



RUHAMA'S RESPONSE TO THE CONSULTATION ON THE PROSTITUTION LAW REFORM (SCOTLAND) BILL 2015

ABOUT RUHAMA

Ruhama is a specialist NGO providing holistic support on a national basis in the Republic of Ireland to women affected by prostitution, including women who have been trafficked. We are the only specialist agency doing this work at a national level in Ireland. We have been providing our services for over 25 years, and have worked with 2,500 women of over 60 nationalities. We currently support approximately 300 women per year, including both women involved in on-street prostitution (about 25% of our client group) and off-street prostitution (about 75% of our client group). We are a holistic service offering a wide range of supports, including the following:

- Needs assessment
- Individual casework support and advocacy
- Care planning and case management
- Out-of-hours emergency response
- Crisis accommodation in emergency situations
- One-to-one and group education, training and development opportunities
- Support for women participating in the criminal justice process
- Support into mainstream training and education
- Support with job-seeking
- Housing and social welfare support
- Mobile street outreach to Dublin's 'red light' areas
- Outreach service to the women's prison in Dublin
- Outreach service to HSE Women's Health Service (sexual health clinic)
- Emotional and psychological supports, including access to counselling
- Addiction support
- Support with immigration issues and repatriation
- Practical support (material needs) in certain circumstances
- Interpretive support
- Referral to other key agencies that can offer additional support.

Please note that as Ruhama works primarily with women and transwomen in prostitution, our responses that follow relate primarily to women, as this is where our expertise lies, alongside the fact that the vast majority of people exploited in prostitution are women.

Ruhama offers the above services to women affected by prostitution regardless of whether they have been trafficked or not. In our experience, the needs of trafficked and non-trafficked women in prostitution are more similar than different.

CONSULTATION QUESTIONS

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

Yes, we fully support any measures in Scotland that would ‘promote the safety and uphold the rights of people selling sex’. However, whilst we are in full agreement with proposals to fully decriminalise those who sell sex, we entirely disagree that any of the other measures set out in this proposed Bill would achieve its desired aim. Our position, drawn primarily from 25 years of experience in supporting women in prostitution, will be explained further throughout our response below, but first we wish to make some overarching points:

The *majority* of women currently or formerly involved in prostitution do not describe their experiences as ‘work’ or call themselves ‘sex workers’. Positioning prostitution as a ‘regular job’ serves to sanitise something that is inherently exploitative, and mask or deny the significant harms involved.

It is also worth noting that ‘sex workers’ is a very broad term used to describe a diverse group that can include those who run or indeed own brothels and/or escort agencies. This means that consultation with sex workers or ‘sex work advocates’ may include the views of those who directly profit from the prostitution of others. Most unsurprisingly, those who directly benefit from the commercial sex trade are of course going to support any proposals that give free reign to their profit-making activities.

We have absolutely no doubt that ‘sex work’ advocates have played a pivotal role in devising these proposals. Our experiences in Ireland show us that there are indeed women, often well-educated, articulate and typically from stable family backgrounds, who make the personal choice to sell sex, and no doubt these women can be found in Scotland too. A number of these women are passionate and vocal advocates for the sex trade, and have every right to voice their opinions and ‘fight their corner’. The real problem here is that in devising your proposals you have chosen to adopt their views and theirs alone, and in doing so you have effectively closed your ears to the much larger and more vulnerable cohort of women involved in prostitution who do not perceive their experiences in the sex trade as a ‘job like any other’. These are often highly marginalised women who have been directly coerced or otherwise drawn into prostitution, typically as a result of a range of vulnerabilities or adversities they have experienced in their lives including poverty, childhood abuse, domestic violence, physical and mental health problems, addiction, conflict in their home country, insecure immigration status, to name but a few. For most of these women who are involved in prostitution right now, their very last concern is lobbying politicians or publicly fighting for their rights, simply because they are entirely focused on surviving and trying to ‘get by’ from day to day. In short, it is very clear from your proposals to decriminalise virtually every aspect of the sex trade in Scotland that you have listened to a vocal and relatively powerful minority of advocates, at the expense of a much larger and much more vulnerable group, who will face further and even more serious exploitation under the measures you propose.

