

# **Prostitution Law Reform (Scotland) Bill**

**A proposal for a Bill to decriminalise activities associated with the buying and selling of sexual services and to strengthen the laws against coercion in the sex industry**

**Consultation by  
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## **FOREWORD**

The purpose of this proposed Bill is to promote the safety and uphold the rights of people selling sex in Scotland. It seeks to reform and repeal existing laws, which criminalise activities associated with sex work, and introduce more robust safeguards against coercion and exploitation.

It is important to stress that this proposed Bill does not argue that the sex industry is free from violence and exploitation. Sex workers themselves can amply testify to the fact that both are present in the context of their work. Criminalisation itself has been recognised to create a fertile ground for human rights abuses to flourish. This proposed Bill represents a practical solution to these issues and it has been guided by what people currently selling sex say that they need. The focus, therefore, is first and foremost on safety and rights.

There is widespread consensus that people selling sex need greater protection from coercion. This proposal seeks to strengthen those protections, ensuring for the first time that sex workers in Scotland would have meaningful access to labour rights, such as the ability to sue their managers for unpaid wages and unlawful deductions. These basic rights have not before been accessible to sex workers, because protections such as these are legally and practically incompatible with criminalised workplaces.

Recent discussions around sex work have been based on harmful and misleading assumptions, and the focus has been on failed models from other jurisdictions such as Sweden. For example, sex workers' vulnerability to violence is treated as an argument for further criminalisation, despite the fact that sex workers are made vulnerable to violence by criminalisation. This proposed Bill adopts an evidenced-based approach to the issue and is grounded in an awareness of the multiple harms caused by criminalisation. It encourages the authorities in Scotland to switch their attention away from arresting and prosecuting sex workers and towards protecting them from violence.

This proposed Bill advocates the New Zealand model: a set of laws and policies which prioritise the safety, rights and health of people currently selling sex. More than ten years ago New Zealand adopted world-leading legislation, based on pragmatic policy positions supported by sex workers themselves, and this approach has since been widely recognised to have delivered substantial material benefits for sex workers and for society.

I hope this consultation will generate a lively discussion on how best to keep sex workers safe, rather than another round of the tired discussions which centre round the feelings of those who would wish the sex industry away. It is time to move away from policy debates that exclude those most affected, and instead let people currently selling sex lead the conversation. I have, in formulating these proposals, listened above all to them, and I will continue to do so throughout this process. Finally, I hope the subsequent Bill will pave the

way for a legislative framework which affirms and upholds the rights, safety and health of everyone who sells sex in Scotland: a piece of legislation fit for a forward-thinking and progressive nation.

A handwritten signature in black ink, appearing to read 'Jean Urquhart', written in a cursive style.

Jean Urquhart MSP

## **HOW THE CONSULTATION PROCESS WORKS**

This consultation is being launched in connection with a draft proposal which I have lodged in the Scottish Parliament.

A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, I would expect to lodge a final proposal in the Parliament along with a summary of the consultation responses.

Lodging a draft proposal in this way is normally the first stage in the process of introducing a Member's Bill. Under the Parliament's rules, if a final proposal secures the necessary cross-party support from other MSPs, the member who lodged it secures the right to introduce a Member's Bill. However, that right may only be exercised until the beginning of June in the penultimate year of the Parliamentary session – and since that deadline has already passed, I will not be able to introduce a Bill on the strength of the current proposal (regardless of the level of support it obtains from other MSPs).

Instead, my aim in lodging this draft proposal is to begin a debate on how to reform the law, in the hope and expectation that a Bill can be introduced – and passed – in the new session (beginning after the May 2016 election).

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, identifying equalities issues, suggesting improvements, considering financial implications and, in general, assisting in ensuring that the resulting legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

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

Additional 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 under Parliamentary Business/Bills/Proposals for Members' Bills/Session 4 Proposals  
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>

## EXECUTIVE SUMMARY

This draft proposal is intended to reduce the violence experienced by sex workers, to give sex workers rights in their interactions with clients and managers, to reduce the number and power of managers, and to promote sex workers' safety, health, and labour rights. Unlike previous moves to change prostitution law, these proposals have been designed in close consultation with current sex workers, whose voices and experience are all too often ignored. Their views are consistent: New Zealand's legislative model on sex work has been demonstrated as the most effective. This consultation will therefore consider the following changes to the law, in line with the New Zealand model.

### 1. **Permitting more than one sex worker to work from the same premises**

A lone sex worker based at home is currently operating within the law, but at much greater risk of violence and theft. Two or more sex workers sharing a space for safety are breaking the law, a provision that directly increases sex workers' vulnerability.

**Specific proposals:** Repeal Section 11(5) of the Criminal Law (Consolidation) (Scotland) Act 1995; legislate to permit up to four sex workers to work collectively from the same premises; introduce a licensing system for premises in which more than four sex workers operate.

### 2. **Make street-based sex work safer**

Current provisions on kerb-crawling and soliciting significantly decrease the time that street-based sex workers have to assess safety and agree services with clients. Both forms of criminalisation have been shown to lead to increased levels of violence.

**Specific proposals:** Repeal the Prostitution (Public Places) (Scotland) Act 2007; repeal Section 46 of the Civic Government (Scotland) Act 1982.

### 3. **Strengthen measures against the coercion of sex workers**

Current legislation on "procuring" is ineffective and not based on the protections that sex workers need. Existing measures against procuring are extended only to women.

**Specific proposals:** Repeal Section 7 of the Criminal Law (Consolidation) (Scotland) Act 1995; introduce more stringent provisions against coercion in the sex industry for all people, regardless of genders.

### 4. **Permitting sex workers to have joint finances with their families**

The law assumes that where a sex worker and any other person have overlapping finances, coercion must be in operation. Sex workers have partners and children and flatmates just like anyone else, and only actual coercion should be criminalised.

**Specific proposals:** Repeal Section 11(1) – (4) and 13 of the Criminal Law (Consolidation) (Scotland) Act 1995; introduce more stringent provisions against coercion as above.

## INTRODUCTION: A RADICAL POLICY CHANGE FOR SCOTLAND

1. My proposed Bill is called the Prostitution Law Reform (Scotland) Bill. It is focussed on repealing certain laws that exist in Scotland that criminalise activities associated with the buying and selling of sexual services. These laws prevent sex workers, in a real and direct way, from adopting safe working practices. For example, the laws in Scotland mean that indoor sex workers are forced to work alone and are prevented from adopting the simple and effective safety strategy of sharing a working space with a friend. Street based sex workers routinely face arrest, which forces them to work in dark and isolated places away from police attention, which increases the likelihood that they will experience violent attacks. In addition to repealing the laws that prevent sex workers from being able to work safely my Bill also seeks to strengthen the laws against coercion in the sex industry.
2. In the proposed Bill a sex worker will be defined as any person who voluntarily offers commercial sexual services.<sup>1</sup> The term ‘voluntarily’ is used intentionally to recognise the agency of people who sell sexual services. The proposed Bill will not use the language of ‘choice’ as I recognise that people’s options and choices, whether they sell sex or not, are limited due to structural inequalities such as poverty, sexism, racism, transphobia and homophobia. It is important to recognise, however, that even in the face of limited options, or dire financial need, the decision to sell sex can still be made voluntarily i.e. without external force or coercion. There is an inherent coercion built into our economic system to provide for ourselves but this is a coercion felt by us all and is not unique to sex workers. Various factors, including our gender and socio-economic background, affect our opportunities and life trajectories and few people have the privilege of absolute unfettered choice in their lives. The recognition of a sex worker as a person with agency represents a radical shift in policy for Scotland, which at present defines the buying and selling of sexual services exclusively as form of exploitation and violence against women in which sex workers are only ever seen as victims.<sup>2</sup>
3. Scottish Government policy states that prostitution “[h]as been shown to be harmful for the individual women involved and ha[s] a negative impact on the position of all women through the objectification of women’s bodies” and “[t]his happens irrespective of whether individual women claim success or empowerment from the activity.”<sup>3</sup> This

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<sup>1</sup> *Commercial sexual services* means sexual services that involve physical participation by a person in sexual acts with, and for the gratification of, another person; and are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

<sup>2</sup> Scottish Government (2009) *Safer Lives: Changed Lives – A Shared Approach to Tackling Violence Against Women*. Available at <http://www.scotland.gov.uk/Resource/Doc/274212/0082013.pdf>

<sup>3</sup> Ibid at pp.7/8

definition sets up and reinforces a simplistic dichotomy in how prostitution is understood between 'oppression' and 'empowerment' with the government imposing its own view on which of these experiences is the 'truth', disregarding sex workers' own and more complex perspectives on their lives.

4. I reject the theory that sex work is inherently oppressive and I also reject the idea that it is inherently empowering – both are one-dimensional and inadequate representations of the realities of sex work.<sup>4</sup> I believe that some sex workers experience their work as a form of violence and exploitation. I also believe that some sex workers experience their work as a positive and affirming aspect of their lives. Most significantly, I believe that many sex workers have experiences that fall at many different points between these two extremes. There is no one truth about what sex work is and how it is experienced and any attempt to impose such a truth is rooted in ideology rather than in the lived experiences of those who sell sex. Not only does the persistent conflation of sex work with 'commercial sexual exploitation' and violence against women fail to reflect the reality of sex workers' lives but it also causes real harm to sex workers. It ignores sex workers' own understandings and experiences of violence and impedes harm reduction strategies, which are seen as condoning the 'violence' inherent in sex work. Furthermore, it misdirects energy that could go into designing laws and policies to tackle actual violence, which are instead directed into attempts to 'eradicate' prostitution, attempts which consistently fail.<sup>5</sup>
5. I also believe it is profoundly wrongheaded to oppose the rights of sex workers on the basis that prostitution has a "negative impact on the position of all women". There is ample evidence showing that criminalisation harms sex workers. To assert sex work's supposed "negative impact on all women" as an argument for criminalisation risks reinforcing the idea that women are divisible into categories of good and bad, and that the rights of 'bad women' must be sacrificed, or at least treated as collateral damage, in order to uphold the rights of 'good women'. All women are harmed by the idea that a woman's right to justice and safety should be dependent upon an arbitrary measure of her moral or public standing.

