



## **An organisational response to the consultation by Rhoda Grant on the Criminalisation of the Purchase of Sex (Scotland) Bill (2)**

**The International Union of Sex Workers  
December 2012**

**Policies that solve problems  
are based in reality and on evidence.**

The red umbrella is the symbol of the international sex workers' rights movement. Red for our strength and our pride, it represents both the literal shelter from the rain needed when working on the street, and a symbolic protection from the prejudice, discrimination and abuse still endured by sex workers everywhere – which we resist, together.

The IUSW is composed of people currently working in the sex industry, together with allies who respect our equal entitlement to human rights and freedom from discrimination and supporters of policy based on evidence and in reality.

We would like our organisational response to the consultation to be included in the public record and in any summary or analysis of findings.

Q1: Do you support the general aim of the proposed Bill? Please indicate “yes/no/undecided” and explain the reasons for your response.

No.

The section on the “objective of the proposed Bill” presents the author’s personal views as if they are fact: “prostitution is inherently harmful and dehumanising... demand creates a market where vulnerable individuals are compelled and/or forced into a cycle of exploitation that places them, and their families, at risk... Prostitution acts as a serious barrier to equality and dignity...” The author may believe her opinions to be true, but that does not make them actually the truth. The author seems ignorant of the overwhelming evidence about the reality of prostitution from both academics and frontline services and the global movement of sex workers self-organising for our human rights and safety, with over 100 different organisations across six continents. This movement recognises the diversity of experiences within the sex industry and seeks to remedy the abuses which can take place by promoting recognition that people in the sex industry are entitled to the same human, civil and labour rights as others. When people in the sex industry talk about what we ourselves need, we ask that people “recognise sex work as work, oppose the criminalisation of sex work, and support the self-organising and self-determination of sex workers”.  
(<http://www.nswp.org/members>)

Simplistic legal solutions fail to solve complex social problems. However, the author shows no knowledge or understanding of the diversity of people who sell sex and our experiences. Research finds a range of reasons people enter and remain in sex work.

**There is no evidence that the majority of sex workers are unwilling.**

**There is no evidence that most purchasers of sexual services wish to buy services from the unwilling.**

**There is no evidence that demand for commercial sex is the primary cause of trafficking: trafficking occurs in the sex industry for the same reasons it occurs in other industries.**

The author demonstrates no awareness of the complexities of prostitution and the social and legal framework in which it is placed. For example, there is no acknowledgement of the role of stigma or marginalisation that are separate from our experience of providing sexual services to clients.

Although the proposed legislation will be framed in gender neutral terms, the author clearly states (point 1.1) “I believe that prostitution in Scotland is a form of violence against women.” The IUSW believes all women have a right to self-determination: to choose how we make a living and what we do with our bodies. The Charter of Fundamental Rights of the European Union states “everyone has the right to liberty and security of person” – i.e., that it is a fundamental right to decide for oneself what one does with one’s body - and, furthermore, the Charter protects “the right to engage in work and to pursue a freely chosen or accepted occupation.”

We evaluate policy and practice on the grounds:

- does it promote the human rights and safety of people in the sex industry?
- does it respect our consent to sexual activity?
- does it facilitate the reporting and prosecution of crimes of violence (e.g., robbery, sexual assault, coercion, trafficking) against people in the sex industry?
- does it challenge the stigmatisation and social exclusion of people who sell sexual services?
- does it reflect the evidence base on prostitution and related issues?

**It is only when we base policy on evidence and in reality that we will actually solve the problems associated with the sex industry.**

Effective policies to challenge violence against people in the sex industry have been developed in Liverpool. With the assistance of specialist services, Liverpool police are achieving a 68% detection rate for rapes committed against street sex workers reported to the police. 90% of cases for violence against sex workers that went to court during 2005 to end March 2009 resulted in convictions. An essential step in this process is to treat crimes against sex workers as hate crime, recognising that often we are targeted as a result of social attitudes that perpetrators often feel legitimise their crimes against us.

The UK Network of Sex Work Projects runs the nationwide Ugly Mugs third party reporting scheme that enables sex workers to report crimes against us without fear of arrest by the police who prioritise prosecution over our protection. This gives us the first real time data on crimes against sex workers.

Q2: 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.

Despite the author’s unsubstantiated assertions that all sex work is violence against women, we can tell the difference between safe, fair and honest working environments and those who coerce, exploit and abuse us; between those who pay us for sexual services clearly negotiated and those who take advantage of our criminalisation and social exclusion to rape, rob or assault us. Broadly drafted legislation allows abuses to flourish because they are poorly targeted.

