



ZERO TOLERANCE

## **Human Trafficking and Exploitation (Scotland) Bill Scottish Parliament Consultation response: February 2015**

### **Introduction**

1. Zero Tolerance is a national Scottish charity working to prevent violence against women and girls (VAWG). We work with individuals and communities in a variety of contexts, as well as Government and the media in order to address the root causes of violence against women by bringing about a change in the attitudes which normalise and support it.
2. Our focus in responding to this consultation therefore is on the provision of support for victims of trafficking (VoT), their criminal and immigration or asylum status as well as the wider exploitation of women and girls in the sex industry – an industry which has close links with traffickers.
3. Overall, Zero Tolerance welcomes the draft Human Trafficking and Exploitation (Scotland) Bill and recognises the serious commitment which has been taken by the Scottish Government and the Scottish Parliament in tackling this issue. We also note the laudable efforts which have been taken to ensure that the bill provides a victim focused response, with multi-agency solutions to a complex problem.

### **Support provisions**

4. Overall, we support the placing of a duty on Scottish Ministers to secure the provision of relevant support and recovery services for VoT's in order to ensure that their rights are ensured in statute, but with the following caveats;
5. Section 8 (3a) provides flexibility for the length of support provision dependant on individual need, and we would like to seek clarification on whether this will be

inclusive of the period before a potential VoT consents to the National Referral Mechanism (NRM), in order to provide the best possible early intervention.

6. A report published in 2013 by the European Commission<sup>1</sup>, found that between 2008 and 2010, 80% of all VoTs were women and children and of the total number of VoTs, 62% were trafficked for the purpose of commercial sexual exploitation. We believe it is important to recognise therefore that in addition to the list of potential support available to victims contained in Section 8 (4) of the bill, further consideration and a clear requirement for specialist support of a gender specific nature should be provided, all of which recognise the role of trauma, exploitation and sexual abuse.
7. Furthermore, we would strongly encourage Ministers and Parliamentarians to consult on a minimum guideline time at a later date if appropriate which takes into account that support should be available where possible for as long as the victim requires it, beyond the confines of the NRM time period of 45 days (Section 2b:i).
8. We would emphasise the inclusion of “safe return” over the use of the word “repatriation” in Section 4 (h) so that a safety plan can be undertaken by all key partners to prevent re-victimisation for those who are unable to remain in the UK.
9. As Scotland does not have full powers over immigration and refugee applications, we would urge the Scottish Parliament to ensure the Scottish Government work closely with the UK Border Agency to ensure that dignity is maintained for VoT’s by treating them as potential victims of a crime rather than immigration cases, which campaigners have criticised in the past, and which have significant safety implications for those involved<sup>2</sup>.
10. We support placing a duty on the Lord Advocate to publish guidance, however the guidance for crown prosecution Section 7 (2) stipulates that the lord advocate produce advice on criminal sanctions for those VoT’s who have engaged in criminal acts. We would recommend emphasising the primacy of victims needs above criminal sanctions in all cases where crimes have been committed under duress, which may be better served by a strict non-prosecution clause.

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<sup>1</sup> [http://www.eurojust.europa.eu/Practitioners/operational/THB/Documents/DGHome-Eurostat\\_THB-statistical-data-report-2013\\_EN.pdf](http://www.eurojust.europa.eu/Practitioners/operational/THB/Documents/DGHome-Eurostat_THB-statistical-data-report-2013_EN.pdf)

<sup>2</sup> <http://www.theguardian.com/law/2013/oct/31/trafficking-victims-immigration-campaigners>

11. Overall, we would therefore support placing a duty on the Scottish Ministers to prepare, publish and regularly review and update a trafficking and exploitation strategy to be laid before the Parliament so that future strategies can take these issues into full account in future policy.

### **Sexual exploitation**

12. Evidence shows that women and children exploited in prostitution through Scotland are under pressure of poverty, addiction, homelessness, domestic abuse and coercion and multiple disadvantages, including direct coercion, threats, deceit or abuse of a position of vulnerability<sup>3</sup>.

13. The circumstances which make women vulnerable to exploitation in the sex industry therefore are the same as those which make women vulnerable to trafficking and these abuses overlap. The level of coercion and control that can take place exists within the context of gender inequality given the various social and economic structures which may disempower women and constrain their choices. Given the grievous nature of the crime therefore, we would support the establishment of statutory aggravations to any criminal offence where the offence is connected with human trafficking in order to recognise the seriousness of this crime.

14. We would therefore urge the Scottish Parliament to amend the Human Trafficking and Exploitation (Scotland) Bill so that paying for sex becomes a criminal offence, while selling sex is decriminalised. This legislative change must be accompanied by the provision of sustainable support and exiting services for people exploited through prostitution, and backed by licensing laws which recognise the interrelated nature of the industry, such as the Sexual Entertainment licensing venue now in the Air and Weapons Bill also sitting in Parliament.

