

Criminalisation of the Purchase and Sale of Sex (Scotland) Bill

Public Consultation

by

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FOREWORD



The principal aim of my Bill is to outlaw the act of purchasing sex.

I readily acknowledge that criminalising the purchaser of sexual services is a radical objective. However, for too long most people in society have viewed prostitution and the role of male clients with tolerance, complacency and even indifference. Demand has remained invisible and without scrutiny.

Prostitution and those involved in this so called industry are rarely the subject of political debate or public scrutiny except when prostitutes are murdered by their clients.

People who buy sex do so of their own free will, whereas the majority of prostitutes are unwilling participants in this exchange of cash for sex. It is time to place the purchaser in an entirely different role, namely as one who commits a criminal offence when seeking to buy sexual services. My Bill aims to challenge the whole acceptance of buying sex.

This is a formidable legislative task with numerous opponents. Nevertheless, I believe that we should seek to protect the so called sexual service providers by legislating against those who pay for their services. Prostitution should be regarded in Scotland as an abuse and exploitation that will not be tolerated.

I look forward to receiving your views on this important subject. Contact information is available at the end of this document.

A handwritten signature in cursive script that reads "Trish Godman".

Trish Godman MSP

INTRODUCTION

1. During the passage of the Criminal Justice and Licensing (Scotland) Bill I tried to amend the Bill to criminalise the purchase of sex and related activities. Although there was support from within the Justice Committee and externally, the Committee considered that further consultation should be carried out. It is my intention to bring forward a Member's Bill to the Scottish Parliament to criminalise the purchasers of sex and related selling activities and I am undertaking this consultation to inform its development.
2. The consultation paper focuses on women as victims and men as the perpetrators. Evidence shows that this is primarily the case. However I am aware that prostitution can equally affect and harm men who sell sex and therefore the benefits of my proposed legislation should equally benefit those men.

Bill Proposal

3. My proposed Bill will criminalise the purchasers of sex and related selling activities. The text of the draft proposal for a Member's Bill lodged is as follows:

Criminalisation of the Purchase and Sale of Sex (Scotland) Bill

Proposal for a Bill to criminalise the purchase and sale of sexual activities.

4. Prostitution is a market and like any other market it is driven by demand and supply. It is widely accepted that demand fuels prostitution and only by targeting this demand can this harmful activity be stopped. However, in Scotland at the moment, work still has to be done in terms of attitudes towards prostitution, a change is necessary for people to see the inherent harm prostitution causes to those involved. This is why Scotland needs to send a strong message that buying sex is not harmless, nor acceptable. It should be regarded in Scotland as an abuse and an exploitation that will not be tolerated.
5. The largest Scottish local authority, Glasgow City Council supports my approach with Ann Hamilton (head of equalities and women's services within Glasgow Community and Safety Service) stating in evidence to the Justice Committee:

"we want something that challenges the acceptability of prostitution. At the moment, buying sex is viewed as something that men do, to which there is an entitlement, and which causes no harm. It is an individual transaction. We want there to be a clear message that that is not the case, and that buying sex has an impact: it supports organised crime and brings harm to women and their families. The proposed change sends out a clear message about the kind of Scotland that we want¹."
6. Until the purchasers of sex are criminalised, individuals, families and communities will still suffer and organised crime profit.

¹ Scottish Parliament Justice Committee, Criminal Justice and Licensing (Scotland) Bill, 23 March 2010 , Col 2785 <http://www.scottish.parliament.uk/s3/committees/justice/or-10/ju10-1101.htm>

