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Proposed Prostitution (Offences and Support) (Scotland) Bill

Consultation by
ASH REGAN MSP

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Proposed Prostitution (Offences and Support) (Scotland) Bill

A proposal for a Bill to create an offence of paying for sexual services, to repeal the offence of soliciting or importuning by prostitutes, to repeal previous convictions for soliciting or importuning by prostitutes and to support those in or exiting prostitution.

Consultation by
Ash Regan MSP, Member for Edinburgh Eastern

19 June 2024

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Foreword



“Prostitution is a system of violence that reduces women to commodities and affects women’s ability to achieve equality.”¹ It violates the rights of those who are sexually exploited within it. Its victims are denied their human dignity and often experience inhumane and degrading treatment – treatment which is today increasingly recognised as a form of torture. “Frontline organisations explain that the consequences of prostitution for mental health are similar to those of victims of torture.”^{2,3}

Prostitution and human trafficking are inextricably linked systems of exploitation. It is impossible to reduce trafficking in women and girls for sexual exploitation without challenging men’s demand for prostitution, because it is their demand that drives trafficking.

Some argue that involvement in prostitution is a free choice that must be accepted. The truth is that for most of the women prostitution is not a choice but a response to dire circumstances – they sell sex to survive. Poverty is the primary factor driving involvement in Scotland, as it does everywhere else in the world, but we cannot allow prostitution to be the solution to women’s poverty. We must not leave impoverished women to a system of exploitation and violence when we should be offering them real choices instead - choices that do not lead to such devastating consequences.

In 2014, the Scottish Government and COSLA issued a joint policy statement called *Equally Safe*, which says that “prostitution is violence against women”.⁴ And yet, in the ten years since, there has been no attempt by the Government to align the laws around prostitution to this policy.

There is, however, much talk about the most vulnerable populations, over-used in many cases. Many of the women exploited in prostitution really are some of the most vulnerable in society with almost no one speaking up for them. They are often trafficked, many began at a young age, have been in the care system or were sexually abused as children. Many sell sex to use drugs and use drugs to cope with selling sex.

¹ United Nations, Human Rights Council, Report by Special Rapporteur Reem Alsalem, UN Doc A/HRC/56/48, 7 May 2024, p. 3, <https://documents.un.org/doc/undoc/gen/g24/078/81/pdf/g2407881.pdf>, (accessed 29 May 2024).

² United Nations, Report by Special Rapporteur Reem Alsalem, p. 5.

³ This is also the focus of Dr Melissa Farley’s current research, presented in a workshop on “Prostitution and Torture” in April 2024.

⁴ Scottish Government, *Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls*, 2014, p. 8.

Some say there's nothing to be done, we should just try to make prostitution safer. Prostitution is inherently unsafe. Since 2002, about 100 women have been murdered in Germany, with their decriminalized so called 'safe' brothels.⁵

"Prostitution in and of itself is an abuse of a woman's body."⁶ How do you make abuse safe for its victims? Do we still, today, treat the injuries of a domestically abused woman and then send her back to her abuser? We do not. We campaigned for and adopted laws that recognise domestic abuse as violence against women. Today, we punish the perpetrator, we support victims to leave their abuser and we help them to heal from their trauma.

It is past time for our law on prostitution to be similarly updated to reflect our recognition of this as a violent, exploitative system that promotes degrading views about women. In the countries that have adopted the "Nordic Model", a challenging demand approach, women are safer, men's demand for prostitution is reduced, and the market for trafficking for sexual exploitation has shrunk. Harmful gender stereotypes as well as inequality between the sexes are changing for the better. This is achieved by shifting the criminal responsibility from the seller to the buyer, offering exit alternatives and public education campaigns.⁷

My proposal for a Bill seeks to adopt the Nordic Model in Scotland. It will challenge men's demand for prostitution by criminalising the buying of sex, protect those who sell sex by decriminalising them and recognise them as victims of exploitation by giving them the legal right to support.

My hope is that in the not-too-distant future, when this trade in humans is finally consigned to history, people will look back and be horrified that we let the sex trade flourish in the way that it has for as long as it has.



Ash Regan MSP
13 June 2024

⁵ M. Schon, *Ausverkauft! Prostitution im Spiegel von Wissenschaft und Politik*, tredition GmbH, 2021, pp. 346-372.

⁶ A. Dworkin, "Prostitution and male supremacy", 1 *Michigan Journal of Gender and Law* 1, 1993, p. 3, <https://repository.law.umich.edu/mjgl/vol1/iss1/1/>, (accessed 14 May 2024).

⁷ European Commission, Directorate-General for Migration and Home Affairs, J. Armstrong et al., *Study on the gender dimension of trafficking in human beings – Final report*, Publications Office, 2016, p. 189, <https://data.europa.eu/doi/10.2837/698222>, (accessed 1 May 2024).

How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at: [Scottish Parliament Standing Orders](#)

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

Details on how to respond to this consultation are provided at the end of the document.

To respond please download this pdf document, fill in the questions and email the document to ash.regan.msp@parliament.scot

Additional hard copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website <https://www.parliament.scot/> under Bills and Laws/Proposals for Bills.

AIM OF THE PROPOSED BILL

Summary

I want to bring forward a Bill to reduce the amount of prostitution in Scotland because of the evidence of exploitation and harm that it is causing. My Bill would be similar in principle to others around the world which aim to reduce the demand for prostitution and provide an environment that will help people to exit prostitution. In particular, my Bill would introduce a new criminal offence of paying for sexual services; repeal the offence of soliciting for the purposes of prostitution in a public place; repeal previous convictions for soliciting and give people who sell sexual acts or exchange sexual acts the statutory right to support while they are involved in prostitution and to exit prostitution.

BACKGROUND

Terminology

Prostitution or Commercial Sexual Exploitation is the offer, acceptance or obtainment of sexual services from a person (A) to another person (B) in return for payment or a promise of payment, a benefit in kind or the promise of such a benefit to A or a third party.

Sexual services are defined as in-person exchanges of physical sexual acts. (This stands in contrast to the provision of remote services of a sexual nature via photographs, telephone or video camera which will not be covered by this proposed Members Bill.)

People in prostitution will also be referred to as people who sell or exchange sexual acts, individuals who sell or exchange sexual acts and, where appropriate, as women who sell or exchange sexual acts and men who sell or exchange sexual acts.

The terms “**sex work**” and “**sex worker**” will not be used in this consultation. In recent years, this terminology has been heavily promoted by a small but vocal minority of people in prostitution, and well-intentioned others not connected to prostitution often use these terms in the mistaken belief that this is respectful or a neutral, non-judgemental way to refer to prostitution and people in prostitution. However, I believe that this terminology serves to conceal the reality of prostitution and the abuse, violence and exploitation endured by the large majority of people in prostitution.⁸ Many women and girls in prostitution strongly object to these terms,⁹ with one survivor quoted during the European Parliament plenary on prostitution in 2023 stating “*Prostitution is violence. Being raped is not a job.*”¹⁰

Exiting - the process of leaving prostitution. Because of the harmful nature of prostitution and the high levels of vulnerability people involved in prostitution experience, this is almost always a difficult and lengthy process. To support those

⁸ United Nations, Human Rights Council, Report by Special Rapporteur Reem Alsalem, UN Doc A/HRC/56/48, 7 May 2024, p. 3, <https://documents.un.org/doc/undoc/gen/g24/078/81/pdf/g2407881.pdf>, (accessed 29 May 2024).

⁹ For one recent example, see the editorial decision of the Scotsman to avoid these terms after objections from people in prostitution in: R. Amery, ‘Prostitution: What is the law in Scotland, and what do campaigners want to see changed?’, *The Scotsman*, 16 March 2024, <https://www.scotsman.com/news/politics/prostitution-what-is-the-law-in-scotland-and-what-do-campaigners-want-to-see-changed-4556854>, (accessed 14 April 2024).

¹⁰ European Parliament Debate, Regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women’s rights, Verbatim Report of Proceedings, 13 September 2023, https://www.europarl.europa.eu/doceo/document/CRE-9-2023-09-13-ITM-018_EN.html, (accessed 14 April 2024).

wishing to exit prostitution, exiting services are provided in many countries which help with employment, housing, health care, substance abuse, trauma recovery and other issues.

Challenging demand legislation – based on the Nordic Model approach to prostitution. It originated in Sweden, first followed by Norway and Iceland, then other countries. It is characterised by three strands:

- A legislative strand to reduce demand by criminalising the buying of sexual acts that also recognises those involved in prostitution as victims of exploitation and decriminalises the selling or exchanging of sexual acts;
- A support strand to support people who currently are or have been involved in prostitution and people who wish to exit prostitution;
- An educational strand to raise awareness of the new law and to change social attitudes towards prostitution by highlighting the dangers and harms of prostitution, and the human rights violation inherent in the commodification of female bodies.

What is the problem

Prostitution

Prostitution is commercialised, systematic rape,¹¹ and many of the people who sell sexual acts endure numerous human rights violations when they do so. As the vast majority of people in prostitution are female and the overwhelming majority of the buyers of sexual acts are male,¹² it is recognised as a form of violence against women and girls. Most, if not all, women and girls who sell sexual acts have been subject to rape, beatings, humiliation, degradation, deprivation, physical and psychological abuse or exploitation and a large number have endured this from childhood. I believe that the dehumanising commodification of female bodies in prostitution cannot be reconciled with the women's rights movement's fight for equality between the sexes, nor with any government's commitment to addressing violence against women and girls.

For as long as female bodies are products to be bought, women and girls cannot fully realise their rights as equals, because prostitution is "an inherently violent system built on the sexual subordination of women and girls."¹³ This is not only detrimental for women and girls in prostitution, but also for society as a whole.

A society that allows women to be prostituted by men, and to be sold and bought as commodities, cannot achieve gender equality. Such a society not only discriminates against women but also among women themselves; normalizing prostitution reflects on the overall status of women and creates two groups of women: one that can be bought and another that cannot.¹⁴

Worldwide, I believe that the only policies effective at tackling prostitution while protecting individuals selling sexual acts are challenging demand models that criminalise the buyers of sexual acts and decriminalise those who sell sexual acts. This is what I am proposing in my Bill.

¹¹ These are the words of a survivor of prostitution, spoken at a recent research workshop into prostitution and torture.

¹² The Scottish crime statistics for the last ten years bear witness to this fact, with 100% of those prosecuted and convicted for selling sex recorded as female and 99.76% of those prosecuted and convicted for buying sex recorded as male. Data available here: Scottish Government Safer Communities Directorate, *Policing and prosecution of crimes associated with prostitution: FOI release*, 30 November 2023 <https://www.gov.scot/publications/foi-202300383839/> (accessed 30 April 2024)

¹³ United Nations, Report by Special Rapporteur Reem Alsalem, p. 10.

¹⁴ G. Jabbour, 'Exploring the demand for prostitution: What Male Buyers Say About Their Motives, Practices, and Perceptions', Kafa (enough) Violence & Exploitation, 2014, p. 61. https://prostitutionresearch.com/wp-content/uploads/2017/06/Exploring-the-Demand-for-Prostitution_2014-1.pdf

The harms and risks of prostitution

In prostitution, no woman stays whole. It is impossible to use a human body in the way women's bodies are used in prostitution and to have a whole human being at the end of it, or in the middle of it, or close to the beginning of it. It's impossible. And no woman gets whole again later, after. (Andrea Dworkin, feminist and prostitution survivor)¹⁵

The Scottish Government's 2016 report into the nature and scale of prostitution in Scotland highlights the risks and harms of being involved in prostitution saying, "most respondents who provide services and support to those involved in prostitution emphasised a range of risks and adverse impacts associated with prostitution in the short and longer term in relation to general and mental health, safety and wellbeing and sexual health."¹⁶ The report's literature review similarly concludes that "the literature highlights a range of risks and adverse impacts such as HIV and STI infection, vulnerability and multiple deprivation, links with drug use, and adverse impacts on wellbeing."¹⁷ Further insight into the reality of prostitution in Scotland was provided in a July 2022 lived experience report which interviewed people in prostitution across Scotland about their experiences and needs as well as the services that support them.¹⁸

More detailed evidence of the harms and risks of prostitution is set out below.

