Gay Men's Network

PARLIAMENTARY BRIEFING

Amendment NC90 (Conversion Practices Prohibition) to the Criminal Justice Bill moved by Alicia Kearns MP

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Foreword

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In her final report Dr Cass said of exploratory therapy for young people that it was *"harmful to equate this approach to conversion therapy as it may prevent young people from getting the emotional support they deserve"*. Amendment NC90 to the Criminal Justice Bill is a dangerous and homophobic piece of legislation which does exactly this because it makes it a crime for parents or doctors to do anything that could later be framed as an attempt to "change, replace or negate" cross sex ideation.

80-90% of young people presenting with gender distress are same sex attracted, 35% are autistic. Gay youth are being taught they have the wrong bodies and that they ultimately require surgical correction. This is Gay Conversion therapy 2.0 and Amendment NC90 is an extraordinary piece of legislation which provides unworkable defences for parents and doctors (a worrying sign the proposed legislation explicitly contemplates the prosecution of parents and doctors).

This is now the fourth version of this amendment, and this is the third GMN briefing on it. Earlier versions contained no definitions of key terms, allowed for private prosecutions, and breached a number of fundamental human rights. NC90 provide some unworkable and wide definitions, breaches human rights and criminalises private prayer. This chaotic approach suggests a haphazard and dangerous approach to legislating.

We are a group of gay men concerned with gay rights. Puberty is a human right, and it is a gay right. Clinical care should be based on evidence, not ideology. No politician should speak over and for gay men where gay men are (now) repeatedly objecting with justified and substantive concerns. We therefore again call upon Alicia Kearns MP to withdraw this dangerous and homophobic piece of legislation.

THE DIRECTORS OF THE GAY MEN'S NETWORK

Introduction

1. Conversion legislation globally criminalises practices aimed at modifying a person's sexual orientation or "gender identity". While this legislation is sometimes well intended, it leads to far reaching and unintended consequences. These consequences principally flow from enacting the contested and controversial mind/body dualist concept of "gender identity" into criminal law. This is of serious concern to GMN because evidence shows homosexuals are overrepresented at youth gender clinics[1] and conversion practices bans have the effect of limiting clinical inquiry and chilling practice by exposing clinicians to the risk of criminal prosecution.

2. These concerns were reflected in evidence placed before the Women and Equalities Select Committee from staff at the Tavistock clinic in the following terms: "Dr Natasha Prescott, a former GIDS clinician reported in her exit interview from the Tavistock that 'there is increasing concern that gender affirmative therapy, if applied unthinkingly, is reparative therapy against gay individuals, i.e. by making them straight' and Dr Matt Bristow, a former GIDS clinician, reported to Hannah Barnes that he came to feel that GIDS was performing 'conversion therapy for gay kids[2]'

3. This briefing follows our work and published briefings on two earlier version of this amendment entitled NC30[3] and NC42[4]. Both versions were not compliant with the Human Rights Act 1998 and contained legal errors of a fundamental nature, (principally a failure to define key terms). The present draft, amendment NC90 attempts to remedy this defect by use terms in the Sentencing Act of 2020. In so doing, the amendment effectively criminalises Cass compliant clinical care and makes severe and unwarranted incursions into family life because a child need only "propose" a course of action associated with cross sex ideation to make any parenting or medical work in this area a potential criminal offence. We also share the view of King's Counsel advising the Labour Women's Declaration Group that the proposed

[1] The most recent reported data from GIDS in England demonstrates that older patients expressing a sexual orientation were overwhelmingly not heterosexual. 67.7% of adolescent female patients were recorded as being attracted to other females only, 21.1% were bisexual, and only 8.5% were listed as heterosexual. Among adolescent male patients, 42.3% were attracted only to other males, 38% were bisexual, and only 19.2% said they were attracted only to females. Holt V, Skagerberg E, Dunsford M. Young people with features of gender dysphoria: Demographics and associated difficulties. Clinical Child Psychology and Psychiatry. 2016;21(1):108-118. doi:10.1177/1359104514558431

[2] https://committees.parliament.uk/publications/43255/documents/215243/default/

