

**Prostitution Law Reform (Scotland) Bill: Consultation by Jean Urquhart MSP Member for Highlands and Islands, 8 September 2015**

**Response from End Demand**

7 December 2015

**About End Demand**

This response has been submitted on behalf of End Demand. End Demand is an initiative working to end the demand that fuels sex trafficking and prostitution.

Supporters of End Demand include: Ashiana; AVA: Against Violence and Abuse; Black Association of Women Step Out; CAADA: Coordinated Action Against Domestic Abuse; Centre for Gender & Violence Research, University of Bristol; Child and Woman Abuse Studies Unit, London Metropolitan University; Connect Centre for International Research on Gender and Harm, University of Central Lancashire; Dovetail Initiative; Durham University Centre for Research into Violence and Abuse; End Violence Against Women coalition; Equality Now; European Women's Lobby; National Alliance of Women's Organisations; Nia; Northern Ireland Committee of the Irish Congress of Trade Unions; Northern Refugee Centre; Object; Respect: Men & women working together to end domestic violence; Rights of Women; Ruhama; Scottish Trades Union Congress; SPACE International; St Mungo's Broadway; The Beth Centre; The Fawcett Society; TUC Women's Committee; UK Feminista; Unison; Welsh Women's Aid; White Ribbon Campaign; Why Refugee Women; women@thewell; Women's Aid Federation of England; Women's Aid Federation of Northern Ireland; Women's Resource Centre; Zero Tolerance. For more information about End Demand please visit [www.enddemand.uk](http://www.enddemand.uk).

**1. Do you support the general aim of the proposed Bill? Please indicate "yes/no/undecided" and explain the reasons for your response.**

This question does not provide sufficient options for answering: it is not possible for us to answer according to "yes/no/undecided". The 'general aim' of the bill includes fully decriminalising brothel-keeping and paying for sex - legislative changes which End Demand does not support. End Demand does support fully decriminalising those who sell sex.

As the Scottish Government rightly recognises, prostitution is a form of violence against women<sup>i</sup>. The government has multiple legal obligations to work to end violence against women. The proposed Bill is not designed to end this form of violence against women.

As outlined in this submission, there is significant evidence to show that not only would fully decriminalising paying for sex and brothel-keeping fail to uphold the Government's duty to work to end violence against women, it would compound the harms inherent to prostitution.

**2. Do you agree that the New Zealand Prostitution Reform Act is a model for Scotland to follow? Please indicate "yes/no/undecided" and explain the reasons for your response.**

No.

The New Zealand Prostitution Reform Act 2003 is not designed to discourage demand for the prostitution trade. As the Prostitution Law Review Committee, which evaluated the impact of the Prostitution Reform Act, stated, "The reason for the law reform was to neither decrease, nor increase, the number of people involved in the sex industry".<sup>ii</sup> They further state, "The PRA reflects a more pragmatic sentiment, recognising that, even if viewed by some as undesirable,

the practice of prostitution is likely to remain given ongoing levels of demand by men seeking to purchase sex."<sup>iii</sup>

However, Scotland has multiple international obligations to reduce the demand which underpins commercial sexual exploitation - including the trafficking of women into the prostitution trade.

- Article 9.5 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>iv</sup> states that, "States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking"<sup>v</sup>.
- The EU Directive on trafficking in human beings requires member states to take action to reduce demand in order to prevent trafficking<sup>vi</sup>.
- Article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings requires member states to "discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking"<sup>vii</sup>.
- The Convention to Eliminate All forms of Discrimination Against Women (CEDAW)<sup>viii</sup> requires signatories to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women"<sup>ix</sup>.

Furthermore, an inquiry into human trafficking in Scotland in 2011 by the Equality and Human Rights Commission concluded, "Demand is a key driver for human trafficking. This fact underlines the need for 'destination' states, such as the UK and Scotland, to take responsibility to act to tackle trafficking through targeting demand."<sup>x</sup>

The Prostitution Law Review Committee reveals that the Prostitution Reform Act 2003 fails on multiple counts to prevent harms attendant to prostitution (aside from the inherent harm of prostitution, which it does not seek to prevent). For example, the Committee found:

- "the purpose of the PRA...cannot be fully realised in the street-based sector."<sup>xi</sup>
- "The majority of sex workers interviewed felt that the PRA could do little about violence that occurred"<sup>xii</sup>
- "Generally, brothels which had treated their workers fairly prior to the enactment of the PRA continued to do so, and those which had unfair management practices continued with them."<sup>xiii</sup>
- "the sex industry remains discreet and to a large extent difficult to study."<sup>xiv</sup>
- "The CJRC's [Crime and Justice Research Centre] key informants were not aware of any substantial change in the use of safer sex practices by sex workers as a result of the enactment of the PRA."<sup>xv</sup>
- "Few of the sex workers who CSOM [Christchurch School of Medicine] interviewed, regardless of the sector they worked in, said they had reported any of the incidents of violence or crimes against them to the Police."<sup>xvi</sup>
- "Although it was hoped decriminalisation would make it easier for sex workers to access health services, the CSOM study found that there were no significant differences in access to health services between Christchurch participants in 1999 and 2006."<sup>xvii</sup>

Prostitution is a form of sexual abuse, not a form of 'work', hence it cannot be made 'safe'.

