PROSTITUTION LAW REFORM (SCOTLAND) BILL CONSULTATION – HIV SCOTLAND RESPONSE

ABOUT HIV SCOTLAND

HIV Scotland is the national HIV policy organisation for Scotland. We exist on behalf of all those living with and at risk of HIV to ensure that Scotland has responsive policies, quality services and a supportive environment that enable people living with or at risk of HIV in Scotland to live healthy and fulfilling lives. We speak out for people living with and at risk of HIV by:

- Ensuring that the lived experience and viewpoints of people living with or at risk of HIV inform the discourse on HIV issues, health and social policy and service provision in Scotland.
- Engaging with people living with and affected by HIV to shape policy in Scotland.
- Providing information, training and resources.
- Signposting to evidence, expertise and community experience.

INTRODUCTION

HIV Scotland greatly welcomes action to help promote the rights, safety and health of sex workers in Scotland. While the proposed Bill relates to a broad range of issues, the focus of our response is primarily on the implications for Scotland’s HIV response. As such, we have tailored our response to answer only those questions where it is most appropriate for us to offer comment.

Gender inequalities persist in Scotland and evidence-informed measures should be taken to address the unequal relations that exist between men and women. It must be recognised that gender inequality can cause women to enter sex work: globally, the vast majority sex workers are female.

The World Health Organisation (WHO) has identified groups who, due to specific higher-risk behaviours, are at increased risk of HIV irrespective of the local epidemic type or context. This includes: sex workers; men who have sex with men; people who inject drugs; people in prisons and other closed settings; and transgender people.1 Sound, evidence-informed measures to address sex work constitute an integral component of an effective, comprehensive response to HIV here in Scotland.

**Defining sex work/prostitution**

For the purposes of this response, we have adopted the definition of sex worker set out within the proposed Bill i.e. ‘any person who voluntarily offers commercial sexual services.’ HIV Scotland wishes to be absolutely clear that this definition does not extend to include minors, or any person who has been trafficked or otherwise coerced into the sex industry. This is consistent with the UNAIDS definition whereby:

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'Sex workers are defined as female, male and transgender adults aged over 18 years who sell consensual sexual services in return for cash or payment in kind, and who may sell sex formally or informally, regularly or occasionally.'

We recognise, however, that this consultation is taking place within a complex policy environment and debate over how sex work/prostitution should be defined and understood in Scotland. Such debate is often focused on the extent to which a person can ‘freely’ choose to engage in sex work/prostitution, and whether sex work/prostitution is an inherent form of violence against women (irrespective of whether individual women claim success or empowerment from the activity). Two distinct perspectives appear to be polarising current discourse: one evidencing optimistic and empowering experiences of sex work/prostitution, the other a narrative of abuse, exploitation and lack of control.

HIV Scotland believes that both these perspectives have validity. Scotland must take a pragmatic approach that acknowledges and responds to both positive and negative experiences - recognising the differing realities of sex workers’ lives. The key to significant and constructive change is recognition that sex work/prostitution is a complex phenomenon, with many facets and numerous different markets.

We are hopeful that the proposed Bill will generate inclusive discussion on how best to keep sex workers safe, and pave the way for a legislative framework that affirms and upholds the rights, safety and health of everyone who sells sex in Scotland. This will require the engagement of all stakeholders, including: sex workers, local authorities, Police Scotland, NHS Scotland, Community Planning Partnerships, women’s organisations, the civil and criminal justice systems, social work, housing, media, the business sector, third sector organisations along with individuals and communities.

SPECIFIC COMMENTS

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

Yes: HIV Scotland believes that decriminalisation could help reduce HIV risk and vulnerability in the context of sex work in Scotland. We welcome moves to adopt an evidence based approach which seeks to ensure the safety and rights of sex workers in Scotland - guided by what people currently selling sex say that they need.

 Debates on sex work rarely feature a range of voices from those with direct experience of the sex industry. Increasing the contribution of people involved in the sex industry may not be easy or straightforward in Scotland, given the fear of stigma and lack of confidence and trust. Nevertheless, HIV Scotland believes that increasing this contribution would represent a significant step forward and must be a priority. This is the only way to create a greater awareness amongst those making policies and developing services of why people enter the various sex work markets, why they might continue working there and how best to protect the most vulnerable.

Globally, sex workers are disproportionally affected by HIV. In 110 countries with available data, the prevalence of HIV infection is almost 12 times higher among sex workers than for the population as a whole.\(^2\) UNAIDS has asserted\(^3\) that the epidemiological data on HIV infection rates among sex

\(^2\) The Gap Report, UNAIDS, 2014
\(^3\) UNAIDS, Guidance Note on HIV and Sex Work, 2012
workers and their clients reflects the failure to adequately respond to their human rights and public health needs.

