

Response to the Criminal Justice Committee’s Stage 1 Report on the Prostitution (Offences and Support) (Scotland) Bill

Executive Summary

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Important clarification on scope and intent

This response addresses the Stage 1 Report as published and laid before Parliament. It is not a critique of the Criminal Justice Committee as a collective body, nor of individual Members. The Report records that the Committee was evenly divided on whether the general principles of the Bill should be agreed, with four Members supporting progression at Stage 1 and four Members taking a different view.

It is important to distinguish between support for progression at Stage 1 and the language used in the Report to describe that support. Members who argued for the Bill to proceed did so on the basis that Stage 1 is concerned with agreement to general principles, and that identified issues — where they existed — were matters for amendment or refinement at later stages, in line with normal parliamentary practice. Their support for progression on that basis should not be read as indicating fundamental objections to the Bill’s core provisions or as implying that the Bill’s principal measures were inherently defective.

Where this response identifies deficiencies, they relate to how the Stage 1 Report, as a document, frames and aggregates those positions, and to the consequences of that framing for Parliament’s understanding of the evidence and of Members’ views. The response is therefore directed at the content, structure, and omissions of the Report itself, rather than at the conduct, competence, or good faith of those Members who sought to enable proper parliamentary consideration of the Bill’s general principles.

Headline Finding

Failure of Scrutiny and Its Consequences for Parliament

Across the Stage 1 Report, a clear and recurring failure of scrutiny is evident. Claims carrying decisive weight in the Report's analysis are repeatedly left untested, even where the Committee had before it written, expert, or authoritative evidence directly capable of assessing those claims. That evidence is neither summarised nor evaluated, and its omission is not explained. The effect is that Parliament is presented with asserted risks as though they were unresolved, while being denied visibility of the material submitted to examine whether those risks are evidenced. In circumstances where a Stage 1 Report makes no recommendation, this is not a neutral outcome: it places Parliament in a position where it cannot know what relevant evidence has been excluded from the Report's reasoning, and therefore cannot properly discharge its own Stage 1 function.

Purpose and Scope

This executive summary sets out the grounds on which the response will examine whether the Criminal Justice Committee's Stage 1 Report on the Prostitution (Offences and Support) (Scotland) Bill discharges the scrutiny function required by Rule 9.6 of the Standing Orders of the Scottish Parliament.

The Stage 1 Report records that the Committee was divided on whether the general principles of the Bill should be agreed. Some Members supported agreement, anticipating amendment at later stages, while others were of the view that the Bill should not proceed beyond Stage 1. As a result, the Stage 1 Report makes no recommendation to Parliament.

Where a Stage 1 Report makes no recommendation, the quality and completeness of its evidential and analytical scrutiny become particularly significant, as Parliament must rely on the Report to inform its own Stage 1 decision.

The Stage 1 Scrutiny Requirement

Stage 1 scrutiny exists to enable Parliament to decide whether to agree the general principles of a Bill. Rule 9.6 requires a lead committee to assess the evidence before it, to weigh competing claims, and to provide Parliament with a reasoned basis for decision.

Recording disagreement or cataloguing submissions, as done in the Stage 1 Report, does not fulfil this function. Where a Stage 1 Report declines to assess the evidential basis of competing claims, it does not remain neutral; it fails to discharge the scrutiny role on which Parliament depends.

The Central Claim Relied Upon in the Stage 1 Report

The Stage 1 Report repeatedly records a central counter-claim: that creating an offence of paying for, or agreeing to pay for, the performance of a sexual act may place women in prostitution at increased risk of harm, including through reduced safety, displacement, and loss of screening practices.

That claim underpins the view, held by some Members, that the Bill should not proceed beyond Stage 1. It is a predictive, causal claim that requires evidential testing.

Failure to Test the Safety Claim

The Stage 1 Report records claims about increased risk, safety, screening, displacement, and violence, but it does not examine their evidential basis. It does not distinguish between anecdotal accounts and population-level evidence, nor does it assess whether asserted harms are supported by causal analysis.

At the same time, the Report states that it does not adjudicate on the quality of contested research evidence. The result is that a claim treated as decisive for some Members is recorded but not scrutinised.

Exclusion of Rebuttal Evidence

Following my oral evidence, I submitted detailed written supplementary material directly addressing the central claims relied upon in opposition to the Bill, including assertions about safety, screening and enforceability.

The Stage 1 Report does not engage with that rebuttal evidence. It is not summarised, assessed, or weighed in the Report's analysis, notwithstanding that it is listed in Annexe A.

By contrast, supplementary correspondence from the Minister and the Lord Advocate is actively drawn into the body of the Report, paraphrased, and relied upon in the framing of concerns.

The effect is that asserted risks are repeatedly recorded and relied upon, while the evidence submitted to test those claims is excluded from the Report's reasoning.

