**Input for SR VAWG's report on violence against women and prostitution**

**CHANGING THE LAW ON PROSTITUTION IN SCOTLAND**

**Proposed Members Bill on Prostitution**

1. I am Ash Regan, a Member of the Scottish Parliament (MSP) for the Alba Party, and I am contributing to this call for evidence to provide information about the current legal situation in Scotland in relation to prostitution.
2. I am currently preparing to bring forward legislative change in Scotland by proposing a Members Bill on Prostitution that seeks to:
* Decriminalise the selling of sex
* Criminalise the buying of sex
* Supports the victims of prostitution
* Vacate previous convictions for the selling of sex
1. Every MSP can bring forward legislative proposals. Following a public consultation on the proposals, the member then seeks supports from other elected representatives. Once this support is given, the proposed Members Bill is assigned to a committee for scrutiny and then put to parliament for a three-stage process ending with voting the proposal into law.

**The current laws in Scotland**

1. In Scotland, it is not an offence to provide sexual services for payment, nor is it illegal to pay for sexual services where both parties are consenting adults. There are, however, a range of laws that apply to activities connected with on-street prostitution, brothel-keeping, living off the earnings of those involved in prostitution and the sexual exploitation of children.
* **Soliciting/loitering for the purpose of prostitution -** The Civic Government (Scotland) Act 1982, section 46, contains the offence of soliciting, loitering or importuning by an individual involved in prostitution for the purposes of providing sexual services for payment.
* **Soliciting/loitering for the purpose of purchasing the services of a person in prostitution -** The Prostitution (Public Places) (Scotland) Act 2007, section 1, contains the offence of soliciting or loitering in a public place (or other relevant place) for the purpose of obtaining the services of a person engaged in prostitution. There is no requirement that the person from whom sexual services are sought is “a known prostitute” only that they were engaged in prostitution at the time.[[1]](#footnote-1)
* **Brothel-keeping –** The Criminal Law (Consolidation) (Scotland) Act 1995, section 11(5), contains offences related to keeping a brothel or permitting premises to be used as a brothel.
* **Procuring and living on the earnings of the prostitution of another person -** The Criminal Law (Consolidation) (Scotland) Act 1995, section 7(1), includes offences aimed at people who seek to procure women to be engaged in prostitution. Sections 11 and 13 contain offences related to living on the earnings of another person through prostitution.
* **Human trafficking –** The Human Trafficking and Exploitation (Scotland) Act 2015, section 1, creates the offence of human trafficking, including human trafficking for the purposes of sexual exploitation. Section 3 lists sexual exploitation and prostitution as forms of exploitation covered by the section 1 offence of human trafficking.[[2]](#footnote-2)
* **Child sexual exploitation -** The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 includes offences related to the sexual exploitation of children including, in section 9, offences related to purchase of sex with a child and, in sections 10 – 12, offences related to the procuring or control of children for the purposes of sexual exploitation.

**Evidence of the harms and risks of prostitution and relevant government research**

1. The existing offences address neither the harms nor the risks of prostitution. I believe that the Scottish Parliament should proactively address the demand for prostitution so that the levels of prostitution in Scotland decrease, which would be an effective way to reduce the harms and risks of prostitution. My Bill is intending to do this through legislative change.
2. The Scottish Government recognises that prostitution is a form of commercial sexual exploitation and, although not all those in prostitution are female, it is a form of violence against women and girls. It does this as part of its Equally Safe strategy, a framework created in 2014 to tackle violence against women and girls.[[3]](#footnote-3)
3. A Scottish Government report in 2016 into the nature and scale of prostitution in Scotland highlights the risks and harms of being involved in prostitution, including negative impacts on general and mental health, safety and wellbeing and sexual heath.[[4]](#footnote-4)
4. In 2022, the Scottish Government commissioned research[[5]](#footnote-5) with adults with lived experience of selling and/or exchanging sex, which included 71 participants and explored people’s views and experiences of accessing support services. This research, alongside an international evidence review of approaches to challenging demand for prostitution, contributed to the development of a framework and set of policy principles to effectively tackle and challenge men’s demand for prostitution.