Punitive environments have been shown to limit the availability, access and uptake of HIV prevention, treatment, care and support for sex workers and their clients.\(^4\) In addition, there is little evidence to suggest that any criminal laws related to sex work stop demand for sex or reduce the number of sex workers.\(^5\) Rather, they risk creating an environment of fear and marginalisation for sex workers, who may have to work in remote and unsafe locations to avoid arrest of themselves or their clients. As such, the WHO has made a clear recommendation that:

“Countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.”\(^6\)

The UNAIDS Guidance Note on HIV and Sex Work provides clarification and direction regarding approaches to reduce HIV risk for sex workers. It has a policy and programmatic emphasis that rests on three interdependent pillars: (a) access to HIV prevention, treatment, care and support for all sex workers and their clients; (b) supportive environments and partnerships that facilitate universal access to needed services; and (c) action to address structural issues related to HIV and sex work. It is firmly built on human rights principles - supporting the right of people to make informed choices about their lives, in a supportive environment that empowers them to make such choices free from coercion, violence and fear.

During the 2014 International AIDS conference, The Lancet medical journal released a series of articles focused exclusively on HIV and sex work. One study by Kate Shannon et al., demonstrates that decriminalisation of sex work could have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade.\(^7\) Shannon’s team showed that “multi-pronged structural and community-led interventions” are essential to promoting the human rights of sex workers, as well as improving their access to HIV prevention and treatment.

It is for these reasons that HIV Scotland joins UNAIDS, the UN Development Programme, the UN Population Fund, the Joint UN Programme on HIV/AIDS, and the World Health Organisation, in calling for the decriminalisation of adult sex work. However, we also recognise that the implications of these proposals go far beyond just health considerations, and that legislation alone will not be nearly enough to achieve the level of change required: stigma and discrimination must be effectively addressed, violence and abuse of sex workers must be reduced, current strategies aimed at preventing violence against women must be reviewed, and legal barriers to participation should be revised.

**Do you agree that the New Zealand Prostitution Reform Act is a model for Scotland to follow? Please indicate “yes/no/undecided” and explain the reasons for your response.**

HIV Scotland believes that whatever model is used in Scotland, this should be based on robust evidence and the needs of the local population. There is no “one size fits all” approach and any model will require to be tailored to local situations, policies, laws and service structures. We are hopeful that this consultation will open up discussions about sex work, lead to an improved

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\(^4\) UNAIDS, The Gap Report, 2014  
\(^5\) UNAIDS, Guidance Note on HIV and Sex Work, 2012  
understanding of the realities of sex work in Scotland, and enable for the creation of a ‘Scottish model’ which is focused on the rights and safety of sex workers.

What (if any) would be the main advantages of the legislation proposed? What (if any) would be the disadvantages?

As stated above, we believe that the proposed Bill could help reduce HIV risk and vulnerability in the context of sex work, by helping to ensure: (a) access to HIV prevention, treatment, care and support for all sex workers and their clients; (b) supportive environments and partnerships that facilitate universal access to needed services; and (c) action to address structural issues related to HIV and sex work.

Another advantage of the proposed legislation is the fact that sex workers themselves have helped to formulate it: community engagement requires involving sex workers in the design, implementation, monitoring and evaluation of policies and programmes that affect their lives. Without the active engagement and involvement of sex workers themselves, efforts to provide universal access to HIV prevention, treatment, care and support in Scotland will not be optimally effective.

The consultation also includes measures aimed at protecting street based sex workers. Current approaches make it more likely that sex workers will be put in situations that inhibit their ability to negotiate condom use with clients and reduce the risk of violence or abuse. Of the street-based workers surveyed in The Lancet study8 by Shannon et al., 25 percent reported being pressured by clients to have sex without a condom. Those who work in remote areas (such as industrial parks) to escape local policing were three times more likely to report being pressured into having sex without a condom than the study population overall.

Street-based sex workers may have particularly complex needs, and stand to benefit from access to specialist sex worker services (including sex worker led services) and a range of wider services (in particular drug and alcohol, mental and physical health, and housing). There is a need to create safer spaces for street based sex workers in Scotland, and better enable them to connect with vital supports and services.

All stakeholders share a responsibility to help empower all people who engage in sex work, regardless of the circumstances in which sex work occurs. Partnerships need to be strengthened between government, civil society, and community actors at national, local and community levels. An agreed written common vision and strategy could be developed to facilitate joint working and demonstrate the similar aims and values which service providers share, responsive to the diverse needs of sex workers.

