



# Consultation Response

## Proposed Prostitution (Offences and Support) (Scotland) Bill

Consultation by Ash Regan MSP

September 2024



## Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to Ash Regan MSP's consultation on a Proposed Prostitution (Offences and Support) (Scotland) Bill. The Committee has the following comments to put forward for consideration.

## General comments

We note that the consultation aims to propose a bill for reducing the level of prostitution in Scotland by decriminalising on street solicitation, criminalising the purchase of sexual services and providing support for exiting prostitution.

Our approach to policy issues is directed by our statutory aims under the Solicitors (Scotland) Act 1980, namely to represent the interests of the solicitors' profession in Scotland and the interests of the public in relation to that profession, and by the regulatory objectives of the Legal Services (Scotland) Act 2010, which are:

- Supporting the constitutional principle of the rule of law and the interest of justice
- protecting and promoting the interests of consumers and the public interest generally
- promoting access to justice and completion in the provision of legal services
- promoting an independent, strong, varied and effective legal profession
- encouraging equal opportunities within the legal profession
- and promoting and maintaining adherence to professional principles

We are of the view that it is not a matter for the Society to comment on the public policy element of the proposals contained in the consultation paper. This is a matter for the Scottish Parliament. However, we want to highlighting some considerations from a legal point of view.

We note that the consultation paper contains some data about recorded crimes associated with prostitution over the last 10 years. The consultation paper also indicates that "Court proceedings data shows a similar downward trend in prosecutions (and hence convictions), which are now in the single digits for both selling and buying sexual acts".

Although prosecutions in some locations for the offence of soliciting for the purposes of prostitution in a public place were common in the past, this is no longer the case. The statistics



of the Scottish Courts and Tribunal Service (<https://www.scotcourts.gov.uk/about-us/official-statistics/courts-data-scotland-criminal-cdsc/>) show that the percentage of crimes associated with prostitution registered has never been higher than 0.3% since 2014.

## Consultation questions

### 1. What is your view of introducing a new criminal offence of paying for sexual services?

- Fully supportive
- Partially supportive
- Neutral
- Partially opposed
- Fully opposed
- Don't want to express a view

Please explain your reasons for your response

#### **Don't want to express a view**

As indicated earlier, we consider that it is not for the Society to comment on the public policy element of this consultation. However, we want to highlight that if the decision of the Scottish Parliament is to create a new offence, the definition will be critical.

We note that the consultation paper indicates that the definition of “sexual services” contained in section 9 of the Sexual Offences (Scotland) Act 2005 has been considered. This definition is too broad for the purpose proposed in the consultation paper, which is to say the criminalisation of buyers of “physical” services. A narrower definition would be required to exclude remote services.

We are of the view that some consideration should be given to the penalties proposed. The 12 months' imprisonment maximum penalty proposed for solemn proceedings is a sentence that could ordinarily be imposed on summary complaint. We would welcome more information on how the proposed penalties would fit with the presumption against short sentences (which generally means people should not get 12 months or less in custody).

We noted that the maximum penalty proposed for solemn proceedings is expected to be applied in “more serious circumstances”. We would welcome some guidance as to what those circumstances might be.



2. What is your view of repealing section 46 of the Civic Government (Scotland) Act 1982: the offence of soliciting for the purpose of prostitution in a public place?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain your reasons for your response

**Neutral.**

We do not have further comments.

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
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Please explain your reasons for your response

**Unsure.**

We would welcome more details on this proposal.

In Scots law, there are historical examples of legislation to pardon convicted people that were enacted after long campaigns that involved an historical injustice<sup>1</sup>. In the case of the Historical Sexual Offences (Pardon and Disregards) (Scotland) Act 2018, there was a broad political consensus that a significant injustice had been done. We would welcome clarification on whether this is the approach proposed in this consultation.

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2022/6/contents>



Such an approach would be preferable, in the Society's view, to the model of the Post Office (Horizon System) Offences (Scotland) Act 2024, which was an exceptional response to unprecedented circumstances.

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- 

Please explain your reasons for your response

We do not have a view on this question.

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain your reasons for your response

We do not have a view on this question.

#### 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?

We do not have a view on this question.

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

It appears to use that the existing powers of the police should provide a sufficient basis for the investigation and enforcement of any new offence.



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

- Exiting support workers
- Drop in services
- Outreach visits to brothels, saunas and other similar premises
- Specialist medical consultations
- Access to drug and alcohol services
- Access to counselling and psychological treatment services
- Specialist housing schemes for women in crisis
- Support for access education, training or work
- Financial advice, debt support etc
- Other

Please explain the reasons for your response and provide examples of best practice  
We do not have a view on this question.



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):

- Internet and social media advertising
- TV advertising
- Print media advertising
- Billboards in public places and transport
- Leaflets to households
- Materials to support and exiting services for people involved in prostitution
- Materials targeted at areas where prostitution is known to occur
- Materials to health and mental health services
- Materials to further education sector
- Inclusion in secondary education (Relationship, Sexual Health, Parenting classes)
- Other (please give details)

Please explain the reasons for your response.

We do not have a view on this question.



10 Do you think legislation is required, or are there any other ways in which the Bill's aims could be achieved more effectively? Please explain the reasons for your response.

We note a lack of reliable data about prostitution in Scotland that impedes to provide a view on whether the proposed new criminal offence will assist in achieving the aims of the bill.



## Resource implications

11 Taking into account all those likely to be affected (including public sector bodies, business and individuals etc), is the proposed Bill likely to lead to:

- A significant increase in costs
- Some increase in costs
- No overall change in costs
- Some reduction in costs
- A significant reduction in costs
- Do not wish to express a view

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.

### **Some increase in costs.**

As we indicated earlier, the information that we have leads us to think that the current law on solicitation is not being enforced.

Assuming other services are to be protected, enforcement of a new offence would require expenditure of resources.



## Equalities

12. Any new law can have an impact on different individuals and groups in society, for example as a result of their age, 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.

We do not have a view on this question.

## Sustainability

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?

We do not have a view on this question.



For further information, please contact:

Liliana Torres Jimenez

Policy Team

Law Society of Scotland [LilianaTorresJimenez@lawscot.org.uk](mailto:LilianaTorresJimenez@lawscot.org.uk)