

Questions in the call for views

1. The Bill proposes to create a new offence of paying for the performance of a sexual act by a person. The Bill (at section 1) includes details of the circumstances in which an offence would be committed. The Bill (at section 9) includes a definition of “a sexual act”. The Bill states that activities such as striptease, pole dancing, lap dancing, or other erotic performances are not included in the definition of a “sexual act”.

What are your views on this proposal?

Please note that the response from the Equally Safe Edinburgh Committee (ESEC) represents the views of the partnership members from the City of Edinburgh Council and the third sector.

The ESEC supports the creation of a new offence of paying for the performance of a sexual act by a person. In terms of the details provided in section 9:

- a. We believe that payment in exchange of the performance of any sexual activity (including sexual entertainment such as pole dancing, strip tease, lap dancing or other erotic performances) should also constitute offences. The ESEC also acknowledges the practical and legislative challenges that this inclusion would pose. However, we need to highlight that sexual entertainment and the performance of sexual acts in exchange for any financial or material benefit are very closely connected, with the sexual entertainment industry having direct linkages with the exchange of sexual favours and with prostitution. We would therefore propose that the Bill explicitly states that the procurement of sexual services in the context of, or following, sexual entertainment equally constitutes a criminal offence for those paying for sex and for those who financially benefit from the sex industry.
- b. The ESEC further believes that Section 9(1) of the Bill, it must be explicitly stated that ‘material benefit’ also includes the provision of drugs and alcohol, other essentials, housing and accommodation, also referred to as ‘sex for rent’.

2. The Bill proposes to repeal [section 46 of the Civic Government \(Scotland\) Act 1982](#). Under this section of the 1982 Act, a person who is found guilty of loitering, soliciting or importuning in a public place for the purposes of prostitution commits an offence.

What are your views on this proposal?

The ESEC fully supports this proposal. CSE is the exploitation of women's vulnerability and subsequently an abuse of their human rights. In our decades of experience supporting women affected by multiple and intersecting forms of violence and abuse, we know that exploitation through prostitution is rarely an exercise of women's 'free choice'. Section 46 specifically applies to women who solicit in public places. This is one of the most vulnerable groups of women in Scotland, the majority of whom are affected by a range of types of current and/or historical abuse and often with multiple and complex needs – including complex trauma, substance use and domestic abuse. In the ESEC's experience, women who solicit for the purposes of prostitution do so as a last resort, a 'survival strategy' and often at immense risk to their lives and wellbeing. On-street prostitution traps women in a cycle of violence and trauma that can be insurmountably challenging to escape. We firmly believe that women who solicit for prostitution are victims/survivors of exploitation, and the law needs to reflect this by removing any provisions that would further victimise them.

3. The Bill proposes to quash historic convictions under [section 46 of the Civic Government \(Scotland\) Act 1982](#), which relates to the offence of loitering, soliciting or importuning in a public place for the purposes of prostitution.

What are your views on this proposal?

The ESEC is fully supportive of the quashing of any previous Section 46 convictions for soliciting for prostitution for women. We would specifically want to clarify that we would see any previous convictions expunged rather than listed as 'spent', as this can have long-term negative impacts on women. Seeking employment that requires enhanced PVG disclosures checks might disclose prior Section 46 offences and this can prevent women not only finding employment but also exiting prostitution altogether. The only way to ensure that women can exit prostitution and not be trapped in a cycle of abuse is to minimise barriers to alternative employment as much as possible, and the expungement of prior Section 46 offences is, in our view, the only way to achieve this.

In terms of the specific provisions within the legislation, the ESEC would also like to urge that under provision 5(2), any information provided to Scottish Ministers regarding records or databases that have been amended to reflect the quashing of convictions under Section 4(1) of the 1982 Act does not include sensitive information that might identify any individual persons.

Additionally, under section 5(3) and 5(4) we urge any guidance that will arise from this Bill potentially becoming an Act includes information on how any letter of confirmation is conveyed to individuals in as private a manner as possible. Any communication containing information about prior convictions of any nature is extremely sensitive. Any information on Section 46 Offences is particularly sensitive as it has the potential to

compromise the health, safety, employment and other life prospects of people (particularly women) who have made the request to quash. It is paramount that this information is communicated to individuals in as private and confidential a manner as possible to prevent risks being generated through the provision of this service.

4. The Bill proposes (at section 6) to place a duty on the Scottish Ministers to ensure that a person who is or has been in prostitution is provided with assistance and support. The Bill sets out a non-exhaustive list of the types of assistance and support that may be provided.

What are your views on this proposal?

Anyone who has been exploited through prostitution should have their rights to the right support enshrined in legislation. In our view, this should apply to everyone equally, including women with No Recourse to Public Funds (NRPF). Ensuring that women with NRPF are supported is fundamental in ensuring equity of access to services and to reducing the risks of further abuse and exploitation for women who might be currently excluded from other services.

