



23rd November 2015

Submission to the consultation on the Prostitution Law Reform (Scotland) Bill from the Nordic Model Information Network

The Nordic Model Information Network is a global alliance of researchers with deep and systematic expertise in researching the dynamics of prostitution and the sex industry, trafficking and violence against women. We write in response to the consultation on the Prostitution Law Reform (Scotland) Bill, and we argue for the adoption of the Nordic Model. We do this in line with the 2014 (Honeyball) Resolution of the European Parliament, and of the Council of Europe report “Prostitution, trafficking and modern slavery in Europe”, both of which endorsed by an overwhelming majority the Nordic Model as best legislative practice throughout the European Union.

Our research is grounded in contemporary evidence including, importantly, the testimony of survivors of the prostitution system, as well as drawing on historical and philosophical inquiry. Many of us have worked directly with prostituted women. We have individual and collective links with a wide variety of organisations working for the abolition of prostitution as an institution of gender inequality and exploitation. We believe it is important to signal very clearly that our position on prostitution is not grounded in a moralistic approach, or in any kind of hostility to women in the prostitution system. Nor is our position linked to considerations about maintaining ‘public order’. Our concern is centrally with the human rights of women in protecting the dignity of all women equally, and with an end to all forms of the subordination and degradation of women.

We unequivocally support the removal of criminal sanctions for women who solicit sex and the strengthening of laws against coercion in the sex industry. On this basis we are in support of law reform that decriminalises solicitation and that focuses on women’s safety. We do not, however, support the general aim of the Bill to reform the law on prostitution in Scotland along the New Zealand model. We set out our reasons for this below. We think it is important from the outset to clarify and correct some of the misinformation, in particular about the Nordic Model, noted in the Consultation Paper.

Misinformation about the Nordic model

The Consultation Paper asserts, without any supporting evidence, that the model pioneered in Sweden and now known as the Nordic Model (criminalising the purchase of sex, while decriminalising its sale and providing support for women to exit) is a ‘failed model from [an]other jurisdiction’ (p 3). This is simply inaccurate. On no measure can prostitution law in Sweden be described as having failed. Since the law was enacted in 1999, the proportion of men in Sweden who buy sex has fallen from 12.7% to 7.6%.¹ Independent evaluations have found that street prostitution markets – the most dangerous for women – have been reduced and there is no evidence that prostitution has been displaced into other spaces.² The proportion of the general public in favour of the approach has increased in that time from 45% of women and 20% of men to 60% of men and 79% of women.³ The enactment of the law has been adjusted several times since 1999, in part to ensure that the safety of women who remain in prostitution continues as a primary goal of equality. The Swedish government *defines* prostitution as violence against women, and hence less prostitution means less violence in the ‘ordinary course’ of transactions; violence *associated with* the industry has also fallen, with the only fatality a woman in prostitution (Eva Marree Smith Kullander) murdered by her ex-boyfriend during a custody visit (a domestic violence murder).

New Zealand

The New Zealand reform is held out in the Consultation Paper as preferable to the Nordic Model. However, the following points from the 2008 Prostitution Law Review Committee Report about women’s safety in NZ are omitted, despite their relevance:

- the majority of women perceived that the law reform ‘could do little about the violence that occurred’ (p 57);
- ‘few’ women across all sectors of the sex industry had reported violence to the police (p 122).

The Report does not provide evidence that the decriminalisation of all aspects of prostitution in New Zealand has reduced violence against women in prostitution. To endorse this model is to accept that women in prostitution, often the most socially marginalised, will inevitably be subject to violence and the best the law can hope for is to enable them to seek support in its aftermath. Endorsement of the NZ approach (also ‘from another jurisdiction’, we note) would place Scotland firmly at odds with approaches to eradicate all forms of violence against women and girls. It is unacceptable to stipulate ‘harm minimisation’ as the best we can do.

¹ See data and analysis in the synoptic research of Max Waltman (2011) Sweden's Prohibition of Purchase of Sex: The Law's Reasons, Impact, and Potential *Women's Studies International Forum* 34: 459-460.

² Ibid.

³ Ibid.

At least four women involved in prostitution are known to have been murdered in New Zealand by sex buyers since the introduction of the Prostitution Reform Act: Suzie Sutherland, 2005; Anna Louise Wilson, 2005; Ngatai Lynette Manning, 2008; Nuttidar Vaikaew, 2009. In contrast, the perpetrator of the only murder of a woman in prostitution in Sweden since the 1999 law reform was her ex-partner.

In terms of the safety of women, we note that the consultation paper (p 13) cites Hilary Kinnell as hoping ‘that those with direct influence over prostitution policy would recognise the lessons of Ipswich’, where five women in prostitution were murdered in 2006. The policy lesson from Ipswich is that approaches that decriminalise women and provide specialist support to exit, while simultaneously tackling men’s demand for buying sexual acts, *are effective*. Alan Caton OBE, Detective Superintendent at the time of the Ipswich murders, oversaw the introduction of a policing strategy on street prostitution based on the principles of the Nordic Model. This involved a multi-agency initiative to provide support to women to exit, together with robust enforcement against men who kerbcrawled. According to an independent evaluation of the initiative, the strategy led to the elimination of kerb crawling and enabling women to exit, again with no evidence of displacement.⁴ There are indeed, then, policy lessons from Ipswich. The chief lesson is that making women’s lives safer requires a focus on ending demand.