Criminalising paying for sex is an inversion of the old prejudice “you can’t rape a hooker”. It sends the message that our consent to sex does not deserve to be treated with respect, does not count.

In addition evidence shows that criminalisation results in increased harms to the health, rights and safety, not just of people who sell sex, but of the wider community. Criminalisation promotes the social exclusion of sex workers and is widely acknowledged by specialist services as impeding their work to deliver support those who need it.

It is recognised as a driver for HIV at the highest level: executive director of UNAIDS Michel Sidibe writes “We must transform the AIDS response so that it works for people. This means protecting sex workers, men who have sex with men, transgender, injecting drug users and women.” ( <http://www.thejakartapost.com/news/2009/08/11/hope-reality-transforming-aids-response.html> )

UN Secretary General Ban Ki-moon states “In countries without laws to protect sex workers, drug users and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment and fewer deaths. Not only is it unethical not to protect these groups; it makes no sense from a health perspective. It hurts all of us.” ( [http://www.un.org/apps/news/infocus/sgspeeches/search\\_full.asp?statID=297](http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=297) )

World Health Organisation guidelines “recommend that countries move towards the decriminalisation of sex work and improve sex workers’ access to health services” ( <https://twitter.com/WHO/status/278792874898907136> )

Criminalising our clients does nothing to increase the range of options available to people who sell sex; in fact, it actively works to reduce them by decreasing our income and thus the resources available to us. **Evidence shows that clients are not the primary perpetrators of violence against people who sell sex.** A substantial amount of violence to street sex workers comes from members of the general public, such as groups of youths, aggrieved local residents and vigilantes. Attacks include shouted abuse, projectiles (e.g. cups of urine) thrown from cars, and assaults requiring hospital treatment.

Much violence experienced by indoor sex workers is through robbery. Gangs make a rational choice, in the expectation of a small number of people on the premises, cash available, reluctance to report, and the knowledge that if the robbery, rape or other assault is reported, the police may be dismissive in their response, the Crown Office and Procurator Fiscal Service wary of prosecuting due to low expectations of a conviction, and judge and jury may be influenced by their perceptions of sex work in the unlikely event a case does get to court. **Criminalising clients as a whole is the opposite of targeting those who actually commit acts of violence against us.**

Existing evidence from the UK shows that crackdowns on kerb-crawling demonstrate a correlation with increased violence against street sex workers. Aggressive prosecution of kerb-crawlers does not increase the options and support available to street sex workers, but increases antagonism between street workers and police. The clients deterred by knowledge of police campaigns against kerb-crawlers are the most law-abiding; such campaigns do nothing to affect the behaviour of the worst. An individual intending to assault, rape, abduct, rob, or kill will not be prevented by the prospect of a fine for kerb-crawling. There is evidence that a small minority of clients’ excitement is increased by a sense of doing something outside the law, so this proposal could, by increasing the risk, increase

their desire to pay for sex. A smaller number of clients does nothing to reduce the amount of money women need, so kerb crawling crackdowns mean street sex workers

- work longer hours
- compete more aggressively with other street workers
- are more likely to cut prices in order to secure a client
- take greater risks and engage in activities they would prefer to avoid, including sex without a condom.
- work in more isolated locations and further from other sex workers
- have less time to assess potential clients or agree prices, boundaries, safe sex and other limits so are more likely to go with clients without negotiation

Women are more likely to find themselves in a situation they would have declined with more time to make a decision. Disrupted working hours and dispersal over a greater geographical area makes it more difficult for outreach workers to contact sex workers for safe sex counselling, drug rehabilitation or support in exiting prostitution. As a result of dispersal over a wider area, more aggressive competition to attract clients and between women, and the longer hours needed to generate the same amount of money, kerb-crawling crackdowns not only harm women selling sex but result in greater impact on communities. In addition, women revert to other forms of crime as a way to make up the money that cannot be earned from sex work. If it is more difficult to make money on the street, some women will trade sex for drugs in crackhouses, a profoundly unsafe environment, which gives them far fewer choices than earning cash which they can use for purposes other than drug purchase. Thus, kerb-crawling crackdowns may actually increase women's drug consumption.

