

THE CHRISTIAN INSTITUTE

PRIVATE MEMBER'S BILL (LLOYD RUSSELL MOYLE MP)

PROPOSED AMENDMENT TO THE CRIMINAL JUSTICE BILL

PROPOSED PROHIBITION OF "CONVERSION PRACTICES"

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ADVICE

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The advice sought

1. I am instructed to advise The Christian Institute (the "Institute") on the compatibility with the European Convention on Human Rights ("ECHR") of (a) the Conversion Practices (Prohibition) Bill, a Private Member's Bill which was introduced into the House of Commons by Lloyd Russell Moyle MP on 23 February 2024 and is scheduled to have its Second Reading on 1 March 2024 (the "Bill"), and (b) an amendment to the Criminal Justice Bill tabled on 16 February 2024 by Elliot Colburn MP ("the Amendment"). Both the Bill and the Amendment intend to prohibit what they define as "*conversion practices*" that is, in summary, conduct which seeks to change or suppress sexual orientation or gender identity. I understand that the Institute is concerned that the Bill and the Amendment would (if enacted) intrude into and interfere with the manifestation and practice of core Christian beliefs within Christian churches and religious communities and would therefore contravene rights conferred by the ECHR.
2. The Institute is a non-denominational charity established for the advancement of the Christian faith and education, primarily in the UK, by a group of church leaders and Christian professionals. It has over 60,000 supporters throughout the UK, including some 5,434 churches and/or church ministers from almost all Christian denominations. Its religious convictions, and those of its supporters, may broadly be described as those of evangelical Christianity.
3. In brief summary, the convictions of the Institute (and of its supporters) which are particularly relevant to this advice include that:

- (1) Marriage is the lifelong and monogamous union of one man and one woman, and sexual conduct outside of marriage is sinful.
  - (2) Sexual acts with persons of the same sex (which necessarily cannot take place within marriage) are sinful.
  - (3) Gender (masculine or feminine) is not separate from the biological sex (male or female) of each person's body, but is rather rooted in, flows from, and is discovered in relation to the biological sex of each person's body.
4. A more detailed summary of the convictions of the Institute and its supporters, provided to me in 2021 in connection with previous advice, is set out in Appendix 1 to this Advice.
  5. The Institute does not support any efforts or practices, whether medical, psychological, or otherwise, that involve violence inflicted upon, or coercion of, a person to change their sexual orientation or gender identity or to suppress conduct consistent with their sexual orientation or gender identity. Indeed, it would regard any such practices as abhorrent. However, the Institute is concerned that the effect of the Bill is to prohibit and criminalise the statement, teaching and practice of traditional Christian beliefs both in churches and religious communities and in other social settings, and more generally to impinge upon (a) the rights of those in positions of responsibility, including within churches and religious communities, to discuss and offer guidance upon issues of gender identity and sexual orientation; and (b) the ability of those interested in such issues (including those holding 'gender critical' beliefs) to discuss and dispute such matters.
  6. In summary, for the reasons set out below, I consider that the Bill and the Amendment, if passed, would constitute a serious intrusion into the legitimate activities and practices of Christian churches and religious communities, which would be contrary to their rights protected by the ECHR, and so to the Human Rights Act 1998. They would also interfere with the legitimate expression of gender critical views, again in a manner which would be likely to breach ECHR rights. In particular:

- (1) The Bill and the Amendment are broad in scope. They would apply both to practices which seek to 'change' sexual orientation or transgender identity and practices which seek to 'suppress' sexual orientation or transgender identity i.e., to change conduct. They would apply to acts which cause no injury or distress; and, indeed, to acts to which the person in question consents. They would apply across a wide range of settings, including social and religious settings (although, the Bill (but not the Amendment) would exempt at least some conduct of parents *vis-à-vis* their children). Whilst some attempt has been made to craft exemptions or exceptions so as to ensure that the practice of religion is not prohibited, the central prohibition in the Bill and the Amendment remains a wide one, applying to churches and other religious organisations, and to those expressing certain views, including gender critical views, outside those settings.
- (2) The Bill and the Amendment would, if enacted, interfere with a number of rights protected by the ECHR. They would (by way of example) restrict the ability of religious organisations to express their beliefs (both within their own communities and to the wider world) and the ability of gender-critical persons to express their beliefs to persons who profess a gender identity which is inconsistent with those beliefs. Such restrictions are likely to interfere with (at least) the right to respect for private and family life (Article 8 ECHR); the right to freedom of thought, conscience and religion (Article 9 ECHR); the right to freedom of expression (Article 10 ECHR); and the right to freedom of assembly and association (Article 11 ECHR).
- (3) Any interference with such rights must be justified and proportionate in order to be lawful. It is very difficult to see how the wide-ranging interference with fundamental rights contemplated by the Bill and the Amendment could be justified. Put shortly, the Bill and the Amendment would criminalise expressions of personal conviction even if they are made without expressions of hatred or intolerance, or improper purpose or coercion, or abuse of power. Restrictions of that nature run contrary to the consistent case law of the European Court of Human Rights ("ECtHR").