Violence

Substantial evidence from crime statistics and relevant research shows that the "risks for experiencing physical violence in prostitution are very high."¹⁹ This is true for all levels of risk, including homicides: "US based studies found that women who sell sex are eighteen times more likely to be murdered than a woman in the general population."²⁰ Empirical data from research worldwide show consistently higher levels of physical and sexual violence experienced by people involved in prostitution. Overall rates vary but can reach 100% for physical and sexual violence.²¹ Client violence against people in prostitution is almost entirely perpetrated by males and mostly suffered by females. Women who sell sexual acts are also frequently abused by those who sexually exploit them, such as pimps and brothel keepers.

¹⁵ A. Dworkin, "Prostitution and male supremacy", 1 Michigan Journal of Gender and Law 1, 1993, p.3,

¹⁶ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews*, December 2016, p. 9.

¹⁷ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 96.

¹⁸ L. Jones, E. Craig and A. Mentzou, *Lived Experience Engagement: The experiences of people who sell or exchange sex and their interaction with support services*, July 2022

¹⁹ M. Farley, 'Risks of Prostitution: When the Person Is the Product', Journal of the Association for Consumer Research, 3(1), 97–108, 2017, p. 98.

²⁰ L. Jones, E. Craig and A. Mentzou, *Lived Experience Engagement*, p.12.

²¹ S. Maszak, "Violence in Prostitution", CUNY Academic Works, p. 3, https://academicworks.cuny.edu/jj_etds/66, (accessed 13 June 2024).

The Encompass Network, which brings together specialist organisations supporting people in prostitution in Scotland, published snapshots of their clients in 2021, 2022 and 2023. As these snapshots reflect one day in their work, the absolute numbers of women whose experiences and needs are collected vary, but their findings echo those of other studies, with the 2023 snapshot showing that 93% of those whose data was known had disclosed experiencing violence because of their involvement in prostitution.²²

The Scottish Government's 2016 report found "perceptions among police respondents that experiences of violence and sexual victimisation were common for this group of people, but also that rates of reported crime were low compared with the real risk of victimisation."²³ Another research study found women in "off-street" prostitution in Glasgow faced actions "directly dangerous to their physical health" and 21 of 33 women interviewed for that review reported that they had experienced violence from men purchasing sex.²⁴ A 2001 survey with 240 women in prostitution in Glasgow and Leeds found "Half of prostitutes working outdoors and over a quarter of those working indoors reported some form of violence by clients in the past six months."²⁵

On-street prostitution statistically carries the highest risk of violence for the women and men selling sexual acts. The most visible form of prostitution typically involving the most vulnerable women²⁶ is also the most documented and researched sector for violence against people in prostitution. For this reason, there is often a perception that indoor prostitution is safer, but this is only true in comparison to on-street prostitution. The risk of violence against those selling sexual acts indoors is still high, and the lifetime experience of violence of people involved in indoor prostitution is much higher than that of the general population. Women selling sexual acts indoors frequently work alone, making client attacks far less visible than for on-street prostitution.

Even though only a minority in either sector report incidents to the police, a study into prostitution in Edinburgh, Glasgow and Leeds found that women involved in on-street prostitution were more than twice as likely to report violence than those working off-street. "The high value placed by indoor sex workers on the preservation of their anonymity is a strong disincentive to reporting incidents of violence in the workplace." In Germany, where buying sexual acts was decriminalised in 2002, legal and illegal

²² Encompass Network, *Encompass Snapshot Briefing 2023*, 2023, p. 5, Encompass Network, https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/encompass_snapshot_2023.pdf, (accessed 14 April 2024)

²³ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 50, more widely pp. 49-51.

²⁴ R. Matthews and H. Easton, *Prostitution in Glasgow: A strategic review*, 2010, pp. 46 & 30.

²⁵ S. Church et al., Violence by clients towards female prostitutes in different work settings: questionnaire survey, *BMJ*, 322 (7285), 2001, pp. 524-525.

²⁶ Factors of vulnerability include the highest levels of poverty, substance abuse and biggest mobility for the perpetrator.

brothels are the main location for 90% of prostitution. Several high-profile court cases against the operators of mega-brothel chains show unequivocally that violence is ubiquitous even in brothels operating within the law.²⁷ Between 2002 and 2017, 75% of the 86 murders of women in prostitution in Germany took place in indoor locations,²⁸ with the buyers of sexual acts the most likely perpetrators.²⁹

I believe that there is no location where women and men selling sexual acts are safe from violence.

Mental health risks

The Scottish Government's 2016 report records "A number of respondents raised longer-term risks to mental health, including stress, anxiety and depression from being involved in prostitution."³⁰ A study with female drug users in Glasgow found that the women who were engaged in prostitution were more likely to show symptoms of anxiety and depression than those drug users not in prostitution.³¹ The three Encompass Snapshots showed that 80%,³² 89%³³ and 91%³⁴ of the women disclosed mental health issues, with the majority experiencing anxiety and depression.

Post-traumatic stress disorder is common in women selling sex, with many researchers across the globe reporting PTSD in 70% and more of study participants.³⁵ This percentage is higher than that of sufferers of PTSD among combat veterans. The severity of symptoms is comparable to that of rape and domestic abuse survivors,

²⁷ H. Lorenz, 'Trouble in Paradise: the rise and fall of Germany's 'brothel king'', The Guardian, 22 June 2019,

<https://www.theguardian.com/global-development/2019/jun/22/trouble-in-paradise-rise-and-fall-of-germany-brothel-king-jurgen-rudloff>, (accessed 17 April 2024).

²⁸ M. Schon and A. Hoheide, 'Murders in the German Sex Trade: 1920 to 2017', *Dignity: A Journal of Analysis of Exploitation and Violence*, Vol. 6: Iss. 1, Article 4, 2021, <https://doi.org/10.23860/dignity.2021.06.01.04>, (accessed 17 April 2024), p. 8 and 9.

²⁹ E. Arrow, 'Who is killing whom, where, how and why in German prostitution?', Elly Arrow, 29 March 2021, <https://ellyarrow.wordpress.com/2021/03/29/who-is-killing-whom-where-how-and-why-in-german-prostitution/>, (accessed 17 April 2024).

³⁰ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 8, also pp. 53-54.

³¹ G. Gilchrist, L. Gruer and J. Atkinson, 'Comparison of drug use and psychiatric morbidity between prostitute and non-prostitute female drug users in Glasgow, Scotland', *Addictive Behaviors* 30(5), 2005, pp. 1019-1023.

³² Encompass Network, *Snapshot 2021*, 2021, p. 1, https://www.encompassnetwork.info/uploads/3/4/0/5/3405303/encompass_snapshot_2021.pdf, (accessed 14 April 2024).

³³ Encompass Network, *Encompass Snapshot Briefing 2023*, p. 3.

³⁴ Encompass Network, *Encompass Snapshot Briefing 2022*, 2022, p.2, https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/snapshot_2022_encompass.pdf, (accessed 14 April 2024).

³⁵ M. Farley, *Risks of Prostitution: 'When the Person is the Product'*, p.100.

victims of state torture and combat veterans.³⁶ An international study across several countries found that 68% of the people in prostitution surveyed met criteria for Post-Traumatic Stress Disorder.³⁷

Health risks

Gynaecologists supporting women selling sexual acts report that the physical damage from selling sexual acts is extensive. Many of the women suffer chronic pelvic pain as well as “irreversible damage through overextension or deliberate injuries”. Infertility caused by infections and urinary as well as faecal incontinence are common even among younger women selling sex.³⁸ Chronic health problems because of selling sexual acts are frequent, both while the women are involved in prostitution and after exiting. The most common issues are stress-related symptoms and chronic pain, often caused by the violence they endured, as well as reproductive, cardiovascular and respiratory complaints.³⁹

The Scottish Government’s 2016 report concludes “Sexual health risks are identified as an area of concern affecting those involved in prostitution.”⁴⁰ The report also identifies that some people involved in prostitution may be more vulnerable to being manipulated or forced into unsafe sexual behaviour for example those with addictions or poor language skills.⁴¹ The report also notes one clinic reporting a recent slight increase in serious sexually transmitted infections thought to be “due to demand from some men for unsafe sex, as well as some women’s lack of understanding of risk and lack of ability to negotiate condom use.”⁴² This echoes available evidence about women in prostitution in England who “appear to be at higher risk of certain sexually transmitted infections and reinfections compared with other female genitourinary medicine (GUM) clinic attendees, even adjusting for demographic factors.”⁴³

Substance and alcohol misuse

Addiction was identified as a core support need in the Scottish Government’s Lived Experience Engagement published in 2022,⁴⁴ echoing the findings of the Scottish

³⁶ M. Farley et al., ‘Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder’, *Journal of Trauma Practice*, Vol. 2 No.3/4, 2003, pp. 33-74.

³⁷ M. Farley et al., ‘Prostitution and Trafficking in Nine Countries’, p.56.

³⁸ L. Bissinger, ‘Physical Damage in Prostitution’, FiLiA, <https://www.filia.org.uk/latest-news/2020/4/5/physical-damage-in-prostitution>, (accessed 17 April 2024).

³⁹ M. Farley et al., ‘Prostitution and Trafficking in Nine Countries’, pp. 49-55.

⁴⁰ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 8.

⁴¹ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 52-53.

⁴² Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 52.

⁴³ L. McGrath-Lone et al., ‘The sexual health of female sex workers compared with other women in England: analysis of cross-sectional data from genitourinary medicine clinics’, *Sexually Transmitted Infections*, vol. 90, 2014, pp.344-350.

⁴⁴ L. Jones, E. Craig and A. Mentzou, Lived Experience Engagement.

Government's 2016 report that some people enter prostitution to fund existing addictions, but also that drugs and alcohol are often used as coping mechanisms to deal with the experience of prostitution.^{45,46} Drug and alcohol misuse problems are particularly severe among those who are involved in on-street prostitution. Research in Glasgow in the 1990s found that 71% of women in on-street prostitution were injecting drug users, with suggestions that by 2006 this may have increased to 90%.⁴⁷ People in off-street prostitution are less likely to engage in intravenous drug use. However, substance misuse among this group is still "prevalent and often concerning" and described as "often escalating due to involvement in prostitution according to sexual health and specialist drugs support respondents."⁴⁸ According to the Encompass Snapshots, between 47% and 83% of the women supported had disclosed substance abuse. Addictions can also act as a barrier preventing people exiting prostitution.⁴⁹

Vulnerability prior to entering prostitution

According to research and data collated by support organisation *You My Sister*, prostitution "is usually 'chosen' by those already abused and vulnerable – often while underage. It is certainly never an informed choice – not a single person in the industry has ever entered it knowing the harms or risks involved."⁵⁰ Global empirical data as well as research conducted across the UK show that levels of vulnerability for people who become involved in prostitution are typically high to very high, with 50 to 90% abused as children and 75% having experienced homelessness.⁵¹

The Scottish Government's 2016 report highlighted a range of factors and circumstances that can lead to people becoming involved in prostitution. Financial pressures may be a key driver, especially after the Coronavirus outbreak and the most recent cost of living crisis, but often there are conditions that make someone especially vulnerable such as homelessness, substance misuse, difficult or chaotic family contexts, involvement of a parent or sibling in prostitution, having previous convictions

⁴⁵ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 9, 53-54.

⁴⁶ This is also shown in R. Matthews and H. Easton, *Prostitution in Glasgow: A strategic review*, 2010, p. 29; R. Matthews, *Prostitution, politics and policy*, Routledge-Cavendish, 2008, p. 48; J. Bindel et al., *Breaking down the barriers: A study of how women exit prostitution*, Eaves and London South Bank University, 2012, p.7, <https://i4.cmsfiles.com/eaves/2012/11/Breaking-down-the-barriers-a37d80.pdf>, (accessed 17 April 2024).

⁴⁷ N. McKeganey et al., 'Female streetworking prostitution and HIV infection in Glasgow', *BMJ (Clinical research ed.)*, vol. 305, 1992, pp. 801-4 and N. McKeganey, 'Street prostitution in Scotland: The views of working women', *Drugs: Education, Prevention and Policy*, vol. 13 (2), 2006, pp. 151-166.

⁴⁸ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 45.

⁴⁹ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 11.

⁵⁰ You My Sister, 'FAQ and Research', <https://youmysister.org.uk/faq-research/>, (accessed 17 April 2024).

