

Criminalisation of the Purchase of Sex (Scotland) Bill (2)

A proposal for a Bill to make it an offence to purchase sex

**Consultation by Rhoda Grant MSP
Member for Highlands and Islands Region
11th September 2012**

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Foreword

The Scottish Parliament has, in its short existence, created an enviable history of leading the way in offering protection for its citizens. Legislation has provided greater protection for the vulnerable, old and young and those suffering abuse through targeted funding and legislation.



The Criminal Justice and Licensing (Scotland) Bill, considered by the Parliament in 2009-10, provided an opportunity for MSPs who were keen to offer protection to those who are abused and exploited to amend this legislation.

I am grateful for the wide support I received during that process to create a new offence of stalking. During that same session I undertook and passed the Domestic Abuse (Scotland) Act that amended legislation to provide more robust protection for those who suffer domestic abuse.

I believe that no individual in a 21st century Scottish society should be subject to inequality, abuse or exploitation. I remain deeply passionate and committed to furthering protection for the vulnerable and fighting to improve equality and social justice. As an MSP I am grateful that I have been given the opportunity to bring forward a consultation that seeks to fight injustice in our society.

This consultation seeks your views on a proposal to tackle the demand side of sexual exploitation. Following Trish Godman's consultation of the purchase and sale of sex, and related activities, in Scotland I adopted the proposal to criminalise the purchase of sex. I strongly believe that no human being should be reduced down to a commodity, to be bought and sold.

I strongly urge you, colleagues and friends to read this consultation and respond to the questions laid within. Your views and opinions are important to this consultation process.

Yours sincerely,

A handwritten signature in black ink that reads "Rhoda Grant".

Rhoda Grant MSP

HOW THE CONSULTATION PROCESS WORKS

1. This consultation is being launched in connection with a draft proposal which I lodged on 11 September 2012 as part of the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:
<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>
2. I had previously lodged a proposal on 23 May 2012 and prepared a statement of reasons as to why further consultation was unnecessary (given the previous consultation carried out by Trish Godman). However, the Justice Committee was not satisfied with the Statement of Reasons which meant that, under the Parliament's rules, my proposal would fall unless I lodged a consultation document within 2 months. I decided to take longer than this to prepare my consultation and this is why I have lodged a fresh proposal.
3. 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. If that final proposal secures the support of at least 18 other MSPs from two or more political parties, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.
4. At this stage, therefore, there is no Bill, only a draft proposal for the legislation.
5. 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.
6. 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.
7. Details on how to respond to this consultation are provided at the end of the document.

8. Additional copies of this paper can be requested by contacting me at

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9. Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.
10. 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>

INTRODUCTION

11. I believe that prostitution in Scotland is a form of violence against women and sexual exploitation.¹ The Scottish Government's *Safer Lives: Changed Lives* which sets out a shared approach to tackling violence against women recognises that prostitution is a form of commercial sexual exploitation. In a modern 21st century Scottish society such treatment and degradation of those who are sexually exploited should not be tolerated. Prostitution is harmful to those who are exploited and impacts negatively on society.
12. The majority of those who are involved in prostitution are unwilling participants. A number of UK studies provide useful background information in this area. Many of the findings are disturbing. For example 75% of women in prostitution in the UK became involved when they were children²; 70% spent time in care and 45% of women in prostitution report experiencing familial sexual abuse³. One study found that out of 115 women involved in street prostitution 81% of them experience violence with 28% having suffered attempted rape and 22% having been raped⁴; the same study found 48% of indoor prostitutes questioned experience violence from purchasers⁵; another paper links problematic drug use to those involved in prostitution⁶.
13. For these reasons, among others, it can be very difficult for victims to find a route out without the assistance of experienced support services. Support services currently offered to those who are involved in prostitution are an invaluable asset. Extremely worthwhile work is being undertaken by organisations and law enforcement agencies at local level to assist victims of prostitution, providing practical help and support. This proposed bill seeks to contribute to established policies and provide a practical tool to help to reduce sexual exploitation in Scotland.
14. It is important to stress that this proposed bill does not seek to further criminalise prostitutes. It seeks to focus on those who buy sexual services and who drive the demand for sexual exploitation in Scotland.
15. It is hoped this consultation will further open up the complex subject of sexual exploitation in Scotland to a full and robust public debate.

¹ Safer Lives: Changed Lives, Scottish Government (2009), <http://www.scotland.gov.uk/Resource/Doc/274212/0082013.pdf>, p.9

² Melrose, M. (2002). *Ties that bind – Young People and the Prostitution Labour Market in Britain*, presented at Fourth Feminist Research Conference, Bologna: September 2000, (www.women.it/cyberarchive/files/melrose.htm)

³ Home Office (2006). *A Coordinated Prostitution Strategy and a Summary of Responses to 'Paying the Price'*. London: UK Government.

⁴ Church, S., Henderson, M., Barnard, M & Hart, G. (2001) Violence by clients towards female prostitutes in different work settings: questionnaire survey. *British Medical Journal*, 332:524-5.

⁵ *Ibid.*

⁶ Home Office (2004) *Solutions and Strategies: Drug Problems and Street Sex Markets*. London: UK Government.

Terminology

16. There are many different words which are currently used to describe a person who is involved in prostitution. Many words can be derogatory, some describe what is believed to be a chosen profession, and others promote stereotypical ideas. Throughout this consultation the word prostitute will be used to designate a person who is exploited sexually while recognising that a minority of individuals state that they have chosen to be a prostitute. The term “prostitute,” when used in this paper, is not to be understood as being gender specific. However, this consultation paper recognises that the large majority of prostitutes are women.
17. This consultation document begins by explaining the objective and background to the proposed bill. It then moves on to how the proposed bill would strengthen the work to prevent and address commercial sexual exploitation in Scotland through criminalising those who engage in paid-for sex and those who pay for sex on behalf of someone else, with or without the knowledge of the person engaging in a paid-for sexual activity. You will find a list of the questions at the end of this document that I would like you to answer. I encourage and seek views from as many individuals and organisations as possible to allow for an in-depth analysis of this proposal. Comments on related issues not covered by the questions are also welcome.
18. This consultation does not seek views on the decriminalisation of those involved in prostitution. I have concluded that this course of action is not one I wish to advocate. You are welcome to provide comment on this aspect although I have a clear policy approach and the purpose of the consultation is to assist me in refining and developing my policy.