One potential way in which decriminalisation could also help promote safer working conditions for sex workers is by enabling them to organise. Collectively, sex workers can better address risk factors in their workplaces and insist upon improved conditions. Any change in legislation in this area would require to be supported by sustained and well-resourced action to build the capacity of sex workers. This could include the provision of adequate funding and training for sex-worker groups, to develop and sustain organisational strength and expertise, to effectively communicate and share good practices with each other and externally.

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A potential disadvantage, which could be argued, is that decriminalising sex work will lead to an increase in trafficking. However, jurisdictions that decriminalise sex work can not only retain but also strengthen criminal prohibitions on trafficking, sexual coercion, and the prostitution of minors.\(^9\) Trafficking into sex work is a profound human rights violation that demands effective and comprehensive international action. HIV Scotland fully supports moves to ensure more stringent and robust laws against coercion in the sex industry. All people selling sex must be protected from violence, coercion and other forms of abuse, and be ensured of their rights to legal assistance and access to justice.

Action to tackle violence and coercion towards sex workers is likely to be most effective when police, the judiciary, health services, and government are engaged and cooperate fully with sex worker organisations and other civil society groups. When not themselves under the threat of criminal penalties, sex workers and their organisations can work with law enforcement to combat trafficking. The UNAIDS Guidance Note on HIV and Sex Work highlights sex worker organisations as best positioned to refer women and children who are victims of trafficking to appropriate services.

In addition to strengthening legislation in this regard, policies and programmes will also require to be developed in Scotland to better support sex workers to acquire the life, education and vocational skills and training they need to make informed decisions and have meaningful choices about their lives. Sex workers must also have access to a meaningful and comprehensive set of alternatives to sex work that respond to workers’ individual circumstances. In devising meaningful alternatives to sex work, programmes should address issues such as drug dependency, family rejection, mental health and financial and legal problems.

**Do you agree that there should be a statutory obligation on brothel operators to ensure safer sex supplies are made available on their premises?**

Yes: While some sex work settings have served as excellent venues for HIV-prevention programmes, many others neither promote safer sex nor protect sex workers from violence.\(^10\) Placing a statutory duty on brothel operators to ensure safer sex supplies are made available would help empower sex workers to assert their rights and hold duty bearers to account.

The threat of detention and laws that equate carrying condoms with evidence of sex work are serious barriers to the availability and uptake of HIV prevention programmes and services for sex workers.\(^11\) Where sex workers are able to assert control over their working environments and insist on safer sex, evidence indicates that HIV risk and vulnerability can be sharply reduced.\(^12\)

Condoms and safer sex supplies must not only be made readily available, but access must be accompanied by programmes that actively promote condom use. Condom promotion programmes, including community-led programmes, can increase condom use by sex workers and their clients. Through peer- and community-led interventions, these programmes can provide information and skills building for condom use and create demand for HIV testing, STI screening, and HIV treatment and care.\(^13\)

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\(^9\) Open Society Foundation, *10 Reasons to Decriminalize Sex Work*

\(^10\) UNAIDS, *Guidance Note on HIV and Sex Work*, 2012

\(^11\) The Gap Report, UNAIDS, 2014

\(^12\) UNAIDS, *Guidance Note on HIV and Sex Work*, 2012

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?

It must be recognised that gender inequality can cause women to enter sex work: globally, the vast majority sex workers are female. With unequal access to education, employment, credit or financial support outside marriage, some women might come to see sex work as one of the few options available to support themselves.14

Gender inequalities persist in Scotland and evidence-informed measures should be taken to address the unequal relations that exist between men and women. For example, programmes to promote dialogue and critical reflection among young men regarding gender inequalities have been shown to significantly reduce their support for inequitable gender norms, and to significantly increase condom use and decrease intimate partner violence.15 Community structures need to be strengthened to foster a cultural environment that refuses to tolerate sexual exploitation.

There is also a need to change attitudes based on harmful gender norms, including a desire for sexual dominance and sense of entitlement, which may manifest in sexual and economic exploitation and violence against sex workers. This will take time, but it is critical to implement the legal and policy reforms needed to protect sex workers in Scotland now, and to pursue these actions with urgency and high-level support.

Sex workers of all genders can struggle to meet their own health and well-being needs and face significant legal and institutional discrimination. Depending on their individual circumstances, sex workers may be further victimised by discriminatory gender-based attitudes, violence, and sexual exploitation, and by membership in other populations that are vulnerable to HIV exposure, such as men who have sex with men, transgender people and injecting drug users. Policies and programmes to address sex work must recognise and respond to the social diversity of sex workers and the intersectionality this entails.16

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15 UNAIDS, Guidance Note on HIV and Sex Work, 2012
16 UNAIDS, Guidance Note on HIV and Sex Work, 2012