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Criminal Justice Committee
The Scottish Parliament
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Dear Convener

Prostitution (Offences and Support) (Scotland) Bill

I want to thank the Committee for its comprehensive Stage 1 Report on the Prostitution (Offences and Support) (Scotland) Bill and to provide an update on the Scottish Government's position on the Bill and next steps in advance of the Stage 1 debate.

I would also like to record my thanks here, to everyone that has written to me, and that I have met since the introduction of the Bill in May last year as well as all those who have provided evidence to the Committee, both written and in person. I am grateful to them for sharing their views and discussing what for many is a very personal and sensitive issue.

I also wish to commend Ash Regan for bringing forward this Bill and ensuring that this extremely important issue has been brought to the fore and onto the political agenda. Many women who are in, or have been in, prostitution have been given a voice to talk about their experiences due to this Bill. Importantly the Bill has led to a clear unequivocal position for those in Parliament and beyond - that prostitution is violence against women and girls. This is the Scottish Government view, as set out in our Equally Safe strategy and we agree with Ms Regan that men should not be able to purchase sex, that women should not be seen as buyable – quite simply that women are not for sale.

The Scottish Government agrees with this clear principle in the Bill and its overall aim of supporting women. However, having very carefully considered the Committee's Report and reflected on what we have heard during evidence sessions, the Scottish Government has concluded that whilst we support the fundamental principle of criminalising the purchase of sex, we still retain significant concerns with the provisions as drafted in the Bill, and are very aware that there are women in prostitution who have said that this Bill as drafted will lead to them being at a higher risk of violence.

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With only weeks left in this parliamentary term, we do not think there is sufficient time left in this session to be able to amend the Bill to properly mitigate that risk as well as make other very necessary changes.

Consequently, we are regrettably unable to support it at Stage 1.

I have detailed below more specific commentary on the Bill provisions as drafted and have noted that the Committee report also highlights various issues with the Bill and has conceded that time is against the Bill, and so pointed to what other steps should be taken.

Whilst I recognise that Ms Regan has been clear about her willingness to amend aspects of the Bill to respond to concerns raised during the Stage 1 progress, we do not believe that the time is available to bring about the degree of change required with proper engagement and consultation. As I said to Committee at my Stage 1 evidence session, for the Scottish Government to be able to bring forward proposals to amend the Bill, we would need time for the significant consultation and engagement with the women impacted by the Bill, justice partners including Police Scotland and COPFS, and wider stakeholders such as CoSLA and third sector organisations who provide support currently. As an example, and as I outlined during Stage 1, the Committee is very aware of the time it took to develop the necessary amendments to the Victims, Witnesses, and Justice Reform Bill to address concerns raised and Committee views.

To engage properly with those affected to ensure we can develop clear workable legislation takes months not weeks. That consultation is vital to ensure legislation achieves the objectives sought, to ensure that the legislation is workable in practice and that Parliament can have confidence in the Bill at Stage 3.

It is also imperative that legislation commands the confidence of those involved in prostitution or who are seeking to exit prostitution. The Scottish Government is committed to ensuring that the voices of those with lived experience are heard and inform policy development, but legislating based on principle alone is not sufficient – we must take the action which will most effectively challenge demand, will improve support for those involved in prostitution, and will do so ensuring the safety of women.

Next steps

The Stage 1 scrutiny has shown the complexity of the issues at play in addressing the purchase of sex and we are concerned about the operational effectiveness of the suggested provision to criminalise it for reasons previously outlined and reflected below. We consider significant further examination is needed to determine the powers required to enable effective enforcement, most particularly in an online context. Therefore, I would like to outline three steps that I can commit to.

Firstly, the Scottish Government strongly supports the Committee's suggestion of an independent Commission with a clear remit and defined timeline for reporting and consider that is complementary to our existing Strategic Approach. Therefore, I have instructed officials to immediately start work on the establishment of a Commission so that options are available for the Minister with responsibility for this issue following formation of the next Government. No matter who is in this role in post the election, this will be ready so that if - as this government will do if returned - this Commission can be established at pace to inform any future legislation.

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Secondly, if this government is returned, we would ensure such a Commission was time limited so that any legislation required can be put before MSPs as early as possible in the next session, informed by the Commission and public consultation, and we commit to introducing that legislation.

Thirdly, we will continue our related work to address men's demand, and will immediately increase support for those in, or seeking to leave, prostitution, As well as the £400,000 outlined in the draft budget, I can inform the Committee we are also providing an additional £65,000 to the Women's Support Project to continue vital work supporting women to exit prostitution.

Bill detail

Let me now provide detail on the sections of the Bill and the Committee's report.

Section 1: proposes a new offence of paying for the performance of a sexual act by a person.

As I have detailed, the Scottish Government supports the principle of criminalising the purchase of sex and, in common with the Committee's conclusions, retain concerns as to whether the new criminal offence proposed in the Bill can be adequately enforced. Most particularly we have concerns about how the provision as drafted can address the challenges of online activity and the police's ability to respond.

The Committee may wish to be aware of a recent debate in the Northern Ireland Assembly on 27 January, on Adult Services Websites, which highlighted again how, notwithstanding the legislation they have in place based on the Nordic Approach, they face difficulties with this aspect of challenging demand.

Through your recommendation of establishing an independent Commission, this is an area we could give further scrutiny to, informed by those with the relevant expertise, to help ensure any legislation that is developed can respond to the online aspects, which are a key driver of exploitation.