Demand for the sex trade can, however, be tackled. During the 1990's, the proportion of men in the UK who pay for sex increased from one in 20 men to nearly one in 10<sup>xviii</sup>. If demand can grow it can also shrink, and that is exactly what has been shown in countries such as Sweden and Norway which have criminalised paying for sex, decriminalised selling sex, and provided

support and exiting services to people exploited through prostitution (an approach known as the Sex Buyer Law). For example,

- The proportion of men paying for sex in Sweden has declined since the Sex Buyer Law was adopted in 1999. Between 1996 and 2008 the proportion of men who reported paying for sex fell from 12.7% to 7.6%<sup>xix</sup>.
- Despite Sweden having 3.8 million more inhabitants than neighbouring Denmark, the number of people involved in prostitution in Sweden – its ‘prostitution population’ – is approximately a tenth of Denmark’s, where paying for sex is legal<sup>xx</sup>.
- Public attitudes have also shifted. In 1996, 45% of women and 20% of men in Sweden supported criminalising the purchase of sex. By 2008, support for this legal principle had risen to 79% among women and 60% among men<sup>xxi</sup>.

In recognition of the Scottish Government's international obligations to reduce demand and the critical role of criminal sanctions in deterring paying for sex, End Demand strongly rejects the suggestion that the New Zealand Prostitution Reform Act - which decriminalises brothel keeping and paying for sex - is a model for Scotland to emulate.

### **3. What (if any) would be the main advantages of the legislation proposed? What (if any) would be the disadvantages?**

As outlined above, End Demand supports the full decriminalisation of people who are paid for sex. As a form of violence against women, it is wholly wrong that those who experience it face criminal sanction. The main 'disadvantage' of this proposed legislation is that it provides a conducive context for commercial sexual exploitation by decriminalising paying for sex and third-party profiteering from prostitution. Indeed, the legality of paying for sex has been found to significantly influence rates of sex trafficking into the country in question. An empirical analysis for a cross-section of up to 150 countries found reported human trafficking inflows were larger in countries where prostitution is legal<sup>xxii</sup>.

### **4. Do you agree that current laws against soliciting and kerb-crawling should be repealed? Please indicate “yes/no/undecided” and explain the reasons for your response.**

This question does not provide sufficient options for answering: it is not possible for us to answer according to “yes/no/undecided”. Laws against soliciting should be repealed, but laws against kerb-crawling should not be repealed.

Paying for sex is a form of commercial sexual exploitation and the Scottish Government has an obligation to work to end it. Research assessing potential deterrents to men paying women for sex has revealed that criminal sanctions are a key method:

- Research conducted with 110 men in Scotland who paid women for sex found 79% of the respondents said having to spend time in jail would deter them from paying for sex, while 72% reported that a greater criminal penalty would do so<sup>xxiii</sup>.
- Interviews with 113 men in Chicago (US) who paid for sex found 83% of the men said a potential consequence of jail time would deter them from buying sex. 75% of the men said greater criminal penalties in general would deter them from paying for sex<sup>xxiv</sup>.
- Research undertaken by the Child and Woman Abuse Studies Unit at London Metropolitan University with 137 men who paid women for sex concluded, "the accounts of men who had paid for sex overseas confirm that legality contributes to normalisation, which in turn increases the likelihood of paying for sex."<sup>xxv</sup>

End Demand therefore supports criminalising paying for sex in any circumstance (while decriminalising selling sex) in order to discourage the demand that drives commercial sexual exploitation.

**5. Do you agree that small groups of up to four sex workers should be legally entitled to work collectively from the same indoor premises? Please indicate “yes/no/undecided” and explain the reasons for your response.**

Again, this question is not sufficiently nuanced as to enable us to answer “yes/no/undecided”. No person selling sex should be criminalised. However, third parties who exploit the prostitution of others, such as pimps and brothel-keepers, should be criminalised. Their actions constitute commercial sexual exploitation.

