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SUBMISSION BY EQUALITY NOW TO CONSULTATION BY JEAN URQUHART MSP ON PROPOSED PROSTITUTION LAW REFORM (SCOTLAND) BILL

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Introduction

Equality Now is an international women's rights organisation dedicated to ending violence and discrimination against women and girls around the world. We work to end trafficking in women and girls and partner with many grassroots organisations, several of which are survivor-led, to end the commercial sexual exploitation of women and girls.

Response

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

Yes and no. Equality Now supports any measure that increases the safety and well-being of people in prostitution and which promotes gender equality. However, the full range of measures proposed in the consultation document – particularly the legalisation of brothels and the purchase of sex – do not promote but in fact conflict with these aims. While we wholeheartedly support the decriminalisation of people involved in prostitution, i.e. those selling or sold for sex, we do not agree with the general aim of the bill to decriminalise all activities around prostitution.

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

No. The full decriminalisation of the sex trade has not been shown to sufficiently improve the situation of those in prostitution in New Zealand. Scotland should adopt the approach which decriminalises those selling sex while criminalising brothel-keeping, pimping and buying sex.

The Prostitution Reform Act 2003 (PRA) was passed by a very slight margin of one single vote. The 2008 New Zealand government review of the (PRA)¹, cited throughout the consultation document as evidence of the success of decriminalisation in New Zealand, itself concluded that 'the majority of sex workers interviewed [as part of the review] felt that the PRA could do little about violence that occurred' (p 14); that there was conflicting evidence on whether people in prostitution were more likely than before decriminalisation to report acts of violence they suffered to the police (p 58), while one of the main studies for the review found that 'few' women across all sectors of the sex industry had reported violence to the police (p 122); that high rates of condom use and low rates of HIV/AIDS incidence among people in prostitution were 'not necessarily due to' the legislation and that many respondents 'said they had always practiced safe sex', noting that 'It was generally felt that most sex workers had already adopted such practices as a result of the effective HIV/AIDS prevention campaign that was established in

¹ New Zealand Ministry of Justice (2008) Report of the Prostitution Law Committee on the Operation of the Prostitution Reform Act 2003.

the late 1980s' (p 14); finally, the report notes that compliance with occupational safety and health requirements in the sex industry 'cannot be measured as there is no system of regular inspections of brothels' by the relevant health and labour authorities (p 14).

Recent years have seen increased discussion in New Zealand on reforming prostitution legislation. Prime Minister John Key has criticised the impact of decriminalisation, pointing out that it has not achieved its goals of eliminating underage and street prostitution². A political champion of decriminalisation who was formerly in prostitution has, a decade later, labelled the law change 'naive' in light of continuing concerns particularly around street prostitution, including the exploitation of minors in the sector among other concerns³. While we believe that the primary concern is the safety and well-being of those in prostitution, it is important to recognise that, contrary to what the consultation document implies, residents in New Zealand do not necessarily feel that prostitution in their areas is being organised 'with consideration for communities' (p 27, para 45).

There are several groups in New Zealand working with women currently and formerly in prostitution which are advocating for New Zealand to shift its approach⁴. Equality Now agrees with them that the best way to improve the safety and well-being of people in prostitution and those at risk of exploitation is to adopt the model in force in Sweden, Norway, Iceland and most recently, Northern Ireland. These countries decriminalise those in prostitution (those personally selling or sold for sex) and criminalise those profiting or otherwise benefitting from others' prostitution, namely traffickers, pimps, brothel-keepers and those who buy sex.

This human rights and gender equality-based approach is generally referred to as the Swedish or Nordic Model but it has since gained traction beyond that region. In 2014, the Parliamentary Assembly of the Council of Europe adopted, by a large majority, a resolution⁵ calling on the Council of Europe's 47 member states, including the United Kingdom, to 'consider criminalising the purchase of sexual services, based on the Swedish model, as *the most effective tool* for preventing and combating trafficking in human beings' (emphasis added). Also in 2014, the European Parliament adopted a similar resolution⁶, also by a large majority. Representing the official position of the 766-member European Parliament, the resolution emphasises the links between sexual exploitation, prostitution and gender (in)equality, and recommends the 28 EU Member States to consider the Nordic Model as one of the best ways to combat prostitution and sex trafficking and to promote gender equality⁷. Thus the two main regional political bodies in Europe have endorsed this approach – not decriminalisation.

Within the UK, Northern Ireland adopted the Nordic Model in 2014 and the UK Parliament's All-Party Parliamentary Group has recommended the same for England and Wales⁸. If Scotland were to fully decriminalise the sex trade, it would run the risk of increased exploitation and

² See 'Prostitution law reform hasn't worked: PM', Otago Daily Times, 14 November 2012. Available at: <http://www.odt.co.nz/news/politics/234736/prostitution-law-reform-hasnt-worked-pm>.

³ See 'Beyer: We were naive liberalizing prostitution', NZ Herald, 7 April 2013. Available at: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10875922.