## The provisions of the Bill

7. The Bill is a short document. It contains a central prohibition, in clause 1(1):

*“An offence is committed if a person:*

- (a) offers, undertakes, or takes payment for conversion practices, or*
- (b) offers, provides or takes payments for materials, advice or guides to conduct conversion practices,*
- (c) advertises, or takes payment for advertising, conversion practices.”*

8. A “conversion practice” is defined in clause 4, as “a course of conduct or activity, the predetermined purpose and intent of which is to change someone’s sexual orientation or to change a person to or from being transgender, including to suppress a sexual orientation or transgender identity so that the orientation or identity no longer exists in full or in part”.

9. Also according to clause 4, “sexual orientation” and “transgender identity” have “the same meaning as in the Sentencing Act 2020”. This can only be a reference to section 66 of the Sentencing Act 2020. That section does not attempt to define either term, but merely extends the meaning of references to sexual orientation and transgender identity so that they include also presumed sexual orientation and presumed transgender identity.<sup>1</sup>

10. Clause 1(2) creates a series of exceptions to the prohibition in clause 1(1). So far as material to this Advice, an offence would not be committed where:

*“(a) person expresses a religious or other belief, provided that it is not directed to an individual as part of a conversion practice,*

*(b) a person expresses to an individual their disapproval of, or acceptance of, that person’s sexual orientation or transgender identity or lack thereof, ..*

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<sup>1</sup> It is likely that “sexual orientation” will also be interpreted in accordance with its definition in section 12 of the Equality Act 2010, as “a person’s sexual orientation towards - (a) persons of the same sex, (b) persons of the opposite sex, or (c) persons of either sex”. The concept of ‘gender identity’, or ‘transgender identity’, as used in the Bill, is not (to the best of my knowledge) defined in any statute. Its meaning is controversial. For present purposes, I note the following summary of ‘gender identity’ which is used by the NHS: “Gender identity is a way to describe a person’s innate sense of their own gender, whether male, female, or non-binary, which may not correspond to the sex registered at birth. Gender identity should not be confused with registered sex at birth, or with sexuality or who someone is attracted to.”

(e) a person is, other than as part of a conversion practice, facilitating or offering support to a person who is –

(i) exploring or questioning their sexual orientation or transgender identity or lack thereof, or

(ii) seeking to develop coping skills in relation to their sexual orientation or transgender identity or lack thereof.

(f) a person is exercising parental responsibility for a child –

(i) in England and Wales, in accordance with the Children Act 1989,

(ii) in Scotland, in accordance with the Children (Scotland) Act 1995,

(iii) in Northern Ireland, in accordance with the Children (Northern Ireland) Order 1995.

*provided that the child's welfare is the person's paramount consideration."*

11. Commission of the offence created by the Bill would be punishable by a fine not exceeding level 5 (clause 3(1)), which means an unlimited fine.<sup>2</sup> Prosecutions may only be instituted with the consent of the Director of Public Prosecutions ("DPP") (in England) (clause 3(2)).
12. By clause 5(1), the Bill extends to England, Wales, Scotland and Northern Ireland. I have not been asked to consider issues with the Bill other than its ECHR compatibility. I note, however, that the proposed ambit of the Bill would be likely to raise devolution issues.
13. The Bill's definition of a "conversion practice" is broadly framed. It includes an "activity" as well as a "course of conduct" and so could extend to a one-off action. It applies to practices which seek to "change" sexual orientation or transgender identity but includes within its scope practices which seek to "suppress" sexual orientation or transgender identity, which, in my view, must be understood as a reference to changing the conduct of an individual. I note the words "so that the orientation or identity no longer exists in full or in part" which appear intended to define the verb "suppress" and read these as consistent with an intention to change conduct. So a conversion practice may occur

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<sup>2</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/9-maximum-fines/>

where one individual seeks to suppress the sexual orientation or transgender identity of another by dissuading them from behaviour which would express their sexual orientation or transgender identity. I adopt that interpretation not least because it would substantially undermine the efficacy of the central prohibition in the Bill if a putative defendant were able to maintain, for example, that they had not breached that prohibition because they only ever intended to avert homosexual conduct and so had not intended to change the putative victim's sexual orientation as such.

14. The central prohibition in the Bill would apply to acts which cause no injury or distress; and, indeed, to acts to which the person in question consents. It would apply across a wide range of social and religious settings. Some attempt has been made to carve out exceptions for religious and social activities, in clause 1(2)(a)-(b) but, as explained further below, these are of limited scope, and leave considerable room for application of the central prohibition to the actions of religious communities and of other actors in social settings.
15. For example, clause 1(2)(a) would exempt an expression of religious belief which is not directed to any individual as part of a conversion practice. There is an unsatisfactory element of circularity about this exception – it is of little use, and would create significant uncertainty, for the law to provide that there will be an exception, and no unlawful conversion practice, save where there is a conversion practice. That aside, an exception for a mere expression of religious belief serves to confirm that any action taken to seek to persuade another to abide by that belief or to sanction another for failing to abide by that belief is potentially criminal and, at the very least, creates significant uncertainty as to whether or not it is criminal (and so would be likely to have a “chilling effect”, deterring any such behaviour).
16. It would appear from clause 1(2)(f) that the Bill intends to exclude from its central prohibition conduct by parents *vis-à-vis* their children, provided that the child's welfare is the parent's “paramount consideration”. However, it is far from clear that the exclusion from “conversion practice” of a person who is exercising parental responsibility for a child would achieve that intention.
17. “Parental responsibility” is “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and [their] property” (section 3(1) of the

