

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

Trish Godman MSP

SUMMARY OF CONSULTATION RESPONSES

Introduction

1. The intention of the proposed Bill is to criminalise the purchasers of sex and related selling activities. The consultation document accompanying the draft proposal for the Criminalisation of the Purchase and Sale of Sex (Scotland) Bill was issued on 24 November 2010 and was open for comment until 18 February 2011. A number of late submissions were received after the closing date; these were accepted and have been included in the analysis.

2. The consultation document was made available from a link on the Proposals for Members Bills webpage on the Scottish Parliament Website: The Scottish Parliament: - Bills - Proposals for Members' Bills at <http://www.scottish.parliament.uk/business/bills/membersBills.htm>. It was also issued to 146 organisations and individuals with an interest in the issue. Recipients were encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter.

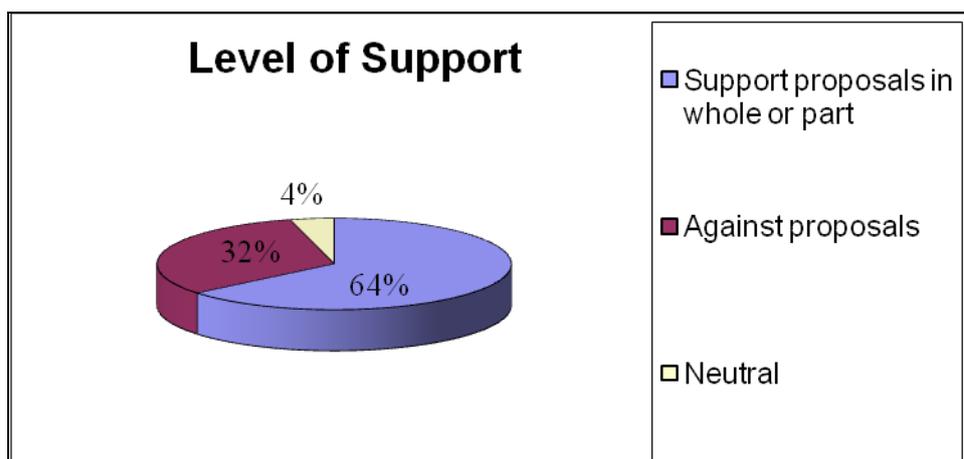
General

3. In total 122 responses were received; these were made up of the following groups:

- 38 individuals
- 20 anti-violence against women organisations
- 9 academics
- 9 equality/human rights organisations
- 9 health boards
- 8 local authorities (including the Association of Directors of Social Work)
- 8 support groups
- 6 women's business organisations
- 5 pro-prostitution organisations
- 4 criminal justice organisations
- 3 religious organisations
- 1 child protection group
- 1 legislator
- 1 trade union organisation

	Number	%
Support	78	64
Against	39	32
Neutral	5	4

4. Almost two thirds (64%) of those who responded to the consultation supported the proposed Bill either in whole or in part.



General support for the proposed legislation

5. In addition the member received a petition from the End Prostitution Now Campaign, which—

“calls on the Members of the Scottish Parliament to support a change in legislation to criminalise the buying of sex and ultimately to **ENDPROSTITUTIONNOW**”

6. The petition was supported by 5851 people from across Scotland which shows the strength of feeling nationally.

7. All of the 20 anti-violence against women’s groups believed that the proposed legislation would help to change attitudes towards prostitution. This was summed up by one respondent—

“The Partnership welcomes the focus on the harm caused by prostitution and the need to challenge the demand. We also welcome the role of the Bill in challenging public attitudes regarding prostitution and in raising awareness of prostitution as a form of violence against women.”(Dundee Violence Against Women Partnership).

8. The seven local authorities and the Association of Directors of Social Work (ADSW), who responded to the consultation, supported the proposed Bill, in whole or in part. The main theme of these responses was that prostitution is a harmful form of violence against women. In particular,

concern was expressed about the trend toward the normalisation of women and girls portrayed as sex objects as highlighted by Perth and Kinross Council—

“There is evidence of significant growth in sexual exploitation involving on and off street prostitution, and this is fuelled by the sexualisation of children and young people. The increased sexualisation of women and girls in the media and popular culture – the "pornification of culture" – is strongly suspected of acting as a conducive context for violence against women by normalising the portrayal of women and girls as sex objects, not people.”

