

# **Engender response to the Scottish Government Equally Safe consultation on challenging men's demand for prostitution, working to reduce the harms associated with prostitution, and helping women to exit**

December 2020

## **1. INTRODUCTION**

Engender is Scotland's feminist policy and advocacy organisation, working to secure women's political, economic and social equality with men. Our aspiration is for a Scotland where women and men have equal access to rights, resources, decision-making and safety.

We welcome the opportunity to respond to this consultation by Scottish Government and particularly its explicit recognition of prostitution<sup>1</sup> as a gendered phenomenon, which is rooted in women's inequality. The prostitution system depends on the relative impunity with which men can abuse and control women and girls, an economy-wide lack of good quality flexible or part-time work, women's unequal responsibilities for unpaid care, occupational segregation, a system of social security that is increasingly failing to provide a safety net for women,<sup>2</sup> and a cultural acceptance of the centrality of men's sexual desires and expectations. It is recognised in Equally Safe as a form of gender-based violence against women.

In November 2020, the UN's CEDAW Committee published a general recommendation relating to Article 6 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). In it, it recommends that states focus on the four root causes of sexual exploitation in women and girls:

1. Systematic gender-based discrimination;
2. Conflict and humanitarian emergencies;

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<sup>1</sup> The language around prostitution itself is contested. In this response we have used the terminology of the consultation paper.

<sup>2</sup> Engender (2015) A Widening Gap: Women and Welfare Reform. Available at:

<https://www.engender.org.uk/content/publications/A-Widening-Gap---Women-and-Welfare-Reform.pdf>.

3. Discrimination in migration and asylum regimes; and
4. Demand that fosters exploitation.<sup>3</sup>

In line with Engender's expertise, our response to this consultation focuses principally on the first of these root causes, which maps onto the primary prevention approach set out in Equally Safe.<sup>4</sup> Our response also makes reference to some non-exhaustive considerations for the development of any new criminal law, and specifically its interrelationship with the UK's asylum and migration regime and also existing institutional sexism within criminal justice institutions and processes.

Five years ago, in our response to a consultation on the Prostitution Law Reform (Scotland) Bill,<sup>5</sup> we advocated for the development of a Scotland model that would align with Scotland's policy ambitions for women's equality and rights and which takes into account the Scottish legal and social context. It is vital to hold men accountable for the harms they perpetrate against women. We also need to ensure that the social programmes provided by UK and Scottish Government are sufficient to realise women's rights to an adequate standard of living, including social security, housing, and health. Men's demand may pull women into prostitution, but poverty, inadequate housing, over-criminalisation, immigration and a lack of mental health services provides the push.

## 2. PRIMARY PREVENTION OF PROSTITUTION

As Equally Safe sets out, primary prevention is about preventing violence before it occurs. In Scotland's national strategy for ending men's violence against women, Scottish Government and COSLA have committed to an approach that "aims to change societal attitudes, values and the structures which produce inequality."

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<sup>3</sup> UN Committee on the Elimination of Discrimination against Women (2020) General recommendation No. 38 on trafficking in women and girls in the context of global migration. Available at: <https://reliefweb.int/report/world/general-recommendation-no-38-2020-trafficking-women-and-girls-context-global-migration>.

<sup>4</sup> Scottish Government, COSLA (2018) Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/04/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/documents/00534791-pdf/00534791-pdf/govscot%3Adocument/00534791.pdf>.

<sup>5</sup> Engender (2015) Engender submission to the Prostitution Law Reform (Scotland) Bill consultation. Available at: <https://www.engender.org.uk/content/publications/Prostitution-Law-Reform-Scotland-Bill-response-November-2015.pdf>.

## 2.1 Primary prevention of prostitution and Equally Safe

The Equally Safe delivery plan acknowledges that violence against women and girls is a continuum that includes many different forms. The delivery plan includes activity targeted at specific forms of violence, but there are only three actions related to commercial sexual exploitation:

- Deliver the Challenging Demand programme to raise awareness of commercial sexual exploitation (Action 1.14);
- Commission a mapping of existing specialist support for those experiencing commercial sexual exploitation to better understand current coverage and good practice (Action 3.12); and
- Consider how support for service providers supporting harm reduction and exit for those engaged in prostitution could be enhanced (Action 3.13).<sup>6</sup>

None of these actions relates to primary prevention, which means that Equally Safe does not currently include activity to prevent women from experiencing the harms of sexual exploitation.

