



Z E R O T O L E R A N C E C H A R I T A B L E T R U S T

Prostitution Law Reform (Scotland) Bill

Response from Zero Tolerance to Jean Urquhart MSP's consultation on a proposed member's Bill

December 2015

Zero Tolerance is a national charity working to end men's violence against women (VAW) in all its forms. We promote a prevention approach, believing that changing societal attitudes, values and structures is the key to ending VAW. We believe that pervasive gender inequality in our society creates a conducive context for violence against women and that promoting gender equality is a means to ending VAW.

A note on language

The consultation paper talks about 'selling sexual services', and uses the terms 'sex work' and 'sex workers'. We do not believe that the social phenomenon of prostitution is primarily a labour relations issue, and so we do not use the term 'sex worker' or 'manager'. We talk about 'women involved in prostitution' or 'women who sell sex/men who buy sex' and about 'brothel owners' or 'people who profit from the sex trade'.

Language is important – using gender neutral language ('people selling sex', 'sex workers'), or business language, (e.g. calling sex buyers 'customers' or 'clients', calling brothel owners 'managers') creates a narrative that we do not agree with; that selling sex is a gender-neutral activity which can be framed as a business transaction.

In same way as we don't call the physical punishment of children 'smacking' or a domestic abuse assault 'a domestic', we don't use language that trivialises, minimises, sanitises, or glamorises the selling and buying of sex, which we understand to be a very harmful practice in the vast majority of cases. We have listened to women who used to sell sex and do not identify with the term 'sex worker' in reaching this position.^{i ii}

We also find the use of the term 'sex worker' increasingly confused – it can cover those who sell sex, but it is also used by some people to include anyone who works in the sex industry e.g. lap-dancers, brothel owners, or webcam performers. For the sake of absolute clarity, we will refer in our response to 'women who sell sex' and 'men who buy sex'.

Our thoughts on the importance of language are further articulated in our media guidance, 'Handle with Care'.ⁱⁱⁱ

Initial remarks

Our replies to the questions posed in the consultation paper are set out below (p.6) but we have some general observation to make first.

We are strongly supportive of the intentions behind this proposed Bill, which are to promote the safety and uphold the rights of people selling sex in Scotland and to introduce robust safeguards against coercion and exploitation. Where we disagree is on the means to achieve those aims.

Feedback on the consultation paper

We have concerns about many aspects of this consultation paper, and the premises on which the proposals are built. The paper contains several false assumptions and straw men, e.g. the suggestion on page 8, s.5, that some people who argue that prostitution harms all women think that 'bad women' should be treated as 'collateral damage' to uphold the rights of 'good women'. There is no evidence for this.

The argument that prostitution has a negative impact on all women is located in understanding that a society which commodifies women's bodies harms all women, because women who sell sex and women who do not sell sex may suffer from e.g. street harassment, sexual harassment at work, sexual assault or domestic abuse, which stems from these collective societal values. There is no organisation that we know of that divides women into 'bad' and 'good' or that thinks the women who sell sex are 'bad women'. This is a bizarre suggestion, and a misunderstanding of the thinking behind calling prostitution socially harmful.

We note that the proposal "has been guided by what people currently selling sex say that they need". This seems a very narrow approach. Prostitution is a public health issue, a gender equality issue, a child protection issue, and an issue which informs our collective societal values and approach to sexuality and gender relations. To consult only current sex-sellers seems to limit the scope of the discussion. Also, we note that women who *used to* sell sex but no longer do, often have dramatically different perspectives on how to tackle this issue than women who are still involved. Just as no consultation on any other public health and equality issue, e.g. smoking, should be based largely on the views of one interest group (e.g. current smokers), no policy on prostitution should be based solely on the view of current 'providers'. This issue is too complex for legislation to be shaped around that one perspective.

It is also worth noting that most women selling sex in Scotland will not have had the opportunity to feed in to the development of this consultation; groups set up to represent women who define 'sex work' as an expression of agency do just that, and cannot represent the voices of women who sell sex but do not agree with this perspective.

