

# **PROSTITUTION (OFFENCES AND SUPPORT) (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Prostitution (Offences and Support) (Scotland) Bill introduced in the Scottish Parliament on 20 May 2025.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 69–EN);
  - a Financial Memorandum (SP Bill 69–FM);
  - a Delegated Powers Memorandum (SP Bill 69–DPM);
  - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 69–LC).
3. This Policy Memorandum has been prepared by Ash Regan MSP, the Member who introduced the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

4. The aim of the Prostitution (Offences and Support) (Scotland) Bill is to reduce the amount of prostitution in Scotland because of the evidence of exploitation and the harms that it is causing. The Bill introduces a new criminal offence of paying for sexual acts, repeals section 46 of the Civic Government (Scotland) Act 1982 (the offence of soliciting for the purposes of prostitution in a public place) and quashes historic convictions under section 46 (sections 1-5).
5. The Bill also provides a legal right to support to people who are or have ever been in prostitution and places a corresponding duty on the Scottish Ministers to ensure the provision of appropriate assistance and support for these individuals, including but not limited to the provision of accommodation, financial and other material assistance, counselling services and healthcare (section 6). The Bill confers on the Scottish Ministers the power to make provision for that assistance and support in regulations.

6. The Member believes that prostitution is commercialised, systematic rape,<sup>1</sup> and many of the people who sell sexual acts endure numerous human rights violations when they do so. As the vast

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<sup>1</sup> These are the words of a survivor of prostitution, spoken at a 2024 research workshop into prostitution and torture.

majority of people in prostitution are female and virtually all buyers of sexual acts are male,<sup>2</sup> it is recognised as a form of violence against women and girls. The Member acknowledges that a small number of individuals selling sexual acts are male. However, prostitution is predominantly a system of inequality, exploitation, violence and abuse based on sex with male perpetrators and female victims. To emphasise this fact, the Member will refer to the sellers of sexual acts as women or women and girls hereafter.

7. Most, if not all, women and girls who sell sexual acts have been subject to rape, beatings, humiliation, degradation, deprivation, physical and psychological abuse or exploitation and a large number have endured this from childhood.<sup>3</sup> The Member believes that the dehumanising commodification of female bodies in prostitution cannot be reconciled with the women's rights movement's fight for equality between the sexes, nor with any government's commitment to addressing violence against women and girls.

8. The Member believes that for as long as female bodies are products to be bought, women and girls cannot fully realise their rights as equals, because prostitution is "an inherently violent system built on the sexual subordination of women and girls."<sup>4</sup> This is not only detrimental for women and girls in prostitution, but also for society as a whole:

"A society that allows women to be prostituted by men, and to be sold and bought as commodities, cannot achieve gender equality. Such a society not only discriminates against women but also among women themselves; normalizing prostitution reflects on the overall status of women and creates two groups of women: one that can be bought and another that cannot."<sup>5</sup>

9. Drawing on evidence from other jurisdictions, the Member contends that the most effective policy to curb prostitution and reduce the associated human trafficking involves targeting market demand rather than penalizing those who sell sexual acts. In this 'challenging demand model', law enforcement focuses on undermining the economic incentives by criminalising buyers while decriminalising sellers. This Bill thus adopts that strategy, aiming to disrupt the market for commercial sexual exploitation while safeguarding some of society's most vulnerable individuals.

10. According to an analysis prepared for the National Institute of Justice, part of the US Department of Justice, illicit markets such as prostitution and sex trafficking are fundamentally driven by demand. As the authors state, 'removing or reducing demand reduces or eliminates markets,' since supply and distribution depend on it. The authors also assert that: "The need for people to provide a

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<sup>2</sup> The Scottish crime statistics for the last ten years bear witness to this fact, with 100% of those prosecuted and convicted for selling sexual acts recorded as female and 99.76% of those prosecuted and convicted for buying sexual acts recorded as male. Data available here: Scottish Government Safer Communities Directorate, *Policing and prosecution of crimes associated with prostitution: FOI release*, 30 November 2023 <https://www.gov.scot/publications/foi-202300383839/>

<sup>3</sup> Scottish Government, Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews, December 2016, p. 88.

<sup>4</sup> United Nations, Human Rights Council, Report by Special Rapporteur Reem Alsalem, UN Doc A/HRC/56/48, 7 May 2024, p. 10, <https://documents.un.org/doc/undoc/gen/g24/078/81/pdf/g2407881.pdf>.

<sup>5</sup> G. Jabbour, 'Exploring the demand for prostitution: What Male Buyers Say About Their Motives, Practices, and Perceptions', KAFA (enough) Violence & Exploitation, 2014, p. 61. [https://prostitutionresearch.com/wp-content/uploads/2017/06/Exploring-the-Demand-for-Prostitution\\_2014-1.pdf](https://prostitutionresearch.com/wp-content/uploads/2017/06/Exploring-the-Demand-for-Prostitution_2014-1.pdf).

‘supply’ and for pimps and traffickers to ‘distribute’ the supply to buyers would not exist without demand.”<sup>6</sup> A 2014 *Police Chief* article, summarising the findings from this study and discussing its implications for law enforcement, further emphasizes the need for demand-reduction strategies, stating that ‘given the covert nature of human trafficking and the rarity of victims identifying themselves, traditional law enforcement strategies may be ineffective at building cases against traffickers.’ The article goes on to argue that ‘it is, therefore, necessary for law enforcement executives to consider alternative approaches, such as demand reduction strategies,’ to tackle the issue effectively.<sup>7</sup>

11. Men’s demand fuels prostitution and sex trafficking, and research into the attitudes of men buying sexual acts has shown that legality normalises the practice, while anonymity is a major factor driving demand, consistently finding that the majority would be deterred from buying sexual acts if it were illegal.<sup>89</sup> The report quoted above found similar patterns, demonstrating that market incentives encourage demand when purchasing sex remains unpunished. Studies in countries that have implemented the Nordic model further support this, showing that criminalising buyers significantly reduces demand. While criminalisation is not the only deterrent, it is one of the most effective strategies identified in international research in curbing prostitution and the associated sex trafficking.<sup>10</sup> Section 1 of this Bill adopts this approach, making it a criminal offence to pay for the performance of sexual acts in order to disrupt the market for commercial sexual exploitation.

12. In addition to the harms associated with prostitution set out below, there is evidence that going through the criminal justice system and having a criminal record for prostitution offences can increase women’s vulnerability, be a barrier to them exiting prostitution and, in fact, entrench them further in prostitution, leading to a vicious circle. This suggests that, rather than helping to prevent prostitution, criminalisation of those who sell sexual acts has the opposite effect.

13. By decriminalising the seller of sexual acts while criminalising the buyers, the burden of shame and negative consequences is shifted away from prostituted individuals, who are among the

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<sup>6</sup> M. Shively, *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, Final Report*, (Final report submitted to the National Institute of Justice, funded by Department of Justice, Document No. 238796, 30 April 2012), p.iv and in more detail on pages 3-9.

<sup>7</sup> M. Q McGough, ‘Putting Sex Traffickers Out of Business: Combatting Human Trafficking and Prostitution by Reducing the Demand for Commercial Sex’, *Police Chief* 2014, vol. 81 (7), p. 16.

<sup>8</sup> G. Jabbour, ‘Exploring the demand for prostitution’, p. 57. Also see M. Farley et al., *Men who Buy Sex: Who They Buy and What They Know*, Eaves, London, December 2009, Table 8, p. 22; J. Macleod et al., *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 Project, 2008, Table 7, p.27; R. Durchslag and S. Goswami, *Deconstructing the Demand for Prostitution: Preliminary Insights from Interviews with Chicago Men who Purchase Sex*, Chicago Alliance Against Sexual Exploitation, May 2008, p. 24; M. Farley et al., *Men who pay for sex in Germany and what they teach us about the failure of legal prostitution: a 6-country report on the sex trade from the perspective of the socially invisible ‘freiers’*, 2022, p. 46.

<sup>9</sup> The remarkably consistent empirical findings also find support in statistical modelling of buyer behaviour: Cameron and Collins find that buyers behave as “rational economic actors” who are “responsive to risk” and conclude that that “shifting the burden of risk and punishment cost on to the man may prove an efficient strategy in reducing the level of prostitution”. Cameron, S., Collins, A. *Estimates of a Model of Male Participation in the Market for Female Heterosexual Prostitution Services*. *European Journal of Law and Economics* 16, 271–288, 2003, p.286.

<sup>10</sup> In a quantitative empirical analysis of 150 countries, the authors found that on average, jurisdictions where prostitution is decriminalised show “a larger degree of reported trafficking inflows.” Cho, S.-Y. et al., *Does legalized prostitution increase human trafficking?* *World development*, 41. pp. 67-82, 2013.

most marginalized and vulnerable in society, onto the buyers who exploit their power and wealth to satisfy their sexual desires.

14. Nationally, prostitution is now widely recognised as a form of abuse and as violence against women and girls, including by the Crown Office and Procurator Fiscal Service, Police Scotland, and the Scottish Government itself. Sections 2 and 3 of the Bill therefore aim to change how its victims are treated by decriminalising them. This will align Scots Law with policing and prosecuting practices across the country, which have not routinely targeted prostituted women as perpetrators for a considerable time.

15. Section 4 of the Bill provides for the quashing of historic convictions under section 46 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”). These convictions have been described by survivors of prostitution as a substantial and often insurmountable barrier to rebuilding their lives as previous criminal convictions have an impact on many areas of daily life, but especially on employment. As those involved in prostitution are exploited, these convictions serve to punish the victims and not the perpetrators of this exploitation. They also frequently present a barrier to exiting prostitution. With a substantial number of women being coerced into prostitution and a large percentage becoming involved as minors, it is particularly important that existing convictions under this section are repealed to avoid further disadvantaging already vulnerable women.

16. The Member acknowledges that the identification and notification of quashed convictions may be a sensitive issue for the individuals involved and appreciates that trauma-informed practices would be necessary to avoid further harming them in pursuit of an otherwise positive measure.

17. Section 6 of the Bill provides for a statutory right to support for all those who are or have been involved in prostitution in Scotland. The Scottish Government’s 2016 report notes that practitioners supporting women involved in prostitution identified the limited availability of specialist services and insecure, short-term and localised funding as key challenges to providing appropriate support to people in or leaving prostitution.<sup>11</sup> The 2022 report highlights further that there is “a lack of consistency in understanding of and response to people selling sex” in mainstream and specialist services.<sup>12</sup>

18. The 2016 report additionally mentions that “health and safety support services are less available for those involved in indoor prostitution,” and that “better opportunities could be made in terms of identifying women involved in prostitution who are accessing other key services”.<sup>13</sup> The Scottish Government’s 2017 review also suggests that “there would appear to be considerable scope for improving the opportunities for individuals to exit prostitution should they so wish.”<sup>14</sup>

19. Women in prostitution access a range of mainstream services such as drug and alcohol services and sexual health services although research has identified a gap in terms of the understanding on the part of these services of the complexity and range of issues faced by people engaged in prostitution.<sup>15</sup>

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<sup>11</sup> Scottish Government, Exploring available knowledge and evidence on prostitution in Scotland, pages 55-64.

<sup>12</sup> L. Jones, E. Craig and A. Mentzou, Lived Experience Engagement, p. 84.

<sup>13</sup> Scottish Government, Exploring available knowledge and evidence on prostitution in Scotland, pp. 7 and 62.

<sup>14</sup> Malloch, Evidence Assessment of the Criminalisation of the Purchase of Sex, p. 38.

<sup>15</sup> Scottish Government, Exploring available knowledge and evidence on prostitution in Scotland, p. 62.

20. The vulnerabilities driving a woman's involvement in prostitution mean that she has multiple and complex support needs, especially since these vulnerabilities are often exacerbated while she is selling or exchanging sexual acts. Shame and a fear of disclosure of involvement in prostitution are significant barriers to accessing support, as is the belief that women selling sexual acts are not entitled to support because they may be thought to be breaking the law. A 2023 survey of 374 service providers across Scotland found that the most common barrier for women seeking support and disclosing their involvement in prostitution was the fear of repercussions, such as being reported to the police or having their children taken into care (94%). Stigma and judgment were identified as the second most common barrier (88%) and a lack of trust in services the third most common (84%).<sup>16</sup>

21. Women seeking help from mainstream services therefore frequently avoid disclosing their involvement in prostitution for fear of being denied help.<sup>17</sup> A statutory right to support will send a strong signal to both those seeking support and the services providing this support that women who sell sexual acts are entitled to access the support they require. This is particularly important for mainstream services, such as those helping with housing, education, childcare or finance, who may not be as experienced in supporting women involved in prostitution as specialist organisations.

## **Background**

22. The Scottish Government's 2016 report into the nature and scale of prostitution in Scotland highlights the risks and harms of being involved in prostitution saying, "most respondents who provide services and support to those involved in prostitution emphasised a range of risks and adverse impacts associated with prostitution in the short and longer term in relation to general and mental health, safety and wellbeing and sexual health."<sup>18</sup> The report's literature review similarly concludes that "the literature highlights a range of risks and adverse impacts such as HIV and STI infection, vulnerability and multiple deprivation, links with drug use, and adverse impacts on wellbeing."<sup>19</sup> Further insight into the reality of prostitution in Scotland was provided in a July 2022 lived experience report which interviewed people in prostitution across Scotland about their experiences and needs as well as the services that support them.<sup>20</sup>

23. More detailed evidence of the harms and risks of prostitution is set out below.

## **Violence**

24. Substantial evidence from crime statistics and relevant research shows that the "risks for experiencing physical violence in prostitution are very high."<sup>21</sup> This is true for all levels of risk, including homicides: "US based studies found that women who sell sex are eighteen times more likely to be murdered than a woman in the general population."<sup>22</sup> Empirical data from research worldwide

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<sup>16</sup> CSE Aware, Barriers to Disclosures of Selling or Exchanging Sex. Service Providers' Perspectives, March 2024, [https://www.cseaware.org/uploads/1/4/1/1/141170061/facilitating\\_disclosures\\_-\\_cse\\_aware\\_1.pdf](https://www.cseaware.org/uploads/1/4/1/1/141170061/facilitating_disclosures_-_cse_aware_1.pdf).

<sup>17</sup> L. Jones, E. Craig and A. Mentzou, Lived Experience Engagement, p. 52.

<sup>18</sup> Scottish Government, Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews, December 2016, p. 9.

<sup>19</sup> Scottish Government, Exploring available knowledge and evidence on prostitution in Scotland, p. 96.

<sup>20</sup> L. Jones, E. Craig and A. Mentzou, *Lived Experience Engagement: The experiences of people who sell or exchange sex and their interaction with support services*, July 2022.

<sup>21</sup> M. Farley, 'Risks of Prostitution: When the Person Is the Product', *Journal of the Association for Consumer Research*, 3(1), 97–108, 2017, p. 98.

<sup>22</sup> L. Jones, E. Craig and A. Mentzou, Lived Experience Engagement, p.12.

show consistently higher levels of physical and sexual violence experienced by people involved in prostitution. Overall rates vary but can reach 100% for physical and sexual violence.<sup>23</sup> Client violence against people in prostitution is almost entirely perpetrated by males and mostly suffered by females. Women who sell sexual acts are also frequently abused by those who sexually exploit them, such as pimps and brothel keepers.