## 2.2 How does primary prevention relate to prostitution?

The evidence about the factors that have led women to sell sex in Scotland is surprisingly thin. We do not know how many women sell sex, or enough about who they are. Specialist services working with women who sell sex have considerable insight into the experiences of some women. However, selling sex is so highly stigmatised that many women who do so avoid mainstream services.<sup>7</sup> Engender knows from discussions with other third-sector organisations that many groups of women, such as disabled women, asylum-seeking women, mothers, and women who have experienced domestic abuse, are disclosing their experiences to services in a way that is unlikely to be captured by academics or policymakers.

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<sup>6</sup> Scottish Government, COSLA (2017) Equally Safe: delivery plan. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/11/equally-safe-delivery-plan-scotlands-strategy-prevent-violence-against-women/documents/00528064-pdf/00528064-pdf/govscot%3Adocument/00528064.pdf>.

<sup>7</sup> Scottish Government (2017) Exploring Available Knowledge and Evidence on Prostitution in Scotland via Practitioner based Interviews. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/exploring-available-knowledge-evidence-prostitution-scotland-via-practitioner-based-interviews/documents/00514437-pdf/00514437-pdf/govscot%3Adocument/00514437.pdf>.

Although we are likely to be missing a whole range of specific experiences, practitioner-based interviews carried out in Scotland in 2016 identified some critical drivers of selling and exchanging sex:

- Financial pressures including inadequate income, debt, and benefits sanctions;
- Inadequate housing and homelessness;
- Lack of access to health services, including mental health services and drug treatment services; and
- A criminal record, especially for women who had previously worked in care, education or other contexts in which a Protecting Vulnerable Groups (PVG) certificate is required.<sup>8</sup>

This echoes the findings of a literature review on social exclusion and prostitution from 2014, which identified the following factors ‘pushing’ women towards selling sex: money, debt, and the inadequacy of ‘welfare’ benefits; housing; addiction; family breakdown and ‘cut off care’, especially for looked-after young people; poor mental health; and discrimination.<sup>9</sup>

These drivers are themselves gendered: women do not have equal access with men to an income or to housing. Women are inequitably criminalised for minor, non-violent offenses in a way that disrupts their family life, financial security, and working life. We need to address women’s income inequality and inadequacy, housing inequality, health inequalities, and over-criminalisation as key elements of preventing exploitation.

In the remainder of this section, we briefly summarise some of the gendered inequalities that should be addressed within any policy response to prostitution. We set out some proposals for a ‘Scotland model’ in section 4.

### 2.3 Income inadequacy

Women’s income in Scotland is lower than men’s, although data about income is usually gathered at the household level. This means we need to look at discrete elements of income to chart the extent and causes of women’s inequality. Here we will outline critical gendered experiences in relation to:

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<sup>8</sup> Ibid.

<sup>9</sup> Balfour R, Allen J (2014) A review of the literature on sex workers and social exclusion. UCL Institute of Health Equity. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/303927/A\\_R\\_eview\\_of\\_the\\_Literature\\_on\\_sex\\_workers\\_and\\_social\\_exclusion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/303927/A_R_eview_of_the_Literature_on_sex_workers_and_social_exclusion.pdf).

- The policy of ‘No recourse to public funds’;
- Social security;
- Wages; and
- The impact on women’s income of unpaid work, including childcare and care.

### *2.3.1 Destitution of migrant women and asylum seekers*

Practitioners working with women who sell sex identify that a high proportion are migrants from outwith the UK. In addition to language barriers, the lack of access to social security and subsequent likelihood of destitution places them at risk of exploitation.<sup>10</sup>

Migrant and asylum-seeking women do not have equal access to the social safety net in the UK. Work by the Unity Project in England, which tracked the experience of families with ‘no recourse to public funds’ (NRPF) found that this condition, imposed by UK Government, particularly affects women’s incomes and those of their dependent children. This is because NRPF:

- Prevents mothers, and especially single mothers, from working in the paid labour markets by curtailing access to free childcare entitlements, among other requirements.
- Prevents people with low-incomes from earning a living wage because it excludes them from in-work benefits. Minoritised women are particularly likely to be working in low-paid and undervalued jobs in Scotland.<sup>11</sup>
- Affects women who are pregnant or have recently given birth, and are consequently unable to work.
- Applies to Scottish and other British children whose parents are subject to NRPF, which means that they cannot benefit from free school meals and social housing.
- Sees women act as a ‘buffer’ between their children and hunger. Women with children comprised 90% of ‘census day’ survey respondents who were subject to NRPF and could not afford a hot and nutritious meal.<sup>12</sup>

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<sup>10</sup> Scottish Government (2017) Exploring Available Knowledge and Evidence on Prostitution in Scotland via Practitioner-based Interviews. Available at:

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/exploring-available-knowledge-evidence-prostitution-scotland-via-practitioner-based-interviews/documents/00514437-pdf/00514437-pdf/govscot%3Adocument/00514437.pdf>.

<sup>11</sup> Close the Gap (2019) Still Not Visible: Research on Black and minority ethnic women’s experiences of employment in Scotland. Available at: [https://www.closesthegap.org.uk/content/resources/1557499847\\_Still-Not-Visible.pdf](https://www.closesthegap.org.uk/content/resources/1557499847_Still-Not-Visible.pdf).

<sup>12</sup> Woolley A (2019) Access Denied: The cost of the “no recourse to public funds” policy. Unity Project. Available at:

Women with ‘no recourse to public funds’ are denied even the limited protection from poverty that Universal Credit provides. Asylum seeking women are at even greater risk of destitution. The asylum and immigration system has numerous points at which the risk of destitution becomes likely, and once destitute it becomes much harder to re-engage with the asylum process. Asylum seekers are not allowed to do paid work, and are only provided with £37.75 per person per week to pay for food, clothing, toiletries, travel, household items and all other costs.

The UK’s approach to asylum and migration itself creates a conducive context for prostitution. We identify migration as one of the challenges that developing a criminal justice response to prostitution in Scotland will have to navigate.

### *2.3.2 Social security*

Women in Scotland are twice as likely to rely on social security for all or part of their income as men,<sup>13</sup> and will have borne the brunt of 59% of the UK Government’s cumulative cuts to social security by 2022.<sup>14</sup>

The design of the social security and ‘welfare’ system is one of the key drivers of economic inequality in the UK. Over a decade of austerity, UK Government has taken a system that was already inadequate and made drastic cuts to it. A detailed accounting of its flaws is beyond the scope of this submission, but this has included imposing a limit on the number of children in a family that will be eligible for specific entitlements. This has particular consequences for women from certain Black and minority ethnic communities, refugee women and women from some faiths who are statistically more likely to have larger families. Changes to eligibility criteria have also had a profoundly negative impact on disabled women and single mothers.

As UN Special Rapporteur on extreme poverty and human rights, Professor Philip Alston, said of the UK’s social safety net in 2018 “If you got a group of misogynists in a room and said how can we make this system work for men and not for women they would not have come up with too many ideas that are not already in place.”<sup>15</sup> His country report into

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<https://static1.squarespace.com/static/590060b0893fc01f949b1c8a/t/5d021ada54e8ee00013fe5b9/1560419116745/Access+Denied+-+V12+%281%29.pdf>.

<sup>13</sup> Engender (2015) A Widening Gap: Women and Welfare Reform. Available at:

<https://www.engender.org.uk/content/publications/A-Widening-Gap---Women-and-Welfare-Reform.pdf>.

<sup>14</sup> Women’s Budget Group (2019) Social security and women. Available at: <https://wbg.org.uk/analysis/uk-policy-briefings/2019-wbg-briefing-social-security-and-gender/>.