Similarly, there is very clear bias in the evidence you cite and no real attempt at balance in this regard. You say you want to avoid the ‘tired discussions which centre round the feelings of those who would wish the sex industry away’ (p. 3) and yet your proposals instead trot out all the same ‘tired discussions’ around why prostitution is ‘work’ and why the New Zealand model of decriminalisation is apparently the antidote to all the ills of the sex trade. Any scholarly work that challenges these positions is promptly dismissed or indeed misrepresented – for example to suggest that the Swedish approach to tackling prostitution is a ‘failed model’ is simply untrue and

unsupported by the numerous independent reviews that have in fact demonstrated its relative efficacy¹.

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, for a number of reasons, as follows:

Flaws of the New Zealand model

No model from any country for addressing prostitution is perfect, and most will acknowledge that given differing geographical, cultural and economic contexts between nation states, it would be unwise to merely graft one nation’s exact model onto another without any modifications. Your proposals make the case for the New Zealand model without any kind of critical review of its weaknesses and the potential challenges it may pose in the Scottish context. It is worth noting that not all commentators have been as complimentary about the impact of the NZ Prostitution Reform Act (PRA) as those that you exclusively cite. The New Zealand branch of CATW (the highly-respected global organisation Coalition Against Trafficking in Women International) prepared a shadow report for CEDAW in 2007, four years following the passing of the PRA, which highlighted some concerns about the state of NZ’s domestic sex trade:

- A rise in the number of unregulated brothels, and in ‘price wars’ in both the on and off-street sectors, both of which would suggest expansion of the sex trade as a whole
- An increase in the number of brothels controlled by organised crime gangs; in particular gangs run by Chinese nationals exploiting vulnerable Chinese women and girls
- A rise in the prostitution of girls under the age of 18, including in on-street prostitution
- Police reports that the PRA makes it more difficult than before to prosecute men who purchase sex from a minor because they are not required to obtain proof of age, accompanied by a very low number of actual convictions for purchasing a child in prostitution – this situation led to the very MP who designed the PRA calling for an investigation into the prostitution of children in NZ
- Continuing overrepresentation of vulnerable indigenous (Maori and Polynesian) women and girls under 18 in the domestic sex trade
- An increasing number of migrant women in NZ brothels, working illegally and therefore not afforded any kind of ‘worker’ protections
- *“The violence that women suffer in prostitution from routine sexual harassment through to assault continues, and Occupational Health and Safety codes are ludicrously unsuited to addressing these harms”*
- *“Decriminalisation in New Zealand enables the state to become a pimp through profiting in license fees and in taxes from this form of violence against women.”²*

Two years later, a very careful and measured review of prostitution policy in nine countries by Kelly *et al*, found the following in relation to New Zealand:

¹ See for example the summary in English of the Swedish *Prohibition Against the Purchase of Sexual Services Review 1999-2008*, available at: <http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Swedish-evaluation-summary.pdf>

² Instone, T., and Margerison, R., 2007. *Shadow Report for the CEDAW Committee on New Zealand from: Coalition Against Trafficking in Women New Zealand*. New Zealand: CATW.

- Whilst women selling sex reported that they felt more supported by the legal system since the PRA; at the same time the majority of incidents of violence were still not being reported and the stigma associated with selling sex remained in spite of the new legislation
- At the same time, evidence of physical and sexual assaults persisting emerged, with the majority of those selling sex who were interviewed making clear that they did not think the PRA could protect them from the violence in prostitution
- New Zealand's Prostitution Law Reform Committee (PLRC) itself concluded in 2008 that the inspection and monitoring regime for brothels has not been effective, with a number of businesses noting that having obtained a certificate they were never again asked to show it, nor had there been any inspections. There is also an acknowledgement that there are currently no enforcement procedures and no mechanisms in place for monitoring health and safety
- The Committee noted that those brothels "*which had unfair management practices [prior to the PRA] continued with them*".

These findings lead Kelly *et al* to conclude that with regard to improvements for those selling sex in brothels in NZ "*the PLRC places its trust in negotiations between women and owners, and that such voluntary compliance will 'evolve naturally' within the current legislative framework. This, to our eyes, is considerably short of the rights based approach that New Zealand has promised and claimed... Whilst decriminalisation in New Zealand has not had the kind of unintended consequences associated with legalisation, it has also yet to deliver on many of the hoped for changes in the organisation of prostitution, and regulation has been consistently under-enforced.*"³

Geographic location and the exploitation of migrant women

While New Zealand has a dispersed population and is essentially an island nation very geographically isolated from much of the rest of the world, the same cannot be said of Scotland. And yet, despite its isolation, there is evidence of women and girls being trafficked into New Zealand to be exploited in prostitution⁴. Scotland's position on the globe and with many neighbouring nations has already made it an attractive destination for traffickers⁵. A decriminalised regime will make it an even more viable location for traffickers and controllers, who can avail of the complete lack of regulation of the trade to profit from the prostitution of others.

