

## Response to Consultation on Ending conversion practices in Scotland

March 2024

### 1. Introduction

The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)

As part of our work we:

- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
- Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
- Conduct research and advise the four UK governments on improvements in regulation
- Promote right-touch regulation and publish papers on regulatory policy and practice.

### 2. General comments

We welcome the opportunity to respond to the Scottish Government consultation on Ending Conversion Practices in Scotland. In responding to this consultation we have restricted our responses to those areas that fall within the scope of our legislative remit and expertise. We have therefore focused on the role of regulation and registration within the policy intent of the proposed legislation. The points we wish to raise may be relevant to more than one question, but have been raised in response to question 6 as it is the most relevant to our role.

### 3. Detailed comments

#### Heading

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?

Yes

No

## **Don't know**

Please give the reason for your answer to Question 1.

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

## **It should be covered**

## **It should not be covered**

## **Don't know**

Please give reasons for your answer to Question 3.

## **Question 5**

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

## **Support**

## **Do not support**

## **Don't know**

## Question 6

Please give reasons for your answer to Question 5.

### The Definition of Health Care Professional

The Professional Standards Authority oversees the regulation and registration of health and care professionals in the UK. We are keen to raise some points regarding the proposed legislation and its definition of healthcare professional and draw your attention to our accredited registers programme and its underpinning legislation.

The ‘avoidance of doubt’ clause of the consultation document includes a definition of healthcare professional. The Scottish Government has explained that these provisions will make it clear that some behaviour and situations are not intended to be included within the legislation and so will not be carried out with the requisite intention. This includes healthcare or medical treatment provided by healthcare professionals in the course of their employment.<sup>1</sup>

Under this legislation, the definition of healthcare professional may determine whether a particular individual is committing a criminal and/or civil offence. Therefore, we have chosen to raise the points in response to question 6.

Section 4(1)(a) refers to the exemption of:

#### *4. Further provision in relation to offence of engaging in conversion practice: intention*

*(1) For the avoidance of doubt, examples of behaviour being engaged in without the intention mentioned in section 1(2) include—*

*(a) the provision, by a healthcare professional in the course of employment as such, of healthcare, including—*

- (i) medical treatment intended to align person B’s physical characteristics with person B’s gender identity,*
- (ii) any medical treatment that causes or addresses a lack of sexual desire on person B’s part,*

The explanation of the provision ‘for the avoidance of doubt’ sets out that this intends to encompass “*practices that are offered through regulated healthcare services*

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<sup>1</sup> [Ending conversion practices in Scotland: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/11/113-118/consultation/summary/summary.pdf) [113-118] and [Part 7: Offence of Engaging in Conversion Practice - Ending conversion practices in Scotland: consultation summary - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/11/113-118/consultation/summary/summary.pdf) [51]

*provided in line with the practitioner's professional opinion, and which comply with relevant medical, ethical and legal rules and guidelines".*

We note that the legislation does not define 'healthcare professional', 'employment', or 'regulated healthcare services'. We are unclear if:

- healthcare professional is meant to include both regulated and unregulated professions
- employment is meant to exclude self-employment, where a patient contracts with a professional to provide healthcare services to them
- regulated healthcare services means services provided in regulated places such as hospitals, clinics and care homes.

The term 'healthcare professional' encompasses both regulated and unregulated roles. For example, clinical psychologists and psychiatrists are healthcare professionals regulated by the Health and Care Professions Council and General Medical Council respectively. However, many roles that may be understood by the public to be healthcare professionals (both in terms of physical and mental health) are not regulated by law, and their titles are not protected. This includes many (but not all) mental health professional roles that deliver talking therapies. The amended National Health Service Reform and Health Care Professions Act 2002<sup>2</sup> allows a regulatory body to establish and maintain a voluntary register of persons who are 'unregulated health professionals', recognising that those considered to be health professionals are not limited to those subject to statutory regulation<sup>3</sup>. Psychologists, counsellors, psychotherapists and healthcare chaplains are not regulated, but fall within the definition of 'unregulated health professional' in the Health and Social Care Act 2012 S228. All of them might be employed within a regulated healthcare service, if that means a regulated workplace such as a hospital, clinic or care home.

Services offered by healthcare professionals, as described in paragraph 95 of the consultation are not 'regulated services' since activities carried out by healthcare professionals are by and large not regulated<sup>4</sup>. Making clear what is meant by 'regulated services' would help to remove any ambiguity here.

## **The Accredited Registers Programme**

In 2012, the UK Parliament gave the PSA the power to establish criteria for voluntary registers of 'unregulated health professionals' and 'unregulated health care workers', and to accredit them<sup>5</sup>.