⁵¹ M. Farley et al., 'Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder', *Journal of Trauma Practice*, vol. 2(3-4), 2004, pp. 33-74, <https://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>.

that present a barrier to employment,⁵² having a history of trauma, abuse or gender-based violence or coercion from pimps or partners.⁵³

An extensive literature review published in Canada in 2018 found that “involvement in prostitution must be interpreted as a process rooted in a broad range of vulnerability factors that, in turn, give rise to a broad range of negative impacts in several areas of the women’s lives.” Detailed findings show that many of the factors that drive involvement also present substantial, often insurmountable barriers to exiting prostitution.⁵⁴

Young people and prostitution

Young people, and especially those who have lived in care, are particularly at risk of being drawn into prostitution. In *Paying the Price*, a 2004 Home Office consultation on prostitution, a review of the then available research showed that between a third and over half of the participants in all studies had care experience and between a third to over three quarters had entered prostitution as minors.⁵⁵

The Scottish Government’s 2016 report contains evidence from frontline practitioners about people who had been drawn into prostitution through grooming and sexual exploitation as teenagers, with “experience of local authority care [...] noted as a key factor in increasing the risk of sexual exploitation.”⁵⁶ Frontline practitioners also reported “young women and men (over the age of consent) in ‘transitions’ from care services, who were targeted by purchasers of sexual acts, because of their vulnerabilities.”⁵⁷

The literature review in the 2016 report highlighted other research “indicating that large numbers of women involved in prostitution became involved as children, spent time in care, report experiences of childhood sexual abuse.”⁵⁸ The Encompass Snapshots provide more recent data for Scotland, showing that over a quarter of the women interviewed had care experience, a quarter had entered prostitution as minors and just under half had experienced childhood sexual abuse.

⁵² J. Bindel et al., ‘Breaking down the barriers: A study of how women exit prostitution’, p. 8.

⁵³ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp 46-49.

⁵⁴ N Lanctôt, *La face cachée de la prostitution : une étude des conséquences de la prostitution sur le développement et le bien-être des filles et des femmes*, Université de Sherbrooke, 2018, summary quoted from N. Lanctôt, ‘The hidden side of prostitution: impacts of prostitution on the development and well-being of girls and women’, Fonds de recherche du Québec, <https://frq.gouv.qc.ca/en/story-and-report/the-hidden-side-of-prostitution-impacts-of-prostitution-on-the-development-and-well-being-of-girls-and-women/>, (accessed 1 May 2024).

⁵⁵ Home Office, *Paying the Price: a consultation paper on prostitution*, 2004, p. 96f., http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/16_07_04_paying.pdf, (accessed 1 May 2024).

⁵⁶ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 47.

⁵⁷ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 47.

⁵⁸ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 88.

The practitioners interviewed for the 2016 report also considered that “technology has created more opportunities for manipulation through phones, messaging, gaming software and the anonymity and control that they enable” which “puts a far larger group of young people (over the age of consent), including those not necessarily previously considered to be in a vulnerable situation, at risk of being manipulated into prostitution.”⁵⁹

Links to human trafficking

“US\$236 billion. This is the obscene level of annual profit generated from forced labour in the world today.”⁶⁰ *Profits and poverty: The economics of forced labour* published in March 2024 by the International Labour Organisation goes on to highlight the lucrative nature of trafficking for the purposes of commercial sexual exploitation: “Although forced commercial sexual exploitation accounts for only 27 per cent of all people in privately imposed forced labour, it accounts for 73 per cent of total illegal profits from forced labour. [...] These numbers are explained by the huge difference in profit per victim between forced commercial sexual exploitation and forced labour exploitation – US\$27,252 for the former against US\$3,687 for the latter.”⁶¹

This type of trafficking is a human rights violation that mostly affects women and girls, who, according to a study headed by Professor Walby, “are overwhelmingly (96 %) the victims of trafficking for purposes of sexual exploitation and the majority (75 %) of victims of trafficking for all purposes.”⁶² The authors highlight that:

‘Demand reduction’ is a strategy to prevent trafficking by reducing the economic attraction of the institutions into which people may be coerced by traffickers. **In the case of trafficking for purposes of sexual exploitation, the most important institution is prostitution.**⁶³ [my emphasis]

Their findings from comparative country studies of prostitution in Germany, the Netherlands and Sweden show that decriminalising profit-making from prostitution does

⁵⁹ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 49.

⁶⁰ International Labour Organisation, *Profits and poverty: The economics of forced labour*, March 2024, p.1, https://webapps.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_918034.pdf, (accessed 17 April 2024).

⁶¹ International Labour Organisation, *Profits and poverty: The economics of forced labour*, March 2024, p.15.

⁶² European Commission, Directorate-General for Migration and Home Affairs, B. Francis et al., *Study on the gender dimension of trafficking in human beings – Executive summary*, Publications Office, 2016, p. 2, <https://data.europa.eu/doi/10.2837/991766>, (accessed 1 May 2024).

⁶³ European Commission, *Study on the gender dimension of trafficking in human beings – Executive Summary*, p. 3.

not lead to reductions in human trafficking.⁶⁴ They go on to state that: “The willingness to purchase sex is one of the drivers of prostitution and thus of trafficking, because of the link between prostitution and trafficking. Reducing the number of those (usually men) seeking to purchase sex is thus potentially a significant form of demand reduction.”⁶⁵ The data and detailed findings from Sweden, as presented in the study, certainly suggest that this is true both for the scale of prostitution as well as trafficking for the purposes of sexual exploitation.

Whilst many of those in prostitution in Scotland have not been trafficked, it is indisputable that people are trafficked into and within prostitution here. Although the Encompass Snapshots are only that – snapshots of data collected on one day of the year – the fact that of the 251 women involved in 2021 and 2022, 95 reported being trafficked suggests that this is not a rare occurrence. The Scottish Government’s 2016 report concludes that the current figures relating to trafficking for sexual exploitation are “likely to under-estimate the number of people who have been trafficked;”⁶⁶ states that “there is evidence of links between prostitution and serious organised crime, and trafficking for the purposes of sexual exploitation”,⁶⁷ and reports that “indoor prostitution is widely understood to involve a higher proportion of foreign nationals than on-street prostitution”.⁶⁸

The literature review features research showing that trafficking in commercial sexual exploitation “commonly occurred in privately owned flats with most victims kept indoors, supervised and controlled;” and that “women involved indoors in saunas and flats were subject to a range of constraints, coercion and exploitation.”⁶⁹ Although not all foreign nationals involved in prostitution are victims of human trafficking, being in a foreign country can mean people have limited languages skills, fewer support networks, and limited understanding of Scottish laws and available services, all of which makes them vulnerable to exploitation.⁷⁰

⁶⁴ European Commission, Directorate-General for Migration and Home Affairs, J. Armstrong et al., *Study on the gender dimension of trafficking in human beings – Final report*, Publications Office, 2016, p. 189, <https://data.europa.eu/doi/10.2837/698222>, (accessed 1 May 2024).

⁶⁵ European Commission, *Study on the gender dimension of trafficking in human beings – Final report*, p. 190.

⁶⁶ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 12.

⁶⁷ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 12 and 67.

⁶⁸ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 45.

⁶⁹ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 90.

⁷⁰ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 3, pp. 9 – 40.

These findings are echoed in a 2018 report from a cross party group of MPs at Westminster which concludes that “Britain is currently a highly profitable and low risk destination for sex traffickers.”⁷¹

Among the aims of the Scottish Government’s Trafficking and Exploitation Strategy is ‘addressing the conditions that foster trafficking and exploitation’.⁷² As the current state of prostitution in Germany demonstrates, the demand for prostitution is indeed one of the conditions that fosters trafficking for sexual exploitation.

Before prostitution was decriminalised in 2002, most women involved were German. More recent data shows that now “an estimated 90% of prostituted women in Germany are of foreign origin” and the percentage of women trafficked into the country for commercial sexual exploitation has risen to 80% and above.⁷³ The changed demographics of prostitution in Germany finds its most harrowing expression in homicide victims. Between 2000 and 2020, there were 99 murders and 60 attempted murders of individuals involved in prostitution. Research by the group *Sex Industry Kills* shows that from 2010 onwards, most of the victims are also victims of trafficking.⁷⁴

Her Future is Equal, a 2021 campaign to end sexual exploitation in Europe, view trafficking and prostitution as inextricably linked:

While not every woman exploited in the sex trade has been trafficked, almost all trafficked women in the EU are in the sex trade. Trafficking would not happen without the demand for prostituted women and girls. The sex trade stokes this demand which in turn relies on trafficked women to feed it. While it can be argued that the sex trade does not rely wholly on trafficked women, the enmeshed nature of systems of prostitution, migration and trafficking make it very difficult to successfully root out exploitation.⁷⁵

I believe that any strategy that seeks to reduce trafficking in Scotland must therefore address the demand for prostitution within Scotland.

⁷¹ All Party Parliamentary Group on Prostitution and the Global Sex Trade, *Behind Closed Doors Organised sexual exploitation in England and Wales*, May 2018, p. 20.

⁷² Scottish Government, *Trafficking and Exploitation Strategy*. May 2017, p. 21.

⁷³ M. Schon and A. Hoheide, ‘Murders in the German Sex Trade: 1920 to 2017’, p.15.

⁷⁴ M. Schon, *Ausverkauft! Prostitution im Spiegel von Wissenschaft und Politik*, tredition GmbH, 2021, pp. 346-372.

⁷⁵ K. Finnegan et al., *Her Future is Equal: Europe is ready for a future free from sexual exploitation*, European Women’s Lobby, 2021, p. 6, <https://prostitutionresearch.com/wp-content/uploads/2021/10/Finnegan-et-al-Equality-in-Europe-2021.pdf>, (accessed 14 May 2024).

The scale of prostitution in Scotland

It is difficult to estimate the number of people involved in or affected by prostitution and there are no definitive estimates or data of the numbers of people involved in prostitution in Scotland available.⁷⁶

The recorded crime statistics for the last ten years show a general downward trend in recorded crimes associated with prostitution over the last ten years, although there was a slight upturn in 2016-17 and 2018-19.⁷⁷ There is a marked downward trend for crimes recorded for selling sexual acts over the last twenty years, with 7489 crimes recorded for selling sexual acts in this period in total, of which only 13% were recorded in the last ten years.

	2013 -14	2014 -15	2015 -16	2016 -17	2017 -18	2018 -19	2019 -20	2020 -21	2021 -22	2022 -23
Procuration (excluding homosexual acts)	14	6	12	11	8	5	10	7	8	4
Brothel keeping	32	36	17	14	18	10	13	13	27	13
Immoral traffic	32	13	7	26	21	31	23	23	25	8
Offences related to prostitution	295	179	146	194	65	50	13	2	9	6
Procuration of homosexual acts	0	2	1	0	2	0	0	0	0	0
Soliciting services of a person engaged in prostitution*	117	138	64	58	22	139	42	11	11	31
Total Crimes associated with prostitution	490	374	247	303	136	235	101	56	80	62

Court proceedings data shows a similar downward trend in prosecutions (and hence convictions), which are now in the single digits for both selling and buying sexual acts. The proceedings for the last three years have been impacted by the coronavirus outbreak, but it is reasonable to expect these to remain low once the backlog and delays resulting from the pandemic have been resolved.⁷⁸

However, as the Scottish Government's 2016 report into the nature and scale of prostitution notes "this data only provides insight into the levels of criminal activity

⁷⁶ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 90.

⁷⁷ Scottish Government, *Recorded crime in Scotland, 2022-23*, June 2023, <https://www.gov.scot/publications/recorded-crime-scotland-2022-23/>, (accessed 17 April 2024).

⁷⁸ Scottish Government, *Criminal Proceedings in Scotland, 2021-22*, October 2023, <https://www.gov.scot/publications/criminal-proceedings-scotland-2021-22/>, (accessed 17 April 2024).

related to prostitution, and do not provide an indication of the number of people who are involved in the sale of sex or who buy it” and “police commonly acknowledged that intelligence shows a much wider scale in terms of prostitution activity than is captured in recorded crime data.”⁷⁹

Police intelligence gathering exercises have assessed the number of online adverts for sexual acts/escorts as an indication of the scale of prostitution (although some adverts will be duplicates or fake). One such search from January 2016 identified around 1800 adverts for sexual acts across four main websites in Scotland in a single day, the majority of which involved women.⁸⁰ A more extensive scoping exercise in 2014 identified 3000 adverts across 10 websites, featuring over 20 separate nationalities, the majority of whom were assessed as young adults.⁸¹

A more recent survey in Glasgow observed 414 men buying sexual acts in the East End and four in the city centre between April and December 2023.⁸² This suggests not only that on-street prostitution continues to be a significant issue, but also that the overall scale of prostitution in Scotland is far larger than the official crime statistics suggest.