At s.53, it is implied that NHS outreach visits to brothels in Edinburgh ceased when sauna licensing ended, but in fact the visits continue to happen every 3 weeks. It is impossible to say with conviction that there were “no cases of force or coercion” in the saunas, as police and NHS inspections and health promotion visits happened in the presence of brothel owners or their staff, which limited women’s ability to speak freely. Some of the people who provide health services to women in saunas suspect trafficking.^{iv}

We would suggest that the survey data quoted on page 29 is methodologically unsound, as the question asked leads participants to the desired answer and does not set out an alternative means of preventing violence. The question seems to be too biased as to be useful.

At s.67, the consultation states that “a false choice is often set up between a gender equal society in which sex work does not exist and a gender unequal one in which it does.” We don’t know of any organisation who uses this thinking. We believe that the choice is between a society which values gender equality and in which prostitution, as an expression of gender inequality, is not socially tolerated or facilitated by the state, and one in which values such as personal choice and commerce are placed above achieving gender equality.

We note that at s.69, the consultation refers to the recent decision of Amnesty International to support decriminalisation of the sex trade. We would wish to note that the Scottish section of Amnesty International abstained in this vote; and that there is evidence that the global organisation’s position was influenced by someone subsequently convicted of trafficking offences.^v

Prostitution and gender inequality

Fundamentally, we cannot support any reform which fails to explicitly recognise that prostitution is an expression of gender inequality and to seek to tackle that. This consultation does not recognise how gendered prostitution is.

It is not a coincidence that the vast majority of people selling sex in Scotland are women and the vast majority of those buying sex are men. This is a consequence of living in a vastly unequal, patriarchal society. The consultation paper says “sex is sold by transgender women, transgender men and by people who are gender non-binary”, but we know that the vast majority of people selling sexual services on the street, in brothels, in strip clubs, and through private listing adverts, are women selling sex to men. We know that the vast majority of ‘punters’, sex tourists, and sex buyers are men. This issue is steeped in gender inequality.

‘Voluntarily’ offering sexual services?

The consultation states that “even in the face of limited options, or dire financial need, the decision to sell sex can still be made voluntarily.” We disagree with this analysis. That prostitution is seen as an option for desperate women (rarely for desperate men, who tend to turn to begging or

crime) is a reflection of women's wider economic inequality, and the ways in which the state fails women (and men) in desperate circumstances too often. No-one should have to choose whether or not to beg, to steal or to sell sex to survive; but in a society in which many make those choices daily, it is telling that women more often than men choose to sell sex. That is a socially structured choice.

The decision to sell sex, when driven by necessity or desperation, by factors such as poverty, drug dependency, homelessness, domestic abuse or child sexual abuse, is not 'voluntary' in any meaningful sense of the word. Prostitution represents survival behaviour for most women involved, not a voluntary decision.

'The majority [of individuals involved in street prostitution]... live chaotic lives and have complex needs, and most are Class A drug users. They often face a multiplicity of risks to their physical, emotional and psychological health as well as problems relating to homelessness, lack of food, clothes, warmth, shelter, money and lack of family networks. Many are disengaged from mainstream services such as healthcare, housing and benefits and have a history of frequent contact with the Criminal Justice System.'^{vi} (Home Office, 2007)

Prostitution and poverty

The Tyneside Cyrenians '*Hidden for survival*' study (2008) found that sex was sold for as little as £5 (the average charge was £37). In Germany, where there are legal brothels, the price of sex has going down so much that "at the "sex boxes" in Cologne's Geestemünder Strasse it's possible to buy sex for as little as 10 euros. "One woman here will even do it for a Big Mac," a prostitute called Alia told a German newspaper last year."^{vii} In Greece today, women are selling sex for the price of a sandwich^{viii}. Women who sell sex are not making lots of money; they are making enough money to survive, in a context of gendered poverty.

Prostitution cannot be understood in isolation from a wider analysis of women's poverty – women experience significantly more poverty, in significantly different ways from men. Women have a lower income than men during work and retirement; smaller, if any, savings; and are more likely than men to experience unmanageable debt.^{ix} This is the context in which prostitution flourishes. A decriminalised sex trade in Scotland, established during a time of austerity, when 85% of cuts are coming out of women's incomes^x, would prey on the most vulnerable, poorest and most disadvantaged members of our society.

