



## Response to Proposed Prostitution (Offences and Support) (Scotland) Bill, 2024

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

The English Collective of Prostitutes strongly opposes the introduction of a new criminal offence of paying for sexual services. We support the repeal of the offence of soliciting for the purposes of prostitution in a public place and expunging of previous convictions for this offence.

#### Description of ECP:

We are a collective of sex workers and former sex workers who work both on the street and in premises. We have a national network throughout the UK, including in Scotland. Since 1975 we have campaigned for the decriminalisation of prostitution, for sex workers' rights and safety, and for resources to enable women to get out of prostitution if we want to and to prevent anyone being driven into prostitution by poverty or other violence. We work with antirape and anti-poverty campaigners and organisations which oppose immigration and welfare policies that impoverish women to the point of destitution and make us more vulnerable to attack. We oppose anti trafficking laws because they have been used primarily to justify raids, prosecutions and deportations of migrant sex workers.

Introducing a criminal offence to pay for sexual services would be disastrous for sex workers. There is a wealth of international evidence that shows that the criminalisation of sex purchase increases violence against sex workers, and does nothing to address trafficking.

There is a large body of evidence from jurisdictions that have implemented similar laws showing that the criminalisation of sex purchase creates the conditions for more violence against sex workers. In an official government review of similar law in Northern Ireland, for example, it was reported that "there was no evidence that the offence of purchasing sexual services has produced a downward pressure on the demand for, or supply of sexual services" and that "the legislation had contributed to a climate whereby sex workers feel further marginalised and stigmatised."<sup>i</sup> This was corroborated in research conducted by Amnesty International, which criticised the lack of reliable evidence to support the introduction of this legislation, and exposed these laws as a structural cause of violence against sex workers.<sup>ii</sup> Evidence from Norway and Sweden has also shown laws targeted sex purchase to have a disastrous effect on women selling sex. Sex workers in these countries reported experiencing increased stigma, a greater risk of violence, and felt less able to report violence to the police under this framework.<sup>iii</sup>

Whilst we agree that sex workers are disproportionately impacted by violence, we know that violence is prevalent in the sex industry because violent men are enabled and emboldened under a criminalised framework. In 2023, the UN Working Group on discrimination against women and girls found that "there is now sufficient evidence on the harms of any form of

criminalisation of sex work”<sup>iv</sup>, including the criminalisation of sex purchase. This is because the so-called ‘Nordic Model’ de facto criminalises the sale of sex, shifting the power dynamic so that sex workers have to work to make their clients feel safe from arrest.<sup>v</sup> This hampers their safety practices and makes client screening more difficult. It also leaves sex workers open to police harassment because they are targeted in order to locate clients.<sup>vi</sup>

We are concerned that the proposed law will give the police a lot of power over women at a time where they have been exposed to be institutionally sexist and racist, and will put these communities at risk through greater interaction with law enforcement.<sup>vii</sup>

Furthermore, the consultation falsely conflates prostitution with trafficking. Research has shown that less than 6% of sex workers in the UK are trafficked<sup>viii</sup>, yet politicians, police, media outlets, and voluntary organisations that profit from anti-trafficking funding deliberately persist with misinformation that trafficking is rife in the sex industry. The consultation confidently asserts that “in the countries that have adopted the ‘Nordic Model’...the market for trafficking for sexual exploitation has shrunk” yet in fact, the idea that these laws reduce trafficking has been discredited by major anti-trafficking organisations. These laws have not been proven to reduce instances of trafficking, and may even undermine operations to rescue actual victims.<sup>ix</sup> Rather than being driven by demand, it is the lack of legal routes for migrants emigrating into the UK that forces people to rely on traffickers to gain entry, and the criminalisation of illegal migration that disempowers them from contacting the authorities for help.<sup>x</sup> This is not unique to the sex industry, but occurs all areas of the labour market.<sup>xi</sup> Women in our network have experienced the ways that laws which conflate sex work with trafficking are used by police to raid, terrorise, arrest, control, and deport migrant sex workers. This will only be exacerbated, not addressed, through the criminalisation of sex purchase.