### **Challenging Misconceptions about Sex Workers**

6. There are many misconceptions and stereotypes as to who sex workers are and what their lives are like. Policy-makers frequently reduce sex workers to a single homogenous group arguing that they all share the same characteristics. I believe that

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<sup>4</sup> See Weitzer, R. (2009) 'Sociology of Sex Work' *Annual Review of Sociology*, 35, 213-234, which explores in detail the creation of the 'oppression paradigm' and the 'empowerment paradigm'.

<sup>5</sup> Ibid. See also Brooks-Gordon, B. (2006) *The price of sex: Prostitution, policy and society*, Cullompton: Wilan Publishing and Kinnell, H. (2008) *Violence and Sex Work in Britain*, Cullompton: Wilan Publishing



Scotland's sex work policy should be grounded in an awareness of the diversity of sex workers and their experiences. The existing approach, which is based on ideology and not supported by the empirical evidence, is wholly inadequate. In Scotland people sell sex in a range of different ways. Some people work on the streets, some work in saunas or massage parlours, some work independently from their own homes, some work via escort agencies, others work collectively from private flats with friends, and others visit clients in their homes and in hotels. Sex is sold in Scotland by women, including transgender women, by men, including transgender men, and by people who are gender non-binary. Some people sell sex because they are living in poverty and are suffering under government cuts to benefits, some sell sex to help fund their studies, some to fund drug use, others sell sex sporadically to fund holidays or special purchases and many sell sex simply because it enables them to support themselves and their families. I reject the notion of a 'representative sex worker' and believe that the only thing that unites all sex workers is their diversity. One study, which reviewed 681 different academic articles on sex work, identified "at least 25 types of sex work according to worksite, principal mode of soliciting clients, or sexual practices."<sup>6</sup> To suggest that the experiences of people across all these different types and contexts of sex work is identical and always a form of violence collapses incredible diversity and complexity into a 'single story':

"The single story creates stereotypes. And the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the only story."<sup>7</sup>

7. Despite the proliferation of academic research on sex work, which highlights incredible diversity and complexity in sex workers' lives, over-generalisation of individual research projects is a serious concern.<sup>8</sup> Often a research report, which reaches a conclusion *about the particular sample that took part in that specific research*, will be used to generalise for all people who sell sex. For example, a frequent claim is made that 'the majority' of women in prostitution began selling sex when they were minors and research that was undertaken specifically with people who were involved in youth prostitution is used to support this claim. In a recent public consultation on proposals to criminalise the purchase of sex in Scotland, it was said that "75% of women in

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<sup>6</sup> Harcourt, C. and Donovan, B. (2005) "The many faces of sex work." *Sexually Transmitted Infections* 81.3: 201-206, p.201

<sup>7</sup> Chimamanda Adichie (2009) 'The Danger of a Single Story', TED Global 2009. Available at <http://ssw.unc.edu/files/TheDangerofaSingleStoryTranscript.pdf> and [http://www.ted.com/talks/chimamanda\\_adichie\\_the\\_danger\\_of\\_a\\_single\\_story?language=en](http://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story?language=en)

<sup>8</sup> See Weitzer, R. (2010) 'The mythology of prostitution: Advocacy research and public policy' *Sexuality Research and Social Policy*, 7(1), 15-29

*prostitution in the UK* became involved when they were children.”<sup>9</sup> This claim is backed up by reference to an academic paper, which “draws on a recently completed, qualitative and retrospective, study of *juvenile prostitution* in Britain”.<sup>10</sup> Using a research report that specifically focused on “*juvenile prostitution*” and then using the findings to generalise to “*women in prostitution in the UK*” is misleading.

8. For every research report that concludes that the average age of entry into prostitution is below 18 there are an equal number of studies noting that the average age of entry is over 18. In a 2001 study, which questioned 240 female sex workers, the average age that they were first paid for sex was 19 for women working outdoors and 22 for women working indoors<sup>11</sup>. In another study, predominantly with indoor workers, the average age of entry into sex work was 23.<sup>12</sup>
9. Further examples of over-generalisations and misconceptions are found in Scottish policies on sex work and include the idea that sex workers are the victims of childhood sexual abuse<sup>13</sup>; that they all experience violence at the hands of their clients<sup>14</sup>; and that they are psychologically traumatised by their experiences in sex work.<sup>15</sup> The reality is that sex workers are a stigmatised and hidden population and obtaining a representative sample for any research project is impossible.<sup>16</sup> Moreover, many sex work related studies are done without the inclusion of a control group of non-sex workers to thoroughly examine the alleged causal link between the subject of the study (violence, childhood abuse) and sex work. In studies that do use suitable control

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<sup>9</sup> See paragraph 12 of the Consultation Document. Available at [http://www.scottish.parliament.uk/S4\\_MembersBills/Criminalisation\\_of\\_the\\_Purchase\\_of\\_Sex\\_%28%29\\_Consultation.pdf](http://www.scottish.parliament.uk/S4_MembersBills/Criminalisation_of_the_Purchase_of_Sex_%28%29_Consultation.pdf)

<sup>10</sup> Melrose (2000), ‘Ties that Bind: Young people and the prostitution labour market in Britain’. Available at <http://www.women.it/cyberarchive/files/melrose.htm>

<sup>11</sup> Church, S., Henderson, M., Barnard, M., & Hart, G. (2001) ‘Violence by clients towards female prostitutes in different work settings: questionnaire survey’ *British Medical Journal*, 322(7285), 524-525.

<sup>12</sup> Sanders, T. (2005) *Sex Work: A Risky Business*, Cullompton: Wilan Publishing. See p.49

<sup>13</sup> NHS Scotland (2009) ‘Commercial Sexual Exploitation’, available at [http://www.gbv.scot.nhs.uk/wp-content/uploads/2009/12/GBV\\_Commercial-Sexual-Exploitation-A4-81.pdf](http://www.gbv.scot.nhs.uk/wp-content/uploads/2009/12/GBV_Commercial-Sexual-Exploitation-A4-81.pdf) See p.4: “Women in prostitution report much higher levels of violence than other women, including *much higher levels of childhood sexual abuse*.”

<sup>14</sup> Ibid. See p.5: “Vulnerability to other forms of violence is also greater for women in prostitution. Various researchers have documented and analysed the sexual and physical violence *which is the normative experience for women in prostitution*.”

<sup>15</sup> Ibid. See p.5: “In order to cope with [prostitution], many women have to learn to dissociate, which in turn *can cause lasting psychological damage*.”

<sup>16</sup> Kramer and Berg (2003) “A survival analysis of timing of entry into prostitution: The differential impact of race, educational level, and childhood/adolescent risk factors.” *Sociological Inquiry* 73(4): 511-528. See p.515: “Caution must be exercised in interpreting findings generated from any sample of subjects whose inclusion in a study is related to the ability of the researcher to gain access to them, and research with those engaging in prostitution poses no exception.”

groups the results directly challenge the simplistic causal connections that are frequently made between sex work and harm.

10. In a study exploring the backgrounds of young people who sold sex the researchers included a control group of non-sex working young people that were similar in 'age, race and family socioeconomic status'.<sup>17</sup> The results of the study showed that the "prostitutes did not differ significantly from the non-prostitutes in the incidence of childhood sexual abuse".<sup>18</sup> I do not dispute that some sex workers have experienced childhood sexual abuse. Looking at all the research, however, what we see is that having a previous experience of childhood sexual abuse does not inevitably lead to a life of selling sex nor is it the case that all, or even most, sex workers have been abused as children. Furthermore, when people who are survivors of childhood sexual abuse do sell sex their experiences of abuse are often used to delegitimise them, which is insulting and hurtful.<sup>19</sup> It reduces survivors to their experiences and suggests that they are uniquely incapable of navigating adult life.
11. Another common misconception about sex workers is that they are all psychologically harmed by their involvement in sex work.<sup>20</sup> When the psychological health of sex workers is directly compared to other groups, however, it becomes clear that sex work may be no more psychologically harmful than other jobs. For example, when the levels of burnout among indoor female sex workers in the Netherlands was compared to a control group of female nurses it was found that the sex workers were no more emotionally exhausted and had similar levels of positive regard about their work as the nurses.<sup>21</sup> Another study conducted in Australia with female sex workers and a control group of age-matched non-sex working women found 'no evidence ... that sex work and increased adult psychiatric morbidity are inevitably associated'.<sup>22</sup> Again, I reference these reports not to argue that sex workers never experience psychological harm as a

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<sup>17</sup> Nadon, S. M., Koverola, C., & Schludermann, E. H. (1998), 'Antecedents to Prostitution Childhood Victimization' *Journal of Interpersonal Violence*, 13(2), 206-221

<sup>18</sup> Ibid at p.214

<sup>19</sup> See <https://everydaywhorephobia.wordpress.com/2014/11/09/a-letter-from-a-sex-worker/> - "Of course some would argue that my life experiences make me damaged goods, that a survivor of rape and childhood sexual abuse is somehow unable to make rational decisions. I hope you see how insulting that is to every survivor, I chose sex work as a rational choice based on the options I have."

<sup>20</sup> See e.g. Farley, Melissa, et al. (2004) "Prostitution and trafficking in nine countries: An update on violence and posttraumatic stress disorder" *Journal of Trauma Practice* 2(3-4): 33-74

<sup>21</sup> Vanwesenbeeck, I. (2005), 'Burnout among female indoor sex workers', *Archives of sexual behavior*, 34(6), 627-639 at p.635

<sup>22</sup> Romans, S. E., et al. (2001) "The mental and physical health of female sex workers: a comparative study" *Australian and New Zealand Journal of Psychiatry* 35.1, 75-80

result of their work but simply to point out that psychological harm is not inevitable in, nor unique to, sex work.