7. This debate is clearly overdue and I welcome your comments which will help inform and develop the policy for my Bill.

BACKGROUND

The Effects of Prostitution

8. In taking the step to legislate for Scotland in this area it is important to understand that prostitution causes significant harm to the individuals involved and their families, as well as impacting negatively on our communities. Prostitution is most evident in our four main cities, but there is likely to be activity in many of our towns and other cities. Many may travel considerable distances from where they live to sell or purchase sex. This may be because larger towns and cities provide higher numbers of buyers for those who sell sex and for those who purchase sex it is easier to keep it hidden from families, friends and colleagues.
9. It is mainly women who sell sex. The exact number of people selling sex in Scotland is unknown. In 2004 the Scottish Executive Report, "Being Outside"² estimated that approximately 1400 women were involved in street prostitution in Scotland. These numbers may have fallen since legislation was brought in making it illegal for men to purchase sex in a public place in 2007. In any event, the number involved in indoor prostitution³ is not known. Whatever the numbers, there is a principle at stake, individuals are harmed by prostitution and Scotland should call time on those who sustain prostitution and those who profit from it.
10. There have been a number of UK studies providing useful background information in this area. Some of the findings are disturbing for example 75% of women in prostitution became involved when they were children⁴; 70% spent time in care and 45% report experiencing sexual abuse during their childhoods⁵. More than half of UK women in prostitution have been raped and/or seriously sexually assaulted at the hands of pimps and others; up to 95% of women in street prostitution are problematic drug users⁶; and 68% of women in prostitution meet the criteria for Post Traumatic Stress Disorder in the same range as victims of torture undergoing treatment⁷.
11. Not only are women exposed to higher levels of violence, children may witness violence against their mothers or be exposed to sexual behaviour. Mothers may leave children in unsuitable care situations while they work leaving them exposed to danger. Children are themselves more vulnerable to becoming involved in prostitution.

² <http://scotland.gov.uk/Publications/2004/12/20410/48751>

³ Indoor Prostitution - brothels, flats, massage parlours and saunas etc

⁴ (Melrose, 2002) <http://www.demandchange.org.uk/index.php/facts>

⁵ (Home Office, 2006) <http://www.demandchange.org.uk/index.php/facts>

⁶ (Home Office 2004) <http://www.demandchange.org.uk/index.php/facts>

⁷ (Ramsay, R. et al, 1993) <http://www.demandchange.org.uk/index.php/facts>

12. It is these harmful effects of prostitution on women and their families that serve to show that show further action is needed to address prostitution in Scotland.

Those who buy sex

13. Men are predominantly the purchasers of sex. A recent Scottish study, “Challenging Men’s Demand for Prostitution in Scotland”⁸, surveyed 110 men who had paid for sex. It found that:

- Their average age was 37 with a range of 18 to 77;
- 74% had bought sex by the age of 25;
- 45% first bought sex when they were with others;
- 56% had bought sex outdoors;
- 80% had bought sex indoors; and
- 56% had bought sex whilst abroad.

14. One of the main aims of the legislation is to have a social impact by changing attitudes toward prostitution. The study showed that men qualified why they buy sex. A third justified prostitution as a simple way to satisfy their sexual desires; prostitution is a place where men have “freedom to do anything they want in a consequence-free environment”⁹.

15. The study states that acceptance of prostitution is one of a cluster of harmful attitudes that encourage and justify violence against women. Violent behaviours against women have been associated with attitudes that promote men’s belief that they are entitled to sexual access to women, that they are superior to women, and that they are licensed as sexual aggressors¹⁰.

16. Worryingly, one-fourth to one-third of the men that were interviewed endorsed rape-tolerant attitudes:

- 32% stated that rape happens because men get sexually carried away; or
- 34% their sex drive gets “out of control”;
- 12% said that the rape of a prostitute or call girl was not possible; while
- 10% asserted that the concept of rape simply does not apply to women in prostitution¹¹.

17. Twenty-two per cent of those interviewed explained that once he pays, the buyer is entitled to do whatever he wants to the woman he buys. These attitudes are what make prostitution so dangerous for the women. One of the men interviewed stated, “*They’ll basically do anything for money.*” The belief that the money they paid cancelled out the harm or exonerated the buyer was a recurring theme in the interviews¹².

⁸ <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf>

⁹ <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf> (page 19).

¹⁰ <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf> (page 5).

¹¹ <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf> (page 14).