[3] See Parliamentary Briefing: Amendment NC30 (Conversion Practices Prohibition) to the Criminal Justice Bill moved by Alicia Kearns MP
Briefing from GMN, https://www.gaymensnetwork.com/letters-and-responses

[4] See Parliamentary Briefing: Amendment NC42 (Conversion Practices Prohibition) to the Criminal Justice Bill moved by Alicia Kearns MP
Briefing from GMN, https://www.gaymensnetwork.com/letters-and-responses

definition of “transgender identity” offends against the provisions of article 7 of the Human Rights Act 1998 because the definition is so wide it is potentially without limit. We note with regret this is now the fourth iteration of this amendment and we take the view the rapid and unexplained changes are symptomatic of a chaotic approach to legislating. We also note with surprise this Amendment NC90 for the first time criminalises private prayer which we take to be an amateurish mistake rather than a serious attempt to severely curtail religious freedom.

4. We wish to be clear. We regard “conversion bans” as homophobic pieces of legislation which are completely unnecessary and dangerous. These bans are homophobic because children who are socially different to their peers are encouraged to diagnose themselves as having been born into the wrong body. It is no accident that the figures from GIDS demonstrate that same sex attracted youth are vastly overrepresented. Conversion bans stop doctors from legitimately exploring a child’s presentation and we remark that these children almost always present in states of distress. These bans are unnecessary because no convincing evidence exists to suggest conversion practice are occurring in the modern era[5], further, the question of what constitutes a “trans conversion practice” has never been adequately answered beyond exposing clinicians and parents to prosecution.

5. While Amendment NC90[6] has been redrafted, such changes as were made appear to have entirely disregarded the Cass Review. We regard that as extraordinary given what Dr Cass says about the dangers of legislation such as this. Accordingly, we repeat the call we made in our definitive response to the Cass Review that Alicia Kearns MP withdraw this dangerous and homophobic amendment[7]. It is time for heterosexual politicians to stop speaking over and for gay men and we ask again that our evidenced and reasoned objections to this legislation are taken seriously.

The significance of the Cass review

6. The final Cass review is clear on the dangers of conversion practices legislation and says the following (emphasis added):

[5] For a detailed analysis of the available data In this area see Paras 7-12, Gay Men's Network, "Ending Conversion Therapy Practices In Scotland: Consultation, March 2024, https://www.gaymensnetwork.com/letters-and-responses
[6] https://publications.parliament.uk/pa/bills/cbill/58-04/0155/amend/criminal_rm_rep_0513.pdf?fbclid=IwZXh0bgNhZW0CMTAAAR0aUW_NFscssO0X7oGpJqTLH_ILGu0xMOGgQkTqHaOIQ4mbWh9kJ_BjQqI_aem_AQndiYIKeRvgu47jw63RkJWRq3AS3Tl2J0XLUQYJ9WJo8kud6QCCl0yr6OWJW06IbLFNKjQjuWntgkYV9pZ1S0X7
[7] See Para 51, Gay Men's Network, "Response to the Final Cass Review: Towards a vision of post-gender gay rights", April 2024 https://www.gaymensnetwork.com/letters-and-responses

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> "The intent of psychological intervention is not to change the person's perception of who they are but to work with them to explore their concerns and experiences and help alleviate their distress, regardless of whether they pursue a medical pathway or not. *It is harmful to equate this approach to conversion therapy as it may prevent young people from getting the emotional support they deserve.*[8]"

7. Amendment NC90, like its predecessors, specifically envisages the prosecution of doctors and other clinicians, or it would not require the "Health Practitioner" defence it proposes at clause 6(c). There are presently two models of clinical care operating across the country which vary by state and whether provision is public or private. These are the "affirmation only" approach which requires a doctor to unquestioningly accept a child's self-diagnosis and the competing Cass compliant standard exploratory therapy approach. This amendment will criminalise one or other of the models contingent on the position of the relevant regulator. This is a recipe for legal chaos and personal misery for clinicians who fall foul of this law.