The organised sex trade is highly mobile across the world and this is certainly evident in Ireland where Ruhama have supported women affected by prostitution of over 60 different nationalities, and it is estimated that 97% of women in Ireland's off-street sex trade are migrants⁶. There are likely to be many similarities between the trade in Ireland and that in Scotland, given our similar location and population sizes. Certainly, we have supported women of a range of nationalities over the years who have been trafficked through Scotland, including those who have been exploited in prostitution there. Yet, strangely your proposals make virtually no reference to trafficking or to the

³ Kelly, L., Coy, M., Davenport, R., 2009. *Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries*. London: CWASU, London Metropolitan University. Available at:

http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Shifting_Sands_UK-HOMe-Office.pdf

⁴ United States of America Department of State, July 2015. *Trafficking in Persons Report*. United States: Department of State. Available at: <http://www.state.gov/j/tip/rls/tiprpt/2015/>

⁵ Equality and Human Rights Commission, Scotland, 2011. *Inquiry into Human Trafficking in Scotland: Report of the Equality and Human Rights Commission*, Scotland: EHRC. Available at: http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human_Trafficking_in_Scotland/inquiry_into_human_trafficking_in_scotland-full-report_pdf.pdf

⁶ The Immigrant Council of Ireland, the Women's Health Project and Ruhama, 2009. *Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland*. Dublin: ICI. Available at: <http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Trafficking-Report-FULL-LENGTH-FINAL.pdf>

conditions for migrant women in the Scottish sex trade. This is despite the fact that the inextricable link between prostitution and trafficking is very well evidenced, and further that countries that have relaxed their prostitution laws have experienced a related increase in trafficking⁷. We are concerned that two very vulnerable and potentially overlapping groups (trafficked women and migrant women in prostitution) have been omitted from consideration of the impact that proposals for decriminalisation might have on them.

The goal of gender equality

Your proposals make reference to New Zealand being at the ‘cutting edge’ of gender equality and that prostitution legislation similar to New Zealand’s will have positive ‘equalities implications’ for Scotland. It is certainly worth noting in this context that three of the top four most gender equal nations in the world⁸ are in fact those that have adopted what is commonly known as the ‘Nordic approach’ to prostitution – namely the decriminalisation of the seller alongside the criminalisation of the buyer. These countries – Iceland, Norway and Sweden – have, through their own prostitution legislation, sent a very clear message to their populations about the unacceptability of men having paid access to the bodies of women and girls for their own sexual pleasure. This is part of what true gender equality should look like. Ireland, which ranks at number five on the gender equality scale, is on the cusp of adopting similar measures.

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

Advantages

The most positive and welcome aspect of these proposals is the decriminalisation of those who sell sex through the repeal of current laws on soliciting by those involved in prostitution. The vulnerabilities of those who sell sex on-street is well-documented⁹, and in Ruhama’s experience the majority of the 70-80 on-street women we support each year face a range of adversities including poverty, debt, addiction, homelessness and poor physical and mental health¹⁰. Criminalising these women for selling sex is akin to punishing them for being exploited and for simply trying to survive, rather than targeting those who are responsible for their exploitation; both pimps and buyers alike.

It is also evident from our work that criminal sanctions for soliciting often deter women from reporting violent crimes committed against them to the police, as well as acting as a significant barrier to exiting prostitution should a woman seek to do so in the future. These sanctions often see women convicted under sexual offences legislation, which bars them from certain professions, and in particular caring professions, that many women seek to enter after exiting prostitution and building new lives for themselves. Knowledge that they have a criminal record of this kind often

⁷ Seo-Young, C. Dreher, A and Neumayer, E., 2012. *Does Legalized Prostitution Increase Human Trafficking?* Economics of Security. Available at:

http://www.diw.de/documents/publikationen/73/diw_01.c.405653.de/diw_econsec0071.pdf

⁸ World Economic Forum, 2015. *The Global Gender Gap Report 2015*. Available at:

<http://reports.weforum.org/global-gender-gap-report-2015/> and see also: <http://www.bbc.com/news/world-34808717>

⁹ See for example: Hester, M., and Westmarland, N., 2004. *Tackling Street Prostitution: Towards an Holistic Approach*. London: Home Office. Available at:

<http://dro.dur.ac.uk/2557/1/2557.pdf?DDD34+dss4ae+dss0nw+dul0jk>

¹⁰ Ruhama, 2013. *Ruhama Annual Report 2013*. Dublin: Ruhama. Available at:

<http://www.ruhama.ie/assets/Press-Releases/Annual-report13-LOWRES.pdf>

prevents women from even considering exiting in the first instance, when they know that this record will always 'haunt' them and block positive opportunities for their future¹¹. It is for all of these reasons that Ruhama strongly advocates for the repeal of soliciting sanctions for all persons selling sex and is currently working closely with our partners to ensure that this is a feature of Ireland's new prostitution legislation.

However, as noted under Qs5&6 below, whilst decriminalising those who sell sex is vital, maintaining powers to tackle those who profit from the prostitution of others, include those who own/manage brothels is also essential.

Disadvantages

In Ireland there is ample evidence from research, from investigative reporting, from police, from agencies working on the ground and from the women involved in prostitution themselves of the widespread involvement of organised crime in the operation of the Irish sex trade¹². It would therefore seem strange to suggest that the Scottish sex trade is devoid of the involvement of organised crime gangs, both domestic and international, and yet your proposals make no mention of this (just as they omit the issue of trafficking and the experiences of migrant women in the Scottish sex trade). The full decriminalisation of the trade as a whole (of brothels and those who run them, of those who benefit from the earnings of the prostitution of another, and of the buyers), literally provides those who control the sex trade with a *carte blanche* to operate with near impunity.

In New Zealand there is certainly evidence (documented under Q2 above) of the involvement of crime gangs in the operation of the trade and the direct sexual exploitation of women and girls. Decriminalised regimes are a more attractive destination for traffickers and pimps, and despite New Zealand's geographic isolation, and the promise of the PRA to enhance the safety of the trade, the trafficking and coercion of vulnerable migrants in New Zealand is a reality. As recently as 2015 the US State Department's annual global 'Trafficking in Persons Report' documents the following with regard to New Zealand:

*"Foreign women from China, Hong Kong, Taiwan, South Korea, Thailand, and Vietnam are at risk of coercive or forced prostitution. Some international students and temporary visa holders are vulnerable to forced labor or prostitution. A small number of Pacific Islands and New Zealand (often of Maori descent) girls and boys are at risk of sex trafficking in street prostitution, and some are victims of trafficking in gangs. Some children are recruited by other girls or compelled by family members, into prostitution."*¹³

The Report also notes the failure of the PRA to effectively sanction offences as serious as child sex trafficking: *"The government reported convicting two traffickers in two child sex trafficking cases*

¹¹ Bindel, J., Brown, L., Easton, H., Matthews, R. and Reynolds, L. [undated]. *Breaking Down the Barriers. A Study of How Women Exit Prostitution – Executive Summary*. London: Eaves and London South Bank University. Available at: <http://i4.cmsfiles.com/eaves/2012/11/Breaking-down-the-barriers-a37d80.pdf>; Matthews, R., Easton, H., Young, L., and Bindel, J., 2014. *Exiting Prostitution: A Study in Female Desistance*. London: Palgrave Macmillan.

¹² See for example: The Immigrant Council of Ireland, the Women's Health Project and Ruhama, 2009. *Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland*. Dublin: ICI. Available at: <http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Trafficking-Report-FULL-LENGTH-FINAL.pdf>; Ruhama, 2013. *Ruhama Annual Report 2013*. Dublin: Ruhama. Available at: <http://www.ruhama.ie/assets/Press-Releases/Annual-report13-LOWRES.pdf>; RTE Primetime: *Profiting from Prostitution*, 2012, available at: <http://www.rte.ie/news/player/prime-time-web/2012/0207/>

¹³ United States of America Department of State, July 2015. *Trafficking in Persons Report*. United States: Department of State. Available at: <http://www.state.gov/j/tip/rls/tiprpt/2015/>

under the Prostitution Reform Act 2003. One trafficker received 200 hours community service and the other trafficker received 10 months' imprisonment; these penalties were not sufficient."¹⁴