¹² <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf>

18. Cultural change and attitudes towards prostitution are not going to change unless legislation enforces the principle that buying sex is wrong, illegal and damaging. Only then do I believe that attitudes will change.

Prostitution and People Trafficking

19. Some women have paid traffickers to bring them to a new country with the promise of a new life, while others are taken, for example, from poor families. Once trafficked, some women are forced into prostitution and denied contact with their families becoming “invisible” in the new country and denied access to services such as healthcare they may need. Most are tightly controlled with no freedom. Increasing isolation, fear and language difficulties make it hard to ask for help and escape their situation.

20. In 2000 the Home Office estimated that in one year, between 142 and 1,420 women are trafficked into the UK. This number was estimated to have increased by 2003 to 4,000 victims of trafficking for prostitution in the UK at any one time. This demonstrates the growth in this area of trafficking. The Home Office report considers prostitution and the trafficking of women to be the third highest ‘black market’ income-earner globally after drugs and arms.¹³ According to the Trafficking Awareness Raising Alliance (TARA) Project, Glasgow has the highest number of sex workers in the UK outside London. It is estimated that at least 50 per cent of them are from overseas.¹⁴

21. With regard to the position in Scotland, Scottish police forces were involved in two police operations which targeted human trafficking - Pentameter 1 in 2006 and Pentameter 2 in 2007-08. Pentameter 1 found women trafficked into prostitution in Glasgow and Edinburgh in 25 premises, made 12 arrests and uncovered 10 women, 5 of whom were confirmed as trafficking victims. Pentameter 2 visited 50 premises and recovered women from Grangemouth, Falkirk, Stirling and the Tayside area, 59 people were dealt with as victims of trafficking.¹⁵

22. The 2006 report “Stolen Smiles¹⁶” interviewed 207 women from a total of 14 countries, the youngest was 15, the eldest 45. 89% of women were in the trafficking situation for more than one month and 20% for over a year.

23. Respondents in the research reported the following as typical examples of their experience:

- Prostituting 12-14 hours a day
- Serving as many as 20-30 clients daily

¹³ Scotland’s Slaves, An Amnesty International briefing on trafficking in Scotland, page 5.
http://www.amnesty.org.uk/uploads/documents/doc_18605.pdf

¹⁴ Scotland’s Slaves, An Amnesty International briefing on trafficking in Scotland, page 5.
http://www.amnesty.org.uk/uploads/documents/doc_18605.pdf

¹⁵ Scotland’s Slaves, An Amnesty International briefing on trafficking in Scotland, page 6.
http://www.amnesty.org.uk/uploads/documents/doc_18605.pdf

¹⁶ <http://genderviolence.lshtm.ac.uk/files/Stolen-Smiles-Trafficking-and-Health-2006.pdf>

- Being permitted few hours sleep or rest
- 95% reported physical or sexual violence
- 90% reported being physically forced or intimidated into sex or sexual acts
- 77% reported that they had no freedom of movement

Comparison with other Countries

24. The approach, in law, to prostitution varies significantly between the legal systems in European and Commonwealth countries. Some countries have relatively recently changed their laws to make the purchasing of sex illegal. In 1999 Sweden was the first country to ban the buying of sex. The prohibition against men buying sex has strong support in Sweden. Opinion polls, conducted in 2000 and 2001, showed that approximately 80 per cent of the population supports the law. Of those who want its repeal, the majority are men¹⁷.

25. Swedish police statistics indicate that there has been a dramatic decline in prostitution since the law commenced. "We have significantly less prostitution than our neighbouring countries," a Stockholm police officer stated¹⁸. Two years after the law's passage, a government taskforce reported that there was a 50% decrease in the number of women prostituting and a 75% decrease in the number of men purchasing sex.

26. In 2009 Norway outlawed the purchase of sex followed by Iceland later that year.

LEGAL POSITION IN SCOTLAND

27. In Scotland, prostitution itself (the exchange of sexual services for money) is not illegal but associated activities such as public solicitation, operating a brothel or other forms of pimping are outlawed.