<sup>15</sup> Booth R, Butler P (2018) UK austerity has inflicted “great misery” on citizens, UN says. The Guardian Available at: <https://www.theguardian.com/society/2018/nov/16/uk-austerity-has-inflicted-great-misery-on-citizens-un-says>.

austerity and extreme poverty in the UK specifically mentions speaking to individuals who have sold sex for money or shelter.<sup>16</sup>

Although the Social Security (Scotland) Act commits Scottish Government to use its new social security powers in a way that advances equality and non-discrimination, it has had relatively limited impact on the overall adequacy of entitlements.<sup>17</sup> Engender has called for a significant increase to the level of specific entitlements for unpaid carers and also for a dedicated entitlement for women experiencing domestic abuse. We are not aware of specific thinking about meeting the financial needs of women who are selling sex, beyond short-run funds during Covid-19 that were administered by Encompass.<sup>18</sup>

### 2.3.3 Employment

Women in Scotland earn 14% less than men.<sup>19</sup> This is because:

- Women and men are concentrated into different economic sectors and different work, with women being more likely to work in roles such as cleaning, caring, catering, retail, and clerical work that are underpaid and undervalued. Women are much less likely to work in senior or managerial roles, or in highly-remunerated, high-investment sectors relating to science, technology, engineering, and maths.
- There is a lack of flexible work that can be readily combined with women's unpaid caring roles, particularly at senior level.
- Discrimination still exists within the pay systems of most organisations.

The systemic undervaluing of “women’s work” in female-dominated sectors is a key cause of women’s higher levels of poverty; two-thirds of workers earning below the Real Living Wage are women.<sup>20</sup> Women are also experiencing increasing precarity, with women more likely to be on zero hours contracts than men.<sup>21</sup> Although the ‘gig economy’ is associated with delivery of goods and taxi services, it is becoming increasingly common

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<sup>16</sup> Alston P (2018) Statement on visit to the United Kingdom. UN Special Rapporteur on extreme poverty and human rights. Available at: [https://www.ohchr.org/Documents/Issues/Poverty/EOM\\_GB\\_16Nov2018.pdf](https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf)

<sup>17</sup> Engender (2020) Engender submission of evidence to the Scottish Parliament Social Security Committee inquiry on the role of Scottish Social Security in Covid-19 recovery. Available at:

<https://www.engender.org.uk/content/publications/Engender-submission-of-evidence-to-the-Scottish-Parliament-Social-Security-Committee-inquiry-on-the-role-of-Scottish-Social-Security-in-Covid-Final.pdf>

<sup>18</sup> Encompass (2020) Moving Out of Lockdown.

<sup>19</sup> Close the Gap (2020) Close the Gap Working Paper 21: Gender pay gap statistics.

<sup>20</sup> Scottish Parliament Information Centre (2020) The Living Wage: Facts and Figures 2020.

<sup>21</sup> Office of National Statistics (2020) EMP17: People in employment on zero hours contracts - Office for National Statistics. Available at:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>.

in the social care sector with work accessed through apps and online platforms.<sup>22</sup> Nearly 75% of women in the gig economy earned less than the taxable threshold.<sup>23</sup>

The link between prostitution and low paid, inflexible work is clear. If women are not able to earn enough by other means to meet their household outgoings, then this increases the likelihood that they will sell or exchange sex.<sup>24</sup>

### *2.3.4 Unpaid work and care*

The idea that women should be responsible for care for children, disabled people, and older people is deeply culturally ingrained in Scotland. The most recently available time-use data for Scotland shows that women in opposite sex couples were undertaking approximately 68% of the housework and 68% of the childcare.<sup>25</sup> UK-wide research from the National Centre for Social Research found that 25% of women took part in childcare on any given day, compared to 15% of men.<sup>26</sup>

These gendered patterns are long entrenched and have been stubbornly slow to disrupt.<sup>27</sup> The 2017 British Social Attitude Survey found that two thirds of respondents thought that it was better for mothers to be at home or to work part time when children were under school age and a majority also thought that fathers should work full time.<sup>28</sup> In 2012 the survey found that 26% of respondents thought that most women would prioritise their caring role over having a job, falling by just 10% since 1987.<sup>29</sup> The presumption that care is a product of inherently 'female' traits and preferences continues to influence how we think care should be assigned, and what it is worth.<sup>30</sup>

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<sup>22</sup> Close the Gap (2020) Falling through the cracks: Women, Covid-19 and the gig economy. Available at: <https://www.closesthegap.org.uk/content/resources/Women-COVID-19-and-the-gig-economy.pdf>.