Your proposals include strengthening laws against coercion and exploitation in the sex industry whilst at the same time decriminalising the trade as a whole. This suggests that tackling coercion/exploitation on its own will leave the rest of the trade a safe and happy place for its 'workers'. This entirely misses the point of how the trade operates – with the exception of a minority of 'empowered sex workers', the running of the sex trade is predicated on the coercion and exploitation of vulnerable women and girls, most of whom do not truly 'choose' prostitution, but are driven into it by extreme adversity, or forced into it by those who seek to profit from their vulnerabilities. Strengthening laws around coercion and exploitation will be an empty exercise given the levels of grooming and psychological control that these women and girls experience at the hands of their controllers, making them extremely unlikely to seek support as a result of their experiences, or even to name what is happening to them as abusive, when they have been coached to see it merely as a 'way of life'. We elaborate on this point further under Q7 below.

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.

Yes and no. For all the reasons explained under Q3 above we believe that laws that criminalise soliciting *by persons involved in prostitution* should be repealed. However, we do not agree that the sex buyers who contribute to the growth of the sex trade, whilst exercising considerable economic power over the seller in the vast majority of circumstances, and purely to satisfy their own desires, should be free from criminalisation. Again we would note the curious virtual absence of sex buyers in your proposals despite their involvement in *every single paid sexual service transaction*.

Ruhama strongly supports the 'Nordic approach' to prostitution, adopted in Sweden, Iceland and Norway, which decriminalises the seller whilst sanctioning the buyer, going some way to address the significant power differential between the two. Rather than obscuring the central role of the sex buyer in prostitution (as your proposals do), this approach serves to place the spotlight on those who create the demand for prostitution in the first instance. Research with buyers and the women they have bought highlights the importance of this focus:

- In contrast to most of the women they purchase, men who buy sex tend to be well educated, have incomes in the middle to high range and are employed in professional occupations
- Many men who buy sex pay for high-risk practices (e.g. unprotected sex of various kinds)
- The majority of women in prostitution report experiencing physical or sexual violence at the hands of buyers
- An exploration of buyers' motivations identifies the need of some buyers to dominate and control the women they purchase and exercise power over them, others see women who sell sex as less than human, something to be consumed and have little empathy for their feelings or circumstances – these buyers tend to be focused on purchasing practices that partners are unwilling to engage in and are very concerned with ensuring that they get 'value for money' from the transaction. Whilst some buyers seek 'no strings attached' – i.e. sex with no emotional attachment, others desire the 'girlfriend experience' and are angry/disappointed when the woman they are purchasing fails to successfully emulate a 'girlfriend'

¹⁴ *Ibid.*

- Many sex buyers are well aware of the vulnerability and risk factors for entry into prostitution that the women they are purchasing have faced, including childhood abuse, poverty and lack of alternative job choices, coercive control and homelessness. However, this knowledge does not appear to deter buyers. Nor does knowledge of direct coercion – 55% of the buyers in one London study believe that the majority of women in prostitution have been lured, tricked or trafficked. A similar number believe that most women in prostitution are controlled by a pimp, and many, through their buying behaviour, have observed that form of control from pimps. Furthermore, and most significantly, half the men in the sample stated that they themselves had bought sex from women whom they believed to be under the control of a pimp
- Services that provide support to women who have been trafficked report that a negligible proportion of their referrals ever come from buyers, and those that do have typically involved the men paying for sex and then reporting their concerns about the woman’s welfare after they have had sex with her¹⁵.

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.

No. As stated above (under Q3) we agree that individuals selling sex should not be criminalised, but this provision, based on the New Zealand ‘SOOBs’ model, is wide open to abuse by those intent on profiting from the prostitution of others. What this measure does is sanction the operating of unlicensed and therefore unregulated brothels with no proper measures in place to identify or tackle the human rights abuses rife within the sex industry.

In the case of New Zealand, researchers have noted that even when genuinely independent women in prostitution sought to avail of the SOOB model, it was not ‘entirely effective’ as most women in this position ‘lack the capital to buy and convert a property themselves’ and ultimately could not afford to set up their own businesses. In New Zealand what this has meant is that the majority of women selling sex in the state are not reaping the benefits of independence in a SOOB, but are to be found in the larger brothels run by big businesses profiting from their prostitution, or on the street¹⁶.