12. The critics of this proposed Bill may accuse me of cherry-picking reports and studies to support my perspective. If I was suggesting that commercial sex was *always* empowering, safe, rewarding and undertaken as a result of unfettered choice I would accept this accusation. But that is not what I am suggesting in bringing forward this proposed Bill. What I am suggesting is that there is a multiplicity of experiences in the sex industry. I challenge the assertion, which grounds current policy in Scotland, that sex work is inherently harmful. I dispute this and believe that laws and policies can be enacted to make sex work safer for all those involved. Whatever a person's reasons for selling sex, and whatever their background, they clearly do not benefit if they are working in a context where the law puts them in danger of violence. This proposed Bill presents a workable legal solution to the issue of prostitution that reflects the diversity of experiences in sex work and focuses the criminal law on those who coerce and exploit. This is reform fit for the 21<sup>st</sup> century that is not based on morality but is concerned with preventing harm and improving the rights, health and wellbeing of sex workers in Scotland.

## VIOLENCE AND THE HARMS OF CRIMINALISATION

“I began writing this book in the immediate aftermath of the Ipswich murders of 2006. Despite its appalling tragedy, the enormity of the crimes committed in Suffolk led to an explosion of public debate about sex work policy, which gave me hope that, if only more people understood why sex workers are vulnerable to violence, about who commits it and why current policies have failed so miserably to prevent it, the tide of cruelty might begin to turn. I also hoped that those with direct influence over prostitution policy would recognise the lessons of Ipswich and refocus their attention on safety instead of repression.”

Hilary Kinnell (2008), *Violence and Sex Work in Britain*, p.xx

13. Violence and exploitation do exist in the sex industry. In bringing forward this proposed Bill I make no attempt to ignore or minimise this fact. Research suggests that violence is much more prevalent on the streets than it is in indoor sex work. For example, in one study it was reported that 81% of street based sex workers had experienced violence in the course of their work compared to 48% of indoor workers.<sup>23</sup> Even lower levels of violence in the indoor market have been recorded in other studies. In research with women in Merseyside and Birmingham who sold sex indoors it was noted that only 21% of the sex workers in Merseyside and 25% in Birmingham had experienced violence at work.<sup>24</sup> While the prevalence of violence against sex workers is well documented I dispute the assumption that prostitution is *inherently* dangerous. I believe that sex work can be undertaken in conditions of worker safety and that criminalisation seriously impedes efforts to make sex work safe.
14. There is a huge evidence base demonstrating that criminalisation, and related enforcement action, exacerbates rather than alleviates violence against sex workers.<sup>25</sup> Criminalisation of street based sex work forces women to take excessive risks to avoid arrest including getting into clients’ cars quickly without making a proper risk assessment and working in isolated areas away from CCTV.<sup>26</sup> Scotland’s brothel-keeping laws force indoor sex workers to work alone rather than being able to do so

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<sup>23</sup> See note 11

<sup>24</sup> Sanders, T., & Campbell, R. (2007), ‘Designing out vulnerability, building in respect: violence, safety and sex work policy’ *The British journal of sociology*, 58(1), 1-19

<sup>25</sup> For UK examples see e.g. Brooks-Gordon, B. (2006) *The price of sex: Prostitution, policy and society*, Cullompton: Wilan Publishing; Kinnell, H. (2008) *Violence and Sex Work in Britain*, Cullompton: Wilan Publishing

<sup>26</sup> Expert Group on Prostitution (2004) ‘Being Outside: Constructing an Adequate Response to Street Prostitution’, available at <http://www.scotland.gov.uk/Publications/2004/12/20410/48751>. See also Hester and Westmorland (2004) “Tackling Street Prostitution: Towards an holistic approach”, Home Office Research Study 279. Available at <http://dro.dur.ac.uk/2557/1/2557.pdf>

with friends and colleagues for safety. Moreover, criminalisation is a massive disincentive for sex workers to report violence to the police when it does occur as a result of the fear that they themselves will be arrested.<sup>27</sup> Criminalisation also creates a climate of impunity for those intent on committing violent acts against sex workers. It reinforces the stigma against sex workers, which directly contributes to the perception of them in our culture as 'degraded' and 'unworthy' and therefore makes them susceptible to violence. Despite the perception that violence against sex workers is committed by their customers, a high proportion of violent attacks are committed by those who *do not pay* suggesting that some attackers are not genuine clients but individuals intent on committing acts of violence.<sup>28</sup> I believe that the high rates of violence committed against sex workers is because they are seen as 'easy targets' and attackers know that they are unlikely to report incidents to the police. In the words of Forensic Psychologist Paul Britton, "they kill prostitutes because prostitutes are easy to kill."<sup>29</sup>

15. The existence of violence and exploitation in the sex industry is often used as justification for anti-sex work policies that seek to eradicate commercial sex altogether. This is misguided. Violence and exploitation exist in many different jobs and industries. For example, exploitation is widely reported in the agriculture sector<sup>30</sup> and in the UK hotel industry<sup>31</sup> and violence against healthcare workers is endemic. In Scotland, 15,057 incidents of violence were reported against healthcare workers in 2013-14.<sup>32</sup> Our response to these issues is not to claim that healthcare is an inherently dangerous job or to eradicate the hotel industry. Instead, we develop laws and policies that aim to reduce incidences of violence and exploitation and punish the perpetrators.
16. Criminalisation causes additional harms to sex workers beyond its exacerbation of violence and one of the most concerning is the fact that the authorities routinely use condoms as evidence when pursuing soliciting and brothel-keeping charges. This

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<sup>27</sup> Brooks-Gordon, B. (2006) *The price of sex: Prostitution, policy and society*, Cullompton: Wilan Publishing. See pp. 202- 203

<sup>28</sup> See Kinnell, H. (2008), particularly Chapter 9 "Who attacks sex workers?"

<sup>29</sup> O'Kane, M. (2002) 'Mean Streets', The Guardian, 12 September 2002. Available at <http://www.theguardian.com/media/2002/sep/16/crime.comment>

<sup>30</sup> Wasley, A. (2011) Bitter harvest: how exploitation and abuse stalks migrant workers on UK farms, The Ecologist, 10<sup>th</sup> October 2011. Available at [http://www.theecologist.org/News/news\\_analysis/1083134/bitter\\_harvest\\_how\\_exploitation\\_and\\_abuse\\_stalks\\_migrant\\_workers\\_on\\_uk\\_farms.html](http://www.theecologist.org/News/news_analysis/1083134/bitter_harvest_how_exploitation_and_abuse_stalks_migrant_workers_on_uk_farms.html)

<sup>31</sup> Migrants Rights Network (2013) Exploitation of staff in hotels is part of an industry-wide business model say campaigners, 24<sup>th</sup> January 2013. Available at <http://www.migrantsrights.org.uk/news/2013/exploitation-staff-hotels-part-industry-wide-business-model-say-campaigners>

<sup>32</sup> UNISON (2014) Violence at Work Survey, Available at <http://www.unison-scotland.org.uk/safety/ViolenceAtWorkSurveyOctober2014.pdf>

completely undermines a harm reduction approach and is a practice used by Police Scotland as was evidenced by the sauna raids undertaken in Edinburgh in 2013.<sup>33</sup> Using condoms as evidence to charge and prosecute creates a strong disincentive for sex workers to carry and use condoms in the course of their work and flies in the face of all international guidance with respect to sexual health and HIV prevention. The World Health Organisation has specifically called for an end to the practice of using condoms as evidence on the basis of its risk to sex workers' health and wider public health.<sup>34</sup>

17. The impact of criminalisation on the health and safety of sex workers cannot be overstated and I believe that my proposed Bill represents a progressive and pragmatic solution that will greatly improve their lives. If sex work is decriminalised then sex workers can finally prioritise their safety and wellbeing rather than focus their energies on avoiding arrest and prosecution. The police can also begin prioritising protecting sex workers from violence and addressing the crimes committed against them rather than arresting and charging the sex workers themselves. In a decriminalised system sex workers will feel confident and secure in reporting violent incidents to the police without fearing repercussions for themselves. Over time and with commitment from the authorities and the criminal justice system it will be made clear that violence against sex workers will no longer be tolerated in Scottish culture.

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<sup>33</sup> McCann D. (2013) Police reveal seedy details of Edinburgh saunas, Edinburgh Evening News, 18 October 2013. Available at <http://www.edinburghnews.scotsman.com/news/police-reveal-seedy-details-of-edinburgh-saunas-1-3148092>. “Officers observed that the females working within the premises were scantily clad, massage rooms were equipped as bedrooms, no purpose-built massage tables were apparent on the premises and **used condoms were found in bins.**”

<sup>34</sup>World Health Organisation (2013) Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions, available at [http://www.who.int/hiv/pub/sti/sex\\_worker\\_implementation/en/](http://www.who.int/hiv/pub/sti/sex_worker_implementation/en/), see p88 - “in countries where law-enforcement officials use condoms as evidence of sex work, governments should take actions to end this practice. Condoms should never be considered to be evidence of sex work, either in official laws or through unofficial law-enforcement practices, and condoms should never be confiscated from sex workers.”

## A WAY FORWARD FOR SCOTLAND: THE NEW ZEALAND MODEL

18. New Zealand is a progressive country and a world leader in the movement for women's rights. It was the first country in the world to introduce women's suffrage, pioneered women's reproductive rights from the early 20<sup>th</sup> century and continues to operate at the cutting edge of human rights and gender equality.<sup>35</sup> In line with its history of promoting women's rights New Zealand became the first country in the world to decriminalise commercial sex when the Prostitution Reform Act was passed by its Parliament in 2003. The Prostitution Reform Act ("PRA") dramatically changed the situation for sex workers in New Zealand and was rooted in a harm reduction approach. The campaign that led to the PRA was spearheaded by feminist organisations, which recognised the real harm done to women through the criminalisation of prostitution.<sup>36</sup> It was recognised that the laws in New Zealand, which were broadly similar to those operating in Scotland, "exacerbated the risks of violence"<sup>37</sup> by "reinforc[ing] the stigma of prostitution while also reducing the likelihood of sex workers informing the police about victimising incidents or individuals."<sup>38</sup> Tim Barnett MP, who sponsored New Zealand's decriminalisation Bill through Parliament, noted that the impetus for the change in the law was to deal effectively, in a targeted way, with the real harms associated with the sex industry:

"It removes the blanket bans on activities around prostitution that are not of themselves harmful (brothel-keeping, procuring), and replaces them with clearer and tougher law concerning the real evils (sex with an under-age prostitute, coercion of a sex worker)."<sup>39</sup>

19. Crucially, alongside the recognition of the harms caused to sex workers by criminalisation there was also a move in New Zealand to recognise the diversity of sex working experiences, which, as I have argued elsewhere in this consultation document, we must begin to do in Scotland:

"One effect of the broadening tolerance and recognition of human diversity in 1990s New Zealand was a reduction in the use and power of the 'deviance' label

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<sup>35</sup> Abel, G., et al. (Eds.) (2010) *Taking the crime out of sex work: New Zealand sex workers' fight for decriminalisation*, Bristol: Policy Press, p.59

<sup>36</sup> Ibid. See p.61, which notes that organisations as diverse as the Business and Professional Women's Federation, the Young Women's Christian Association, the National Council of Women, Maori Women's Welfare League and the New Zealand Prostitutes' Collective joined the call for the decriminalisation of sex work in New Zealand.