28. Section 46 of the Civic Government (Scotland) Act 1982 applies in relation to soliciting and loitering in a public place by a prostitute (male or female).

29. The Criminal Law (Consolidation) (Scotland) Act 1995 creates a number of offences connected to profiting from prostitution:

- section 7(1) includes offences aimed at people who seek to procure women to work as prostitutes;
- section 11 includes offences relating to living on the earnings of prostitutes and brothel-keeping; and
- section 13(9) provides that it is an offence to live on the earnings of another from male prostitution

¹⁷<http://www.glasgow.gov.uk/NR/rdonlyres/C19E010B-1A4F-4918-97BD-F96AF7D7F150/0/mainreport.pdf>, page 26.

¹⁸Prostitution Ban Huge Success in Sweden, Anwar, 11 August 2007
<http://www.spiegel.de/international/europe/0,1518,druck-516030,00.html>

30. The most recent standalone legislation aimed at tackling prostitution was the Prostitution (Public Places) Scotland Act 2007 (the 2007 Act). The Act created two offences:

- Soliciting i.e. where a person solicits another person for the purpose of obtaining the services of someone engaged in prostitution in a relevant place, and
- Loitering i.e. where it might be reasonably inferred that the person loitering was doing so for the purpose of obtaining the services of a person engaged in prostitution in a relevant place. Loitering can be in a motor vehicle or on public transport.

31. Under the 2007 Act a person guilty of an offence of soliciting or loitering, is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

32. There has been further legislation which touches on prostitution. The Sexual Offences (Scotland) Act 2009 created a statutory offence of sexual coercion which makes it an offence to force or coerce someone else to engage in any sexual activity (sections 4, 5 and 6). While the recent Criminal Justice and Licensing (Scotland) Act 2010 increased the maximum penalties for various offences under sections 11 and 13 of the Criminal Law (Consolidation) (Scotland) Act 1995, relating to living on the earnings of prostitution and brothel-keeping.

33. According to Scottish Government statistics, prostitution offences have increased by 5% over the past year, with 533 offences in 2008-09.¹⁹

THE NEED FOR LEGISLATION

34. There are two principle reasons why my proposed Bill is necessary. Firstly it would, coupled with existing legislation, make the purchase of sex illegal in Scotland, thus reducing the demand for prostitution. Secondly, by strengthening the existing legislative framework against both sellers and purchasers Scotland becomes an unattractive market for prostitution and as such other associated activities like people trafficking will diminish.

Tackling indoor prostitution

35. As highlighted there are a number of pieces of legislation although none tackle the purchase of sex indoors or related selling activities like advertising.

36. The 2007 Act was significant in that it tackled demand by making the buying of sex in a public place an offence. However, although Scotland has legislated against street prostitution, this has not addressed the whole issue. The End Prostitution Now organisation highlights that whilst street prostitution has declined, indoor prostitution continues to flourish as men who buy sex in premises do so without committing an offence²⁰. Many men buy sex in massage

¹⁹ The Scotsman News Paper Article, "Tale of two cities' approach to vice", 16 November 2010

²⁰ <http://www.endprostitutionnow.org/time-for-change/introduction.aspx>

parlours, saunas, brothels, lap dancing clubs, bars, private flats, through escort agencies, private parties, hotels and nightclubs. Unlike street prostitution, those who buy sex indoors find women through a variety of means such as advertisements in newspapers, magazines, on television and through the internet.

37. With regard to the men who purchase sex in Scotland, it is interesting that the study, “Challenging Men’s Demand for Prostitution in Scotland”, which interviewed 110 men shows that 80% had bought sex indoors, whilst only 56% had bought sex outdoors. A UK Report published in December 2009 “Men who buy sex” found that 96% of men used women in indoor prostitution and highlighted that no longer can it be assumed that indoor prostitution is safer than street prostitution. The Report also found that many of the most vulnerable women are kept under control indoors as opposed to on the street where they could be seen.²¹
38. By criminalising the purchasing of sex indoors my proposed Bill would tackle the demand for prostitution, sending out a clear message to organised crime that Scotland is not open for “*business*”.