***Vulnerability prior to entering prostitution***

1. The Scottish Government’s 2016 report also highlighted that there are a range of factors and circumstances that can lead to people becoming involved in prostitution:
* Financial pressures,
* homelessness,
* substance misuse,
* difficult or chaotic family contexts, involvement of a parent or sibling in prostitution,
* having previous convictions that present a barrier to employment,
* having a history of trauma, abuse or gender-based violence or coercion from pimps or partners.[[6]](#footnote-6)

***Young people and prostitution***

1. Young people, and especially those who have lived in care, are particularly at risk of being drawn into prostitution, through grooming and sexual exploitation as teenagers, with “experience of local authority care […] noted as a key factor in increasing the risk of sexual exploitation.”[[7]](#footnote-7) Frontline practitioners also reported “young women and men (over the age of consent) in ‘transitions’ from care services, who were targeted by purchasers of sex, because of their vulnerabilities.”[[8]](#footnote-8)
2. The practitioners interviewed for the 2016 report also considered that “technology has created more opportunities for manipulation through phones, messaging, gaming software and the anonymity and control that they enable” which “puts a far larger group of young people (over the age of consent), including those not necessarily previously considered to be in a vulnerable situation, at risk of being manipulated into prostitution.”[[9]](#footnote-9)

***Links to human trafficking***

1. Whilst most of those in prostitution have not been trafficked, it is indisputable that people are trafficked into and within prostitution in Scotland. The Scottish Government’s 2016 report concludes that the current figures relating to trafficking for sexual exploitation are “likely to under-estimate the number of people who have been trafficked;”[[10]](#footnote-10)states that “there is evidence of links between prostitution and serious organised crime, and trafficking for the purposes of sexual exploitation”;[[11]](#footnote-11) and reports that “indoor prostitution is widely understood to involve a higher proportion of foreign nationals than on-street prostitution”.[[12]](#footnote-12)
2. Theliterature review features research showing that trafficking in commercial sexual exploitation “commonly occurred in privately owned flats with most victims kept indoors, supervised and controlled;” and that “women involved indoors in saunas and flats were subject to a range of constraints, coercion and exploitation.”[[13]](#footnote-13) **The scale of prostitution in Scotland**
3. It is difficult to estimate the number of people involved in or affected by prostitution and there are no definitive estimates or data of the numbers of people involved in prostitution in Scotland available. My most recent attempt to bring together available data from public services in January 2024 highlighted the inadequate nature of data gathering in Scotland. The only definitive data available on prostitution are crime statistics.
4. The recorded crime statistics for the time period 2012 to 2022 (when the last complete data is available) show a general downward trend in recorded crimes associated with prostitution. Despite the downward trend, 442 women were charged for selling sex, with 413 convicted.[[14]](#footnote-14) The number of men charged for buying sex was lower, at 420, with 315 convicted. This conviction rate is considerably lower than that for women charged for selling.
5. However, as the Scottish Government’s 2016 report into the nature and scale of prostitution noted “this data only provides insight into the levels of criminal activity related to prostitution, and do not provide an indication of the number of people who are involved in the sale of sex or who buy it” and “police commonly acknowledged that intelligence shows a much wider scale in terms of prostitution activity than is captured in recorded crime data.”[[15]](#footnote-15)
6. Police intelligence gathering exercises have assessed the number of online adverts for sexual services/escorts as an indication of the scale of prostitution (although some adverts will be duplicates or fake). One such search from January 2016 identified around 1,800 adverts for sexual services across 4 main websites in Scotland in a single day, the majority of which involved women.[[16]](#footnote-16) A more extensive scoping exercise in 2014 identified 3000 adverts across 10 websites, featuring over 20 separate nationalities, the majority of whom were assessed as young adults.[[17]](#footnote-17)
7. Reflections from practitioners working with people involved in prostitution as well as the police indicate the following trends:[[18]](#footnote-18)
	1. a decline in on-street prostitution with those involved having a range of vulnerabilities and complex needs where prostitution is in some ways a means of “survival,”
	2. a shift towards indoor prostitution although the scale is difficult to assess as it is much less visible; it is thought to comprise approximately 90% of all prostitution in Scotland,
	3. indoor prostitution is widely understood to involve a higher proportion of foreign nationals than on-street prostitution as well as a wider range of socio-economic backgrounds.