Agency; individuals vs structures

We note that there are some women (and perhaps some men, although they are less prominent in public discussions) who describe their involvement in the sex trade as a positive expression of 'agency'. That may be the case, but the Scottish Parliament makes policy for the majority, not for the minority,

based on the likelihood of social harm, and social good. Commercial surrogacy for example, is illegal in Scotland because of the risks that some women might be exploited, even if individual women would freely and happily consent. Prostitution creates social harms that must weigh more heavily in policy-making than a minority of individuals' testimonies.

In any case, individuals' testimonies regarding prostitution will vary over time. Many women involved in prostitution describe the activity as freely chosen at the time, as a coping and survival mechanism, but later recant. For example in the European Women's Lobby film '*Not for Sale*^{xi}, Fiona Broadfoot, a survivor of prostitution, says: "*Women have to tell themselves they have made a choice to survive. I told myself for many, many years I was OK. I had to do that to survive the industry*".

Individual stories cannot tell us all we need to know about a global trade. The root cause of a system wherein men buy women's bodies without sanction is the pervasive and continuing unequal distribution by gender of power, wealth and opportunity, and can't be reduced to what any one person says or does. Prostitution is structural, not individualistic, despite the tenor of recent debates.

Prostitution and violence

Prostitution has links to other forms of neglect, abuse and VAW. 70% of those involved in street prostitution have a history of local authority care and 45% report experiencing sexual abuse during their childhoods (Home Office 2006). The Tyneside study found links with other forms of violence such as domestic violence – 41% of respondents reported being in a violent relationship and there was evidence of domestic abuse deterring women's involvement in drug treatment as partners did not allow it.

More than half of women in prostitution in the UK have been raped and/or seriously assaulted and at least 75% have been physically assaulted at the hands of pimps and punters.^{xii} An American study found that the mortality rate of women in prostitution is 200 times higher than for the general population.^{xiii}

Prostitution is also linked to child abuse, not least because some of the people selling sex are girls. A Glasgow study showed that 24.5% of the women surveyed had entered prostitution before age 18, with 8.2% starting at age 16 or under.^{xiv}

We do not believe that such violence and abuse would be tackled by decriminalisation of this trade.

What about the men?

Zero Tolerance has always believed that public discourse about prostitution focuses too much on women who sell sex, and too little on challenging the men who sustain the demand for commercial sex. Their 'agency' is rarely questioned.

It is anomalous in Scotland that we have a society which tells men there is 'zero tolerance' of domestic abuse, to seek active consent to sex and to understand that rape is sex without freely given consent, to have healthy respectful interpersonal relationships etc. but also tells them that consent to sex can be bought in some places and circumstances, and that in those contexts, the man can choose what happens sexually, because he is the customer. This creates a conducive context for abuse and exploitation.

Some people assume that men who pay for sex do so because they are single and unable to find a partner. On the contrary - one study found that 48% of men who have bought sex from women involved in prostitution were in a relationship with a wife or girlfriend or other partner^{xv}; another found that 66% of men who buy sex were married or living with a partner.^{xvi} A third, more recent, study from Boston put this figure at 61%^{xvii}. The men who buy sex despite being married or in a relationship, do so because they can access sexual acts which their partner does not wish to engage in. In a recent study, one sex buyer said, *"If my fiancée won't give me anal, I know someone who will."*

The Boston study also found that

- Men who buy sex are more likely to report having committed rape and other aggressive sexual acts. Sex buyers (15%) were more likely than non sex buyers (2%) to report that they would force a woman to have sex or rape a woman if they could get away with it and if no one knew about it.
- Men who buy sex share certain key characteristics with men who are at risk for committing sexual aggression - both groups tend to have a preference for impersonal sex, a fear of rejection by women, a history of having committed sexually aggressive acts and a hostile masculine self-identification.
- Those who buy sex, on average, have less empathy for women in prostitution and view them as intrinsically different from other women.
- Sex buyers (37%) were more likely than non sex buyers (21%) to state that once sex is paid for, women are obligated to do whatever the buyer wants.
- Forty-one percent of sex buyers had bought sex from a woman in prostitution who was controlled by a pimp.

We suggest that prostitution law reform should be centred on challenging men's sense of entitlement to paid-for sex and on men's harmful behaviours, not on regulating the supply side of the equation.