“Any society that claims to defend principles of legal, political, economic, and social equality for women and girl must reject the idea that women and children, mostly girls, are commodities that can be bought, sold and sexually exploited by men.”⁷

Gunilla S. Ekberg

⁷ Ekberg, G. (2004). The Swedish Law That Prohibits the Purchase of a Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings, *Violence Against Women*, Vol.10, No. 10, pp.1187-1218. Sage Publications, United States.

OBJECTIVE OF THE PROPOSED BILL

19. Prostitution is inherently harmful and dehumanising. The buying of sexual activity is sexual exploitation and is recognised as a form of violence against women. The demand creates a market where vulnerable individuals are compelled and/or forced into a cycle of exploitation that places them, and their families, at risk. It is vital that Scotland takes a zero tolerance stance on the buying of sexual activity.
20. Prostitution acts as a serious barrier to equality and dignity by reducing sexual activity and individuals to a commodity that can be exchanged for money or goods. The buying of individuals for sexual purposes creates a form of sexual servitude.
21. Those who benefit from or fuel prostitution through purchasing sexual activity should be made aware of the consequences of their actions. International and Scottish evidence based research suggests that men who have purchased sexual activity believe that a number of consequences including legal penalties, financial penalties or public exposure could act as an effective deterrent if effectively enforced.⁸
22. Creating an offence will strengthen the existing legislative framework against purchasers. Scotland should aim to be an unattractive market for those who organise prostitution activities and sexually exploit individuals for commercial purposes. As a by-product other associated serious criminal activities such as human trafficking, could become less lucrative. Human trafficking is not the focus of this proposed legislation. However, by tackling demand for the purpose of prostitution, these activities will be disrupted.

Q1: Do you support the general aim of the proposed Bill? Please indicate “yes/no/undecided” and explain the reasons for your response.

⁸ Macleod, J, Farley, M, Anderson, L & Goulding, J. *Challenging Men's Demand in Scotland: A Research Report Based on Interviews with 110 Men Who Bought Women in Prostitution* (Women's Support Project, Glasgow 2008).pp. 26-27

BACKGROUND

23. In 2010 Trish Godman MSP lodged amendments to the Criminal Justice and Licensing (Scotland) Bill to criminalise the purchase of sex and related activities. After taking written and oral evidence on the amendments, the Justice Committee agreed that further consultation should be carried out.⁹ Trish Godman subsequently consulted on a proposal for a Bill to create the following three offences:

- Engaging in a paid-for sexual activity;
- Advertising paid-for sexual activities; and
- Facilitating a paid-for sexual activity.

24. The majority of those responding to the question of who should be criminalised agreed that only the purchaser, and not the prostitute, should be guilty of committing an offence.¹⁰ The main reasons given were: tackling demand; acknowledgement that prostitutes are vulnerable and victims of abuse and; that the proposed Bill would bring indoor prostitution in line with legislation covering street prostitution where purchasers can be prosecuted.

“We believe that the measures proposed would not only reduce the demand to buy sex, but also make Scotland a less attractive destination country for those that profit from the misery of prostitution and the traffickers who exploit the strength of sex markets. However, more than just criminalising demand, the main impact of the proposed Bill would be to challenge attitudes and to send out a strong message that buying sex is not a harmless or acceptable activity within Scotland. This particularly resonates in a locality such as Orkney with no ‘formal’ sex industry, but where there is anecdotal evidence of activities (and the attitudes which go alongside these activities) such as the exchange of sex for e.g. alcohol.”¹¹ (NHS Orkney)

25. Trish Godman stood down as an MSP at the 2011 election, and her proposal fell. Subsequently I have taken forward the proposal to criminalise the purchase of sex (i.e. an offence of engaging in a paid-for sexual activity or paying for sex). The analysis of the previous public consultation suggested that this proposal was considered to be an effective mechanism for reducing the demand to buy sexual activity by making it clear that those who purchase will be prosecuted.

⁹Details and documents:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25043.aspx>

¹⁰ Criminalisation of the Purchase and Sale of Sex (Scotland) Bill, Summary of Consultation Responses (2011), p.5

http://www.scottish.parliament.uk/S3_MembersBills/Final%20proposals/20110316consultationresponsesummaryFinal.pdf

¹¹ Criminalisation of the Purchase and Sale of Sex (Scotland) Bill, Summary of Consultation Responses (2011), pp.3-4

http://www.scottish.parliament.uk/S3_MembersBills/Final%20proposals/20110316consultationresponsesummaryFinal.pdf

Challenging demand

26. It is difficult to estimate the number of people involved or affected by prostitution in Scotland due to the lack of reliable data available. It was estimated in 1999 that around 80,000 people were involved in prostitution (on street and off street) in the UK.¹² As outlined in the previous consultation document, the 2004 Scottish Executive Report “*Being Outside*”¹³ estimated that approximately 1400 individuals were regularly involved in street prostitution. Whilst the level of advertising online and off-line suggests that there is a substantial market regarding indoor prostitution, the exact number of those involved in indoor prostitution is not known.
27. The impact and level of harm to those involved, as well as on their families and communities, is therefore difficult to quantify. Nonetheless as long as the purchase of sexual activity in Scotland continues to be tolerated, commercial sexual exploitation and the dangers inherent to those involved will continue.
28. Statistical data on recorded crime and anecdotal evidence from individuals and organisations working with those involved can all be used as indicators of the prevalence of commercial sexual exploitation in Scotland.
29. Scottish Government publications¹⁴ on recorded crime indicate that prostitution related offences are most prevalent in regions containing our main cities. There is also acknowledgement that whilst prostitution may be prevalent in our main cities it is also evident in smaller towns and more rural areas throughout Scotland.¹⁵ ACPOS recognises that the effects of prostitution are more widespread due to “the geographical spread of residence of both prostitutes and those using their services.”¹⁶ Providing sustainable, effective support programs to those exploited through prostitution is absolutely crucial as is bolstering legal and policy initiatives to tackle demand.
30. The aim of creating an offence in Scotland that penalises the purchase of sex is also to change the attitudes of those who make a choice to purchase sex. These individuals should be made aware of the negative and harmful impact