Reflections from practitioners working with people involved in prostitution as well as the police indicate the following trends:

- a decline in on-street prostitution with those involved having a range of vulnerabilities and complex needs where prostitution is in some ways a means of “survival”,
- a shift towards indoor prostitution although the scale is difficult to assess as it is much less visible; it is thought to comprise approximately 90% of all prostitution in Scotland,⁸³
- indoor prostitution is widely understood to involve a higher proportion of foreign nationals than on-street prostitution as well as a wider range of socio-economic backgrounds.⁸⁴

I recognise that there are a few people involved in prostitution who would not consider themselves vulnerable and feel they have made a choice that they are comfortable with and feel that they take steps to manage the risks of harm. However, I believe that this

⁷⁹Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 20-21, 25.

⁸⁰ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 25.

⁸¹ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 25.

⁸² S. Hilley, ‘Glasgow East End sex trade concern as more than 400 men seen using prostitutes’, *Glasgow Live*, 8 March 2024, <https://www.glasgowlive.co.uk/news/glasgow-news/glasgow-east-end-sex-trade-28783538> (accessed 14 May 2024)

⁸³ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 6-7.

⁸⁴ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 43-45.

typically represents a small number of those involved in prostitution. Melissa Farley estimates this at about two percent, while the rest are split into 38% “who need the money, who have had the option of sexual exploitation as a survival mechanism made very real to them by a history of incest or childhood sexual abuse, and who may face an emergency situation such as escaping a violent partner, losing a job, or having children with special needs” and 60% who have been trafficked, who have “enormously restricted life choices” of which many “have been physically coerced into prostitution.”⁸⁵

Even those who are highly paid are exposed to the risks of prostitution. Diane Martin, a Scottish survivor of prostitution and ardent campaigner for the Nordic Model, talks of her harrowing experiences in a recent Scotsman article:

What I have learned is that it is the same thing – a bruise or a threat feels the same whether you’re in a five-star hotel or leant against a car park wall, whether wearing Prada or Primark.

The fear, the violence and the hopelessness feels the same, as does the desire for safety and a life free of violence. It’s not a job like any other, it is exploitation.⁸⁶

When considering the overall picture presented by research and survivors, it is clear to me that the vast majority of those involved in prostitution experience great harm and significant risk.

I believe that the protection of those who are vulnerable must be our priority.

⁸⁵ M. Farley, ‘Prostitution’s Hierarchy of Control and Coercion’, Prostitution Research and Education, 2008, <https://prostitutionresearch.com/prostitutions-hierarchy-of-control-and-coercion/>, (accessed 1 May 2024)

⁸⁶ R. Amery, ‘Scotland must take ‘For Sale’ sign off women’s bodies, prostitution survivor says, amid calls to overhaul laws on selling sex’, *The Scotsman*, 16 March 2024, <https://www.scotsman.com/news/politics/scotland-must-take-for-sale-sign-off-womens-bodies-prostitution-survivor-says-amid-calls-to-overhaul-laws-on-selling-sex-4557056>, (accessed 1 May 2024).

Legal Overview

The current laws in Scotland

In Scotland, it is not an offence to provide sexual acts for payment, nor is it illegal to pay for sexual acts where both parties are consenting adults. There are, however, a range of laws that apply to activities connected with on-street prostitution, brothel-keeping, living off the earnings of those involved in prostitution and the sexual exploitation of children.

- **Soliciting/loitering for the purpose of prostitution** - *The Civic Government (Scotland) Act 1982, section 46*, contains the offence of soliciting, loitering or importuning by an individual involved in prostitution for the purposes of providing sexual services for payment.⁸⁷
- **Soliciting/loitering for the purpose of purchasing the services of a person in prostitution** - *The Prostitution (Public Places) (Scotland) Act 2007, section 1*, contains the offence of soliciting or loitering in a public place (or other relevant place) for the purpose of obtaining the services of a person engaged in prostitution. There is no requirement that the person from whom sexual services are sought is “a known prostitute” only that they were engaged in prostitution at the time.⁸⁸
- **Brothel-keeping** – *The Criminal Law (Consolidation) (Scotland) Act 1995, section 11(5)*, contains offences related to keeping a brothel or permitting premises to be used as a brothel.
- **Procuring and living on the earnings of the prostitution of another person** - *The Criminal Law (Consolidation) (Scotland) Act 1995, section 7(1)*, includes offences aimed at people who seek to procure women to be engaged in prostitution. Sections 11 and 13 contain offences related to living on the earnings of another person through prostitution.
- **Human trafficking** – *The Human Trafficking and Exploitation (Scotland) Act 2015, section 1*, creates the offence of human trafficking, including human trafficking for the purposes of sexual exploitation. *Section 3* lists sexual exploitation and prostitution as forms of exploitation covered by the section 1 offence of human trafficking.⁸⁹
- **Child sexual exploitation** - *The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005* includes offences related to the sexual exploitation of children including, in *section 9*, offences related to purchase of

⁸⁷ In practice, prosecution policy across Scotland is to charge a person for being involved in prostitution only after they have received two warnings from a police officer. Thus, they are only charged with an offence on the third occasion. Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 91.

⁸⁸ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 91.

⁸⁹ Section 3(3)-(5) of the Human Trafficking and Exploitation (Scotland) Act 2015 includes prostitution and sexual exploitation in the definition of exploitation for the purposes of the section 1 offence.

sexual acts with a child and, in *sections 10 – 12*, offences related to the procuring or control of children for the purposes of sexual exploitation.

The law in the rest of the UK – Northern Ireland

In 2015, Northern Ireland adopted a legislative approach to challenge men’s demand for prostitution as part of its *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*.⁹⁰ The law aims to tackle human trafficking and sexual exploitation, with offenders receiving fines of up to £1000 and one year’s imprisonment.

Although the Act did not include any provision for support or exiting services for people selling or exchanging sexual acts, it did include a requirement that a strategy of support and assistance for people wishing to exit prostitution must be developed and published within 10 months of the Act coming into force.⁹¹ Subsequently, a programme of assistance and support (PAS) for exiting was published, with mainstream and specialist services set out on a dedicated website.

The law in the rest of the world

Over the last few years, several jurisdictions around the world have introduced similar legislation to that which I am proposing: criminalising demand, repealing the soliciting offence and providing support and routes to exit prostitution.

Sweden pioneered challenging demand legislation as part of an Act titled *Kvinnofrid* (often translated as *Violence Against Women Act*) in 1998. Like the Scottish Government’s view that prostitution is a form of violence against women, the Swedish Government stated that

“[O]ne issue that was closely related to that of violence against women and a lack of gender equality was the issue of men who purchase sexual services, usually from women; i.e. the issue of prostitution. The most important insight regarding the issue of prostitution, presented through the Bill, was that attention must be directed to the purchasers. It was a matter of a shift in perspective, which can be summarised by stating the obvious: if there was no demand there would be no prostitution.”⁹²

⁹⁰ *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*, <https://www.legislation.gov.uk/nia/2015/2/contents>, (accessed 14 April 2024).

⁹¹ *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*, <https://www.legislation.gov.uk/nia/2015/2/section/19>, (accessed 14 April 2024).

⁹² Ministry of Justice, Sweden, *Ban on the Purchase of Sexual Services - An Evaluation 1999-2008 English Summary*, 2010, p. 30, https://documentation.lastradainternational.org/lisidocs/1049_swedish_prostitution_summary_original.pdf, (accessed 14 April 2024).

Implemented from January 1999, the law decriminalised people selling sexual acts and criminalised people buying sexual acts. The law has since been amended, first to increase the maximum fine and to increase the prison term to one year's imprisonment and amended again in August 2022 so that the minimum penalty for paying for sexual acts is imprisonment.⁹³

Norway implemented *Sexkjøpsloven (Sex Purchase Act)* in 2009, following decades of public debate on the harmful nature of prostitution. The Act's proponents brought together two main arguments for criminalising the purchase of sexual acts: that prostitution fuelled human trafficking, exploitation of the most vulnerable women and girls and that prostitution is violence against women and was therefore incongruous with a society striving for equality between the sexes.⁹⁴ Purchasing or attempting to purchase sexual acts is now punishable with fines or up to six months' imprisonment with a maximum of one year's imprisonment for severe cases. The law also applies to Norwegians purchasing or attempting to purchase sexual acts abroad, even in countries where prostitution is legal.

Iceland criminalised the purchase of sexual acts through *Law No 54, an amendment to its General Criminal Code (Prohibition on the Purchase of Prostitution)* in 2009. Following the 2008 financial and political crisis in the country, which was seen to be caused by its male leadership, the women's rights movement in Iceland gained not only substantial support for its aims and demands but women also gained political and financial power.⁹⁵ The commodification of women's bodies through prostitution and strip clubs became a major issue of the campaign for equality between the sexes. Thus, the new law was part of a wider package of measures, designed to tackle the commodification of female bodies, human trafficking and child sexual abuse.⁹⁶ Under the new law, offenders face fines and up to one year's imprisonment with higher penalties for purchasing sexual acts from minors.

Canada's Bill C-36, the Protection for Communities and Exploited Persons Act has been in force since December 2014. The law criminalised the purchase of sexual acts,⁹⁷ imposing mandatory minimum fines as well as mandatory minimum penalties of six months' imprisonment for a first offence rising to up to five years' imprisonment if the offender is prosecuted in court. In contrast to other challenging demand legislation, *Bill*

⁹³ A Model For Scotland, *International Insights How Scotland can learn from international efforts to combat commercial sexual exploitation*, 2023, https://www.amodelforscotland.org/files/ugd/43b7aa_2de030c749074a31aed9cf3ee6556bb9.pdf, (accessed 1 May 2024).

⁹⁴ M. L. Skilbrei, 'The Development of Norwegian Prostitution Policies: A Marriage of Convenience between Pragmatism and Principles', *Sexuality Research and Social Policy*, 9(3): 244-257, 2012, p. 253.

⁹⁵ NCOSE, 'Iceland's Sex Trade Ban: A Model for Gender Equality', *National Center on Sexual Exploitation*, 29 October 2020, <https://endsexualexploitation.org/articles/icelands-sex-trade-ban-a-model-for-gender-equality/>, (accessed 14 April 2024).

⁹⁶ Strip clubs were prohibited in 2010.

⁹⁷ This covers a variety of sexual services, including lap-dancing.

C-36 adds to the standard provision for the decriminalisation of the selling of sexual acts that sellers are allowed to take safety measures including selling cooperatively, working together indoors and hiring independent bodyguards who do not profit from the sale of sexual acts. The Canadian government reasoned on prohibiting the purchase of sexual acts:

Prostitution allows men, who are primarily the purchasers of sexual services, paid access to female bodies. Condoning a clearly gendered practice by legalizing and regulating it would demean and degrade the human dignity of all women and girls. The human body is not a commodity to be bought and sold.⁹⁸

France passed Loi no. 2016- 444 Visant à Renforcer la Lutte Contre le Système Prostitutionnel et à accompagner les personnes prostituées (Law no. 2016-444 aimed at strengthening the fight against the prostitution system and support prostituted persons) in 2016. The thinking behind the new legislation echoes that of the other countries with similar laws: prostitution is seen as a human rights violation, a breach of women's rights, an impediment to true equality between the sexes and a driver of organised crime and human trafficking. The purchase of sexual acts is punishable by a fine of up to €1,500 for the first offence and €3,750 for repeat offences. Offenders are obliged to attend awareness course at their own expense. The law also included provisions to support people in prostitution, including protections for victims of human trafficking whose immigration status is unsecured.

Ireland criminalised the purchase of sexual acts through the *Criminal Law (Sexual Offences) Act 2017*. Offenders are fined €500 for a first offence and up to €1000 for repeat offences. The Act also decriminalised the selling of sexual acts, while at the same time increasing the fines and terms of imprisonment for brothel keeping and pimping, thus also targeting those who profit from sexually exploiting people in prostitution. Legislative efforts to adopt a challenging demand approach took place at the same time in Northern Ireland and Ireland and the public debate North and South of the border was informed by the same arguments around tackling child sexual abuse, human trafficking and sexual exploitation.

Israel's Knesset unanimously passed a law criminalising the purchase of sexual acts on the last day of 2018.⁹⁹ *The Prohibition of Consumption of Prostitution Services* imposes a fine of 2000 shekels on those caught purchasing sexual acts or being on premises where prostitution is facilitated. The fine rises to 4000 shekels for repeat offences within

⁹⁸ Department of Justice Canada, 'Qs & As: Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act', 2014, https://www.justice.gc.ca/eng/rp-pr/other-autre/c36faq/c36faq_eng.pdf, (accessed 14 April 2024).