Summary

It is clear to us that women selling sex are participating in an inherently exploitative and violent system and that this system maintains, exacerbates, and feeds on gender inequality. The whole notion of 'sex work' posits sex as a labour activity for women and a leisure activity for men. It is impossible to

imagine a world where women experience their full entitlement to human rights, equality and dignity, yet where men can choose to sexually exploit a permanent underclass of women and are told that some women are always sexually available for the right price. The two cannot be reconciled.

Opposing wholesale decriminalisation of the sex trade and developing policy or legislation to protect women involved in selling sex are *not* mutually exclusive. Anti-prostitution activists are just as interested in harm reduction as people who view the sex trade as legitimate, we simply differ in our belief about how to achieve harm reduction. We do not support these proposals, but we keen to explore options for promoting safety and preventing coercion.

Other models

The much-vaunted ‘Nordic model, which criminalises buying sex and supports women to exit, has many advantages, not least a coherent message about VAW, a focus on the demand side, market disruption and attitudinal change.

We believe that this measure would have the effect of creating a reduction in prostitution (as was seen in Sweden and Norway after they took this approach), and a reduction in trafficking. In January 2009 Norway criminalised the purchase of sex. After the law was put into effect there was a dramatic reduction in both indoor and outdoor prostitution.^{xviii} In Sweden, which criminalised the purchase of sex in 1999, street prostitution has halved, and 10 years after the ban less than 7.8% of its active adult male population was buying sex, compared to 13.6% before the law was enacted, which is a 51% overall reduction in demand.^{xix}

Compare this with Denmark, which decriminalised prostitution in 1999. It has four times the number of trafficking victims as Sweden despite having around half the population.^{xx}

We believe that the Nordic model would also create an attitudinal shift – especially in boys’ attitudes – and drive societal recognition that prostitution is not victimless, fun, ‘work’, entertainment, normal or inevitable. In Sweden there has been a marked change in public attitudes to prostitution since the law changed there: 80% of the public now view prostitution as unacceptable, compared to 49% in 1999^{xxi}.

However, we believe that Scotland could lead the way in developing its own model for tackling prostitution; there is not a simple choice between the Nordic model, the New Zealand model, or the status quo.

Responses to the specific questions posed in the paper:

1. Do you support the general aim of the proposed Bill?

No. We support the intention of protecting the safety of women (and men, but it is primarily women) selling sex and preventing exploitation. However, the

general aim of the Bill is to bring the 'new Zealand model' of regulating the sex industry to Scotland and we strongly reject that approach.

We do agree with the decriminalisation of selling sex, but not with any other decriminalisation of the sex industry.

There is a contradiction created by the ongoing criminalisation of sellers of sex in Scotland. Prostitution is currently recognised by the Scottish Government as exploitation and abuse, and a form of VAW, so continuing to criminalise the most vulnerable people involved in the industry, the sellers, seems completely anomalous.

2. Do you agree that the New Zealand Prostitution Reform Act is a model for Scotland to follow?

No. The NZ model decriminalises the whole sex industry. It effectively sanctions the sale of sex and deems the sex industry a normal part of the economy as opposed to a harmful social phenomenon.

There are both practical and ideological reasons to oppose this model in Scotland.

Practical: New Zealand is geographically isolated. It is unattractive to people traffickers. Scotland is part of a union of nations, and is geographically and culturally close to mainland Europe. It is an attractive destination to people who wish to enter the sex trade or who wish to 'encourage' their partner to do so. Local intelligence tells us that most of the women selling sex in Edinburgh's saunas are Eastern European, many from non-accession countries. If Scotland had a wholly decriminalised sex trade, it would become an extremely attractive destination for traffickers.

The 2000 Protocol on Trafficking, at art.9 clause 5, says "State parties shall take 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."^{xxii} Decriminalising most aspects of the sex industry, as per the New Zealand approach, does not tackle demand for paid-for sex that leads to trafficking.

Scotland has new and welcome anti-trafficking laws (the Human Trafficking and Exploitation (Scotland) Act)^{xxiii} and the New Zealand approach would undermine their effectiveness and purpose.