**6. Do you agree that the licensing regime already in place for sexual entertainment venues should be extended to cover indoor premises where more than four sex workers are employed? Please indicate “yes/no/undecided” and explain the reasons for your response.**

No. We do not support the proposal that the Scottish Government should state-sanction brothels by imposing a licensing system. As stated previously, prostitution is a form of violence against women. The government has a duty to work to end this form of sexual exploitation, not sanction venues for it to take place in.

As highlighted above, the Prostitution Law Review Committee concluded in its review of New Zealand's brothel licensing system, "Generally, brothels which had treated their workers fairly prior to the enactment of the PRA continued to do so, and those which had unfair management practices continued with them."<sup>xxvi</sup> They also revealed, "The overall impression gained by the CJRC in their interviews was that there were 'good' and 'bad' operators as regards allowing sex workers to refuse to provide commercial sexual services. The good ones tended to accept a worker's judgement, but even so insisted on their having a 'good' reason to refuse."<sup>xxvii</sup> The Prostitution Law Review Committee report that a survey of 772 women in prostitution conducted for their review of the Prostitution Reform Act found that, in the past 12 months, 38% of those who sold sex in 'managed indoor' venues "felt they had to accept a client when they didn't want to"<sup>xxviii</sup>. It is simply untenable to hold up such a legal regime as a model for Scotland to aspire to.

In addition, researchers at VU University Amsterdam note the "common problem" in the Netherlands of 'straw men' being used to apply for brothel licenses, allowing other (non-licensed) sex trade profiteers to retain control behind the scenes<sup>xxix</sup>. They highlight a police investigation that found "direct negotiations about rooms took place with pimps (rather than prostitutes) and that a cafe was used as a meeting place for pimps, where they could monitor their prostitutes in the alley via the cafe's surveillance cameras". The researchers conclude of the brothel licensing regime: "The regulation has hidden the legalized sector from the view of the criminal justice system, while human trafficking still thrives behind the legal façade of a legalized prostitution sector. Brothels can even function as legalized outlets for victims of sex trafficking."<sup>xxx</sup> Licensing brothels does not disappear the sexual abuse inherent to prostitution. In fact, as the above experiences highlight, it can compound the harms attendant to the prostitution trade.

**7. Do you agree that the laws on living on the earnings of prostitution and procuring should be repealed and that there is a need for more stringent and robust laws against coercion in the sex industry modelled on the New Zealand Prostitution Reform Act?**

Third-party exploitation of the prostitution of others - such as pimping and brothel keeping - must remain illegal because this is a form of commercial sexual exploitation. We also refer to the view

of Equality Now on this question: "We support stringent and robust laws that ensure that anyone financially benefiting from the exploitation of someone in prostitution is held to account. We agree that partners, family members, friends and those living with someone in prostitution should generally not be penalised unless they are exercising control or coercion over that person. Laws must be carefully crafted, however, to ensure the punishment of those particularly in an intimate partner relationship with the person in prostitution who encourage or otherwise support their partner to engage in prostitution for gain or other exploitation."<sup>xxxI</sup>

**8. Do you agree that there should be a statutory right for sex workers to refuse to provide, or refuse to continue to provide, sexual services?**

Not being allowed to 'refuse' to have sex is rape. The very fact that this question has been asked demonstrates how untenable it is to talk about prostitution as 'sex work'. A scenario in which a person in prostitution did not have a legal right to refuse would not be possible because this would constitute state-sanctioned rape - in violation of international law.

**9. Do you agree that there should be a statutory obligation on brothel operators to ensure safer sex supplies are made available on their premises?**

It should not be legal to operate a brothel because this is commercial sexual exploitation. The Scottish government should ensure the provision of comprehensive support and exiting services for people involved in prostitution.

**10. What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?**

It is vital that the Scottish government provides comprehensive support and exiting services for anyone exploited through prostitution - in recognition of the fact that prostitution is a form of violence against women. Yet the proposed Bill risks disincentivising the government, and local authorities, from funding these services - because it reframes prostitution as a job.

Indeed, New Zealand's Prostitution Law Review Committee commented in relation to the provision of exiting services, "Funding issues have arisen, and will continue to arise, when dealing with the sex industry in New Zealand. The very fact of decriminalisation may make funding harder to get."<sup>xxxii</sup>

In contrast, provision of support and exiting services is integral to the Sex Buyer Law because it recognises prostitution as violence against women.

**11. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?**

Prostitution is a form of violence against women. It is both a cause and a consequence of women's inequality. By accepting, normalising and regulating commercial sexual exploitation, the proposed Bill would have substantial negative implications for the promotion of women's equality.