<sup>37</sup> Ibid at p.40

<sup>38</sup> Ibid at p.40

<sup>39</sup> Barnett, T (2003), 'Outmoded ethics let evil thrive', *New Zealand Herald*, 25 June 2003



... Interviews with sex workers, and accounts published documenting their lives, have revealed varying and often understandable reasons for their entry into sex work. These have also suggested that the women themselves come from diverse backgrounds and hold divergent attitudes towards their work, in ways that make it impossible to sustain any narrow representations of sex workers only being viewable as pitiful, coerced victims.”<sup>40</sup>

## Features of the New Zealand Model

20. The New Zealand Model decriminalises soliciting on the streets, brothel-keeping and living on the earnings of prostitution while ensuring that the laws against under-age sex work and coercion in the industry are strengthened. Its approach to street based sex work is focussed on local interventions to ensure sex worker safety and to mediate between communities to address any social nuisance. In recognition of the fact that indoor working is much safer New Zealand created a system of Small Owner Operated Brothels (SOOBs) to allow small groups of sex workers to work together from the same premises.<sup>41</sup> The creation of the SOOBs enables groups of up to four sex workers to work together from the same indoor premises without any requirement for licensing. Crucially, each sex worker retains complete control over their own earnings in a SOOB to ensure that it is truly a collective working environment.
21. The PRA also made it possible for local authorities to license larger brothels where more than four sex workers can work.<sup>42</sup> Each local authority is responsible for its own licensing requirements and has the power to designate areas where larger brothels are permitted. If an individual wishes to open a brothel they must first obtain a Brothel Operator Certificate.<sup>43</sup> This was introduced in recognition of the fact that someone who operates a brothel and exerts some level of control over the working lives of sex workers must be an appropriate person to do so. The Operator Certificate is granted to individuals who are over 18, permanent residents or citizens of New Zealand and only if they do not have any disqualifying criminal convictions.<sup>44</sup> There are stringent rules in New Zealand about advertising for commercial sex services and it is illegal to advertise

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<sup>40</sup> See note 35 at p.40

<sup>41</sup> s. 4 of the Prostitution Reform Act 2003 (“PRA”). Available at <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>

<sup>42</sup> s.15 of the PRA

<sup>43</sup> ss.34 - 41 of the PRA

<sup>44</sup> The disqualifying criminal convictions broadly fall into the categories of sexual crimes, crimes of violence, crimes of dishonesty, participation in organised crime, possession of offensive weapons and drugs offences (except possession for personal use)

on radio, television, in cinemas and in the print media, except in the classified sections.<sup>45</sup>

22. Most importantly, the New Zealand Model is designed to protect the human rights of sex workers. The PRA contains a clause which explicitly recognises the rights of sex workers to withdraw their consent to provide sexual services at any stage of the commercial transaction.<sup>46</sup> It also ensures protection against force and coercion<sup>47</sup> making it an offence to coerce someone to provide or continue to provide sexual services or to continue to provide payment derived from commercial sexual services by doing any of the following: improperly using any power or authority gained through an occupational or vocational position (e.g. brothel manager); improperly using any power or authority gained through an existing relationship (e.g. partner, spouse or family member); committing an offence that is punishable by imprisonment (e.g. using threats of or actual physical violence); blackmail, including threatening to report the person to the immigration authorities; or supplying or withholding supply of controlled drugs.
23. The New Zealand Model also protects the labour rights of sex workers. Given that their work is now decriminalised, sex workers are able to pursue complaints against their managers at the Disputes Tribunal and the New Zealand Human Rights Tribunal. In a landmark case decided in March 2014 a sex worker won a compensation award of \$25,000 after being sexually harassed by a brothel operator. The New Zealand approach to sex worker rights is summed up in the judgement of the Human Rights Tribunal in this case:

“Sex workers are as much entitled to protection from sexual harassment as those working in other occupations. The fact that a person is a sex worker is not a licence for sexual harassment, especially by the manager or employer at the brothel. Sex workers have the same human rights as other workers.”<sup>48</sup>

### **Impact of the Reforms in New Zealand**

24. The New Zealand Prostitution Reform Act contained within it an express provision that the law be reviewed by an expert committee after it had been in operation for a period of 5 years. The Prostitution Law Review Committee was formed and produced a

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<sup>45</sup> s.11 of the PRA

<sup>46</sup> s.17 of the PRA

<sup>47</sup> s.16 of the PRA

<sup>48</sup> *DML v Montgomery and MT Enterprises Ltd* [2014] NZHRRT 6, see para 146. Available at <http://www.nbr.co.nz/sites/default/files/images/2014-NZHRRT-6-DML-v-Montgomery-and-M-T%20Enterprises%20Ltd.pdf>

detailed report in 2008.<sup>49</sup> The committee brought together a diverse group of people with diverging moral views on sex work and included a retired police officer, a nun, social workers, a public health specialist, academics and representatives from the New Zealand Prostitutes' Collective.<sup>50</sup> The Committee was alert to accusations of bias and therefore resolved "to support all of its findings and recommendations by rigorous, independent research."<sup>51</sup> The Review Committee was determined to fulfil its statutory duty in evaluating the PRA using an evidence based approach and a number of research studies were commissioned specifically to assist the Committee in undertaking its review. These included an estimation on the numbers of sex workers in New Zealand before<sup>52</sup> and after decriminalisation<sup>53</sup>, a study on the impact of the PRA on the health and safety of sex workers<sup>54</sup> and Key Informant Interviews, with NGOs that were responsible for supporting those who work in the sex industry as well as brothel operators<sup>55</sup>.

25. The research on the size of the sex industry in New Zealand was commissioned by the government to examine fears that decriminalisation would lead to an increase in the numbers of people selling sex.<sup>56</sup> The estimation pre-decriminalisation was that there were 5,932 sex workers operating in New Zealand and in two studies conducted post-decriminalisation, using slightly different methodologies, the figures reached were 2,396 and 2,332<sup>57</sup>. The Review Committee noted that the vast reduction in numbers recorded pre and post decriminalisation was likely not reflective of a huge decline in

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<sup>49</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act (2008). Available at <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>

<sup>50</sup> Ibid. See Appendix 1

<sup>51</sup> Fitzharris P and Taylor, A. (2010) 'Review of the Prostitution Reform Act' in Abel, G., et al. (Eds.) (2010) *Taking the crime out of sex work: New Zealand sex workers' fight for decriminalisation*, Policy Press, p.110

<sup>52</sup> Ministry of Justice (2005) 'The nature and extent of the sex industry in New Zealand: An estimation'. Available at <http://www.justice.govt.nz/publications/global-publications/n/the-nature-and-extent-of-the-sex-industry-in-new-zealand-an-estimation>

<sup>53</sup> Department of Public Health and General Practice, University of Otago (Christchurch School of Medicine) (2007) 'The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers', see Chapter 2, 'Estimation of Numbers'. Available at <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/impact-health-safety>

<sup>54</sup> Ibid

<sup>55</sup> Mayhew, P. and Mossman, E. (2007) 'Key Informant Interviews: Review of the Prostitution Reform Act 2003', Crime and Justice Research Centre, Victoria University of Wellington. Available at <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/key-informant-interviews>

<sup>56</sup> Estimating the size of the sex industry in any country is notoriously difficult to undertake given the hidden nature of sex work and this was acknowledged by the Review Committee. See note 48, p.29

<sup>57</sup> See note 49, chapter 2 'Estimation of the Numbers of Sex Workers in New Zealand'

the numbers of sex workers in New Zealand but was more likely “a result of the limitations of the initial data collection methods, and the more robust methodology used to estimate numbers in the current report.”<sup>58</sup> A more direct comparison was possible by focusing on the city of Christchurch in which an estimation of the numbers of sex workers in the city was done in 1999 and then again in 2006 using an identical methodology. The 1999 count recorded 375 sex workers and there was a slight increase in 2006 to 392.<sup>59</sup> This represents a possible increase of just 17 sex workers in the city, which is in no way a significant or meaningful increase. The Committee was, therefore, satisfied after considering all the evidence that “the PRA has had little impact on the numbers of people working in the sex industry.”<sup>60</sup>

26. The Christchurch School of Medicine (CSoM) conducted a thorough study into the impact of the PRA on the health and safety of sex workers in New Zealand. They evaluated survey responses from 772 sex workers from across the country and conducted in-depth interviews with 58 sex workers as well as interviewing six Medical Officers of Health, two sexual health promoters and one occupational health nurse.<sup>61</sup> The report noted a range of positive outcomes for sex workers as a result of decriminalisation including awareness among sex workers of their increased legal, health and safety and employment rights. Sex workers reported that these increased rights gave them “greater powers of negotiation of safer sex with clients; the right to refuse to do a client; protected them from violent attacks; [and] were mentally enabling, allowing them to feel supported and safe.”<sup>62</sup> It was, noted, that while many participants articulated an increasing trust in the police post-decriminalisation this did not necessarily translate into increased levels of reporting. The study notes that confidence was growing in the police and criminal justice system as sex workers witnessed friends and colleagues being treated well<sup>63</sup> but that ‘stigmatisation plays a key role in non-reporting of incidents’.<sup>64</sup> It is important to be aware that legal reform is not an instant fix for problems that have developed over decades and decriminalisation is simply the first step in encouraging sex workers to report violence to the police.