Overall, the way that the consultation engages with evidence in order to conflate sex work with violence and trafficking shows concerning omissions. It relies on the same few pieces of evidence (including the discredited APPG report, and the work of Melissa Farley, whose research has been criticised as lacking methodological rigour<sup>xii</sup>). This is not a convincing or satisfactory basis upon which to introduce new legislation.

### **Sex work is not driven by men’s demand for sex, it is driven by women’s need for money.**

The crux of the consultation’s argument for the introduction of the new law is that men’s demand for sex is responsible for the existence of the sex industry. But this ignores and it seems deliberately distracts from the obvious truth that the cost of living crisis and rising poverty is pushing more women, and particularly single mothers, into sex work to survive and feed their families. In Scotland in 2022-23 it was estimated that 19% of women were living in poverty<sup>xiii</sup>, which has been attributed to insufficient welfare provision and the prevalence of poverty-waged work for women.<sup>xiv</sup>

As Jenny from our network said:

*I go out to work now because of economic pressures. Benefits don’t cover the cost of gas, electric, water rates, replacing household equipment. I can’t live on benefits long term. When I have to buy coats or shoes I can’t afford them.*

*Most of the other girls or women that I meet on the street are there for very similar reasons, purely to keep their families together; their children out of care. It gives*

*them a little bit of control about when to have the heating on or not, instead of having to stay in bed with the covers on to stay warm. They go out for an hour and can pay a bill.*

Politicians who claim to want to reduce prostitution must address the wider structural causes of women's poverty: rising inequality, homelessness and debt, as well as the lack of pay equity, low wages, and poor conditions in many other jobs – especially those traditionally done by women.

Instead of making people's lives harder by increasing criminalisation of the sex industry as they are trying to get by during a cost-of-living crisis, the government must address the poverty (that is exacerbated for women of colour and migrant women in particular) that is causative of sex work.

The consultation acknowledges that women's poverty is a driving factor of prostitution, but then perversely says little about how this would be effectively addressed by the proposed laws.

Proposals for “a new national support pathway” and “a new national hub for specialist support services” are vague and limit support to those who are able to exit the sex industry. What about women who don't want to exit or who can't because sex work remains their only viable financial option. Furthermore, the idea that this support will have “minimal financial impact” is concerning, since meaningfully addressing women's poverty would entail a serious government commitment to putting money in women's hands.

Amy one of the women read the consultation and commented:

*I've seen them say that prostitution isn't the solution to women's poverty. Then what is? What are they offering.? We have had to find our own solutions. I say to those politicians, don't take away my income unless you are coming to put money in my hands. Actual money. Not patronising, unsuitable and vague support.*

### **Decriminalisation sex work to keep women safe!**

The report dismisses the effectiveness of 'harm reduction approaches' to sex work without explaining why this is the case. Why is "decriminalisation incongruous with commitments to prevent and eradicate violence against women and girls," when there is so much evidence showing that decriminalisation is necessary to keep sex workers safe? Since 2003, New Zealand has decriminalised sex work, with observable improvements in sex workers' safety, health, wellbeing, and human rights.<sup>xv</sup> A comprehensive review of the impact of the law found that over 90% of sex workers said they had additional employment, legal, health and safety rights. 64.8% found it easier to refuse clients, 70% said they were more likely to report incidents of violence to the police, and some have taken employers to the human rights commission and got compensation. There has been no reported increase in the numbers of sex workers or incidence of trafficking following decriminalisation.<sup>xvi</sup> Belgium decriminalised sex work in 2022, giving sex workers labour rights, including pensions, maternity leave, and the right to refuse clients, thereby strengthening workers' hands to fight workplace exploitation. It seems that the decriminalisation of sex work is most consistent with the government's commitment to protect women and girls from violence. Why has this evidence been ignored?

The Scottish government should look to the example of Wales.

Safety First Wales (SFW) is an impressive coalition made up of sex workers, health professionals, church representatives, anti-poverty, anti-violence, anti-racist and trans rights campaigners. It has gathered compelling testimony from sex workers and done independent and academically rigorous research in order to present concrete proposals for action to the Welsh government.