⁹⁹ D. Israel, 'Knesset Passes Bills Punishing Prostitution Clients, Compelling Security Cameras in Old Age Homes', *Jewish Press.com*, 31 December 2018, <https://www.jewishpress.com/news/israel/the-knesset/knesset-passes-bills-punishing-prostitution-clients-compelling-security-cameras-in-old-age-homes/2018/12/31/>, (accessed 14 April 2024).

three years with a maximum fine of 75,000 shekels for those who chose to contest the fines and are prosecuted in court. As part of the legislative package, the Israeli government will provide 90 million shekels to support people in prostitution to exit the sexual acts trade. The law came into effect in July 2020, with some support and exiting services yet to be implemented.

International Human Rights Framework

In 1945, the dignity and worth of all human beings was recognised as a fundamental principle of human rights in the *United Nations Charter*.¹⁰⁰ In 1948, the protection of this right was enshrined as “a cornerstone of the human rights system and law” within the first sentence of the *Universal Declaration of Human Rights*.¹⁰¹ Just one year later, the connection between prostitution and trafficking was explicitly recognised in the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (UN 1949 Convention)*, which stated that:

...prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.¹⁰²

This was the first time international human rights law specifically prohibited the exploitation of the prostitution of others. This convention acknowledges that trafficking and prostitution are inextricably linked, because the demand for women in prostitution drives trafficking. When the rights of women were enshrined in international human rights law in 1979, Article 6 of the *UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* decreed:

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.¹⁰³

CEDAW is legally binding on the United Kingdom and requires the state to adopt measures to prevent the exploitation of women in prostitution. This includes all forms of pimping, procuring and brothel-keeping, even with the consent of the person in prostitution. The *Palermo Protocol to Prevent, Suppress and Punish Trafficking in*

¹⁰⁰ United Nations, *United Nations Charter*, 1945, Preamble, <https://www.un.org/en/about-us/un-charter/full-text>, (accessed 14 April 2024).

¹⁰¹ United Nations, *Universal Declaration of Human Rights*, 1948, Preamble, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (accessed 14 April 2024).

¹⁰² United Nations, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 1949, Preamble, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-suppression-traffic-persons-and-exploitation>, (accessed 14 April 2024).

¹⁰³ United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, 1979, Article 6, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>, (accessed 14 April 2024).

Persons, Especially Women and Children, which supplements the *United Nations Convention against Transnational Organized Crime (2000)* classifies prostitution as sexual exploitation.¹⁰⁴

For 75 years then, international human rights law has understood prostitution to constitute a violation of human dignity, an exploitative practice which cannot be separated from human trafficking, and puts specific obligations on states which demand that:

When defining and implementing policies with regards to prostitution and its exploitation, States must ensure that they work towards the elimination of prostitution and the protection of its victims. Furthermore, States are de facto prohibited from implementing policies that would encourage prostitution and thereby foster a violation of human dignity. All policies that justify, promote or trivialise prostitution as “sex work” are incompatible with established and binding UN human rights legislation.¹⁰⁵

In 2020, *CEDAW General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration* once again confirmed that trafficking and prostitution were indivisibly linked. It stated that

Sexual exploitation persists due to the failure of States parties to effectively discourage the demand that fosters exploitation and leads to trafficking. Persistent norms and stereotypes regarding male domination and the need to assert male control or power, enforce patriarchal gender roles and male sexual entitlement, coercion and control, which drive the demand for the sexual exploitation of women and girls.¹⁰⁶

It stresses that states have an obligation to identify, address and eliminate demand as one of the root causes driving sexual exploitation and trafficking.

¹⁰⁴ United Nations, *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the *United Nations Convention against Transnational Organized Crime*, 2000, Article 3 (a), <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>, (accessed 14 April 2024).

¹⁰⁵ G. Théry, *Prostitution under International Human Rights Law: An Analysis of States' Obligations and the Best Ways to Implement Them*, CAP International, 2016, p. 13, <https://www.cap-international.org/wp-content/uploads/2016/11/ProstitutionUnderIntlHumanRightsLawEN.pdf>, (accessed 14 April 2024).

¹⁰⁶ United Nations, *General recommendation No.38 (2020) on trafficking in women and girls in the context of global migration*, 2020, IV C 30, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women>, (accessed 14 April 2024).

In the last 25 years, the **European Parliament**¹⁰⁷ and the **Council of Europe**¹⁰⁸ have adopted several resolutions addressing prostitution, explicitly recognising it as a form of sexual exploitation, a driver for human trafficking and both a cause and a consequence of the inequality of the sexes. They make clear that both institutions consider it to have an impact on violence against women in general as well as on the status of women and men, and the perception of their mutual relations, making it impossible to achieve equality between the sexes. Discouraging demand is repeatedly presented as a key prevention measure.

The most recent European Parliament resolution of 14 September 2023 comprehensively addresses the harms and risks of prostitution, “pays respect to the large majority of people in prostitution who do not consider it to be a normal job” and rejects the term “sex worker” because they “do not want to idealise the reality of prostitution or mask the violence, abuse and exploitation that the large majority of people, especially women and girls, in prostitution endure”. Most importantly, this resolution recommends the Nordic Model, explores its advantages and effectiveness in detail, highlights that it is successful in changing men’s attitudes towards women for the better and:

Stresses that human trafficking for the purpose of sexual exploitation, including child sexual abuse, is increasing due to high demand; points out that this is particularly visible in countries with a liberal regulatory model, whereas Member States such as France and other countries that follow approaches like the Nordic/Equality model are no longer big markets for human trafficking for that purpose.¹⁰⁹

My proposed bill would ensure that Scotland meets its obligations under international and European human rights law and follows best international practice in addressing sexual exploitation in prostitution and trafficking.

The Scottish Government’s Position

Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls presents the Scottish Government’s ambition to tackle all forms of violence suffered by women and girls “precisely because they are female”. As people

¹⁰⁷ European Parliament, Resolution on implementation of the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective (2015/2118(INI)), P8_TA (2016) 0227, Brussels, 12 May 2016, paragraphs 50 and 48; European Parliament, Resolution on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), P7_TA(2014) 0162, Brussels, 26 February 2014, paragraph 29.

¹⁰⁸ Council of Europe, Parliamentary Assembly, Resolution 1983 (2014), Prostitution, trafficking and modern slavery in Europe, 8 April 2014, paragraphs 3, 6 & 12.1.1.

¹⁰⁹ European Parliament, Regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women’s rights, 2023, 22, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0328_EN.html, (accessed 14 April 2024).

involved in prostitution are predominantly female while those buying sexual acts are almost exclusively male, it has rightly recognised prostitution as a form of violence against women and girls since it first adopted the strategy in 2014.

The strategy recognises that women and girls are at risk of such abuse precisely because they are female and it aligns with the UN definition of violence against women that includes the girl child, reflecting that this risk is present throughout life. It is gender, rather than age, that predicts an individual's likelihood of experiencing inequality and the forms of violence described above, with girls, young women and adult women all at risk because they are female.¹¹⁰

The Scottish Government acknowledged in 2014 that its “approach is more developed for some of the forms of violence and abuse than others and this strategy will provide a framework for helping to address this as part of future work.” Equally Safe has evolved since then, but in ten years there has been no real progress on adopting a strategy, or even a strategic framework, to prevent and eradicate prostitution.

In 2022, the Scottish Government published a *Lived Experience Engagement* report¹¹¹ on support services across Scotland which includes interviews with people selling or exchanging sexual acts in Scotland, *Challenging Demand for Prostitution: An International Evidence Review*¹¹² which considers the impact of challenging demand legislation in Sweden, Norway, Northern Ireland, Ireland and France and *Challenging men's demand for prostitution: policy principles* which set out the Scottish Government's policy principles on tackling prostitution.

Although the latter once again acknowledges that prostitution is violence against women, there is neither intent nor commitment to legislative change, a shortcoming which was also strongly criticised after the Scottish Government published its long-awaited new strategy on prostitution in February 2024. A Model for Scotland, a coalition of groups campaigning for a Nordic Model approach in Scotland called for the strategy to be “more ambitious” and emphasised:

...if the Scottish Government is serious about achieving its goal of challenging men's demand for prostitution, the new strategic approach must include criminalising paying for sex. [...] As well as providing support to those exploited in the sex trade, tackling the demand which fuels prostitution and sex trafficking

¹¹⁰ Scottish Government, *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls*, 2014, p. 8, https://webarchive.nrscotland.gov.uk/20180104204452mp_/https://www.gov.scot/Resource/0045/00454152.pdf, (accessed 14 April 2024).

¹¹¹ L. Jones, E. Craig and A. Mentzou, *Lived Experience Engagement*.

¹¹² Scottish Government, *Challenging Demand for Prostitution: An International Evidence Review*, 2022.

by criminalising paying for sex is crucial to ensure that women aren't subjected to the immeasurable harms they face in the sex trade in the first place.¹¹³

Instead of criminalising the purchase of sexual acts, the government has, instead, opted once again to attempt to mitigate against its harmful consequences for the women and girls involved. It has chosen to do so even though the usefulness of a harm reduction approach in relation to prostitution is, in my view, questionable. I believe that women in prostitution are not addicted to selling sexual acts, they are the product being sold and consumed – they are the ones harmed in the process, not the men who buy sexual acts.

This harm reduction approach is incongruous with the Scottish Government's stated commitment to preventing and eradicating violence against women and girls. By their very nature, harm reduction approaches do not seek to end the harmful practice in question, they condone and prolong it. The Scottish Government's approach allows for the continuation of prostitution and the harms it causes to the women and girls in prostitution. It neither reduces the risk of violence nor does it prevent violence. I believe that the only approach that can do both by reducing the demand for prostitution is the Nordic Model approach that I am seeking to introduce to Scotland with this proposed Bill.

Effects of criminalising the purchase of sexual acts - international evidence

The 2023 *International Insights* report by *A Model For Scotland* provides a recent overview of the effectiveness of challenging demand legislation in Iceland, Ireland, France and Sweden. Although the French and Irish laws are not yet a decade old, early studies indicate positive developments on public attitudes, access to justice, trafficking and helping women to exit prostitution.¹¹⁴

The Scottish Government's review of the evidence about criminalising the purchase of sexual acts, published in February 2017, concludes that, despite some limitations with the available evidence, there is sufficient evidence that in the Nordic countries where the law changed to criminalise the purchase of sexual acts prior to 2010 there have been reductions in prostitution and decreased demand.¹¹⁵ There is also a correlation

¹¹³ A Model for Scotland, Press Release 6 March 2024, p. 2, https://www.amodelforscotland.org/files/ugd/43b7aa_207f49dd7c5c4da09de4f2b602df8818.pdf, (accessed 14 April 2024).

¹¹⁴ A Model For Scotland, *International Insights*.

¹¹⁵ M. Malloch, L. Robertson and E. Forbes, Evidence Assessment of the Impacts of the Criminalisation of the Purchase of Sex: A Review, Scottish Centre for Crime and Justice Research, 2017, pp. 23, 27 and 38, <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/evidence-assessment-impacts-criminalisation-purchase-sex-review/documents/00514185-pdf/00514185-pdf/govscot%3Adocument/00514185.pdf>, (accessed 13 June 2024).

between prostitution legislation and rates of human trafficking, with countries with restrictive legislation associated with lower rates of human trafficking.¹¹⁶

For example, on rates of prostitution, the evidence suggests that:

In Sweden

- on-street prostitution has halved in Sweden since 1995 (the law criminalising purchase of sexual acts was introduced in 1999);¹¹⁷
- although it can be difficult to assess the scale of off-street prostitution, there has been a reduction in the overall number of individuals engaged in prostitution in Sweden;¹¹⁸
- comparing the figures to Denmark where the purchase of sexual acts is legal and where the population is 5.6 million compared to Sweden's 9.4 million researchers in 2008 suggested the number of people in prostitution in Sweden is one-tenth that of neighbouring Denmark, where there is no similar law;¹¹⁹
- there has been a decrease in the number of men in Sweden reporting having bought sexual acts in the previous year from 1.3% in 1996 to 0.8% in 2014, which is the lowest recorded level in Europe,¹²⁰ and a significant reduction in the number of men reporting ever having bought sexual acts from 13.6% in 1996 (before the law changed) to 8% in 2008 and 7.5% in 2014;¹²¹
- the introduction of the law in Sweden has limited the growth of the prostitution market and consequently limited the involvement of organised criminals in prostitution in Sweden;¹²² the 2010 evaluation of the Swedish law states "according to the National Criminal Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers

¹¹⁶ S-Y. Cho, A. Dreher and E. Neumayer, "Does legalized prostitution increase human trafficking?", *World Development*, Volume 41, 2013; N. Jakobsson and A. Kotsadam, "The Law and Economics of International Sex Slavery: Prostitution laws and trafficking for sexual exploitation", *Working Papers in Economics*, No 458, University of Gothenburg, June 2010, Revised May 2013, pp. 16-17; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 29.