Andrea Matolcsi, the programme officer for sexual violence and trafficking at Equality Now, says "*For a trafficker it's much easier to go to a country where it's legal to have brothels and it's legal to manage people in prostitution. It's just a more attractive environment.*"^{xxiv}

Prostitution has strong links to organised crime.^{xxv} In September 2011, Detective Superintendent Jonas Trolle, who was then head of a trafficking

investigation team in Stockholm, said "*Prostitution is always connected with organised crime*," and reported that criminal gangs who force women into prostitution are also dealing with drugs, weapons and money laundering.^{xxvi}

In Australia, the Chief Commissioner of Police, Christine Nixon, told a parliamentary committee that organised crime gangs are entrenched in Victoria's legal brothel industry.^{xxvii}

In the Netherlands, politicians across the spectrum are commenting on the problems that the decriminalisation of prostitution have created. Mayor Job Cohen says that legalisation led to an increase in organised crime, human trafficking and money laundering.^{xxviii}

Decriminalising the sex trade would bring risks of increased organised crime in Scotland.

Regulation of the sex industry does not remove the illegal trade; it creates a two-tier industry. There is evidence that regulated regimes have many failings. Regulation is invariably under-enforced and under-resourced, with a lack of clarity in law and policy. This had led, in many regimes, to unchecked growth in illegal sectors and a failure to police prostitution offences. Both create disincentives for the licensed sector to comply with policy goals.^{xxix}

Ideological: We see prostitution as a form of violence against women and children and a huge barrier to full gender equality. The Scottish Government has also described it as such in the '*Equally Safe*' VAW strategy.^{xxx}

Prostitution is part of a broad continuum of VAW; all forms on the continuum are connected. This continuum is acknowledged and explained in the Scottish Government paper, '*The case for a gendered analysis of violence against women*'^{xxxj}. A woman who is involved in prostitution often considers the sex as 'paid rape'^{xxxii}; one survivor called selling sex 'pay-as-you-go rape' and another said that it was "like signing a contract to be raped"; a third called selling sex "being raped for a living"^{xxxiii}. This is also an analysis used by men who buy sex.^{xxxiv}

A woman might be forced into selling sex by a partner who engages in other forms of domestic abuse^{xxxv}. She might be forced through prostitution to make pornography or to enact scenes from pornography; one woman who sold sex told us that "*a lot of them [the men] want to do porn movies especially and want to watch porn movies so they'll do it and like do what they're doing at the same time.*"^{xxxvi}

A woman who sells sex might be subject to ancillary assaults including sexual assaults in addition to the assault of enduring unwanted sex. Women who sell sex experience high levels of violence.^{xxxvii}

Scotland has taken a robust approach to many forms of VAW. It could be considered a world leader in many respects. It is certainly the envy of the rest of the UK in terms of its VAW services and responses^{xxxviii}. Scotland has

excellent responses to domestic abuse, including specialist courts and policing task forces. It has a sexual violence specialist unit in the COPFS and a domestic abuse specialist prosecutor. It has ACPOS-led campaigns on consent to sex which tackle rape myths^{xxxix}. These all help us move towards a society in which gender based abuse and harm is not tolerated. It would make no logical sense then, to enact laws which would enshrine gender inequality in the law and protect male privilege and sanction the commodification of women's bodies.

We note that, although we perceive buying sex to be an abusive and harmful behaviour, it also causes harm, to some extent, to some of the buyers – in one study 25% of men who had bought sex in prostitution expressed “significant shame or regret” about having done so.^{xl}

3. Advantages and disadvantages of the legislation proposed.

We believe that decriminalising the selling of sex would be advantageous for many reasons. It would remove a barrier to change for the individuals involved. It would change public perception about the women (and men) who sell sex, and could drive understanding of the lack of free choice and the power dynamics around buying/selling sex, particularly if accompanied by public education and awareness raising. It could reframe the issue of prostitution as one in which the provider is not causing a social nuisance and refocus attention onto the buyers.

There are many disadvantages associated with the rest of the proposals in this consultation.

- Enshrining gender inequality; and other inequalities e.g. around poverty and race
- Policy incoherence – an inconsistent approach to VAW
- Risks of logical consequences – e.g. women being driven into the sex industry by the state or risk having benefits withdrawn if they refused to participate (this is a logical consequence of framing selling sexual services as a form of work like any other)
- Increased people trafficking
- Increased prevalence of serious organised crime in Scotland
- Diversion of resources from support/exit services (no specialist services would be needed if selling sex was deemed as a normal type of work)

4. Do you agree that current laws against soliciting and kerb-crawling should be repealed?

We agree with the repeal of legislation that penalises women (and men) who solicit to sell sex in a public place.