8. We say that criminal law has no legitimate place in models for paediatric psychiatry outside of the many criminal offences that already exist to deal with malpractice. It is a matter of state overreach to second guess world leading experts such as Dr Cass and we remark that had this amendment been law prior to her report what she recommends would itself be a criminal offence under clause 1(b) of this amendment which criminalises the provision of materials. That is frankly absurd and a vivid illustration of how badly thought through this legislation is.

Summary of continuing legal problems with the amendment

9. Amendment NC90 is a redraft of amendments NC58, NC42, and NC30 which were all modified versions of a Private Member's Bill moved by Lloyd Russell Moyle MP on 1 March 2024. NC90 contains many of the same problems we identified with the predecessor versions and the original Private Member's Bill[9] and adds to them with defects of a fundamental nature in a criminal statute, namely:

    a. The amendment for the first time attempts to define "transgender identity" with reference to a statute used for sentencing. The wide breath of this definition places any parents or clinicians not affirming cross sex ideation in jeopardy of prosecution. The definition is also so wide as to be uncertain in law and so a

[8] Final Cass Review, Page 150
[9] https://www.gaymensnetwork.com/letters-and-responses

breach of the Article 7 Human Right that requires criminal laws to be certain and understood.

b. The permission of the Director of Public Prosecutions is required to prosecute (first added in NC42). This is an attempt to deal with a post-office like scandal by limiting private prosecutions, however, this amendment fails to recognise that such permission can be devolved to Crown Prosecutor level where a statute does not specify the personal permission of the DPP is required. This leaves the door open to a private prosecution with consent.

c. Amendment NC90 criminalises private prayer for the first time.

d. Many of the statutory defences involve undesirable "reverse burdens" being placed upon defendant doctors and parents such that they must establish difficult to prove facts/concepts in order to secure an acquittal.

e. The statutory defences are in some cases entirely circular or otherwise ineffective because they misunderstand legal concepts like parental responsibility.

f. The proposed offence is "either way" (meaning it can be tried by a Magistrates or Crown Court) whereas previous versions proposed only a summary only offence (meaning it could only be tried by the Magistrates). This has (likely unintended) implications for private prosecution costs being met by the state which we analyse below.

10. We take the view that these defects considered collectively mean the amendment is not compliant with the Human Rights Act 1998 and is therefore vulnerable to a declaration of incompatibility on application. Defining the key term "transgender identity" as widely as NC90 does for the first time is a breach of the Article 7 requirement for specificity in criminal statutes and it will expose parents and clinicians to the jeopardy of criminal prosecution where they do anything other than affirm cross sex ideation. Legislating for incoherent or circular defences, particularly where "reverse burdens" are involved simply invites long and costly human rights challenges. Legislating to criminalise private prayer is frankly extraordinary. This amendment practically guarantees unnecessary and complex caselaw to fill the gaps a responsible legislator would not leave in a criminal statute.

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The definition of "transgender identity" in NC90

11. NC90 defines "transgender identity" in clause 2 in the following terms:

    "transgender identity" has the same meaning as in the Sentencing Act 2020.

    While NC90 does not trouble to mention a section of the Sentencing Act 2020 it has in mind, this can only be a reference so s.66[10] of the act which deals with offence aggravation on sentence. Section 66 of the Sentencing Act 2020, ss. 6 (e) states that (emphasis added):

    > "references to being transgender include references to *being transsexual*, or undergoing, *proposing to undergo* or having undergone a process or part of a process of gender reassignment"

    The Sentencing Act 2020 definition is itself based on the language which describes the protected characteristic of "gender reassignment" in the Equality 2010 which reads as follows (emphasis added):

    > "A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex *by changing physiological or other attributes of sex*"

    It will no doubt be immediately obvious that Amendment NC90, via s.66 of the Sentencing Act 2020 confers "transgender identity" on those proposing to undergo a process or part of a process of gender reassignment. Neither the Sentencing Act of NC90 define what a "process" is, the Equality Act 2010 does (because the words "changing physiological or other attributes of sex" feature in the Equality Act 2010 but not in the Sentencing Act 2020. This means NC90, a criminal statute, has a wider and more vague definition than a civil statute. That is highly unusual.