¹⁵ Coy, M., Horvath, M., and Kelly L., 2007. *‘It’s just like going to the supermarket’: Men Buying Sex in East London*. London: Toynbee Hall. Available at: <http://embracedignity.org/uploads/DemandReportREAD.PDF>; Escort Surveys, 2006. *Irish Escort Client Survey*. Available at: <http://www.escortsurveys.com>; Farley, M., Bindel, J., and Golding, J., 2009. *Men Who Buy Sex: Who They Buy and What They Know*. London: Eaves and San Francisco: Prostitution Research and Education. Available at: <http://www.educating-voices.com/pdf/eaves.pdf>; The Immigrant Council of Ireland, the Women’s Health Project and Ruhama, 2009. *Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland*. Dublin: ICI. Available at: <http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Trafficking-Report-FULL-LENGTH-FINAL.pdf>; Ruhama, 2013. *Ruhama Annual Report 2013*. Dublin: Ruhama. Available at: <http://www.ruhama.ie/assets/Press-Releases/Annual-report13-LOWRES.pdf>; Bindel, J., Brown, L., Easton, H., Matthews, R. and Reynolds, L. [undated]. *Breaking Down the Barriers. A Study of How Women Exit Prostitution – Executive Summary*. London: Eaves and London South Bank University. Available at: <http://i4.cmsfiles.com/eaves/2012/11/Breaking-down-the-barriers-a37d80.pdf>; Matthews, R., Easton, H., Young, L., and Bindel, J., 2014. *Exiting Prostitution: A Study in Female Desistance*. London: Palgrave Macmillan.

¹⁶ Kelly, L., Coy, M., Davenport, R., 2009. *Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries*. London: CWASU, London Metropolitan University. Available at: http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Shifting_Sands_UK-HOME-Office.pdf; Hubbard, P., Matthews, R., and Scoular, J., 2008. ‘Regulating sex work in the EU: prostitute women and the new spaces of exclusion’. *Gender, Place & Culture*, 15:2, 137-152.

Selling sex is an inherently risky activity and survivors often relate the experience of being constantly tense and 'on high alert' as they await their next buyer. In describing this, many have challenged the view that brothels are safer than the street – in a private room behind a closed and sometimes locked door there are far fewer means of escape when a buyer becomes violent¹⁷. This is precisely why women who sell sex in brothels, particularly in decriminalised and legalised regimes, are provided with advice on how to avoid such 'occupational hazards' – such as heavily screening buyers in advance of appointments, not accepting open drinks from buyers, checking for items that the buyer could use as a weapon or restraint etc. These are hardly hazards typically associated with a 'regular job'¹⁸. In short, this points to the levels of violence inherent within prostitution, and the fact that brothels are locations where this violence can occur and is always at risk of occurring, regardless of how 'well' they are managed.

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. As indicated under Q5 above, it is impossible to guarantee a completely 'safe' brothel, and for all the women that Ruhama support, brothels are effectively sites of sexual exploitation. It is difficult to understand, given your very positive promotion of the SOOBs model, why you would further seek to open the doors so readily to big businesses seeking to profit from prostitution – to us this seems like a tacit acknowledgment of reality – namely that most of the money to be made in the sex trade is by third parties who profit from the prostitution of others.

There is very little evidence to suggest that large business ventures running brothels purely for profit invest much time, money or care in the wellbeing of those who sell sex on their premises. Any woman, no matter how independent, who complains about safety or other conditions, is typically quickly replaced. Worryingly, the measures proposed here for Scotland appear to all but pave the way for large-scale brothel businesses of the style run under the German legalised regime, where owners' care and responsibility for the women who sell sex there merely extends as far as their policy that what goes on behind closed doors in the rooms of the brothel is entirely between the woman and her buyer¹⁹.

Finally, it is a fact that in regimes that have relaxed their laws around profiting from prostitution, a larger illegal prostitution market rife with abuse always flourishes alongside the legitimate, state-sanctioned one. This has led analysts to conclude that such 'unchecked growth' in illegal sectors as well as failures to effectively police exploitation “Both create disincentives for the licensed sector to comply with policy goals”.²⁰

¹⁷ Moran, R., 2013. *Paid For: My Journey Through Prostitution*. Dublin: Gill & Macmillan.

