

Prostitution (Offences and Support) (Scotland) Bill

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Introduction

The Scottish Human Rights Commission ("SHRC") is a public body created by the Scottish Commission for Human Rights Act 2006.

We are an independent, expert body that works with and for the people of Scotland; we monitor, listen, speak up for all of our rights and respond when things go wrong.

The SHRC is also part of the international human rights system. It is accredited by the United Nations as its trusted organisation to provide impartial evidence on the enjoyment of human rights in Scotland.

The SHRC is independent of Government. We are accountable to the people of Scotland via the Scottish Parliament. We provide advice and guidance on human rights under Section 3 of the Scottish Commission for Human Rights Act 2006.

This submission is provided to inform the scrutiny of the Criminal Justice Committee's at Stage 1 of the proposed Prostitution (Offences and Support) (Scotland) Bill. It sets out the key human rights considerations engaged by this proposed legislation. We set out the matters we consider will be relevant to Parliament as part of a human rights-based assessment of the general principles of this Bill at Stage 1. We also highlight wider policy and practice considerations relevant to prostitution.

Executive Summary

- International human rights law does not offer a clear and unified approach to domestic laws and policy frameworks concerning prostitution. Human rights experts have offered a range of interpretations but recognise a lack of consensus on prostitution itself.
- Case law and human rights monitoring from human rights bodies, especially the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) and European Court of Human Rights (ECtHR) set out a number of considerations for a human rights analysis of approaches to prostitution. These should inform Parliamentary scrutiny of this Bill.
- On the basis of this analysis of the international legal frameworks, the SHRC recommends several areas for further examination by the Committee. These include:
 - Considering the Bill in the context of the full range of legislation, policy and practice affecting people in prostitution, in particular

migrant women, including broader support from the State, such as those intended to support poverty alleviation.

- Ensuring the Bill is compatible with obligations to protect children from sexual exploitation and recognises such offences as especially grave.
- Upholding participation as an important part of a human rights-based approach to scrutiny, including trauma informed, sensitive and respectful inclusion of diverse experiences and views.
- In our view, human rights law neither prevents nor requires the approach set out in the Bill in and of itself. However, the operationalisation, including any consequences of greater attention of police and other public authorities towards prostitution, and financial and technical resourcing, need to be considered in full as part of human rights compliance.

Note on Terminology

The proposed Bill refers to 'prostitution' to describe the sale of sex. The SHRC notes that some may choose to use other terminology, including, for example, some human rights experts such as the Council of Europe Commissioner for Human Rights and some representative bodies such as SCOT-PEP, who have used terms such as 'sex work'. This submission uses the term 'prostitution' to reflect the terminology of the proposed Bill. We note that this term is also used by the Scottish Government and within the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Summary of proposed legislation

The Prostitution (Offences and Support) (Scotland) Bill is intended to criminalise the purchase of sex while decriminalising the sale of sex. It does this by proposing a new offence of paying for sexual acts and repealing the existing offence of 'soliciting and importuning by prostitutes' in the Civic Government (Scotland) Act 1982. It also creates what is termed a 'Right to Support' which requires the Scottish Ministers to ensure that a person who is, or has been, in prostitution is provided with help and support such as accommodation, financial assistance, healthcare or legal advice and representation.

This model of regulating prostitution is commonly termed the 'Nordic model'. This model has been replicated in a number of States and endorsed by bodies such as the European Parliament.¹ However, some human rights experts and NGOs such as Amnesty International and Human Rights Watch do not support this model, and have

argued that the approach can contribute to the discrimination and marginalisation of sex workers.²

This short Bill contains provisions under four key themes, which aim to reflect prostitution as a form of violence against women and girls, as articulated in the policy memorandum. This framing echoes Scotland's approach to violence against women and girls as set out in the Equally Safe Strategy.³ This briefing will address these by providing an analysis of the human rights engaged and the relevant international and domestic human rights framework, and the areas recommended for further scrutiny and deliberation, including the status of migrant women and those trafficked for prostitution or other existing criminal activities.

Human rights legal framework

European Convention on Human Rights (ECHR)

Under the Scotland Act 1998, Scottish Parliament legislation must comply with the European Convention on Human Rights (ECHR). Actions by duty bearers must not be incompatible with the Convention under the Human Rights Act 1998.