Addressing trafficking for sexual exploitation

39. Prostitution and trafficking are inextricably linked – indeed trafficking often follows when and where there is a demand for prostitution, and in particular, where buyers and sellers are exempt from punishment. According to the Proposal for a European Union Commission Directive²² on preventing and combating human trafficking and protecting victims, trafficking is a new form of slavery. It states that organised crime networks take advantage of the vulnerable for sexual exploitation.
40. Section 22 of the Criminal Justice (Scotland) Act 2003 outlaws the practice of trafficking people for use in the sex industry so that it is an offence to engage in trafficking for the purpose of sexual exploitation (control over an individual for prostitution or involvement in the making or production of obscene or indecent material). The offences apply both cross border (in to and out of the UK) and within the UK.
41. In evidence to the Equal Opportunities Committee, Amnesty Scotland’s Programme Director said there had been no convictions for human trafficking in Scotland compared to 100 in England and Wales²³. A recent news article suggests an increase in trafficking in Scotland²⁴.

²¹ Men Who Buy Sex, A research study of 103 men and their use of women in prostitution

²² Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, Press Release 29 March 2010
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/108>

²³ <http://news.stv.tv/scotland/182935-scotland-fails-to-convict-anyone-of-human-trafficking-offences/>

²⁴ Rise in number of children trafficked into Scotland Scotsman article, 7 November 2010

<http://www.scotsman.com/news/Rise-in-number-of-children.6615850.jp>

42. The European Human Rights Commission in Scotland has launched an Inquiry²⁵ into human trafficking in Scotland with a particular focus on commercial sexual exploitation. The Inquiry, being led by Baroness Helena Kennedy QC, aims to identify the nature, extent and causes of human trafficking (not prostitution) in Scotland. It will assess to what extent Scotland is meeting international and domestic human rights obligations to prevent and prohibit trafficking, prosecute traffickers, and protect its victims. The EHRC hopes to report with recommendations in summer 2011.
43. Even with specific legislation in Scotland aimed at trafficking this has not worked and further inquiry is necessary to understand the barriers to its effectiveness. Although the EHRC report will be useful in providing a general overview of trafficking and the prevalence, it is clear that it will not be focused on prostitution and the different approaches to tackling the issue, so it is unlikely to have any major impact on the need for legislation.
44. The Parliament's Equal Opportunities Committee is undertaking an inquiry into migration and trafficking in Scotland to explore the impact and contribution of migrant populations within Scottish society and the extent and nature of trafficking - this inquiry appears to be wider than sexual exploitation and is not tackling prostitution. I understand the Committee will publish its report by the end of this year.
45. However the Committee did receive evidence in relation to the Commonwealth Games in 2014 that action must be taken now to avoid rising numbers of women being brought to the city for the purposes of exploitation-

"Creating a hostile environment is the most effective barrier to those seeking to exploit such opportunities. The more complacency and tolerance there is with regard to the sex industry in host cities, the more attractive it will be to organised gangs and exploiters."²⁶

46. According to the Swedish National Rapporteur on Trafficking the law that prohibits the purchase of sexual services has had "a direct and positive effect in limiting the trafficking in human beings for sexual purposes to Sweden"²⁷. An article²⁸ on the success of the Swedish law in relation to reduction in trafficking in Sweden states, "the Swedish government estimates that in the last few years only 200 to 400 women and girls have been annually trafficked into Sweden for prostitution, while in neighbouring Finland the number is 15,000 to 17,000."

²⁵ <http://www.equalityhumanrights.com/scotland/projects-and-campaigns-in-scotland/inquiry-into-human-trafficking-in-scotland/>

²⁶ STV News 15 June 2010 <http://news.stv.tv/scotland/west-central/182789-commonwealth-games-could-see-prostitution-and-trafficking-increase/>

²⁷ (Ekberg, 2004) <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf>

²⁸ Swedish Prostitution Ban An Apparent Enormous Success, Internet Article, 15 November 2007 <http://www.lifesitenews.com/ldn/2007/nov/07111506.html> (*Baklinski, 2007*)

47. In 1999 Finland debated taking the same approach as Sweden although its bill was rejected in parliament by a narrow margin²⁹.

