

Scottish Women's
Convention's response to Ash
Regan's, MSP, consultation on:

Proposed Prostitution (Offences and Support) (Scotland) Bill



September 2024

Premise

Currently in Scotland, women in prostitution face increased likelihood of criminalisation and discrimination across their lives as a result of patriarchal exploitation. The following consultation aims to assess whether there are potential alternatives through the creation of a new Bill which will aim to reduce demand for prostitution. The 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
- Provide support for those selling sexual acts or exchange sexual acts through a statutory right to support while they are involved in prostitution and exiting prostitution

After Ash Regan, MSP, has received consultation responses, these responses shall be analysed, with a final proposal lodged to the Scottish Parliament alongside a summary of responses. If this final proposal is supported by 18 MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, Ash Regan, MSP, will have the right to introduce a Member's Bill.



The Scottish Women's Convention (SWC)

The SWC is funded to engage with women across Scotland to ensure that their views are represented in policy and decision-making processes. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at Scottish, UK and international levels.

The SWC gathers information using different methods, including roadshows, thematic conferences, surveys, and both in-person and online roundtable events. This submission presents the views of a range of women, reflecting their opinions, ideas and lived experience. Working together with many other equalities organisations and community groups, we use our broad network to ensure that women from a range of backgrounds are heard and acknowledged. We are continually reviewing innovative ways of engaging with women and developing our trauma-informed and culturally sensitive practice to support vital contributions from as many women as possible.

Our Response

What is your view of introducing a new criminal offence of paying for sexual services?

Fully supportive

The Scottish Women's Convention (SWC) consider prostitution to be an act of violence against women and girls, aligning the view held by the Scottish Government. We believe that prostitution equates to that of exploitation and is fuelled by women and girls' continued disadvantage and the systemic patriarchal attitudes observed across society. It is this patriarchal attitude which has entitled men for generations to women's bodies, continually using and abusing women and girls for sexual gratification. The patriarchal system has also provided protection for men's dangerous and violent behaviour, placing onus upon women in prostitution, viewing prostitutes as morally dubious, resulting in regular stigmatisation and societal abuse. Women in prostitution are therefore faced with poor access to public services, low qualities of life and systemic poverty, while those using sexual services escape societal or judicial retribution. Similar views were reported during a SWC conference in 2016, *Women for Sale: The Criminalisation of the Purchase of Sex*, where women reported the need for major societal change with regards to the overt sexualisation of women¹. We therefore recommend the creation of a criminal offence of paying for sexual services, placing the focus on men's behaviour, challenging the status-quo, while enabling the improvement of life quality for those in prostitution.

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

Fully supportive

Current legislation which covers prostitution, such as the Civic Government (Scotland) Act 1982, places women in further hardship, while ignoring the buyers of sexual services. Women in prostitution commonly experience poverty and are more likely to have suffered multiple adverse childhood experiences². Through the continued focus on criminalisation of these women, opportunities to exit prostitution are limited. Fines are the elected penalty for those found to be carrying out prostitution, pushing many into further financial precarity and an increased reliance on profits made from prostitution. In cases where fines cannot be paid, vulnerable women are handed harsher sentences, and at times, are placed into the prison system. Criminal records create a significant barrier to potential employment options, again, preventing women in prostitution from seeking alternative financial opportunities. Therefore, it can be said that through section 46 of the Civic Government (Scotland) Act 1982, women in prostitution are placed at a higher risk of poverty and destitution, limiting their ability to seek alternatives.

In addition, criminalisation of prostitution prevents women from accessing vital services, due to perceived and experienced stigma. Stigma acts as a significant social mechanic, controlling

¹ The Scottish Women's Convention. (2016). *Women for Sale: The Criminalisation of the Purchase of Sex*. Contact info@scottishwomensconvention.org for access.