¹² Home Office, (July 2004). “*Paying the Price: a consultation paper on prostitution*” http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary; Kinnell, H (1999) Survey of sex work characteristics and policies in the UK, Netherlands, Belgium, France, Ireland and Luxembourg. *European Network for HIV / STD prevention in prostitution*.

¹³ Scottish Executive (2004). *Being Outside: Constructing a Response to Street Prostitution*, A Report of the Expert Group on Prostitution in Scotland. Pages 1 and 4; see also paragraph 4.3.

¹⁴ Scottish Government (2012). *Recorded Crime in Scotland, 2011-12*, Statistical Bulletin, Crime and Justice Series. A National Statistics Publication for Scotland, Edinburgh.

¹⁵ Easton, L., & Matthews, R. (January 2012). *Investigating the Experiences of People Trafficked into Commercial Sexual Exploitation in Scotland*. Equality and Human Rights Commission Research Report. Glasgow.

¹⁶ Letter from ACPOS to the Scottish Government regarding the Draft Guidance for Local Authorities and their Community Planning Partners on Tackling Street Prostitution (11 December 2006). <http://www.scotland.gov.uk/Resource/Doc/1099/0052354.pdf>

of their behaviour on those directly affected as well as on society by perpetuating violent behaviour, inflicting harm on vulnerable individuals and to understand their key role in the expansion of organised and serious crime.

31. *Challenging Men's Demand for Prostitution in Scotland* surveyed 110 men who had paid for sexual activity. It provides an insight into the opinions of those interviewed about buying sexual activity. A third of these men stated that by buying sexual activity they could satisfy their sexual cravings. Also, prostitution provided an opportunity for them where they have "freedom to do anything they want in a consequence-free environment."¹⁷

32. Its main findings highlighted that:

- 74% had bought sex by the age of 25;
- 55% were alone when they first bought sex;
- 56% had bought sex outdoors;
- 80% had bought sex indoors; and
- 56% had bought sex outside the UK.¹⁸

The study also indicated harmful and violent attitudes of men who buy sexual activity:

- 32% stated that rape happens because men get sexually carried away; or (34%) because their sex drive gets "out of control";
- 12% said that the rape of a prostitute or call girl was not possible; while 10% asserted that the concept of rape simply does not apply to women in prostitution.¹⁹

33. This study supports the argument that prostitution is dangerous and violent for those involved. It also indicated that a number of sanctions, effectively enforced, could deter purchasers from buying sex. This included criminal penalties and/or public exposure.²⁰ A number of participants in the study also stated that a major social change would be necessary in order to eliminate prostitution. Some suggestions for tackling these issues included, but not exclusively, routes out programmes for prostitutes, promotion of sex equality and the eradication of poverty.²¹

34. I believe in this instance that social change will only be achieved through the adoption of specific legislation such as I am promoting, supported by implementation of effective local policies and practice including enforcement.

¹⁷ Macleod, J., Farley, M., Anderson, L., & Golding, J., (2008). *Challenging Men's Demand for Prostitution in Scotland: A Research Report Based on Interviews with 110 Men Who Bought Women in Prostitution*. Women's Support, Scotland.
<http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf>. P.19

¹⁸ *Ibid.* pp.10-12

¹⁹ *Ibid.* p. 14

²⁰ *Ibid.* p.27

²¹ *Ibid.* pp.24-25

35. Responses to Trish Godman's consultation raised some concerns that legislating on the criminalisation of the purchase of sex would push prostitution activities "underground". There is no substantive evidence to suggest that criminalisation of those who purchase sex would have this effect.
36. Prostitution has to be visible to those that purchase sex and therefore for it to go undetected is not possible. If those who purchase sex are able to find those selling sex then the law enforcement agencies will also be able to do so. Whilst this proposal may deter or even diminish street prostitution, indoor prostitution or prostitution services marketed via Internet and escort services may continue. However, as the purchaser of sexual activity would be at risk of prosecution this would result in a decrease in the demand side.
37. Countries that have criminalised the purchase of sexual activity include Sweden, Norway, and Iceland. A comprehensive evaluation of the Swedish law, which was carried out in 2008-2010, indicates that the number of individuals involved in street prostitution has decreased, while no overall increase in prostitution activities has been observed as a result of the ban on the purchase of sexual services.²² The evaluation report also notes that concern that prostitution should move to other arenas has not been fulfilled. The evaluation also finds that following the introduction of the law in 1999, the number of men who bought sexual services has decreased considerably leading the evaluation inquiry to conclude that the law has affected their actions and decisions to purchase sexual services²³.
38. A number of other countries are consulting on a range of measures and approaches, some of which include criminalising the purchase of sex. Before the 2012 elections a proposal was lodged with the French National Assembly in 2011.²⁴ This led the National Assembly adopting a resolution to abolish prostitution.²⁵ Following the election, the French Minister for Women has committed to organising a consultation on how to abolish prostitution in France.²⁶
39. There is a consultation currently running in Ireland on the future direction of legislation regarding prostitution.²⁷
40. The Northern Ireland Assembly has in recent history published research papers relating to prostitution and human trafficking.²⁸ ²⁹ Within the papers

²² Selected extracts of the Swedish government report SOU 2010:49. *The Ban against the Purchase of Sexual Services. An Evaluation 1999-2008*. Section B, English summary of the report, p.8.