Children Act 1989). It will be clear whether a person has parental responsibility for a child (see sections 2 and 4-6 of the Children Act 1989) and it is clear also that parental responsibility ceases altogether when the child reaches 18. However, the extent to which a person can exercise parental responsibility in respect of a child diminishes as the child gets older and becomes legally competent to make their own decisions (for example, regarding consent to medical treatment, on the *Gillick* test).<sup>3</sup>

18. It follows that an exclusion from “conversion practice” based on whether a person is exercising parental responsibility when engaging in the alleged practice is liable to leave room for doubt, and argument, in individual cases concerning older children as to whether a parent has acted unlawfully or not. If the matter with which the parent’s conduct was concerned was one which the child was deemed competent to decide for themselves, the conclusion may be that parental responsibility was not being exercised, within the meaning of the Bill, in that case. Further doubt, and further scrutiny of a parent’s conduct *vis-à-vis* their child, is invited by the qualification in clause 1(2)(f) that the child’s welfare must be the parent’s “paramount consideration”. One might expect that parents would generally say that this was the case, but it is certainly possible to conceive of cases where parents have more than one motivation and where there will be room for argument about whether the terms of the qualification are satisfied.
19. I should also make clear that the exclusion in clause 1(2)(f) will not, save in exceptional cases where they have parental responsibility, apply to grandparents, godparents or other adults who may play a significant role in the upbringing of a child. That is so even where the actions of grandparents, godparents etc. are approved of or even invited by the parent of a child.

### The Amendment

20. The Amendment states, so far as material to this Advice, as follows:

*“Offence of encouraging or assisting conversion practices*

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<sup>3</sup> *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112: a child is competent to consent to medical treatment if they have sufficient maturity and intelligence to understand the nature and implications of the proposed treatment.

*(1) A person (B) commits an offence if—*

- (a) B does an act capable of encouraging or assisting another person to undergo conversion practices, or arranges for another person (C) to do such an act, and*
- (b) the act is intended to encourage or assist another person to undergo conversion practices.*

*(4) For the purposes of this section – ...*

*“conversion practices” mean practices which are directed towards a person –*

- (a) on the basis of the person’s sexual orientation or gender identity; and*
- (b) for the purpose of changing or suppressing the person’s sexual orientation or gender identity;*

*but do not include – ..*

- (iii) actions intended to support an individual’s personal, emotional or social development, including explorations of sexual orientation or gender identity, which are not intended to change or suppress the individual’s sexual orientation or gender identity;*
- (iv) the expression of a belief or a religious principle made to an individual that is not intended to change or suppress the individual’s sexual orientation or gender identity.*

*(5) A person who commits an offence under this section is liable –*

- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);*
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine (or both).”*

21. The central prohibition which would be introduced by the Amendment, that of intentionally encouraging or assisting an individual to undergo conversion practices, being practices which have the purpose of changing or suppressing a person’s gender identity or sexual orientation, is very similar to that of the Bill. For present purposes, the most significant differences between the Bill and the Amendment are (a) the Amendment has no exception at all for parental action, (b) the offence created by the Amendment is more serious in that it would be punishable by imprisonment as well as a fine and (c) despite that, the Amendment does not require prosecution for the offence to be brought with the consent of the DPP.

## The ECHR rights

22. I have previously advised in detail on the requirements of Articles 8, 9, 10 and 11 ECHR as they apply to religious communities and the beliefs of individuals, in advice published by the Institute.<sup>4</sup> I summarise the position for ease of reference, drawing on the conclusions in my previous advice:

- (1) Freedom of thought, conscience and religion is “one of the foundations of a ‘democratic society’ within the meaning of the Convention. In its religious dimension, it is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it”.<sup>5</sup>
- (2) A religious organisation is entitled to make rules for the governance of its community, including criteria governing admission to, and rejection from, the community, and to maintain discipline (by which I mean adherence to its rules) among its community.<sup>6</sup> Such conduct is protected both by Article 9 and Article 11 ECHR. The state is not entitled to restrict the practice of religious beliefs by and among those who adhere to those beliefs,<sup>7</sup> although it may restrict manifestation of those beliefs in what might broadly be called the public sphere (e.g., in employment or in operating commercial enterprises), so long as the restriction is justified and proportionate.<sup>8</sup>
- (3) Religious believers are also entitled, within limits, to attempt to convince others of the truth of their beliefs. The ECtHR has recognised that “bearing witness in

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<sup>4</sup> [www.the.ci/coppel](http://www.the.ci/coppel)

<sup>5</sup> *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 13, §114. See also s. 13(1) Human Rights Act 1998.

<sup>6</sup> *Religionsgemeinschaft der Zeugen Jehovas v Austria* (2009) 48 EHRR 17, §61.