⁴ These include Stop Demand (<http://www.stopdemand.org/>) and Freedom from Sexual Exploitation (<http://www.ffse.org.nz/>). Please see their websites for further information on the adverse effects of decriminalisation in New Zealand.

⁵ Council of Europe Parliamentary Assembly resolution 1983 (2014) on *Prostitution, trafficking and modern slavery in Europe*, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20716&lang=en>; Report: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=20559&Language=EN>

⁶ 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?type=TA&reference=P7-TA-2014-0162&language=EN&ring=A7-2014-0071>.

⁷ In addition to this resolution, the European Commission, including Home Affairs Commissioner Cecilia Malmström and EU Anti-Trafficking Coordinator Myria Vassiliadou, has on several occasions emphasised these links in public memos and statements (see e.g., http://europa.eu/rapid/press-release_SPEECH-13-763_en.htm; <http://www.thejournal.ie/eu-commissioner-report-sex-human-trafficking-1382201-Mar2014/>; <http://www.neurope.eu/article/anti-trafficking-coordinator-situation-europe-worrying>; http://europa.eu/rapid/press-release_MEMO-13-331_en.htm).

⁸ All-Party Parliamentary Group on Prostitution and the Global Sex Trade (2014) *Shifting the Burden*. Available at: <https://appgprostitution.files.wordpress.com/2014/04/shifting-the-burden.pdf>.

organised crime within its borders; furthermore, as decriminalisation undermines gender equality (please see below), by doing so Scotland would be seen not as a bastion of progress but rather as having gone backwards in terms of women's rights.

The trend in Europe is clearly towards the Nordic Model and away from legalisation. Legalisation's negative effects, including a high prevalence of trafficking, exploitation and organised crime in the legal and illegal prostitution sectors in countries such as Germany and the Netherlands, are becoming increasingly clear. They are also increasingly recognised by officials in those countries, who are making or discussing changes to their laws in an attempt to curb these negative effects. For example, Amsterdam has taken steps to tighten regulations in its world-famous legalised red light district, including raising the minimum age to be involved in prostitution from 18 to 21⁹, while both Germany and the Netherlands have discussed making it an offence to buy sex from someone who has been trafficked. While decriminalisation is not the same as legalisation, both systems permit the purchase of sex, brothel-keeping and, in some cases, pimping/living off the earnings of someone else's prostitution. The lessons currently being learned in several European countries with legalised prostitution must be taken into consideration when considering what approach to take in Scotland.

The consultation document states that there is 'growing consensus' among UN agencies and experts in supporting the full decriminalisation of the sex trade. It is important to note that when many UN agencies and experts talk about 'decriminalising sex work', they are referring to the selling of sex and not necessarily other activities such as pimping or brothel keeping. To represent such statements as support for full decriminalisation is incorrect and misleading. The citation used in footnote 106 (p 37), references as evidence of UNAIDS' support for full decriminalisation is not the official 2009 UNAIDS *Guidance Note on HIV and Sex Work*, but an annex subsequently added to it by pro-decriminalisation civil society organisations advising UNAIDS. The *Guidance Note* bears the disclaimer that 'These annexes do not necessarily represent the views of all members of the Advisory group on HIV and Sex Work, nor the stated positions, decisions or policies of the UNAIDS Secretariat or any of the UNAIDS Cosponsors.' The official part of the *Guidance Note* in fact states that, in the context of HIV prevention, there is a clear imperative to address demand for prostitution, and that '*national and regional policy reform should address the norms and factors that increase demand for paid sex*'¹⁰ (emphasis added). Citing the annex rather than the official report in relation to UNAIDS' position is therefore inaccurate and misleading. UNAIDS' position was confirmed in 2013 directly by its Executive Director, Michel Sidibé, who stated that "UNAIDS is not advocating for the decriminalisation of pimping or brothel ownership." Publicised claims of similar positions of other UN agencies should be treated with the same caution when making claims of widespread support for full decriminalisation.

Regarding civil society support for decriminalisation, there is widespread and global opposition to the recent moves by Amnesty International to officially endorse such a policy. In other words, the global human rights and NGO community, in particular gender equality and anti-trafficking organisations, is by no means agreed that decriminalisation is the best approach. There is also a growing and ever-stronger movement led by survivors – women and men who have been in prostitution – who are calling for the Nordic Model¹¹. Their voices must be taken into consideration when determining the approach that Scotland takes.

⁹ See <http://www.iamsterdam.com/en/media-centre/city-hall/dossier-red-light-district/red-light-district-faq>.

¹⁰ UNAIDS (2009) *Guidance Note on HIV and Sex Work*, p 21.

¹¹ For example the networks SPACE International (<http://spaceinternational.ie/>) and Sex Trafficking Survivors United, and numerous national and local-level organisations.

Under international and European law, Scotland is obligated to reduce the demand for sex trafficking¹². Scotland will not be meeting this legal obligation if its laws actually encourage this demand, for example by decriminalising the purchase of sex and brothel keeping, thereby ensuring access for those who seek to buy sex and normalising commercial sexual exploitation.