¹¹⁷ Swedish Government, *The Ban against the Purchase of Sexual Services. An evaluation 1999-2008*, Report SOU 2010:49, English Summary, pp. 37-38; County Administrative Board of Stockholm, *Prostitution in Sweden*, 2014 and *The extent and development of prostitution in Sweden*, 2015 p. 16; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, pp. 21 and 22.

¹¹⁸ G. Ekberg, "The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings." *Violence Against Women*, 2004 10(10), 1187-1218, updated; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.

¹¹⁹ M. Waltman, "Prohibiting Sex Purchasing And Ending Trafficking: The Swedish Prostitution Law", *Michigan Journal of International Law*, Vol 33:133, 2011, p. 146.

¹²⁰ European Commission, *Study on the gender dimension of trafficking in human beings – Final report*, p. 139.

¹²¹ 1996 and 2008 surveys covered in Holmström & Skilbrei eds., *Prostitution in the Nordic Countries*, Conference report, 2009, p. 29; 2014 surveys in County Administrative Board of Stockholm, *Prostitution in Sweden*, 2014; *The extent and development of prostitution in Sweden*, 2015, p. 24.

¹²² Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 29.

considering establishing themselves in Sweden.”¹²³ There are also reports of intelligence gathered in Sweden from traffickers and their victims suggesting that it is recognised that the demand for prostitution has decreased, making it less lucrative for traffickers.¹²⁴

- A European Commission report found that “the law has curtailed the growth of the sex industry, which is considerably smaller than that in neighbouring countries with smaller populations and compared with many other EU Member States. This, alongside pro-active policing, has created a less conducive context for trafficking.”

In Norway

- there has been a clear downward trend in prostitution in Norway since the law to criminalise the purchase of sexual acts was introduced in 2009:¹²⁵
 - the level of on-street prostitution in Oslo has settled at 40-65% of the level in 2009;¹²⁶
 - off-street prostitution in Norway has reduced by 10-20%;¹²⁷
- the level of human trafficking has been assessed as lower than it would have been without the law.¹²⁸

I am proposing a similar offence of purchasing sexual acts in my Bill.

On the claim that criminalising the purchase of sexual acts drives prostitution underground:

The suggestion to criminalise the buyers of sexual acts is often met with the objection that this will drive prostitution underground.¹²⁹ In a review of the Swedish law, Waltman concluded that this claim was not supported by “information, empirical evidence, or other research.”¹³⁰

¹²³ Swedish Government, *The Ban against the Purchase of Sexual Services. An evaluation 1999-2008*, Report SOU 2010:49.

¹²⁴ G. Ekberg, “The Swedish Law that Prohibits the Purchase of Sexual Services; M. Waltman, “Sweden’s Prohibition of Purchase of Sex: The Law’s Reasons, Impact, and Potential”, *Women’s Studies International Forum*, Vol. 34, No. 5, pp. 449-474, 2011.

¹²⁵ I. Rasmussen et al., “Evaluering av forbudet mot kjøp av seksuelle tjenester”, *Vista Analyse*, 2014, p. 13; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.

¹²⁶ Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.

¹²⁷ I. Rasmussen et al., *Vista Analyse*, p. 13; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.

¹²⁸ I. Rasmussen et al., *Vista Analyse*, p. 13.

¹²⁹ Sometimes this is also taken to mean that prostitution will merely become invisible, and therefore harder to police, because it will be pushed indoors. However, most prostitution in Scotland already takes place indoors (see page 22 of this consultation).

¹³⁰ M. Waltman, “Sweden’s prohibition of purchase of sex”, p. 459.

Swedish police addressed this claim directly, with Detective Superintendent Kajsa Wahlberg, Sweden's National Rapporteur on Trafficking in Human Beings, stating in 2010, a decade after the law was enacted:

I want to underline that prostitution activities are not and cannot be pushed underground. The profit of traffickers, procurers and other prostitution operators is obviously dependent on that men easily can access women who they wish to purchase for prostitution purposes. ...It is more a matter of priorities and attitudes towards these issues. If the buyers can find the women in prostitution- the police can too. The Swedish police regularly search the Internet for, and find, information about where prostitution activities take place. We also regularly process and analyse information from the public, public authorities and organisations.¹³¹

This claim is based on what I believe is the unfounded view that decriminalising the buyers of sexual acts will keep prostitution activities legal and aboveboard. The situation in Germany directly contradicts this. The scale of prostitution in Germany ranges from an estimated 125,000 prostituted women and men to an estimated 400,000.¹³² Under German law, all individuals involved in selling sexual acts must be licenced. Official statistics show 28,278 registrations by the end of 2022, only 50 of whom had a legal employment contract.¹³³ With the true scale of prostitution in Germany believed to be around 250,000,¹³⁴ this means almost 90% of women and men selling sexual acts in the country are unlicensed and only a very small number have employment rights. Decriminalisation has also made it more difficult to protect women in prostitution, investigate crimes and bring perpetrators of violence, trafficking and exploitation to justice, as reported by police in Germany.¹³⁵

¹³¹ Speech by Kajsa Wahlberg, Swedish National Rapporteur on Trafficking in Human Beings at the Third Swedish-Dutch Conference on Gender Equality: Trafficking in Human Beings and Prostitution, organized by the Swedish Institute the Swedish National Police Board, the Swedish Embassy, and the Netherlands National Police Agency, den Haag, The Netherlands, December 6, 2010.

¹³² The low estimate stems from supporters of Germany's prostitution law, the high estimate from its opponents. Both groups agree that most people involved in prostitution are unlicensed.

¹³³ This is the most recently available data. Statistisches Bundesamt, "Ende 2022 rund 28 280 Prostituierte bei Behörden angemeldet", Pressemitteilung Nr. 368, 15 September 2023, destatis.de, https://www.destatis.de/DE/Presse/Pressemitteilungen/2023/09/PD23_368_228.html, (accessed 14 May 2024).

¹³⁴ See for example a motion from the German Conservative Party: Deutscher Bundestag, Antrag der Fraktion der CDU/CSU, "Menschenunwürdige Zustände in der Prostitution beenden – Sexkauf bestrafen", 20 February 2024, <https://dserver.bundestag.de/btd/20/103/2010384.pdf>, (accessed 14 May 2024).

¹³⁵ For a comprehensive report on Germany see H. Sporer, *The New German Way For a Reorganisation of Prostitution Legislation*, *European Women's Lobby*, April 2022, https://www.womenlobby.org/IMG/pdf/helmut_sporer_1_oct_2013_english_final.pdf, (accessed 14 May 2024).

Previous proposals to criminalise the purchase of sexual acts in Scotland

There have already been some discussions on this theme in Scotland. In 2010 Trish Godman MSP brought forward a proposal for a Criminalisation of the Purchase and Sale of Sex (Scotland) Bill which fell due to elections for the Scottish Parliament. Following that, in 2012, Rhoda Grant MSP consulted on a proposal to make it an offence to purchase sexual acts.¹³⁶ The majority of those responding supported the aim of the proposed Bill to make it a criminal offence to purchase sexual acts (80%).¹³⁷ The most common reason given by respondents for supporting the proposal was that “the legislation would reduce the incidence of prostitution and protect women against violence”.¹³⁸ The summary of consultation responses also records that “it was noted that a few respondents, although supportive of the proposed bill, would have liked to see the policy extended to include the decriminalisation of the sale of sex, so that vulnerable people are not further penalised.”¹³⁹ My proposed Bill would do this.

During the passage of the Human Trafficking and Exploitation (Scotland) Act 2015,¹⁴⁰ the Justice Committee noted in its Stage 1 report the proposal from a number of witnesses that the Bill should include provision to criminalise the purchase of sexual acts.¹⁴¹ Amendments to this effect were tabled by Rhoda Grant MSP at Stage 2 but were withdrawn following a commitment from the Scottish Government to commission research into the evidence around criminalising the purchase of sexual acts and the scale and nature of prostitution in Scotland.¹⁴²

Based on the aforementioned research, the Scottish Government published a report in late 2016: *Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews*¹⁴³ and a review in early 2017: *Evidence Assessment of*

¹³⁶ Rhoda Grant’s proposal fell because it failed to obtain the necessary cross-party support. An alternative approach was brought forward in 2015 by Jean Urquhart MSP. Her proposal was for a Prostitution Reform Bill that would fully decriminalise prostitution in Scotland. The consultation closed in December 2015, but the proposal did not progress further.

¹³⁷ R. Grant, “Proposed Criminalisation of the Purchase of Sex (Scotland) Bill (2), Summary of Consultation Responses, p. 8.

<https://webarchive.nrscotland.gov.uk/20240327021156/https://archive2021.parliament.scot/parliamentary-business/Bills/54314.aspx>, (accessed 13 June 2024).

¹³⁸ Grant, Summary of Consultation Responses, p. 10.

¹³⁹ Grant, Summary of Consultation Responses, p. 10.

¹⁴⁰ Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12), <http://www.legislation.gov.uk/asp/2015/12/contents>.

¹⁴¹ The Scottish Parliament, *Justice Committee Stage 1 Report on the Human Trafficking and Exploitation (Scotland) Bill*, SP Paper 710, 9th report, Session 4 (2015), pp. 35-36. http://www.parliament.scot/S4_JusticeCommittee/Reports/juR-15-09w.pdf.

¹⁴² The Scottish Parliament, *Justice Committee, Official Report*, Tuesday 16 June 2015, paragraph 26.

¹⁴³ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, 2016.

the Impacts of the Criminalisation of the Purchase of Sex: A Review.¹⁴⁴ Extensive stakeholder consultation about the findings was conducted by the Scottish Government after publication of these documents, but no further attempts to change the law were undertaken.

Decriminalising those in prostitution

In addition to the harms associated with prostitution set out above, there is evidence that going through the criminal justice system and having a criminal record for prostitution offences can increase people's vulnerability, be a barrier to them exiting prostitution and, in fact, entrench them further in prostitution, leading to a vicious circle.¹⁴⁵

This suggests that, rather than helping to prevent prostitution, criminalisation of those who sell sexual acts has the opposite effect. It is my view that the resources expended on policing and prosecuting this offence should instead be re-focussed on reducing demand for prostitution, preventing people being drawn into prostitution and supporting people to exit.

Moreover, criminalising people who sell sexual acts is not consistent with the approach set out in the *Equally Safe* strategy which understands prostitution as a form of violence against women.

Suggestions have previously been made that Scotland should decriminalise **all** activities related to prostitution, adopting the approach taken in Germany or New Zealand.¹⁴⁶ However, I do not believe decriminalising activities related to the organisation, control, exploitation or profiting from prostitution would fit within the framework of the *Equally Safe* and *Trafficking and Exploitation* strategies outlined above. Moreover, there is significant evidence from New Zealand, as well as from other countries such as the Netherlands and Germany, that decriminalising or legalising those aspects of prostitution related to third parties does not protect people from exploitation, violence or other harms caused by prostitution.¹⁴⁷

¹⁴⁴ Malloch, *Evidence Assessment of the Impacts of the Criminalisation of the Purchase of Sex: A Review*.

¹⁴⁵ Scottish Executive, *Being Outside: Constructing a Response to Street Prostitution*, 2004, para 11.12; R. Matthews et al., *Exiting Prostitution - a study in female desistance*, Palgrave Macmillan, 2014, p. 5; H. Harvey, L. Brown and L. Young, *I'm no criminal*, NIA, 2017.

¹⁴⁶ For example, Jean Urquhart's proposal for a Prostitution Law Reform (Scotland) Bill on which she held a consultation in 2015.