<sup>23</sup> Balaram B, Warden J, Wallace-Stephens F (2017) Good Gigs: A fairer future for the UK's gig economy. Available at: [https://www.thersa.org/globalassets/pdfs/reports/rsa\\_good-gigs-fairer-gig-economy-report.pdf](https://www.thersa.org/globalassets/pdfs/reports/rsa_good-gigs-fairer-gig-economy-report.pdf).

<sup>24</sup> Work and Pensions Committee (2019) Universal Credit and "survival sex." UK Parliament. Available at: <https://publications.parliament.uk/pa/cm201919/cmselect/cmworpen/83/8302.htm>.

<sup>25</sup> Scottish Government (2019) Centre for Time Use Research Time Use Survey 2014-15: Results for Scotland. Scottish Government. Available at: <https://www.gov.scot/publications/centre-time-use-research-time-use-survey-2014-15-results-scotland/pages/5/>.

<sup>26</sup> Wishart R, Dunatchik A, Speight S, Mayer M (2019) Changing patterns in parental time use in the UK. NatCen. Available at: [http://natcen.ac.uk/media/1722408/Parental\\_time\\_use\\_report.pdf](http://natcen.ac.uk/media/1722408/Parental_time_use_report.pdf).

<sup>27</sup> Sullivan O (2006) Changing Gender Relations, Changing Families: Tracing the Pace of Change Over Time. Lanham: Rowman & Littlefield Publishers.

<sup>28</sup> The National Centre for Social Research (2018) British Social Attitudes 35 – Gender.

<sup>29</sup> The National Centre for Social Research (2013) British Social Attitudes 30 – Gender.

<sup>30</sup> Thompson E (2020) Gender and Inclusive Growth. Engender and Close the Gap. Available at: [https://www.engender.org.uk/content/publications/1591173199\\_Gender--Inclusive-Growth---Making-inclusive-growth-work-for-women-in-Scotland.pdf](https://www.engender.org.uk/content/publications/1591173199_Gender--Inclusive-Growth---Making-inclusive-growth-work-for-women-in-Scotland.pdf).

These stereotypes and assumptions around childcare and care have an impact on the types of childcare and social care provision created by Scottish Government and councils. Despite an expansion of childcare to 1140 hours per year, there is still not a sufficient entitlement to enable a single parent to work full time. 39% of single women with children are living with poverty.<sup>31</sup> Survey data published for Carers Week 2020 suggests that there are now as many as 1.1 million unpaid carers in Scotland, providing care for sick or disabled people, of which 61% are women.<sup>32</sup> Women are the poorest carers, and are much more likely to give up paid work to care than men.<sup>33</sup>

The lack of state provision of childcare and social care, coupled with deeply embedded gendered expectations about women's caring roles, means that women are under a great deal of pressure to mother and care well. Covid-19 has displaced care, childcare, and housework from the state to individual women.<sup>34</sup> For women living with financial precarity, the irreconcilable demands to provide childcare or care and do paid work, may make selling sex more likely.

## 2.4 Housing and homelessness

Women have been largely invisible in housing and homelessness policy across the UK and Scotland, and their experiences are under researched. Limited sex-disaggregated data means that we do not know what the impact of cuts to housing-related social security entitlements has been on women, nor the decline of the proportion of social housing in Scotland since 1999. Women's housing situations rest heavily on unequal access to resources and safety.

Women's economic inequality means that women pay a higher proportion of their income in rent and have less capital to buy homes. Almost half of single mothers in the UK fall below the poverty threshold after housing costs.<sup>35</sup> The unaffordability of adequate, secure, safe housing means that women and their dependent children are

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<sup>31</sup> Scottish Government (2020) Poverty and Income Inequality in Scotland 2016-19. Available at: <https://www.gov.scot/publications/poverty-income-inequality-scotland-2016-19/>.

<sup>32</sup> Ibid.

<sup>33</sup> Carers UK (2016) 10 facts about women and caring in the UK on International Women's Day. Available at: <https://www.carersuk.org/news-and-campaigns/features/10-facts-about-women-and-caring-in-the-uk-on-international-women-s-day>.