“Yeah, confident, I’ve got a lot more confidence, and I know that I can ring them to say, “Oh this has happened, and blah blah blah.” I haven’t had to do that, but I just know that I can. Cause that’s the law, that’s the law change. [...] Whereas

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<sup>58</sup> See note 49, para 2.7 (p.40)

<sup>59</sup> See note 49, para 2.3.4 (p.35)

<sup>60</sup> See note 49, para 2.7 (p.41)

<sup>61</sup> See note 53, pp.7 – 9

<sup>62</sup> See note 53, p.168

<sup>63</sup> See note 53, p.173

<sup>64</sup> See note 53, p.135

before it was all hush hush, you couldn't go to the Police, cause what would you say?"

Sally, Street, Female, Christchurch<sup>65</sup>

27. Taking into account all of the evidence that was before it the final conclusion of the Review Committee was that 'the PRA has been effective in achieving its purpose'<sup>66</sup>, which was the promotion of the human and labour rights of sex workers. The Committee expressed confidence that 'the vast majority of people involved in the sex industry are better off under the PRA than they were previously.'<sup>67</sup> The Committee recommended that the impact of the reforms be reviewed again in 2018, fifteen years after its passing.

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<sup>65</sup> See note 53, p.166

<sup>66</sup> See note 49, p.168

<sup>67</sup> See note 49, p.168

## THE CURRENT LAWS IN SCOTLAND

### Soliciting and Kerb-Crawling

28. Section 46 of the Civic Government (Scotland) Act 1982 makes it a criminal offence to loiter in a public place, solicit in a public place or importune any person in a public place for the purposes of prostitution. This piece of legislation is used to criminalise people who sell sex on the streets, predominantly women. Women are routinely arrested in Scottish cities and charged with soliciting. If convicted they are either fined or referred to a diversion program.<sup>68</sup> Statistics from the Crown Office show that 4,146 prosecutions were pursued under section 46 in the ten years from 2003 – 2013.<sup>69</sup> Of these, 2,009 resulted in convictions.<sup>70</sup>
29. The Prostitution (Public Places) (Scotland) Act 2007 also makes it an offence to solicit or loiter for the purposes of obtaining the services of a person engaged in prostitution (“kerb-crawling”). This legislation was designed to target the male clients of sex workers to redress the gender imbalance in the soliciting laws. The flawed rationale behind this legislation is that criminalising the purchasers of sex reduces the overall demand for commercial sex. Statistics from the Crown Office show that 644 charges were laid under this Act from 2007 to 2013 with 410 convictions secured.<sup>71</sup>
30. Street based sex work is a small proportion of all sex sold in Scotland and yet the women involved disproportionately bear the brunt of criminalisation and experience the highest rates of arrest, prosecution and conviction. People selling sex on the streets may be dealing with a range of challenges, and criminalisation, whether of sex workers directly or their clients, exacerbates these and forces them to take risks with their safety. My proposed Bill, therefore, will seek to repeal the laws on soliciting and kerb-crawling.

### Brothel-keeping

31. Section 11(5) of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”) makes it an offence to keep, manage or assist in managing a brothel or to knowingly

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<sup>68</sup> For example, in Edinburgh SACRO runs the Another Way service where women can be referred when charged with sex work related offences - <http://www.sacro.org.uk/services/criminal-justice/another-way-service>

<sup>69</sup> Statistics available at <http://www.copfs.gov.uk/foi/responses-we-have-made-to-foi-requests/472-prosecutions-prostitution>

<sup>70</sup> Ibid

<sup>71</sup> Ibid

allow premises to be used as a brothel. A brothel for the purposes of the legislation is classified as any premises in which more than one sex worker operates. That means that two sex workers who decide to work together from the same indoor premises, a decision that is often made for safety reasons, are deemed to be operating a brothel and can be charged with brothel-keeping.

32. Media reports confirm that small groups of women (2-5) working together for their safety and wellbeing continue to be arrested and charged with brothel keeping in Scotland. In Aberdeen women were arrested, prosecuted or convicted with brothel-keeping in November 2013<sup>72</sup>, December 2013<sup>73</sup>, March 2014<sup>74</sup>, April 2014<sup>75</sup>, May 2014<sup>76</sup>, October 2014<sup>77</sup>, February 2015<sup>78</sup> and then in May 2015<sup>79</sup>. In May 2013 women were being prosecuted for working together in Paisley<sup>80</sup> and in November 2013 'brothels' were raided in Glasgow and five women were arrested and taken to court<sup>81</sup>. There is no suggestion that these women were doing anything other than renting apartments together to work in safety given that they were all working as sex workers themselves and not as bosses or managers.
33. My proposed Bill seeks to repeal the current laws on brothel-keeping and to make it possible for small groups of sex workers (maximum four) to work together collectively for safety. It will also propose a system of larger Licensed Brothels.

### **Living on the Earnings of Prostitution**

34. The 1995 Act (section 11(1)) makes it an offence for any male person to knowingly live wholly or in part on the earnings of female prostitution. In deciding whether a man is living on the earnings of prostitution consideration is given to whether he lives with or is habitually in the company of a female sex worker. A person is also deemed to be living on the earnings of prostitution if he is shown to have exercised control, direction or influence over the movements of a sex worker in such a manner as to show that he is

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<sup>72</sup> Two women caught running brothel in Aberdeen, Evening Express, 13 November 2013

<sup>73</sup> Sex worker admits using Aberdeen home as brothel, Evening Express, 12 December 2013

<sup>74</sup> Women fined over Aberdeen brothels, Evening Express, 14 March 2014

<sup>75</sup> Three women held after Aberdeen brothel raid, Evening Express, 3 April 2014

<sup>76</sup> Prostitute to have £44000 taken over brothel, Press and Journal, 23 May 2014

<sup>77</sup> Three women arrested for brothel keeping in Aberdeen, Police Scotland, <http://www.scotland.police.uk/whats-happening/news/2014/october/three-women-arrested-for-brothel-keeping-in-aberdeen>

<sup>78</sup> Two women arrested after police swoop on suspected brothels in Aberdeen, Daily Record, 13 February 2015

<sup>79</sup> Women accused of running brothel on Aberdeen's Union Street, Press and Journal, 1 May 2015

<sup>80</sup> Flat owner denies vice charges after police raid uncovers dozens of kinky outfits and sex toys, Daily Record, 30 May 2013

<sup>81</sup> Brothel raid five in court, Evening Times, 11 November 2013

aiding, abetting or compelling her prostitution (section 11(3)). Section 11(4) of the 1995 Act also criminalises women if they have, for the purposes of gain, exercised control, direction or influence over the movements of a sex worker (female) in such a manner as to show that she is aiding, abetting or compelling her prostitution. Section 13 of the 1995 Act makes it an offence to knowingly live wholly or partly on the earnings of another from male prostitution.

35. This legislation was enacted to address the situation where one person forces another to sell sex and takes control of the money they earn. It wrongly conflates the issues of force and coercion with living on the earnings of sex work and directly criminalises the family members and friends of sex workers. The law makes it illegal for a person aged over 18 to be supported by their parent if the parent earns their money from sex work, and it criminalises the spouses and partners of sex workers if they live together and share household income and expenses. I do not believe that living on the earnings of sex work should be a criminal offence if there is no force or coercion involved. My proposed Bill will, therefore, seek to repeal the existing laws on living on the earnings of prostitution and replace it with tougher laws against the coercion of sex workers.

### **Procuring / Coercion**

36. Section 7 of the 1995 Act deals with procuring (procure means to get someone to do something or to persuade or cause someone to do something) and makes it an offence to procure or attempt to procure any woman under 21 to have unlawful sexual intercourse with any other person or persons in any part of the world; procure or attempt to procure any woman or girl to become a common prostitute in any part of the world; procure or attempt to procure any woman or girl to leave the UK with the intent that she become an inmate of or frequent a brothel elsewhere; or procure or attempt to procure any woman or girl to leave her usual place of abode in the UK with the intention that she may for the purposes of prostitution become an inmate of or frequent a brothel in any part of the world. Section 8 of the 1995 Act makes it an offence to detain any woman or girl against her will in, any premises with the intention that she may have unlawful sexual intercourse with men or a particular man, or in any brothel.
37. The proposed Bill seeks to repeal the current procuring laws (section 7 only)<sup>82</sup> and replace it with more robust and comprehensive laws against coercion in the sex industry. Statistics from the Crown Office show that the number of charges brought under the procuring laws are extremely low with 11 prosecutions brought between 2003 and 2013 and only 2 convictions secured.<sup>83</sup> I believe that the law should be

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<sup>82</sup> Section 8 will remain untouched given that this is a crime of force and coercion

<sup>83</sup> See note 69



changed to make it easier for genuine cases of exploitation, force and coercion to be prosecuted and the perpetrators convicted. Furthermore, I note that the current procuring laws are gender specific and the proposed Bill seeks to extend the protection offered by the law to all people, regardless of gender.

### **Buying sex from someone under 18**

38. The laws in Scotland around buying sex from minors are extremely robust. The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 makes it an offence to pay for the sexual services of someone under 18 (section 9), cause or incite someone under 18 to provide sexual services or be involved in pornography (section 10), control the activities of someone under 18 relating to their provision of sexual services or involvement in pornography (section 11) and to arrange or facilitate the provision of sexual services or involvement in pornography by someone under 18 (section 12).
39. In addition, section 9 of the 1995 Act makes it an offence for the owner or occupier of a premises (or the person managing or controlling a premises) to knowingly allow any girl under the age of 16 to be in the premises for the purposes of having unlawful sexual intercourse with men or with a particular man. Section 10 of the 1995 Act makes it an offence for the parent or carer of a girl under 16 to cause or encourage the seduction or prostitution of her.
40. My proposed Bill is concerned with decriminalising the buying and selling of sexual services between people who are over 18 and does not seek to alter the law around buying sex from minors. The existing laws are strong and should remain as they are. While buying sex from minors is and will remain a criminal offence it is important to recognise that young people do sell sex and that they have a right to access non-judgmental health and support services.