25. The Encompass Network, which brings together specialist organisations supporting people in prostitution in Scotland, published snapshots of their clients in 2021, 2022 and 2023. As these snapshots reflect one week in their work, the absolute numbers of women whose experiences and needs are collected vary, but their findings echo those of other studies, with the 2023 snapshot showing that 93% of those whose data was known had disclosed experiencing violence because of their involvement in prostitution.<sup>24</sup>

26. The Scottish Government's 2016 report finds "perceptions among police respondents that experiences of violence and sexual victimisation were common for this group of people, but also that rates of reported crime were low compared with the real risk of victimisation."<sup>25</sup> Another research study highlights that women in "off-street" prostitution in Glasgow faced actions "directly dangerous to their physical health" and 21 of 33 women interviewed for that review reported that they had experienced violence from men purchasing sex.<sup>26</sup> A 2001 survey with 240 women in prostitution in Glasgow and Leeds concludes that "Half of prostitutes working outdoors and over a quarter of those working indoors reported some form of violence by clients in the past six months."<sup>27</sup>

27. On-street prostitution statistically carries the highest risk of violence for the women selling sexual acts. The most visible form of prostitution typically involving the most vulnerable women<sup>28</sup> is also the most documented and researched sector for violence against people in prostitution. For this reason, there is often a perception that indoor prostitution is safer, but this is only true in comparison to on-street prostitution. The risk of violence against those selling sexual acts indoors is still high, and the life- time experience of violence of people involved in indoor prostitution is much higher than that of the general population. Women selling sexual acts indoors frequently work alone, making client attacks far less visible than for on-street prostitution.

28. Even though only a minority in either sector report incidents to the police, a study into prostitution in Edinburgh, Glasgow and Leeds concludes that women involved in on-street prostitution were more than twice as likely to report violence than those working off- street. The study highlights that "the high value placed by indoor sex workers on the preservation of their anonymity is a strong disincentive to reporting incidents of violence in the workplace."<sup>29</sup>

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<sup>23</sup> S. Maszak, "Violence in Prostitution", CUNY Academic Works, p. 3, [https://academicworks.cuny.edu/jj\\_etds/66](https://academicworks.cuny.edu/jj_etds/66).

<sup>24</sup> Encompass Network, *Encompass Snapshot Briefing 2023*, 2023, p. 5, Encompass Network, [https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/encompass\\_snapshot\\_2023.pdf](https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/encompass_snapshot_2023.pdf).

<sup>25</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 50, more widely pp. 49-51.

<sup>26</sup> R. Matthews and H. Easton, *Prostitution in Glasgow: A strategic review*, 2010, pp. 46 & 30.

<sup>27</sup> S. Church et al., Violence by clients towards female prostitutes in different work settings: questionnaire survey, *BMJ*, 322 (7285), 2001, pp. 524-525.

<sup>28</sup> Factors of vulnerability include the highest levels of poverty, substance abuse and biggest mobility for the perpetrator.

<sup>29</sup> M. Barnard et al., "Client violence against prostitute women working from street and off-street locations: A three city comparison." *ESRC Violence Research Programme*, 2000, p.4, [https://www.encompassnetwork.info/uploads/3/4/0/5/3405303/client\\_violence\\_research.pdf](https://www.encompassnetwork.info/uploads/3/4/0/5/3405303/client_violence_research.pdf).

29. In Germany, where buying sexual acts was decriminalised in 2002, legal and illegal brothels are the main location for 90% of prostitution. Several high-profile court cases against the operators of mega-brothel chains show unequivocally that violence is ubiquitous even in brothels operating within the law.<sup>30</sup> Between 2002 and 2017, 75% of the 86 murders of women in prostitution in Germany took place in indoor locations,<sup>31</sup> with the buyers of sexual acts the most likely perpetrators.<sup>32</sup>

### ***Mental health risks***

30. The Scottish Government's 2016 report records "A number of respondents raised longer-term risks to mental health, including stress, anxiety and depression from being involved in prostitution."<sup>33</sup> A study with female drug users in Glasgow finds that the women who were engaged in prostitution were more likely to show symptoms of anxiety and depression than those drug users not in prostitution.<sup>34</sup> The three Encompass Snapshots show that 80%,<sup>35</sup> 89%<sup>36</sup> and 91%<sup>37</sup> of the women disclosed mental health issues, with the majority experiencing anxiety and depression.

31. Post-traumatic stress disorder (PTSD) is common in women selling sex, with many researchers across the globe reporting PTSD in 70% and more of study participants.<sup>38</sup> This percentage is higher than that of sufferers of PTSD among combat veterans. The severity of symptoms is comparable to that of rape and domestic abuse survivors, victims of state torture and combat veterans.<sup>39</sup> An international study across several countries found that 68% of the people in prostitution surveyed met criteria for PTSD.<sup>40</sup>

### ***Health risks***

32. Gynaecologists supporting women selling sexual acts report that the physical damage from selling sexual acts is extensive. One doctor, drawing on her clinical experience states that many of the women suffer chronic pelvic pain as well as "irreversible damage through overextension or deliberate injuries". She further highlights that infertility caused by infections and urinary as well as faecal incontinence are common even among younger women selling sex.<sup>41</sup> Chronic health problems because of selling sexual acts are frequent, both while the women are involved in prostitution and

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<sup>30</sup> H. Lorenz, 'Trouble in Paradise: the rise and fall of Germany's 'brothel king'', The Guardian, 22 June 2019, <https://www.theguardian.com/global-development/2019/jun/22/trouble-in-paradise-rise-and-fall-of-germany-brothel-king-jurgen-rudloff>.

<sup>31</sup> M. Schon and A. Hoheide, 'Murders in the German Sex Trade: 1920 to 2017', *Dignity: A Journal of Analysis of Exploitation and Violence*, Vol. 6: Iss. 1, Article 4, 2021, <https://doi.org/10.23860/dignity.2021.06.01.04>, p. 8 and 9.

<sup>32</sup> E. Arrow, 'Who is killing whom, where, how and why in German prostitution?', Elly Arrow, 29 March 2021, <https://ellyarrow.wordpress.com/2021/03/29/who-is-killing-whom-where-how-and-why-in-german-prostitution/>.

<sup>33</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 8, also pp. 53-54.

<sup>34</sup> G. Gilchrist, L. Gruer and J. Atkinson, 'Comparison of drug use and psychiatric morbidity between prostitute and non-prostitute female drug users in Glasgow, Scotland', *Addictive Behaviors* 30(5), 2005, pp. 1019-1023.

<sup>35</sup> Encompass Network, *Snapshot 2021*, 2021, p. 1, [https://www.encompassnetwork.info/uploads/3/4/0/5/3405303/encompass\\_snapshot\\_2021.pdf](https://www.encompassnetwork.info/uploads/3/4/0/5/3405303/encompass_snapshot_2021.pdf).

<sup>36</sup> Encompass Network, *Encompass Snapshot Briefing 2023*, p. 3.

<sup>37</sup> Encompass Network, *Encompass Snapshot Briefing 2022*, 2022, p.2, [https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/snapshot\\_2022\\_encompass.pdf](https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/snapshot_2022_encompass.pdf).

<sup>38</sup> M. Farley, *Risks of Prostitution: 'When the Person is the Product'*, p.100.

<sup>39</sup> M. Farley et al., 'Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder', *Journal of Trauma Practice*, Vol. 2 No.3/4, 2004, pp. 33-74.

<sup>40</sup> M. Farley et al., 'Prostitution and Trafficking in Nine Countries', p.56.

<sup>41</sup> L. Bissinger, 'Physical Damage in Prostitution', FiLiA, <https://www.filia.org.uk/latest-news/2020/4/5/physical-damage-in-prostitution>.



after exiting. The most common issues are stress-related symptoms and chronic pain, often caused by the violence they endured, as well as reproductive, cardiovascular and respiratory complaints.<sup>42</sup> The mental and physical health consequences of selling sexual acts have a devastating impact on the women involved, with one medical study examining long-term health evidence finding that their mortality rate is 200 times higher than that of the general population.<sup>43</sup>

33. The Scottish Government's 2016 report concludes "Sexual health risks are identified as an area of concern affecting those involved in prostitution."<sup>44</sup> The report also identifies that some people involved in prostitution may be more vulnerable to being manipulated or forced into unsafe sexual behaviour for example those with addictions or poor language skills.<sup>45</sup> The report further notes one clinic reporting a recent slight increase in serious sexually transmitted infections thought to be "due to demand from some men for unsafe sex, as well as some women's lack of understanding of risk and lack of ability to negotiate condom use."<sup>46</sup> This echoes available evidence about women in prostitution in England who "appear to be at higher risk of certain sexually transmitted infections and reinfections compared with other female genitourinary medicine (GUM) clinic attendees, even adjusting for demographic factors."<sup>47</sup>

### ***Substance and alcohol misuse***

34. Addiction was identified as a core support need in the Scottish Government's Lived Experience Engagement published in 2022,<sup>48</sup> echoing the findings of the Scottish Government's 2016 report that some people enter prostitution to fund existing addictions, but also that drugs and alcohol are often used as coping mechanisms to deal with the experience of prostitution.<sup>4950</sup>

35. Drug and alcohol misuse problems are particularly severe among those who are involved in on-street prostitution. Research in Glasgow in the 1990s reveals that 71% of women in on-street prostitution were injecting drug users, with suggestions that by 2006 this may have increased to 90%.<sup>51</sup> People in off-street prostitution are less likely to engage in intravenous drug use. However, substance misuse among this group is still "prevalent and often concerning" and described as "often escalating due to involvement in prostitution according to sexual health and specialist drugs support respondents."<sup>52</sup> According to the Encompass Snapshots, between 47% and 83% of the women

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<sup>42</sup> M. Farley et al., 'Prostitution and Trafficking in Nine Countries', pp. 49-55.

<sup>43</sup> J.J. Potterat et al., "Mortality in a Long-term Open Cohort of Prostitute Women," *American Journal of Epidemiology*, 159, no. 8, 15 April 2004, p. 778 to 785, <https://doi.org/10.1093/aje/kwh110>.

<sup>44</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 8.

<sup>45</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 52- 53.

<sup>46</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 52.

<sup>47</sup> L. McGrath-Lone et al., 'The sexual health of female sex workers compared with other women in England: analysis of cross-sectional data from genitourinary medicine clinics', *Sexually Transmitted Infections*, vol. 90, 2014, pp.344-350.

<sup>48</sup> L. Jones, E. Craig and A. Mentzou, Lived Experience Engagement.

<sup>49</sup> This is also shown in R. Matthews and H. Easton, *Prostitution in Glasgow: A strategic review*, 2010, p. 29; R. Matthews, *Prostitution, politics and policy*, Routledge-Cavendish, 2008, p. 48; J. Bindel et al., *Breaking down the barriers: A study of how women exit prostitution*, Eaves and London South Bank University, 2012, p.7, <https://i4.cmsfiles.com/eaves/2012/11/Breaking-down-the-barriers-a37d80.pdf>, (accessed 17 April 2024).

<sup>50</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 9, 53-54.

<sup>51</sup> N. McKeganey et al., 'Female streetworking prostitution and HIV infection in Glasgow', *BMJ (Clinical research ed.)*, vol. 305, 1992, pp. 801-4 and N. McKeganey, 'Street prostitution in Scotland: The views of working women', *Drugs: Education, Prevention and Policy*, vol. 13 (2), 2006, pp. 151-166.

<sup>52</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 45.



supported had disclosed substance abuse. Addictions can also act as a barrier preventing people exiting prostitution.<sup>53</sup>

### ***Vulnerability prior to entering prostitution***

36. Research and data collated by support organisation *You My Sister* highlight that prostitution “is usually ‘chosen’ by those already abused and vulnerable – often while underage. It is certainly never an informed choice – not a single person in the industry has ever entered it knowing the harms or risks involved.”<sup>54</sup> Global empirical data as well as research conducted across the UK show that levels of vulnerability for people who become involved in prostitution are typically high to very high, with 50 to 90% abused as children and 75% having experienced homelessness.<sup>55</sup>

37. The Scottish Government’s 2016 report observes a range of factors and circumstances that can lead to people becoming involved in prostitution. Financial pressures may be a key driver, especially after the Coronavirus outbreak and the most recent cost of living crisis, but often there are conditions that make someone especially vulnerable such as homelessness, substance misuse, difficult or chaotic family contexts, involvement of a parent or sibling in prostitution, having previous convictions that present a barrier to employment,<sup>56</sup> having a history of trauma, abuse or gender- based violence or coercion from pimps or partners.<sup>57</sup>

38. An extensive literature review published in Canada in 2018 finds that “involvement in prostitution must be interpreted as a process rooted in a broad range of vulnerability factors that, in turn, give rise to a broad range of negative impacts in several areas of the women’s lives.” Detailed findings show that many of the factors that drive involvement also present substantial, often insurmountable barriers to exiting prostitution.<sup>58</sup>

### ***Young people and prostitution***

39. Young people, and especially those who have lived in care, are particularly at risk of being drawn into prostitution. In *Paying the Price*, a 2004 Home Office consultation on prostitution, a review of the then available research concludes that between a third and over half of the participants in all studies had care experience and between a third to over three quarters had entered prostitution as minors.<sup>59</sup>

40. The Scottish Government’s 2016 report contains evidence from frontline practitioners about people who had been drawn into prostitution through grooming and sexual exploitation as teenagers, with “experience of local authority care [...] noted as a key factor in increasing the risk of sexual

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<sup>53</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 11.

<sup>54</sup> You My Sister, ‘FAQ and Research’, <https://youmysister.org.uk/faq-research/>.

<sup>55</sup> M. Farley et al., ‘Prostitution and Trafficking in Nine Countries’, pp. 33–74.

<sup>56</sup> J. Bindel et al., ‘Breaking down the barriers: A study of how women exit prostitution’, p. 8.

<sup>57</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp 46- 49.

<sup>58</sup> N Lancôt, *La face cachée de la prostitution : une étude des conséquences de la prostitution sur le développement et le bien-être des filles et des femmes*, Université de Sherbrooke, 2018, summary quoted from N. Lancôt, ‘The hidden side of prostitution: impacts of prostitution on the development and well-being of girls and women’, Fonds de recherche du Québec, <https://frq.gouv.qc.ca/en/story-and-report/the-hidden-side-of-prostitution-impacts-of-prostitution-on-the-development-and-well-being-of-girls-and-women/>.

<sup>59</sup> Home Office, *Paying the Price: a consultation paper on prostitution*, 2004, p. 96f., [http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/16\\_07\\_04\\_paying.pdf](http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/16_07_04_paying.pdf).

exploitation.”<sup>60</sup> Frontline practitioners also reported “young women and men (over the age of consent) in ‘transitions’ from care services, who were targeted by purchasers of sexual acts, because of their vulnerabilities.”<sup>61</sup>

41. The literature review in the 2016 report highlights other research “indicating that large numbers of women involved in prostitution became involved as children, spent time in care, report experiences of childhood sexual abuse.”<sup>62</sup> The Encompass Snapshots provide more recent data for Scotland, showing that over a quarter of the women interviewed had care experience, a quarter had entered prostitution as minors and just under half had experienced childhood sexual abuse.<sup>63</sup>

42. The practitioners interviewed for the 2016 report also considered that “technology has created more opportunities for manipulation through phones, messaging, gaming software and the anonymity and control that they enable” which “puts a far larger group of young people (over the age of consent), including those not necessarily previously considered to be in a vulnerable situation, at risk of being manipulated into prostitution.”<sup>64</sup>

### ***Links to human trafficking***

43. *Profits and poverty: The economics of forced labour* published in March 2024 by the International Labour Organisation reveals the lucrative nature of trafficking for the purposes of commercial sexual exploitation: “Although forced commercial sexual exploitation accounts for only 27 per cent of all people in privately imposed forced labour, it accounts for 73 per cent of total illegal profits from forced labour. [...] These numbers are explained by the huge difference in profit per victim between forced commercial sexual exploitation and forced labour exploitation – US\$27,252 for the former against US\$3,687 for the latter.”<sup>65</sup>

44. This type of trafficking is a human rights violation that mostly affects women and girls, who, according to a study headed by Professor Walby, “are overwhelmingly (96 %) the victims of trafficking for purposes of sexual exploitation and the majority (75 %) of victims of trafficking for all purposes.”<sup>66</sup> The authors highlight that:

‘Demand reduction’ is a strategy to prevent trafficking by reducing the economic attraction of the institutions into which people may be coerced by traffickers. **In the case of trafficking for purposes of sexual exploitation, the most important institution is prostitution.**<sup>67</sup>

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<sup>60</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 47.