We have seen from Sweden the effects of wholesale criminalisation of clients. This policy is enthusiastically promoted by the Swedish government, but has received a less positive reception from Swedish sex workers and academics. For example, the claimed effects of decreasing prostitution and trafficking are disputed. The Swedish National Board of Health and Welfare has carried out surveys since the criminalisation of clients and in 2007 said "This is the third time we have done such a survey ... once again ... it is difficult to get a clear cut picture on the extent of prostitution." There have been reports of increased trafficking and eviction of sex workers by landlords informed by police they may be prosecuted as profiting from prostitution. Even the Anna Skarhed, Swedish Chancellor of Justice, seems to accept that the evidence base for the effects of the law on the sex industry itself is dubious but that it has met the aim of promoting the exclusion of people who sell sex, telling a reporter from the Swedish National Council for Crime Prevention that "Some have objected to the scientific validity of our investigation. Which is fine, but in my view we have been able to show that the law has had a effect in accordance to the objective: to show that we don't want prostitution in society." Evaluation of support services for people in the sex industry has raised concerns about exclusion of sex workers who do not wish to exit prostitution from services or told that they will only be offered help if they stop selling sex.

Q3: Are you aware of any unintended consequences or loopholes caused by the offence? Please provide evidence to support your answer.

In addition to the harmful consequences described above, this law will facilitate trafficking and coercion of people who sell sex.

There is no evidence that demand for commercial sex is the primary cause of trafficking: trafficking occurs in the sex industry for the same reasons it occurs in other industries.

Indeed, "...we could almost say that supply generates demand rather than the other way about... attempts to suppress the prostitution market, whether focused on sex workers or their clients, necessarily implies subjecting those who sell sex to what Radin describes as "the degradation and danger of the black market ... *it is ... hard to see why anyone genuinely concerned with protecting and promoting human rights would place measures to tackle consumer demand for commercial sex at the top of their policy agenda*" (Men, middlemen and migrants: the demand side of sex trafficking', (O'Connell Davidson, 2006) <http://www.eurozine.com/articles/2006-07-27-davidson-en.html>, italics ours)

Elsewhere, O'Connell Davidson explains how criminalised markets increase harm: "...three related factors are key to ... exploitative conditions ... (a) The unregulated nature of the labour market segments in which they work; (b) the abundant supply of exploitable labour and (c) the power and malleability of social norms regulating the behaviour of employers and clients...the absence of effective regulation is one of the factors that help to create an environment in which it is possible and profitable to use unfree labour." (Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study (O'Connell Davidson, 2003 [http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&cPath=17\\_20&products\\_id=226](http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=17_20&products_id=226) )

Measures which improve the situation of migrant workers in other industries will improve the situation of migrants in the sex industry. Trafficked persons are not found in businesses which operate openly and where conditions are monitored.

However, trafficking within the sex industry *is* different from that in other sectors since clients are able to interact privately with victims and build relationships of trust with them. There are numerous cases of clients assisting victims of trafficking – for example, in the Oriental Gems case, one of the largest trafficking investigations in London in recent years, part of the reason the prosecution was viable was due to evidence from a victim of trafficking freed from slavery as a result of a client paying £20,000 of her debt.

**Criminalising clients ensures that the vast majority of people who are in a position to report anxieties about coercion and trafficking for sexual exploitation face enormous disincentives to do so.**

Q4: What are the advantages or disadvantages in using the definitions outlined above?

As sex workers, we have been privileged to see the range and creativity of human desire, from the socially sanctioned heteronormativity of penis in vagina intercourse to the vast array of fetish, kink and BDSM activities. The author seems to seek the validation of a "reasonable person" to reinforce her views of what constitutes acceptable sexual activity. In particular, people with disabilities, many of whom have limited options to develop social and sexual relationships due to discrimination and literal and metaphorical obstacles placed in the way of their full participation in society, may be forced by lack of mobility, sensory impairment or pain management, amongst other issues, to explore ways of experiencing sensual pleasure that might not occur to the author's hypothetical "reasonable people". In addition, the experience of some sex workers with some disabled clients demonstrates the absurdity of viewing all prostitution as violence – for example, when a woman is paid to have sex with a man who is paralysed from the neck down and unable to breathe without a machine, he clearly is not inflicting violence upon her and is completely incapable of doing so.

Q5: What do you think the appropriate penalty should be for the offence? Please provide reasons for your answer.

None. The sexual behaviour of consenting adults requires no regulation by the state. The Charter of Fundamental Rights of the European Union states that “everyone has the right to respect for his or her physical and mental integrity.”

**Legislation that disregards our consent to sex is a fundamental disrespect of our physical and mental integrity.**

Q6: How should a new offence provision be enforced? Are there any techniques which might be used or obstacles which might need to be overcome?