² Hanlin, H et al. (2024). Exploring the Link Among Adverse Childhood Experiences and Commercial Sexual Exploitation. *Child Protection and Practice*, 121(2).

access to services and public life³. Women in prostitution are a group who have been historically demonised throughout Scottish society, particularly street-based prostitutes and those using illegal substances. This demonisation has facilitated physical, emotional and financial abuse, most often at the hands of men, placing women in dangerous situations.

Furthermore, from 2023 SWC work surrounding drug use in Scotland, we know that stigma plays a major role in preventing drug users from gaining access to vital services, such as healthcare and justice. Women explained that those using drugs were often shunned by society, and through strict regulations surrounding sobriety and mental healthcare, were prevented from utilising vital services. Mothers who used substances were particularly disadvantaged, with few rehabilitation and recovery services providing childcare. The stigma facing this group was also reported to be high, with societal expectations surrounding motherhood placing increased stress on these women. With Encompass Snapshots data included within the accompanying consultation document, estimating that between 47% and 83% of women in prostitution supported had disclosed substance use, it is vital that barriers which prevent this group from accessing help are removed. Through the decriminalisation of prostitution as an act, the Scottish Government have the opportunity to rectify the historical mistreatment of women in prostitution, fulfilling their statutory duty to all members of Scottish society.

- “Don’t criminalise people using drugs for their own consumption or women involved in prostitution, as this can impact future...job prospects.”
- “As a family we encountered stigma from [drug recovery] staff ignoring us, refusing to include us in our loved one’s treatment, refusing to converse on the phone.”
- “What we need to do is offer safe spaces for women to come and recover, not just from substance use, [but also from] domestic abuse, mental health, all of the issues that go alongside substance use, but to stay with their babies.”

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

We support the repealing of previous convictions under section 46 of the Civic Government (Scotland) Act 1982, as this should reduce the likelihood of further negative consequences faced by those convicted. As stated, women in prostitution, often face difficult financial situations, limiting their ability to enter alternative employment. Previous criminal convictions, further worsen this situation for women in prostitution, with historic acts limiting their life chances to move on.

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

Fully supportive

The SWC fully supports the inclusion of the legal right to support for those in prostitution. Women in prostitution are commonly in vulnerable positions and are likely to have been a victim

³ Jobe, A. et al. (2022). Stigma and Service Provision for Women Selling Sex: Findings from Community-Based Participatory Research. *Ethics and Social Welfare*, 16(2), pp. 112-128.

of a violent crime during their life. We suggest that the majority of these women require substantial support, for example financial aid and advice, healthcare and specialised services. The integration of a statutory right to support women in prostitution will likely improve their general life quality, enabling access to public services. We propose that finances gathered through the punishment of buyers should be ring-fenced to provide good quality resources for women in prostitution, and those attempting to leave.

However, many local authorities currently lack sufficient resources to fulfil multiple statutory duties across the country, with women being continually let down. For example, we have heard from women providing support to those fleeing domestic violence that service-users have remained in refuges for long periods of time, sometimes with children - women in refuges remain in a refuge for an average of 142 days⁴. This accommodation can be unsuitable for their needs, with fundamental duties not being met. It can be said that local authorities are struggling to manage increase requests for support across public services, with housing just one example. Ensuring that local authorities receive improved resourcing is therefore key if the Scottish Government hope to include a specific inclusion of a right to support for women in prostitution.

- “...women in our refuge, it used to be about six months maximum to get them a place somewhere else...but now it's taking two years. These are women, vulnerable women, who need accommodation...And it can be made even more difficult if they have children.”

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

Fully supportive

We fully endorse the inclusion of provisions for exiting services in the Bill. When one considers the impact of similar approaches on an international level, such as the Nordic Model, this has seen a considerable decrease in visible levels of prostitution and in the number of men reporting usage of sexual services. However, it can be argued that through a lack of sufficient support networks put in place alongside the policy decisions, the lived experience of women in prostitution has been lost across narratives.