<sup>7</sup> *Bessarabia*, above; *Hasan and Chaush v Bulgaria* (2002) 34 EHRR 55; *R (Johns) v Derby City Council* [2011] HRLR 20, *Ibragimov v Russia* (1413/08 and 28621/11), §90.

<sup>8</sup> *Eweida v United Kingdom* (2013) 57 EHRR 8.

*words and deeds is bound up with the existence of religious convictions” and that freedom of religion and belief “includes in principle the right to try to convince one’s neighbour”, for example through ‘teaching’.”<sup>9</sup> Such conduct will not, however, be legitimate when it involves improper means such as “violence, brainwashing or taking advantage of those in distress or in need”.<sup>10</sup>*

- (4) The Article 10 right of freedom of expression encompasses the right to express ideas that cause offence, or are otherwise regarded as unsavoury (‘offend, shock or disturb’). This is not a point unique to the expression of religious beliefs, but it has been applied in that context. Such expression may only be legitimately restricted when the statements promote “violence, hatred or intolerance”<sup>11</sup> (including by insulting, holding up to ridicule or slandering)<sup>12</sup> such as, for example, where homosexuality was referred to in leaflets as a “deviant sexual proclivity” which had “a morally destructive effect on the substance of society”.<sup>13</sup>
- (5) As regards the protected status of beliefs such as those of the Institute, the domestic courts have repeatedly found that such beliefs are protected by Article 9 ECHR and worthy of respect as such.<sup>14</sup> As stated in one of those cases:<sup>15</sup>

*“The belief in question is the orthodox Christian belief that the practice of homosexuality is sinful. The manifestation in question is by teaching, practice and observance to maintain the choice not to accept, endorse or encourage homosexuality. Whether the belief is to be accepted or rejected is not the issue. The belief is a long*

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<sup>9</sup> *Kokkinakis v Greece* (1994) 17 EHRR 397.

<sup>10</sup> *Larissis v Greece* (1999) 27 EHRR 329; *Ibragimov*, above.

<sup>11</sup> *Ibragimov*, above; *Alekhina v Russia* (2019) 68 EHRR 14.

<sup>12</sup> *Lilliendahl v Iceland* (29297/18, 12 May 2020).

<sup>13</sup> *Vejdeland v Sweden* (2014) 58 EHRR 15. See also the summary of authority in the case of *Brown v Public Prosecution Service for Northern Ireland* [2022] NICA 5 (not a religious belief case).

<sup>14</sup> *Re Christian Institute’s Application for Judicial Review* [2008] IRLR 36, §50; *R (Johns) v Derby City Council* [2011] HRLR 20, §47; *Bull v Hall* [2012] 1 WLR 2514, §56.

<sup>15</sup> *Re Christian Institute’s Application for Judicial Review* [2008] IRLR 36, §50.

*established part of the belief system of the world's major religions. This is not a belief that is unworthy of recognition. I am satisfied that Article 9 is engaged in the present case."*

- (6) As regards conduct within the family, the general position of the law, given the right to respect for private and family life conferred by Article 8 ECHR, is that "[w]ithin limits, families must be left to bring up their children in their own way".<sup>16</sup> The intervention of the state in the actions taken by parents in relation to their children could only be justified where parental action harms or would harm the health and development of a child.<sup>17</sup>
- (7) The Employment Appeal Tribunal has also recently held that gender-critical beliefs are similarly protected.<sup>18</sup>
23. Lastly, I should also refer to Article 3 ECHR (the prohibition on torture or inhuman and degrading treatment ("IDT")). The UK, as a signatory to the ECHR, is obliged to take measures to ensure that individuals within the UK are not subjected to torture or IDT, even by private individuals. Conduct must be of a high degree of severity in order to be classified as torture or IDT. By way of example, in *L v Lithuania* (2008) 46 EHRR 22, the applicant contended that Lithuania's failure to adopt legislation permitting the applicant to complete gender reassignment surgery (which had been partially undertaken) and to have his legal gender changed from female to male breached Article 3. The Court found that the applicant's "understandable distress and frustration" did not fall within the scope of Article 3 as it did not "indicate circumstances of such an intense degree, involving ... exceptional, life-threatening conditions" that would be required for that purpose (§47). The vast majority of cases in which IDT has been found have involved intentional abuse or inhuman/ degrading conditions in contexts involving an imbalance of power and restricted liberty (e.g., in prisons, mental hospitals, and/or where the perpetrator is a member of the police or security forces).

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<sup>16</sup> *Christian Institute v Lord Advocate* 2017 S.C. (U.K.S.C.) 29, §73.

<sup>17</sup> *Ibid*, citing *Neulinger v Switzerland* (2012) 54 EHRR 31.

<sup>18</sup> *Forstater v CGD Europe and ors* [2022] ICR 1; *Mackereth v Department for Work and Pensions* [2022] ICR 1609.