9. ADSW considered the proposed legislation to be a critical step in addressing the damaging effects of prostitution stating—

“The Association concurs that sustainable change will only occur when the men who purchase sex from vulnerable women and children acknowledge that it is unacceptable, is an abuse and degradation of women, and has no place in modern Scotland.”

10. Some other reasons given for supporting the proposed bill were-

“The Committee welcomes any objective which reduces the risk of harm towards women involved in prostitution.” (The Law Society of Scotland);

“Many of the young people, aged 16 – 25, supported by Quarriers youth housing support services can be vulnerable to sexual exploitation by reason of their age, background and previous traumatic experiences. Many have substance misuse issues, mental health difficulties and experience of both physical abuse and sexual abuse.” (Quarriers); and

“We consider that the policy intent of the bill is fully in line with the Scottish Government’s stated approach to prostitution, which is to recognise it as a form of violence against women (Safer Lives, Changed Lives, Scottish Government, 2009). In addition to the significant levels of violence – including sexual violence – experienced by those involved in prostitution, we believe that prostitution is harmful in of itself. The main cause of this harm is in having to endure unwanted sex. In order to be able to cope with constant unwanted sex, women often need to dissociate, either by “splitting off” within their own head, or through use of drugs or alcohol.” (Rape Crisis Scotland).

11. A rural perspective was provided by NHS Orkney, who stated that—

“We believe that the measures proposed would not only reduce the demand to buy sex, but also make Scotland a less attractive destination country for those that profit from the misery of prostitution and the traffickers who exploit the strength of sex markets.

However, more than just criminalising demand, the main impact of the proposed Bill would be to challenge attitudes and to send out a strong message that buying sex is not a harmless or acceptable activity within Scotland. This particularly resonates in a locality such as Orkney with no 'formal' sex industry, but where there is anecdotal evidence of activities (and the attitudes which go alongside these activities) such as the exchange of sex for e.g. alcohol."

General comments not in support of the proposed legislation

12. 32% (39) of respondents stated that they did not support the proposal. There were 24 individuals opposed to the proposed legislation. In addition, 8 of the 9 academics who responded to the consultation were fundamentally against the proposal, with one stating, "The consultation is based on false premises and biased statements including sexist and paternalistic notions which have no place in a modern legislation." (Dr Linda Cusick) Other reasons given included—

- There should be no criminalisation of something private between two consenting adults;
- Any criminalisation has the potential to push prostitution further underground, making prostitutes more vulnerable and less likely to access services; and
- There are already laws in place to tackle trafficking, kerb crawling, violent and sexual crimes.

13. Particular concerns focused on the enforcement of the proposed legislation. With the Association of Chief Police Officers in Scotland (ACPOS) "of the opinion that officers may not be able to gather sufficient evidence to report to the Procurator Fiscal, which in turn would mean there would be too few convictions for the proposed new offence to deter others."

General neutral comments raised in response to the proposed legislation

14. In the remaining 4% (5) of responses the respondents were neutral. One respondent, the Scottish Courts Service provided information on costs, per case, to enable the estimation of costs likely to arise from the prosecution of the offences created by the proposed Bill.

15. NHS Health Scotland, commented on the equality issues that may arise from the proposed Bill and suggested that a "one size fits all" approach would be unhelpful and that the proposed Bill should address the health and wellbeing issues of sex workers. NHS Health Scotland also however acknowledged that people involved in prostitution were likely to be victims.

16. NHS Lothian was clear that tackling demand for prostitution is a crucial part of reducing gender based violence and promoting equality, but it was

unsure if further criminalisation was the correct way to tackle this.

Responses in more detail

17. The consultation document posed eight questions; a summary of the responses to each are outlined below.

Question 1

18. The proposed Bill has two main aims—

- to make the purchasing/selling of sex indoors illegal; and
- to strengthen existing legislation to criminalise activities linked to prostitution aims to tackle the demand for prostitution, by criminalising the purchasing of sex.