48. Comparing the approaches it appears that Sweden's tougher approach of making the purchase of sex illegal has made Sweden a less favourable place for traffickers.

49. Making the purchasing of sex illegal in Scotland would have a similar effect to that in Sweden - reducing the number of women being trafficked into, and within Scotland.

Timing of proposed legislation

50. In August 2003, the Scottish Executive established an Expert Group on Prostitution in Scotland. The expert group's first report was published the following year – Being Outside: Constructing a Response to Street Prostitution. Although this report indicated that it would go on to look at other issues, including indoor prostitution and trafficking, the expert group was never reconvened and therefore did not produce a further report.

51. Action is required now and my proposed bill seeks to tackle indoor prostitution amongst other issues. Based on the evidence above my proposed Bill will have a positive effect on reducing human trafficking for sexual exploitation in Scotland. My proposed Bill sends a message of zero tolerance to those who purchase sex and those who profit from it.

THE DETAIL OF THE BILL

52. My proposed Bill has 2 main aims:

- to make the purchasing/selling of sex indoors illegal; and
- to strengthen existing legislation to criminalise activities linked to prostitution.

53. Purchasing sex does not necessarily mean monetary payment is given in exchange for sexual services. It is well documented that sexual services can be exchanged, particularly with young people, or swapped for drugs, shelter, food, clothing or paying off a debt rather than receiving payment or goods.

54. The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 defines payment as any financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount. The payment does not need to involve money actually changing hands, but could instead involve the discharge of an obligation to pay – such as the waiving of a debt – or provision of goods or services free of charge or at a reduced cost – for example providing food or accommodation, or supplying illegal drugs free or for less than street value.

²⁹ Sex work and Sexual Exploitation in the European Union
<http://people.exeter.ac.uk/watupman/undergrad/aac/suomi.htm>

55. In order to encompass the varied nature of prostitution, it is my intention to include non-monetary payment within the definition of payment for sex.

Making the purchase and selling of sex indoors illegal

56. Currently it is possible for a consenting adult aged 18 or over to have sex with another consenting adult in return for payment without any offence being committed by either person. However, a range of offences apply to street prostitution, the involvement of young people in prostitution, the running of brothels and those who seek to live off the earnings of a prostitute..

57. There are two options in moving forward:

- Option 1 is to criminalise both the seller and the purchaser; or
- Option 2 is to criminalise only the purchaser.

58. The first option would keep the balance of existing legislation in relation to public places. It would continue the more “gender” neutral approach brought about by the 2007 Act. A disadvantage is that it further criminalises prostitutes who are the victims of prostitution. The criminal justice system has its merits however as it can allow agencies to become aware of those involved in prostitution and therefore work towards supporting them to exit. Another advantage would be that the position in Scotland would be clear - you can neither buy nor sell sex anywhere without committing a crime. Thus making Scotland less attractive to traffickers.

59. The other option would be to make only the purchase of sex in a private place illegal. This approach would not further criminalise prostitutes who are the victims of prostitution. Would it matter if the law was changed placing a greater focus on purchasing, because prior to the 2007 Act the weight of the law fell on the seller. An advantage with this approach is that it is much more incremental. However, would the authorities find it harder to enforce? Is the message that prostitution is not tolerated diluted to such an extent that Scotland remains a place where women are exploited and trafficked.

Question 1: Which option do you favour? Please explain the reasons for your choice.

60. If both the purchasing and selling were to be criminalised what should their respective penalties be.

61. Research suggests that the arrest of the purchaser may be the single biggest deterrent to buying sex³⁰. This is confirmed by the Women Support Project’s research “Challenging Men’s Demand for Prostitution in Scotland³¹” which asked

³⁰ (Wilcox et al, A rapid assessment of the literature as part of the Tackling Demand for Prostitution Review, Home Office 2008)

³¹ <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf>

interviewees what would deter them from purchasing sex, in terms of criminalisation, the following were listed:

- being added to the sex offender register – 89%
- spending time in jail – 79%
- increase criminal penalties – 72%
- having car impounded – 70%
- higher fines – 69%.