24. In summary, therefore:

- (1) The relevant beliefs of the Institute regarding sexual relations, sexual orientation and gender identity are protected by Article 9(1) ECHR. These beliefs must be treated by the State with neutrality and impartiality. Adherents to those beliefs are entitled to practise them and to adopt internal rules and maintain discipline within their church organisations according to those beliefs.
- (2) Christians who hold these beliefs are, in principle, entitled to seek to persuade others to adhere to them. Legislation may only prevent such activities in two circumstances. First, where they amount to “improper proselytism”, that is, the application of improper or undue pressure or coercion, or abuse of power, including where the mental state of the object of proselytism requires special protection. Second, where the “persuasion” falls outside the bounds of freedom of expression because it consists of the spreading, incitement, promotion or justification of hatred based on intolerance.
- (3) There are, accordingly, only limited circumstances in which the expression of Christian beliefs to a consenting adult, with the intention of changing their behaviour, could be prohibited compatibly with the ECHR rights of the person expressing those beliefs. There is greater scope for prohibiting such conduct when directed at minors, even where it appears consensual, simply because minors (as a category) are more vulnerable to improper pressure or abuse of power than adults (as a category). However, the position is likely to differ depending upon the age and maturity of particular individuals.<sup>19</sup> Within the home, moreover, a legal prohibition on a parent expressing their religious beliefs to their child, with a view to fostering beliefs and behaviours in that child, is highly problematic and unlikely to be compatible with ECHR rights.<sup>20</sup> The same can be said of a

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<sup>19</sup> *R (Just for Kids Law) v Secretary of State for the Home Department* [2019] 4 WLR 97, §71.

<sup>20</sup> I am not concerned here with extremes of parental behaviour, amounting to physical or psychological abuse of children, which is prohibited by the existing law.

prohibition upon a grandparent or other significant adult expressing religious beliefs to a child, particularly where this is invited, or approved of, by a parent.

- (4) The imposition of criminal sanctions for the expression of religious beliefs to others is particularly difficult to justify in Convention terms. I would not go so far as to say that criminal sanctions can only be justified where such expression amounted to incitement to hatred. That principle has been expressed in the context of expressions of political/religious belief in the public sphere, but there are other cases where the ECtHR has upheld convictions for (e.g.) improper proselytism conducted in private. Undoubtedly, however, a regime which imposes criminal penalties will be more difficult to justify, and the more serious the penalty the more onerous will be the burden of justification.

#### **Analysis of the potential impact of the Bill**

25. The following situations (among many others) would be likely to be caught by the offence created by the Bill:

- (1) A Christian church teaches that homosexual acts are inherently sinful. It is a rule of the church community that members should be in good standing with the church, and not be living in 'unrepentant sin'. Members are encouraged and assisted, through prayer and discussion, not to live in unrepentant sin according to the church's teaching. A member of the church engages in homosexual acts. The pastor prays with the individual, asking God to help the individual resist his inclinations to same-sex sexual conduct, and conducts a Bible study with the individual. Ultimately, the pastor informs the individual that he will no longer be allowed to remain a member of the church unless he refrains from homosexual sexual acts. Giving the terms of the Bill their ordinary and natural meaning, it seems likely that both the prayer and Bible study, and the rules on membership of the church, would be considered to have the purpose or intent to change sexual orientation and, certainly, to suppress the expression of sexual orientation. This conduct would not fall within clause 1(2)(a) of the Bill as a mere expression of religious or other belief.

- (2) A Christian church requires candidates for adult baptism or confirmation to attend classes over an 8-week preparatory course. These classes cover 'Christian living', including sexual ethics. A candidate strongly objects to being told that homosexual relationships are wrong - a point he makes on several occasions during course discussions. At the end of the course, he is informed that he cannot be baptised unless he accepts the Bible's teaching as understood and practised by the church. The analysis would be the same as that in sub-paragraph (1) above.
- (3) A Christian church teaches that homosexual sexual acts are inherently sinful. The pastor of that church preaches to the congregation to the effect that sex is a gift reserved for marriage between a man and woman and says that singleness is an honourable calling. The issue here would be whether the pastor was merely expressing a religious belief, within the exception in clause 1(2)(a) of the Bill, in which case their conduct would not be unlawful. That may or may not be the case depending upon the intention of the pastor. It is easy to see how, for example, they could be considered to have been directing their expressions of belief at individuals in the congregation in order to dissuade those individuals from homosexual sexual acts, in which case the exception would likely not apply. On any view, the real possibility of committing a criminal offence through preaching could be expected to have a chilling effect on what the pastor says to their congregation.
- (4) A gender-critical public figure is invited to public events to speak on gender issues. In the course of their attendance at these events, they make statements such as "*Your biological sex is your true gender*"; "*People who think that they are transgender need to realise who they really are*"; and "*People who feel they are trans need help, not medication. They shouldn't be taking life-changing measures based on a lie.*" Giving the terms of the Bill their ordinary and natural meaning, it seems likely that the individual would be considered to have (i) attempted to change listeners' gender identity or, at the least, (ii) attempted to suppress expression of gender identity. This conduct would be unlikely to fall within the exceptions in clause 1(2)(a) or (b) of the Bill as a mere expression of religious or other belief or an expression of disapproval or lack of acceptance of transgender identity.