As we believe that our consent should be treated with respect, we do not believe paying for sex should be an offence and therefore requires no enforcement. Enforcement of current criminalisation – for examples, the prohibition of freedom of association that makes it illegal to work together – endangers sex workers and creates distrust in the authorities. The Universal Declaration of Human Rights states “everyone has the right to freedom of peaceful assembly and association” and that “all are ... entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” The Charter of Fundamental Rights of the European Union states “everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests ... everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions.” This protects sex workers’ right to dispose of our income as we wish and to pay for services related to our work – for example, arranging premises or booking our appointments.

Q7: 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?

The IUSW receives no funding and all work is done by volunteers, mostly current, active sex workers across the UK. This Bill directly seeks to decrease our income and to enshrine discrimination against us in statute. It will increase the stigma we endure and impede those organisations which seek to offer support informed by service user need, rather than driven by ideology and the desire to impose their aims – for example, exiting prostitution – upon us. The scarce resources of needs-led projects would be further depleted by the increased difficulties of locating and building relationships of trust with people who sell sex. Additionally, if sex workers in Scotland experience the same prejudiced and hurtful behaviour from services in Scotland as sex workers do from Swedish services (Levy, J, 2011, Impacts of the Swedish Criminalisation of the Purchase of Sex on Sex Workers, Presented at the British Society of Criminology Annual Conference, Northumbria University, 4th July), there may be increased uptake of services outside Scotland by Scottish sex workers who are not receiving the help they need in their home country.

Q8: 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?

This Bill is founded on as lack of understanding of equality issues within the sex industry, demonstrating no knowledge of the experience of male and trans sex workers, the frontline services that support them or the evidence base relating to these issues.

It also entrenches unequal treatment for women in the sex industry compared to other women. It has always been seen as acceptable to discriminate against women, particularly women who engage in sexual behaviour that contravenes standards of approved feminine behaviour. For example, women who masturbate have been subject to clitoridectomy, unmarried mothers imprisoned in institutions such as “Magdalene laundries” and lesbians forced to undergo treatment for insanity. Despite the enormous changes in social attitudes, for many, it has remained acceptable to discriminate against and disregard the voices of women who sell sex.

**Women will not achieve equality while a woman’s sexual activity is still used as justification for social exclusion and legally enshrined discrimination.**

#### **Appendix.**

#### **An examination of the evidence base used in the consultation document.**

Of the documentation cited, twenty nine sources are from government documents (e.g., Hansard quotes, policy documents, consultation papers and selected responses to consultations), two are from ACPOS and one refers to an international convention. Six citations are from journalistic articles.

*Only five are from papers published in academic journals or presented at academic conferences; only one of these was published in the past five years.*

In contrast, the author cites the WSP publication “Challenging Men’s Demand in Scotland” six times. The “Background” section of this document states “Melissa Farley of PRE and Jan Macleod of WSP together initiated this research project ... Melissa Farley provided the questionnaires, trained interviewers, reviewed the social science literature, and consulted with Lynn Anderson and Jan Macleod throughout the data collection and analysis.”

Farley has expressed distasteful and contemptuous attitudes to women who sell sex – she refers to indoor sex workers as the “house ni\*\*\*\*s” of the sex industry (Indoor Versus Outdoor Prostitution in Rhode Island, Farley, 2009 [http://www.prostitutionresearch.com/how\\_prostitution\\_works/000219.html](http://www.prostitutionresearch.com/how_prostitution_works/000219.html) ) and jokes about our experience of sexual violence: “I like getting fucked by the football team, the fraternity brothers, and law students at graduation parties. I realized that gang rape could be a transcendental experience.” (Why I Made the Choice To Become A Prostitute, Craft and Farley, 1996 <http://www.prostitutionresearch.com/WhyIMade.html> )

Serious concerns have been raised about Farley's validity as a researcher. Complaints have been made that her work has breached the Code of Ethics of the American Psychological Association (professional organization that represents psychologists). Academics have questioned Farley's competence, with one critique of her work attracting seventeen signatories from four countries. Judge Himel of the Ontario Supreme Court has stated "I find that some of the evidence tendered on this application did not meet the standards set by Canadian courts for the admission of expert evidence... I found the evidence of Dr. Melissa Farley to be problematic... For example, Dr. Farley's unqualified assertion in her affidavit that prostitution is inherently violent."

The consultation author is either unaware of or has chosen to ignore the vast array of academic data on the sex industry that examines issues of violence, migration and trafficking, reasons for selling sex, age of entry into prostitution etc..