¹⁴⁷ L. Kelly, M. Coy and R. Davenport, *Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries*, Home Office, 2009; W. Huismann and E.R. Kleemans, *The challenges of fighting sex trafficking in the legalized prostitution market of the Netherlands*, *Crime, Law and Social Change*, Vol 61, pp.215 – 228, 2014; European Parliament, Directorate-General for Internal Policies of the Union, M. Skalin et al., *Sexual exploitation and prostitution and its impact on gender equality*, Publications Office,

I am proposing that my Bill should include the decriminalisation of soliciting. This approach was adopted by the Northern Ireland Assembly when they passed the Northern Ireland Human Trafficking Act as well as by other countries adopting a similar approach.¹⁴⁸ The European Parliament resolution on prostitution also recommended removal of such offences.¹⁴⁹

Supporting people to exit

The proposals for changes in the criminal law that I am suggesting should also be accompanied by an emphasis on supporting individuals to exit prostitution. This approach was adopted by the Northern Ireland Assembly when they passed the Northern Ireland Human Trafficking Act. The European resolutions on prostitution also recommended programmes for those who wish to exit prostitution:

- In February 2014, the European Parliament resolution on *Sexual exploitation and prostitution and its impact on gender equality* highlighted the need to accompany legislative change with practical support saying “a vast majority of persons in prostitution would like to stop but feel unable to do so...suggests, therefore that the competent authorities put in place programmes to help persons escape prostitution, in close co-operation with the stakeholders.”¹⁵⁰
- In April 2014, the Council of Europe’s resolution on *Prostitution, trafficking and modern slavery in Europe*, recommended member states “set up ‘exit programmes’ for those who to give up prostitution, aimed at rehabilitation and based on a holistic approach including mental health and health-care services, housing support, education and training and employment services”.¹⁵¹

There are some specialist services in Scotland to support people in prostitution some of which offer specific assistance to exit prostitution; however, there are significant variations in the range of services available in different parts of the country.¹⁵²

2014, <https://data.europa.eu/doi/10.2861/44806>, (accessed 13 June 2024); M. Coy and P. Molisa, “What lies beneath prostitution policy in New Zealand?”, *Open Democracy*, December 2016, https://www.opendemocracy.net/5050/maddy-coy-pala-molisa/what-lies-beneath-prostitution-and-policy-in-new-zealand_1, (accessed 14 May 2024).

¹⁴⁸ Section 15(4) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

¹⁴⁹ European Parliament, Resolution on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), P7_TA(2014) 0162, Brussels, 26 February 2014, paragraphs 26, 27.

¹⁵⁰ European Parliament, Resolution on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), P7_TA(2014) 0162, Brussels, 26 February 2014, paragraphs 27, 42.

¹⁵¹ Council of Europe, Parliamentary Assembly, Resolution 1983 (2014), Prostitution, trafficking and modern slavery in Europe, 8 April 2014, paragraphs 12.1.1 and 12.1.5.

¹⁵² Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 55.

Many people in prostitution also access a range of mainstream services such as drug and alcohol services and sexual health services although research has identified a gap in terms of the understanding on the part of these services of the complexity and range of issues faced by people engaged in prostitution.¹⁵³

The Scottish Government's 2016 report notes that practitioners supporting people involved in prostitution identified the limited availability of specialist services and insecure, short-term and localised funding as key challenges to providing appropriate support to people in or leaving prostitution.¹⁵⁴ The 2022 report notes further that there is "a lack of consistency in understanding of and response to people selling sex" in mainstream and specialist services.¹⁵⁵

The 2016 report also noted that "health and safety support services are less available for those involved in indoor prostitution," and that "better opportunities could be made in terms of identifying women involved in prostitution who are accessing other key services".¹⁵⁶ The Scottish Government's 2017 review also suggests that "there would appear to be considerable scope for improving the opportunities for individuals to exit prostitution should they so wish."¹⁵⁷

In 2017, the Scottish Government gave grant funding to several projects which support people in prostitution from its Violence against Women and Equally Safe funding streams for the period 2017-2020.¹⁵⁸

Many services receive local government funding although stretched by tight budgets.¹⁵⁹

I propose to include in my Bill a statutory right to support, including the right to support to exit prostitution, and to give the Scottish Government the responsibility to drive and oversee the delivery of this right.

¹⁵³ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 62.

¹⁵⁴ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pages 55-64.

¹⁵⁵ L. Jones, E. Craig and A. Mentzou, *Lived Experience Engagement*, p. 84.

¹⁵⁶ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 7 and 62.

¹⁵⁷ Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 38.

¹⁵⁸ Scottish Government, *Violence against women and girls: national and intermediary funding 2017-2020*, 2017

<https://beta.gov.scot/publications/vawg-national-intermediary-bodies-funding-2017-2020/>, (accessed 14 May 2024); Scottish Government, *Equally Safe (Violence Against Women and Girls) Fund 2017-2021, 2022*, <https://beta.gov.scot/publications/vawg-fund-2017-2020/>, (accessed 14 May 2024).

¹⁵⁹ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 64.

DETAIL OF THE PROPOSED BILL

The proposals

This section includes detail on the main proposals for the Bill.

My aim for this Bill is to reduce the amount of prostitution in Scotland because of the evidence of exploitation and harm that it is causing.

The proposed Bill would have three primary elements, to:

- (i) introduce a new criminal offence of paying for sexual services;
- (ii) repeal section 46 of the Civic Government (Scotland) Act 1982: the offence of soliciting for the purposes of prostitution in a public place and repeal previous convictions under section 46;
- (iii) give people in prostitution the legal right to support.

The proposed criminal offence of paying for sexual services

I propose that the Bill will target the “purchasing” (rather than the “selling”) side of prostitution by making it an offence for someone to make or promise payment in order to obtain sexual acts from another person.

The offence would need to:

- cover when payments were made by the purchaser or a third person;
- define the term “payment” in a way that extends beyond money to the provision of goods or services;
- define the term “sexual services”. I am considering using precedents for this that already exist in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 section 9 (*Paying for sexual services of a child*);¹⁶⁰
- set out penalties.

I am proposing that there should be a maximum penalty for someone convicted of paying for sexual acts of either a fine of up to £10,000 (the statutory maximum) and/or six months’ imprisonment on summary conviction (for offences in less serious circumstances) or a fine or 12 months’ imprisonment following solemn proceedings (for offences in more serious circumstances). My intention is that these penalties would act

¹⁶⁰ Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, <http://www.legislation.gov.uk/asp/2005/9/section/9>, (accessed 14 May 2024).

as a deterrent to committing this offence. They are the same as the penalties for the offence of paying for sexual services introduced in Northern Ireland in 2015. These penalties are greater than the penalty for the current Scottish offence of soliciting, which is a summary offence liable to a fine of up to £500 only, and I believe are commensurate with the more serious nature of the offence.

My Bill would ensure that the person providing sexual acts was not charged with aiding, abetting or conspiring to commit this new offence of purchasing sexual services. This means that people in prostitution will not be liable to prosecution in relation to this new offence.

Police Scotland already have many powers that could be used to enforce this new offence.

The implementation of a law to criminalise the purchase of sexual services in the UK was examined in a Westminster report published in February 2016.¹⁶¹ Produced at the request of the All Party Parliamentary Group on Prostitution and the Global Sex Trade by a special “Commission on the Sex Buyer Law” (including one serving and one former police officer with expertise in policing prostitution) the report reviews the enforcement of the law in Sweden and considers what the applicable policing powers and structures would be in a UK context. The report concludes “A standard four-step enforcement operation of the Sex Buyer Law would be consistent with existing policing powers.”¹⁶²

Specific details of the precise operational tools and policing powers that could be used are set out clearly in the Commission’s report.¹⁶³ In summary the four stages are:

- Locate – police officers locate premises being used for prostitution.
- Confirm – police contact the premises in person or by phone. There are powers and structures to authorise such a visit to be made covertly (as is generally done in Sweden). However, overt operations are currently used in gathering evidence relating to the offence of brothel-keeping so current enforcement practice could be employed for an offence of purchasing sexual services.
- Observe – police observe suspected buyers entering premises being used for prostitution. In crime hotspots such observation may be able to be carried out covertly without the need for special authorisation; in some circumstances authorisation under the Regulation of Investigatory Powers Act 2000 may be required as for other investigations of serious and organised crime.
- Action – police deal with suspect offender in a similar manner to arrests for kerb-crawling.

¹⁶¹ Commission on the Sex Buyer Law, *How to implement the Sex Buyer Law in the UK*, 2016, <https://www.appg-cse.uk/wp-content/uploads/2017/09/How-to-implement-the-Sex-Buyer-Law-in-the-UK-2016.pdf>, (accessed 13 June 2024).

¹⁶² Commission on the Sex Buyer Law, *How to implement the Sex Buyer Law in the UK*, 2016, p. 1.

¹⁶³ Commission on the Sex Buyer Law, *How to implement the Sex Buyer Law in the UK*, 2016, pp. 11-12.

My consultation also seeks views on whether additional police powers would be necessary or beneficial.

Police Scotland's prostitution policy is based "on activity around the 4 key objectives of Divert, Disrupt, Deter and Detect".¹⁶⁴ My Bill is seeking to deter individuals from exploiting individuals through purchase of sexual acts. It will support individuals who wish to exit prostitution (divert). There will need to be an emphasis on detection which is in line with the current policy of Police Scotland of "investigation of those who abuse, exploit or coerce and the investigation and disruption of organized criminal activity with prostitution through effective and innovative use of current legislation." Since other jurisdictions already enforce this offence, I would expect that there will need to be exchange of expertise with other police forces to ensure the most cost-effective means of enforcement.

In preparation for the new offence, I am proposing that the Scottish Government should conduct an awareness-raising campaign to ensure that those who purchase sexual acts are aware of the new offence. Such campaigns have been used in other countries for example: billboard campaigns coordinated by the Swedish government in 2002 highlighting the law;¹⁶⁵ the French law included funds set aside for public education about the harms of prostitution.¹⁶⁶

The proposed repeal of the offence of soliciting and importuning by people in prostitution

I propose that the Bill would repeal the offence of soliciting and importuning by prostitutes in section 46 of the Civic Government (Scotland) Act 1982. This would mean that those providing sexual acts would not commit an offence. My Bill would also include a provision for repealing previous convictions under section 46. As those involved in prostitution are considered to be exploited, these convictions serve to punish the victims and not the perpetrators of this exploitation. They also frequently present a barrier to exiting prostitution as previous criminal convictions have an impact on many areas of daily life, but especially on employment.

¹⁶⁴ Scottish Government, Trafficking and Exploitation Strategy, 2017, <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/05/trafficking-exploitation-strategy/documents/00518587-pdf/00518587-pdf/govscot%3Adocument/00518587.pdf>, (accessed 14 May 2024).

¹⁶⁵ G. S. Ekberg and K. Wahlberg, "The Swedish Approach: A European Union Country Shows How to Effectively Fight Sex Trafficking" Solutions Journal, Vol 2:2, 2011.

¹⁶⁶ Article 1 and Article 18 of Loi no 2016-444, see G. Théry and C. Legardinier, *The French law of April 13 2016 aimed at strengthening the fight against the prostitutional system and providing support for prostituted persons*, CAP International, 2017, pp. 38 and 40, <https://www.cap-international.org/wp-content/uploads/2017/04/CAP-brochure-MARS2017-EN-WEB3-1.pdf>, (accessed 14 May 2024).

The proposal to give people involved in prostitution the right to support

The third part of my bill seeks to enshrine in Scots Law the right to support for people selling or exchanging sexual acts. The underlying principle for this provision is the recognition that prostitution is inherently harmful, that those involved in selling sexual acts are victims of exploitation and that they must be able to access the support they require.

The vulnerabilities driving an individual's involvement in prostitution mean that they have multiple and complex support needs, especially since these vulnerabilities are often exacerbated while an individual is selling or exchanging sexual acts. Shame and a fear of disclosure of involvement in prostitution are significant barriers to accessing support, as is the belief that people selling sexual acts are not entitled to support. Individuals seeking help from mainstream services therefore frequently avoid disclosing their involvement in prostitution for fear of being denied help. A statutory right to support will send a strong signal to both those seeking support and the services providing this support that people who sell sexual acts are entitled to access the support they require.

Researchers and support workers typically report that when asked almost all individuals involved in prostitution express a desire to leave, but exiting is a lengthy, difficult process which requires long-term support from specialist services. The Scottish Government's strategic approach to prostitution, published in February 2024, includes the creation of "a new national support pathway aiming to ensure a clearer, better connected, and coordinated pathway of sustainable support for those with experience of prostitution, which will include support to exit prostitution." Also planned is a national hub for specialist support services, which will allow for better provision of services across Scotland.

