

**REPORT**

To: CORPORATE SERVICES COMMITTEE		Subject: CRIMINALISATION OF THE PURCHASE OF SEX (SCOTLAND) BILL (2)
From: HEAD OF LEGAL SERVICES		
Date: 3 January 2013	Ref: TB	

**1. PURPOSE OF REPORT/INTRODUCTION**

1.1. The purpose of this report is to seek homologation by Committee of the response to the Consultation on Criminalisation of the Purchase of Sex (Scotland) Bill. The Council's response to the Consultation was sent to the Scottish Parliament on 21 December 2012.

A copy of the Consultation Paper is available in the Members' Library.

**2. BACKGROUND**

2.1. In 2010 Trish Godman MSP lodged amendments to the Criminal Justice and Licensing (Scotland) Bill to criminalise the purchase of sex and related activities. After taking written and oral evidence on the amendments, the Justice Committee agreed that further consultation should be carried out. Trish Godman subsequently consulted on a proposal for a Bill to create the following three offences:

1. Engaging in a paid-for sexual activity;
2. Advertising paid-for sexual activities; and
3. Facilitating a paid-for sexual activity.

The majority of those responding to the question of who should be criminalised agreed that only the purchaser, and not the prostitute, should be guilty of committing an offence. The main reasons given were: tackling demand; acknowledgement that prostitutes are vulnerable and victims of abuse and; that the proposed Bill would bring indoor prostitution in line with legislation covering street prostitution where purchasers can be prosecuted.

Rhoda Grant MSP Member for Highlands and Islands Region, is taking forward the proposal to criminalise the purchase of sex (i.e. an offence of engaging in a paid-for sexual activity or paying for sex) with the aim not only of creating an offence in Scotland that penalises the purchase of sex is also to change the attitudes of those who make a choice to purchase sex.

**3. PROPOSALS/CONSIDERATION**

3.1. The proposed Bill will make buying sex from a prostitute illegal in Scotland. The offence will target demand for sex and will apply in any location where sex can be purchased, for example on the street and off the street i.e. in brothels and massage parlours or flats.

The proposed Bill will be the first legislation in Scotland which penalises the act of buying sex, rather than selling it, and so targets purchasers rather than prostitutes. The 2007 Act criminalised soliciting or loitering in a public place with the intention of purchasing sex. It was promoted primarily to protect communities from the nuisance, alarm or offence arising from street prostitution-related activities in or near public places, whether caused by seller or purchaser. Creating an offence will strengthen the existing legislative framework against purchasers.

The proposed Bill will target the “purchasing” (rather than the “selling”) side of this transaction, by making it an offence knowingly to engage in a sexual activity with a prostitute or to pay for someone else to engage in a sexual activity with a prostitute (whether or not the person engaging in paid-for sexual activity knows it has been paid for).

### **3.2. Nature of the Offence**

Prostitution involves a commercial transaction related to sexual activity. It counts as prostitution whether or not it is the customer who makes the payment (or someone else on their behalf) and whether or not it is the prostitute who receives the payment (or someone else on their behalf).

Prostitution acts as a serious barrier to equality and dignity by reducing sexual activity and individuals to a commodity that can be exchanged for money or goods. The buying of individuals for sexual purposes creates a form of sexual servitude.

### **3.3. Definition of Payment**

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 section 9(2) defines “payment” as “any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount”. The payment does not need to involve money actually changing hands, but could involve the discharge of an obligation to pay – such as the waiving of a debt – or provision of goods or services free of charge or at a reduced cost – for example providing food, alcohol or accommodation, or supplying illegal drugs free or for less than street value. It might also include payment to a nominated third party.

## **4. THE COUNCIL’S RESPONSE TO THE CONSULTATION PAPER**

4.1. See Appendix A.

## **5. CORPORATE CONSIDERATIONS**

5.1. It has been suggested that the proposals would have a (small) financial impact upon the Scottish Government. There would be a financial implication for Local Authorities arising from increased requirements on social work services and an increased workload to the Courts as cases are brought forward for the new offence. The majority of the costs would be incurred in enforcing the new offence.

The Bill has the potential to reduce the levels of demand for prostitution as it becomes known that the police will arrest those who engage in paid-for sex activity, which would result in cost-savings from a reduction in the number of cases brought under the new offence.

6. **RECOMMENDATIONS**

6.1. The Committee is asked to homologate the Council's response, as set out in Appendix A to this report.



**Head of Legal Services**

For further information on this report please contact June Murray on telephone 01698 302295.

**APPENDIX A**

**CONSULTATION ON THE CRIMINALISATION OF THE PURCHASE OF SEX (SCOTLAND)  
BILL(2)**

**QUESTIONS**

<p>Q1:</p>	<p>Do you support the general aim of the proposed bill? Please indicate "yes/no/undecided" and explain the reasons for your response.</p> <p><b>Yes, the Council supports the general aim of the proposed Bill. Prostitution has the potential to be harmful not only to those who are exploited but also to their families, including their children and to society as a whole.</b></p> <p><b>The Bill is also likely to start cultural shift in Scotland where the purchase of another person is socially unacceptable.</b></p>
<p>Q2:</p>	<p>What do you believe would be the effects of legislating to criminalise the purchase of sex (as outlined above)? Please provide evidence to support your answer.</p> <p><b>Based on the research referred to it appears that criminalisation of the purchase of sex would act as a deterrent to prostitution.</b></p>
<p>Q3:</p>	<p>Are you aware of any unintended consequences or loopholes caused by the offence? Please provide evidence to support your answer.</p> <p><b>No</b></p>
<p>Q4:</p>	<p>What are the advantages or disadvantages in using the definitions outlined above?</p> <p><b>The definitions are appropriate. The advantage is that activities which are not strictly 'sexual intercourse' but which are sexually based would be caught by the legislation. No disadvantages are perceived as it would be for the courts to determine whether a sexual activity has occurred.</b></p>
<p>Q5:</p>	<p>What do you think the appropriate penalty should be for the offence? Please provide reasons for your answer.</p> <p><b>It is suggested that the courts should have greater discretion re penalties perhaps to accord with the Swedish penalties. Greater discretion would be particularly appropriate in case of repeated offences.</b></p>
<p>Q6:</p>	<p>How should a new offence provision be enforced? Are there any techniques which might be used or obstacles which might need to be overcome?</p> <p><b>Utilising the experience of existing agencies and encouraging the establishment of bespoke agencies eg. agencies like Glasgow Community and Safety Services.</b></p> <p><b>Agencies might have to share information to identify purchasers and this could be an issue.</b></p>

<p>Q7:</p>	<p>What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?</p> <p><b>There are likely to be financial implications for local authorities arising from increased requirements on social work services and in the event that bespoke agencies are created to promote the legislation. Welfare reform has the potential to impact on the number of people involved in this activity i.e. selling sex to survive.</b></p>
<p>Q8:</p>	<p>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?</p> <p><b>The council would anticipate that the proposal would have a positive impact on equality.</b></p>