Neither violence against women nor prostitution are explicitly referred to in the text of the ECHR. Case law of the European Court of Human Rights (ECtHR) involving violence against women has considered the following rights:

- Article 2: The right to life
- Article 3: The prohibition of torture or inhuman or degrading treatment or punishment
- Article 8: The right to respect for private and family life
- Article 14: The prohibition of discrimination

ECtHR has also made clearer the positive obligations on the State such as to prevent and prosecute instances of violence against women. In the landmark case of *Opuz v Turkey*, the Court showed the importance of considering how gendered dynamics create risk factors for violence against women, relying on the developments of the CEDAW Committee.⁴

The Court considered prostitution for the first time in *V.T. v France* (2007). In this case, it noted that there was no prevailing European consensus on whether prostitution per se was within the scope of Article 3.⁵

The ECtHR examined approaches to prostitution most recently in the case of *M.A. and Others v. France*.⁶ This case concerned a French law that criminalised the

purchase of sexual relations including where carried out by freely consenting adults in a private setting. The law was challenged by 261 "sex workers" who alleged violations of their rights under Article 8. The Court determined that while rights to a private life, personal autonomy and sexual freedom had been restricted ('interfered with') by the law, the interference was a proportionate means of achieving the legitimate aim of protecting the rights and health of others (Article 8.2.).

Additionally, ECtHR case law clarifies two key points which will be important for the Scottish Parliament to consider in relation to this Bill:

- States have a large 'margin of appreciation' (discretion) to determine a regulatory model through their democratic process.

Part of navigating this margin of appreciation is robust scrutiny by domestic parliamentarians, conducting a fair balancing act of the rights which may be interfered with and the public interest.

- Criminalisation of purchase is just one part of the whole system.

Compliance with human rights law must include consideration of the include broader regulatory package including support for people engaged in prostitution.

Convention on the Elimination of Violence Against Women (CEDAW)

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 by the UN General Assembly. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The UK ratified CEDAW in 1986, which means it is bound to observe and protect the rights in the convention under international law. The Scotland Act 1998 places a responsibility on the Scottish Government and Scottish Parliament to observe and implement of the UK's international obligations, including under CEDAW.

The relevant Article of CEDAW for consideration of this Bill is Article 6. This requires that:

"States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."

CEDAW does not define trafficking or prostitution. Official records suggest that Article 6 was not intended to address prostitution as such but the 'exploitation of prostitution',⁷ though this is also not defined. Although there is active debate on this,

the prevailing legal and political consensus is that Article 6 leaves the legal treatment of prostitution itself to States.⁸

The Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) has however interpreted Article 6 in its monitoring and decisions, and indicated a number of obligations relevant to prostitution within Article 6:

- States should not criminalise or penalise the sale of sex, and should not penalise women for breaches of domestic laws including immigration which result from being trafficked and should take measures to reduce demand.
- Specifically in relation to the trafficking of women and girls in the context of global migration, State parties:
 - must pursue all appropriate means to eradicate trafficking and exploitation of prostitution to ensure that laws, systems, regulations and funding are in place to make the realization of anti-trafficking protection effective in practice;
 - should "discourage the demand that fosters exploitation of prostitution and leads to trafficking in persons."
- States should consider the socio-economic factors and root causes that deny women alternative means of financial support and the ways in which this makes women vulnerable to exploitation of prostitution.⁹
- There is a need for women and girls with insecure or no legal migration statuses to be ensured access to justice.
- Existing justice systems may be more likely to violate women's rights, rather than protect them.¹⁰

The Committee's last review of the UK (2019) included issues made seven recommendations to all parts of the UK to improve compliance with Article 6 obligations:¹¹

1. Improvements to the National Referral Mechanism (the UK's framework for identifying victims of human trafficking and/or exploitation, introduced through the Modern Slavery Act (2015))¹²;

2. Measures to address access to employment opportunities, housing, and social security so that women do not have to resort to prostitution or 'sex for rent';
3. Effective measures to reduce demand for commercial sex, including by carrying out educational and awareness-raising measures targeted at men and boys and focused on combating all notions of the subordination and objectification of women;
4. Legislation to decriminalize prostitution and clear the criminal records of women who have been convicted for offences related to prostitution;
5. Improved availability of specialist service, and educational and employment opportunities for women exiting prostitution;
6. Legislation to "shift the burden of proof from the prosecution to the purchaser of sexual services for cases involving minors";
7. Conduct research into the prevalence and nature of prostitution in Northern Ireland and Scotland to identify the necessary changes to be made to legislation and policy.