12. The wide definition proposed in NC90 gives rise to the following obvious issues:

    a. The Sentencing Act says that a person has "transgender identity" where they are "*proposing* to undergo" a process or part of a process of gender reassignment (which is not defined). Children in states of gender distress frequently present at gender clinics with proposals to undergo processes, some children have been specifically advised online as to how best to secure puberty blockers or cross sex hormones. Some children and young people will have settled and determined proposals regarding cross sex ideation and all the evidence

[10] https://www.legislation.gov.uk/ukpga/2020/17/section/66/enacted

indicates that same sex attracted children and autistic children are most likely to do so. If NC90 became law, doctors and Parents dealing with such children have only one safe course available to avoid prosecution which is not to do anything that might later be cast by the prosecution as an attempt to "change, replace or negate" such proposals. This is unconscionable and it is entirely contrary to the approach recommended by Dr Cass because a confident and clear diagnosis or course of treatment may well involve changing, replacing or negating a manifestation of an identity as would much basic parenting. It is not enough to suggest that a safeguard lies in the fact that only a predetermined desire by a parent or clinician would trigger criminal liability. The fact is that exposure to prosecution is a serious and chilling matter, and this policy would fundamentally change parenting and healthcare by making one approach fraught with the risk of prosecution and one approach safe.

b. While the Equality Act 2010 defines the "process" envisaged as "changing physiological or other attributes of sex", section 66 of the Sentencing Act 2020 does not. This makes an already wide definition of "transgender identity" even wider as the word "process" NC90 relies upon is undefined. This is a serious concern given the realities of this debate include situations such as children "socially transitioning" at schools. A cross dressing young person could in theory meet the proposed definition of "process" which would mean any school/parent/counsellor seeking to "change, replace or negate" such a course of action would be guilty of the criminal offence of committing a conversion practice. This is wholly unreasonable and, in our view, absurd. It would mean a school could not enforce a uniform policy, parents could not regulate clothing under pain of criminal prosecution and doctors could not explore manifestations of cross sex ideation without risk of criminal prosecution other than to affirm them.

c. We respectfully adopt the analysis of Sarah Vine KC in her public advice to the campaign group, the Labour Women's Declaration[11]. At paragraph 5 of that advice, King's Counsel opines:

> "5. Any definition makes clear the scope of what a word or term refers to and, axiomatically, what lies outside that scope. The wording of this amendment fails to achieve this in any workable way. It invites confusion, serious inconsistency, misuse, arbitrary decisions to prosecute and convict/acquit, and fails in every measure to meet the requirement of "quality of law" for the purposes of Article 7."

[11] https://labourwomensdeclaration.org.uk/wp-content/uploads/2024/04/NC58-8.5.24.pdf

d. Section 66 ss 6 (e) of the Sentencing Act 2020 does not define what the words "being transexual" mean. The fact these words are followed by the word "or" indicates that this concept is designed to be different to the concept of "undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment". We question whether the words "being transexual" might allow for self-identification into this category. A troubled autistic child demanding a harmful breast binder of her parents could easily describe herself as "being transexual". If this fits the criteria of this criminal statute, any attempt to change, replace or negate that identity by denying this request could potentially meet with criminal prosecution and the only safe course for parents to avoid criminalisation would be to acquiesce to the demand. We regard that as an oppressive and undesirable excess of state overreach into parenting.

13. Amendment NC90 fundamentally misunderstands the fact that the Sentencing Act 2020 is designed to be used by Judges after trial for the purposes of sentencing. NC90 seeks to use sentencing concepts during a criminal trial. These are two fundamentally different tasks. A Judge on sentence has available all the facts at trial and such further material (potentially not admissible at trial) as the prosecution and defence place before the court. Judges are also entrusted to make sound, reasoned and explicable assessments which are then set out in sentencing remarks. Such sentences can be appealed where a defect identified in the sentencing remarks is properly arguable. This is not the case for a concept used during a trial. A jury is under no duty to explain their verdict beyond saying the words "guilty" or "not guilty". Further, a jury is entitled to understand what a term means and components of criminal offences are tightly and clearly defined for this reason. The concept of "transgender identity" is neither tightly nor clearly defined in this amendment, and in including terms associated with proposals to undergo processes, it widens the door to prosecution of parents and clinicians where they do anything other than affirm a cross sex identity.