²³ *Ibid.* p.9.

²⁴ <http://www.bbc.co.uk/news/world-europe-16047284>

²⁵ *Ibid.*

²⁶ <http://www.guardian.co.uk/society/2012/jun/22/french-minister-abolition-prostitution-europe>

²⁷ <http://cdn.thejournal.ie/media/2012/06/Discussion-Documents-on-Future-Direction-of-Prostitution-Legislation.pdf>

²⁸ Department of Justice, (January 2011). *Research paper investigating the issues for women in Northern Ireland involved in prostitution and exploring best practice everywhere*.

²⁹ Potter, M., & Egerton, L., (12 June 2012). *Human Trafficking in Northern Ireland*. Northern Ireland Assembly, Research and Information Service Research Paper.

there are discussions regarding possible prevention routes through criminalisation of the procurement of sex as is raising awareness to help deter purchasers and building upon policing policies. A consultation ran on proposed amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (treatment of claimants etc) Act 2004 in regards to compliance with the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.³⁰

41. Clause 5 of the Criminal Justice Bill, which at the time of writing is proceeding through the Assembly, seeks to amend the law in Northern Ireland relating to human trafficking for sexual exploitation.
42. During the second stage debate on the Criminal Justice Bill in July 2012, Lord Morrow proposed that there should be a new offence of paying for the services of a prostitute (regardless of the existence of any coercion).³¹ On 21 August 2012 Lord Morrow published a public consultation on proposing changes to the laws on prostitution and human trafficking in Northern Ireland.³² The consultation seeks views and opinions on several proposals including making it an offence to pay for sex and training for police and prosecutors.
43. Reasons for governments and parliamentarians taking up consultation processes or adopting similar approaches are varied. They include objectives to eradicate violence against women, further equality, tackling human trafficking, or have been a result of a call from public protest. In the example of Israel, public protests demanding social justice were an impetus for addressing prostitution in the country.³³ In February 2012 Israel's Ministerial Committee for Legislation approved a draft law that would make it an offence to purchase sex.³⁴

³⁰ <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/final-eu-directive-ht-consultation-document.pdf>

³¹ See Northern Ireland Assembly Hansard, 3 July 2012, Page 339.

<http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Criminal-Justice-Bill/>

³² <http://www.bbc.co.uk/news/uk-northern-ireland-19328666>

³³ <http://www.jpost.com/VideoArticles/Video/Article.aspx?id=256573>

³⁴ *Ibid.*

Commitment to tackle sexual exploitation

44. The introduction of the Prostitution (Public Places) Scotland Act 2007 showed a political commitment to tackle prostitution and recognition by the police authorities that purchasers of sexual activity perpetuate sexual exploitation:

“This new approach to the problem of street prostitution shows we will not turn a blind eye to the people who sustain and fuel this exploitative trade.

It corrects an unfair legal position where only those engaged in prostitution could be targeted, while the kerb-crawlers demanding their services – often harassing the wider community in the process – get off scot-free... But while we rightly seek to help those individuals trapped in prostitution, we simply cannot, and will not sit back and let the demand that fuels this deeply damaging and dangerous trade go unchallenged.”³⁵

(Cabinet Secretary for Justice Kenny MacAskill, 2007)

“The new law [the 2007 Act] which comes into effect today changes fundamentally the power that our police officers can wield in tackling the purchaser... Kerb-crawlers perpetuate the demand that keeps vulnerable women and men immersed in prostitution. They hinder the efforts that we in the police and many of our partners make to create routes out for those who are vulnerable and caught up in street prostitution.”³⁶

(ACPOS Assistant Chief Constable John Neilson, 2007)

³⁵ <http://www.scotland.gov.uk/News/Releases/2007/10/15103450>

³⁶ *Ibid.*

CURRENT LEGISLATION

45. Currently in Scotland, it is possible for a consenting adult to have sex with another consenting adult in return for payment without any offence being committed by either person. However, a range of offences apply to street prostitution, the involvement of young people in prostitution, the running of brothels and those who seek to live off the earnings of a prostitute.³⁷
46. Section 46 of the Civic Government (Scotland) Act 1982 applies in relation to soliciting and loitering in a public place by a prostitute (male or female).
47. The Criminal Law (Consolidation) (Scotland) Act 1995 creates a number of offences connected to profiting from prostitution:
- Section 7(1) includes offences aimed at people who seek to procure women;
 - Section 11 includes offences relating to living on the earnings of prostitutes and brothel-keeping; and
 - Section 13(9) makes it an offence to live on the earning of another from male prostitution.
48. The most recent legislation aimed at those who purchase sexual services was the Prostitution (Public Places) Scotland Act 2007 (the 2007 Act). The Act created two offences:
- 1) Soliciting (i.e. a person solicits another person in a public place for the purpose of obtaining the services of someone engaged in prostitution); and
 - 2) Loitering in a public place (i.e. where it might be reasonably inferred that the person loitering was doing so for the purpose of obtaining the services of a person engaged in prostitution).
49. Soliciting or loitering can be in a motor vehicle or on public transport.
50. Under the 2007 Act a person guilty of an offence of soliciting or loitering is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).
51. Other recent legislation also impacts indirectly and directly on prostitution activities. The Sexual Offences (Scotland) Act 2009 created a statutory offence of sexual coercion which makes it illegal to force or coerce someone to engage in any sexual activity (sections 4, 5 and 6). The recent Criminal Justice and Licensing (Scotland) Act 2010 increased the maximum penalties for various offences under sections 11 and 13 of the Criminal Law

³⁷ SPICe Briefing, Criminal Justice and Licensing (Scotland) Bill: Stage 3, 4 June 2010, page 18.
<http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB10-35.pdf>

(Consolidation) (Scotland) Act 1995, relating to living off the earnings of prostitution and brothel-keeping.