There is some evidence to suggest that the reduction in street-based prostitution has resulted in a poorer financial situation for street-based prostitutes, and has also increased levels of 'hidden' prostitution: prostitution, which is carried out in homes, illegal brothels, etc. Hidden prostitution places women in prostitution at a high risk of violence and increased exploitation, with the 'hidden' nature obscuring dangerous behaviour. Furthermore, in Sweden, where the Nordic Model has been widely implemented, a large portion of funding has been focused to increase policing rather than support services, and that the services on offer lack emphasis on healthcare, such as STI testing, and legal services⁵. To avoid women in prostitution being forced into further precarity and danger, it is imperative that the Scottish Government include specific provisions of exit services. In addition, these exit services must be properly resourced through increased funds for local authorities, as stated in our response to question four.

⁴ Scottish Government. (2023). Homelessness in Scotland: 2022-23. Available at: [Homelessness in Scotland 2022-23 \(www.gov.scot\)](https://www.gov.scot)

⁵ Vuolajarvi, N. (2021). Criminalising the Sex Buyer: What Must Policymakers Learn from the Nordic Model? Available at: <https://www.lse.ac.uk/research/research-for-the-world/politics/criminalising-the-sex-buyer>

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?

We hold some concerns regarding the enforcement of such an offence. Women in prostitution have traditionally negative views of law enforcement staff, as a result of continual criminalisation and stigmatising attitudes, as well as experiences of violence. As has been noted by the previous Police Scotland Chief, Sir Iain Livingstone, the Scottish police force is institutionally misogynistic and sexist, contributing to discriminatory behaviour⁶. Women in prostitution regularly receive this abuse, with complaints of sexual assault and violent crime being dismissed⁷. Therefore, we hold concern that without effective training being developed for police officers in Scotland, which actively tackles misogyny and stigma against women in prostitution, increasing the level of engagement between the two groups could have negative consequences.

Additionally, consideration of online technologies and prostitution must be made within the development of this Bill. As stated in the accompanying document, accessing sexual services is increasingly moving online, contributing to a sense of anonymity for purchasers. This anonymity may result in more complex policing strategies being required, alongside the development of a 'black market' of sexual services. Assessments of models used to reduce prostitution have been highly variable, due to a lack of reliable data. For example, the stigma experienced by women in prostitution can create a significant barrier to accessing services. Some evaluation of the approach taken in Sweden has found that there has been a marked reduction in prostitutes working on the streets, however, there has been an increase in online prostitution⁸. It can be said that this increase is due to a general increase in online technologies during the relevant time period, however, this does not excuse a lack of consideration of online prostitution, and instead presents an argument for the inclusion of this issue. We would therefore recommend increased consideration of the online element of prostitution, allowing for the futureproofing of the proposed Bill.

Please indicate which of the following forms of support and/or services you think should be provided for people in prostitution and exiting prostitution. Please explain the reasons for your response and provide examples of best practice.

- a. Exiting support workers**
- b. Drop-in services**
- c. Outreach visits to brothels, saunas and other similar premises**
- d. Specialist medical consultations**
- e. Access to drug and alcohol services**
- f. Access to counselling and psychological treatment services**
- g. Specialist housing schemes for women in crisis**

⁶ BBC News. (2023). Police Scotland Chief Says Force is Institutionally Racist. Available at: <https://www.bbc.co.uk/news/uk-scotland-65706748>

⁷ Bowen, R. et al. (2021). Why Report? Sex Workers Who Use NUM Opt-Out Sharing Victimisation with Police. Sexuality Research and Social Policy, 18(1), pp. 885-896.

⁸ Della Guista, M. et al. (2021). Quashing Demand or Changing Clients? Evidence of Criminalisation of Sex Work in the United Kingdom. Southern Economic Journal, 8(2), pp. 527-544.

- h. Support to access education, training or work**
- i. Financial advice, debt support, etc.**

We believe that all of the proposed forms of support and/or services should be provided for women in prostitution and exiting prostitution. As this group is continually disadvantaged throughout interactions with public services, significant support is required to improve life qualities. It is also vital to note the importance of good quality services for these women which aim to provide comprehensive support for exiting prostitution. Without such services, exiting becomes significantly more difficult, weakening the impact of any resultant law changes.