<sup>61</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 47.

<sup>62</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 88.

<sup>63</sup> Encompass Network, Snapshot 2021, 2021, p. 1,

[https://www.encompassnetwork.info/uploads/3/4/0/5/3405303/encompass\\_snapshot\\_2021.pdf](https://www.encompassnetwork.info/uploads/3/4/0/5/3405303/encompass_snapshot_2021.pdf); Encompass Snapshot Briefing 2022, 2022, p.2,

[https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/snapshot\\_2022\\_encompass.pdf](https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/snapshot_2022_encompass.pdf); Encompass Snapshot Briefing 2023, p. 3 [https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/encompass\\_snapshot\\_2023.pdf](https://www.encompassnetwork.info/uploads/1/4/2/8/142838553/encompass_snapshot_2023.pdf).

<sup>64</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 49.

<sup>65</sup> International Labour Organisation, *Profits and poverty: The economics of forced labour*, March 2024, p.15.

<sup>66</sup> European Commission, Directorate-General for Migration and Home Affairs, B. Francis et al., *Study on the gender dimension of trafficking in human beings – Executive summary*, Publications Office, 2016, p. 2, <https://data.europa.eu/doi/10.2837/991766>.

<sup>67</sup> European Commission, *Study on the gender dimension of trafficking in human beings – Executive Summary*, p. 3.

45. Their findings from comparative country studies of prostitution in Germany, the Netherlands and Sweden show that decriminalising profit-making from prostitution does not lead to reductions in human trafficking.<sup>68</sup> They go on to state that: “The willingness to purchase sex is one of the drivers of prostitution and thus of trafficking, because of the link between prostitution and trafficking. Reducing the number of those (usually men) seeking to purchase sex is thus potentially a significant form of demand reduction.”<sup>69</sup> The data and detailed findings from Sweden, as presented in the study, certainly suggest that this is true both for the scale of prostitution as well as trafficking for the purposes of sexual exploitation.

46. Whilst many of those in prostitution in Scotland have not been trafficked, it is indisputable that people are trafficked into and within prostitution here. Although the Encompass Snapshots are only that – snapshots of data collected on one week of the year – the fact that of the 251 women involved in 2021 and 2022, 95 reported being trafficked suggests that this is not a rare occurrence.<sup>70</sup> The Scottish Government’s 2016 report concludes that the current figures relating to trafficking for sexual exploitation are “likely to under-estimate the number of people who have been trafficked;” states that “there is evidence of links between prostitution and serious organised crime, and trafficking for the purposes of sexual exploitation”, and reports that “indoor prostitution is widely understood to involve a higher proportion of foreign nationals than on-street prostitution”.<sup>71</sup>

47. The literature review features research showing that trafficking in commercial sexual exploitation “commonly occurred in privately owned flats with most victims kept indoors, supervised and controlled;” and that “women involved indoors in saunas and flats were subject to a range of constraints, coercion and exploitation.”<sup>72</sup> Although not all foreign nationals involved in prostitution are victims of human trafficking, being in a foreign country can mean people have limited languages skills, fewer support networks, and limited understanding of Scottish laws and available services, all of which makes them vulnerable to exploitation.<sup>73</sup>

48. These findings are echoed in a 2018 report from a cross-party group of MPs at Westminster which concludes that “Britain is currently a highly profitable and low risk destination for sex traffickers.”<sup>74</sup>

49. Among the aims of the Scottish Government’s Trafficking and Exploitation Strategy is ‘addressing the conditions that foster trafficking and exploitation’.<sup>75</sup> As the current state of prostitution in Germany demonstrates, the demand for prostitution is indeed one of the most important conditions that fuels trafficking for sexual exploitation.

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<sup>68</sup> European Commission, Directorate-General for Migration and Home Affairs, J. Armstrong et al., *Study on the gender dimension of trafficking in human beings – Final report*, Publications Office, 2016, p. 189, <https://data.europa.eu/doi/10.2837/698222>.

<sup>69</sup> European Commission, *Study on the gender dimension of trafficking in human beings – Final report*, p. 190.

<sup>70</sup> Encompass Network, Snapshot 2021, 2021, p. 1; Encompass Snapshot Briefing 2022, 2022, p.2.

<sup>71</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 12, 45 and 67.

<sup>72</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 90.

<sup>73</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 3, pp. 9 – 40.

<sup>74</sup> All Party Parliamentary Group on Prostitution and the Global Sex Trade, *Behind Closed Doors Organised sexual exploitation in England and Wales*, May 2018, p. 20.

<sup>75</sup> Scottish Government, *Trafficking and Exploitation Strategy*. May 2017, p. 21.

50. Before prostitution was decriminalised in the country in 2002, most women involved were German. More recent data shows that now “an estimated 90% of prostituted women in Germany are of foreign origin” and the percentage of women trafficked into the country for commercial sexual exploitation has risen to 80% and above.<sup>76</sup> The changed demographics of prostitution in Germany finds its most harrowing expression in homicide victims. Between 2000 and 2020, there were 99 murders and 60 attempted murders of individuals involved in prostitution. Research by the group *Sex Industry Kills* shows that from 2010 onwards, most of the victims are also victims of trafficking.<sup>77</sup>

51. Her Future is Equal, a 2021 campaign to end sexual exploitation in Europe, view trafficking and prostitution as inextricably linked:

“While not every woman exploited in the sex trade has been trafficked, almost all trafficked women in the EU are in the sex trade. Trafficking would not happen without the demand for prostituted women and girls. The sex trade stokes this demand which in turn relies on trafficked women to feed it. While it can be argued that the sex trade does not rely wholly on trafficked women, the enmeshed nature of systems of prostitution, migration and trafficking make it very difficult to successfully root out exploitation.”<sup>78</sup>

52. The Member believes that any strategy that seeks to reduce trafficking in Scotland must therefore address the demand for prostitution within Scotland.

### ***The scale of prostitution in Scotland***

53. It is difficult to estimate the number of people involved in or affected by prostitution and there are no definitive estimates or data of the numbers of people involved in prostitution in Scotland available.<sup>79</sup> However, by 2021, it was widely believed that across the UK there were 105,000 individuals involved in prostitution, of whom 96% were estimated to be female.<sup>80</sup> This represents an increase from the 2016 figures of 72,000 but with research showing that the number of men who have paid for sexual acts at least once has more than doubled in the last 35 years,<sup>81</sup> and with men’s demand fuelling the sex trade, this increase seems to be likely. Based on Scotland’s share of the population, this suggests that between 6000 and 8000 individuals may be involved in prostitution in Scotland.<sup>82</sup>

54. The recorded crime statistics for the last ten years show a general downward trend in recorded crimes associated with prostitution over the last ten years, although there was a slight upturn in 2016-

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<sup>76</sup> M. Schon and A. Hoheide, ‘Murders in the German Sex Trade: 1920 to 2017’, p.15.

<sup>77</sup> M. Schon, *Ausverkauft! Prostitution im Spiegel von Wissenschaft und Politik*, tredition GmbH, 2021, pp. 346-372.

<sup>78</sup> K. Finnegan et al., *Her Future is Equal: Europe is ready for a future free from sexual exploitation*, European Women’s Lobby, 2021, p. 6, <https://prostitutionresearch.com/wp-content/uploads/2021/10/Finnegan-et-al-Equality-in-Europe-2021.pdf>.

<sup>79</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 90.

<sup>80</sup> Streetlight UK, *Annual Report 2021*, p. 4, <https://www.streetlight.uk.com/wp-content/uploads/2021/02/ANNUAL-REPORT-2021-MASTER.pdf>.

<sup>81</sup> M Hester et al., *The nature and prevalence of prostitution and sex work in England and Wales today*, Centre for Gender and Violence Research, University of Bristol, October 2019, p.37f.

<sup>82</sup> Such estimates are typically based on extrapolating the numbers of those accessing support services across the whole of the UK. They are therefore likely to exclude groups less likely to access services, such as victims of trafficking, migrants or escorts, and individuals who exchange sexual acts for rent, food or other provisions in lieu of money.

17 and 2018-19.<sup>83</sup> There is a marked downward trend for crimes recorded for selling sexual acts over the last twenty years, with 7489 crimes recorded for selling sexual acts in this period in total, of which only 13% were recorded in the last ten years.

55. Court proceedings data show a similar downward trend in prosecutions (and hence convictions), which are now in the single digits for both selling and buying sexual acts. The proceedings for the last three years have been impacted by the coronavirus outbreak, but it is reasonable to expect these to remain low once the backlog and delays resulting from the pandemic have been resolved.<sup>84</sup>

56. However, as the Scottish Government's 2016 report into the nature and scale of prostitution notes "this data only provides insight into the levels of criminal activity related to prostitution, and do not provide an indication of the number of people who are involved in the sale of sex or who buy it" and "police commonly acknowledged that intelligence shows a much wider scale in terms of prostitution activity than is captured in recorded crime data."<sup>85</sup>

57. Police intelligence gathering exercises have assessed the number of online adverts for sexual acts/escorts as an indication of the scale of prostitution (although some adverts will be duplicates or fake). One such search from January 2016 identified around 1800 adverts for sexual acts across four main websites in Scotland in a single day, the majority of which involved women. A more extensive scoping exercise in 2014 identified 3000 adverts across 10 websites, featuring over 20 separate nationalities, the majority of whom were assessed as young adults.<sup>86</sup>

58. A more recent survey in Glasgow observed 414 men buying sexual acts in the East End and four in the city centre between April and December 2023.<sup>87</sup> This suggests not only that on-street prostitution continues to be a significant issue, but also that the overall scale of prostitution in Scotland is far larger than the official crime statistics suggest.

59. Reflections from practitioners working with people involved in prostitution as well as the police indicate the following trends:

- a decline in on-street prostitution with those involved having a range of vulnerabilities and complex needs where prostitution is in some ways a means of "survival",
- a shift towards indoor prostitution although the scale is difficult to assess as it is much less visible; it is thought to comprise approximately 90% of all prostitution in Scotland,<sup>88</sup>
- indoor prostitution is widely understood to involve a higher proportion of foreign nationals than on-street prostitution as well as a wider range of socio-economic

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<sup>83</sup> Scottish Government, *Recorded crime in Scotland, 2022-23*, June 2023, <https://www.gov.scot/publications/recorded-crime-scotland-2022-23/>.

<sup>84</sup> Scottish Government, *Criminal Proceedings in Scotland, 2021-22*, October 2023, <https://www.gov.scot/publications/criminal-proceedings-scotland-2021-22/>.

<sup>85</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 20- 21, 25.

<sup>86</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 25.

<sup>87</sup> S. Hilley, 'Glasgow East End sex trade concern as more than 400 men seen using prostitutes', *Glasgow Live*, 8 March 2024, <https://www.glasgowlive.co.uk/news/glasgow-news/glasgow-east-end-sex-trade-28783538>.

<sup>88</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 6-7.



backgrounds.<sup>89</sup>

60. The Member recognises that there are a few people involved in prostitution who would not consider themselves vulnerable and feel they have made a choice that they are comfortable with and feel that they take steps to manage the risks of harm. However, the Member understands that this typically represents a small number of those involved in prostitution. Melissa Farley, an American clinical psychologist and researcher best known for her extensive studies into the harms of prostitution, trafficking, and sexual violence, estimates this at about two percent, while the rest are split into 38% “who need the money, who have had the option of sexual exploitation as a survival mechanism made very real to them by a history of incest or childhood sexual abuse, and who may face an emergency situation such as escaping a violent partner, losing a job, or having children with special needs” and 60% who have been trafficked, who have “enormously restricted life choices” of which many “have been physically coerced into prostitution.”<sup>90</sup>

61. Even those who are highly paid are exposed to the risks of prostitution. A Scottish survivor of prostitution and ardent campaigner for the Nordic Model talks of her harrowing experiences in a recent Scotsman article:

“What I have learned is that it is the same thing – a bruise or a threat feels the same whether you’re in a five-star hotel or leant against a car park wall, whether wearing Prada or Primark.

The fear, the violence and the hopelessness feels the same, as does the desire for safety and a life free of violence. It’s not a job like any other, it is exploitation.”<sup>91</sup>

62. When considering the overall picture presented by research and survivors, it is clear to the Member that the vast majority of those involved in prostitution experience great harm and significant risk. The Member believes that the protection of those who are vulnerable must be the priority.

### **Current law and practice**

63. In Scotland, it is not an offence to provide sexual acts for payment, nor is it illegal to pay for sexual acts where both parties are consenting adults. There are, however, a range of laws that apply to activities connected with on-street prostitution, brothel-keeping, living off the earnings of those involved in prostitution and the sexual exploitation of children.

- **Soliciting/loitering for the purpose of prostitution** - *The Civic Government (Scotland) Act 1982, section 46*, contains the offence of soliciting, loitering or importuning by an individual involved in prostitution for the purposes of providing

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<sup>89</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 43- 45.

<sup>90</sup> M. Farley, ‘Prostitution’s Hierarchy of Control and Coercion’, Prostitution Research and Education, 2008, <https://prostitutionresearch.com/prostitutions-hierarchy-of-control-and-coercion/>.

<sup>91</sup> R. Amery, ‘Scotland must take ‘For Sale’ sign off women’s bodies, prostitution survivor says, amid calls to overhaul laws on selling sex’, *The Scotsman*, 16 March 2024, <https://www.scotsman.com/news/politics/scotland-must-take-for-sale-sign-off-womens-bodies-prostitution-survivor-says-amid-calls-to-overhaul-laws-on-selling-sex-4557056>.



sexual services for payment.<sup>92</sup>

- **Soliciting/loitering for the purpose of purchasing the services of a person in prostitution** - *The Prostitution (Public Places) (Scotland) Act 2007, section 1*, contains the offence of soliciting or loitering in a public place (or other relevant place) for the purpose of obtaining the services of a person engaged in prostitution. There is no requirement that the person from whom sexual services are sought is “a known prostitute” only that they were engaged in prostitution at the time.<sup>93</sup>
- **Brothel-keeping** – *The Criminal Law (Consolidation) (Scotland) Act 1995, section 11(5)*, contains offences related to keeping a brothel or permitting premises to be used as a brothel.
- **Procuring and living on the earnings of the prostitution of another person** - *The Criminal Law (Consolidation) (Scotland) Act 1995, section 7(1)*, includes offences aimed at people who seek to procure women to be engaged in prostitution. Sections 11 and 13 contain offences related to living on the earnings of another person through prostitution.
- **Human trafficking** – *The Human Trafficking and Exploitation (Scotland) Act 2015, section 1*, creates the offence of human trafficking, including human trafficking for the purposes of sexual exploitation. *Section 3* lists sexual exploitation and prostitution as forms of exploitation covered by the section 1 offence of human trafficking.<sup>94</sup>
- **Child sexual exploitation** - *The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005* includes offences related to the sexual exploitation of children including, in *section 9*, offences related to purchase of sexual acts with a child and, in *sections 10 – 12*, offences related to the procuring or control of children for the purposes of sexual exploitation.