- (5) A grandparent becomes aware that a grandchild considers themselves to be transgender and wishes to be called by a different name, consistent with their preferred gender. They wish to do their part to dissuade the child from that course. With the knowledge and approval of the child's parents, the grandparent refuses to use the child's preferred name, or to see the child when they are dressed in clothes consistent with their preferred gender and seeks to ensure that the child is in no doubt about what they believe to be the Bible's disapproval of transgender identity. It seems likely that the grandparent would be considered to have (i) attempted to change the child's gender identity or, at the least, (ii) attempted to suppress expression of that gender identity. This conduct would be unlikely to fall within the exceptions in clause 1(2)(a) or (b) of the Bill as a mere expression of religious or other belief or an expression of disapproval or lack of acceptance of transgender identity and would not be caught by the exception in clause 1(2)(f) for those exercising parental responsibility.
26. I consider that a criminal prohibition on the conduct summarised above would be highly likely to breach ECHR rights. In each of these situations, views are being expressed about sexual orientation and gender identity which are protected by (variously) Article 9 ECHR and Article 10 ECHR. In the 'church discipline' examples ((1) and (2) above), Article 11 ECHR rights are also interfered with. In the 'family' example ((5) above), Article 8 ECHR rights are also interfered with.
27. If the Bill were to prohibit parents from expressing their beliefs, whether religious or gender critical beliefs, to their children, that would also likely interfere with Article 8 ECHR rights. As explained above, the Bill may intend to avoid such interference, but its current drafting would need to be revisited – both the focus upon the exercise of “parental responsibility” and the need for a parent to demonstrate in their defence that the child's welfare was their “paramount consideration” - in order to ensure that such behaviour by parents *vis-à-vis* their children is not criminalised.
28. While the proportionality and so the ECHR compatibility of the Bill would turn in part upon the quality of the evidence as to the nature and the extent of the harm which the legislation was seeking to prevent, I note that the Bill criminalises expressions of personal conviction and religious belief even if they are made without expressions of

hatred or intolerance, or improper purpose or coercion, or abuse of power. It is very difficult to see how such a wide-ranging interference with such fundamental rights could be justified. In my firm view, on the basis of the longstanding case-law of the ECtHR, the degree of interference with ECHR rights which would be caused by the Bill, if passed, would be very likely to be held to breach the ECHR, and so result in the Bill/Act being subject to a declaration of incompatibility under s. 4 HRA.

### **Analysis of the potential impact of the Amendment**

29. Almost all of the analysis above is equally applicable to the Amendment. However, the Amendment would, if passed, give rise to more widespread and more serious breaches of ECHR rights than the Bill. The absence of any exception for parental action vis-à-vis their children will serve to criminalise a significantly wider range of actions in the home, contrary to Article 8 ECHR. Further, the fact that the offence would be punishable by imprisonment and not merely a fine will ensure that any interferences with Convention rights are more serious, more difficult to justify and so more likely to be unlawful.
30. In my firm view, on the basis of the longstanding case-law of the ECtHR, and as with the Bill, the degree of interference with ECHR rights which would be caused by the Amendment, if passed, would be very likely to be held to breach the ECHR, and so result in the Amendment/section being subject to a declaration of incompatibility under s. 4 HRA.

**JASON COPPEL KC**  
**11KBW Chambers**

**26 February 2024**

## Appendix 1 – Summary of Relevant Beliefs

1. This Appendix summarises the relevant beliefs of the Institute and its supporters, as they have been set out in our Instructions.

### General

2. As ‘evangelicals’, the Institute and its supporters hold to the Bible - Old and New Testaments - as the supreme authority in all matters of faith and conduct.<sup>8</sup>
3. Evangelical Christians believe that every human being is born in sin and needs to be forgiven and reconciled to God in order to know him (and thus be saved, to escape the eternal judgment of God). This salvation is secured by the death on the cross of the Lord Jesus Christ, in dying in the place of sinners, bearing God’s punishment for sin. Salvation is received through faith in Christ. Salvation is entirely a work of God’s grace and cannot be earned. It has been fully accomplished by Christ and is applied to each believer by the work of the Holy Spirit. God in his love forgives sinners to whom he grants repentance and faith.
4. This repentance – or turning from a life of sin – is an essential element of Christian conversion. Repentance is also an ongoing aspect of living the Christian life. The Articles of Religion of the Church of England state: *“After we have received the Holy Ghost, we may depart from grace given, and fall into sin, and by the grace of God we may arise again, and amend our lives. And therefore they are to be condemned, which say, they can no more sin as long as they live here, **or deny the place of forgiveness to such as truly repent**”* (emphasis added).
5. Evangelicals believe that sin is any lack of conformity to, or transgression of, the law of God. God’s moral law is summarised in the Ten Commandments (Exodus 20). All mankind has fallen short of those standards which, if left unforgiven, will lead to eternal judgement. But for those who have turned to Christ in repentance and faith, the Ten Commandments are the rule for how they should

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<sup>8</sup> The Institute’s Basis of Faith confesses belief in *“The inspiration of the Holy Scripture in its entirety by God’s Spirit through the human authors, and its revelation of God’s truth to humanity. The Bible is without error not only when it speaks of salvation, its own origins, values, and religious matters, but it is also without error when it speaks of history and the cosmos. Christians must, therefore, submit to its supreme authority, both individually and corporately, in every matter of belief and conduct.”* Evangelical churches will typically have similar statements in their own confessional and doctrinal statements.