**Previous proposals to criminalise the purchase of sex in Scotland**

1. In the last 14 years, there has been one attempt to change the law in Scotland and several other approaches to curbing demand were explored:
* In 2010, **Trish Godman MSP** brought forward a proposal for a Criminalisation of the Purchase and Sale of Sex (Scotland) Bill which fell due to elections for the Scottish Parliament.
* In 2012, **Rhoda Grant MSP** consulted on a proposal to make it an offence to purchase sex.[[19]](#footnote-19) The majority of those responding supported the aim of the proposed Bill to make it a criminal offence to purchase sex (80%).[[20]](#footnote-20) The most common reason given by respondents for supporting the proposal was that “the legislation would reduce the incidence of prostitution and protect women against violence”.[[21]](#footnote-21)
1. In 2015, during the passage of the Human Trafficking and Exploitation (Scotland) Act 2015,[[22]](#footnote-22) the Justice Committee noted in its Stage 1 report the proposal from a number of witnesses that the Bill should include provision to criminalise the purchase of sex.[[23]](#footnote-23)
2. There have been no further attempts to challenge demand for prostitution through legislative change since then. Despite the Scottish Government’s acknowledgement that prostitution is violence against women and girls, and its firm commitment to tackle all forms of violence against women and girls, the government’s legislative timetable for this parliamentary session includes no plans to change the law on prostitution to challenge demand.
1. Scottish Government, Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews, December 2016, p91. [↑](#footnote-ref-1)
2. Section 3(3)-(5) of the Human Trafficking and Exploitation (Scotland) Act 2015 includes prostitution and sexual exploitation in the definition of exploitation for the purposes of the section 1 offence. [↑](#footnote-ref-2)
3. Scottish Government, Equally Safe Scotland’s Strategy for Preventing and Eradicating Violence against Women and Girls, 2014. [↑](#footnote-ref-3)
4. Scottish Government Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews December 2016, p9. [↑](#footnote-ref-4)
5. <https://www.gov.scot/publications/lived-experience-engagement-experiences-people-sell-exchange-sex-interaction-support-services/pages/1/> [↑](#footnote-ref-5)
6. Scottish Government Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews December 2016, pp 46-49. [↑](#footnote-ref-6)
7. ibid, p47. [↑](#footnote-ref-7)
8. p47. [↑](#footnote-ref-8)
9. p49. [↑](#footnote-ref-9)
10. p12. [↑](#footnote-ref-10)
11. pp 12 and 67. [↑](#footnote-ref-11)
12. p45. [↑](#footnote-ref-12)
13. p90. [↑](#footnote-ref-13)
14. No males were charged or convicted for selling sex in Scotland in that time. [↑](#footnote-ref-14)
15. Scottish Government Exploring available knowledge and evidence on prostitution in Scotland via practitioner-based interviews December 2016, pp 20-21, 25. [↑](#footnote-ref-15)
16. ibid, p25. [↑](#footnote-ref-16)
17. ibid [↑](#footnote-ref-17)
18. pp43-45 [↑](#footnote-ref-18)
19. Rhoda Grant’s proposal fell because it failed to obtain the necessary cross-party support. [↑](#footnote-ref-19)
20. Proposed Criminalisation of the Purchase of Sex (Scotland) Bill (2) Summary of Consultation Responses, p8.

 <http://www.parliament.scot/S4_MembersBills/FINAL_consultation_summary_Criminalisation_of_Purchase_of_Sex.pdf>. [↑](#footnote-ref-20)
21. Proposed Criminalisation of the Purchase of Sex (Scotland) Bill (2) Summary of Consultation Responses, p10. [↑](#footnote-ref-21)
22. Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) <http://www.legislation.gov.uk/asp/2015/12/contents> [↑](#footnote-ref-22)
23. The Scottish Parliament Justice Committee Stage 1 Report on the Human Trafficking and Exploitation (Scotland) Bill SP Paper 710, 9th report Session 4 (2015) pp35-36. <http://www.parliament.scot/S4_JusticeCommittee/Reports/juR-15-09w.pdf> [↑](#footnote-ref-23)