

“Unbuyable”- Proposed Prostitution (Offences and Support) (Scotland) Bill Consultation

Response from Scottish Women’s Aid- September 2024

Questions

Please fill in the questions below by enabling editing or saving a copy of the document and email it to ash.regan.msp@parliament.scot.

About you-(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in bold.)

1. Are you responding as: ☒ on behalf of an organisation?

2B. Please select the category which best describes your organisation:

☒ Third sector (charitable, campaigning, social enterprise, voluntary, non- profit)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g., whether it is the view of particular officeholders or has been approved by the membership as a whole).

SWA was a member of the Scottish Government’s Challenging Men's Demand for Prostitution Short Life Working Group developing the principles that underpinned the strategic Scottish approach.

3. Please choose one of the following:

☒ I am content for this response to be published and attributed to me or my organisation

4. Please provide your name or the name of your organisation. (Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)

Scottish Women’s Aid

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. (Note: We will not publish these contact details.)

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Unbuyable”- Proposed Prostitution (Offences and Support) (Scotland) Bill Consultation

Scottish Women’s Aid Views on The Proposal

Scottish Women’s Aid (SWA) is the lead organisation in Scotland working to end domestic abuse and plays a vital role in campaigning for effective responses to domestic abuse. SWA is the umbrella organisation for the majority of local Women’s Aid organisations across Scotland, each providing practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach, follow-on support and temporary refuge accommodation.

SWA also run the Scotland’s Domestic Abuse and Forced Marriage Helpline taking over one thousand calls, WhatsApp messages, and texts (24h/365) every month.

We are grateful to the Women’s Support Project for their work on these issues and we note that their response has informed some of our submission.

1/ What is your view of introducing a new criminal offence of paying for sexual services? Please explain the reasons for your response

Fully supportive

SWA recognises and supports the position that prostitution, as a form of commercial sexual exploitation (CSE), is a form of violence against women and both a cause and a consequence of gender inequality. The gender-specific nature of CSE exploits and preserves attitudes and stereotypes that enforce gender inequality and continues the diminution of women’s rights.

As a member of the Scottish Government’s Challenging Men’s Demand for Prostitution Short Life Working Group that in 2022 developed the principles that underpinned the Scottish approach ¹ and in recognition of the issues identified for women and the need to proceed with meaningful reform that goes beyond harm reduction, SWA fully supports this proposal to create a new criminal offence of paying for sex. This new offence, if consistently and appropriately implemented in conjunction with associated proposals to improve support for exiting prostitution, will address and prevent this form of violence and send out the message that it will no longer be tolerated in Scotland.

The Scottish Government’s 2024 Strategy paper setting out² the collective approach, to both challenge and deter men’s demand for prostitution and support those with experience of it has, as a key aim, “...to improve support for women, including to

¹ <https://www.gov.scot/publications/challenging-mens-demand-for-prostitution-policy-principles/>

² <https://www.gov.scot/publications/scotlands-strategic-approach-challenging-deterring-mens-demand-prostitution-supporting-recovery-sustainable-exit-those-involved-prostitution/pages/2/>

sustainably exit prostitution, and to challenge and deter men's demand through education, awareness raising, more informed public and private sector service provision and engagement, and where evidenced, through legislation” which is also supported by the delivery of their Vision for Justice in Scotland and the Equally Safe Strategy.

The proposal in this consultation, intended to hold men who perpetrate this form of violence against women to account, specifically supports one of the six principles developed by the Working Group and also set out in the 2024 Strategy paper - *“A strong, consistent, and unambiguous national message that is understood and promoted throughout policy and practice on national and local levels that reinforces that there is no place for commercial sexual exploitation of any individual in Scotland. It will make plain that prostitution and wider commercial sexual exploitation are a form of violence against women and girls, and that this will not be tolerated in Scotland. Those perpetrating exploitation (such as sex buyers and profiteers) will be held to account.”*

It also takes forward one of the 2024 Strategy's key activities of disrupting, deterring demand, and tackling its drivers, in addition to positively progressing the intended Action set out in the 2024 Equally Safe Delivery Plan ³*“12.1-We will progress Scotland's strategic approach to challenging and deterring men's demand for prostitution and support the recovery and sustainable exit of those involved in prostitution.”*

A new criminal offence of paying for sex would mean Scotland undertaking its international obligations on human rights. Article 6 of the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW⁴) requires public authorities to *‘take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.’* A new General recommendation No. 38, adopted by CEDAW⁵ in 2020, outlined the obligations of governments in implementing Article 6 of the Convention including focussing on the demand that fosters exploitation. Also, the Scottish Government committed to the UN Sustainable Development Goals in 2015. All countries adopting these are aiming to achieve these goals by 2030. Goal 5.2⁶ includes: *‘eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.’*

What is your view of repealing section 46 of the Civic Government (Scotland) Act 1982- the offence of soliciting for the purposes of prostitution in a public place? Please explain the reasons for your response.