## **Previous proposals to criminalise the purchase of sexual acts in Scotland**

64. In 2010 Trish Godman MSP brought forward a proposal for a Criminalisation of the Purchase and Sale of Sex (Scotland) Bill which fell due to elections for the Scottish Parliament.

65. Following that, in 2012, Rhoda Grant MSP consulted on a proposal to make it an offence to purchase sexual acts.<sup>95</sup> The majority of those responding supported the aim of the proposed Bill to make it a criminal offence to purchase sexual acts (80%). The most common reason given by respondents for supporting the proposal was that “the legislation would reduce the incidence of

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<sup>92</sup> In practice, prosecution policy across Scotland is to charge a person for being involved in prostitution only after they have received two warnings from a police officer. Thus, they are only charged with an offence on the third occasion. Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 91.

<sup>93</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 91.

<sup>94</sup> Section 3(3)-(5) of the Human Trafficking and Exploitation (Scotland) Act 2015 includes prostitution and sexual exploitation in the definition of exploitation for the purposes of the section 1 offence.

<sup>95</sup> Rhoda Grant MSP’s proposal fell due to the lack of the necessary cross-party support. An alternative approach was brought forward in 2015 by Jean Urquhart MSP. Her proposal was for a Prostitution Reform Bill that would fully decriminalise prostitution in Scotland. The consultation closed in December 2015, but the proposal did not progress further.

prostitution and protect women against violence”. The summary of consultation responses also records that “it was noted that a few respondents, although supportive of the proposed bill, would have liked to see the policy extended to include the decriminalisation of the sale of sex, so that vulnerable people are not further penalised.”<sup>96</sup>

66. During the passage of the Human Trafficking and Exploitation (Scotland) Act 2015,<sup>97</sup> the Justice Committee noted in its Stage 1 report the proposal from a number of witnesses that the Bill should include provision to criminalise the purchase of sexual acts.<sup>98</sup> Amendments to this effect were tabled by Rhoda Grant MSP at Stage 2 but were withdrawn following a commitment from the Scottish Government to commission research into the evidence around criminalising the purchase of sexual acts and the scale and nature of prostitution in Scotland.<sup>99</sup>

67. Based on the aforementioned research, the Scottish Government published a report in late 2016: *Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews*<sup>143</sup> and a review in early 2017: *Evidence Assessment of the Impacts of the Criminalisation of the Purchase of Sex: A Review*. Extensive stakeholder consultation about the findings was conducted by the Scottish Government after publication of these documents, but no further attempts to change the law were undertaken.

## **The law in the rest of the UK – Northern Ireland**

68. In 2015, Northern Ireland adopted a legislative approach to challenge men’s demand for prostitution as part of its *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*.<sup>100</sup> The law aims to tackle human trafficking and sexual exploitation, with offenders receiving fines of up to £1000- and one-year’s imprisonment.

69. Although the Act did not include any provision for support or exiting services for people selling or exchanging sexual acts, it did include a requirement that a strategy of support and assistance for people wishing to exit prostitution must be developed and published within 10 months of the Act coming into force.<sup>101</sup> Subsequently, a programme of assistance and support (PAS) for exiting was published, with mainstream and specialist services set out on a dedicated website.

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<sup>96</sup> R. Grant, “Proposed Criminalisation of the Purchase of Sex (Scotland) Bill (2), Summary of Consultation Responses, p. 8 and 10.

<https://webarchive.nrscotland.gov.uk/20240327021156/https://archive2021.parliament.scot/parliamentarybusiness/Bills/54314.aspx/>.

<sup>97</sup> Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12), <http://www.legislation.gov.uk/asp/2015/12/contents>.

<sup>98</sup> The Scottish Parliament, *Justice Committee Stage 1 Report on the Human Trafficking and Exploitation (Scotland) Bill*, SP Paper 710, 9th report, Session 4 (2015), pp. 35-36.

<https://webarchive.nrscotland.gov.uk/20240327012044/https://archive2021.parliament.scot/parliamentarybusiness/Bills/84356.aspx>.

<sup>99</sup> The Scottish Parliament, *Justice Committee, Official Report*, Tuesday 16 June 2015, paragraph 26.

<sup>100</sup> *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*, <https://www.legislation.gov.uk/nia/2015/2/contents>.

<sup>101</sup> *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*, <https://www.legislation.gov.uk/nia/2015/2/section/19>.

## **The law in other jurisdictions**

70. Over the last few years, several jurisdictions around the world have introduced similar legislation to that which the Member is proposing: criminalising demand, repealing the soliciting offence and providing support and routes to exit prostitution.

71. **Sweden** pioneered challenging demand legislation as part of an Act titled *Kvinnofrid* (often translated as *Violence Against Women Act*) in 1998. Like the Scottish Government's view that prostitution is a form of violence against women, the Swedish Government emphasises that:

“[O]ne issue that was closely related to that of violence against women and a lack of gender equality was the issue of men who purchase sexual services, usually from women; i.e. the issue of prostitution. The most important insight regarding the issue of prostitution, presented through the Bill, was that attention must be directed to the purchasers. It was a matter of a shift in perspective, which can be summarised by stating the obvious: if there was no demand there would be no prostitution.”<sup>102</sup>

72. Implemented from January 1999, the law decriminalised people selling sexual acts and criminalised people buying sexual acts. The law has since been amended, first to increase the maximum fine and to increase the prison term to one year's imprisonment and amended again in August 2022 so that the minimum penalty for paying for sexual acts is imprisonment.<sup>103</sup>

73. **Norway** implemented *Sexkjøpsloven* (*Sex Purchase Act*) in 2009, following decades of public debate on the harmful nature of prostitution. The Act's proponents brought together two main arguments for criminalising the purchase of sexual acts: that prostitution fuelled human trafficking, exploitation of the most vulnerable women and girls and that prostitution is violence against women and was therefore incongruous with a society striving for equality between the sexes.<sup>104</sup> Purchasing or attempting to purchase sexual acts is now punishable with fines or up to six months' imprisonment with a maximum of one year's imprisonment for severe cases. The law also applies to Norwegians purchasing or attempting to purchase sexual acts abroad, even in countries where prostitution is legal.

74. **Iceland** criminalised the purchase of sexual acts through *Law No 54*, an amendment to its *General Criminal Code (Prohibition on the Purchase of Prostitution)* in 2009. Following the 2008 financial and political crisis in the country, which was seen to be caused by its male leadership, the women's rights movement in Iceland gained not only substantial support for its aims and demands but women also gained political and financial power.<sup>105</sup> The commodification of women's bodies through prostitution and strip clubs became a major issue of the campaign for equality between the

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<sup>102</sup> Ministry of Justice, Sweden, *Ban on the Purchase of Sexual Services - An Evaluation 1999-2008 English Summary*, 2010, p. 30, [https://documentation.lastradainternational.org/lisidocs/1049\\_swedish\\_prostitution\\_summary\\_original.pdf](https://documentation.lastradainternational.org/lisidocs/1049_swedish_prostitution_summary_original.pdf).

<sup>103</sup> A Model For Scotland, *International Insights How Scotland can learn from international efforts to combat commercial sexual exploitation*, 2023, [https://www.amodelforscotland.org/files/ugd/43b7aa\\_2de030c749074a31aed9cf3ee6556bb9.pdf](https://www.amodelforscotland.org/files/ugd/43b7aa_2de030c749074a31aed9cf3ee6556bb9.pdf).

<sup>104</sup> M. L. Skilbrei, 'The Development of Norwegian Prostitution Policies: A Marriage of Convenience between Pragmatism and Principles', *Sexuality Research and Social Policy*, 9(3): 244-257, 2012, p. 253. 95 NCOSE, 'Iceland's Sex Trade Ban: A Model for Gender Equality', *National Center on Sexual Exploitation*, 29 October 2020, <https://endsexualexploitation.org/articles/icelands-sex-trade-ban-a-model-for-gender-equality/>.

<sup>105</sup> NCOSE, 'Iceland's Sex Trade Ban: A Model for Gender Equality', *National Center on Sexual Exploitation*, 29 October 2020, <https://endsexualexploitation.org/articles/icelands-sex-trade-ban-a-model-for-gender-equality/>.

sexes. Thus, the new law was part of a wider package of measures, designed to tackle the commodification of female bodies, human trafficking and child sexual abuse.<sup>106</sup> Under the new law, offenders face fines and up to one year's imprisonment with higher penalties for purchasing sexual acts from minors.

75. **Canada's Bill C-36, the Protection for Communities and Exploited Persons Act** has been in force since December 2014. The law criminalised the purchase of sexual acts,<sup>107</sup> imposing mandatory minimum fines as well as mandatory minimum penalties of six months' imprisonment for a first offence rising to up to five years' imprisonment if the offender is prosecuted in court. In contrast to other challenging demand legislation, *Bill C-36* adds to the standard provision for the decriminalisation of the selling of sexual acts that sellers are allowed to take safety measures including selling cooperatively, working together indoors and hiring independent bodyguards who do not profit from the sale of sexual acts. The Canadian government reasoned on prohibiting the purchase of sexual acts:

Prostitution allows men, who are primarily the purchasers of sexual services, paid access to female bodies. Condoning a clearly gendered practice by legalizing and regulating it would demean and degrade the human dignity of all women and girls. The human body is not a commodity to be bought and sold.<sup>108</sup>

76. **France** passed Loi no. 2016- 444 Visant à Renforcer la Lutte Contre le Système Prostitutionnel et à accompagner les personnes prostituées (Law no. 2016-444 aimed at strengthening the fight against the prostitution system and support prostituted persons) in 2016. The thinking behind the new legislation echoes that of the other countries with similar laws: prostitution is seen as a human rights violation, a breach of women's rights, an impediment to true equality between the sexes and a driver of organised crime and human trafficking. The purchase of sexual acts is punishable by a fine of up to €1,500 for the first offence and €3,750 for repeat offences. Offenders are obliged to attend awareness courses at their own expense. The law also included provisions to support people in prostitution, including protections for victims of human trafficking whose immigration status is unsecured.

77. **Ireland** criminalised the purchase of sexual acts through the *Criminal Law (Sexual Offences) Act 2017*. Offenders are fined €500 for a first offence and up to €1000 for repeat offences. The Act also decriminalised the selling of sexual acts, while at the same time increasing the fines and terms of imprisonment for brothel keeping and pimping, thus also targeting those who profit from sexually exploiting people in prostitution. Legislative efforts to adopt a challenging demand approach took place at the same time in Northern Ireland and Ireland and the public debate North and South of the border was informed by the same arguments around tackling child sexual abuse, human trafficking and sexual exploitation.

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<sup>106</sup> Strip clubs were prohibited in 2010.

<sup>107</sup> This covers a variety of sexual acts, including lap-dancing.

<sup>108</sup> Department of Justice Canada, 'Qs & As: Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act', 2014, [https://www.justice.gc.ca/eng/rp-pr/other-autre/c36faq/c36faq\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/other-autre/c36faq/c36faq_eng.pdf).

78. **Israel's** Knesset unanimously passed a law criminalising the purchase of sexual acts on the last day of 2018.<sup>109</sup> *The Prohibition of Consumption of Prostitution Services* imposes a fine of 2000 shekels on those caught purchasing sexual acts or being on premises where prostitution is facilitated. The fine rises to 4000 shekels for repeat offences within three years with a maximum fine of 75,000 shekels for those who chose to contest the fines and are prosecuted in court. As part of the legislative package, the Israeli government will provide 90 million shekels to support people in prostitution to exit the sexual acts trade. The law came into effect in July 2020, with some support and exiting services yet to be implemented.

### ***International legal support for the Nordic Model***

79. France's new law on prostitution was brought to the European Court of Human Rights, claiming that the criminalisation of buyers violated the article rights of sellers of sexual acts. Rejecting the claims, in June 2024 the ECHR upheld the provisions of the French law on prostitution, "noting that penalizing sex buyers is an inextricable aspect of the French government's efforts to prevent and combat prostitution, organized crime, and human trafficking. The Court also acknowledged the democratic processes that led to the enactment of the law and its focus on the mental, social, and physical health of prostituted individuals, who are overwhelmingly women."

80. A year earlier, the Canadian law on prostitution was tested in Ontario's Supreme Court. Superior Court Justice Robert Goldstein ruled in favour of the law in September 2023, stating "Overall, I find that Parliament's response to a pressing and substantial concern is a carefully crafted legislative scheme that prohibits the most exploitative aspects of the sex trade while immunizing sex workers from prosecution."<sup>110</sup>

### ***Effects of criminalising the purchase of sexual acts - international evidence***

81. The 2023 *International Insights* report by *A Model For Scotland* provides a recent overview of the effectiveness of challenging demand legislation in Iceland, Ireland, France and Sweden. Although the French and Irish laws are not yet decade old, early studies indicate positive developments on public attitudes, access to justice, trafficking and helping women to exit prostitution.<sup>111</sup>

82. Rights4Girls, in their 2025 report *Buyers Unmasked*, notes on France that "the number of criminal investigations related to pimping and trafficking increased by 54% in the first three years of the law's implementation, with nearly 2.35 million euros confiscated from exploiters reinvested in the protection and rehabilitation of sex trade survivors. In a 2024 report, the French government observes the existence of 845 exit programs throughout the country, with 87.5% of sex trade survivors achieving stable employment."<sup>112</sup>

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<sup>109</sup> D. Israel, 'Knesset Passes Bills Punishing Prostitution Clients, Compelling Security Cameras in Old Age Homes', *Jewish Press.com*, 31 December 2018, <https://www.jewishpress.com/news/israel/the-knesset/knesset-passes-bills-punishing-prostitution-clients-compelling-security-cameras-in-old-age-homes/2018/12/31/>.

<sup>110</sup> Rights4Girls, *Buyers Unmasked: Exposing the Men Who Buy Sex & Solutions to End Exploitation*, January 2025, p. 39, <http://rights4girls.org/BuyersUnmasked>.

<sup>111</sup> A Model For Scotland, *International Insights*.

<sup>112</sup> Rights4Girls, *Buyers Unmasked: Exposing the Men Who Buy Sex & Solutions to End Exploitation*, January 2025, <http://rights4girls.org/BuyersUnmasked>.