<sup>34</sup> Engender (2020) Gender and unpaid work: The impact of Covid-19 on women's caring roles. Available at: [https://www.engender.org.uk/content/publications/1594974358\\_Gender--unpaid-work---the-impact-of-Covid-19-on-womens-caring-roles.pdf](https://www.engender.org.uk/content/publications/1594974358_Gender--unpaid-work---the-impact-of-Covid-19-on-womens-caring-roles.pdf).

<sup>35</sup> Women's Budget Group (2019) A home of her own: housing and women. Available at: <https://wbg.org.uk/analysis/uk-policy-briefings/2019-wbg-briefing-social-security-and-gender/>.

more likely to live in overcrowded housing or poor conditions, at a cost to their mental and physical health.<sup>36</sup>

Women go to great lengths to avoid street homelessness, which frequently involves juggling temporary and often volatile accommodation. This less visible form of homelessness includes sleeping on floors or in overcrowded spaces and (re)entering into relationships with potentially abusive partners.

A survey by Shelter in England found that over 250,000 women had been asked for 'sexual favours' in place of paying rent by their landlord in the previous five years.<sup>37</sup> As Shelter Scotland note, 'there is currently no Scotland specific evidence on the extent of sex for rent', but that they are 'anecdotally aware' of arrangements involving free accommodation, a reduction in rent, or to write off rent arrears.

Large numbers of women in the most precarious housing situations do not engage with homeless services. This is both because of perceived stigma and shame but also because homeless services are not designed for women and do not understand or respond to their needs.<sup>38</sup>

Research that has focused on women and homelessness has concluded that women who sell sex on the street constitute one of the most 'excluded and marginalised groups within the homeless population in the UK'.<sup>39</sup> It describes a clear and reciprocal link between selling sex and homelessness; housing options can cause women selling sex to become homeless and homelessness can lead women to sell sex. 'Survival sex' is a key subsistence strategy for single homeless women, and repeat homelessness is evident in the lives of women who sell sex.

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<sup>36</sup> Engender (2020) Gender, housing and homelessness: A literature review. Available at: <https://www.engender.org.uk/content/publications/A-WOMANS-PLACE---GENDER-HOUSING-AND-HOMELESSNESS-IN-SCOTLAND.pdf>.

<sup>37</sup> Shelter Scotland (2018) Sex for rent in Scotland. Available at: [https://scotland.shelter.org.uk/\\_\\_data/assets/pdf\\_file/0006/1624335/FINAL\\_Sex\\_for\\_rent\\_in\\_Scotland\\_Topic\\_Briefing.pdf/\\_nocache](https://scotland.shelter.org.uk/__data/assets/pdf_file/0006/1624335/FINAL_Sex_for_rent_in_Scotland_Topic_Briefing.pdf/_nocache).

<sup>38</sup> Engender (2020) A Woman's Place: Gender, housing and homelessness in Scotland. Available at: <https://www.engender.org.uk/content/publications/A-WOMANS-PLACE---GENDER-HOUSING-AND-HOMELESSNESS-IN-SCOTLAND.pdf>.

<sup>39</sup> Batty E, Casey R, Reeve K (2010) On the Streets: Sex workers and Homelessness. Homeless in Europe, FEANTSA Gender perspectives on Homelessness Available at: [https://www.feantsa.org/download/homeless\\_in\\_europe\\_spring10\\_en5953934337965060559.pdf](https://www.feantsa.org/download/homeless_in_europe_spring10_en5953934337965060559.pdf); Reeve K (2018) Women and homelessness: putting gender back on the agenda. *People, Place and Policy Online* 11:165–174. DOI: 10.3351/ppp.2017.8845235448.

## 2.5 Criminalisation of women

There are approximately 400 women in prison in Scotland at any one time, a figure that has doubled since 2000 and remained at its current level for approximately seven years.<sup>40</sup> 2015 analysis identified that 3,000 women were imprisoned each year, of whom almost two thirds are sent on remand.<sup>41</sup>

A roundtable convened by Prison Reform Trust in 2016 discussed the ‘disproportionate number of women on custodial remand’. It explored the concerns of a number of agencies, academics, and groups that women are remanded to custody pending their trial or sentencing date for non-violent offences. Homelessness was identified as a key driver of this over-detention of women, along with ‘significant shortages in permanent and supported accommodation’.<sup>42</sup> Women are being placed in custody ‘for their own good’, because they do not have access to safe housing.