15. Indeed, the EHRC Inquiry into Human Trafficking in Scotland acknowledged that in order to end trafficking Scotland must become '*a more hostile environment for traffickers*'<sup>4</sup>. The Human Trafficking Bill goes some way towards achieving this; however the role of demand is overlooked when one of the biggest incentives for sex traffickers remains a market willing to pay for access to women's bodies.

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<sup>3</sup> [Being Outside: Constructing A Response To Street Prostitution](#); [Off the streets: tackling homelessness among female sex workers](#); [Improving Services for Women Involved in Prostitution and Substance Misuse](#); [Home Office \(2004\). Paying The Price](#); [Women's Resource Centre Briefing](#); [Prostitution and Domestic Violence](#)

<sup>4</sup> [Inquiry into Human Trafficking in Scotland](#)

Interviews with 110 men in Scotland who paid women for sex found one-fourth to one-third of the men had attitudes tolerant of rape, 22% of interviewees said that once a customer has paid he is entitled to do whatever he wants to the woman, and 12% said it wasn't possible to rape a woman in prostitution<sup>5</sup>. It is clear that many men who buy sex are not interested in the consent of the women they buy from and it is unlikely that they will report suspected trafficking. For those who profit from prostitution therefore, there is a continued incentive to supply women whether they have provided consent or not.

16. Research demonstrates that criminal sanctions could reduce demand for paid sex. Research conducted with 110 men in Scotland who paid women for sex found 79% of the respondents said having to spend time in jail would deter them from paying for sex, while 72% reported that a greater criminal penalty would do so<sup>6</sup>. Research undertaken by the Child and Woman Abuse Studies Unit at London Metropolitan University with 137 men who paid women for sex concluded, "*The accounts of men who had paid for sex overseas confirm that legality contributes to normalisation, which in turn increases the likelihood of paying for sex*"<sup>7</sup>. The legality of paying for sex has also been found to influence rates of sex trafficking into the country in question. An empirical analysis for a cross-section of up to 150 countries found reported human trafficking inflows were larger in countries where prostitution is legal<sup>8</sup>.

### **The Scottish Government's commitment and obligation to VAWG**

17. This policy would align with the Scottish Government's gendered analysis of VAWG which defines violence as directed against a woman because she is a woman or violence that affects women disproportionately, having its roots in gender inequality. Indeed, exploitation of women in the sex industry is defined as violence against women by the Scottish Government's VAWG strategy, Equally Safe<sup>9</sup>. Furthermore, leaders of all Scottish parties have signed up to this definition and committed to ending all forms of VAWG in Scotland by signing the

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<sup>5</sup> [Macleod, J., Farley, M., Anderson, L., & Golding, J. \(2008\) Challenging Men's Demand for Prostitution in Scotland, Women's Support Project](#)

<sup>6</sup> Ibid

<sup>7</sup> Coy, M. et al (2007) *It's just like going to the supermarket: Men buying sex in East London*, Report for Safe Exit, Child and Woman Abuse Studies Unit: p.25

<sup>8</sup> Cho S-Y.; Dreher A. & Neumayer, E. (2013) *Does legalised Prostitution Increase Human Trafficking?* World Development, 41: 67-82

<sup>9</sup> <http://www.gov.scot/Resource/0046/00463546.pdf>

Statement of Intent on VAWG<sup>10</sup>. Thus, VAWG exists on a continuum and different forms of VAWG cannot be tackled independently, and all policy and justice responses therefore need to reflect this.

18. The Scottish Government is also obligated internationally to reduce the demand for sexual exploitation (including prostitution) and trafficking under Article 9.5 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>11</sup>; The EU Directive on trafficking in human beings<sup>12</sup>; Article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings<sup>13</sup>; and the Convention to Eliminate All forms of Discrimination Against Women<sup>14</sup>. It may also be useful to note that Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings<sup>15</sup> enables member states to consider the '*criminalisation of the use of services of a Victim of Trafficking (VoT)*'.
19. We would urge the Scottish Parliament to encourage the Scottish Government to adhere to its own policies on VAWG, and acknowledge the links between trafficking, prostitution and the sexual exploitation of children. Demand for paid sex is the uniting factor in these human rights abuses, but it is a factor that has thus far been overlooked, thus isolating trafficking and child sexual exploitation as distinct, unrelated – and less controversial - issues. However, trafficking of women and girls for sexual exploitation will continue as long as the demand is there.

**For more information** please contact: Laura Tomson or Amy Marshall at Zero Tolerance

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<sup>10</sup> <http://zerotolerance.org.uk/news/1/323>

<sup>11</sup> [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime](#)

<sup>12</sup> [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims](#)

<sup>13</sup> [Council of Europe Convention on Action against Trafficking in Human Beings](#)

<sup>14</sup> [Convention to Eliminate All forms of Discrimination Against Women, Article 6](#)

<sup>15</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>