*“love the Lord your God with all your heart and with all your soul and with all your mind and with all your strength” and “love your neighbour as yourself” (Mark 12:30-31).*

#### Prayer and Guidance, and Church Discipline

6. Evangelicals see themselves as part of the church, which is understood to be the body of Christ. Within this, believers share with and serve one another. It is understood to be part of that sharing and service that Christians will sometimes seek to restore a fellow Christian who has fallen into sin, through speaking the truth (as they see it) to them in love and through prayer.

*“[S]o we, though many, are one body in Christ, and individually members one of another” (Romans 12:5);*

*“Rather, speaking the truth in love, we are to grow up in every way into him who is the head, into Christ” (Ephesians 4:15);*

*“...praying at all times in the Spirit, with all prayer and supplication. To that end keep alert with all perseverance, making supplication for all the saints” (Ephesians 6:18);*

*“Brothers, if anyone is caught in any transgression, you who are spiritual should restore him in a spirit of gentleness. Keep watch on yourself, lest you too be tempted” (Galatians 6:1).*

7. It is part of the role of church leaders to bring the teaching of the Bible to those under their care, both in preaching and teaching and in pastoral discussion and prayer. They guide believers into a life of faith in Christ and repentance.

*“[S]hepherd the flock of God that is among you, exercising oversight, not under compulsion, but willingly, as God would have you; not for shameful gain, but eagerly; not domineering over those in your charge, but being examples to the flock” (1 Peter 5:2-3);*

*“...teaching them to observe all that I have commanded you. And behold, I am with you always, to the end of the age” (Matthew 28:20).*

8. Most Christian denominations have clear statements in their constitutions and confessional statements about how to deal with church discipline. For example, the statement of faith of Congregational (Independent) Churches, the Savoy Declaration of Faith and Order (1658) includes The Institution of Churches, and the Order Appointed in Them by Jesus Christ, and remains enshrined in the trust deeds of many protestant chapels in England and Wales. It provides:

“1. Whereas the Lord Jesus Christ hath appointed and instituted as a means of edification, that those who walk not according to the rules and laws appointed by him (in respect of faith and life, so that just offence doth arise to the church thereby) be censured in his name and authority. Every church hath power in itself to exercise and execute all those censures appointed by him in the way and order prescribed in the gospel.

2. The censures so appointed by Christ, are admonition and excommunication. And whereas some offences are or may be known only to some, it is appointed by Christ, that those to whom they are so known, do first admonish the offender in private: in public offences where any sin, before all. Or in case of non-amendment upon private admonition, the offence being related to the church, and the offender not manifesting his repentance, he is to be duly admonished in the name of Christ by the whole church, by the ministry of the elders of the church; and if this censure prevail not for his repentance, then he is to be cast out by excommunication with the consent of the church.

3. As all believers are bound to join themselves to particular churches, when and where they have opportunity so to do, so none are to be admitted unto the privileges of the churches, who do not submit themselves to the rule of Christ in the censures for the government of them.”

9. We are instructed that discipline may include matters such as a request to refrain from partaking of the Lord’s Supper (ie. Holy Communion) for a period, or in extreme cases for a person to be removed from membership of the community. Such discipline is not, however, administered in a vacuum. Disciplinary sanctions are accompanied by loving care, prayer and scriptural one-to-one teaching by church ministers/elders. The aim is always to determine whether there are signs of genuine repentance and spiritual restoration. In certain circumstances, if there is no evidence of repentance, it may be necessary for those in leadership to remove a person as a member of the church. But none of this is done lightly.

### Marriage and sexual intercourse

10. The seventh commandment regards the honouring of marriage in thought, word and deed. Evangelical churches (like churches of other traditions) teach that marriage is to be the lifelong and monogamous union of one man and one woman. Sexual conduct outside of that union is sinful.<sup>9</sup> This is understood to be the message of the creation account, and is also derived from the New Testament. So high is the biblical view of marriage that it is used as a metaphor for the relationship of Christ and his church.

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<sup>9</sup> See eg. Canon B30 of the Canons of the Church of England: <https://www.churchofengland.org/about/leadership-and-governance/legal-services/canons-churchengland/section-b>, and a more detailed summary of evangelical teaching on marriage with scriptural references at chapter 24 of the WCF, (<http://www.epcew.org.uk/resources/westminster-confession-of-faith/chapter-xxiv-of-marriage-and-divorce#fn0>). We are instructed that the WCF has been drawn on by many other churches in the reformed and evangelical tradition.

*“Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh” (Genesis 2:24);*

*“[Jesus] answered, ‘Have you not read that he who created them from the beginning made them male and female, and said, “Therefore a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh”? So they are no longer two but one flesh. What therefore God has joined together, let not man separate”’ (Matthew 19:4-5);*

*“‘Therefore a man shall leave his father and mother and hold fast to his wife, and the two shall become one flesh.’ This mystery is profound, and I am saying that it refers to Christ and the church” (Ephesians 5:31-32).*

11. Evangelicals believe that Christians will be tempted to deviate from God’s pattern for sexual conduct, including by their own hearts. Sinful thoughts, words and deeds are seen as occasions to seek God’s mercy, to turn from sin and to walk with God in all the ways of his commandments.