¹⁸ See for example: <https://www.nationalblacklist.com/article2.aspx>

¹⁹ See for example: <http://www.telegraph.co.uk/women/sex/germanys-mega-brothel-left-me-cold/>

²⁰ Kelly, L., Coy, M., Davenport, R., 2009. *Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries*. London: CWASU, London Metropolitan University. Available at: http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Shifting_Sands_UK-HOMe-Office.pdf

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?

No. This is an appalling misguided proposal as what it essentially does is sanction pimping. It ignores the fact that vulnerable women are often pimped in the context of an intimate relationship and that pimping is a tool used by perpetrators of domestic violence²¹. There is an attempt to obscure this harsh reality with fluffy language relating to the ‘family members and friends of sex workers’. You say that: ‘I do not believe that living on the earnings of sex work should be a criminal offence if there is no force or coercion involved’ – but how do you intend to prove this lack of force/coercion? Do you really think that women and girls who are being pimped by their partners are going to readily report them to the authorities, particularly if they are already tightly physically and emotionally controlled by them and perhaps living in fear for their lives?

You say that issues of force and coercion can be addressed via harsher sanctions for these offences – but again this shows a profound misunderstanding of the way coercion operates in the context of prostitution. Women and girls are rarely forced/coerced into prostitution through direct physical control but through the psychological control and domination of someone who holds a great deal of power over them and who they usually fear very much. Part of this control involves grooming and threatening a woman in such a way as to ensure that she never approaches the authorities or indeed anyone else for help. This is achieved via a number of means, all of which are evident in our frontline work:

- A controller (an intimate partner or otherwise) will threaten the safety and even the lives of the woman, her children and other people she loves if she ever attempts to seek help
- A woman/girl is ‘coached’ by her controller to answer questions by the authorities or support providers in a way that deflects or avoids raising their concerns
- A controller will instil a deep mistrust and fear of authority in the woman/girl he is controlling – e.g. by telling her that the police are corrupt/will deport her/that he has ‘friends in high places’ that will report back to him if she ‘steps out of line’
- Less overtly, a controller will groom a woman/girl to believe that she is proving her love for him by remaining in prostitution, or that she does not really need or indeed deserve any assistance or any better kind of life²².

For all of the above reasons, effectively identifying instances of force and coercion, particularly when a woman is being prostituted by an intimate partner or a family member, is going to be extremely difficult. Prosecutions in this regard are likely to be rare, whilst anyone living off the earnings of the prostitution of another will be able to do so with relative impunity.

²¹ Bindel, J., Brown, L., Easton, H., Matthews, R. and Reynolds, L. [undated]. *Breaking Down the Barriers. A Study of How Women Exit Prostitution – Executive Summary*. London: Eaves and London South Bank University. Available at: <http://i4.cmsfiles.com/eaves/2012/11/Breaking-down-the-barriers-a37d80.pdf>; Matthews, R., Easton, H., Young, L., and Bindel, J., 2014. *Exiting Prostitution: A Study in Female Desistance*. London: Palgrave Macmillan.

²² Breslin, R., 2015. *Know Sex Trafficking: A Guide for Professionals*. Dublin: The REACH Project.

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?

Surely this right exists already under sexual offences legislation, which applies to anyone who withdraws their consent to a sex act, even where they have consented previously, and/or where they have accepted payment to perform that act? Persons in prostitution can and should be protected under current sexual offences legislation that applies to all members of the population – it seems to us that suggesting the need for this specific measure is once again a tacit acknowledgement of the serious levels of violence, and particularly sexual violence, inherent in the sex trade.

Indeed, it is the case that women in prostitution are raped and sexually assaulted on a regular basis, despite the existence of laws against these violations²³. For the many women in prostitution who are highly vulnerable, how does one propose that they can safely negotiate with a buyer to withdraw their consent to sexual services, particularly if payment has already changed hands? It seems very doubtful that all buyers will calmly accept this withdrawal/refusal and simply walk away. Consent is already a much abused concept in the context of prostitution – women selling sex, whether on the street or in the best of hotels, regularly recount instances where a buyer was not satisfied with the service he received or felt he did not get his ‘money’s worth’ and so forcibly took what he believed was ‘owed’ to him. In this context additional statutory rights for those selling sex would be meaningless when they could very rarely be enforced.

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?