83. The Scottish Government's review of the evidence about criminalising the purchase of sexual acts, published in February 2017, concludes that, despite some limitations with the available evidence, there is sufficient evidence that in the Nordic countries where the law changed to criminalise the purchase of sexual acts prior to 2010 there have been reductions in prostitution and decreased demand.<sup>113</sup>

84. On rates of prostitution, the evidence suggests that in Sweden, on-street prostitution dropped by 40% since the law came into effect and has not increased since.<sup>114</sup> Although the scale of indoor prostitution is more difficult to assess, overall numbers of individuals involved in prostitution in Sweden have decreased.<sup>115</sup> Comparing the overall figures to Denmark where the purchase of sexual acts is legal and where the population is 5.6 million compared to Sweden's 9.4 million, researchers in 2008 suggested the number of people in prostitution in Sweden is one-tenth that of neighbouring Denmark, where there is no similar law.<sup>116</sup>

85. These figures are further reflected in a decrease in the number of men in Sweden reporting having bought sexual acts in the previous year from 1.3% in 1996 to 0.8% in 2014, which is the lowest recorded level in Europe,<sup>117</sup> and a significant reduction in the number of men reporting ever having bought sexual acts from 13.6% in 1996 (before the law changed) to 8% in 2008 and 7.5% in 2014.<sup>118</sup>

86. Figures for Norway show a clear downward trend in prostitution since the law to criminalise the purchase of sexual acts was introduced in 2009.<sup>119</sup> Within five years, the level of on-street prostitution in Oslo settled at 40-65% of the level in 2009<sup>120</sup> and off-street prostitution in Norway reduced by 10-20%.<sup>121</sup>

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<sup>113</sup> M. Malloch, L. Robertson and E. Forbes, *Evidence Assessment of the Impacts of the Criminalisation of the Purchase of Sex: A Review*, Scottish Centre for Crime and Justice Research, 2017, pp. 23, 27 and 38, <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/evidence-assessment-impacts-criminalisation-purchase-sex-review/documents/00514185-pdf/00514185-pdf/govscot%3Adocument/00514185.pdf>.

<sup>114</sup> Swedish Government, *The Ban against the Purchase of Sexual Services. An evaluation 1999-2008*, Report SOU 2010:49, English Summary, pp. 37-38; County Administrative Board of Stockholm, *Prostitution in Sweden, 2014 and The extent and development of prostitution in Sweden*, 2015 p. 16; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, pp. 21 and 22.

<sup>115</sup> G. Ekberg, "The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings." *Violence Against Women*, 2004 10(10), 1187-1218, updated; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.

<sup>116</sup> M. Waltman, "Prohibiting Sex Purchasing And Ending Trafficking: The Swedish Prostitution Law", *Michigan Journal of International Law*, Vol 33:133, 2011, p. 146.

<sup>117</sup> European Commission, *Study on the gender dimension of trafficking in human beings – Final report*, p. 139.

<sup>118</sup> 1996 and 2008 surveys covered in Holmström & Skilbrei eds., *Prostitution in the Nordic Countries*, Conference report, 2009, p. 29; 2014 surveys in County Administrative Board of Stockholm, *Prostitution in Sweden, 2014; The extent and development of prostitution in Sweden*, 2015, p. 24.

<sup>119</sup> I. Rasmussen et al., "Evaluering av forbudet mot kjøp av seksuelle tjenester", *Vista Analyse*, 2014, p. 13; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.

<sup>120</sup> Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.

<sup>121</sup> I. Rasmussen et al., *Vista Analyse*, p. 13; Malloch, *Evidence Assessment of the Criminalisation of the Purchase of Sex*, p. 23.



87. The Member acknowledges that early findings on the effect of the law in Northern Ireland were not promising, as echoed in the official review published in 2019.<sup>122</sup> Following its publication, the Member met with the relevant authorities and found that the law was not properly enforced following its introduction in 2015. In a detailed response to this review, campaign group Nordic Model Now! suggests that the lack of enforcement was largely due to outdated guidance from the National Police Chiefs' Council, which had not been amended to reflect the legislative changes to prostitution law in Northern Ireland.<sup>123</sup> More recently, a 2024 report titled, *A Reanalysis of the Equality Model in Northern Ireland*, asserts that the law is working, noting a "50% reduction in people engaging in street prostitution after the ban on the purchase of sex and no identified increase in trafficking."<sup>124</sup> The report also contradicts sensationalised stories in the media about claimed negative consequences of the law in both Northern Ireland and Ireland.<sup>125</sup>

88. There is also a correlation between prostitution legislation and rates of human trafficking, with countries with restrictive legislation associated with lower rates of human trafficking.<sup>126</sup> The introduction of the law in Sweden has limited the growth of the prostitution market and consequently limited the involvement of organised criminals in prostitution in Sweden.<sup>127</sup> The 2010 evaluation of the Swedish law states "according to the National Criminal Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers considering establishing themselves in Sweden."<sup>128</sup> There are also reports of intelligence gathered in Sweden from traffickers and their victims suggesting that it is recognised that the demand for prostitution has decreased, making it less lucrative for traffickers.<sup>129</sup>

89. A European Commission report emphasises that "the law has curtailed the growth of the sex industry, which is considerably smaller than that in neighbouring countries with smaller populations and compared with many other EU Member States. This, alongside pro-active policing, has created a less conducive context for trafficking."<sup>130</sup> In 2021, Per-Anders Sunesson, the Swedish special ambassador for the combatting of human trafficking, declared: "The Swedish market for human

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<sup>122</sup> G. Ellison, C. Ní Dhónaill and E. Early, A Review Of The Criminalisation Of Paying For Sexual Services In Northern Ireland, School of Law, Queen's University Belfast, September 2019.

<sup>123</sup> Nordic Model Now!, Response to the Queen's University Belfast review of the operation of Northern Ireland's sex buyer law, 21 November 2019, <https://nordicmodelnow.org/wp-content/uploads/2019/11/nmn-response-to-the-qub-research-in-ni-1.pdf>.

<sup>124</sup> J. Smith, A Reanalysis of the Equality Model in Northern Ireland, Nordic Model Now!, January 2024, summary, <https://nordicmodelnow.org/2024/01/16/a-reanalysis-of-the-equality-model-in-northern-ireland/>.

<sup>125</sup> J. Smith, A Reanalysis of the Equality Model in Northern Ireland, Nordic Model Now!, January 2024, pp.21 ff. <https://nordicmodelnow.org/wp-content/uploads/2024/01/Northern-Ireland-FINAL.pdf>.

<sup>126</sup> S-Y. Cho, A. Dreher and E. Neumayer, "Does legalized prostitution increase human trafficking?", World Development, Volume 41, 2013; N. Jakobsson and A. Kotsadam, "The Law and Economics of International Sex Slavery: Prostitution laws and trafficking for sexual exploitation", Working Papers in Economics, No 458, University of Gothenburg, June 2010, Revised May 2013, pp. 16-17; Malloch, Evidence Assessment of the Criminalisation of the Purchase of Sex, p. 29.

<sup>127</sup> Malloch, Evidence Assessment of the Criminalisation of the Purchase of Sex, p. 29.

<sup>128</sup> Swedish Government, The Ban against the Purchase of Sexual Services. An evaluation 1999-2008, Report SOU 2010:49.

<sup>129</sup> G. Ekberg, "The Swedish Law that Prohibits the Purchase of Sexual Services; M. Waltman, "Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and Potential", Women's Studies International Forum, Vol. 34, No. 5, pp. 449-474, 2011.

<sup>130</sup> European Commission, Study on the gender dimension of trafficking in human beings – Final report, p. 139.

trafficking is practically dead.”<sup>131</sup> The level of human trafficking for Norway has also been assessed as lower than it would have been without the law.<sup>132</sup>

***On the claim that criminalising the purchase of sexual acts drives prostitution underground:***

90. The suggestion to criminalise the buyers of sexual acts is often met with the objection that this will drive prostitution underground.<sup>133</sup> In a review of the Swedish law, Waltman concludes that this claim was not supported by “information, empirical evidence, or other research.”<sup>134</sup>

91. Swedish police addressed this claim directly, with Detective Superintendent Kajsa Wahlberg, Sweden’s National Rapporteur on Trafficking in Human Beings, stating in 2010, a decade after the law was enacted:

I want to underline that prostitution activities are not and cannot be pushed underground. The profit of traffickers, procurers and other prostitution operators is obviously dependent on that men easily can access women who they wish to purchase for prostitution purposes. ...It is more a matter of priorities and attitudes towards these issues. If the buyers can find the women in prostitution- the police can too. The Swedish police regularly search the Internet for, and find, information about where prostitution activities take place. We also regularly process and analyse information from the public, public authorities and organisations.<sup>135</sup>

92. This claim is based on what the Member believes is the unfounded view that decriminalising the buyers of sexual acts will keep prostitution activities legal and above-board. The situation in Germany directly contradicts this. The scale of prostitution in Germany ranges from an estimated 125,000 prostituted women to an estimated 400,000. Under German law, all individuals involved in selling sexual acts must be licenced. Official statistics show 28,278 registrations by the end of 2022, only 50 of whom had a legal employment contract.<sup>136</sup> With the true scale of prostitution in Germany believed to be around 250,000,<sup>137</sup> this means almost 90% of women selling sexual acts in the country are unlicensed and only a very small number have employment rights.

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<sup>131</sup> Helmut Sporer, “Statement on the Consultation of the Committee on Gender Equality and Women of the State Parliament of North Rhine-Westphalia,” Nordic Model Now!, January 14, 2021, <https://nordicmodelnow.org/wp-content/uploads/2021/03/helmut-sporer-statement-in-english-1.6.21.pdf>.

<sup>132</sup> I. Rasmussen et al., Vista Analyse, p. 13.

<sup>133</sup> Sometimes this is also taken to mean that prostitution will merely become invisible, and therefore harder to police, because it will be pushed indoors. However, most prostitution in Scotland already takes place indoors.

<sup>134</sup> M. Waltman, “Sweden’s prohibition of purchase of sex”, p. 459.

<sup>135</sup> Speech by Kajsa Wahlberg, Swedish National Rapporteur on Trafficking in Human Beings at the Third Swedish-Dutch Conference on Gender Equality: Trafficking in Human Beings and Prostitution, organized by the Swedish Institute the Swedish National Police Board, the Swedish Embassy, and the Netherlands National Police Agency, den Haag, The Netherlands, December 6, 2010.

<sup>136</sup> This is the most recently available data. Statistisches Bundesamt, “Ende 2022 rund 28 280 Prostituierte bei Behörden angemeldet“, Pressemitteilung Nr. 368, 15 September 2023, [destatis.de, https://www.destatis.de/DE/Presse/Pressemitteilungen/2023/09/PD23\\_368\\_228.html](https://www.destatis.de/DE/Presse/Pressemitteilungen/2023/09/PD23_368_228.html).

<sup>137</sup> See for example a motion from the German Conservative Party: Deutscher Bundestag, Antrag der Fraktion der CDU/CSU, “Menschenunwürdige Zustände in der Prostitution beenden – Sexkauf bestrafen“, 20 February 2024, <https://dserver.bundestag.de/btd/20/103/2010384.pdf>.

## **DETAIL OF THE PROPOSED BILL**

### **Section 1 – Offence of paying for the performance of a sexual act by a person**

93. Subsection (1) of section 1 makes it an offence for a person (A) to intentionally obtain for themselves the performance of a sexual act by another person (B) by paying or promising to pay B or a third person for the performance of that act. It also makes it an offence for A to intentionally obtain for themselves the performance of a sexual act by B by where a person other than A (for example, an acquaintance of A) pays or promises to pay B or a third person for the performance of that act, so long as A knows that another person has made or promised that payment before obtaining performance of that act.

94. The commission of the offence does not require that A pays or promises to pay for the performance of the act before the act takes place. The offence will also be committed by A where A makes payment or promises payment after the act. It is not necessary for the purposes of conviction for the prostitution to prove that A intended to pay for the act before the act took place.

95. “Sexual act”, for the purposes of this Act, means any act involving physical conduct carried out by a person (B) with the intention of causing sexual arousal, gratification or stimulation of another person (A), where that act is provided in exchange for payment or the promise of payment.

96. Activities such as striptease, pole dancing, lap dancing, or other erotic performances are not included in the definition of “sexual act”.

97. Subsection (2) details the penalties for those convicted: (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both and (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or a fine or both.

98. Criminalising the buying of sexual acts is a primary, preventative measure to redress the harms of prostitution and sex trafficking by reducing the size of the prostitution market in Scotland and making it a less attractive destination for sex traffickers. Unlike harm reduction approaches, which seek to mitigate the negative consequences individuals in prostitution experience after they have occurred, this measure aims to prevent these consequences from arising in the first place.

99. Subsection (3) provides that the person providing sexual acts is not charged with aiding, abetting or conspiring to commit this new offence of purchasing sexual services. This means that people in prostitution will not be liable to prosecution in relation to this new offence.

100. Under Scots law, "art and part", a phrase used in this subsection, is a doctrine stating that a person who aids, abets, counsels, or otherwise contributes to the commission of an offence is treated as fully liable for the crime, even if they did not directly carry out the main act. However, subsection (3) expressly ensures that individuals providing sexual acts are not liable under this principle in relation to the offence of purchasing sexual services. This provision distinguishes between those who engage in prostitution and those who facilitate or encourage the offence, reinforcing that only buyers are subject to prosecution under this new law."

### **Policy implementation**

101. Police Scotland already have many powers that could be used to enforce this new offence. The implementation of a law to criminalise the purchase of sexual services in the UK was examined in a Westminster report published in February 2016.<sup>138</sup> Produced at the request of the All Party Parliamentary Group on Prostitution and the Global Sex Trade by a special “Commission on the Sex Buyer Law” (including one serving and one former police officer with expertise in policing prostitution) the report reviews the enforcement of the law in Sweden and considers what the applicable policing powers and structures would be in a UK context. The report concludes “A standard four-step enforcement operation of the Sex Buyer Law would be consistent with existing policing powers.”<sup>139</sup>

102. Specific details of the precise operational tools and policing powers that could be used are set out clearly in the Commission’s report.<sup>140</sup> In summary the four stages are:

- Locate – police officers locate premises being used for prostitution.
- Confirm – police contact the premises in person or by phone. There are powers and structures to authorise such a visit to be made covertly (as is generally done in Sweden). However, overt operations are currently used in gathering evidence relating to the offence of brothel-keeping so current enforcement practice could be employed for an offence of purchasing sexual services.
- Observe – police observe suspected buyers entering premises being used for prostitution. In crime hotspots such observation may be able to be carried out covertly without the need for special authorisation; in some circumstances authorisation under the Regulation of Investigatory Powers Act 2000 may be required as for other investigations of serious and organised crime.
- Action – police deal with suspect offender in a similar manner to arrests for kerb-crawling.

103. Police Scotland’s prostitution policy is based “on activity around the 4 key objectives of Divert, Disrupt, Deter and Detect”.<sup>141</sup> The Bill is seeking to deter individuals from exploiting individuals through purchase of sexual acts. It will support individuals who wish to exit prostitution (divert). There will need to be an emphasis on detection which is in line with the current policy of Police Scotland of “investigation of those who abuse, exploit or coerce and the investigation and disruption of organized criminal activity with prostitution through effective and innovative use of current legislation.”

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<sup>138</sup> Commission on the Sex Buyer Law, How to implement the Sex Buyer Law in the UK, 2016, <https://www.appgcse.uk/wp-content/uploads/2017/09/How-to-implement-the-Sex-Buyer-Law-in-the-UK-2016.pdf>.

<sup>139</sup> Commission on the Sex Buyer Law, *How to implement the Sex Buyer Law in the UK*, 2016, p. 1.

<sup>140</sup> Commission on the Sex Buyer Law, *How to implement the Sex Buyer Law in the UK*, 2016, pp. 11-12.

<sup>141</sup> Scottish Government, Trafficking and Exploitation Strategy, 2017, <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/05/trafficking-exploitation-strategy/documents/00518587-pdf/00518587-pdf/govscot%3Adocument/00518587.pdf>.