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

The only advantage that we can see arising from the proposals is the decriminalisation of those individuals who sell sex, i.e. those in prostitution. Equality Now fully supports this and believes that those in prostitution must be provided with support and assistance, not criminalised. Without, however, at the same time criminalising the purchase of sex, the needs of those in prostitution risk being neglected. The inclusion in the proposals of the legalisation of numerous exploitative activities such as brothel-keeping and buying sex (in public places) are serious shortcomings of the proposals and serve to ultimately undermine its capacity to achieve its aims of promoting the safety and well-being of people in prostitution.

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. Laws penalising the selling of sex, i.e. targeting those in prostitution, should be repealed. The relative disadvantage, exploitation, violence suffered by and marginalisation of many in prostitution should be recognised. Provision should instead be provided to support and assistance, including to exit prostitution, if wished.

Kerb-crawling legislation, however, should not be repealed but instead extended to fully criminalise the purchase of sex in all circumstances. Aiming only at harm reduction rather than harm elimination in an industry rife with harm and exploitation does a disservice to those harmed and exploited and is unacceptable in a society that believes in equality for all its members. Efforts should be made to reduce the scale of the industry as a whole and thereby reduce the number of people at risk of exploitation and violence. This shrinking of the industry can most effectively be done by targeting the ultimate driving force behind commercial sexual exploitation, the demand for paid sex posed by buyers.

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.

We do not believe that checks could be put in place and enforced to adequately prevent exploitation and/or criminal activity by exploiters.

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. Legalised brothels help legitimise and promote the idea that it is acceptable for primarily better-off individuals to have on-demand sexual access to those who are generally more disadvantaged. Examples from Germany and the Netherlands show that licensing regimes do not work to stop trafficking and exploitation. We know from our partners working in these countries and regular news reports that legal brothels there are rife with trafficking and exploitation, as are the illegal brothels that flourish around the legal sector. In Germany, police are reporting

¹² UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Article 9(5)), Directive 2011/36/EU of the European Parliament and of the Council (Article 18) and the Council of Europe Convention on Action against Trafficking in Human Beings (Articles 6 and 19).

increased difficulties in acting against exploitation in the legal industry because exploitative acts that were previously criminalised, are now legal¹³.

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

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?

Yes, but such violations should be covered by existing laws against rape and sexual assault.

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 do not agree with the premise that brothels should be legal/decriminalised. Even having supplies available does not ensure their use. We know from survivors and service provider partners in countries such as Germany and the Netherlands that, despite their brothels being legal ‘working environments’, there is widespread lack of condom use. For example, as ‘Grace’, a Nigerian woman trafficked into legal brothels in Germany, said: ‘I worked for seven months and was told by my various employers that I had to have sex without condoms when asked. Men demanded sex without condoms. At a well-known legal brothel, the owners told me directly that I had to have sex without condoms, otherwise I would be fired. The owners would ask the clients afterwards if they were happy, if I willingly serviced them without a condom’¹⁴.

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?

If it decriminalises all aspects of prostitution, Scotland will have to expend increased resources in the medium- and long-term to deal with the likely increase in victims of exploitation, human trafficking and organised crime. Conversely, by enacting the Nordic Model and investing in exiting and support services while targeting those who fuel exploitation, Scotland would be saving money in the long-term by having reduced the scale of prostitution, trafficking and organised crime.

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?

While some of those selling sex are men and some of those buying sex are women, the overwhelming majority of those selling sex are women and those buying sex are men. Prostitution is thus a highly gendered phenomenon. It is a manifestation of gender inequality,

¹³ See e.g. Sporer, H. (2013) ‘Prostitution in Germany’, speech given at the Seminar ‘Reality of Prostitution’, European Women’s Lobby (1 Oct 2013), Brussels, available at: <http://www.scribd.com/doc/184667092/Prostitution-in-Germany-by-Detective-Superintendent-Helmut-Sporer#scribd>.

¹⁴ See: <http://www.equalitynow.org/survivorstories/grace>.

being rooted in the unequal power relations between women and men in society. Individuals' vulnerability to exploitation in prostitution is further exacerbated, and in some cases determined, by other inequalities based on ethnicity, class, disability and other socio-economic characteristics. The full decriminalisation of the sex trade normalises prostitution and thereby helps to further entrench these inequalities. The best way to promote equality across society is through the Nordic Model, which seeks to redress these power imbalances. Harm reduction in the scenario put forward under this proposed Bill is not possible since the very act of passing such a law would signal the different worth the Scottish government affords to women and men, which signal is broadcast across society and not limited to the issue of prostitution.

Acknowledging the negative impact of prostitution as a system on all women in society is not, as the consultation document argues (p 8, para 5), in any way blaming those in prostitution. Rather, it is about recognising the detrimental effects of unequal societal power structures on individuals, and the negative impact of those who choose to exploit people in prostitution.