The wide net of criminal liability in this amendment and failure to define core terms

14. This amendment provides via Clause 1 and 2 that

  i. any conduct,

  ii. that is "carried out",

iii. the "predetermined intent" of which,

iv. is to change, replace or negate,

v. an actual or perceived sexual orientation or "transgender identity" (or lack thereof),

vi. be a criminal offence if not excused by a defence in clause (6)

15. NC90 does not trouble to define "change, replace or negate" and for the first time "premediated intent" becomes "predetermined intent", this is also undefined, and it is unclear how "predetermined intent" might be different to simple intent in criminal law. This language immediately exposes parents and clinicians who do not affirm cross sex ideation at risk of prosecution because in the real world the children presenting with cross sex ideation are those most likely to claim or fit the definition of "transgender identity". Any parent or doctor seeking to avoid prosecution would have to avoid any behaviour that could later be presented as changing, replacing or negating an identity in a criminal court. This is draconian and a grotesque piece of state overreach.

16. Any defendant prosecuted for this offence for the "transgender identity" variant would be bound by criminal law to accept that "transgender identity" exists. That requirement cannot be reconciled with the existing civil law position set out in *Forstater v CGD*[12] that a person's view that "gender identity" does not exist is a protected characteristic belief. This amendment thus creates a serious inconsistency in law. In the civil sphere "gender identity ideology" is correctly treated as a contested mind/body dualist theory, but this amendment would compel a defendant in a criminal context to accept it as the basis for their prosecution.

Circular and ineffective statutory defences

17. Clause 6 of the amendment substantially reproduces defences from the previous PMB on this subject. It reproduces the same defects in that bill and the defences are ineffective, circular or misunderstand legal concepts like parental responsibility. The defences raise the following issues:

18. The religion defence is not a statutory defence at all because it cannot apply where a conversion practice has taken place, in addition NC90 for the first time criminalises

[12] https://inews.co.uk/news/long-reads/trans-conversion-therapy-patient-speaks-out-psychiatrist-reported-1641330
[12] https://www.legislation.gov.uk/ukpga/1985/23/section/17

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private prayer (which we regard as extraordinary). Clause 6 (a) (i) of NC90 provides for a defence where a Defendant engages in (emphasis added) “a religious or other belief, including private religious prayer, provided that it is not directed to an individual as part of a conversion practice”. This means that a private prayer directed towards a person with the predetermined intent they might change, replace or negate a sexual orientation or transgender identity now becomes a criminal offence for the first time in the history of changes to this amendment. We struggle to take this proposition seriously and can only think that it is unintended and a result of a careless approach to drafting legislation.

19. As the so-called religious defence cannot apply where a conversion practice is proved by the prosecution, it is in any event not an excusatory defence in criminal law[13] in any event. The religion defence also introduces the new concept of a conversion practices “directed to an individual”, it is unclear what this means or if it intended to be a different concept to the main conversion practices concept in clause 2.

20. The “disapproval/acceptance” defence in clause 6 (ii) is vague, and neither term is defined. It is unclear whether this is a defence intended for parents and doctors or general conversation.

21. The “parental responsibility” defence[14] applies only where a person is “exercising” that responsibility, this will be extremely difficult for any parent to prove as against a Gillick competent child. The exercise of parental responsibility as analysed by Lord Denning MR was quoted in *Gillick* who said “the legal right of a parent to the custody of a child…is a dwindling right which the courts will hesitate to enforce against the wishes of the child, and the more so the older he is. It starts with a right of control and it ends with little more than advice[15]”. It is perhaps of serious concern that this statute envisages parental prosecution and sets parents an almost impossible standard to reach in law in order to secure an acquittal.