Those proposals include practical measures to reduce violence against sex workers such as:

- Implementing an amnesty from arrest to protect sex workers who report witnessing or experiencing violence;
- Amending the National Police Chiefs' Council guidelines to specify that arrests and raids should only occur where police can show reasonable grounds to suspect that sex workers are being subject to force and coercion in order to ensure that sex workers aren't criminalised "simply for being sex workers" or engaging in practices that increase their own safety;
- Implementing a 'firewall' to separate police investigations into violence and labour inspections from Immigration Enforcement, to ensure migrant sex workers can report violence regardless of their immigration status.
- Instructing the police, prosecuting authorities and courts to prioritise safety by vigorously investigating and prosecuting rape, coercion, stalking and other violence.

It also proposes ways that resources can be targeted at sex workers to enable them to leave prostitution if they choose. This includes:

- Ensuring that sex workers get priority for social housing and are helped to access tailored debt relief, health services and domestic violence services.
- Instructing benefit decision makers to not impose sanctions<sup>xvii</sup> which cause destitution and are proven to be a primary cause of the rise in prostitution.
- Scrapping the No Recourse to Public Funds (NRPF) condition which disproportionately affects women and leaves them destitute and at risk of exploitation and violence.
- The provision of a "care income"<sup>xviii</sup> to mothers - similar to the payments<sup>xix</sup> of £1600 a month given to young people leaving care in Wales - in recognition of the fact that most sex workers are working to support families. Hawaii passed a law in January to pay a basic income of \$2000 a month to sex workers aiming to exit prostitution.<sup>xx</sup>
- Take action to stop sex working mothers losing custody of their children -- no child should be is taken from their mother/primary carer because the family is poor, homeless or unable to afford food, clothing or childcare.

Lastly, we strongly object to the disparaging and dehumanising description of sex workers as "used" and 'not whole.' We are courageous women who have decided to step outside of the

law to ensure that our children and loved ones are fed. We are fully aware of the decisions we make, often forced to choose the best option out of a set of bad options.

As Jenny, one of the women in our network said:

*We can stay in bed, live in squalor, we can live on bread and jam, but myself personally I feel I deserve more and so does my daughter. I choose to go on the street and earn that money because I want a better life. It is not dishonest. It is hard work. I wouldn't do it if I had a choice. It is the only job that I have the time to do to fit in with my home life without neglecting my daughter.*

*Criminalising clients will make it more difficult for women to earn the money they need to keep their heads above water and their families afloat.*

*Decriminalising prostitution, may be too late for me but it will give other women the chance to get out. It would open up so many opportunities.*

**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?**

We have campaigned for the abolition of the loitering and soliciting laws, along with other prostitution laws, for decades. Our experience is primarily from women in our network in England but is applicable to Scotland as the laws are implemented in a similar way. The repeal of the loitering and soliciting laws was proposed as far back as 1979 by Maureen Colquhoun MP, who worked with the ECP to put forward the Protection of Prostitutes Bill. Presenting the Bill to parliament she said:

*"It is a totally unjust system that a woman can be twice cautioned on the evidence of a single police officer. On a third occasion, still on the evidence of a single and often the same police officer, she can be charged with loitering with intent for the purposes of prostitution. If she pleads not guilty before the court, the same police officer reads out the evidence of his two cautions. Before any offence has been proved, a person innocent in the eyes of the law can be labelled as a common prostitute."*

The label "common prostitute" was abolished by the Policing and Crime Act 2009 but this law at the same time changed the definition of "persistent" soliciting to "twice in a period of three months," making it easier for police to arrest sex workers. The ECP spearheaded opposition to this at the time.

The penalty for loitering or soliciting is a fine, and/or an "engagement and support order" (which are promoted as an "alternative to fining" people, but function as another form of criminalisation). In theory, for anyone to be convicted of loitering and soliciting, an observable offence must be established on two occasions:

"... two officers need to witness the activity and administer the non-statutory 'prostitute's caution'".

Of course, in practice it doesn't work that way. Women in the ECP's network have been given a prostitute's caution by police shouting out of the window of their car as they passed. This is more likely where the women are already known to the police as sex workers.