Harm reduction and the enhancement of safety is a vital component of any support response to those selling sex. However, harm reduction alone is never sufficient for those experiencing trauma as a result of their involvement in prostitution and those who are seeking to exit the trade. It makes sense that brothels should provide ‘safer sex supplies’ to those selling sex on their premises, but for those who profit from the prostitution of others, their motivation for doing so is far more likely to be about protecting or maximising their profits rather than about genuine care for their ‘workers’. Harm reduction work should not be done in isolation from or in place of providing much broader holistic support for people involved in prostitution, which addresses a wide range of their physical, sexual and emotional needs, and not just those that relate to their immediate safety.

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?

Ruhama does not envisage any direct financial implications of the proposed Bill for us given that we are based in a different jurisdiction, and one which is on the verge of criminalising demand. However, we would argue that implications for the Scottish exchequer include dealing with the

²³ Bindel, J., Brown, L., Easton, H., Matthews, R. and Reynolds, L. [undated]. *Breaking Down the Barriers. A Study of How Women Exit Prostitution – Executive Summary*. London: Eaves and London South Bank University. Available at: <http://i4.cmsfiles.com/eaves/2012/11/Breaking-down-the-barriers-a37d80.pdf>; Matthews, R., Easton, H., Young, L., and Bindel, J., 2014. *Exiting Prostitution: A Study in Female Desistance*. London: Palgrave Macmillan; Cabiria, 2004, *Femmes et Migrations en Europe, Stratégies et Empowerment*.

fallout from the increase in the trafficking of women into and within Scotland for the purposes of prostitution which is highly likely to occur under a decriminalised regime. More broadly, the cost to individual support services and the state as a whole is likely to increase as more women become involved in prostitution and suffer the physical, sexual and emotional harms that this entails for so many. This is evidenced by recent research in France which attempted to estimate the social and economic cost of prostitution to the state, and it is no small sum²⁴.

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?

Negative implications. As previously noted (under Q2 above), the most gender equal nations in the world are also those that have sent a normative message to their populations, through legislation, about the unacceptability of men purchasing sexual access to women's bodies purely to meet their own needs and desires. These jurisdictions fully recognise the gendered nature of prostitution and the fact that the vast majority of the sellers are female and the vast majority of buyers are male, although it is also notable that men and transgender persons in prostitution are most commonly purchased by men too.

Ruhama subscribes to the view, firmly supported by the European Parliament²⁵, that prostitution is both a cause and a consequence of gender inequality, and that attempts to legitimise the purchase of sex effectively sanctions the bodies of women as acceptable commodities to be bought for sexual purposes, whilst institutionalising the rights of men as purchasers of these bodies. This in turn merely serves to perpetuate hierarchical relations between the genders at the societal level, and in doing so further widens the inequality gap between *all* men and women in that state.

It is also vital to bear in mind that these proposals fly in the face, not only of the excellent work undertaken to date in Scotland by highly reputable support organisations and advocates to tackle prostitution as a form of gender-based violence, but also the progressive moves by many of Scotland's European neighbours to tackle the harms of the sex trade by criminalising rather than legitimising demand – this is the approach already in place in Sweden, Iceland, Norway and most recently in Northern Ireland, with the Republic of Ireland and France on the brink of introducing similar measures. In general, as the work of the European Parliament attests²⁶, this is the direction that Europe is now taking to address prostitution, and it will not serve Scotland well to take the regressive alternative approach outlined in these proposals. The true beneficiaries of this proposed Bill would undoubtedly be those who profit from the prostitution of others, at the very significant expense of vulnerable women and girls currently involved in prostitution and those survivors who have exited, all of whom, very regrettably, appear to have been ignored in or effectively omitted from this process.

²⁴ Mouvement du Nid and Psytel, 2015. *'ProstCost': Estimate of the Economic and Social Cost of Prostitution in France – Summary of the Study's Results*. Available at:

<https://prostcost.files.wordpress.com/2015/09/prostcost-vang-web2.pdf>

²⁵ European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)). Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2014-0071+0+DOC+PDF+V0//EN>

²⁶ *Ibid.* – note that there was overwhelming cross-Parliament support for this EP resolution to address prostitution as a form of violence against women and criminalise the demand in its final vote – 343 MEPs in favour, 139 against, with 105 abstentions.

Thank you for the opportunity to respond. Please direct any queries about this consultation response to:

Ruth Breslin

Email: ruth@ruhama.ie

Tel: +353 (1) 836 0292

Web: www.ruhama.ie