There needs to be specialist exiting service provision for women exploited through prostitution in the proposed Bill. This includes specialist exiting service provision available flexibly on an outreach basis. Our experience has taught us that traditional service provision can be challenging for women to access, and often it is more productive for services to go to the women rather than the other way around.

Currently, Scotland experiences a 'postcode lottery' in terms of where VAWG services are located, and this landscape becomes increasingly challenging when seeking specialist support to exit prostitution given the complexities and sensitivities involved in this work.

The ESEC believes that the provision of specialist exiting support first and foremost is essential to any person who has ever sold or exchanged sex under any circumstances and context(s). Specialist support should be the first port of call as it can best identify the needs of commercially sexually exploited people and make the necessary risk and needs assessments as well as onward referrals and signposting.

However, the increasingly challenging funding landscape has seen existing specialist services operating on ever-decreasing resources and struggling to provide the comprehensive and holistic support that women require in order to exit prostitution. There also needs to be considerable investment in existing specialist exiting services, as well as investment in non-specialist VAWG services to be able to identify exploitation through prostitution and provide appropriate support, referrals and signposting. Resources would also be hugely appreciated if used to create standard best practice guidance on CSE for all specialist and non-specialist services beyond VAWG services.

The Scottish Government's current strategy '[Prostitution – challenging and deterring men's demand](#)' aims to minimise harm to women by creating a coordinated local and national response to the needs of women exiting prostitution. Although we agree that coordination is essential in this work, we do not feel that this current proposal adequately challenges men's demand for prostitution. However, we also don't entirely agree with the proposal's explanation that '*a harm reduction approach in relation to prostitution is [...] questionable*' (p.32). Harm reduction cannot be the only way forward, but there is a place for it – for example in using proceeds from fines against those purchasing sex and sexual services to supplement the cost of delivering specialist exiting services to women.

However, the ESEC would urge for scrutiny in the administration of any funding for exiting services for women exploited through prostitution. This is to ensure that any work taking place aligns with the principles of Equally Safe and is committed to ending CSE in Scotland rather than supporting the decriminalisation of activities relating to CSE. We would also urge the consideration of additional support and resources be allocated for the professional support of workers responsible for supporting women exiting CSE to ensure that women receive a high standard of service.

Additionally, we believe that this needs to be reflected beyond Section 46 of the Civic Government (Scotland) Act 1982. Should the proposed Prostitution (Offences and Support) (Scotland) Bill become an Act, we would expect any intervention and response to women soliciting for prostitution to align with the understanding that women who solicit for prostitution are victims/survivors of exploitation and not criminals. This would include the understanding that women affected by CSE are seen as vulnerable witnesses and therefore automatically entitled to special measures when invited to provide evidence in court.

Lastly, we would like to highlight Section 6(6) of the Bill. Although we support the legal right of anyone who has ever faced CSE to receive support, we believe that further clarity is needed as to any conditions placed on what kind of support can be provided to people who leave Scotland, and by whom this support will be provided. The reasoning behind this is that VAWG services in Scotland are already overstretched, with little statutory support and resources. The expectation on them to be legally required to provide support to commercially sexually exploited women who have left Scotland not only increases the pressure on those services but can also create a 'bottleneck' – where support is provided to women who have left the country at the expense of women who are in Scotland and in urgent need of support. There is an added challenge for services in Scotland to provide support and signposting to women who have moved outside of the UK; if this applies, then it will be increasingly challenging for services to refer and appropriately signpost women to relevant services outside the UK.

5. Do you have any other comments on the Bill which you have not already covered elsewhere?

Please read these important notes below.

The ESEC fully supports the introduction of legislation criminalising the purchase of sexual services, establishing legal rights to support and supporting specialist exiting service provision.

There are some key issues we would like to highlight, which we do not feel are currently sufficiently explicit in the Bill:

1. The first issue is online CSE. There are currently a multitude of websites facilitating the commercial sexual exploitation of women. These include 'personal ads' or 'community' websites, as well as online escorting websites. We believe that, although it would stand to reason that for the purposes of the Bill (under section 1: "Offence of paying for the performance of a sexual act by a person") this is not explicit enough in the Bill. We would therefore ask for further clarity around the responsibilities of online CSE websites and how they will be treated under this new proposed legislation.
2. The second issue similarly addresses online CSE from the perspective of sex buyers. A number of websites exist for the sole purpose of (primarily male) sex buyers writing reviews on their experiences with commercially sexually exploited women. Strictly speaking, such websites do not contravene the provisions of this Bill. However, in order to provide reviews, the users of those websites have committed what would be termed an offence under this Bill. Therefore, there needs to be considerations around how this proposed Bill will be applied to sex buyers who write reviews of exploited women on these websites, as well as on the websites themselves who could be argued to encourage and perpetuate CSE.