19. 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.

20. The consultation asked--

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

21. Of the 64% (78) of respondents that supported the proposed Bill, 87% (68) of these supported option 2, to criminalise the purchaser only. The key reason given in support of option 2 was the seller of sex is a victim and therefore should not be criminalised.

22. The majority of respondents (63) who supported option 2 said that the main reason was that they felt the focus should be on tackling the demand for prostitution. This was because they considered the majority of women (and men) who sell sex did so because they were disadvantaged; believing rarely would a person make a lifestyle choice to become a prostitute. A number noted that the Scottish Government recognises prostitution as violence against women, and therefore it seems inappropriate to punish the “victim”.

23. This was expanded upon by Angus Council who advised—

“Research overwhelmingly suggests that prostitutes have in many instances experienced sexual abuse, been in the care system, and are often dependent on drugs and/or alcohol. While there is extensive research on street prostitution, there is less known about women who are involved in indoor prostitution. There is no indication that women involved in indoor prostitution are a different group or are less likely to experience the issues described above. For this reason we would be

against criminalising people who sell sex (or any sexual act) on an individual basis.”

24. The majority of health boards that responded also shared this view opting for option 2 as it “would avoid further victimising those who are involved in selling sex, who are largely drawn from the most deprived and vulnerable people in society. We consider prostitution to be a harmful and abusive practice and believe that individuals involved in prostitution should be offered support to exit prostitution, as opposed to being further punished.” (NHS Ayrshire & Arran)

25. 17 of those respondents also felt that the proposed Bill would send a clear message that Scotland will not tolerate prostitution.

26. It was also felt that there would be a reduction in the “market” by lowering the demand.

27. Another reason given in support of criminalising the purchaser was—

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

28. East Lothian Council’s response also highlighted the uneven treatment by the law of indoor and street prostitution stating, “We consider both street and indoor prostitution as damaging and exploitative and that penalties should apply to both. This is not currently the case and means that those that purchase sex indoors can do so without cause to consider the consequences.”

29. Other reasons articulated related to achieving broader international and European commitments.

30. For example, CARE for Scotland drew attention to the fact that “the Scottish Government, along with the UK Home Office, has ratified the Council of Europe Convention on Action against Trafficking in Human Beings, which came into force on 1st April 2009. Article 6 of the convention clearly indicates the necessity of tackling demand in order to reduce this type of exploitation.” In relation to the proposed legislation, CARE stated “Scotland’s commitment to tackle human trafficking, this must be a priority. Article 19 of the Convention stresses the importance of criminalising the use of services of a victim of trafficking.”

31. In relation to the World Health Organisation’s definition of sexual health, (The possibility of having pleasurable and safe sex experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled) NHS Greater Glasgow and Clyde points out that this “definition precludes the possibility of prostitution being contextualised as anything other

than exploitative, harmful and at odds with the endorsement of the WHO definition.”

32. A further 8% (6) supported the general principles of the proposed Bill but did not state their preference for a particular option, although four of these respondents appeared to be more in favour of option 2, they stated that they—

“.....firmly believe that the Scottish Parliament should recognise the inherent harm of prostitution to those involved, by focusing on the source of the problem – the men who buy vulnerable women and men in prostitution” (Centre for Gender Violence and Research, one individual, Soroptimists International Inverness and Nairn and Soroptimists International of Kirkintilloch and District).

33. Perth and Kinross Council stated that—

“It could be argued that where something is illegal both the purchaser and the seller should be criminalised as happens with illegal drugs. However if one of the primary purposes of this legislation is the protection of prostitutes then it would make little sense to criminalise them and impose fines and terms of imprisonment”.

34. 5% (4) of respondents favoured option 1, to criminalise the purchaser and the seller. The reasons given for this were—

“...that more notice would be taken, if both purchasers and sellers are criminalised” (individual);

“...there should be much higher penalties for the purchaser. It would be a matter for the procurator fiscal’s office whether they felt that it would be in the public interest to prosecute the seller. There may be times/occasions that the Police feel that a seller should be prosecuted – for instance a persistent offending person. Option 1 would allow the police the flexibility of using its powers and in itself act as deterrent” (East Ayrshire Council).