## **Section 2 – Repeal of the offence of soliciting and importuning by prostitutes and Section 3 – Offences**

104. Section 2 repeals Section 46 of the 1982 Act (soliciting and importuning by prostitutes). This means that those performing sexual acts would not commit an offence in any setting, regardless of whether they are involved in on-street or indoor prostitution.

105. Subsection (1) of section 3 provides that on or after the date on which section 3 comes into force, no person can be convicted of an offence under section 46 of the 1982 Act (soliciting and importuning by prostitutes) or, where the conviction has occurred prior to that date, no penalty may be imposed upon them. This gives immediate effect to the repeal of the offence of soliciting and importuning and displaces other statutory rules that would mean the law as it applied before the Bill comes into force would continue to apply in those circumstances.

## **Section 4 – Quashing of convictions for relevant historic offences and Section 5 – Identification and notification of quashed convictions**

106. Subsection (1) of section 4 provides that any conviction for an offence under section 46 of the 1982 Act (soliciting and importuning by prostitutes) that preceded the Bill coming into force is quashed immediately upon the Bill coming into force.

107. Subsection (1) of section 5 places the duty on the Scottish Ministers to instruct Police Scotland and the Scottish Courts and Tribunal Service to update their records. This update must reflect the quashing of convictions as outlined in section 4(1).

108. Subsection (2) of section 5 places a duty on Police Scotland and the Scottish Courts and Tribunal Service to confirm to the Scottish Ministers that official records and databases under their control have been amended to reflect the quashing of convictions under section 4(1). This confirmation ensures that the records held by public authorities no longer treat these convictions as valid, and provides Ministers with assurance that the quashing process has been properly implemented in practice.

109. Subsection (3) requires the Scottish Ministers to provide a letter of confirmation to an individual who requests confirmation that their conviction under section 46 of the 1982 Act has been quashed. This letter serves as official confirmation of the quashing of the conviction.

## **Section 6 – Right to support**

110. Subsection (1) places a duty on the Scottish Ministers to ensure that a person who is or has been in prostitution is provided with assistance and support.

111. Subsection (3) provides that the assistance and support to be provided to a person in accordance with that duty may not be made conditional on them agreeing to act as a witness, may only be provided with their agreement, and must take due account of their needs as regards their safety and protection from harm.

112. The underlying principle for this provision is the recognition that prostitution is inherently harmful, that those involved in selling sexual acts are victims of exploitation and that they must be able to access the support they require.

113. Researchers and support workers typically report that when asked, almost all women involved in prostitution express a desire to leave, but exiting is a lengthy, difficult process which requires long-term support from specialist services.

114. In February 2014, the European Parliament resolution on *Sexual exploitation and prostitution and its impact on gender equality* highlighted the need to accompany legislative change with practical support saying “a vast majority of persons in prostitution would like to stop but feel unable to do so... suggests, therefore that the competent authorities put in place programmes to help persons escape prostitution, in close co-operation with the stakeholders.”<sup>142</sup>

115. In April 2014, the Council of Europe’s resolution on *Prostitution, trafficking and modern slavery in Europe*, recommended member states “set up ‘exit programmes’ for those who to give up prostitution, aimed at rehabilitation and based on a holistic approach including mental health and health-care services, housing support, education and training and employment services”.<sup>143</sup>

116. There are some specialist services in Scotland to support people in prostitution some of which offer specific assistance to exit prostitution; however, there are significant variations in the range of services available in different parts of the country.<sup>144</sup> The Scottish Government’s strategic approach to prostitution, published in February 2024, includes the creation of “a new national support pathway aiming to ensure a clearer, better connected, and coordinated pathway of sustainable support for those with experience of prostitution, which will include support to exit prostitution.”<sup>145</sup> Also planned is a national hub for specialist support services, which will allow for better provision of services across Scotland.<sup>146</sup>

117. As the Scottish Government has already planned a new infrastructure to offer people in prostitution better support, it makes sense therefore to give the Scottish Government the responsibility to support them.

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<sup>142</sup> European Parliament, Resolution on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), P7 TA(2014) 0162, Brussels, 26 February 2014, paragraphs 27, 42.

<sup>143</sup> Council of Europe, Parliamentary Assembly, Resolution 1983 (2014), Prostitution, trafficking and modern slavery in Europe, 8 April 2014, paragraphs 12.1.1 and 12.1.5.

<sup>144</sup> L. Jones, E. Craig and A. Mentzou, Lived Experience Engagement.

<sup>145</sup> Scottish Government, Scotland’s strategic approach to challenging and deterring men’s demand for prostitution and supporting the recovery and sustainable exit of those involved in prostitution, February 2024,

<https://www.gov.scot/publications/scotlands-strategic-approach-challenging-deterring-mens-demand-prostitution-supporting-recovery-sustainable-exit-those-involved-prostitution/>.

<sup>146</sup> Scottish Government, Scotland’s strategic approach to challenging and deterring men’s demand for prostitution, p. 2.



## **ALTERNATIVE APPROACHES**

118. The Member has given due consideration to alternative approaches to combat prostitution and human trafficking for the purposes of sexual exploitation. The reasons why those alternatives were rejected is set out below.

### **Alternative legislative approaches**

119. In addition to the Nordic Model approach represented by this Bill, there are three other legislative models on prostitution: full criminalisation, legalisation and full decriminalisation.

120. Full criminalisation operates on the premise that prostitution is so damaging to women and society that it seeks to challenge men's demand by criminalising buyers while also deterring women by criminalising sellers. Proponents argue that such stringent measures send an unequivocal societal message against what is seen as inherently exploitative. However, evidence shows that most women do not enter prostitution by choice; instead, factors such as poverty, substance abuse, coercion, violence, and trafficking are often decisive. Criminalising sellers only deepens their marginalisation and deters them from accessing support, further compounding their vulnerability. Given these concerns, this model was ultimately rejected in favour of an approach that prioritises protection for prostituted women.

121. Legalisation means prostitution is a fully legal, licensed and regulated industry. Regulations and labour laws are intended to protect prostituted persons from violence, abuse and exploitation. Full decriminalisation removes all laws and regulations on prostitution. Buying and selling sexual acts, brothel-keeping and pimping are all decriminalised. While New Zealand is often cited as an example of a decriminalised model and Germany a legalised model, in practice, the Member considers that the distinction between the two is frequently overstated, as the Member believes that both permit the same harms to proliferate.

122. Full decriminalisation is the preferred legislative approach by the commercial sex industry and its profiteers—traffickers, exploiters and sex buyers themselves. However, the Member does not believe decriminalising activities related to the organisation, control, exploitation or profiting from prostitution, such as pimping or brothel-keeping would fit within Equally Safe, the Scottish Government's safeguarding strategy for women and girls or its Trafficking and Exploitation strategies. Moreover, there is significant evidence from New Zealand, as well as from other countries such as the Netherlands and Germany, that decriminalising or legalising those aspects of prostitution related to third parties does not protect people from exploitation, violence or other harms caused by prostitution.<sup>147</sup>

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<sup>147</sup> L. Kelly, M. Coy and R. Davenport, *Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries*, Home Office, 2009; W. Huismann and E.R. Kleemans, *The challenges of fighting sex trafficking in the legalized prostitution market of the Netherlands*, *Crime, Law and Social Change*, Vol 61, pp.215 – 228, 2014; European Parliament, Directorate-General for Internal Policies of the Union, M. Skalin et al., *Sexual exploitation and prostitution and its impact on gender equality*, Publications Office, 2014, <https://data.europa.eu/doi/10.2861/44806>; M. Coy and P. Molisa, "What lies beneath prostitution policy in New Zealand?", *Open Democracy*, December 2016, <https://www.opendemocracy.net/5050/maddy-coy-pala-molisa/what-lies-beneath-prostitution-and-policy-in-new-zealand>.

123. Prior to 2002, while prostitution was not illegal under German law, it was treated as a public order offence. Although selling sexual acts was not illegal, it was regarded as immoral and criminalised as indecency. The Prostitution Act 2002 decriminalised all aspects of prostitution, granting prostituted persons legal rights, allowing them to access health insurance, contracts, and benefits. Within five years of decriminalising prostitution in 2002, the German government admitted the law had worsened conditions for prostituted women and failed to deliver promised improvements.<sup>148</sup> The country had become known as the “Brothel of Europe”, a stark illustration of the failure of this approach.<sup>149</sup> By 2017, growing evidence of rising violence and organised crime—including sex trafficking—led Germany to move towards the legalisation approach through the Prostituted Persons Protection Law in 2017, requiring prostituted persons to register and brothels to obtain licences.<sup>150151</sup> This adjustment has not resolved the underlying problems, as police report ongoing difficulties in protecting victims, investigating crimes, and addressing trafficking networks.<sup>152</sup>

124. The Netherlands adopted a legalisation model in 2000, aiming to regulate prostitution by licensing brothels, enforcing health and safety standards, and granting sex workers legal protections. The goal was to reduce exploitation by bringing prostitution into a controlled environment. However, studies have shown that the system has not achieved its intended objectives. Many prostituted women continue to operate outside the regulated sector, where they remain vulnerable to violence and coercion.<sup>153</sup> Dutch authorities have acknowledged that legalisation has not eliminated trafficking or abuse.<sup>154</sup> The Red-Light District, once the symbol of regulated prostitution, has become increasingly associated with organised crime, prompting discussions about stricter regulation or even reversing the legalisation policy.

125. New Zealand fully decriminalised prostitution with the Prostitution Reform Act in 2003,<sup>155</sup> removing criminal penalties for buyers, sellers and brothels. Although it is frequently referred to as an example of decriminalisation success by pro-prostitution campaigners, New Zealand’s approach has not prevented violence, trafficking, or exploitation. The 2024 Trafficking in Persons Report of the US State Department on sex trafficking strongly criticised the country for its failure to protect child victims of sex trafficking, its “inadequate anti-trafficking response and its failure to meet the minimum standards for eliminating trafficking.” Here, too, the report notes further, “the government has admitted that it is more difficult for law enforcement to discover abuses and exploitation in the

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<sup>148</sup> For a comprehensive report on Germany see H. Sporer, *The New German Way For a Reorganisation of Prostitution Legislation*, European Women’s Lobby, April 2022,

[https://www.womenlobby.org/IMG/pdf/helmut\\_sporer\\_1\\_oct\\_2013\\_english\\_final.pdf](https://www.womenlobby.org/IMG/pdf/helmut_sporer_1_oct_2013_english_final.pdf).

<sup>149</sup> Culture Trip Travel Team, *Here's Why Germany Is Europe's "Biggest Brothel"*, Culture Trip, 21 October 2024,

<https://theculturetrip.com/europe/germany/articles/heres-why-this-country-is-europes-biggest-brothel>.

<sup>150</sup> Bundesministerium fuer Familie, Senioren, Frauen und Jugend, *The new Prostitute Protection Act (Das neue Prostituiertenschutzgesetz)*, 2017,

<https://www.bmfsfj.de/resource/blob/117624/ac88738f36935f510d3df8ac5ddcd6f9/prostschg-textbausteine-en-data.pdf>.

<sup>151</sup> According to German government statistics, less than 10% of the people involved in prostitution in Germany have registered, meaning more than 90% of those involved in prostitution operate underground.

<sup>152</sup> For a comprehensive report on Germany see H. Sporer, *The New German Way For a Reorganisation of Prostitution Legislation*, European Women’s Lobby, April 2022,

[https://www.womenlobby.org/IMG/pdf/helmut\\_sporer\\_1\\_oct\\_2013\\_english\\_final.pdf](https://www.womenlobby.org/IMG/pdf/helmut_sporer_1_oct_2013_english_final.pdf).

<sup>153</sup> J Bindel, *The Pimping of Prostitution. Abolishing the Sex Work Myth*, Palgrave Macmillan London, London, 2019.

<sup>154</sup> J. Outshoorn, *Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control*, *Sex Res Soc Policy* 9, 233–243 (2012).

<sup>155</sup> New Zealand Parliament. *Prostitution Law Reform in New Zealand*. <https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/>.

sex trade because commercial sex establishments are legal and [...] police no longer have probably cause to enter such spaces.”<sup>156</sup> In fact, just as is the case in Germany, many of those who lobbied for decriminalisation in New Zealand have acknowledged that the law did not achieve its objectives and “achieved the exact opposite of what individuals in the sex trade were promised.”<sup>157</sup>

126. The distinction between legalisation and decriminalisation is often presented as a fundamental divide between prostitution policies and leveraged to dismiss evidence of harm under legalisation while advocating for decriminalisation. And yet, as two legal scholars observe in a recent paper “the two permit the same harms to proliferate, with legalization sometimes purporting to mitigate them, and decriminalization not even pretending to do so.”<sup>158</sup> In practice, both legalisation and decriminalisation enable prostitution to expand and trafficking to increase, exposing more women and girls to harm. Statistical analysis of prostitution rates supports this view, showing that in jurisdictions adopting these models, the number of people involved in prostitution is at least ten times higher than in countries following the Nordic model.<sup>159</sup>

### **Alternative non-legislative approaches**

127. As evidenced by the Scottish Government’s framework on prostitution, published in February 2024,<sup>160</sup> harm reduction is the Scottish Government’s main approach to prostitution. The strategic approach outlined in the framework does not include criminalising the purchase of sex, but it does state that “Lessons learnt from the piloting of the Strategy will help inform any future legislative considerations, including whether to criminalise the purchase of sex.” Although one of the four components of its strategy is aimed at challenging men’s demand for prostitution, the Scottish Government seeks to do so through awareness and education campaigns instead of legislative change.

128. The three remaining components of the strategy are dedicated to prevention, harm reduction and exiting support. It also includes training for mainstream and specialist services. As this is not a legislative model, the Scottish Government’s current approach cannot combat prostitution and human trafficking, instead it aims to mitigate the negative consequences of prostitution for the women and girls involved by offering them support to cope with the arising physical and mental health issues and by offering those who wish it support to exit prostitution.

129. The Member believes that the usefulness of a harm reduction approach in relation to prostitution is questionable. Originally, harm reduction involved practical strategies designed to support drug users in adopting less risky behaviours to prevent the spread of HIV and AIDS. This approach acknowledged the reality of illicit drug use and focused on reducing its associated harms—making drug use as safe as possible for the user.

130. The Member considers that women and girls in prostitution are not addicted to selling sexual acts, they are the product being sold and consumed—they are the ones harmed in the process, not the

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<sup>156</sup> 2024 Trafficking in Persons Report – New Zealand (U.S. State Department), <https://www.state.gov/reports/2024-trafficking-in-persons-report/new-zealand/>.

<sup>157</sup> Rights4Girls, Buyers Unmasked, pp. 28 to 30.

<sup>158</sup> C. MacKinnon and M. Waltman, Legal Prostitution: A Crime Against Humanity?, Harvard International Law Journal, 66, 153–228, 2025, p. 155.

<sup>159</sup> J. Smith, A Reanalysis of the Equality Model in Northern Ireland, Nordic Model Now!, January 2024, p.2. <https://nordicmodelnow.org/wp-content/uploads/2024/01/Northern-Ireland-FINAL.pdf>.

<sup>160</sup> Scottish Government, Scotland’s strategic approach to challenging and deterring men’s demand for prostitution, p. 2.

men who buy sexual acts.<sup>161</sup> The Member believes that a harm reduction approach to prostitution is the equivalent of treating the injuries of a domestically abused woman and then sending her back to her abuser. Abuse cannot be made safe for its victims. Neither can violence and exploitation. As harm reduction does not seek to end the harmful practice in question, it condones and prolongs it. In relation to prostitution, this approach is incongruous with any commitment to preventing and eradicating violence against women and girls.