22. The “health practitioner” defence[16] is a complex three-part defence which places three “reverse burden” on a Defendant thus:

    a. First, a defendant must be a person who is a member of a body overseen or accredited by the Professional Standards Authority for Health and Social Care (PSAHC). This will capture most medical professionals, but it will not cover

[13] Clause 6 (a) (i)
[14] Clause 6 (b)
[15] https://www.bailii.org/uk/cases/UKHL/1985/7.html
[16] Clause 6(c) (i) and (ii)

counsellors or therapists who fall outside the supervision of the PSAHC. This is a significant omission given the prominent role of counselling and therapy in this area.

b. Second, a defendant must prove they were complying with "their regulatory and professional standards". This phrase is not defined, and the Final Cass Review makes it plain that service specifications in this area are in a state of flux. Legislators should be aware that NHS Service Specifications and General Medical Council (GMC) professional obligations, for example, are two different things. Therefore, the NHS can adopt Cass-compliant standard medical practice, but private providers may adopt a different one. By leaving this key term undefined it is entirely unclear which regulatory or professional standard is envisaged and the circumstances in which this defence would be available. Further, no account is taken of the fact that the many bodies supervised by the PSAHC have different and sometimes conflicting standards, and no account is taken of the fact that one of the regulators, Social Work England, was recently heavily criticised by the Employment Tribunal for the influence of gender ideology over it and ordered to put in place remedial training for staff[17].

c. Third, a defendant must prove that they did not commence the treatment with an intention to change, replace or negate a sexual orientation or "gender identity". Placing reverse burdens on Defendants (particularly clinicians or similar) is generally considered to be undesirable and onerous because Defendants are not expected to prove their innocence. Legitimate clinical practice will sometimes have a predetermined outcomes where a confident and clear diagnosis is made.

23. The "assisting" defence[18] is unclear and undefined and introduces the concept of "therapy" into the amendment which is does not feature in the "health practitioner" defence. Read in context the defence appears to be available to those assisting a person undergoing treatment or therapy rather than the therapist or treating clinician. It is entirely unclear why such persons might be criminalised in the first place.

[17] See Ms R Meade v Westminster City Council and Social Work England: 2200179/2022 and 2211483/2022, https://www.gov.uk/employment-tribunal-decisions/ms-r-meade-v-westminster-city-council-and-social-work-england-2200179-slash-2022-and-2211483-slash-2022
[18] Clause 6 (d)

24. The "exploring or questioning" defence[19] suffers from the same flaw as the religion defence, it applies only where a conversion practice is not proved and so is not a statutory defence at all.

25. Read collectively, the statutory defences as drafted suggest a poor understanding of criminal law because the defences are circular, onerous to prove or in some cases not statutory defences at all. In addition, they specifically envisage the prosecution of parents, doctors, religious figures, and persons expressing acceptance or disapproval, which might be thought to be highly undesirable.

Ability of Private Prosecutors to misuse this amendment and potential costs issues

26. This amendment provides for an offence which may be privately prosecuted as per s.6 of the Prosecution of Offences Act 1985 where the consent of the DPP is obtained. Amendment NC90 does not specify that the DPP must give personal consent about which the Crown Prosecution Service correctly state (emphasis added) "Where the consent of the DPP to institute proceedings is required, *this can generally be given by a Crown Prosecutor* by virtue of section 1(7) Prosecution of Offences Act 1985"[20].

27. Private Prosecutions are highly undesirable in a political space where fiercely contested public litigation is a norm. Activists in this area have previously targeted clinicians regarded as political opponents and there is every reason to expect crowdfunded private prosecutions designed to politicise the field of gender paediatrics. This would be a misuse of the criminal law in a fraught area where recent developments around puberty blockers suggest gender activist are motivated by ideology, rather than emerging NHS England clinical best practice.

28. Amendment NC30 created a summary only offence triable only in the Magistrates court. Clause 4 of amendment NC90 creates an "either way" offence which may be tried in the Magistrates or the Crown Court, but it remains punishable only by a fine (which is unusual for an offence in the Crown Court). The significance of this change is that a private prosecutor may claim back costs from the state where an either way offence is prosecuted in the Crown or Magistrates Court. NC90 is therefore potentially far more expensive to the public than previous drafts and given the failure to define

[19] Clause 6 (e) (i) and (ii)
[20] See https://www.cps.gov.uk/legal-guidance/consents-prosecute

key legal terms and inadequacy of the defences such costs are likely to be extremely high reflecting the length of trials and legal arguments.