Human Trafficking and International Protocol

52. This document makes references to international evidence-based research conducted on the subject of prostitution. The previous consultation paper also drew upon such research and concluded that these studies establish a link between human trafficking, organised crime and prostitution. The paper compared the number of convictions for human trafficking in England and Wales (150) to that of Scotland (1) at the time of publication. It also discussed the rise in human trafficking in Scotland as reported through the media.
53. Subsequent to the conclusion of the previous consultation the Equality and Human Rights Commission Scotland (EHRC) published its findings on its 2011 inquiry into human trafficking. This study outlines the many forms of human trafficking: exploitation of migrant labour, to domestic servitude and commercial sexual exploitation. While the report emphasises that commercial sexual exploitation is not the exclusive form of human trafficking in Scotland it points to commercial sexual exploitation as the “most prevalent and pernicious manifestation of human enslavement”.³⁸ The report calls for a zero tolerance approach to human trafficking and highlights the need for the purchasers of sex “to be faced with the effects of their conduct and their role in maintaining the profitability of this vicious trade.”³⁹
54. It is important to stress that human trafficking constitutes the trafficking of people around the UK as well as those who are trafficked to and from the UK. Internal trafficking is an area of growing concern.⁴⁰
55. The EHRC report recommends that all relevant policy levers and legislation should be used to make Scotland a “hostile environment for traffickers”.⁴¹
56. The report outlines that 134 persons were referred into the National Referral Mechanism (NRM) over a 21 month period. However, it does not include “those potential victims that do not consent to enter the National Referral Mechanism (NRM) or those who have not been identified at all.”⁴²
57. In Northern Ireland 75 victims of human trafficking have been reported since 2009 with one trafficker convicted in April 2012. Northern Ireland, like Sweden, recognises that the sex industry and human trafficking are

³⁸ *Inquiry into Human Trafficking in Scotland*. Report of the Equality and Human Rights Commission, Scotland. Executive Summary (2011) p.10.
<http://www.equalityhumanrights.com/scotland/human-rights-in-scotland/inquiry-into-human-trafficking-in-scotland/>

³⁹ *Ibid.* p.14.

⁴⁰ <http://archive.scottish.parliament.uk/s3/committees/equal/papers-10/eop10-12.pdf>. p.3.

⁴¹ *Inquiry into Human Trafficking in Scotland*. (2011). Report of the Equality and Human Rights Commission, Scotland. pp.23, 25, 31, 60, 86

⁴² *Inquiry into Human Trafficking in Scotland*. Report of the Equality and Human Rights Commission, Scotland. Executive Summary (2011) p.23

“fundamentally linked”.⁴³ In February 2012 the Northern Ireland Assembly passed a motion to meet the obligation set out by the Council of Europe Convention (2005) and Directive 2011/36/EU of 5th April 2011 *on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*.

58. The new Directive takes a victim-centred approach and calls on Member States to introduce provisions to improve victims’ support as well as prevention. Article 18 of the Directive calls on Member States to take appropriate action, including education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking human beings.

“Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation⁴⁴ as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.”

(Article 18(4), Directive 2011/36/EU)

59. In June 2012 communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions published the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.⁴⁵ The strategy highlights significant data and evidence from member states regarding human trafficking. It outlines the comprehensive and integrated approach of the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The objective of this strategy is “to provide a coherent framework for existing and planned initiatives, to set priorities, to fill gaps and therefore complement the recently adopted Directive.”⁴⁶
60. Article 9 of the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000) requires states to implement comprehensive measures to prevent trafficking such as social and economic initiatives, as well as information and mass media campaigns.⁴⁷
61. A major 2012 research study of the situation in 150 countries discusses “*Does legalized prostitution increase human trafficking?*” Its main conclusion is: “*Our*

⁴³ Potter, M. & Egerton, L. (2012). *Human Trafficking in Northern Ireland*, Research and Information Service, Research Paper NIAR 012-12. Northern Ireland Assembly. p.3

⁴⁴ “Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.” Article 2 (3), Directive 2011/36/EU.

⁴⁵ [http://ec.europa.eu/home-](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf)

[affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf)

⁴⁶ Communication from the commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the regions (19 June, 2012) *EU Strategy towards the Eradication of Trafficking in Human Being 2012-2016*, European Commission, Brussels, p.4

⁴⁷ http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20tr%20aff_eng.pdf

*quantitative empirical analysis for a cross-section of up to 150 countries shows that the scale effect dominates the substitution effect.*⁴⁸ *On average, countries with legalized prostitution experience a larger degree of human trafficking inflows.*⁴⁹ This increase is to meet the demand that a legalized industry creates.⁵⁰ The paper lays out the arguments that prostitution relies on a supply and demand function – where there is a demand from purchasers of sexual activity, there will be a willingness to supply prostitution services.⁵¹

62. The Swedish Government reiterates that “international trafficking in human beings could not flourish but for the existence of local prostitution markets where men are willing and able to buy and sell women and children for sexual exploitation.”⁵² It is argued that some are deterred from purchasing sexual activity where it is illegal and where there is an increased risk in being prosecuted.⁵³
63. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 is considered the fundamental international treaty addressing women’s rights. It seeks to protect women from abuse and discrimination. States Parties, including the United Kingdom which signed the treaty in 1981 and ratified it in 1986, are legally bound to put provisions in place to implement and meet their obligations to protect, uphold and promote human rights. The 30 articles of the Convention lay out measures for state parties to adopt in order to eradicate discrimination of women and promote equality for both men and women. Part 1 article 6 states “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”⁵⁴
64. Prostitution is sexual servitude, reducing humans down to a commodity to be bought and sold for sexual activity. It perpetuates gender inequality and legitimises the actions of purchasers of sexual activity to use the bodies of individuals.

⁴⁸ This is based on the theory that legalization of prostitution has two contradictory effects on the incidence of trafficking. The scale effect sees an expansion of the prostitution market, thus increasing human trafficking. The substitution effect reduces demand for trafficked women as legal prostitutes are favoured over trafficked prostitutes.