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- <sup>i</sup> Violence Against Women, The Scottish Government. Accessed at: <http://www.scotland.gov.uk/Topics/People/Equality/violence-women> Content accessed 3 February 2015.
- <sup>ii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 29.
- <sup>iii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 166.
- <sup>iv</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. New York, 15 November 2000. Accessed at: <https://treaties.un.org/doc/Publication/UNTS/Volume%202237/v2237.pdf>
- <sup>v</sup> United Nations Office of the High Commissioner for Human Rights (2013) Protocol to Prevent, Suppress and Punish Trafficking in Persons. UNOHCHR: Geneva. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>
- <sup>vi</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Accessed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>
- <sup>vii</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005. Accessed at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>
- <sup>viii</sup> Equality Now highlight the following recommendations issued by the CEDAW Committee: CEDAW Committee, Concluding Observations: Republic of Korea, para. 23(f), U.N. Doc.CEDAW/C/KOR/CO/7 (2011) (calling on the Republic of Korea to “[t]ake appropriate measures to suppress the exploitation of prostitution of women, including by discouraging the demand for prostitution”); CEDAW Committee, Concluding Observations: Botswana, para. 28, U.N. Doc. CEDAW/C/BOT/CO/3 (2010) (calling on Botswana to “take appropriate measures to suppress the exploitation of prostitution of women, including through the discouragement of the demand for prostitution”); CEDAW Committee, Concluding Observations: Denmark, para. 35, U.N. Doc. CEDAW/C/DEN/CO/7 (2009) (calling on Denmark to “strengthen measures aimed at addressing the exploitation of prostitution in the country and, in particular, the demand for prostitution”).
- <sup>ix</sup> Article 6, Convention on the Elimination of All Forms of Discrimination against Women. Accessed at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article6>
- <sup>x</sup> Inquiry into Human Trafficking in Scotland: Report of the Equality and Human Rights Commission, 2011. p.52
- <sup>xi</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 131.
- <sup>xii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 14.
- <sup>xiii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 17.
- <sup>xiv</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 29.
- <sup>xv</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 50.
- <sup>xvi</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 122.
- <sup>xvii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 123.
- <sup>xviii</sup> "Twice as many men' pay for sex', BBC News, 1 December 2005. Accessed at: <http://news.bbc.co.uk/1/hi/health/4482970.stm>
- <sup>xix</sup> Waltman, M. (2011) *Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential*. Women's Studies International Forum 34: 449-474
- <sup>xx</sup> Waltman, M. (2011) *Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential*. Women's Studies International Forum 34: 449-474
- <sup>xxi</sup> Waltman, M. (2011) *Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential*. Women's Studies International Forum 34: 449-474
- <sup>xxii</sup> Cho S-Y.; Dreher A. & Neumayer, E. (2013) *Does Legalized Prostitution Increase Human Trafficking?* World Development, 41: 67-82
- <sup>xxiii</sup> Macleod, J., Farley, M., Anderson, L., & Golding, J. (2008) *Challenging Men's Demand for Prostitution in Scotland*, Women's Support Project. Available at: <http://www.prostitutionresearch.com/pdfs/ChallengingDemandScotland.pdf>
- <sup>xxiv</sup> 'Deconstructing the Demand for Prostitution: Preliminary Insights from Interviews with Men who Buy Sex', Chicago Alliance Against Sexual Exploitation, May 2008. Available at: [http://g.virbcdn.com/\\_f/files/40/FileItem-149406-DeconstructingtheDemandForProstitution.pdf](http://g.virbcdn.com/_f/files/40/FileItem-149406-DeconstructingtheDemandForProstitution.pdf)
- <sup>xxv</sup> Coy, M. et al (2007) *'It's just like going to the supermarket': Men buying sex in East London*, Report for Safe Exit, Child and Woman Abuse Studies Unit: p.25
- <sup>xxvi</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 17.

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<sup>xxvii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 45.

<sup>xxviii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 46.

<sup>xxix</sup> W. Huisman & E. R. Kleemans, 'The challenges of fighting sex trafficking in the legalized prostitution market of the Netherlands', *Crime, Law and Social Change*, 61 (2) (2014): 215–228, p. 226.

<sup>xxx</sup> W. Huisman & E. R. Kleemans, 'The challenges of fighting sex trafficking in the legalized prostitution market of the Netherlands', *Crime, Law and Social Change*, 61 (2) (2014): 215–228, p. 227.

<sup>xxxi</sup> Submission by Equality Now to Consultation by Jean Urquhart MSP on the Proposed Prostitution Law Reform (Scotland) Bill, 7 December 2015.

<sup>xxxii</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand Government, 2008, p. 80.