In the hope Ms Grant wishes to make policy from an informed perspective, we include an initial reading list relevant to some of the issues she claims to wish to address:

The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers (Abel, Fitzgerald, Brunton, 2006)

Taking the crime out of sex work: New Zealand sex workers' fight for decriminalisation (Abel et al, 2010)

Sex at the Margins: Migration, Labour Markets and the Rescue Industry (Agustin, 2007)

Sex workers and Violence Against Women: Utopic Visions or Battle of the Sexes? (Agustin, 2011)

The Price of Sex: Prostitution, policy, and society (Brooks-Gordon, 2006)

Why Norway banned the purchase of sexual services: Ideas and prostitution policy (Bucken-Knapp & Karlsson Schaffer, 2010)

Sex Work Now (Campbell & O'Neill, 2006)

Defining Sex Work as Work for Human Rights and Harm Reduction (Cusick, 2007)

The Swedish Sex Purchase Act: Claimed Success and Documented Effects (Dodillet & Östergren, presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011)

The impact of organised crime in the UK: revenues and economic and social costs (Dubourg & Prichard, 2003)

Hit And Run: Anti Trafficking In Thailand (Empower Foundation, 2012)

Whats the Cost of a Rumour? (Global Alliance Against Traffic in Women, 2011)

Sex Work and the Law (Harcourt, Egger, Donovan, 2005)

Home Office Research Study 279 Tackling Street Prostitution: Towards an holistic approach (Hester & Westmarland, 2004)

Trafficking in Human Beings and the 2006 World Cup in Germany (International Organisation for Migration, 2006)

Health needs and service use of parlour-based prostitutes compared with street-based prostitutes: a cross-sectional survey (Jeal & Salisbury 2007)

Beyond gender: an examination of exploitation in sex work (Jenkins, 2009)

The Swedish Law to Criminalise Clients: a Failed Experiment in Social Engineering (Jordan, 2010)

Slavery, Forced Labour, Debt Bondage, and Human Trafficking: From Conceptual Confusion to Targeted Solutions (Jordan, 2011)

Violence and Sex Work in Britain (Kinnell, 2008)

Four hundred thousand Swedish perverts (Kulick, Journal of Lesbian and Gay Studies, 2005)

Trafficking, demand and the sex market (Lin Lean Lim, ILO, 2004)

Migrant Workers in the UK Sex Industry (Mai, 2009)

Prostitution, Power and Freedom (O'Connell Davidson, 1998)

Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study (O'Connell Davidson, 2003)

Men, middlemen and migrants: the demand side of sex trafficking, (O'Connell Davidson, 2006)

Will the real sex slave please stand up? (O'Connell Davidson, 2006)

Contested Commodities (Radin, 1996, *quoted in* Men, middlemen and migrants: the demand side of sex trafficking', (O'Connell Davidson, 2006)

Exploring diversity within the sex industry: an investigation into the structure and composition of sex markets in Britain (Pitcher, 2010)

Risk of sexually transmitted infections and violence among indoor-working female sex workers in London: the effect of migration from Eastern Europe (Platt, Grenfell et al, 2011)

Regulating sex for sale: Prostitution policy reform in the UK (Phoenix, editor, 2009)

Experiences of commercial sex in a representative sample of adults (Rissel et al, 2003)

Dollars Are a Girl's Best Friend? Female Tourists' Sexual Behaviour in the Caribbean (Sánchez Taylor, 2001)

Sex Work: A risky business (Sanders, 2004)

Male Sexual Scripts: Intimacy, Sexuality and Pleasure in the Purchase of Commercial Sex (Sanders, 2008)

Paying for Pleasure: Men Who Buy Sex (Sanders, 2008)

Prostitution: Sex Work, Policy and Politics (Sanders, O'Neill, & Pitcher, 2009)

Sex Work Stigma: Opportunist Migrants in London (Scambler, 2007)

The Subject of Prostitution: Sex/Work, Law and Social Theory (Scoular, 2009)

Living and working in areas of street sex work (Scoular, Pitcher, Campbell, Hubbard & O'Neill, 2006)

Prostitution, women, and misuse of the law: the fallen daughters of Eve (Self, 2003)

Sex Work, Migration, Health (TAMPEP, 2009)

Navigating Risk: Lessons From the Dockside Sex Trade for Reducing Violence in South Africa's Prostitution Industry (Trotter, 2007)

Building Partnerships on HIV and Sex Work (UNAIDS, 2011)

What happens to women who sell sex? Report of a unique occupational cohort (Ward & Day, 2006)