Please indicate which of the following ways of raising awareness of the new offence you believe to be most effective. Please explain the reasons for your response.

- a. Internet and social media advertising**
- b. TV advertising**
- c. Print media advertising**
- d. Billboards in public places and transport**
- e. Leaflets to households**
- f. Materials to support and exiting services for people involved in prostitution**
- g. Materials targeted at areas where prostitution is known to occur**
- h. Materials to health and mental health services**
- i. Inclusion in secondary education**

Of the options provided we believe that a, b, d, f, g, h and i would be most valuable forms of awareness raising. We propose that through a combination of online and in-person advertisement a wide range of people can be targeted, including women who engage in prostitution and men who currently seek sexual services. Through targeted approaches in areas where prostitution is known to occur, women in prostitution are provided with increased knowledge surrounding their right to support, potentially leading to an increase in usage of support services.

Also, we believe that it would be valuable for specific mention of prostitution to be provided within secondary education. It can be argued that sex and relationship education provide a setting for preventative action, tackling misogyny and patriarchal assumptions surrounding women's bodies. Currently, women and young women have explained that sex and relationship education lacks information surrounding consent and negative relationship behaviours, contributing to dangerous mindsets amongst young men. We would therefore recommend significant shifts across sex and relationship education, with an inclusion of the lived experience of prostitution and associated harms.

Equalities

Any new laws 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, pregnant 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.

The proposed Bill will directly impact women, as women make up the majority of those in prostitution. Through the removal of criminal convictions against women, this will have a positive effect on this group and their life quality. Additionally, the inclusion of a right to support and exit services, will most likely positively impact women in prostitution, providing them with sufficient statutory support. However, as stated, these support services must be properly resourced for the Bill to have the intended consequences.

Alternatively, we would like to draw attention to the lack of consideration of migrant and immigrant women within the development of the Bill. As stated within the associated document presented by Ash Regan, MSP, “60% [of those in prostitution] have been trafficked, who have “enormously restricted life choices” of which many “have been physically coerced into prostitution””. Women who have been victims of trafficking face countless challenges, with their immigration status preventing them from accessing public services and justice. A recent Scottish Parliament Cross Party Group on Commercial Sexual Exploitation highlighted the injustices faced by trafficked women, with some forced into sexual slavery. These women have little recourse to assistance due to their uncertain immigration status, placing them into further precarity.

It can be said that through the criminalising of the buyer of sex, traffickers are less likely to operate in Scotland, however, one must consider the lived impact on women currently exploited by traffickers, particularly as these women make up the majority of those in prostitution. With the Scottish Government holding control over human trafficking as a devolved power, we recommend further consideration given to trafficked women and migrant women in prostitution, to ensure that these women are effectively protected when attempting to access exit and support services.

Sustainability

Any new laws 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 proposals could impact any of these areas?

It can be said that through propositions made within the Bill surrounding exit services, women in prostitution are more likely to access good quality work. Good quality work is vital in creating a healthy society for the future, and therefore, these proposals further the Scottish Government's aim of fair work for all in Scotland. It can also be said that through the proposed change to the Civic Government (Scotland) Act 1982, women who have been habitually victimised and abused by the patriarchal system are less likely to be purposefully disadvantaged by the Scottish justice system.

Conclusion

Having listened to women, our three key recommendations on this topic are:

- Use funds gathered through the enforcement of the Bill to fund comprehensive support and exit services for women in prostitution.
- Utilise devolved controls around Human Trafficking to provide additional protections for trafficked women in prostitution.
- Consider online technologies' impact on prostitution in Scotland, to futureproof the proposed Bill.

The SWC is grateful for the opportunity to respond to Ash Regan's, MSP, consultation on '**Proposed Prostitution (Offences and Support) (Scotland) Bill**'. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to this topic and its effects on women's equality.

For further information or to share your views, please contact:

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