Decriminalising the *purchase* of sex normalises men’s entitlement to sexual release in/through women’s bodies, the same dynamics that underpin sexual violence and trafficking.

Trafficking for sexual exploitation

New Zealand is identified by the US State Department Trafficking in Persons (TiP) Report as a ‘destination country’ for trafficking for sexual exploitation. Yet the Consultation Paper refers only cursorily to trafficking for sexual exploitation, noting that separate legislation is being considered by the Scottish Parliament. To dismiss the implications of decriminalising all aspects of prostitution in this way flies in the face of strong evidence on the link between trafficking and prostitution. For example, a recent study exploring the trafficking flows into 150 countries found sex markets were larger in countries where prostitution was not subject to criminal sanctions, and established a positive correlation between ‘the legal status of prostitution and inward trafficking’.⁵ The study concluded that ‘legalising prostitution will therefore almost invariably increase demand for prostitution’. The Nordic

⁴ Poland, F, Boswell, G, Killest, A, Jarrett, J, Fordham, R, Houghton, J, Varley, A and Laura Seebom (2012) *Evaluation Research Report for Ipswich/Suffolk Prostitution Strategy 2007-2012: Evissta 2* University of East Anglia.

⁵ Cho, S-Y, Dreher, A & Neumayer, E. (2013) Does Legalized Prostitution Increase Human Trafficking? *World Development* 41: 67–82.

Model recognises this evidence in addressing prostitution and trafficking within the same framework.

A requirement to address demand for commercial sex is enshrined in a number of human rights protocols on trafficking, including the Beijing Platform for Action. Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (The Palermo Protocol) requires States Parties to ‘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’. The UN Recommended Principles on Human Rights and Human Trafficking (2002) specify that ‘strategies aimed at preventing trafficking shall address demand as a root cause of trafficking’.⁶

Decriminalising the purchase of sexual services weakens imperatives to discourage demand, and runs counter to human rights obligations to address trafficking.

The countries with the highest levels of gender equality in the world have recognised prostitution as incompatible with equality between women and men.⁷ In 2014, the European Parliament voted overwhelmingly in favour of a Resolution sponsored by MEP Mary Honeyball to recognise prostitution and sexual exploitation as cause and consequence of gender inequality, and as contrary to the principles of the Charter of Fundamental Rights of the European Union, including the goal and the principle of gender equality. Member States are called upon to reduce demand as part of ‘an integrated strategy against trafficking’.⁸ Mary Honeyball herself noted that by the passage of the resolution, ‘We send a strong signal that the European Parliament is ambitious enough to tackle prostitution head on rather than accepting it as a fact of life.’ The EP resolution adopts the approach of the Declaration on the Elimination of Violence against Women⁹ that see forms of violence such as prostitution and sexual exploitation as ‘a manifestation of historically unequal power relations between men and women’, and in no sense as natural or biological phenomena.

The EP Resolution was followed by the adoption on 8 April 2014 by the Parliamentary Assembly of the Council of Europe (PACE) of the Resolution *Prostitution, Trafficking and Modern Slavery in Europe*, based on the Report prepared by the Committee on Equality and Non-Discrimination.¹⁰ The PACE Resolution noted that ‘[f]orced prostitution and sexual

⁶ Office of the High Commissioner for Human Rights (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking, addendum to the report of the United Nations High Commissioner for Human Rights* (E/2002/68/Add. 1), p 1.

⁷ For example, Iceland, Sweden and Norway.

⁸ See TEXTS ADOPTED PART III at the sitting of Wednesday 26 February 2014.

⁹ See www.un.org/documents/ga/res/48/a48r104.htm.

¹⁰ See <http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=20716&lang=EN>.

exploitation should be considered as violations of human dignity and, as women are disproportionately represented among victims, as an obstacle to gender equality.’ The Resolution noted the intimate connection of trafficking and prostitution, and cited the ‘Swedish approach’ in noting that ‘policies prohibiting the purchase of sexual services are those that are more likely to have a positive impact on reducing trafficking in human beings’. The Resolution called, inter alia, for states to consider criminalising the sale of sexual services, to ban the advertising of sexual services and to criminalise pimping, along with the establishment of holistic exit programs to safeguard the health, safety and security of those in the prostitution system.

On the basis of our research expertise, we endorse these measures as recommended for implementation by the EP and PACE Reports and Resolutions.

For Scotland to remain a beacon of gender equality, attempts to decriminalise the purchase of sex must be resisted, while support for the safety of women involved in prostitution must be increased, and criminal sanctions for activities related to selling sex removed.