⁴⁹ Cho, S. Y., Dreher, A., & Neumayer, E. (September 2011 updated January 2012). *Does legalized prostitution increase Human Trafficking?* Courant Research Centre ‘Poverty, Equity and Growth in Developing and Transition Countries: Statistical Methods and Empirical Analysis’. Georg-August-Universität Göttingen.

⁵⁰ *Ibid.* P.2

⁵¹ *Ibid.* P.5

⁵² Swedish Ministry of Industry, Employment, and Communication. (2004) Fact Sheet: *Prostitution and Trafficking in Women.*

<http://www.sweden.gov.se/content/1/c6/01/87/74/6bc6c972.pdf>

⁵³ Cho, S. Y., Dreher, A., & Neumayer, E. (September 2011 updated January 2012). *Does legalized prostitution increase Human Trafficking?* Courant Research Centre ‘Poverty, Equity and Growth in Developing and Transition Countries: Statistical Methods and Empirical Analysis’. Georg-August-Universität Göttingen. P.6

⁵⁴ Part 1, Article 6, CEDAW (1979).

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>

65. In Scotland, it is currently legal to procure and pay for sex. Those who buy sex are central to the exploitation and abuse of those individuals who for one reason or another find themselves in prostitution. This proposal would make it illegal to purchase sex, thereby disrupting the market that tolerates and fuels commercial sexual exploitation.

“The Bill would remove the current disparity that exists in the purchase of street and off street prostitution. The message would be that Scotland will take sanctions against those who purchase and exploit women and children for prostitution.”⁵⁵

(Association of the Directors of Social Workers)

⁵⁵ Criminalisation of the Purchase and Sale of Sex (Scotland) Bill, Summary of Consultation Responses (2011), p.3
http://www.scottish.parliament.uk/S3_MembersBills/Final%20proposals/20110316consultationreponsesummaryFinal.pdf

THE PROPOSED BILL

66. The proposed bill will make buying sex from a prostitute illegal in Scotland. The offence will target demand for sex and will apply in any location where sex can be purchased, for example on the street and off the street i.e. in brothels and massage parlours or flats.
67. My objective is to tackle the demand for prostitution. The proposed bill will be the first legislation in Scotland which penalises the act of buying sex, rather than selling it, and so targets purchasers rather than prostitutes. The 2007 Act criminalised soliciting or loitering in a public place with the intention of purchasing sex. It was promoted primarily to protect communities from the nuisance, alarm or offence arising from street prostitution-related activities in or near public places, whether caused by seller or purchaser.
68. The effects of the 2007 Act are still to be determined. However, a freedom of information request indicated that the number of charges received rose during the first two years following commencement and subsequently decreased in 2010-2011. In 2007-2008, 100 charges were received; this number increased to 174 in 2009-2010 and dropped to 152 in 2010-2011.⁵⁶
69. My proposed legislation would put it beyond doubt that Scotland has a zero tolerance policy towards prostitution and commercial sexual exploitation.
70. Further consideration of the details of the offence and associated financial and equality issues are set out in the following paragraphs.

Nature of the offence

71. Prostitution involves a commercial transaction related to sexual activity. It involves one person (the prostitute) “giving” a sexual activity and another (the customer) “receiving” a sexual activity, in exchange for payment. It counts as prostitution whether or not it is the customer who makes the payment (or someone else on their behalf) and whether or not it is the prostitute who receives the payment (or someone else on their behalf).
72. The Bill will target the “purchasing” (rather than the “selling”) side of this transaction, by making it an offence knowingly to engage in a sexual activity with a prostitute or to pay for someone else to engage in a sexual activity with a prostitute (whether or not the person engaging in paid-for sexual activity knows it has been paid for).
73. In order to understand the offence fully, it might be helpful to consider a few examples. The first example is the most straightforward: Person A goes into a massage parlour and has sex with person B working there; A hands over an agreed amount of cash either directly to B or to someone else C such as a receptionist. It is clear that A has frequented the massage parlour for the

⁵⁶ Letter to the Justice Committee from Rhoda Grant MSP, 19 June 2012
http://www.scottish.parliament.uk/S4_JusticeCommittee/General%20Documents/20120619_Rhoda_Grant_to_CG.pdf

purpose of having sex, and that A is aware that B had sex with them in exchange for payment. As such A (but not B) would be guilty of an offence under the Bill.⁵⁷

74. In order to determine whether an offence had been committed, it would not matter whether A made the payment before or after the sex took place. Indeed, it would not matter if the payment was never actually made (e.g. if the police raided the massage parlour before A could make the payment), so long as it was clear from the circumstances that payment was expected and that the sex was provided in that expectation. Nor would it matter whether B ever actually receives (or, indeed, expects to receive) any part of the payment. A would be no less guilty of an offence if C (either with or without A's knowledge) keeps all the cash and gives none to B.
75. A second example demonstrates how the Bill will protect those who are genuinely unaware they are engaging in paid-for sex: one person (A) pays a prostitute (C) to have sex with their friend (B) without letting B know this is the case. B believes that sex with C is as part of an ordinary consensual relationship. Under the Bill, the knowledge element is central to the offence – so, in this example, B does not commit an offence but A does, even though it is B who has sex with a prostitute while A does not.
76. In the final example one person (A) offers a friend (B) a gift consisting of a paid-for visit to a prostitute (C). Again, it is A who pays for the sex, and B who has the sex, but in this case both are aware of the nature of the transaction, and both would be guilty of an offence under the Bill.
77. In all the examples, the gender of the participants is irrelevant to determining whether an offence has been committed.

Q2: What do you believe would be the effects of legislating to criminalise the purchase of sex (as outlined above)? Please provide evidence to support your answer.

Q3: Are you aware of any unintended consequences or loopholes caused by the offence? Please provide evidence to support your answer.

⁵⁷ C would not be guilty of an offence under the Bill; but there are already relevant offences for which C could be prosecuted (brothel-keeping or living off the immoral earnings of a prostitute)

Definitions of payment and sexual activity

78. The previous consultation looked at what is meant by “payment”. It did not consider what constitutes a “sexual activity”.