“...both the seller and the purchaser should be criminalised on the basis that this would be consistent with the gender balance in previous legislation and also it would allow the police and relevant agencies and authorities to intervene with regard to those involved in prostitution and accordingly provide support” (The Law Society of Scotland);

35. Of the 32% (39) of respondents that did not want criminalisation in either circumstance mainly because they viewed prostitution as a private transaction between consenting adults. Seven of these respondents favoured full decriminalisation as they thought that this would help people who did not want to be in prostitution get out, whilst not penalising those who choose prostitution as their profession. One respondent stated—

“I must have missed the options. I am against the non-option of “criminalising” and “criminalising”. Decriminalisation is still my all time favourite.”(individual)

Question 2

36. The consultation also sought views on what the respective penalties should be if both the purchasing and selling were to be criminalised. The consultation asked—

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

37. 54 of the 68 respondents who preferred option 2, to criminalise the purchaser only, favoured all, some or one of the penalties from the Women Support Project’s research “Challenging Men’s Demand for Prostitution in Scotland¹”, with 32 respondents favouring all of them. These are listed below for ease of reference—

The Women Support Project’s asked 110 men, who used prostitutes, what would deter them from buying sex, their responses are outlined below—

Being added to a sex offender register	89%
Having your picture and/or name on a billboard	86%
Having your picture and/or name in the local newspaper	84%
Having to spend time in jail	79%
Having your picture and/or name posted on the internet	78%
A letter being sent to your family saying you were arrested for soliciting a woman in prostitution	77%
Greater criminal penalty	72%
Having your car impounded	70%
Higher monetary fine	69%
Required to attend an educational program for men who buy prostitutes	56%

38. Of the 6 respondents that supported the general principles of the proposed Bill only one (Perth and Kinross Council) offered a response to this question and they thought that the “shame and embarrassment” of being taken to court would be the best deterrent.

39. Of the five respondents who favoured option 1, two respondents did not give a response to this question and one respondent, The Law Society of Scotland, considered—

“Penalties may need to be wide ranging dependent on the circumstances of the offence and the personal circumstances of the offender or offenders.”

¹ <http://www.prostitutionresearch.com/pdfs/ChallengingDemandScotland.pdf>

40. but that—

“a fine might not be considered a useful method of sentence for women involved in prostitution as it is likely they will sell sex again in order to pay the fine and in this respect refers to paragraph 63 of the Consultation Paper .”

41. One respondent that supported option 1 (Soroptimist International Perth Club) thought that the purchaser should be added to the sex offenders register and the seller should face prison/confiscation of premises/seizure of assets.

42. The final respondent that supported option 1 (East Ayrshire Council) thought there should be higher penalties for the purchaser than the seller but offered no response on what these penalties should be.

43. Seven of the 39 respondents, that did not favour either option, said that—

“.....it is simplistic to assume direct correlation between punishment and the extent of purchase and sale.” (3 individuals; Scot-PEP, Service Providers Against Negative Knowledge and European Centre for Sex Work Research and Policy); or

“....the assumption that any penalty imposed would directly impact on both the purchaser and sale of sex is misguided and shows a lack of understanding of the complexity of the issue.” (individual).

44. From question 3 onwards all respondents who supported option 1, option 2 or the general principles of the proposed Bill will be referred to as “those/respondents who supported the proposed Bill”.

Question 3

45. The proposed Bill aims to tackle simultaneously other activities that are linked to prostitution, as it is likely prostitution will adapt because it is a profitable market for criminals. The proposed legislation considers placing more emphasis on the advertising and facilitating of prostitution. The consultation asked—

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

46. Although the majority of respondents who supported the proposed Bill agreed that it would be difficult to police and enforce a prohibition on advertising, mainly due to modern technology, in particular websites that are hosted overseas, four respondents said these difficulties should not be insurmountable. Two respondents felt any difficulties should be overcome to protect prostitutes.