*“...and forgive us our debts, as we also have forgiven our debtors. And lead us not into temptation, but deliver us from evil”. (Matthew 6:12-13)*

*“If we say we have no sin, we deceive ourselves, and the truth is not in us. If we confess our sins, he is faithful and just to forgive us our sins and to cleanse us from all unrighteousness.” (1 John 1:8-9; see also Hebrews 12:1)*

12. The Institute and its supporters consider that the goal for Christians experiencing same-sex sexual desire is not to replace it with opposite-sex desire, although new beginnings of this sort must not be ruled out. Rather, the aim is to become more like Christ in self-denying love and obedience.

*“For this is the will of God, your sanctification: that you abstain from sexual immorality; that each one of you know how to control his own body in holiness and honour, not in the passion of lust like the Gentiles who do not know God” (1 Thessalonians 4:3-5);*

*“For those whom he foreknew he also predestined to be conformed to the image of his Son, in order that he might be the firstborn among many brothers” (Romans 8:29);*

*“And [Jesus] said to all, ‘If anyone would come after me, let him deny himself and take up his cross daily and follow me”’ (Luke 9:23);*

*“Or do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived: neither the sexually immoral, nor idolaters, nor adulterers, nor men who practice*

*homosexuality, nor thieves, nor the greedy, nor drunkards, nor revilers, nor swindlers will inherit the kingdom of God. And such were some of you. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the spirit of our God”* (1 Corinthians 6:9-11).

#### The body and gender identity<sup>10</sup>

13. The Institute and its supporters consider the human person as a psychosomatic (integrated soul-body) unity, according to God’s design in both creation and salvation.
14. The Apostles’ and Nicene Creeds (theological summaries of the Bible’s central teaching) reflect the Bible’s affirmation of the original goodness of creation as the good craftsmanship of a good God (Genesis 1). This includes the embodied reality of humanity, made in God’s image as male and female (Genesis 1:26-27), leading to an understanding of humans as sexually dimorphic (as a species, male and female, and individuals male or female) image-bearers of God.
15. The Creeds also focus attention on the central realities of the Christian gospel. First, Christ’s taking on of human flesh in the incarnation, in which human nature (body and soul) is dignified in its personal union with God’s Son. Then, Christ’s sufferings in human flesh under Pontius Pilate, his death by crucifixion, and his bodily resurrection from the dead on the third day. The Gospels emphasise that Christ’s tomb was empty, and that Christ therefore rose with the same body he had before he died, a body that still bore the marks of the nails with which he was crucified, and the spear with which his side was pierced. Thirdly, both the Bible and the Creeds treat Christ’s resurrection as the certain promise of the bodily resurrection of all people for judgement, and Christian believers for embodied eternal life.
16. The Institute and its supporters consider that the Bible teaches that the reality of masculine or feminine gender is not separate from the sexually dimorphic form of people’s bodies. Rather, gender is rooted in, flows from, and is discovered in relation to the male or female biological sex of the body, and in relation to the male or female sex of other human bodies. This bodily and social reality is not something “assigned” by a midwife, or a parent, at birth. It is, rather, a reality given by God as creator, which can only be recognised as such by his creatures. Christian belief in the resurrection entails that this is not a temporary, or mutable reality. The Pauline letters state that

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<sup>10</sup> This section is based upon a note by Rev. Matthew Mason on ‘Orthodox Christian teaching on the Body and Gender Identity’, which was included in our Instructions.

the dead will be raised with the body "*God has chosen*" and assigned in creation (1 Corinthians 15:38). He also teaches that it is this body, the one given in this life, which will be raised clothed in immortal glory (1 Corinthians 15:53-54).

17. The Institute and its supporters therefore consider that the meaning of sex and gender, rooted in and flowering from the biological form of human bodies, is not incidental, but intrinsic to humanity's reality as creatures defined not by themselves, but by God the creator. Christ himself recognised and affirmed the authority of this dimorphic creation pattern of humanity for human life and ethics (Matthew 19:3-12).
18. The consequence is that, for the Institute and its supporters, the reality of a person's bodily form, including their sex and gender at birth, is not malleable. Rather a person's bodily sex has enduring, God-given, and God-defined ontological significance, regardless of that person's own feelings or preferences. While theology and pastoral practice recognises the agonising realities of gender dysphoria, and the need for compassion and care for those who experience this distressing condition, experience of gender dysphoria is not considered a true reflection of the reality of someone's sex or gender identity, which is rather defined by their body's chromosomes and primary and secondary sexual characteristics.
19. For the Institute and its supporters, to reject the meanings of bodies as the things which identify our gender is to reject the truth of an individual's identity. But this rejection also has far greater consequences. It is to reject the truth of who God is, how he creates, saves and relates to his creatures, what it means to be human in God's world, and, indeed, the central meaning of all created reality and history.