We disagree with repealing laws on kerb-crawling and on soliciting to buy sex in a public place. These laws protect women from street harassment and deter sex buyers. They make neighbourhoods which have been affected by

highly visible street prostitution safer. They target those who create the demand for paid-for sex.

However, we believe that these laws should be enforced more effectively.

The Prostitution (Public Places) Scotland Act was introduced to target men. The then Cabinet Secretary for justice, Kenny MacAskill, described prostitution as “an "exploitative trade" when launching the Prostitution (Public Places) Scotland Act 2007, and spoke about the need to target “those who leave their comfortable homes to exploit the vulnerable women on our streets”.^{xli}

We know that the people who engage in ‘kerb-crawling’ are men; but by and large it has been women who have been prosecuted under this law. Most of the time, men have been free to purchase sex with impunity. This has to change. This law needs to target the men whose behaviour it was designed to change. It is unacceptable for this law to be used to punish women who are selling sex to survive.

We note that laws and criminal justice processes which are intended to protect the rights of vulnerable women are often the least effective and well implemented (cf. the low (albeit improving) rape conviction rate in Scotland, the very limited use of exclusion orders in domestic abuse cases, the lack of prosecutions for FGM and Forced Marriage in Scotland etc.) and would argue that if the current law against kerb-crawling was maintained that substantial police training and public education would be needed to make it effective.,

5. Do you agree that small groups of up to 4 sex workers should be legally entitled to work collectively from the same indoor premises?

No. Legal brothels are not acceptable in a country which strives to be ‘fairer’. Those selling sex should not be criminalised for doing so but the state should not be sanctioning indoor prostitution by creating new legal structures for selling sex.

It’s commonly assumed that indoor prostitution is safer than street prostitution. Ruhama, a support organisation based in Ireland says ““The experience of women in indoor prostitution is no less dangerous and has added consequences. For example women discuss with us being in a constant state of tension because of the risk of something going wrong. They never know what is going to happen when there is a knock on the door. Women talk about being attacked and robbed by people pretending to be buyers, and another contributing factor for Irish women is the possibility of it being someone they know or a member of their family. Women indoors sometimes have to spend the whole night with somebody, or much longer periods of time in a far more exposed manner. And critically victims of trafficking are predominantly exploited in the indoor sex trade.”

Ruhama has found that 99% of all the suspected victims of trafficking whom they have assisted were based in off-street prostitution, the majority last year from Nigeria and Brazil. ^{xlii}

There is inherent harm in prostitution, regardless of the setting. The core harm for the vast majority of sex sellers is submitting to repeat unwanted sex, and using techniques of disassociation to survive this. Legal brothels, of whatever size, sanction this.

In one study of women in *indoor* prostitution, 48% had experienced client violence, including being slapped, punched, or kicked; attempted rape; vaginal rape and anal rape; and strangulation. ^{xliii} Self-organisation in a small collective cannot protect an individual woman once she is in a bedroom with a 'client'.

The proposal is put forward in gender neutral terms, suggesting 'sex workers' working together, but we all know that in practice this would mean women working together in small brothels, in houses and tenement flats, for example. How would the safety of women who had to live alongside these SOOBs be ensured? Who would get to choose if they had a SOOB in their stairwell or on their street? Would SOOBs be allowed to operate at any hour of the day or night? There are practical as well as political implications of allowing brothels to proliferate in our towns and cities.

There may a temptation to see legal brothels as enhancing safety, but the danger in prostitution comes from the men who buy sex, and that element is not being addressed in these proposals. It is not possible to tell which men are the most dangerous, (indeed some men who are trusted and known punters are later found to be among the most dangerous, e.g. Steve Wright who murdered 5 women involved in prostitution in Ipswich, but was known to the women and seen at the time as a 'decent punter' who it was safe to go with).

We don't believe that women in SOOBs would be any safer than women who currently operate alone or with a friend from private premises, because the fundamental risk – a violent, dangerous, perhaps even murderous 'client' - would still be there.