Definition of payment

79. The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 section 9(2) defines “payment” as “any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount”.⁵⁸ The payment does not need to involve money actually changing hands, but could involve the discharge of an obligation to pay – such as the waiving of a debt – or provision of goods or services free of charge or at a reduced cost – for example providing food, alcohol or accommodation, or supplying illegal drugs free or for less than street value. It might also include payment to a nominated third party.

80. I want to ensure that the proposed legislation avoids any potential loopholes where a purchaser could avoid prosecution by means of non-cash payment.

Definition of sexual activity

81. Under section 19 (interpretation) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 “sexual activity” is defined as an activity “that a reasonable person would, in all the circumstances, consider to be sexual”.⁵⁹ A reasonableness test is used in many Acts and is a widely recognised proposition. This avoids the potential problems which come with having to specify every type of sexual activity.

82. I intend to pursue this approach as it would mean that the offence would not be limited to sexual intercourse or oral sex but could potentially include a wider variety of sexual activity. It would be for law enforcement agencies (and ultimately, the courts) to decide whether a reasonable person would conclude that an activity is of a sexual nature.

Q4: What are the advantages or disadvantages in using the definitions outlined above?

⁵⁸ <http://www.legislation.gov.uk/asp/2005/9/section/9>

⁵⁹ <http://www.legislation.gov.uk/asp/2005/9/section/19>

Penalties

83. The penalty for offences related to prostitution prescribed by section 1(5) of the Prostitution (Public Places) (Scotland) Act 2007 is a fine not exceeding level 3 on the standard scale (currently £1,000).
84. By comparison in Sweden (where the purchase of a sexual service has been an offence since 1999) the penalty is a fine and up to a maximum of one year in prison. Following the evaluation of the law in 2010 the maximum penalty for the crime was increased from six months' imprisonment to one year to allow for a wider scale of penalties, and to adapt a sentence to the circumstances of individual cases.
85. In keeping with current legislation, I envisage the maximum penalty for an offence under the Bill being a fine not exceeding level 3 on the standard scale. However, I am receptive to other arguments, including that the courts should have the option of imposing more severe penalties – including, possibly, a custodial sentence – in appropriate circumstances.

Q5: What do you think the appropriate penalty should be for the offence? Please provide reasons for your answer.

Enforcement

86. The previous consultation responses highlighted concerns regarding enforcement of the proposed bill. Respondents stated that the possible ineffective enforcement of the bill could result in the subsequent failure to deter purchasers of sexual activity.
87. Law enforcement agencies have a wealth of experience and knowledge about prostitution and commercial sexual exploitation. The Association of Chief Police Officer in Scotland (ACPOS) stated “any new legislation should enhance the opportunity for successful prosecution rather than reduce it”.⁶⁰ In its submission to the previous consultation ACPOS underlined that an effective deterrent is the key to tackling the demand for prostitution.
88. Police forces work with local authorities to develop local solutions to meet differing local needs. This is reflective through *Guidance for Local Authorities and Community Planning Partnerships* that provide advice and best practice examples for a joint agency approach to tackling street prostitution.⁶¹ According to Scottish Government statistics, 576 offences associated with prostitution⁶² occurred in 2011-12.⁶³ This is a two per cent decrease from the previous year.
89. There is a great deal of enforcement work on-going. Information, knowledge and evidence sharing of the extent of prostitution throughout regions occur between agencies and the police. For example, Glasgow Community and Safety Services (GCSS) which manages the Trafficking Awareness Raising Alliance (TARA), like other support agencies, have a wealth of specialised experience and knowledge on complex issues of human trafficking and prostitution. TARA works closely with Strathclyde police, Glasgow City Council, social work services, UK Border Agency, health and voluntary organisations to tackle violence against women and children, commercial sexual exploitation and trafficking.
90. Organisations, like GCSS, describe a “clear link between prostitution, trafficking and organised crime” and believe disruption to the sex industry is crucial to tackling commercial sexual exploitation and human trafficking.⁶⁴ They have established and continue to develop good practices. The demand from the sex industry and those seeking to purchase sexual activity is recognised as the cause and reason for the supply of women.⁶⁵

⁶⁰ ACPOS submission to *Criminalisation of the Purchase and Sale of Sex (Scotland) Bill Consultation*, (2011). No.58. <http://www.rhodagrants.org.uk/consultation2012/>

⁶¹ <http://www.scotland.gov.uk/Topics/Justice/crimes/Response/streetprostguidecons>

⁶² Offences associated with prostitution includes: Offences relating to prostitution, Soliciting services of person engaged in prostitution, Brothel keeping, Immoral traffic and Procurement.

⁶³ Statistical Bulletin: Crime and Justice Series, *Recorded Crime in Scotland, 2011-12*. A National Statistics Publication for Scotland.

⁶⁴ See response to Trish Godman’s Consultation from Glasgow Community and Safety Services on behalf of Glasgow City Council, no.93.

<http://rhodagrants.org.uk/consultation2012/>

⁶⁵ <http://archive.scottish.parliament.uk/s3/committees/equal/inquiries/migration/subs/MT16TARA.pdf>. p.6