The Northern Irish law quoted above obliged its government to develop and publish a strategy of support and assistance for people wishing to exit prostitution within ten months of the law coming into force. As the Scottish Government has already planned and partially implemented a new infrastructure to offer people in prostitution better support, my bill will give the Scottish Government the responsibility to drive and oversee the delivery of this right to support outright.

Financial implications

I believe the proposals would have minimal financial impact on the Scottish Government in the medium term.

It has been estimated that the social and economic cost to the UK of human trafficking for the purposes of sexual exploitation alone are £890 million of which a proportion will be incurred in Scotland – in 2009 it was estimated that 5% of organised crime groups in Scotland were involved in prostitution.¹⁶⁷ Reducing the market for commercial sexual exploitation will reduce this cost to society.

There will be some cost connected to raising public awareness of the change in the law although this need not be excessive, which will need to be borne by central government. For example, the Scottish Government engaged in an awareness raising campaign in 2016-17 on new offences relating to sharing of intimate images without consent (so called “revenge porn”) which cost £92,926.60.¹⁶⁸

There may be some costs incurred in enforcing and prosecuting the new offence. There would likely be short term training costs to ensure officers and prosecutors are familiar with the offence but in the longer-term prostitution and trafficking offences should reduce. With all criminal enforcement where greater priority and funds are applied greater results will be seen, as was the case in Sweden in 2010 following the introduction of a new human trafficking and prostitution strategy.¹⁶⁹ Police Scotland’s operational priorities already include serious organised crime and protecting people at risk of harm, including victims of human trafficking. The new offence I propose will be another tool to assist Police Scotland achieve these priorities. Analysis by the University of East Anglia of a prostitution strategy adopted in Ipswich following the murders of five women in prostitution in 2006, which focussed on arresting kerb crawlers, (but not arresting people for soliciting) and assisting those in prostitution to access services and exit prostitution found that “The economic analysis of the Strategy’s activity through the comparison of estimated professional hours as set against the potential costs to the criminal justice system showed that these costs are reduced from approximately £154,731 to £72,324 per annum, so that the work of the Strategy is reducing the costs to the criminal justice system by 55%.”¹⁷⁰

The proposed Bill would give individuals a statutory right to support, which would put a responsibility on the Scottish Government to ensure that this is delivered. This will of course have financial implications, but the Scottish Government has already committed

¹⁶⁷ Scottish Government, *Serious Organised Crime (SOC) in Scotland: A Summary of the Evidence* November 2017, pp. 27-28, <https://beta.gov.scot/publications/marketing-https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/12/serious-organised-crime-soc-scotland-summary-evidence/documents/00528019-pdf/00528019-pdf/govscot:document>, (accessed 14 May 2024).

¹⁶⁸ Scottish Government, Marketing Spend 2016-17, <https://beta.gov.scot/publications/marketing-spend-2016-2017/>; (accessed 14 May 2024); Scottish Government, “Sharing images without consent”, 3 July 2017, <https://news.gov.scot/news/sharing-images-without-consent>, (accessed 14 May 2024).

¹⁶⁹ M. Waltman, “Sweden’s Prohibition of Purchase of Sex”.

¹⁷⁰ G. Boswell et al., “Findings from the University of East Anglia’s Evaluation of the Ipswich/Suffolk Multi-Agency Strategy On Prostitution Following The Five Murders In 2006”, *Law Review*, 10, 2013, https://ueaeprints.uea.ac.uk/55750/1/EVISSTA_paper.pdf, (accessed 14 May 2024).

to create a new national support pathway as well as a new national hub for specialist support services, both of which include help for those who wish to exit prostitution. The timeline given in its strategy seeks to establish these before the end of 2024, which means that a considerable amount of the funding required will not be new. As other countries adopting a Nordic Model approach have observed, increased numbers of women in prostitution accessed exiting services following the new law coming into force, which would put an additional burden on funding.

There may therefore be some initial increased costs involved in ensuring that all those who would like to exit prostitution have access to appropriate support. The Scottish Government has funded some projects to support women exiting prostitution under the violence against women funds for 2017-20. For example, the SACRO Another Way service has been granted funds of £37,893.00 per year for those three years.¹⁷¹

However, academic research on how people exit prostitution has concluded that there are significant potential cost savings over the long term by helping people to exit successfully. These cost savings would be seen in areas such as: health care, social care for children, addiction treatment, and criminal justice enforcement, i.e. across central and local government and NGOs.¹⁷² The evaluation study of the exiting strategy put in place in Ipswich estimated an approximate saving of £2 for every £1 spent within the strategy.¹⁷³ In time, as there is less demand for prostitution resulting from the deterrent effect of the offence of purchasing sexual services, I would expect the number of people in prostitution, and who may therefore use support services to exit, to fall.

There is unlikely to be any additional costs on businesses. Individuals who face prosecution could face additional costs.

Implications for equalities

I believe prostitution is also a cause and a consequence of gender inequality. We will not achieve our aims of building a Scottish society in which men and women thrive as equals if it remains acceptable for people (mostly men) to buy sexual access to someone else's body (most often a woman's). In order to reduce violence against women and girls, and to change the attitudes and behaviour which allow it to continue, I believe we must seek to reduce demand for commercial sexual exploitation and enable women to exit prostitution unencumbered by a criminal record. This would be achieved through my proposed Bill. It aims to address the demand for prostitution, challenging the

¹⁷¹ Scottish Government, *Equally Safe (Violence Against Women and Girls) Fund 2017-2021*.

¹⁷² R. Matthews et al., *Exiting Prostitution - a study in female desistance*, Palgrave Macmillan, 2014, p. 128.

¹⁷³ R. Matthews et al., *Exiting Prostitution - a study in female desistance*, Palgrave Macmillan, 2014, p. 128.

attitudes which perpetuate that behaviour and reduce the resulting inequality between men and women.

Poverty or financial pressures are a common reason why many people enter, or remain in, prostitution.¹⁷⁴ I believe that building a more equal society includes working towards greater opportunities for everyone and not accepting the status quo. Prostitution is not a long-term solution to poverty and inequality. Instead, it exacerbates a cycle of poverty, places already vulnerable people at risk of additional harm and compounds economic gender inequality.

I believe the Bill will also have a positive impact on people from minority ethnic groups. The Scottish Government's 2016 research found evidence suggesting that a significant proportion of people involved in prostitution in Scotland are foreign nationals.¹⁷⁵ National Referral Mechanism statistics also show that the vast majority of adults referred as potential victims of human trafficking for sexual exploitation from Scotland are foreign nationals. The Equality and Human Rights Commission inquiry into human trafficking in Scotland identified a situation of "racialisation of sexual exploitation where individuals want sex from 'exotic others'".¹⁷⁶ The reduction in demand for prostitution and its associated harms and the provision of support for those exiting prostitution is likely to reduce ethnicity related inequality.

Sustainability

The proposed Bill seeks to create a fairer society by reducing exploitation, improving the physical and mental health of persons involved in prostitution and improving the overall culture of gender equality. All of this benefits the wider community and improve sustainability.

As mentioned above the social and economic costs of human trafficking for sexual exploitation are significant.¹⁷⁷ My proposed Bill will reduce the market for human trafficking and therefore enable those funds to be deployed elsewhere.

It is not anticipated the proposed Bill would have a significant impact on the environment, nor impact governance issues.

¹⁷⁴ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 7 and 11.

¹⁷⁵ Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 7, 25, 30 and 45.

¹⁷⁶ Equalities and Human Rights Commission Scotland, *Inquiry into Human Trafficking in Scotland*, Edinburgh, 2011, https://www.equalityhumanrights.com/sites/default/files/inquiry_into_human_trafficking_in_scotland-full-report.pdf, (accessed 14 May 2024), p. 37.

¹⁷⁷ See page 44 of this document.

Questions

[Please download this pdf document, fill in the questions below and email the document to ash.regan.msp@parliament.scot] **For longer answers, you may wish to draft your response separately and then paste the text into the relevant field.**

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
an individual – in which case go to Q2A
on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g., clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g., whether it is the view of particular officeholders or has been approved by the membership as a whole).

3. Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

I would like this response to be published anonymously

I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Data protection declaration

I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

Please ONLY tick this box if you are UNDER 12 years of age.

YOUR VIEWS ON THE PROPOSAL

1. What is your view of introducing a new criminal offence of paying for sexual services? [This is the only mandatory question]

Fully supportive
Partially supportive
Neutral (neither support nor oppose)
Partially opposed
Fully opposed
Don't want to express a view

Please explain the reasons for your response.

2. What is your view of repealing section 46 of the Civic Government (Scotland) Act 1982: the offence of soliciting for the purposes of prostitution in a public place?

Fully supportive
Partially supportive
Neutral (neither support nor oppose)
Partially opposed
Fully opposed
Unsure

Please explain the reasons for your response.

3. What is your view of repealing previous convictions under section 46 of the Civic Government (Scotland) Act 1982: the offence of soliciting for the purposes of prostitution in a public place?

Fully supportive
Partially supportive
Neutral (neither support nor oppose)
Partially opposed
Fully opposed
Unsure

Please explain the reasons for your response.

4. What is your view of giving people in prostitution the legal right to support?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

5. What is your view of including provisions for exiting services in the bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

6. How should the proposed offence be enforced. Are there any particular techniques which you think should be used or obstacles which might need to be overcome?

7. Do you believe that there are any new policing powers that would be necessary or beneficial for enforcing this offence?
8. Please indicate which of the following forms of support and/or services you think should be provided for people in prostitution and exiting prostitution (tick as many as you agree with):

- Exiting support workers
- Drop in services
- Outreach visits to brothels, saunas and other similar premises
- Specialist medical consultations
- Access to drug and alcohol services
- Access to counselling and psychological treatment services
- Specialist housing schemes for women in crisis
- Support to access education, training or work
- Financial advice, debt support etc
- Other (please give details)

Please explain the reasons for your response and provide examples of best practice.

9. Please indicate which of the following ways of raising awareness of the new offence you believe to be most effective (tick as many as you agree with):

- Internet and social media advertising
- TV advertising
- Print media advertising
- Billboards in public places and transport
- Leaflets to households
- Materials to support and exiting services for people involved in prostitution
- Materials targeted at areas where prostitution is known to occur
- Materials to health and mental health services
- Materials to further education sector
- Inclusion in secondary education (Relationship, Sexual Health, Parenting classes)
- Other (please give details)

Please explain the reasons for your response.

10. Do you think legislation is required, or are there are other ways in which the Bill's aims could be achieved more effectively? Please explain the reasons for your response.

Resource implications

11. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

a significant increase in costs
some increase in costs
no overall change in costs
some reduction in costs
a significant reduction in costs
do not wish to express a view

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

Equalities

- 12: Any new law can have an impact on different individuals and groups in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

Sustainability

13. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

Please download this pdf document, fill in the questions and email the document to ash.regan.msp@parliament.scot

If you would like a word version of this document to fill in please email Ash.regan.msp@parliament.scot

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g., whether it is the view of particular office-holders or has been approved by the membership as a whole).

Please include with your response contact details (e-mail if possible, or telephone or postal address) so we can contact you if there is any query about your response.

Where to send responses

Responses prepared electronically should be sent by e-mail to:

Ash.Regan.msp@parliament.scot

Responses prepared in hard copy should be sent by post to:

Ash Regan MSP
M3.01a
Scottish Parliament
Edinburgh EH99 1SP

Deadline for responses

All responses should be received no later than **30 September 2024**. Please let me know in advance of this deadline if you anticipate difficulties meeting it.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website www.unbuyable.org. Published, responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content or may edit the content itself and publish a redacted version.

I expect to prepare a summary of responses that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The summary may cite, or quote from, your response (unless it is “not for publication”) and may name you as a respondent to the consultation (unless your response is anonymous).

If I lodge a final proposal, I will be obliged to provide copies of responses (other than confidential responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as **anonymous**, please state this clearly. You still need to supply your name, but if the response is treated as anonymous, only an anonymised version will be published or provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response to be treated as “not for publication” please state this clearly. If the response is treated as confidential it will not be published or provided to SPICe.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for your response not to be published. I will not publish your signature or personal contact information.

Information on how I process your personal data is set out in my **privacy notice**, which can be found here <https://www.unbuyable.org/privacy-policy>. Please confirm that you have read the privacy notice by ticking the box below.

I confirm that I have read and understood the **privacy notice** (referred to above) to this consultation which explains how my personal data will be used.

If a respondent is under 12 years of age, I will need contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

Please tick this box if you are under 12 years of age.

I may also edit any part of your response which I think could identify a third party unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.