ECP members have been convicted of loitering and soliciting on the basis of 'police evidence'; evidence such as "she was standing on a street corner looking in the direction of several men". One woman described the way the police implemented the loitering and soliciting laws:

*"The police wait outside my house to catch me when I leave. It doesn't matter how I'm dressed, who I'm with, where I'm going, they say I'm loitering. When they stop me, they jeer at me, and make jokes at my expense, often sexually explicit jokes. When they arrest me, I'm strip searched, and they sometimes leave the door open so the male officers can see in. All this is to humiliate me."*

When police instigate a 'crackdown' in any area, the number of loitering and soliciting convictions and prostitute's cautions issued increase, in some cases massively. For example, a police operation in the West Midlands resulted in 800 prostitute's cautions being given out over a two-year period that ended in 2014. In the London Borough of Redbridge, 639 women were given prostitute's cautions for soliciting between 2013 and 2015. In 2019 in Stoke-on-Trent, the police "Operation Calling" resulted in 270 sex workers getting a prostitute's caution or being charged with loitering and soliciting. An operation to "tackle prostitution" in Ilford in 2013 resulted in "236 prostitutes" being cautioned. Specialist funding for a team of police officers in Newham resulted in 94 prostitute's cautions being issued in one year. Further, evidence of police racism is demonstrated in figures that found between April 2015 and July 2016, 92% of women who were issued cautions for loitering/soliciting in Redbridge in 2015 were Romanian. Statistics from the Metropolitan police show that between 2016 and 2021, out of 259 people arrested for loitering, just 1% were white British.

It is women who are disproportionately arrested under loitering and soliciting laws. Figures for London between 2016-2021 show that 94% of people arrested for loitering and soliciting were female. In Manchester of those who went to court charged with loitering or soliciting between 2012-2016, 100% were female.

Women in the ECP's network have successfully worked to get a prostitute's caution expunged. We've also fought loitering and soliciting charges, and even won in some cases by showing that the procedure for issuing a prostitute's caution wasn't followed.

**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?**

Thousands of women in the UK have received a 'prostitute's caution' - a specific type of caution reserved for the punishment of sex workers - and/or have been convicted for prostitution offences; that is, for loitering or soliciting for working on the street and for brothel keeping or controlling prostitution for working together in premises with others.

Having a prostitute's caution and/or a criminal record for a prostitution offence brands sex workers as criminals, making us an easy target for the police and others in authority to discriminate and deny us our rights. In practice this means that sex workers lose custody of our children, are deported or prevented from travelling to other countries, and are denied compensation and insurance, among other injustices. Additionally, a criminal record can put sex workers at greater risk of exploitation, rape, and other violence because it is a barrier to getting another job and leaving sex work. The risks of a prostitute's caution, and the impacts of them are compounded for sex workers who are migrant, trans, women of colour, street workers and working class.

Please see our report: Proceed Without Caution: The Impact of 'Prostitute's Cautions' and Convictions on Sex Workers' Lives

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

Proposals to give sex workers the legal right to support are deeply flawed because they are vague, and don't specify in what way they will address women's poverty, homelessness and other concrete economic needs. The proposal for "a new national support pathway" and "a new national hub for specialist support services" are vague and limit support to those who are able to exit the sex industry. What about women who don't want to exit or who can't because sex work remains their only viable financial option. Furthermore, the idea that this support will have "minimal financial impact" is concerning, since meaningfully addressing women's poverty would entail a serious government commitment to putting money in women's hands.

Amy, one of the women in our network who read the consultation, commented:

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

Decriminalisation sex work to keep women safe!

Decriminalisation of sex work is in line with your stated commitments to prevent and eradicate violence against women and girls. Evidence from New Zealand which decriminalised in 2003 shows observable improvements in sex workers' safety, health, wellbeing, and human rights. A comprehensive review of the impact of the law found that over 90% of sex workers said they had additional employment, legal, health and safety rights. 64.8% found it easier to refuse clients, 70% said they were more likely to report incidents of violence to the police, and some have taken employers to the human rights commission and got compensation. There has been no reported increase in the numbers of sex workers or incidence of trafficking following decriminalisation. Belgium decriminalised sex work in 2022, giving sex workers labour rights, including pensions, maternity leave, and the right to refuse clients, thereby strengthening workers' hands to fight workplace exploitation. It seems that the decriminalisation of sex work is most consistent with the government's commitment to protect women and girls from violence. Why has this evidence been ignored?