This Bill would represent a step, in principle, towards implementing recommendations 4 and 5 above in Scotland. However, it is noted that obligations under CEDAW do not in themselves require or preclude a specific approach to prostitution be taken, and that human rights issues can persist regardless of the legislative approach taken. The CEDAW Committee has highlighted issues in their monitoring of countries with decriminalised, regulatory and 'Nordic model' approaches. For example:

- Concern with the decriminalisation of prostitution for citizens and permanent residents in a way which excludes migrant women (New Zealand)
- Access to support services and exit programmes for women and girls in prostitution as well as disparities and challenges in identifying victims of trafficking (Germany)
- Concerns - despite welcoming a "pioneering role and innovative approaches in addressing trafficking of women for sexual exploitation" - including evidence of increasing demand for prostitution and the lack of information on the measures taken by the State party to reduce it (Sweden).¹³

The work of the Committee highlights that compliance with obligations under CEDAW is not only determined by the legislative approach taken, but by the effectiveness of the State's approach as a whole in addressing discrimination and violence against women. It also indicates the importance of giving particular consideration to access to support for migrant women and women with no or insecure migration status.

Convention on the Rights of the Child (UNCRC)

Both international and domestic law emphasises that a child cannot consent to their own sexual exploitation. Under the UNCRC (Incorporation) (Scotland) Act 2024, Scottish Parliament legislation must be compatible with the UN Convention on the Rights of the Child (UNCRC).¹⁴

For consideration of this Bill, the most relevant Article under the UNCRC is Article 34. This requires States to protect the child from all forms of sexual exploitation and sexual abuse,¹⁵ and the obligations set out in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Article 3(3) of the Optional Protocol requires that sexual exploitation offences involving children are punishable by appropriate sentences reflecting their grave nature.¹⁶

The Bill's Policy Memorandum acknowledges that the new offence proposed by the Bill also applies where either person A or person B is a child. We note that the maximum penalties for this proposed offence are significantly lower than sexual exploitation offences contained in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.¹⁷

While nothing in the present Bill alters the existing offences which criminalise child sexual exploitation, we suggest that consideration should be given to whether there should be explicit reference to the 2005 Act on the face of the Bill to put this beyond any doubt, thereby mitigate any risk that the Bill, when applied in practice, inadvertently creates any negative impact on Article 3(3) of the CRC Optional Protocol.

Additionally, section 6 of the Bill, which establishes a right to support for any person who is or was in prostitution, would extend to child victims of sexual exploitation as 'prostitution' is not defined. Specific consideration on the appropriateness of the support required under the Bill for child victims would be helpful.

Other relevant human rights standards

'Soft law' refers to international human rights standards which are not legally binding but should be considered as part of a rights-based approach. These may also be helpful to Parliament in its consideration of the proposals in this Bill. For example:

- The Declaration on the Elimination of Violence against Women (UN General Assembly resolution 48/104 (1993)) (Article 2): "[v]iolence against women shall be understood to encompass, but not be limited to . . . trafficking in women and forced prostitution" ¹⁸
- In UN General Assembly Resolution 77/194 on Trafficking in Women and Girls (2022), the UN General Assembly reiterated the need to eliminate the demand that fosters sex trafficking. ¹⁹
- The Beijing Declaration and Platform of Action 1995 adopted at the Fourth World Conference on Women covers state obligations to prevent enforced prostitution and to tackle the root causes of human trafficking for the purposes of prostitution. ²⁰

The SHRC notes that the initial consultation paper for the Bill acknowledges that that there has been much consideration of the principle of human dignity in discussion of prostitution and human rights. Some advocates for more abolitionist approaches to prostitution have argued that protection of dignity is incompatible with permissive or tolerant approaches to prostitution.

Dignity is deeply embedded in the Universal Declaration of Human Rights (UDHR), as articulated in Article 1. It is noted that the UDHR is not a binding human rights treaty and Article 1 is not replicated as standalone substantive rights in either the International Covenant on Child and Political Rights nor the International Covenant on Economic, Social and Cultural Rights. ¹ Nevertheless, it is important that the human rights principle of dignity and respect should inform the Committee and wider deliberation on this Bill.

¹ Although both treaties refer to human dignity in their preambles. The text of the ECHR does not refer to 'dignity' however the ECtHR has noted that "... the very essence of [the Convention] is respect for human dignity and human freedom." [SW v United Kingdom](#).