We support this proposal as it is not possible to identify prostitution as a form of violence and exploitation and to then criminalise the women involved. It also agrees with the need for a victim-centred, trauma- informed justice approach, as set out in the 2024 Strategy referenced above, and further aligns with the 2022 Working Group's policy principles restated in that document- ***“Victims of exploitation, not criminals- A legal and societal framework that understands the specific circumstances associated with those involved in prostitution and acknowledges this group as victims of exploitation, and not perpetrators of crime. Those involved in***

³ <https://www.gov.scot/publications/equally-safe-delivery-plan/>

⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

⁵ <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women#:~:text=Summary,the%20context%20of%20global%20migration.>

⁶ <https://www.undp.org/sustainable-development-goals/gender-equality>

exploiting, recruiting, managing, coercing, and/or forcing individuals into prostitution, forms of human trafficking, and those who commit violent and sexual offences against this group receive punishment proportionate to their crime.”

Perpetrators of domestic abuse can, and do, manipulate the criminal justice system, including using the threat of criminalisation of their victim to continue the abuse and avoid reporting and being held to account. Similarly, for women subject to CSE, those exploiting women and buying sex use violence, threat of criminalisation, for migrant women, the threat of deportation and that women will not be believed, in order to continue the violence and escape consequences. Women may not report violence or crimes committed against them for fear of arrest or other reasons such as stigma, fear of not being believed, lack of confidence in the justice system and the fear of being criminalised.

The new support pathways in the Scottish Government 2024 Strategy must be supported by national and local resources to support women, along with robust prevention, harm reduction and exiting services. As stated in the 2024 Strategy, *“In common with the Nordic Model the Strategy seeks to enable women to safely, and sustainably, exit from prostitution. The Strategy will also raise awareness and educate the public, relevant service provisions and mainstream public services to recognise that women with experience of selling/exchanging sex are victims of exploitation.”*

.3. What is your view of repealing previous convictions under section 46 of the Civic Government (Scotland) Act 1982: the offence of soliciting for the purposes of prostitution in a public place?

Women exploited through prostitution who have a criminal record can face substantial additional barriers to seeking help, exiting, and recovering. Having a criminal record of this nature can limit employment and other opportunities, as disclosure can cause shame and discriminate against women, which then traps women in a cycle of poverty and inequality. This proposal will support women by removing the impact of criminalisation.

4. What is your view of giving people in prostitution the legal right to support?

The 2024 Strategy states *“...An important aspect of disputing demand is removing the drivers of exploitation. This Strategy is cognisant of the need to respond to the systemic societal and economic disadvantages that women face, in order to address the conditions that can drive exploitation. This also involves recognising the risk factors and circumstances that can lead to exploitation. Poverty is one of the key drivers for exploitation and there are a range of relevant actions we are taking to tackle it.”* It also restates the 2022 Working Group’s principles of *“Supporting recovery and sustainable exit”* and *“Establishing a new national support pathway”*.

Women are entitled to, and should, receive all-inclusive, consistently delivered and properly resourced support. It is well documented that many women may have experienced physical, emotional, and sexual violence, abuse, threats, and financial abuse from those buying sex, selling, and trafficking women and the public. Mental health issues are both a cause of, and a driver for, prostitution; women report long-lasting and complex psychological harms, trauma, and PTSD which impact on many parts of women's lives and their opportunity and ability to engage with support services.

There are a large number of policy areas and services across different sectors that are all relevant to CSE. The positive implementation of the legislation and accompanying support will require a national strategic approach and planning to ensure consistent, specialised and mainstream responses and services across the country, in both rural and urban areas, responses and services that are trauma informed, multiagency, appropriate and accessible, with local Violence Against Women Partnership engaged and leading on local planning and strategy. Existing limited specialist support must be extended. All services must be women centred, support a sustainable exit, and partnerships and services must collaborate directly with women to develop the best model. All of this, of course, will require long-term funding and resourcing.

5. What is your view of including provisions for exiting services in the bill?

“Exiting” or leaving prostitution is a process, not an event, and can be a long and difficult process due to personal circumstances and pressures, taking many years. Services will be required to: - supportively address women’s insecure immigration status; facilitate access to safe, secure, and affordable accommodation; offer support into employment and education; financial aid; access to appropriate health services but to name a few. Our response to Question 4 above in terms of the strategic national and local approach is relevant here.

6. How should the proposed offence be enforced. Are there any particular techniques which you think should be used or obstacles which might need to be overcome?