47. 28 respondents, who supported the proposed Bill, thought that the Scottish Government should look to the Republic of Ireland model. North Lanarkshire Council stated that—

“It is recognised that there will be considerable challenges in policing and enforcing a prohibition, however lessons can be learned from countries such as The Republic of Ireland who have already implemented a prohibition and from intelligence employed in areas of serious crime.”

48. Three respondents who supported the proposed Bill suggested that there should be a dedicated police division with specialised Information Technology knowledge.

49. Two further respondents suggested that the model that exists to police child abuse on the internet could be adapted and one respondent thought that the existing telecommunications legislation could be used to disrupt the industry.

50. Of the respondents that did not support the proposed Bill, eight thought that in times of tight public spending that this was not a priority, four respondents thought that this would be unenforceable or impossible, one of them stating—

“...cannot police websites in other jurisdictions” (individual).

51. A further respondent felt that there should not be a ban on advertising as it makes the profession safer, stating—

“It is now possible to arrange to book an appointment with a sex worker online. Many of these websites require participants to register for an account and to leave feedback. In my opinion this can be a valuable tool for safety as a sex worker can read a potential client’s feedback before agreeing to meet up. Similarly a client can read the feedback on a sex worker before requesting an appointment.

There are also internet message forums where sex workers communicate with each other and warn others of clients who have made them feel uncomfortable and unsafe” (individual).

Question 4

52. The consultation sought views on what the appropriate penalties should be if the proposed Bill is to tackle the advertising of brothels or prostitution. The consultation asked—

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?

53. 42 of the 78 respondents who supported the proposed legislation believed there should be a range of penalties depending on the crime; should focus on those who profit; and match the nature and severity of the crime. For example the White Ribbon Scotland Campaign, who are a campaign group for men (and women) in Scotland who want to end violence against women. It supported harsh penalties with a sliding scale to acknowledge the seriousness of the offences and the impact on individuals and communities and to dissuade this activity.

54. ADSW, which was supportive of legislating in this area, did raise concerns that complex processes could diminish the impact of the proposed Bill—

“The profit made from advertising prostitution and associated activities, pornography, escorts, saunas, masseuses, strip and lap dancing clubs, telephone/internet sex lines mean all/any attempts to reduce revenue will be challenged and met with opposition. The Scottish Government, along with other agencies, should ensure that the principles of the Bill are not lost as a result of complicated and costly processes.”

55. With regard to targeting action, NHS Ayrshire and Arran suggested that—

“Scottish legislation to control advertisement in newspapers, telephone cards, etc. would be more effective due to the physical nature of the materials and locating offenders in the “real world” as opposed to the “online world”. The advertising of brothels and prostitution has recently been prohibited in Ireland, and we could look to there for evidence of the efficacy of this type of legislation. ... those who advertise brothels or the prostitution of others need to bear meaningful penalties, such as going on the sex offenders register or incarceration.

56. A further three respondents did not support individuals who advertise themselves being criminalised and felt that any legislation should focus on the organisations or people who profit from advertising. The STUC expanded on this in its response—

“The STUC would wish to emphasise that the focus should be on those businesses and organisations that profit from the sale and advertising of sexual services. The publishers and promoters should be held responsible for ensuring advertising is not knowingly carried that sells sexual services. “

57. Two respondents, who supported the proposed Bill, thought that the Scottish Government could learn from the Republic of Ireland model.

58. Of the 39 respondents that did not support the proposed Bill, seven of them said there should be no penalties for individuals advertising themselves and penalties should only exist for organised crime gangs who may be involved in coercive practices. Two respondents objected to prostitutes being talked about in the same way as crime gang members.

59. Three of these respondents stated that—

“We find this difficult to answer, as the range of advertisement is so wide. However, I do not believe it to be a priority as some advertising companies already operates censorship” (ScotPep, Service Providers Against Negative Knowledge and one individual)

Question 5

60. 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 a flat in the knowledge that it is to be used for the purpose of prostitution, or that they booked transport for this reason. It is known that concierges are asked in some hotels for details of prostitution availability. It is the aim of the proposed Bill to capture this sort of behaviour if the intention is to allow someone to buy sex.