91. Prostitution can be used as, and linked with, serious and organised crime. Police authorities throughout Scotland place a priority on the disruption of serious and organised crime
92. Law enforcement continues to develop effective initiatives to investigate, prosecute and deter aspects of serious crime.⁶⁶ These agencies have the capacity, knowledge, intelligence and creativity to develop effective enforcement strategies. My proposal would give police authorities' robust powers to arrest and the courts to prosecute those who fuel the demand for commercial sexual exploitation.
93. The internet can provide a mechanism for advertising and selling sexual activity. However, it can also provide a means for law enforcement agencies to gather intelligence and evidence.
94. Laws already in force in Scotland have led to over 500 reported offences linked to prostitution last year. The police successfully develop expertise and experience in evidence and intelligence gathering to enforce current legislation relating to prostitution.
95. The proposal would increase the powers currently available to law enforcement agencies for the investigation of prostitution-related crimes. It would also send a clear message to those who buy sexual activity that the purchase of a sexual activity will lead to prosecution, no matter where it is purchased in Scotland.
96. An example of how current practice can target the prostitute and fail to capture those who purchase sexual services was highlighted by Janine* a former prostitute who spoke about her experience on BBC Scotland's Call Kaye (19 June 2012)⁶⁷: *"I worked in a sauna once. The police came in. All the guys just got up and walked out and we all got charged."* (03:50)
97. Enforcement alone is inadequate to address the problem and find a solution. A societal change in attitude and perception of prostitution and commercial sexual exploitation is needed. When the law was introduced in Sweden, there was a public campaign to promote and raise awareness of the law. The police and other agencies undertook training to bolster good practices. The Evaluation highlights how this has led to a change in attitude in Sweden. A co-operative approach between agencies and organisations is necessary to:
- change perceptions and understanding;
 - send a strong, clear message that purchasing of sexual services in Scotland will not be tolerated; and

⁶⁶ See response to Trish Godman's Consultation from Glasgow Community and Safety Services on behalf of Glasgow City Council, no.93. <http://rhodagrants.org.uk/consultation2012/>

⁶⁷ *Name changed to protect identity. <http://www.bbc.co.uk/news/uk-scotland-18506909>.

- encourage those who are or have been involved in prostitution or commercial sexual exploitation to seek support and contact support services available.

98. The cost to society of not tackling the demand of commercial sexual exploitation and the harm that it causes far out-weighs the cost of acting to tackle these issues head-on. The Association of Chief Police Officers asks their Chief Constables the following: *Is the price of inaction a price worth paying?*⁶⁸

Q6: How should a new offence provision be enforced? Are there any techniques which might be used or obstacles which might need to be overcome?

⁶⁸ ACPO (2011). *Strategy and Supporting Operation Guidance for Policing Prostitution and Sexual Exploitation*.

Anticipated costs of implementing the proposed Bill

99. The proposals would have a small financial impact upon the Scottish Government, if the Scottish Ministers decided to publicise the change in the law.
100. Courts would perhaps have an increased workload initially as cases are brought forward for the new offence. However in the long run there may be cost-savings resulting from a reduction in the number of cases brought under the new offence as would-be clients are deterred from engaging in paid-for sexual activity. With the reduction of prostitution in Scotland cases under other prostitution related offences should also fall.
101. The majority of the costs would be incurred in enforcing the new offence. However, again it is envisaged that as it becomes known that the police will arrest those who engage in paid-for sexual activity, the level of demand for prostitution should drop, leading to less police resources being expended to tackle prostitution.
102. With less demand for individuals to be exploited for the purpose of prostitution there will be a greater demand on support services to assist those individuals that leave the prostitution milieu.

Q7: What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?

Impact of the proposal on equalities

103. Gender equality cannot be achieved in a society where one person can buy another.
104. Evidence suggests that women are more likely than men to be victims of prostitution and commercial sexual exploitation and that the majority of those who purchase sexual activity are men. This proposal aims to challenge the demand for prostitution and tackle the inequality it perpetuates.
105. In terms of race, the EHRC found women from specific countries were trafficked to Scotland because there was a market for sexual exploitation of women from different ethnicities.⁶⁹ This proposal to tackle demand would reduce the market for sexual exploitation in Scotland by deterring traffickers. It would therefore indirectly lessen ethnicity-based inequality in Scotland as the number of women brought to Scotland for the purpose of commercial sexual exploitation decreased.
106. This proposal aims not only to tackle the demand for prostitution and commercial sexual exploitation but aims to promote a societal change and further equality.

Q8: 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?

⁶⁹*Inquiry into Human Trafficking in Scotland*. (2011). Report of the Equality and Human Rights Commission, Scotland. pp. 36-37.

CONCLUSION

107. Thank you for reading this consultation paper. You are now invited to respond by answering the questions which are repeated below and make any other comments that you consider appropriate.

QUESTIONS

- Q1:** Do you support the general aim of the proposed Bill? Please indicate “yes/no/undecided” and explain the reasons for your response.
- Q2:** What do you believe would be the effects of legislating to criminalise the purchase of sex (as outlined above)? Please provide evidence to support your answer.
- Q3:** Are you aware of any unintended consequences or loopholes caused by the offence? Please provide evidence to support your answer.
- Q4:** What are the advantages or disadvantages in using the definitions outlined above?
- Q5:** What do you think the appropriate penalty should be for the offence? Please provide reasons for your answer.
- Q6:** How should a new offence provision be enforced? Are there any techniques which might be used or obstacles which might need to be overcome?
- Q7:** What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?
- Q8:** 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

108. 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.

109. Responses should be submitted by **14 December 2012** and sent to:

Rhoda Grant MSP
Room M1.06
Scottish Parliament
Edinburgh EH99 1SP

Tel: 0131 348 5766

Fax: 0131 348 5767

E-mail: Rhoda.Grant.msp@scottish.parliament.uk

110. Please indicate whether you are a private individual or an organisation

111. Respondents are also encouraged to begin their submission with short paragraph outlining briefly who they are, and who they represent (which may include, for example, an explanation of how the view expressed was consulted on with their members).

112. To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website <http://www.rhodagrants.org.uk/> and in hard copy in the Scottish Parliament's Information Centre (SPICe).

113. Therefore, 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 “anonymous response”. 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.

114. 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 the non-confidential parts). However, I am obliged to provide a (full) copy of the response to the Parliament's Non-Government Bills Unit 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.

115. NGBU may be responsible for summarising and analysing the results of this consultation and will normally 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.
116. There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.
117. In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.

Data Protection Act 1998

118. 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. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).
119. I may also edit any information which I think could identify any third parties 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.
120. 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.
121. Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

122. 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 and 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.

123. Further information about Freedom of Information can be found at:
www.itspubliknowledge.info.