sup> <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/hate-crime-and-public-order-scotland-bill/stage-2/marshalled-list-at-stage-2-hate-crime-and-public-order-scotland-bill.pdf>
  - <sup>5</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115036.aspx>
  - <sup>6</sup> <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=13097>
  - <sup>7</sup> <https://legislation.mt/eli/cap/567/eng/pdf>
  - <sup>8</sup> <https://christianconcern.com/comment/x-factor-malta-silences-ex-gay-singers-christian-testimony/>
  - <sup>9</sup> <https://christianconcern.com/comment/scottish-council-votes-to-commend-christian-sex-education-materials/>
  - <sup>10</sup> <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-26041921>
  - <sup>11</sup> [https://en.wikipedia.org/wiki/Kate\\_Forbes](https://en.wikipedia.org/wiki/Kate_Forbes)
  - <sup>12</sup> [https://www.stonewallscotland.org.uk/sites/default/files/scottish\\_green\\_party\\_manifesto\\_-\\_lgbt\\_commitments.pdf](https://www.stonewallscotland.org.uk/sites/default/files/scottish_green_party_manifesto_-_lgbt_commitments.pdf)
  - <sup>13</sup> [https://en.wikipedia.org/wiki/Patrick\\_Harvie](https://en.wikipedia.org/wiki/Patrick_Harvie)
  - <sup>14</sup> <https://policy.greenparty.org.uk/pp.html>
  - <sup>15</sup> <https://theferret.scot/catholic-church-gay-conversion-therapy-courage/>
  - <sup>16</sup> [https://beta.parliament.scot/chamber-and-committees/what-was-said-and-official-reports/what-was-said-in-parliament/meeting-of-parliament-14-01-2021?meeting=13057&iob=118137#orscontributions\\_M5059E260P652C2311398](https://beta.parliament.scot/chamber-and-committees/what-was-said-and-official-reports/what-was-said-in-parliament/meeting-of-parliament-14-01-2021?meeting=13057&iob=118137#orscontributions_M5059E260P652C2311398)