61. It is not the intention of the proposed Bill 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. The consultation asked—

What are the barriers to policing and enforcing this aspect of the proposal?

62. Four respondents, who supported the proposed Bill, felt that it would be challenging for police to enforce facilitation offences without surveillance/intelligence. One respondent stated that any barriers should be overcome.

63. North Lanarkshire Council, highlighted an example of an effective deterrent—

“The increased risk of detection and criminal penalties may have a deterrent effect. For example, studies have shown that there was a reduction in drink driving when the risk of detection was greater (random breath testing) and when penalties increased.”

64. Three respondents who supported the proposed Bill felt that there was a need to develop an agreed definition of the word “brothel”. One respondent explained why—

“one person prostituting from a private flat does not constitute a brothel, but what if there are three women per day each working an 8-hour shift?” (Shetland Child Protection Committee)

65. Of the respondents that did not support the proposed Bill, eight thought that in times of tight public spending that this was not a priority. Six of those respondents stating that money and resources would be a barrier to

enforcement of this aspect of the policy, with one respondent stating that—

“...manpower involved in policing this aspect of the bill is inappropriate and disproportionate to the impact it will have” (individual).

Question 6

66. The consultation sought views on what the appropriate penalties should be if the proposed Bill is to tackle those that facilitate prostitution. The consultation asked—

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

67. 30 of the 78 respondents, who supported the proposed Bill, believed that the penalties should be on a sliding scale to acknowledge the seriousness of the offence and that these penalties should be harsh.

68. Two other respondents, who supported the proposed Bill, considered there should be a range of penalties depending on the crime. Those two respondents and one other respondent said the focus should be on those who profit from the exploitation of someone else. Two other respondents also felt the “pimps” should be placed on the sex offenders register.

69. Of the 39 respondents that did not support the proposed Bill they—

- did not believe there should be any penalties for facilitation of prostitution, with one adding that in times of tight public spending this is not a priority (six respondents).
- felt that there were already adequate laws in place to deal with organised crime gangs, pimps and coercion and that these laws should be enforced effectively (five respondents).
- felt that the term facilitation was too broad and would be difficult to police, with two of these stating that the definition needs to be very firm and more consideration of this is required (three respondents).
- believed that prostitutes would be more protected if prostitution, and activities surrounding prostitution, were decriminalised then these could be run as legitimate, above board, businesses (two respondents).

Question 7

70. The consultation paper identified some areas where costs might be incurred. The paper requested respondents to comment on the possible

costs of the proposed Bill. The consultation asked—

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

71. 35 of the 78 respondents that supported the proposed Bill agreed that there would be an increased cost in services to support women out of prostitution and or to support policies into paid employment. 14 respondents said there would be additional costs for education programmes for police and criminal justice personnel, public education or training for staff in hotels, letting agencies and landlords. North Lanarkshire Council stated that—

“There will be a need to raise public awareness of the penalties that will be imposed. It was evident from “Challenging Men’s Demand for Prostitution in Scotland” that there was a lack of awareness on the legal position regarding prostitution with several of the men interviewed assuming indoor prostitution was licensed.”

72. The STUC expanded on the need for resources and public education to be delivered alongside any legislation—

“Funding and resources for a wide public education campaign to promote and explain the new legislation and to address broader issues. This can build on the commitments from many civic organisations, including the STUC, to raise awareness amongst their own memberships.

Resources must also be invested in support to all who seek to exit prostitution.”

73. A further 16 respondents felt that there may be an increase in costs in the short term, but in the long term any costs would reduce and three respondents said any increase in costs would be incidental compared to the costs of not tackling the demand. NHS Ayrshire & Arran, for example, stated that—

“There may be a short to medium-term increase in the costs of support services for those involved in prostitution, both to assist individuals exit prostitution and to educate those who purchase sex. Resources would be needed to run training and skill provision programmes to help prostitutes move into employment, to provide social care support in obtaining housing and security in the community. Addiction services in particular may see a rise in costs, as substance addiction is one of the main factors that drive people into prostitution and keeps them there.