29. It is difficult to reconcile some of the rhetoric in this area which compares conversion practices to torture with an amendment that proposes a fine only offence. This does not suggest such concerns are real or otherwise prison sentences would no doubt be proposed.

Human Rights Concerns

30. We take the view that the amendment as drafted is not compliant with the Human Rights Act 1998 and would likely be declared incompatible with the convention for the following reasons:

Right to a Fair Trial (Article 6)

31. This amendment provides a wide and incoherent definition of "transgender identity" borrowed from an act aimed at sentencing. It does not define "change, replace or negate" at all which is remarkable in this type of legislation and contrary to the Article 6 right that a Defendant understand the case against them in ordinary and clear language. The reverse burdens in clause 6 impose significant and onerous burdens on Defendants and in some cases do not amount to statutory defences at all. Criminalising private prayer is extraordinary. Further, requiring a Defendant to accept the existence of a contested identity concept as the basis for their prosecution is draconian and irreconcilable with the position in civil law where disbelief is protected. Article 6 requires a fair an independent tribunal, but any criminal court adopting the position dictated by this act, (that the contested identity concept exists), would be making an essentially political statement.

32. We remark further that the inadequate statutory defences threaten to embroil criminal courts in unfamiliar areas, principally the nuances of the family law concept of parental responsibility and the regulatory regimes applicable to clinicians. Crown Courts are unlikely to welcome complex legal arguments on these issues given the current backlog in court work.

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No Punishment without Law (Article 7)

33. This legislation is chaotically updated and deficient in respects so fundamental that a citizen would struggle to understand it. We agree with the analysis of Srah Vine KC to the Labour Women's Declaration that it therefore fails the "quality of law" test imposed by Article 7 and we remark further that, if enacted, many wholly innocent parents and doctors would be put at jeopardy of criminal prosecution. We regard that proposition as unconscionable.

Right to respect for private and family life (Article 8)

34. The amendment makes significant incursions into family life by potentially criminalising parental guidance or regulation that touches on sexual orientation or "gender identity". Difficult conversations that parents have as a matter of course would potentially be criminalised. Further, a parent can only rely on the relevant defence where they are "exercising" parental responsibility (PR). Courts are unlikely to conclude PR is being exercised over Gillick competent teenagers where prosecutions seem most likely. We respectfully suggest the parental defence as drafted completely misunderstands the concept of parental responsibility and we remark it makes no provision at all for family figures outside the concept of PR.

Right to freedom of conscience (Article 9) and expression (Article 10)

35. This amendment would significantly curtail both religious and political expression. A similar law passed in Victoria, Australia, led to the domestic human rights body regulating public prayer and NC90 for the first time criminalises private prayer.

Conclusion

36. As with the previous amendments, GMN continues to share the concern of the Secretary of State for Women and Equalities and members across both houses that there is "evidence that children likely to grow up to be gay (same sex attracted) might be subjected to conversion practices on the basis of gender identity rather than their sexual orientation. Both prospective and retrospective studies have found a link between "gender non-conformity" in childhood and someone later coming out as

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gay. A young person and their family may notice that they are gender nonconforming earlier than they are aware of their developing sexual orientation”.

37. The fact that this amendment introduces such a wide definition of “transgender identity” is extraordinary. Gender Identity is a contested concept and potentially imposing criminal liability on parents, teachers and clinicians with such a wide definition of what will meet the criteria for prosecution is not the hallmark of responsible legislating. This amendment is poorly drafted and likely to create long and expensive cases in the Magistrates, Crown and ultimately High Court, and the court is likely to regard the statute as a less than serious attempt to grapple with the many clearly identified problems in this area.

38. We call upon the movers of this amendment to withdraw it. There is no credible evidence that Conversion practices are actually occurring outside the discredited campaigning material of ideologues. Conversion practice bans are homophobic, and they put parents and doctors under an unwarranted and unjustified threat of prosecution. The Cass Review is perfectly clear on the dangers of such legislation, it is now high time to legislate on the basis of evidence and expert guidance, not ideological lobbying.

THE DIRECTORS

GAY MEN’S NETWORK