### **Trafficking for the purposes of sexual exploitation**

41. In recognition of the fact that trafficking is an issue that affects a range of different industries and takes place in a variety of contexts outside of sex work this proposed Bill will not address the matter. I believe that Scotland must have strong and robust anti-trafficking laws to ensure that this harmful activity is addressed. This will most effectively be achieved by way of separate legislation and I note that the Human Trafficking and Exploitation (Scotland) Bill is currently being considered by the Parliament.

## THE PROPOSALS

### Street Based Sex Work

42. A thorough and comprehensive study of street sex work in Scotland was undertaken in 2003 by an Expert Group on Prostitution that was set up by the then Scottish Executive. The Group published its findings in December 2004 and a number of key conclusions were reached on the impact of the law on people involved in street level sex work.<sup>84</sup> The Expert Group was highly critical of Scotland's soliciting law, noting that it criminalised on a moral basis, it contributed to the stigma female sex workers experience, it increased their vulnerability and forced them to take risks to avoid apprehension by the police.<sup>85</sup> Overall, the Expert Group concluded that "[t]he current law therefore appears unsuitable - both in terms of fairness and equity, and in terms of its capacity to contribute helpfully to the operational objectives of tackling prostitution."<sup>86</sup> They recommended repealing the soliciting laws and were at pains to note that this was not about ignoring the harms faced by some people who sell sex on the streets but that minimising harm was best achieved "through support and encouragement, with access to appropriate services, than by stigmatisation and criminalisation."<sup>87</sup>
43. As far back then as 2003/2004 the country's foremost legal and policy experts on sex work highlighted the harms caused by the criminalisation of street based sex work. Sex workers themselves also want to see soliciting decriminalised. In interviews with 63 street working women in Scotland every single woman expressed a desire to "work without fear of arrest and prosecution".<sup>88</sup>
44. The harms done to street workers as a result of soliciting laws are well documented. It is a grave injustice that people who sell sex on the street, who may be vulnerable and dealing with a range of issues, are persistently arrested, charged and prosecuted by the authorities. I believe that the police should be there to protect people who sell sex from violence and harassment rather than to arrest them. Criminalisation is also highly detrimental to street based sex workers in the long term if they do decide to exit sex

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<sup>84</sup> Expert Group on Prostitution (2004) 'Being Outside: Constructing an Adequate Response to Street Prostitution', available at <http://www.scotland.gov.uk/Publications/2004/12/20410/48751>.

<sup>85</sup> Ibid. See para 11.2

<sup>86</sup> Ibid. See para 11.2

<sup>87</sup> Ibid. See para 11.21

<sup>88</sup> McKeganey, N. (2006) "Street prostitution in Scotland: The views of working women." *Drugs: Education, Prevention, and Policy* 13(2): 151-166. See p.159. This research explored women's views on a tolerance zone and full decriminalisation/legalisation.

work. Having a record of soliciting charges seriously impedes any efforts to secure alternative employment. For these reasons my proposed Bill will repeal all laws against soliciting for the purposes of prostitution.

45. While the previous Expert Group on Prostitution discussed the possibility of a new statutory offence of ‘soliciting that causes alarm, offence or embarrassment’ this will not form part of my proposed Bill. It would be against the spirit of decriminalisation, and the lessons learned in New Zealand, to replace the statutory offence of soliciting with another sex work related offence. The New Zealand Prostitution Law Review Committee emphasised how further criminalisation was pointless given its past failures and how “any form of prohibition (whether targeting workers or clients) increases the vulnerability of sex workers, and adds to the harms associated with street-based sex work”.<sup>89</sup> Instead, New Zealand ensures that street workers are supported to work safely and with consideration for communities through local interventions, including the use of outreach workers, peer education and the development of positive relations between the police and sex workers.<sup>90</sup> I believe that a similar approach would be equally effective in Scotland. Research done in the UK into areas of street sex work concluded that peaceful coexistence between sex workers and local communities was achieved most effectively through an “integrated, multi-stakeholder response” that involved sex workers and sex work projects in addressing community concerns.<sup>91</sup> The report highlighted the importance of mediation and awareness raising in improving relations between sex workers and residents. It is also important to emphasise that laws are already in place to deal with issues like littering and offensive behaviour (e.g. Breach of the Peace) and these should be enforced to address any social nuisance associated with street sex work rather than introduce any new statutory provisions. With a commitment from the authorities to build positive and supportive relationships with street based sex workers I believe that any nuisance behaviours can be adequately addressed and the impact on local communities significantly reduced.

46. My proposed Bill will also repeal Scotland’s ‘kerb crawling’ laws. It is worth noting that the Expert Group on Prostitution explicitly cautioned against introducing kerb-crawling laws noting that ‘evidence of its effectiveness ... is unconvincing’ and that ‘unwanted consequences such as displacement, or stigmatisation could arise’.<sup>92</sup> If ‘kerb-crawling’ remains a criminal offence then street based sex workers, although not directly

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<sup>89</sup> See note 49, p.131

<sup>90</sup> See note 49, p.132

<sup>91</sup> Jane Pitcher, Rosie Campbell, Phil Hubbard, Maggie O'Neill and Jane Scoular (2006) Living and Working in Areas of Street Sex Work, Joseph Rowntree Foundation. Available at <http://www.jrf.org.uk/publications/living-and-working-areas-street-sex-work>

<sup>92</sup> See note 84, para 11.23

criminalised themselves, are still operating in a criminalised environment and the risks to their safety, which are well documented, remain a real concern:

“Even if some men are scared off by police clampdowns, the women we surveyed said that that meant they had to hang around longer and go to more isolated locations to earn the same money from fewer men.”<sup>93</sup>

47. ‘Kerb-crawling’ legislation has the same practical impact as soliciting laws in forcing women to be watchful for the police and to make rushed decisions on going with clients without making a proper safety assessment.<sup>94</sup> As one sex worker says, “Car pulls up, you haven’t got time to check it out as well as you like, it’s just in and off.”<sup>95</sup> It has also been recognised that kerb-crawling legislation has the effect of deterring ‘decent punters’ whereas individuals intent on committing acts of violence are not in any way deterred by kerb-crawling laws.<sup>96</sup> Furthermore, ‘kerb-crawling’ legislation has been in place now for 7 years and there is no indication that it has ‘reduced demand’ for sexual services in Scotland. It may have, at some level, displaced the sex industry from the streets to indoor locations but given that women, although in smaller numbers, continue to sell sex on the streets, and men continue to purchase it there, the deterrent effect of the kerb-crawling legislation is unfounded. In an extensive study of street sex work in London involving 300 hours of fieldwork with the Metropolitan Police Vice and Clubs Unit and in which over 500 police reports of men caught ‘kerb-crawling’ were analysed the researcher concluded that ‘the criminalisation of clients neither protects those involved in sex working nor deters clients’ and that ‘it is hard to understand, from the empirical findings, what the justification is for the kerb-crawling laws at all.’<sup>97</sup>

## **SUMMARY – STREET BASED SEX WORK**

### **My proposed Bill will:**

- a. Repeal s.46 of the Civic Government (Scotland) Act 1982 (soliciting and importuning by prostitutes)**
- b. Repeal the Prostitution (Public Places) (Scotland) Act 2007 (kerb-crawling)**

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<sup>93</sup> See note 29

<sup>94</sup> Hester and Westmorland (2004) “Tackling Street Prostitution: Towards an holistic approach”, Home Office Research Study 279. Available at <http://dro.dur.ac.uk/2557/1/2557.pdf>. See p.24

<sup>95</sup> See note 29

<sup>96</sup> See note 94, p.24

<sup>97</sup> See note 27, p.259

## Indoor Sex Work

48. It is widely accepted that most sex work in Scotland takes place indoors with Police Scotland estimating that the indoor market represents 90% of all sex sold in Scotland.<sup>98</sup> As the law currently stands it is not illegal for a sex worker to work from an indoor location as long as they are working as an isolated individual. As soon as there is more than one sex worker operating from the same place the premises is deemed to be a brothel and the sex workers who have chosen to work collectively can be prosecuted for brothel-keeping. Many sex workers prefer to work collectively for safety and those who choose to work in this way are living in constant fear of arrest and prosecution. Police Scotland is continuing to arrest and charge women who are working together for safety where there is absolutely no suggestion of force or coercion (see para 32 above).

49. Detective Chief Inspector Ruth Gilfillan, of Police Scotland's National Rape Taskforce and Human Trafficking Unit, has stated publicly that the police are not concerned with criminalising women working in the off-street industry:

"It is important those involved in the off-street sex industry understand our position is not to criminalise them. There are those who are being forced or have no alternative but to work in the off-street industry. And there are those who have made an informed lifestyle choice. Some people are content with this choice. But there are also people who are not. Our priorities are to identify people and organised crime gangs who are criminally exploiting those people."<sup>99</sup>

50. I agree wholeheartedly that people working in the off-street sex industry should not be criminalised. Despite the sentiment expressed by DCI Gilfillan the reality is that the existence of brothel-keeping laws on the statute books means that indoor sex workers *are* criminalised and will continue to be until these laws are repealed. I believe that people should be able to work together in an indoor location without this constituting a criminal offence and I am confident that the majority of the Scottish public support me in this. In a recent poll of Scottish residents by Survation 86.8% of those surveyed supported a change in the law to allow sex workers to work together indoors for safety.<sup>100</sup> While there are legitimate concerns about issues of force and coercion in the

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<sup>98</sup> Leask D (2014) 3,000 women sell sex in thriving 'off-street' prostitution industry, The Herald, 16 August 2014. Available at <http://www.heraldscotland.com/news/home-news/3000-women-sell-sex-in-thriving-off-street-prostitution-industry.25059026>

<sup>99</sup> Ibid

<sup>100</sup> Survation surveyed 1,003 Scottish residents aged 16+ between 9th and 12th May 2014 on behalf of the sex worker rights organisation SCOT-PEP and the Better Nation website. The survey was conducted via online panel, and the results were weighted by age, sex and region to the profile of all adults aged 16+. The following question was asked, "Currently it is illegal for two or more sex workers to work independently from the same premises. However, it has been argued that women working on their own are more likely to

sex industry what I propose is a legal solution that decriminalises individuals working together for safety, introduces a robust licensing system for larger brothels and strengthens laws against coercion. I believe that the New Zealand model achieves this balance well and is the model that we should be adopting in Scotland.