Views and positions of Human Rights Experts

Senior human rights experts at both UN and Council of Europe level have set out at times contrasting views on how more general human standards should be applied in cases of 'non-forced' prostitution:

- The Special Rapporteur on Violence Against Women argues that prostitution results in the dehumanisation of and violence against women and girls, violates their rights, including to dignity, "and often constitutes torture, inhuman and degrading treatment." ²¹
- The UN Working Group on discrimination against women in law and in practice has however raised concerns about criminalisation and encouraged approaches to prostitution that ensure access to healthcare, social security and safety.²² The Working Group has more recently said there is "now sufficient evidence on the harms of any forms of criminalisation of sex work, including criminalisation of clients and 'third parties' related activities" and urged a move away from polarised debates about 'sex work' that are, in their view, counterproductive. ²³
- The Special Rapporteur on the Right to the Highest Attainable Standard of Health has warned against conflation of 'sex work' and trafficking and argued that Nordic Model style-laws "only serve to "disempower sex workers and prevent them from taking reasonable steps to ensure their own safety," ²⁴
- The previous Council of Europe Commissioner for Human Rights, Dunja Mijatović called for "an approach to sex work that is firmly based on human rights and focuses on the effective protection of sex workers' rights, prioritising their safety, agency and bodily autonomy over stereotypes and misconceptions." ²⁵

Issues for Parliament to consider

As the analysis above sets out, human rights law and standards neither require nor prohibit the approach to prostitution set out in the proposed Bill. The State has a large margin of appreciation in determining how it approaches this matter. Case law demonstrates that in this context, it is important that there is a robust and fair legislative scrutiny process.

Issues specific to consideration of the Bill

1. Participation is a key element of a human rights-based approach. This means that people have the right to meaningfully engage in decisions that affect them.²⁶ The SHRC recognises the challenges of a participatory approach to law reform, especially on matters that generate a range of opinion. The human rights principle of ensuring effective participation applies, therefore the Committee must ensure that all views are able to be heard safely and respectfully.
2. The SHRC notes that the Bill's approach is in line with some of the recommendations made in the CEDAW Committee's most recent UK report. Parliament should also consider its obligations as set out above to legislate in a way that is compliant with the European Convention of Human Rights, the Convention on the Elimination of Discrimination against Women and the UN Convention on the Rights of the Child.
3. The State's response to prostitution must also pay particular attention to the impacts of the whole legal and policy framework for migrant women or women with insecure immigration status. The Bill's Policy Memorandum highlights existing research showing the racialisation of sexual exploitation and concludes that reducing demand will reduce the risk to women, including migrant women and victims of trafficking from abroad.²⁷ While the Bill cannot directly alter the existing immigration system, and by extension to constraints on recourse to public funds, to legislate in a human-rights compliant way the Scottish Parliament should consider how it can support protection of migrant women, women with uncertain migration status and racialised women.
4. The SHRC notes that the intention of the Bill's proposals to require the provision of support services to women who are in, or have been in, prostitution is to improve service provision and protection for those women. Ensuring the effective provision of appropriate support services for all women affected by prostitution is essential in meeting their rights and entitlements. This means also ensuring that services

must be designed and resourced to support women coming into contact with state agencies and services in a way they may not have previously been, and act to address the wider and unintended consequences for some groups of women in particular dependent on their migration status.

5. Specifically in respect of migrant women, it will therefore be important that services developed in response to the 'right to support' in section 6 of the Bill are fully accessible to women with no legal migration status or with No Recourse to Public Funds visa conditions.
6. The Committee should consider the impacts of changes to law or policing policy as required by the Bill for women who are the victim of trafficking into the UK or for women who have no leave to remain in the UK. While the Bill does not and cannot change the law in this area, the Committee may wish to consider the consequences of any resultant changes to policing practice and data sharing safeguards.

Other issues to consider as delivery implications

In the UK, potential victims of human trafficking who come into contact with what are known as 'first responder' organisations, including law enforcement agencies and some charities, should be referred to the National Referral Mechanism (NRM) operated by the Home Office in order to receive targeted support, including legal advice.²⁸ Consent is required for an adult to be referred to the NRM but children must be referred. The SHRC has previously highlighted in our reporting to international human rights bodies that there has been widespread criticism about the NRM, both in terms of time taken to process referrals and flaws in the decision making.²⁹

Since 2023, the UK grants renewable residence permits to confirmed victims of human trafficking through the grant of temporary permission to stay. A temporary permission to stay may be granted to assist recovery from physical or psychological harm or to enable the victim to cooperate with a public authority, such as police. Home Office guidance provides that the length of stay is fact dependent but should not normally be granted for more than 30 months at a time for assisting with psychological / physical recovery needs and / or assisting public authorities. The Guidance notes that the UK Government considers this policy aligns with its international obligations.³⁰