SOOBs would also be a possible cover for organised crime. There is some evidence that in New Zealand, crime groups operate under the guise of owner-operated brothels; Chinese gangs are reportedly trafficking women through networks of SOOBs which they control. ^{xliv}

6. Do you agree that the licensing regime already in place for SEVs should be extended to cover indoor premises where more than four sex workers are employed?

No. The SEV regime was put in place to cover venues offering 'sexual entertainment', such as lap-dancing and stripping. We supported this legislation as it was preferably to the status quo ante, of essentially unregulated venues, and may enhance the safety and protection of

performers. However, we believe that 'sexual entertainment' which is highly gendered, essentially women stripping for men, has no place in a modern, equal nation, and we expect that this form of 'public entertainment' will decline, as local authorities realise that licensing this form of venue is incompatible with promoting gender equality and tackling VAW.

It would be completely inappropriate to extend the SEV regime to create large brothels on the high streets of our towns and cities. Highly visible and culturally tolerated prostitution feeds into social and cultural attitudes and creates a climate in which vulnerable people are more likely to be drawn into the sex trade.

In February 2010, the Home Office published a review of Sexualisation of Young People. This review examined culture and society in the UK and found that jobs in brothels and lap-dancing clubs (where prostitution routinely happens) were being advertised by Job Centre Plus and that "we are seeing the normalisation of [sex work] as viable career choices" which "sends out a powerful message to young people about what is of value" (para 29). The review also concluded that popular culture lends "credence to the idea that women are there to be used and that men are there to use them" (para 30).

In this climate, it is easy for young people to be groomed for involvement in prostitution: young women groomed as sellers and young men as users and controllers of women. It is increasingly seen as normal for men to buy sex as part of a night out with friends or colleagues^{xlv}, or a 'stag' night^{xlvi} – and many regret doing so. A significant number of men who buy sex later regret it: 25% of men interviewed in Scotland said that they felt "significant shame and regret" at having bought sex.^{xlvii}

Other jurisdictions have successfully legislated to criminalise demand (Sweden, Norway) and have seen a resultant reduction in prostitution and trafficking but also a change in social attitudes. In Sweden, which has legislated to criminalise the purchase of sex, there has been a marked change in public perception with 80% of the public now viewing prostitution as unacceptable, compared to 49% in 1999^{xlviii}.

On 6 December 2012, the Solicitor General Lesley Thomson QC said on launching new guidelines: "Prostitution represents an insidious form of abuse of women and men."^{xlix} It would be unacceptable to use local government licensing to facilitate this form of abuse.

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 NZ Prostitution Reform Act?

No. Having a criminal offence of living on the earnings of prostitution is an important safeguard against the exploitation of women by men who seek to abuse their partners, friends, daughters etc.

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?

This is an extremely bizarre proposal. Inherent in this is the suggestion that people selling sex have fewer human rights than anyone else, and that the commercial context for sex provided by prostitution changes the way in which universal laws apply.

Of course everyone should always have the right to say no to sex at any time. Sexual relations should always be based on consent, as free agreement, which can be withdrawn at any time, including during a sexual act. Scotland has robust and modern laws around rape and sexual offences, and these apply equally to women involved in prostitution as to anyone else.

The fact that a statutory right to refuse might be considered necessary for sex workers, is evidence of the ways in which prostitution is inherently harmful and dangerous, because the men who buy sex think that normal laws do not apply to them.

The Boston study found that men who buy sex, on average, have less empathy for women in prostitution and view them as intrinsically different from other women; and sex buyers were more likely than non sex buyers (37% vs 21%) to state that once sex is paid for, women are obligated to do whatever the buyer wants. While men's attitudes to consent during paid-for sex are clearly problematic, we suggest that a statutory right to refuse would not be an appropriate response.

We would support other measures to tackle societal attitudes (e.g. that it is impossible for a woman involved in prostitution to be raped), for example through the use of expert witnesses or judicial directions in rape trials. But to prevent rape in prostitution, rather than just seek justice for it after the fact, we need to prevent the normalisation of the sex industry and of a male attitude that women are sexual objects who do not deserve respect and autonomy.

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?

