

# PROPOSED CRIMINALISATION OF THE PURCHASE OF SEX (SCOTLAND) BILL

## STATEMENT OF REASONS WHY CONSULTATION IS UNNECESSARY

### Proposal

1. My draft proposal seeks to make it an offence to pay for sex.
2. In Scotland, 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.<sup>1</sup>
3. The most recent stand-alone legislation aimed at those who purchase sexual services was the Prostitution (Public Places) Scotland Act 2007 (the 2007 Act). The Act created two offences:
  - Soliciting (i.e. 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).
4. My proposal will make the purchase of sex illegal in Scotland, with the aim of reducing the demand for prostitution. In addition, by strengthening the existing legislative framework against purchasers, Scotland should become an unattractive market for prostitution and therefore other associated serious criminal activities, such as people trafficking for sexual exploitation, would be disrupted.

### Procedure

5. Under Rule 9.14.3 of the Parliament’s Standing Orders, a draft proposal should be lodged with either:

a consultation document; or

a written statement of reasons why, in the member’s opinion, a case for the proposed Bill has already been established by reference to specified published material and that consultation on the draft proposal is therefore unnecessary.

### Published Material/Consultation

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<sup>1</sup> SPICe Briefing, Criminal Justice and Licensing (Scotland) Bill: Stage 3, 4 June 2010, page 18  
<http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB10-35.pdf>

6. Former MSP Trish Godman lodged amendments in 2010 to the Criminal Justice and Licensing (Scotland) Bill to criminalise the purchase of sex and related activities.

7. The Justice Committee invited written submissions and held an oral evidence session at Stage 2 to inform its consideration of those amendments<sup>2</sup>. A substantial number of written submissions<sup>3</sup> were received by the Justice Committee, and the Committee heard from 8 witnesses.<sup>4</sup> Other related published material is the SPICe paper<sup>5</sup> which sets out the background law and summarises the Committee consideration of the amendments. Although there was support from within the Justice Committee and externally, the Committee considered that further consultation should be carried out.

8. Trish Godman then lodged a draft proposal on 24 November 2010 and consulted on its terms between 24 November 2010 and 18 February 2011. The paper was issued to 128 MSPs and 146 organisations, including local authorities, all NHS Boards, Special NHS Boards, women's groups, and equality groups. In addition, the paper was issued to academics, individuals and organisations who had responded to the Justice Committee's call for evidence on the amendments to the Criminal Justice and Licensing (Scotland) Bill.

9. The proposal consulted on at that time included the following three new offences and the respective penalties for these offences:

- Engaging in a paid-for sexual activity;
- Advertising paid-for sexual activities; and
- Facilitating a paid-for sexual activity.

10. The consultation paper received 122 formal responses from individuals, anti-violence against women organisations, academics, equality/human rights organisation, health boards, local authorities (including the Association of Directors of Social Work), support groups, women's business organisations, pro-prostitution organisations, criminal justice organisations, religious organisations, a child protection group and a trade union organisation.

11. Almost two thirds (64%) of those who responded supported the proposed Bill either in whole or in part. I am of the view that this clearly demonstrates the need for action to be taken.

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<sup>2</sup> Justice Committee, Stage 2, Criminal Justice and Licensing (Scotland) Bill, 20 April 2010, Official Report, Col 2918-2938

<http://archive.scottish.parliament.uk/s3/committees/justice/or-10/ju10-1301.htm>

<sup>3</sup> <http://archive.scottish.parliament.uk/s3/committees/justice/inquiries/CriminalJusticeandLicensing/ju-criminaljustice-evid.htm>

<sup>4</sup> Justice Committee Oral Evidence, 23 March 2010, Official Report Cols 2775 -2832

<http://archive.scottish.parliament.uk/s3/committees/justice/or-10/ju10-1101.htm>

<sup>5</sup> SPICe Briefing, Criminal Justice and Licensing (Scotland) Bill: Stage 3, 4 June 2010, page 20-22

<http://www.scottish.parliament.uk/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB10-35.pdf>

12. The majority of respondents responding to the question of who should be criminalised agreed that only the purchaser, and not the seller, should be guilty of committing an offence. The main reasons for this were tackling demand; acknowledgement that prostitutes are victims of abuse; and that the proposed Bill would bring indoor prostitution in line with legislation covering street prostitution.

13. In terms of the penalties, the majority of respondents favoured a combination of penalties, although a penalty that exposed the perpetrator's behaviour to the public would have a better deterrent effect as those who purchase sex mostly do so without the knowledge of their family, friends and work colleagues.

14. With regard to tackling the advertising of brothels and prostitution, there was a degree of agreement that this would be difficult to police, for example, 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.

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

16. Copies of the consultation document and the summary of the responses can be viewed at the Scottish Parliament's website on the Members' Bills page (link below):

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25043.aspx>

17. Copies of all responses received were also placed in the Scottish Parliament Information Centre (SPICe).

18. Trish Godman lodged a final proposal on 16 March 2011 and although this secured sufficient support for a Bill to be introduced, the cut-off for introducing Members' Bills had already passed and the proposal fell at dissolution. Trish Godman did not stand again for election to the current Parliament.

19. I am keen to pursue the issues consulted on by Trish Godman. However, having considered the detail of the responses, I have refocused my proposal on the creation of an offence of purchasing a sexual activity. I am still very supportive of the other strands of Trish Godman's proposal but consider these would be better pursued at a later time, and in the first instance, debate should be focused on the core aim of the proposal.

### **Why consultation is unnecessary**

20. In relation to the draft proposal for this Bill, I do not consider that further consultation is required for the following reasons.

21. Trish Godman's consultation took place little over a year ago, on a very similar proposal. In addition, the Justice Committee gathered a substantial amount of evidence on her closely-related Stage 2 amendments earlier in session 3. I therefore believe that the practical, operational, legal, equality and financial considerations have been explored to a sufficient degree to test, develop and refine my specific proposal and enable me to proceed towards the development of a Bill.

22. On 17<sup>th</sup> January 2011 I met with stakeholders and representatives from a number of organisations who hold an interest in this area to discuss the bill. I have continued to liaise with organisations on this topic. Views expressed to me so far, as part of my on-going engagement with a number of bodies, the public and others with an interest in this proposal, confirm that the views expressed during the formal consultation process have not changed.

23. I am unaware of any major policy developments or changes in relation to the purchase of sex in Scotland since the consultation period ended. As a result, I consider that any further consultation would duplicate effort already expended on this issue, incur additional and unnecessary costs and be construed by the public as "over consultation" on a process on which views have already been clearly expressed.

### **Conclusion**

24. I therefore request the Committee considers this statement of reasons and indicates whether it is satisfied with the grounds I have set out above to justify the absence of a consultation paper on my draft proposal.

**Rhoda Grant MSP**  
**23 May 2012**