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- ¹ [European Parliament, 'Resolution of 26 February 2014 on Sexual Exploitation and Prostitution and its Impact on Gender Equality' \[2014\] OJ C 2024/1767.](#)
- ² [Amnesty International: Our policy to protect sex workers' human rights: frequently asked questions](#); [HRW 'Why sex work should be decriminalised'](#)
- ³ [Scottish Government, Equally Safe Strategy \(Refreshed\) \(2023\)](#)
- ⁴ [Case of Opuz v Turkey](#)
- ⁵ [V. T. c. France \(No. 37194/02\)](#)
- ⁶ [M.A. et Autres c. France \(No. 63664/19\)](#) The judgement is only available in French. A description of the case is available in English as part of the Court's press release: European Court of Human Rights, 'Criminalisation of the purchase of sexual acts (Law No 2016-444): No violation of Article 8 of the Convention, M.A. and Others v France' (Press Release, 25 July 2024).
- ⁷ [Lars Adam Rehof, Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women \(1993\).](#)
- ⁸ [Office of the United Nations High Commissioner for Human Rights \(OHCHR\) 'Guidelines on the UN CEDAW General Recommendation No 38 Trafficking in Women and Girls in the Context of Global Migration' \(2022\)](#)
- ⁹ [Committee on the Elimination of Discrimination against Women \(CEDAW\), 'Concluding Observations on the tenth periodic report of Sweden' \(CEDAW/C/SWE/CO/10, 2021\)](#)
- ¹⁰ [Committee on the Elimination of Discrimination against Women General recommendation No. 38 \(2020\) on trafficking in women and girls in the context of global migration, 2020](#)
- ¹¹ [CEDAW, 'Concluding Observations on the eighth report of the United Kingdom of Great Britain and Northern Ireland' \(CEDAW/C/GBR/CO/8, 2019\)](#)
- ¹² [Government of the United Kingdom, 'National Referral Mechanism Guidance: Adult \(Northern Ireland and Scotland\)' \(updated 20 October 2024\)](#)
- ¹³ [UN Committee on the Elimination of Discrimination against Women, 'Concluding Observations on the tenth periodic report of Sweden' \(CEDAW/C/SWE/CO/10, 2021\)](#)
- ¹⁴ [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#)
- ¹⁵ [Convention on the Rights of the Child \(1989\)](#)
- ¹⁶ [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography \(2000\)](#)
- ¹⁷ [Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005](#)
- ¹⁸ [Declaration on the Elimination of Violence against Women General Assembly resolution 48/104 \(1993\)](#)
- ¹⁹ [UN General Assembly Resolution 77/194 Trafficking in Women and Girls \(2022\)](#)

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- ²⁰ [Beijing Declaration and Platform for Action: 4th World Conference on Women, Beijing, China, 4 - 15 September 1995](#)
- ²¹ [Prostitution and violence against women and girls Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem \(2024\)](#)
- ²² [Report of the Working Group on the issue of discrimination against women in law and in practice \(2016\)](#)
- ²³ [Eliminating discrimination against sex workers and securing their human rights Guidance document of the Working Group on discrimination against women and girls \(2024\)](#)
- ²⁴ [The Special Rapporteur on the Right of Everyone to the Enjoyment of the Attainable Standard of Physical and Mental Health's Written Submission in the matter of M.A. and Others v. France \(2021\)](#)
- ²⁵ [Dunja Mijatović 'The Commissioner's Human Rights Comment: Protecting the human rights of sex workers' \(2024\)](#)
- ²⁶ [SHRC 'Human Rights Based Approach' \(webpage\).](#)
- ²⁷ [Scottish Parliament 'Prostitution \(Offences and Support\) \(Scotland\) Bill Policy Memorandum' \(2025\)](#)
- ²⁸ [Government of the United Kingdom, 'National Referral Mechanism Guidance: Adult \(Northern Ireland and Scotland\)' \(updated 20 October 2024\)](#)
- ²⁹ [SHRC 'Comments on the 42nd National Report of the United Kingdom on the Implementation of the European Social Charter June 2023 Theme: Children, Families and Migrants' \(2023\)](#)
- ³⁰ [Government of the United Kingdom 'Temporary permission to stay: considerations for victims of human trafficking or slavery \(accessible\) \(Updated 11 August 2025\)](#)