We again agree with the Committee that these challenges need not, in themselves, rule out legislating in this area, but consider that the amendments that would be required to get this right would require careful consultation to respond to the concerns that have been raised, most specifically in relation to the safety of women – concerns which must be addressed. I most recently noted the open letter to the Herald calling for MSPs to vote against the Bill, because of concern that it would put individuals at more harm and that it was going to drive 'the trade' underground.

I also acknowledge the Committee's wider observations around any amendment to the definition of 'sexual act' in the Bill and revisiting the option currently in the Bill which allows for prosecution under both summary and solemn proceedings.

The Scottish Government very much see this provision as being intrinsically linked to the issue of support provision and in both instances more work and consideration, which includes engagement and consultation with those impacted, is required.

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Sections 2 and 3: Repeal of offence of soliciting.

This part of the Bill attracted widespread support from witnesses, with the Committee acknowledging the Scottish Government position that repealing section 46 would require further consultation given the sensitivities and complexities around prostitution. This would include considering any impact on Police Scotland's current locus to interact with those involved in prostitution, from a safety perspective. As outlined during Stage 1, Police Scotland's Begonia approach aims to route women to local support, as opposed to criminalising them - with their enforcement actively focussed on kerb-crawlers and those carrying out exploitation and violence.

Similar considerations around challenging demand for prostitution have been discussed in the UK parliament. Within the discussions on the UK Crime and Policing Bill there have been similar proposed amendments on repeal of existing offences and in a debate on [9 December 2025](#) it was decided not to progress these, pointing to the need to consider the views of local communities in relation to on-street activity, as well as potential impacts on women's safety.

The Scottish Government recognises the broad support for repeal but would caution that these issues of safety and community reaction need to be very carefully considered in how this is taken forward ahead of committing to doing so, and again there are some of the issues a Commission could consider.

Section 4 and 5: Quashing of historic convictions.

The Committee have acknowledged the policy intention and the concerns expressed with the approach proposed, including that it would not be appropriate for the Scottish Parliament to quash convictions in these circumstances.

The Scottish Government has been clear from the outset that we do not support the quashing of these convictions and would oppose any suggestions to do so, as this would encroach on the role of the independent criminal courts.

Again, as outlined during Stage 1, we would also note the considerable cost of quashing convictions and that this is a major undertaking. Many have referenced the Post Office Horizon case as a precedent in this context. However, the fundamental difference is that context was that the convictions were tainted by the fact that the information technology system had not been functioning properly. The Parliament took an exceptional step to quash those convictions to ensure that victims could speedily access justice and that they could receive compensation from the United Kingdom Government for the harm that was caused by the use of the IT system. I would also reference the costs involved in quashing the convictions under the 2024 act were £4,000 per person. That is a considerable amount of money, given that there are about 10,600 previous convictions in relation to this Bill.

We note that any alternative proposals would be inherently linked to any repeal of existing offences, and therefore further consultation on this aspect would be subject to some of the same considerations as are outlined above.

It's also perhaps helpful to note that the Crown Office and Procurator Fiscal Service's written evidence to the Committee included that *between 1 April 2020 and August 2025 ... there were 10 charges across 10 cases reported under section 46 during this period.*

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In 7 cases, no prosecutorial action was taken. The remaining 3 cases were marked for Summary court proceedings...of the three cases marked for Summary proceedings, 2 involved additional offences and, in both, not guilty pleas were accepted to the section 46 charges. The remaining case involved a single section 46 charge and was discontinued prior to trial. This reflects a principled approach by Police Scotland and the Crown not to criminalise the seller.

As outlined above, this is alongside Police Scotland's Begonia approach which aims to route women to local support.

The Committee Stage 1 report noted that, in general terms a conviction for a section 46 offence is spent within a year at most and is not included as conviction information on any level of disclosure when spent. Information relating to a section 46 conviction could only be included as other relevant information on a Level 2/PVG scheme disclosure if the police determined the information was relevant to the purpose of the disclosure which would be in exceptional cases.

We are undertaking work with employability stakeholders to improve support for women with experience of commercial sexual exploitation when they are ready to consider these next steps.

Section 6: Right to assistance and support.

The Scottish Government agree with the Committee's concerns with the specific proposal set out in the Bill, namely a statutory right to support, including how this will be funded. The absence of any specific detail and an expectation that this is for the Scottish Government to determine, fund and deliver, is not a sound basis for legislation. Given the range of support needs some with experience of prostitution may have, this clearly needs more careful consideration.

The Scottish Government consider that these concerns, which have been consistently raised, have not been adequately addressed. It is imperative that any proposal is deliverable and affordable, and that those who may be affected indirectly and directly are able to comment on the detail, which is clearly absent.

This approach would not have been acceptable if this were a Scottish Government Bill.

Financial Memorandum

The Scottish Government would also agree with the Committee's concerns that the figure in the Financial Memorandum for the annual cost of the support may be a significant underestimate, and would raise serious concerns about the accuracy of the Memorandum. The Scottish Government also consider that alongside the absence of detail and with no clear view as to where that funding would be taken from (noting that the Delivering Equally Safe and Victim Centred Approach funds are currently fully committed), this is a fundamental gap in consideration of the Bill.

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I hope this of assistance to the Committee and other MSPs ahead of the Stage 1 debate on Tuesday 3 February.

Yours sincerely,



SIOBHIAN BROWN

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