### **Small Owner Operated Brothels (SOOBs)**

51. To enable sex workers to work together for safety New Zealand's Prostitution Reform Act allows small groups of up to four sex workers to work together from Small Owner Operated Brothels (SOOB). My proposed Bill will similarly make it possible for up to four sex workers to work together from indoor premises. Crucially, each sex worker in a SOOB must retain control over their own earnings to ensure that it is truly a collective working environment where there is no manager or boss with control over the other workers. SOOBs, given their small scale and collective working arrangements, will not be subject to any licensing requirements. Decriminalisation is focused on removing criminal penalties for sex workers to enable them to work safely without fear of arrest or prosecution. Introducing excessive licensing requirements is counter-productive and simply results in widespread non-compliance.
52. I understand that there may be concerns from the public about SOOBs operating without licensing. It is important to point out that the vast majority of indoor sex work is already being undertaken in Scotland in a similar manner. Given that the law forces sex workers to work alone from indoor premises there are small sex work businesses being operated in many locations around Scotland and this is done in a highly discreet and respectful manner. This will not change under decriminalisation. Sex workers are keen to protect their own anonymity and confidentiality and will continue to ensure that their work is undertaken discreetly and safely with respect and consideration for their neighbours and communities.

### **Licensed Brothels**

53. While the SOOB system will make it possible for up to four sex workers to work collectively as independent workers there are some sex workers who may still prefer to work in a larger brothel or massage parlour where they are not required to do their own marketing, managing of appointments and maintenance of the premises. A system of licensed saunas worked extremely effectively in Edinburgh from the early 1980s

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experience violence. Which of the following statements is closest to your opinion? The law should be changed to allow sex workers to work together or the law should not be changed." The results showed that 86.8% were in favour of a change to the law and 13.2% against.

until 2014 as a way to provide a safe working environment for sex workers. NHS and outreach staff regularly visited the Edinburgh saunas to ensure that safer sex supplies were made available and to ensure that there were no cases of force or coercion. Following the success of this system in Edinburgh I propose a system of Licensed Brothels in which more than four sex workers can operate and in which sex can legally be bought and sold.

54. These premises will be subject to licensing by local authorities. I propose that licensed brothels be subject to the same licensing conditions as are currently in force for sex shops and which was recently extended to 'sexual entertainment venues' by the Air Weapons and Licensing (Scotland) Act 2015. The licensing system is set out under Schedule 2 to the Civic Government (Scotland) Act 1982 and simple legislative amendments will make it possible to extend these provisions to encompass licensed brothels.
55. I have considered whether to propose a Brothel Operator Certification system as is in force in New Zealand but having examined the licensing regime under the 1982 Act I do not believe this is necessary. The Brothel Operator Certificate is designed to ensure that only those who are deemed suitable to operate a brothel are able to do so. The licensing rules under Schedule 2 to the 1982 Act gives local authorities wide powers to refuse to grant licenses on the grounds of an applicant's prior criminal convictions or if they deem them unsuitable for any other reason and so a separate operator certificate is unnecessary. Adopting the system prescribed under Schedule 2 to the 1982 Act will also ensure that there is a right for officers and employees of the local authority and police officers to enter and inspect licensed brothels. This represents a further safeguard against exploitative working conditions for sex workers and will ensure that any instances of force or coercion will be uncovered. For the avoidance of doubt, there will be no similar right of entry to SOOBs as these are private premises, and if the police wish to enter they will require a warrant. I also note that adopting the licensing regime under the 1982 Act will give local authorities power to refuse brothel licenses on the grounds of inappropriate location and also to put conditions on the license limiting external signage. In addition, the licensing regime permits anyone to make representations objecting to the granting of a license. These safeguards are sufficient to ensure that licensed brothels will not impact negatively on local communities.
56. The experiences from jurisdictions which have some form of licensed sex industry show that creating overly onerous conditions or fees does not make the licensing system more robust but instead creates a two tier system of legal and illegal brothels because compliance is so difficult to achieve.<sup>101</sup> I, therefore, propose to introduce a cap on the

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<sup>101</sup> Jordan, J. (2005) The sex industry in New Zealand: A literature review, Ministry of Justice. Available at <http://www.justice.govt.nz/publications/global-publications/s/the-sex-industry-in-new-zealand-a-literature-review>

fees that local authorities can charge for issuing a brothel license while ensuring that they are able to charge a fee commensurate with the work involved in administering the licensing system. This is in recognition of the fact that exorbitant fees will discourage compliance and increase the potential for exploitative working conditions in underground unlicensed brothels.

## **SUMMARY – INDOOR SEX WORK**

### **My proposed Bill will:**

- a. Repeal s.11(5) of the Criminal Law (Consolidation) (Scotland) Act 1995, which criminalises brothel-keeping**
- b. Introduce a provision that enables up to four sex workers to work collectively from an indoor premises without requiring a license**
- c. Amend Schedule 2 to the Civic Government (Scotland) Act 1982 to bring the licensing of brothels in line with sex shops and sexual entertainment venues**



## Protections for Sex Workers

57. I believe that the current law on “living on the earnings of prostitution” is too broad, under-utilised and unfairly criminalises the friends, partners and family members of sex workers. It should not be a criminal offence to receive financial support from a sex worker if the sex worker willingly offers such support. If it is not illegal to earn money from selling sex then it should not be illegal to be supported by these earnings. The fact that someone lives with or is habitually in the presence of a sex worker must not be a criminal offence. In effect, this criminalises simply being in a relationship with a sex worker.
58. Following the New Zealand model I propose a statutory right for sex workers to refuse to provide, or refuse to continue to provide, sexual services under any circumstance. I also propose a new law on force/coercion that goes beyond our existing procuring laws and provides real safeguards for sex workers. This will be modelled on section 16 of the New Zealand PRA, which makes it an offence for a person to coerce someone to provide or continue to provide sexual services or to coerce someone to continue to provide payment derived from commercial sexual services by:
- Improperly using any power or authority gained through an occupational or vocational position (e.g. brothel manager)
  - Improperly using any power or authority gained through an existing relationship (e.g. partner, spouse or family member)
  - Committing an offence that is punishable by imprisonment (e.g. using threats of or actual physical violence)
  - Blackmail, including threatening to report the person to the immigration authorities
  - Supplying or withholding supply of controlled drugs
59. If convicted under the provisions on coercion in my proposed Bill a person will be liable, on conviction, on indictment, to imprisonment for a term not exceeding 7 years, to a fine, or to both and on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both. These penalties are in line with those currently in force for procuring in Scotland.
60. There is no intention in this proposed Bill to prescribe particular contractual arrangements between sex workers and brothel operators. I note that some sex workers may prefer to work as independent contractors and others may prefer an employer/employee relationship. If this Bill passes sex workers will, for the first time, have labour rights and will be able to pursue cases, against brothel operators, at an Employment Tribunal for unfair dismissal, sexual harassment and other forms of unlawful discrimination. In the event that disputes arise between sex workers and brothel operators where contractual arrangements are unclear the Tribunal will make

an assessment, based on the evidence before it, as to whether the relationship was that of employee or contractor.

61. In New Zealand the PRA included a statutory obligation for sex workers and clients to use prophylactic protection for any oral, vaginal or anal penetration with failure to comply constituting a criminal offence.<sup>102</sup> When the Act was reviewed it was noted that only one person had been convicted under these provisions (a client) and fined \$400.<sup>103</sup> I note that levels of condom use are already extremely high amongst sex workers in Scotland and the rest of the UK.<sup>104</sup> Following extensive discussions with sex workers in Scotland, I do not favour the introduction of criminal penalties as a way to encourage safer sex practices in the sex industry and believe that this can be achieved more effectively using a collaborative approach. If sex workers are concerned about the risk of prosecution for engaging in unsafe sex practices then this provides a disincentive to engage with health authorities and to seek testing, treatment and advice on sexual health. My proposed Bill will, however, include a statutory obligation on brothel operators and managers to ensure that safer sex supplies are readily made available on their premises for use by all sex workers and clients.
62. Social security is not (at time of writing) devolved to the Scottish Parliament, although this is expected to change. It is my belief that no-one who is currently in receipt of benefits should be compelled by the state to undertake any kind of sex work. This is consistent with the Welfare Reform Act 2012, which already prevents job centres from advertising sex work. This is as it should be: no one should be forced into sex work under threat of losing their access to social security.
63. This area is sometimes subject to sensationalist and misleading media coverage, so it is worth noting that many forms of sex work - for instance, cam-work, stripping and glamour modelling - are currently not criminalised, and people are not forced by job

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<sup>102</sup> s.9 of PRA

<sup>103</sup> See note 49, p.23

<sup>104</sup> Sanders, T. (2005) *Sex Work: A Risky Business*, Cullompton: Wilan Publishing. See p.45: "All of the indoor workers I interviewed were staunch advocates of using condoms for all commercial sex acts and considered the condom to be an integral part of their working routines."; Taylor, A. et al (1993) HIV risk behaviours among female prostitute drug injectors in Glasgow, *Addiction*, 88(11), 1561-1564. See p.1561: "use of condoms for all commercial sexual encounters was almost universal." Cusick, L. (2006). Widening the harm reduction agenda: From drug use to sex work. *International Journal of Drug Policy*, 17(1), 3-11. See p.6: "Where genital contact is the norm, condoms are widely used and STIs effectively prevented. Indeed, in the UK during an epidemic of STIs amongst the general population, their prevalence fell amongst sex workers attending a London clinic."

centre advisors to apply for these jobs through the threat of having their social security withheld. As such, my proposals are entirely consistent with current practice and passage of this proposed Bill will not lead to individuals being compelled to apply for sex work roles by job centre advisors.