62. Guidance issued by the Scottish Government in 2007 to local authorities and their community planning partners (including health boards, police forces and local community and voluntary groups) to help them tackle street prostitution highlights the effectiveness of criminal sanction as a deterrent to men who purchase sex. It states:

If street prostitution is to be tackled and ultimately eradicated, it is not enough to take steps to prevent women from becoming involved, or to provide support to help them to leave. It is also necessary to tackle demand from men for prostitution.

While, for the women involved, street prostitution is a survival behaviour, and the threat of criminal sanction may not prove a great deterrent, the men who purchase exercise a much greater degree of free choice to be involved, and are much more likely to be deterred by the possibility of enforcement action being taken against them.³²

63. Additionally, issuing a fine might not be considered a useful method of punishment for women involved in prostitution, as it is likely they will sell sex again in order to pay the fine.

Question 2: What penalties would have a deterrent effect for the purchaser/seller?

Criminalising other activities linked to prostitution

64. It is likely prostitution will adapt because it is a profitable market for criminals. It is therefore important to tackle other activities that are linked to prostitution simultaneously. This means there is much more emphasis on advertising and facilitating prostitution.

Advertising

65. Covert advertising for prostitution can take a number of forms:

- by cards in newsagents' windows;
- by cards placed in public telephone enclosures: so-called "tart cards". These are most common in London but can be found elsewhere in the United Kingdom. They are typically placed in phone booths by professional

³² <http://www.scotland.gov.uk/Resource/Doc/1099/0051328.pdf> paragraph 12

"carders", who tour the phone boxes, replacing cards which have been removed by the telephone companies' cleaners;

- by euphemistic advertisements in regular magazines and newspapers (for instance, talking of "massages" or "relaxation");
- in specialist contact magazines, these are a type of classified magazine that is largely or wholly dedicated to personal ads. As well as publishing the personal ads, the publishers of contact magazines often run an anonymous mail forwarding service that allows advertisers to identify themselves only with box numbers. Many contact magazines are sex-contact magazines aimed at a readership of people looking for or offering sex. Specialist contact magazines also exist for those with specific sexual preferences; and
- via the internet, through dedicated websites, spam emails/adverts and "pop-ups".

66. The internet has become a powerful new tool enabling paid-for sexual activities to be sold "*in secret*" while allowing the purchaser to remain "*fairly invisible*"³³. Those advertising range from criminal gangs, agencies and pimps through to individuals. Internet advertising is on the increase³⁴ with many sites masquerading as escort sites.

67. By way of illustration, one site offers a huge search criteria where you can search based on geographical area and preferred sexual activity³⁵. It states that -

This website is intended for entertainment purposes only. The contributions by members are intended only as an exercise in creative writing and are not meant to be taken seriously. Nothing in this site should be construed as inducement to engage in any unlawful acts.

68. The same site also offers "field reports" on the "ladies" featured, stating -

The ladies who have favourable reports posted should see an increase in business as time goes on. Also, if any working girl wishes to send me a rebuttal to one of her field reports, I shall be happy to post it.

69. The Republic of Ireland has prohibited the advertising of brothels and prostitution under section 23 of the Criminal Justice (Public Order) Act 1994. "Advertisement" includes every form of advertising or promotion, whether in a publication or by the display of notices or posters or by the means of circulars, leaflets, pamphlets or cards or other documents or by way of radio, television, computer monitor, telephone, facsimile transmission, photography or cinematography or other like means of communication.

³³ The Local – Sweden's News in English, Sweden's prostitution law a success: report <http://www.thelocal.se/27580/20100703/>

³⁴ Prostitution in Scotland moves from the streets to the internet, Daily Record Article, 15 March 2010 <http://www.dailyrecord.co.uk/news/scottish-news/2010/03/15/prostitution-in-scotland-moves-from-the-streets-to-the-internet-86908-22112097/>

³⁵ Reference to this site has intentionally been excluded from this paper.