We agree that safer sex should be encouraged within prostitution, where possible. (Although if you accept this as an industry like any other, in which the client should get what he demands, because he is a paying customer and the seller is simply a 'service provider', it is hard to argue that safer sex, i.e. sex with condoms, will be the norm, as the norm will be what the punter demands and is willing to pay for, and what the seller is willing to do for the money).

We know that women selling sex in Edinburgh 'saunas' are incredibly vulnerable to unsafe sex. A doctor who provides sexual health support to these women has said *"The women who are not from the UK...don't speak English very well, so they find it difficult to negotiate the use of condoms. We*

see girls of 17 or 18 who don't speak English who have very high rates of STIs.' We don't believe that a law about providing safer sex supplies will protect vulnerable women like this.

Safer sex happens when parties are able to give free consent, when there is mutual respect and desire, and mutual decisions about risk. Safer sex is less likely to happen when consent is paid for, when the sex acts engaged in are chosen by the buyer, when the sexual encounter is timed, when the power dynamics are skewed by the exchange of money. Prostitution is not a conducive context for safer sex. We note that the consultation paper, on page 34, states that only one person in New Zealand had been convicted of failing to use prophylactic protection, when the law was reviewed, but we find it very hard to believe that only one person committed this offence, given the dynamics at play in paid for sex.

We disagree with the practice of police investigations of 'saunas' using condoms as evidence, to which this question perhaps implicitly refers. However, we do not believe that brothels should be allowed to exist, therefore we would not support a statutory obligation on brothels – to do so would be illogical.

We do support sexual health outreach, clinics, specialist services, investment in support services etc. There are a variety of ways in which safer sex can be promoted within prostitution, but ultimately, commercial sex cannot be made completely safe, as the buyer will create the demand and the sellers will comply with their wishes.

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

We do not anticipate any financial impact on our organisation.

If this consultation resulted in an increased focus on the need for support services for women selling sex there may then be financial implications for women's sector agencies which provide such support.

If this proposal resulted in a new law, there would clearly be other costs arising, as would arise from any new legislation - for example for training, guidance, and public education.

In theory, this proposal if enacted could result in increased revenue into government, via taxation. This would be offset by the costs created by entrenching gender inequality, such as costs to health services, criminal justice services etc.

11. Is the proposed Bill likely to have any substantial positive or negative implications for equality?

These proposals, if enacted, would be very damaging to gender equality – and such negative implications can't be mitigated, as the core of the proposal is to enshrine in law a system of exploitation which is rooted in, and thrives on, gender inequality. To put it bluntly, you cannot have gender equality if you have an underclass of women who are there to provide sex for any man who can afford to buy it. And you cannot have equality in a society which objectifies women in this way and which tells men, however tacitly, that some women are essentially objects who will provide sex for money.

This proposal will also be detrimental to race equality. The prostitution industry emphasises the 'exotic' nature of women in saunas, and indulges in racial stereotyping, encouraging punters to see women as a range of varieties or types instead of full human beings. If SOOBS or larger brothels were created, we would no doubt see these advertising women on the basis of their nationality, fuelling racist attitudes. (One Edinburgh sauna, now closed, used to offer a 'lovely Thai lady' on its website).

It is clear to us that prostitution is a significant barrier to equality and that this must be tackled if we are to achieve a Fairer, Smarter, Healthier, Safer and Stronger Scotland^{li} (to which the Scottish Government aspires) in which all people are treated equally and enabled to reach their potential and live lives free of violence, abuse and subjugation. Prostitution *is* preventable – but decriminalising the whole trade and regulating it as work like any other is not a prevention strategy, it is a growth strategy. That is why we oppose the majority of the aspects in this proposal.

Further information

For more information on this response, please contact:

Jenny Kemp or Laura Tomson, Co-Directors
Zero Tolerance, 1 Papermill Wynd, Edinburgh, EH7 4QL

E: Jenny.Kemp@zerotolerance.org.uk
Laura.Tomson@zerotolerance.org.uk

T: 0131 556 7365

NB: This submission is made on behalf of the organisation and may be published.

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ⁱⁱ <http://rebeccamott.net/2011/02/23/i-hate-sex-work/>

ⁱⁱⁱ <http://www.zerotolerance.org.uk/resources/handle-care-media-guide?destination=node%2F333>

^{iv} <http://www.scotsman.com/news/insight-crackdown-on-edinburgh-saunas-1-3159754>

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