However, there should be long-term benefits in changing the level of prostitution in Scotland and the Scottish population’s attitude to prostitution. There should be reduced costs to the NHS, local authorities and the Third Sector in the provision of addiction services and social care, and reduced costs to the NHS from harm-reduction services provided by sexual health and mental health services. “

74. East Lothian Council's view was that—

“Local multi-agency partnerships can be used to tackling attitudes and provide law enforcement with relevant intelligence etc but we have no doubt that the resources that will be required until the law is embedded will be considerable. However, we also appreciate that the risks posed to vulnerable people have long term impacts on a wide range of public services and can result in complex issues that require intensive treatment or interventions. There is therefore an opportunity to make savings in the longer term through changing attitudes and reducing or removing the potential for damage to the health, safety and wellbeing of those in the future who would otherwise be at risk of harm.”

75. A further 10 respondents, who supported the proposed Bill, offered no comment on this question.

76. NHS Lothian, who were neutral, made the following point about prostitution and the link to the economic downturn—

“Tackling the demand for prostitution is a crucial part of reducing gender based violence and promoting equality. However, other economic drivers also need to be addressed. NHS Staff working directly in this area report that over the last two years the economic situation has led to more women who have lost employment deciding to work in saunas. Our staff report seeing a number of graduates, teachers, bankers, lawyers, nurses and students selling sex.”

77. 12 of the 39 respondents who did not support the proposed Bill said the costs involved would be a loss of tax revenue and/or a loss to the economy, with two of these saying there would also be a loss to tourism, Scottish businesses would move away and it would be less likely that international events would come to Scotland.

78. One respondent, the Scottish Courts Service provided information on costs, per case, to inform any costs likely to arise from the prosecution of the offences created by the proposed Bill.

Question 8

79. One of the Scottish Parliament's key aims is the mainstreaming equal opportunities for all in its operation and appointments. In this regard the consultation sought to uncover any impact on equalities as a result of the proposed policy. The consultation paper asked—

Are there any equality issues that arise from this proposal?

80. 37 of the 78 respondents, who supported the proposed Bill, felt that it would go a long way to redress the inequality that they felt already existed in society due to prostitution. ADSW stated that—

“The Scottish Government is committed to ensuring a ‘fairer, safer and stronger and healthier’ Scotland for all its citizens. Such aspirations cannot be fully achieved when vulnerable women and children are sold for the sexual gratification of men.... As the professional association of senior social work managers we are acutely aware of the often irreparable harm that prostitution causes to individuals, families and communities.”

81. North Lanarkshire Council shared this view indicating that the time is right for public discussion—

“Gender inequality is inherent in prostitution. As previously said, there is an immense power imbalance between the purchaser and women or men who are purchased for sex. Criminalising the purchase of sex, irrespective of location, is a critical step in addressing this and should go hand in hand with challenging attitudes through education and increasing the public’s understanding of the harm, violence, abuse and exploitation caused by prostitution. Lessons can be learned from domestic abuse whereupon issues were moved from the private arena to the social and public domain.”

82. The Equalities and Human Rights Commission drew attention to a relevant UN declaration—

“In relation to the criminalisation of the purchase and sale of sex, article 1 of the UN declaration on the Elimination of Violence Against Women is pertinent in that it defines violence as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private.’”

83. Victim Support Scotland listed various human rights and their pertinence to the consideration of legislating to eradicate prostitution—

“As part of our organisational values, we believe that all human beings are entitled to fundamental human rights, including:

- Right to privacy and family life. (Article 8 European Convention on Human Rights and Fundamental Freedoms)
- Liberty and security (Article 5 European Convention on Human Rights and Fundamental Freedoms)
- No one shall be held in slavery or servitude and no one should be required to perform forced or compulsory labour. (Article 4 European Convention on Human Rights and Fundamental Freedoms)
- Human dignity is inviolable and must be respected and protected. (Article 1 Charter of Fundamental Rights of the European Union)
- Every human being has the right to respect for their physical

and mental integrity. (Article 3 Charter of Fundamental Rights of the European Union)

Bearing these values in mind, the practice of prostitution creates a false and detrimental balance of power, whereby a buyer is given privileges over another person. Prostitution causes harm by viewing sexual exploitation as a commercial enterprise. It affects not only how men think about women, it also influences their actual behaviour towards women, including sexual aggression against non-prostituting women.”