64. To support those who wish to leave the sex industry, I will propose a provision to ensure that any sex worker choosing to exit the sex industry will not have their claim for benefits refused on the basis that they have voluntarily made themselves unemployed. This is in recognition of the fact that no-one should be compelled to sell sex against their will by anyone, including the state. This would currently require the UK Government to make a Section 30 Order under the 1998 Scotland Act, but this need would be removed if the relevant powers form part of the proposed devolution powers currently under discussion at Westminster.
65. My proposals do not require any alterations to the collection of income tax revenue, because sex workers are already expected to pay tax on their earnings. The fact that sex workers in Scotland are expected to pay tax as workers, but are prevented - through criminalisation - from access to the basic workplace safety and rights that other workers expect is clearly hypocritical, and a hypocrisy that my proposals seek to remedy.

## **SUMMARY – PROTECTIONS FOR SEX WORKERS**

### **My proposed Bill will:**

- a. Repeal sections 7 (procuring), 11(1) – (4) (living on the earnings of prostitution) and 13 (living on the earnings of male prostitution) of the Criminal Law (Consolidation) (Scotland) Act 1995**
- b. Create a statutory right for sex workers to refuse to provide, or continue to provide, sexual services under any circumstance.**
- c. Create a new and more robust law against coercion in the sex industry modelled on s.16 of New Zealand’s PRA**
- d. Create a statutory obligation on brothel operators and managers to ensure that safer sex supplies are readily made available on their premises for use by all sex workers and clients.**

## FINANCIAL IMPLICATIONS

66. I believe that if my proposed Bill is passed it will ultimately create savings for the Scottish Government on the basis that the burden on the criminal justice system (and legal aid budgets) will be greatly reduced if soliciting, kerb-crawling and brothel-keeping charges are no longer prosecuted. This will free up time and resources to concentrate on detecting and prosecuting genuine cases of coercion and exploitation in the sex industry. Any costs borne by local authorities in setting up and administering the licensing system for Licensed Brothels will be met by the application fees charged.

## EQUALITIES IMPLICATIONS

67. I believe strongly that my proposed Bill represents a significant advance for equality in Scotland. A false choice is often set up between a gender equal society in which sex work does not exist, and a gender unequal one in which it does. Outside of 'extreme social situations', such as China during the Cultural Revolution, there is no evidence to suggest that laws and policies on sex work have ever significantly increased or decreased the numbers of people selling sex.<sup>105</sup> The only thing such policies impact on, in either direction, is the safety and rights of sex workers. Where sex work is criminalised, sex workers' rights, safety and access to justice are limited or non-existent. Conversely, where sex work is decriminalised, sex workers can take steps to work in safety, and can access healthcare, justice, and labour rights. The real choice, in terms of equality, is between a society that protects sex workers or one that perpetuates the harms that they face.

68. My proposed Bill will improve the lives of the most marginalised sex workers who are disproportionately affected by criminalisation. It will empower female sex workers who are the victims of male violence in the course of their work to report this to the police and bring the perpetrators to justice. It recognises that sex workers often face intersectional oppression including sexism, racism, homophobia and transphobia and will assist all sex workers to work in greater safety. Most importantly, if my proposed Bill is taken forward it will send a strong signal that all sex workers in Scottish society are worthy of respect and that violence against them will no longer be tolerated.

69. There is a growing international consensus, among organisations working globally to address inequalities, that decriminalisation of sex work is the only appropriate policy

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<sup>105</sup> See note 6, p.201

response to ensure that sex workers are protected from violence and that their rights are upheld. UNAIDS<sup>106</sup>, the UN Development Programme<sup>107</sup>, the UN Population Fund<sup>108</sup>, the Joint UN Programme on HIV/AIDS<sup>109</sup> and the World Health Organisation<sup>110</sup> all call for the decriminalisation of adult sex work. Organisations involved in the fight against trafficking in human beings<sup>111</sup>, human rights organisations<sup>112</sup> and those working for gender equality<sup>113</sup> are also joining the campaign for decriminalisation of sex work. Just recently, Amnesty International passed a motion to allow its International Board to develop a policy supporting decriminalisation<sup>114</sup> and the Lancet, one of the world's most respected medical journals, issued a special edition in 2014, which strongly

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<sup>106</sup> UNAIDS Guidance Note on HIV and Sex Work, Available at [http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf). See p.6: "States should move away from criminalising sex work or activities associated with it."

<sup>107</sup> UNAIDS, UNDP, UNFPA, Sex Work and the Law in Asia and the Pacific, March 2013. Available at <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/sex-work-and-the-law-in-asia-and-the-pacific/>

<sup>108</sup> Ibid

<sup>109</sup> Ibid

<sup>110</sup> See note 34, p.8 – "All countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."

<sup>111</sup> Global Alliance Against Traffic in Women (GAATW) GAATW-IS statement on attack on UN research calling for decriminalisation of sex work, October 13. Available at <http://www.gaatw.org/resources/statements/754-gaatw-is-statement-on-attack-on-un-research-calling-for-the-decriminalisation-of-sex-work>

"GAATW's years of experience working on trafficking in persons, all over the world, has led us to the opposite conclusion. GAATW-IS advocates for the decriminalisation of sex work, for labour rights for sex workers, and the conceptual de-linking of sex work and trafficking in persons."; La Strada International NGO Platform Statement February 2014. Available at <http://lastradainternational.org/lisidocs/STATEMENT%20-%20FEMM%20report.pdf> - "The partners of the LSI NGO Platform have supported many women and men who were trafficked in the sex industry in the past nearly two decades. We know from experience that criminalisation does not solve any of the problems that our clients face, nor does it prevent or stop human trafficking."

<sup>112</sup> Human Rights Watch, World Report 2014. Available at [http://www.hrw.org/sites/default/files/wr2014\\_web\\_0.pdf](http://www.hrw.org/sites/default/files/wr2014_web_0.pdf). See p.47 – "...our push for decriminalizing voluntary sex work by adults..."

<sup>113</sup> Commission for Gender Equality (South Africa), Position Paper on Sex Work, 16 January 2013. Available at <http://www.nswp.org/sites/nswp.org/files/Policy%20Brief%20Position%20Paper%20on%20Sex.pdf>; Association for Women's Rights in Development, AWID Calls for the Voices of Sex Workers to be Heard by the European Parliament, February 2014. Available at <http://awid.org/Library/AWID-Calls-for-the-Voices-of-Sex-Workers-to-be-Heard-by-the-European-Parliament> - "Research has shown that the criminalization of sex workers and/or their clients will only increase the vulnerability of sex workers and will not lead to a decline in sex work nor a reduction in levels of violence against sex workers."

<sup>114</sup> Amnesty International (2015) 'Q&A: Policy to protect the human rights of sex workers'. Available at <https://www.amnesty.org/qa-policy-to-protect-the-human-rights-of-sex-workers/>

advocated decriminalisation as a way to protect sex workers from HIV.<sup>115</sup> This proposed Bill is truly a step forward for equality in Scotland.

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<sup>115</sup> The Lancet (2014) 'HIV and Sex Workers', published 23 July 2014. Available at <http://www.thelancet.com/series/hiv-and-sex-workers>

## QUESTIONS

1. Do you support the general aim of the proposed Bill? Please indicate “yes/no/undecided” and explain the reasons for your response.
2. Do you agree that the New Zealand Prostitution Reform Act is a model for Scotland to follow? Please indicate “yes/no/undecided” and explain the reasons for your response.
3. What (if any) would be the main advantages of the legislation proposed? What (if any) would be the disadvantages?
4. Do you agree that current laws against soliciting and kerb-crawling should be repealed? Please indicate “yes/no/undecided” and explain the reasons for your response.
5. Do you agree that small groups of up to four sex workers should be legally entitled to work collectively from the same indoor premises? Please indicate “yes/no/undecided” and explain the reasons for your response.
6. Do you agree that the licensing regime already in place for sexual entertainment venues should be extended to cover indoor premises where more than four sex workers are employed? Please indicate “yes/no/undecided” and explain the reasons for your response.
7. Do you agree that the laws on living on the earnings of prostitution and procuring should be repealed and that there is a need for more stringent and robust laws against coercion in the sex industry modelled on the New Zealand Prostitution Reform Act?
8. Do you agree that there should be a statutory right for sex workers to refuse to provide, or refuse to continue to provide, sexual services?
9. Do you agree that there should be a statutory obligation on brothel operators to ensure safer sex supplies are made available on their premises?
10. What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?

11. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?



## 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

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

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 the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

### Where to send responses

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

[Jean.Urquhart.msp@scottish.parliament.uk](mailto:Jean.Urquhart.msp@scottish.parliament.uk)

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

Jean Urquhart MSP  
Room M3.20  
Scottish Parliament  
Edinburgh  
EH99 1SP

You may also contact Jean Urquhart's office by telephone on (0131) 348 5052

### Deadline for responses

All responses should be received no later than **1 December 2015**.

## 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 on my website (<https://jeanurquharhighlandsandislandsmsp.wordpress.com/>). As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

I expect to provide copies of all responses to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary 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 and may name you as a respondent to the consultation – unless I have agreed that your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

## Requests for anonymity or confidentiality

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly along with the reasons for this. If I accept the reasons, I will publish it as an anonymous response, and only the anonymised version will be provided to NGBU and SPICe. If I do not accept the reasons, I will let you know and give you the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content of does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly and give reasons. If I accept the reasons, I will not publish it, or publish only a suitably redacted version. However, I would still be obliged to provide a complete copy of the response to NGBU, and a redacted copy to SPICe when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which

considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published in full.

### **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 statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

### **Data Protection Act 1998**

As an MSP, I must comply with the requirements of the Data Protection Act 1998 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 and I agree anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

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 specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

### **Freedom of Information (Scotland) Act 2002**

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). So if the information you send me is requested by third parties the Parliament is obliged to consider the request and

provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:  
[www.itspublicknowledge.info](http://www.itspublicknowledge.info).