Question 3: What are the barriers to policing and enforcing a prohibition on advertising?

Question 4: What penalties are appropriate for those who advertise brothels or prostitution, bearing in mind these may range from individuals such as prostitutes to organised crime gang members?

Facilitating

70. There are other activities linked to prostitution beyond advertising. For example the accommodation or transport to enable prostitution to take place. There are already statutes dealing with brothels and private landlords, but what about those that organise hotel accommodation or the flat in the knowledge that it was to be used for the purpose of prostitution, or that they booked transport for this reason. It is known that hotel concierges are asked for details of prostitution availability. It is my aim to capture this sort of behaviour if the intention is to allow someone to buy sex.

71. It is not my intention to criminalise the hotel receptionist or the taxi driver who has innocently responded to the booking and who does not have the knowledge that an offence is taking place.

Question 5: What are there barriers to policing and enforcing this aspect of the proposal?

Question 6: What penalties are appropriate for those that facilitate prostitution, bearing in mind these might be individuals such as prostitutes or organised crime gang members?

Question 7: What other costs might arise as a consequence of this proposal?

Question 8: Are there any equality issues that arise from this proposal?

Please make any other comments or suggestions that you consider relevant to this proposal

CONCLUSIONS AND HOW TO RESPOND

72. Thank you for reading this consultation paper. I hope you have been persuaded that there is need to change the criminal justice system to ensure that the purchasers of sex should be criminalised and that related selling activities need to be made offences to tackle the problem of prostitution in Scotland.

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

74. Responses, which should be submitted by **18 February 2011** should be sent to:

Trish Godman MSP
Q2.08a
Scottish Parliament
Edinburgh
EH99 1SP

Tel: 0131 348 5837
Fax: 0131 348 6460

E-mail: trish.godman.msp@scottish.parliament.uk

75. Please make it clear whether you are responding as an individual or on behalf of an organisation.

76. To help inform debate on the matters covered by this paper and in the interests of openness it is intended all the responses submitted on this consultation document will be made public. You should therefore be aware that by submitting this response you are indicating consent to the publication of all the material contained in your response. Unless you indicate otherwise this will include your name and address and any other biographical information you have provided about yourself. You should note that personal data referring to third parties included in the response cannot be accepted without explicit written consent from the third party. This consent should be provided with your response.

77. I am not entitled to process your personal data by publication without your consent. If therefore you want parts of your response to remain confidential please indicate which parts are not for publication. Similarly, if you wish all of the contents of your response to be treated in confidence and not made public then please indicate so.

78. All responses will be included in any summary or statistical analysis. However, if you have asked for your response to be treated in confidence, I will not identify you individually in any summary or analysis.

79. You may also wish to note that your response may be analysed and summarised by the Non-Executive Bills Unit at the Scottish Parliament and therefore the information you have provided may be subject to requests made under the Freedom of Information (Scotland) Act 2002.

80. Additional copies of the paper or alternative formats can be requested using the contact details above. An on-line copy is available on the Scottish Parliament website [The Scottish Parliament: - Bills - Proposals for Members' Bills.](#)

QUESTIONS

Question 1: Which option do you favour? Please explain the reasons for your choice.

Question 2: What penalties would have a deterrent effect for the purchaser/seller?

Question 3: What are the barriers to policing and enforcing a prohibition on advertising?

Question 4: What penalties are appropriate for those who advertise brothels or prostitution, bearing in mind these may range from individuals such as prostitutes to organised crime gang members?

Question 5: What are there barriers to policing and enforcing this aspect of the proposal?

Question 6: What penalties are appropriate for those that facilitate prostitution, bearing in mind these might be individuals such as prostitutes or organised crime gang members?

Question 7: What other costs might arise as a consequence of this proposal?

Question 8: Are there any equality issues that arise from this proposal?