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<sup>i</sup> Ellison et al. (2019). *A Review of the Criminalisation of Paying for Sexual Services in Northern Ireland*. Available from: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/report-criminalisation-paying-forhttps://www.justice-ni.gov.uk/sites/default/files/publications/justice/report-criminalisation-paying-for-sex.pdf>

<sup>ii</sup> Amnesty International. (2022). "We live within a violent system." Structural violence against sex workers in Ireland. <https://www.amnesty.org/en/documents/eur29/5156/2022/en/>.

iii Levy, J. and Jakobsson, P. (2014). Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work on the lives of Sweden's sex workers, *Criminology and Criminal Justice*. <http://lastradainternational.org/Isidocs/3049-Levy%20Sweden.pdf>; Jakobsson, P. & Edlund, C. (2014). Another Horizon; Sex Work and HIV Prevention in Sweden. <http://www.hiv-sverige.se/wp-content/uploads/Enhttp://www.hiv-sverige.se/wp-content/uploads/En-annan-horisont-webb.pdf>

iv UN Working Group on Discrimination Against Women and Girls v Niina Vuolajärvi. (2022). Criminalising the Sex Buyer: Experiences from the Nordic Region. <https://www.lse.ac.uk/women-peace-security/assets/documents/2022/W922-0152-WPShttps://www.lse.ac.uk/women-peace-security/assets/documents/2022/W922-0152-WPS-Policy-Paper-6-singles.pdf> vi *Ibid*.

vii Platt et al. (2022). The Effect of Systemic Racism and Homophobia on Police Enforcement and Sexual and Emotional Violence among Sex Workers in East London: Findings from a Cohort Study [LINK]; StopWatch, Release, and LSE International Drug Policy Unit. (2013).

<https://www.release.org.uk/publications/ColourOfInjustice> viii

ix GAATW; La Strada <https://www.gaatw.org/publications/GAATWat25.pdf> x Laura Connelly and the English Collective of Prostitutes. (2021). EU migrant sex work in the UK post-referendum. <https://prostitutescollective.net/eu-migrant-sex-work-in-the-uk-post-referendum/referendum/>.

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xii <https://prostitutescollective.net/response-to-melissa-farley/> xiii <https://www.gov.scot/collections/poverty-and-income-inequality-statistics/>.

xiv <https://www.jrf.org.uk/poverty-in-scotland-2023#:~:text=Main%20findings%3A,living%20in%20very%20deep%20poverty.>

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xv Abel, G., Fitzgerald, L. & Brunton, C. (2007). The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers. <https://www.otago.ac.nz/christchurch/otago018607.pdf>; Gillian M Abel. (2014). A decade of decriminalization: Sex work 'down under' but not underground. <https://doi.org/10.1177/1748895814523024>. xvi Ministry of Justice. (2008). Report of the Prostitution Law Review Committee on the Prostitution Reform Act 2003. <https://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf> content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf.

xvii In New Zealand, the State discriminates in favour of sex workers who want to leave sex work and need to claim benefits. Other workers who leave their job are not paid jobseekers allowance for a number of weeks. Sex workers do not have this stand down period when going on a benefit. (Ministry of Justice, 2008).

xviii In the UK, the English Collective of Prostitutes, Support Not Separation, the Global Women's Strike and a number of other women's organisations, as well as the Green New Deal for Europe, are campaigning for a care income to address social and environmental justice. They point to the fact that 80% of women are mothers and that overwhelmingly mothers are the primary carers and are impoverished as a result. An income that addresses mothers' poverty and recognises their vital contribution to society would go a long way to tackling the economic conditions that drive women, especially mothers, into prostitution.

xix <https://gov.wales/basic-income-care-leavers-wales-pilot-announced>

xx [https://www.capitol.hawaii.gov/session2022/bills/SB3347\\_.HTM](https://www.capitol.hawaii.gov/session2022/bills/SB3347_.HTM)