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<sup>2</sup> Section 25D(1). [National Health Service Reform and Health Care Professions Act 2002 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2002/17/section/25D)

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2002/17/section/25D>

<sup>4</sup> <https://www.mygov.scot/pvg-scheme/types-of-work-covered-by-pvg>

<sup>5</sup> Section 228 25E (7), Health and Social Care Act 2012

<https://www.legislation.gov.uk/ukpga/2012/7/section/228/enacted>

PSA established an accredited registers programme, and awards its accreditation Quality Mark to organisations that can demonstrate they meet its Standards for Accredited Registers. These are like the standards for the statutory regulators, and cover areas such as standards, education and complaints handling. Practitioners on these registers can display our Quality Mark, which demonstrates their commitment to maintaining high standards of practice. We have accredited several counselling and psychotherapy registers, some of whose registrants may work or offer their services in Scotland. This includes COSCA. The PSA does not accredit any Register that permits conversion therapy in relation to sexual orientation or gender identity<sup>6</sup>. We expect any Accredited Register which sees evidence of registrants practising conversion therapy to act to protect the public. We can provide further information about the programme if this would be of assistance.

The proposed private members' bill from Lloyd Russell MP in the UK Parliament [Conversion Practices (Prohibition) Bill] defined a healthcare professional as 'a person who is a member of a body overseen or accredited by the Professional Standards [Authority] for Health and Social Care'.<sup>7</sup>

It is unclear to us whether the Scottish government has considered the potential impact of its legislation on registrants on an Accredited Register and if it intends them to be included or excluded from the exemption, but it may have an impact on their registrants' liability in civil or criminal law.

Many counsellors and psychotherapists on accredited registers work in both paid employment and undertake private or voluntary work. Under the draft legislation proposed, it appears they would benefit from an exemption in the former, but not when a patient sees them privately, or through a voluntary provider.

**It is our view that the definition of healthcare professional must be sufficiently clear before this Bill is passed into law.**

We have written to the authors of the private members bill in Westminster to discuss the merits and potential limits of using the accredited registers programme to define healthcare professional. We would like to extend our invitation to work with the Scottish Government and those who may be considering the definition of 'healthcare professional' and '*relevant medical, ethical and legal rules*'.

We would be happy to meet, or provide further such advice on this issue. We would welcome further policy and legal guidance on the definition of conversion practices, and collaboration with relevant government departments on the PSA's role in identifying conversion practices.

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<sup>6</sup> <https://www.professionalstandards.org.uk/news-and-blog/latest-news/detail/2022/09/27/psa-supports-mou-on-conversion-therapy-and-welcomes-the-inclusion-of-gender-identity#:~:text=The%20MoU%20recognised%20that%20the,sexual%20orientation%20and%20gender%20identity.>

<sup>7</sup> Line 12, Section 4, Conversion Practices (Prohibition) Bill [House of Commons Private Members Bill] <https://publications.parliament.uk/pa/bills/cbill/58-04/0022/230022.pdf>

### **Question 7**

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

**Support**

**Do not support**

**Don't know**

### **Question 8**

Please give reasons for your answer to Question 7.

### **Question 9**

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

**Support**

**Do not support**

**Don't know**

### **Question 10**

Please give reasons for your answer to Question 9.

## **Question 11**

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)?

**Agree**

**Do not agree**

**Don't know**

## **Question 12**

Please give reasons for your answer to Question 11.

## **Question 13**

Do you agree with the inclusion of a defence of reasonableness?

**Agree**

**Do not agree**

**Don't know**

## **Question 14**

Please give reasons for your answer to Question 13.

## **Question 15**

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

**Agree**

**Do not agree**

**Don't know**

## **Question 16**

Please give reasons for your answer to Question 15.

### **Question 17**

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

**Yes**

**No**

**Don't know**

Question 18

**Please give reasons for your answer to Question 17.**

Question 19

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

### **Question 20**

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?

**Support**

**Do not support**

**Don't know**

### **Question 21**

Please give your reasons for your answer to Question 20.

### **Question 22**

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

**Support**



**Do not support**

**Don't know**

### **Question 23**

Please explain your answer to Question 22.

### **Question 24**

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

**Support**

**Do not support**

**Don't know**

### **Question 25**

Please explain your answer to Question 24.

### **Question 26**

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?

### **Question 27**

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

**Support**

**Do not support**

**Don't know**

### **Question 28**

Please explain your answer to Question 27.

## **Question 29**

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

**Agree**

**Do not agree**

**Don't know**

## **Question 30**

Please explain your answer to Question 29.

## **Question 31**

Do you have any other comments regarding the civil order as set out in Parts 13 – 15?

## **Question 32**

Do you have any views on the potential impacts of the proposals in this consultation on equality by:

- a) Age**
- b) Disability**
- c) Gender reassignment**
- d) Civil partnership**
- e) Pregnancy and maternity**
- f) Race**
- g) Religion and belief**
- h) Sex**
- i) Sexual orientation**

### Question 33

Do you have any views on the potential impacts of the proposals in this consultation on children and young people, as set out in the UN Convention on the Rights of the Child?

### Question 34

Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

### Question 35

Do you have any views on potential impacts of the proposals in this consultation on communities on the Scottish islands?

### Question 36

Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

### Question 37

Do you have any views on the potential impacts of the proposals in this consultation on businesses and the third sector?

### Question 38

Do you have any views on the potential impacts of the proposals in this consultation on the environment?

## 4. Further information

Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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