131. For this reason, the Member considers that on its own, the harm reduction approach is an inadequate response to the harms of prostitution and sex trafficking in Scotland. The late Bishop Desmond Tutu once said “We need to stop just pulling people out of the river. We need to go upstream and find out why they’re falling in.” The Member’s Bill does just that—it goes upstream to stop women falling into prostitution by challenging men’s demand.

### **Alternative treatment of fines issued on conviction**

132. The Bill makes no provision for the repayment of fines issued on the convictions to be quashed as a result of this Bill. The Member has decided not to make provision for the repayment of fines issued on convictions to be quashed as a result of this Bill. This decision is based on several considerations.

133. The Bill seeks to quash historic convictions under section 46 to reflect the Member’s view that society’s understanding of prostitution has changed, and that it is now increasingly recognised as a system of violence against women and girls. The Member believes that women and girls involved in prostitution should be regarded as victims of exploitation, not as criminals to be punished. While the convictions are being quashed to reflect this shift in understanding, the fines were imposed lawfully at the time under existing legislation. Those convicted paid fines as part of legal sentencing, and there is no established precedent for reversing financial penalties when laws change retrospectively. Reimbursing these fines would raise complex legal and administrative challenges, particularly when considering other areas of law that have evolved over time.

134. The Member further notes that record retention policies also play a role. Police and court records are generally kept for a limited time, and thus when the law comes into force, not all records of convictions will still exist. Even among those that do exist, identifying who paid fines and verifying repayment eligibility would be difficult. Retrieving financial records from decades ago would require significant administrative resources, making the process costly and impractical.

135. The Member believes that convictions under section 46 are a barrier to women seeking to rebuild their lives after exiting prostitution. The primary aim of quashing the convictions is to remove these barriers that serve to punish and stigmatise women now viewed as victims of abuse and exploitation, rather than to provide financial restitution. This change recognises that attitudes toward women involved in soliciting have shifted since 1982 and acknowledges that their circumstances were different from how they were characterised by legislation and public discourse at the time. The Bill therefore aims to correct how they are viewed in the present day, ensuring they no longer face the legal stigma associated with past convictions.

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<sup>161</sup> Mancarella, Francesca, Human rights-based approach to sex trafficking of women and girls: the analysis of prostitution policies in Italy, Sweden, and the Netherlands, 2021, p.13.

136. The Member further notes that summary procedure fines were issued as part of judicial sentencing, meaning they were considered fair and proportionate at the time. Since these fines were not unlawful when imposed, reversing them now could create inconsistencies in legal decision-making. Ensuring fairness in legal reform requires a distinction between removing convictions and reimbursing financial penalties. By quashing convictions while leaving fines unchanged, the Member believes that the law provides clarity in its intent and ensures that the focus remains on acknowledging social change rather than revisiting financial consequences.

### **Alternative approach to historic convictions under section 46**

137. Correspondence between the member and the Scottish Courts and Tribunal Service and the National Records Archive of Scotland revealed that there is considerable uncertainty about the number of records of convictions under section 46 that still exist and that would need to be amended after section 4 of this Bill comes into force. The Member acknowledges that there may be an unknown but substantial number of much older records of convictions to be identified and amended. If these records are in paper form, considerable time and effort may be needed to amend them to reflect that they have been quashed.

138. The Member has therefore considered providing for other options in line with two other Acts of the Scottish Parliament: the Miners' Strike (Pardons) (Scotland) Act 2022 which provided for an automatic pardon of convictions and the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018, which provided for both an automatic pardon for some convictions as well as a disregard on application for others. However, for the reasons set out in paragraph 131, the Member has chosen to provide for the quashing of convictions instead, as the Member believes this better reflects the changed view of women in prostitution as victims of violence and exploitation rather than as criminal offenders.

### **CONSULTATION**

139. The Member consulted on a draft proposal lodged on 19 June 2024. The consultation period ran from 19 June 2024 to 30 September 2024 (Extended from the original deadline of 12 September 2024). The extension was intended to provide more time for the Member to engage with stakeholders and for interested parties to respond. This was felt necessary because the General Election and the election campaign for the UK Parliament overshadowed the announcement of the consultation.

140. The consultation received 100 responses, and a summary of those responses was published along with a final proposal on 21 January 2025.<sup>162</sup> All responses were received by email.

141. There were 53 responses from individuals (53%) and 47 from organisations (47%). 19 individuals (19%) and two organisations (2%) asked for their submission to be published anonymously while 9 respondents (9%) asked for their submission not to be published.

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<sup>162</sup> <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/consultation-on-proposed-prostitution-offences-and-support-scotland-bill.pdf>.

## **Overall summary of responses to the key questions**

142. The consultation responses reveal strong and consistent support for the proposals, with fully supportive responses ranging from around 72% to 87% and outright opposition (both fully and partially opposed) remaining below 22% across the first five key questions. Neutral or unsure responses were minimal—typically under 7% of total responses. When comparing organizations with individual respondents, both groups broadly showed support. Organizations exhibited a slightly higher rate of fully supportive responses (around 72%–90%) compared to individuals (approximately 73%–85%), although there was a modestly higher level of opposition among individual respondents.

143. Notably, respondents with relevant experience were more inclined to express strong support, and those who submitted their feedback anonymously showed only marginally lower support than those who signed their submissions. Additionally, sex and gender appeared to play a role: female respondents consistently exceeded 93% support, whereas male respondents supported the proposals at rates between 65% and 80%—with opposition among males varying from 10% to 35% depending on the question.

## ***General themes emerging from responses***

144. Support for the Bill was clearly divided into two main groups:

- **Majority Group (66 respondents):** This group fully supported all elements of the Bill, which include criminalising the buyers of sexual acts, decriminalising the sellers, repealing previous convictions, and establishing a statutory right to support for those involved in prostitution.
- **Minority Group (6 respondents):** These respondents favoured criminalizing buyers and introducing a right to support but opposed decriminalising sellers and repealing previous convictions. They argued that while sellers are typically involved in prostitution out of necessity and vulnerability, the entire activity should be criminalised, with the state mitigating the seller's vulnerability through support systems.

145. A notable finding was that none of the public services, local authorities, or third-sector organisations in the violence against women and girls sector opposed the proposal. Furthermore, all women's rights organisations and abolitionist campaign groups that responded voiced their full support, underscoring the view that prostitution constitutes a form of male violence that exploits and endangers women and girls. These groups stressed that sellers of sexual acts are victims of commercial sexual exploitation rather than perpetrators and argued that legal sanctions should not fall on them.

146. Specialist and general support services working with women and girls involved in prostitution also agreed that legislative change is overdue. They emphasised the need for robust enforcement by Police Scotland and noted a positive shift in how police currently treat sellers—as individuals in need of protection rather than as criminals. Most supportive organisations stressed that any new law must be matched with adequate funding for both general and specialist support, including mechanisms to help women exit prostitution. Importantly, several respondents argued that reducing demand for sexual acts would ultimately result in fewer women and girls being drawn into prostitution, thereby lowering both the human and financial costs related to exploitation and trafficking.



### ***Key concerns raised***

147. Several recurring themes emerged in the feedback:

- **Understanding the Proposal:** Many opponents appeared to misunderstand the nature of a Members Bill, mistaking it for a government proposal. There was also criticism regarding the alleged bias of the consultation process towards criminalising the buyers, again misunderstanding the nature of a Members Bill, which allows a Member to advocate for their chosen legislative approach.
- **Engagement with Affected Groups:** A common argument from opponents was that if the Member had sufficiently engaged with women in prostitution, she would perhaps advocate for full decriminalization rather than the current model.
- **Client Dynamics:** Some critics argued that the proposed approach might leave sellers with only dangerous or violent buyers, as law-abiding buyers could be deterred from purchasing sexual acts, thus potentially reducing reporting of abuse or trafficking.
- **Terminology:** The language used in the consultation sparked debate. Opponents frequently used the slogan "sex work is work" to lend legitimacy to prostitution as an occupation. In contrast, supporters challenged this phrasing—arguing that terms such as “sexual services” or “sex work” diminish recognition of the violence and exploitation inherent in the industry. An open letter by Reem Alsalem and detailed commentary by language expert Karleen Gribble were cited to underline the importance of terminology in addressing prostitution effectively.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

148. The Bill provides for the criminalisation of the buying of sexual acts, the decriminalisation of the selling of sexual acts, the quashing of previous convictions under section 46 of the 1982 Act and a statutory right to support for those who are or have been involved in prostitution. As prostitution is highly unequal on the basis of sex, and a large number of women enter prostitution when they are underage, the Bill is expected to have a positive impact on women and children.

149. The Equality Impact Assessment the Member carried out will therefore focus on women with intersecting protected characteristics as well as looking at individual protected groups.

### ***Age***

150. The Member believes that the Bill will reduce inequality for older women by ensuring they have access to the support they need to enable them to exit prostitution. It will increase protection for younger women by helping to reduce entry into prostitution, particularly for those vulnerable to exploitation.

### ***Disability***

151. Women with disabilities, particularly those with learning disabilities, mental health conditions, or physical impairments, are at a higher risk of exploitation in prostitution. Across the world, they are disproportionately represented among prostituted women and girls, but face typically

more barriers to exiting and seeking support. Some disabled women may be coerced or pressured into prostitution due to economic hardship, reliance on caregivers, or lack of alternative support networks. Women with disabilities are also at a higher risk of violence and abuse, and prostitution increases their exposure to harm, coercion, and control.<sup>163</sup>

152. Coercion and exploitation are recognised in prostitution as human trafficking, but many disabled women are not identified as trafficking victims due to gaps in reporting and support. Prostituted women are still criminalised, including those with disabilities, creating additional economic and legal barriers. Police, legal, and support systems do not always fully recognise disabled women as victims of exploitation, leading to underreporting and lack of protection.<sup>164</sup>

153. The Bill has the potential to protect disabled women from exploitation and ensure they have the support required to enable them to exit prostitution.

154. Several respondents claimed that the Bill will interfere with the right of disabled men to have a fulfilling sex life if the buying of sexual acts is criminalised. The Member notes that there is no basic human right to sex or sexual satisfaction and that there is no basic human right to commodifying human bodies for one's own pleasure. There is however a human right to dignity which is violated when women are treated as a commodity. The Member therefore rejects this argument and believes the Bill will not have a negative impact under the Equality Act 2010.

### ***Gender reassignment***

155. The Bill aims to reduce demand for prostitution, which could decrease exploitation and harm for all individuals involved, including men and women with the protected characteristic of gender reassignment. The Member therefore believes that the Bill would have a positive impact on this protected group.

### ***Marriage and civil partnerships***

156. Married women or those in civil partnerships who engage in selling sexual acts are not treated differently under the law compared to unmarried women, neither are married men who buy sexual acts. As this Bill does not distinguish between individuals on this basis either, it is not expected to have any adverse impact on this protected group.

### ***Pregnancy and maternity***

157. There are no explicit legal barriers for pregnant women involved in prostitution. Pregnant women are at a greater risk of violence, exploitation or coercion than the general population but may be less likely to report crimes due to fears of criminalisation, stigma, or social services involvement

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<sup>163</sup> People First (Scotland) and the Scottish Commission for People with Learning Disabilities, 'Unheard, Unequal, Unjust – But not hidden anymore: Women with Learning Disabilities experience of Gender-Based Violence in Scotland.', 2021, p.16, <https://www.sclld.org.uk/wp-content/uploads/2021/12/Unheard-Unequal-Unjust%E2%80%93But-not-hidden-web-version.pdf>.

<sup>164</sup> CSE Aware, Commercial Sexual Exploitation And Women With Learning Disabilities In Scotland Research Findings, 2025, p. 15, [https://www.cseaware.org/uploads/1/4/1/1/141170061/report\\_women\\_with\\_learning\\_disabilities\\_final\\_2025.pdf](https://www.cseaware.org/uploads/1/4/1/1/141170061/report_women_with_learning_disabilities_final_2025.pdf).

with their children.<sup>165</sup> By criminalising the purchase of sexual acts, the Bill may reduce the risks of coercion and violence faced by pregnant women and mothers in prostitution. And by decriminalising sellers and creating a right to support, the Bill is expected to have a positive impact on this group.

### ***Race***

158. The Scottish Government's 2016 research found evidence suggesting that a significant proportion of people involved in prostitution in Scotland are foreign nationals.<sup>166</sup> National Referral Mechanism statistics also show that the vast majority of adults referred as potential victims of human trafficking for sexual exploitation from Scotland are foreign nationals. The Equality and Human Rights Commission inquiry into human trafficking in Scotland identified a situation of "racialisation of sexual exploitation where individuals want sex from 'exotic others'".<sup>167</sup> The reduction in demand for prostitution and its associated harms and the provision of support for those exiting prostitution is likely to reduce ethnicity related inequality.

159. Women from minority ethnic backgrounds, particularly migrant women and those with no recourse to public funds are overrepresented in prostitution, often due to systemic racism, economic marginalisation, and immigration status. In Scotland, the largest group of migrant women are from Eastern European countries and this group is overrepresented among prostituted women. Non-UK nationals, particularly from Eastern Europe, Africa, and Asia, may face heightened legal risks due to immigration laws and anti-trafficking measures. Migrant women engaged in prostitution may be more likely to be targeted for raids, detention, and deportation under laws designed to combat trafficking.

160. Ethnic minority and migrant prostituted women may struggle to access legal protection due to language barriers, fear of deportation, or distrust of authorities. Women of colour, particularly Black and Asian prostituted women, may face additional stigma or racialised violence, making it harder to report abuse or seek help. By criminalising the purchase of sexual acts, the Bill will reduce the risks faced by Black, minoritised and migrant women in prostitution.

161. These women are also overrepresented among victims of trafficking for commercial sexual exploitation. As this Bill seeks to curb trafficking by challenging men's demand for prostitution, fewer women are expected to be trafficked into Scotland and becoming victims of exploitation.

### ***Religion***

162. Some religious groups may oppose the decriminalisation of prostitution on moral grounds, potentially creating tension between the Bill's objectives and the beliefs of certain communities. Among respondents to the consultation from religious groups, there was majority support for this proposal, but wider engagement with religious communities may be needed.

163. While Scottish law does not discriminate based on religion or belief in relation to prostitution, indirect inequalities exist due to stigma, lack of tailored services, and potential barriers in reporting

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<sup>165</sup> L. Jones, E. Craig and A. Mentzou, *Lived Experience Engagement: The experiences of people who sell or exchange sex and their interaction with support services*, July 2022, p.53.

<sup>166</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 7, 25, 30 and 45.

<sup>167</sup> Equalities and Human Rights Commission Scotland, *Inquiry into Human Trafficking in Scotland*, Edinburgh, 2011, p.37

[https://www.equalityhumanrights.com/sites/default/files/inquiry\\_into\\_human\\_trafficking\\_in\\_scotland-full-report.pdf](https://www.equalityhumanrights.com/sites/default/files/inquiry_into_human_trafficking_in_scotland-full-report.pdf).

abuse. Women from religious backgrounds, particularly those from conservative faith communities such as Muslim, Sikh, Jewish, Christian, Hindu may face greater stigma and community ostracisation if involved in prostitution, whether voluntarily or through coercion. Women from Muslim or Orthodox Jewish backgrounds, for example, may fear disproportionate consequences within their communities, discouraging them from engaging with police or legal services.