Asymmetrical Treatment of Lived Experience Evidence

Where women with lived experience agree with the Stage 1 Report's diagnosis of prostitution as harmful, exploitative, and unsustainable, but do not assert that the Bill would increase danger, their evidence is afforded little weight. Where women with lived experience reject that diagnosis but assert increased danger, their evidence is elevated and repeatedly foregrounded.

This distinction cannot be explained by concern for lived experience as such. It reflects prioritisation of a specific claim.

The Stage 1 Report acknowledges that lived experience evidence before it was contested. However, it does not assess the evidential basis of the competing safety claims, does not test them against Scotland's legislative history or comparative evidence, and does not explain why one set of testimony is treated as determinative while the other is not.

The effect is not neutral presentation of disagreement. It is an asymmetrical weighting of lived experience evidence in which fear of harm is treated as decisive, while rebuttal by other women with lived experience is discounted without analysis.

Screening Claims as Untested Assumptions

Claims about the loss of "screening" are repeatedly invoked as safety concerns, yet the Stage 1 Report does not examine whether screening functions as a meaningful safety mechanism across the prostitution system as a whole.

Structural constraints that limit many women's ability to refuse buyers are not analysed, despite evidence submitted on this point. These claims form part of the untested safety narrative rather than being subjected to scrutiny.

Scottish Legislative History and the Significance of Non-Occurrence

Scotland has criminalised buyer behaviour in public places since 2007. During scrutiny of the Prostitution (Public Places) (Scotland) Bill in 2006–07, materially identical safety warnings were advanced, including claims about increased danger, loss of screening, and displacement.

Nearly two decades later, no empirical evidence has emerged demonstrating that those predicted harms materialised. If criminalising buyers in public settings had increased violence or reduced safety, such evidence would exist and would have been presented. The Stage 1 Report does not examine this legislative history or the evidential significance of non-occurrence.

Enforceability and Mischaracterisation of Section 1

The Stage 1 Report acknowledges that evidential difficulty does not, in itself, rule out legislation. Nevertheless, it treats enforcement challenges as undermining the objectives of section 1.

This rests on a mischaracterisation of the Bill's purpose as prosecution-driven. Section 1 is not designed to succeed primarily through high rates of prosecution or conviction, but through its deterrent, normative, and declarative effects, which operate independently of enforcement yield.

No witness identified a drafting defect in the creation of the offence itself, and justice partners accepted the offence as legally workable, albeit challenging. Opposition to section 1 rests on asserted safety consequences, not legal deficiency, as recorded in the Stage 1 Report.

Section 1 gives effect to the Bill's primary purpose, namely the creation of an offence of paying for sexual acts, and was identified at introduction as the core provision to which the Bill must conform. Stage 1 scrutiny therefore required engagement with the provision on its own terms.

Time Pressure, Amendability, and Parliamentary Precedent

The Stage 1 Report cites time pressure and proximity to dissolution as reasons for caution. Oral evidence concluded on 26 November 2025, written supplementary material was submitted on 16 December 2025, and the Report was published on 23 January 2026. The Report does not explain why this period was insufficient for evidential assessment, particularly given that it explicitly declined to weigh contested evidence.

During scrutiny of the Prostitution (Public Places) (Scotland) Bill in 2006–07, the relevant committee initially stated that it was not in a position to endorse the general principles. That position changed when the Executive indicated willingness to amend the Bill at Stage 2. The Committee at that time then recommended agreement to the general principles, conditional upon amendment, despite the same safety warnings and significant enforceability concerns, and despite scrutiny taking place in the final months before dissolution.

In the present case, the Member in Charge has similarly indicated willingness to amend where appropriate. However, no drafting defect was identified in section 1. Resistance to progression rests solely on the untested claim of increased harm.

Deferral in Place of Scrutiny

Although the Stage 1 Report makes no recommendation on whether to agree the Bill's general principles, it goes on to propose a future commission should the Bill not progress. The Report does not identify what evidential gap such a commission would fill, nor explain why the evidence already before the Committee was insufficient to permit a view.

The Bill stands at the apex of more than twenty years of sustained Scottish Government and parliamentary engagement with prostitution, including consultations, commissioned research, legislative scrutiny, and policy review. Much of the evidence considered at Stage 1 draws directly on that existing body of work.

The Stage 1 Report does not explain why that evidential history, supplemented by Stage 1 material, was inadequate for scrutiny. In the absence of such explanation, the proposal operates as deferral in place of scrutiny.

Conclusion

The Stage 1 Report accepts that prostitution is harmful and exploitative and recognises the inadequacy of the status quo. It records a central claim that the Bill would increase harm, but it does not test that claim against rebuttal evidence, legislative history, or comparative experience.

The Report records disagreement rather than scrutinising it. It withholds a recommendation without explaining why the evidence before it is insufficient to permit a view, and it proposes deferral without completing the scrutiny required to justify that course.

This is not a deficiency of evidence.
It is a failure of Stage 1 scrutiny.