84. Two of these 78 respondents said that the proposed Bill should take into account the equality impact on male prostitutes as well as female prostitutes as they may be different. One respondent said the proposed Bill must be gender neutral.

85. A further 6 of these respondents offered no comment on this question.

86. 25 of the 39 respondents who did not support the proposed legislation felt there were equality issues with the proposed Bill. Five of these did not offer any comment on what these issues were.

87. Seven of these respondents felt there were issues regarding the human rights of sex workers and consenting adults. Two respondents believed that the proposed Bill was discriminatory against disabled people, explaining—

“Though not to be assumed as the only option, many disabled clients seek out the services of sex workers. In many instances it will be the only sexual encounters they will ever have, to criminalize, and close off the avenue which is presently open to them is cruel and discriminating.” (individual)

“Disabled people are also discriminated against. Disabled people hire sex workers for a large number of reasons....”. (TLC Trust)

88. NHS Health Scotland, who were neutral, responded only to this question stating that—

“Every highly vulnerable woman or man who works in the sex industry will have different characteristics, experiences and reasons for doing so, therefore a one size fits all approach is unhelpful. We would suggest adopting an ‘equality and human rights’ based approach to the Bill and to any work undertaken on this topic to ensure that individual differences and circumstances are fully understood and taken account of”.

Summary

89. The consultation on the proposed legislation produced a high response

rate showing the topic is of relevance and concern to Scotland today. The responses received showed marked support for the proposal. Confirmation of this also came in the form of the End Prostitution Now Campaign petition which collected 5851 signatures nationally. The response from NHS Orkney underlined prostitution affects all areas of Scotland in varying degrees as.

90. The majority of respondents who considered the question of who should be criminalised agreed only the purchaser should be guilty of committing an offence. The main reasons being: tackling demand; acknowledgement that prostitutes are victims of abuse; and that the proposed Bill would bring indoor prostitution in line with legislation covering “on-street” prostitution.

91. In terms of the penalties for those criminalised the majority favoured a combination of penalties, although those that shone a public light on their behaviour found particular favour.

92. With regard to tackling the advertisement of brothels and prostitution there was some agreement that it would be difficult to police. Enforcing a prohibition on advertising on the internet would be challenging. There was a suggestion that the effectiveness of the Republic of Ireland legislation should be investigated and that the model used for dealing with child abuse on the internet could also be adopted in relation to prostitution.

93. Most respondents who answered the question on appropriate penalties for advertising considered a sliding scale with individual prostitutes advertising themselves treated more leniently than those who publish the adverts. For those criminals who profit from prostitution a more severe penalty such as incarceration and being added to the sex offenders register was suggested.

94. The question about the facilitation of the buying of sex did not elicit a high number of responses. Those that did respond foresaw difficulties policing and enforcing this aspect without a high level of surveillance/information. Concerns were raised about how facilitation would be defined so as to avoid unintended consequences.

95. In terms of the penalties for facilitation, responses were similar to that for the proposed advertising offence in that there should be a sliding scale.

96. Respondents suggested there would be an increased cost in services to support women out of prostitution and or to support policies into paid employment. Additional costs were anticipated to develop existing training/education programmes for police and criminal justice personnel. There was also a suggestion that a public education campaign would be needed to alert the public to the new offences. Although there appeared to be short term costs some considered there would be long term savings to the public sector and the voluntary sector.

97. Lastly, the answers to the equality question clearly indicated the proposed bill would have a major positive impact on equalities. It also uncovered that a small number considered the policy would have a

detrimental impact on those choosing to work as prostitutes.

Conclusions

98. The responses to consultation have provided a number of ideas that the member will consider and use to further develop the policy before completing the drafting of the bill.

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