164. Fear of honour-based violence or community backlash may also make it harder for women from religious backgrounds to seek legal or social support and faith-based beliefs may affect how women engage with social and legal services. Support services need to address these cultural or religious sensitivities.

165. Women may feel uncomfortable accessing secular or mixed-sex support services, which could limit their ability to exit prostitution or access healthcare. There is limited research on whether women from religious minorities face disproportionate police attention in Scotland. However, if they are also racial or migrant minorities, they may be indirectly impacted by broader biases in policing.

166. Before the Bill is implemented, the government should consider the intersection of religion, sex, race, and migration status to ensure that women from religious backgrounds are not disproportionately disadvantaged and are safe from additional backlash due to their religious beliefs.

## **Sex**

167. Criminalising the buyers of sexual acts will disproportionately affect men who are virtually always the buyers. As this Bill seeks to protect women and children from the harms of prostitution and trafficking, the Member considers this to be justifiable.

168. Women involved in prostitution are regularly the victims of very serious and violent crimes, often perpetrated by men who buy sexual acts. Despite this, women can be reluctant to report crimes against them for justified fear of criminalisation.<sup>168</sup> The approach of this Bill to prostitution which criminalises the buyers of sex while offering support to women involved in prostitution will reduce the number of women in prostitution, the number of women and children trafficked into the country, and the harm done to those women.

## **Sexual orientation**

169. Like many women involved in prostitution, lesbians often enter the industry due to economic hardship, lack of employment opportunities, or financial instability. Discrimination in the job market based on sexual orientation can exacerbate this. Lesbians in prostitution may face a "double stigma" due to their sexual orientation and their involvement in the sex trade. Gay men selling sexual acts face many of the same issues as lesbian women.

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<sup>168</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, p. 50, more widely pp. 49-51.

170. The Bill has the potential to positively affect homosexual and bisexual individuals engaged in selling sexual acts, by decriminalising them, repealing existing convictions and creating a right to support. This can reduce the exploitation and violence experienced by this protected group.

## **Human rights**

171. In 1945, the dignity and worth of all human beings was recognised as a fundamental principle of human rights in the *United Nations Charter*.<sup>169</sup> In 1948, the protection of this right was enshrined as “a cornerstone of the human rights system and law” within the first sentence of the *Universal Declaration of Human Rights*.<sup>170</sup> Just one year later, the connection between prostitution and trafficking was explicitly recognised in the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* (UN 1949 Convention), which stated that:

“...prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”<sup>171</sup>

172. This was the first time international human rights law specifically prohibited the exploitation of the prostitution of others. This convention acknowledges that trafficking and prostitution are inextricably linked, because the demand for women in prostitution drives trafficking. When the rights of women were enshrined in international human rights law in 1979, Article 6 of the *UN Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) decreed:

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>172</sup>

173. CEDAW is legally binding on the United Kingdom and requires the state to adopt measures to prevent the exploitation of women in prostitution. This includes all forms of pimping, procuring and brothel-keeping, even with the consent of the person in prostitution. The *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the *United Nations Convention against Transnational Organized Crime* (2000) classifies prostitution as sexual exploitation.<sup>173</sup>

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<sup>169</sup> United Nations, United Nations Charter, 1945, Preamble, <https://www.un.org/en/about-us/un-charter/full-text>.

<sup>170</sup> United Nations, Universal Declaration of Human Rights, 1948, Preamble, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>171</sup> United Nations, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, Preamble, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-suppression-traffic-persons-and-exploitation>.

<sup>172</sup> 103 United Nations, Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 6, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

<sup>173</sup> United Nations, Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime, 2000, Article 3 (a), <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

174. For 75 years then, international human rights law has understood prostitution to constitute a violation of human dignity, an exploitative practice which cannot be separated from human trafficking, and puts specific obligations on states which demand that:

175. As the Coalition for the Abolition of Prostitution argues in its analysis of international human rights laws on prostitution: “When defining and implementing policies with regards to prostitution and its exploitation, States must ensure that they work towards the elimination of prostitution and the protection of its victims. Furthermore, States are de facto prohibited from implementing policies that would encourage prostitution and thereby foster a violation of human dignity. All policies that justify, promote or trivialise prostitution as “sex work” are incompatible with established and binding UN human rights legislation.”<sup>174</sup>

176. In 2020, CEDAW General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration once again confirmed that trafficking and prostitution were indivisibly linked. It stated that:

“Sexual exploitation persists due to the failure of States parties to effectively discourage the demand that fosters exploitation and leads to trafficking. Persistent norms and stereotypes regarding male domination and the need to assert male control or power enforce patriarchal gender roles and male sexual entitlement, coercion and control, which drive the demand for the sexual exploitation of women and girls.”<sup>175</sup>

177. It stresses that states have an obligation to identify, address and eliminate demand as one of the root causes driving sexual exploitation and trafficking.

178. In the last 25 years, the **European Parliament**<sup>176</sup> and the **Council of Europe**<sup>177</sup> have adopted several resolutions addressing prostitution, explicitly recognising it as a form of sexual exploitation, a driver for human trafficking and both a cause and a consequence of the inequality of the sexes. They make clear that both institutions consider it to have an impact on violence against women in general as well as on the status of women and men, and the perception of their mutual relations, making it impossible to achieve equality between the sexes. Discouraging demand is repeatedly presented as a key prevention measure.

179. The most recent European Parliament resolution of 14 September 2023 comprehensively addresses the harms and risks of prostitution, “pays respect to the large majority of people in

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<sup>174</sup> G. Théry, Prostitution under International Human Rights Law: An Analysis of States’ Obligations and the Best Ways to Implement Them, CAP International, 2016, p. 13, [https://prostitutionresearch.com/wp-content/uploads/2016/03/cap\\_rj\\_va.pdf](https://prostitutionresearch.com/wp-content/uploads/2016/03/cap_rj_va.pdf).

<sup>175</sup> United Nations, General recommendation No.38 (2020) on trafficking in women and girls in the context of global migration, 2020, IV C 30, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women>.

<sup>176</sup> European Parliament, Resolution on implementation of the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective (2015/2118(INI)), P8\_TA (2016) 0227, Brussels, 12 May 2016, paragraphs 50 and 48; European Parliament, Resolution on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), P7\_TA(2014) 0162, Brussels, 26 February 2014, paragraph 29.

<sup>177</sup> Council of Europe, Parliamentary Assembly, Resolution 1983 (2014), Prostitution, trafficking and modern slavery in Europe, 8 April 2014, paragraphs 3, 6 & 12.1.1.



prostitution who do not consider it to be a normal job” and rejects the term “sex worker” because they “do not want to idealise the reality of prostitution or mask the violence, abuse and exploitation that the large majority of people, especially women and girls, in prostitution endure”. Most importantly, this resolution recommends the Nordic Model, explores its advantages and effectiveness in detail, highlights that it is successful in changing men’s attitudes towards women for the better and:

“Stresses that human trafficking for the purpose of sexual exploitation, including child sexual abuse, is increasing due to high demand; points out that this is particularly visible in countries with a liberal regulatory model, whereas Member States such as France and other countries that follow approaches like the Nordic/Equality model are no longer big markets for human trafficking for that purpose.”<sup>178</sup>

180. The Member’s Bill would ensure that Scotland meets its obligations under international and European human rights law and follows best international practice in addressing sexual exploitation in prostitution and trafficking.

181. In addition to complying with international human rights treaties, it is important to note the recent European Court of Human Rights decision in *M.A. and others v. France*. In that case, a group of prostituted women challenged the criminalisation of the purchase of sexual acts on the grounds that it violated their rights under Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), and 8 (right to respect for private and family life) of the European Convention on Human Rights. The Court ultimately rejected these claims, holding that the measure fell within the margin of appreciation afforded to Member States in addressing the exploitation inherent in prostitution and in combating trafficking. This decision confirms that a demand-reduction approach—by criminalising buyers while decriminalising sellers—can be implemented without contravening the key rights protected under the Convention.<sup>179</sup>

### **Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024**

182. Under section 23 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, a member of the Scottish Parliament introducing a Public Bill in the Parliament must, on or before introduction of the Bill, make a statement in writing about the extent to which, in the member’s view, the provisions of the Bill would be compatible with the UNCRC requirements.

183. The Prostitution (Offences and Support) (Scotland) Bill proposes to make it an offence to obtain the performance of sexual acts by a person (section 1); to repeal offences of solicitation (sections 2 and 3) and provide for the quashing of certain convictions for offences of solicitation (sections 4 and 5); to provide for support for persons in prostitution (section 6); and for connected purposes.

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<sup>178</sup> European Parliament, Regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women’s rights, 2023, 22, [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0328\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0328_EN.html),

<sup>179</sup> See HUDOC Judgment in *M.A. and Others v. France*, available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-8007995-11178092&filename=Judgment%20M.A.%20and%20Others%20v.%20France%20-%20Criminalisation%20of%20the%20purchase%20of%20sexual%20acts%20is%20not%20a%20violation%20of%20the%20Convention.pdf>.

184. This Bill applies to children (as defined in Article 1 of the UNCRC as a person under 18), in relation to all sections of the Bill as outlined above. With regard to section 1, a child may be impacted as a person who an offence may be committed against and as a person who may commit an offence.

185. Article 6 UNCRC, the right to life, survival and development includes protecting the child from violence and exploitation, as this is vital for maximum survival and development. Protecting the child from violence and exploitation is also provided for in Article 19, Article 34 provides specific protection against sexual exploitation and Article 35 prevents the abduction, sale and trafficking of children. There is also an Optional Protocol to the Convention, on the sale of children, child prostitution and child pornography. Section 1 of the Bill furthers all of these UNCRC rights, and although these rights (as they relate to the Bill) are already ensured under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, section 1 of the Bill is positive in terms of its compatibility with the UNCRC requirements.

186. Article 40 concerns the administration of juvenile justice, and as such may be engaged by a new criminal offence that could apply to those under 18. However, the text of Article 40 requires treatment which “reinforces the child’s respect for the human rights and fundamental freedoms of others”. As the Bill is specifically designed to recognise that those who sell sex are victims of exploitation, the purpose of the Bill is compatible with this UNCRC Article.

187. With the repealing of offences of solicitation and the quashing of previous convictions, the intention of sections 2-5 of the Bill is to recognise that those who sell sex are victims of exploitation, and to shift criminal responsibility away from them. This aspect of the Bill engages Article 39, which promotes the rehabilitation of child victims and has a positive impact with regard to this right.

188. Article 2 of the UNCRC protects children from discrimination. The Committee on the Rights of the Child notes the importance of eradicating degradation and exploitation with specific regard to discrimination against girls. By recognising that buying sex is a form of exploitation, the Bill has a positive impact on this right for all children.

189. Article 39 is also relevant in relation to section 6 of the Bill, which provides support to persons in prostitution. The assistance and support provided under the Bill accords with the requirements of Article 39, such as the provision of healthcare, including counselling, and an adequate standard of living (the Bill includes provision for accommodation and financial assistance). As such this section of the Bill has a positive impact on this Article of the UNCRC.

### **Island communities**

190. Prostitution is present in all communities in Scotland, but both the scale of prostitution, its local impact and access to support services varies greatly across the country. In engaging with frontline workers from island communities, the member found that women and girls involved in prostitution often travel to the mainland to sell sexual acts but have to deal with the negative consequences of the harms associated with prostitution when they are back in their communities.

191. Care must therefore be taken when the Bill is implemented that service provision in island communities is adequately funded and uses a unified approach that is aware of the specific needs and vulnerabilities of prostituted women and girls.

## **Sustainable development**

192. Prostitution is both a cause and a consequence of entrenched gender inequality and economic marginalisation. Financial pressures—and the systemic disadvantages they create—drive many vulnerable individuals into prostitution, perpetuating cycles of poverty and exacerbating gender disparities. This Bill aims to disrupt these cycles by reducing the demand for commercial sexual exploitation and enabling women to exit prostitution unencumbered by a criminal record.

193. In doing so, the Bill contributes directly to Scotland's commitment to the United Nations Sustainable Development Goals, particularly SDG 5 (Gender Equality) and SDG 10 (Reduced Inequalities). By protecting women and girls and addressing the root causes of exploitation, the Bill also supports SDG 8 (Decent Work and Economic Growth) and SDG 16 (Peace, Justice, and Strong Institutions). Scotland's recent publication, *Scotland and the Sustainable Development Goals: A National Review to Drive Action* (2020), sets an ambitious framework for integrating social justice with sustainable development. The proposed legislative measures align with these ambitions by promoting a fairer, resilient society where both human rights and sustainable economic growth are prioritised.

194. While the Bill is primarily focused on redressing severe social harms and achieving greater equality, it is designed to do so without placing significant additional burdens on environmental or governance structures. On the one hand, by reducing exploitation and supporting vulnerable individuals, the Bill is expected to yield long-term savings in social and economic costs. On the other, there remains a need to ensure that any structural adjustments—particularly in reallocating support services—are monitored to prevent inadvertent negative impacts on local communities.

195. Overall, the Bill not only seeks to curb prostitution and its associated harms but also contributes to Scotland's broader sustainable development objectives. Its rights-based and socially focused approach reinforces the country's commitment to the SDGs, aiming for a just, fair, and thriving society for all.

196. Poverty or financial pressures are a common reason why many people enter, or remain in, prostitution.<sup>180</sup> The Member believes that building a more equal society includes working towards greater opportunities for everyone and not accepting the status quo. Prostitution is not a long-term solution to poverty and inequality. Instead, it exacerbates a cycle of poverty, places already vulnerable people at risk of additional harm and compounds economic gender inequality.

197. This Bill seeks to create a fairer society by reducing exploitation, improving the physical and mental health of persons involved in prostitution and improving the overall culture of gender equality. All of this benefits the wider community and improves sustainability.

198. It is not anticipated the proposed Bill would have a significant impact on the environment, nor impact governance issues.

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<sup>180</sup> Scottish Government, *Exploring available knowledge and evidence on prostitution in Scotland*, pp. 7 and 11.

## **Local authorities**

199. Local authorities already provide a comprehensive array of services—ranging from social work and health and social care partnerships to housing, homelessness support, addiction recovery, and independent living programs—that assist women involved in or exiting prostitution. Because the statutory right to support formalises existing service access rather than broadening eligibility, it is not anticipated that overall demand will rise significantly.

200. Additionally, staff in these sectors are well-trained, with programs such as CSE AWARE<sup>181</sup> equipping frontline workers to handle the complex needs of this vulnerable group. While more specialised assistance might be useful in the long term, anticipated refinements should primarily stem from a reallocation or restructuring of current resources rather than from extra funding. Initiatives like Getting it Right for Everyone (GIRFE) show that strategic service improvements can be achieved with effective resource management. Overall, the Bill is designed to enhance support without placing undue financial or operational strain on local authorities. The Member believes that any additional costs associated with implementation should be met through an increase in the Delivering Equally Safe fund, ensuring that services remain properly resourced without placing additional financial strain on local authorities.

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<sup>181</sup> CSE Aware is part of the Women's Support Project and is funded by the Scottish Government through the Delivering Equally Safe strategy. It is designed to support frontline staff working with women involved in commercial sexual exploitation (CSE) by providing resources, training, and guidance to help services better understand and respond to the needs of women who sell or exchange sexual acts. For more details, see <https://www.cseaware.org/>.



*This document relates to the Prostitution (Offences and Support) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 20 May 2025*

# **PROSTITUTION (OFFENCES AND SUPPORT) (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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