- Consistent application nationwide will be required to prevent buyers simply moving to areas of the country that are considered or reported to be “under-policed.”
- It must be clear that the offence covers “off-street locations” and the virtual world, which will require a change in the nature of investigations to identify and prosecute buyers.
- Consideration will have to be given on how to protect women during prosecutions of buyers and how to avoid or minimise them being required as witnesses in the prosecution of the new offence.
- As the consultation notes, “payment” must be widely defined, including provision of goods and services, to capture all eventualities and ensure that activities are not allowed to fall outside the offence, particularly where they are contrived to do so.
- What is missing from the legislative proposal is how this offence could be used to take action against those who organise and facilitate the exploitation of women, for instance “escort agencies”, websites and it may require creation of an additional, complementary offence to cover this.
- The UK Parliament's Home Affairs Select on Human Trafficking⁷ recommended *“Third party profit-taking from the prostitution of another person needs to be extended to prohibit any individual or company from enabling and/or profiting from the prostitution of another person, including facilitation that takes place via online, digital services, websites and the internet.”* This could be achieved through adding a further, new offence to the Bill or through an amendment to the Criminal Law (Consolidation) (Scotland) Act 1995 section 7 offences aimed at people who seek to procure women to be

⁷ <https://committees.parliament.uk/work/7290/human-trafficking/publications/>

engaged in prostitution, and the offences in sections 11 and 13 related to living on the earnings of another person through prostitution.

- Successful implementation of the offence will require extensive training for front-line and investigative officers, and for the judiciary but more importantly, an attitude change towards this form of violence against women and the focus put on those who buy and exploit as opposed to the exploited seller. Therefore, to ensure this happens, it is also absolutely vital that the draft legislation contains monitoring, evaluation and reporting duties relating to investigation, prosecution, conviction and sentencing.
- We would also support the paper's proposal that, in preparation for the new offence the Scottish Government should conduct an awareness-raising campaign to ensure that those who purchase sexual acts are aware of the new offence.

7. Do you believe that there are any new policing powers that would be necessary or beneficial for enforcing this offence?

It is important that this is discussed as soon as possible with Police Scotland so that any need for additional powers through legislative reform can be dealt with, if necessary, through the Bill and similarly, consideration given to which operational procedures would require updating. The new offence would shift the focus from those exploited to the exploiters and necessitate a different investigative approach and we would also refer to our response to Question 6 above.

8. Please indicate which of the following forms of support and/or services you think should be provided for people in prostitution and exiting prostitution (tick as many as you agree with):

Support needs to be comprehensive to address the many and complex needs of women so we consider that all the services listed would be necessary. Further, migrant women and trafficked women will need additional support, particularly around immigration status. Creation and implementation of national and local data collection and monitoring systems will also be needed.

9. Please indicate which of the following ways of raising awareness of the new offence you believe to be most effective (tick as many as you agree with):

Direct information to support organisations and statutory services about the changes and support available, particularly around exiting; inclusion in secondary and further education and for women involved in prostitution about the legislative reform and support options are crucial. We are unsure as to whether leaflets to households would be as cost effective. A pre-commencement public information campaign would be needed, with different messaging for different groups, with care taken that this focuses on sex buyers, does not stigmatise or judge women or continue harmful and derogatory stereotypes.

11. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to: a significant increase in costs ** Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses, and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

We are concerned that the financial impact and level of resources required to increase the scale and nature of service provision and in enforcing and prosecuting the new offence has been underestimated. It is also not possible to rely on projected

and assumed social and economic savings, that will likely be achieved in areas such as health and social care, criminal justice through reduction of CSE, being immediately available to offset and reduce costs of these proposals, or to rely on the Scottish Government's commitments to create new support pathways and hub.

Substantial funding will be required to support awareness and education programmes; produce and deliver training for statutory and support staff, particularly those who may have little or no awareness or experience of supporting victims of CSE; produce and deliver training and awareness for police, COPFS, the SCTS and judiciary and also to engage with survivors to inform all of this work.

If resourcing is not provided, the Bill's outcomes will not be achieved but this does not mean that progress on addressing this serious abuse of women should not happen. The recent strategic funding review of VAWG services recommended that underfunding of CSE support be addressed meaning a concomitant Scottish Government financial commitment and it is hoped that a more focussed, sustained preventative approach and support to exiting services would reduce costs.

12: Any new law can have an impact on different individuals and groups in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

The proposal may have an impact on women trafficked into or involved in CSE so care must be taken that there are no unforeseen consequences arising from uncertain immigration status and that the legislation is not used as a tool to control immigration and asylum.

13. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?

In addressing the inequalities and harms visited upon women subject to CSE, it is hoped that criminalising purchasers will drive down demand, reduce the perpetration of this form of violence against women, offer women choices in their lives and opportunities in employment and education, as well as offering better support for health issues and housing.