The use of remand has a catastrophic impact on women, removing them from their communities, support networks, families and children. Detaining women prior to conviction and/or sentencing results in the loss of employment, adding further barriers to women’s safe and successful return to their communities on release.

Women in prison have often been victims of much more serious offences than the ones they are accused of committing. Women tend to commit economically-motivated crimes to support drug use or alleviate poverty, such as shoplifting.<sup>43</sup>

Being in prison is a driver of homelessness. Women lose tenancies when they enter prison, and women prisoners are less sure of where they will live when they leave prison than male prisoners.<sup>44</sup>

Prison is disruptive of women’s lives, but convictions bring particular difficulties to women who have worked in female-dominated education or care settings. Jobs with

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<sup>40</sup> Scottish Government (2020) Scottish prison population: statistics 2019 to 2020. Available at: <https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/>.

<sup>41</sup> Wilson T (2020) International Review of Custodial Models for Women: Key Messages for Scotland. Scottish Government. Available at: <https://www.gov.scot/publications/international-review-custodial-models-women-key-messages-scotland/pages/0/>.

<sup>42</sup> Prison Reform Trust (2016) Women and remand in Scotland: Roundtable report. Available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Remand%20Scotland%20June%2020%202016.pdf>.

<sup>43</sup> Prison Reform Trust (2017) Why focus on reducing women’s imprisonment in Scotland? Available at: [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Why%20women\\_Scotland\\_2017.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Why%20women_Scotland_2017.pdf).

<sup>44</sup> Ibid.

children and vulnerable adults require Protecting Vulnerable Groups (PVG) checks, which mean that all convictions will be disclosed to an employer. This means that being convicted of a dishonesty offense as a result of poverty may make women much less likely to be able to secure paid work.

## 2.6 Developing a primary prevention approach to prostitution

If Scotland is to achieve the ambition set out in Equally Safe, and respond to the charge of the UN's CEDAW Committee then we must develop a primary prevention approach to prostitution.

It is clear even from the summary of evidence set out in this response, that the factors pushing women into prostitution also constitute gendered inequality themselves. They are also a violation of women's economic and social rights. Our proposals for a primary prevention of prostitution are set out in section 4.

## 3. CRIMINAL JUSTICE RESPONSES

While we agree that the question of the best possible criminal justice response to prostitution is an important one, Engender cannot speak with expertise to this. We highlight the thinking of other violence against women organisations on this issue, especially that of Women's Support Project, which specifically focuses on commercial sexual exploitation.<sup>45</sup>

The current situation in Scotland, in which prostitution is acknowledged as violence against women and yet women are nonetheless criminalised for selling sex is profoundly contradictory. This contradiction should be resolved by decriminalising the selling of sex. The shape of the rest of the criminal justice response is less clear to us. Our 2015 response to the Prostitution Law Reform (Scotland) Bill consultation identified substantive issues with the New Zealand model.<sup>46</sup> The 2017 evidence assessment of the impacts of criminalisation on the purchase of sex charted a contested evidence base and lack of clarity about the impact of particular policy prescriptions.<sup>47</sup> We are wary of path

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<sup>45</sup> Women's Support Project (2020) Women's Support Project response to Equally Safe: A consultation challenging men's demand for prostitution, working to reduce the harms associated with prostitution and helping women to exit.

<sup>46</sup> Prostitution Law Review Committee (2008) Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003. Ministry of Justice, NZ Government. Available at: <https://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>.

<sup>47</sup> Malloch M, Robertson L, Forbes E (2017) Evidence Assessment of The Impacts of The Criminalisation of The Purchase of Sex: A Review. Scottish Centre for Crime and Justice Research. Available at:

dependence in thinking about policy solutions. The history of prostitution is studded with attempts to influence women who sell sex or men who buy sex through the blunt tool of criminalisation. This focus on the criminal justice system as a lever of change remains, to the possible exclusion of other, better approaches.

It is our view that the Scotland model that is developed should focus on prevention, but should also enable women to exit prostitution, and also maximise their rights while they are selling or exchanging sex. We list some issues that Scottish Government should consider when developing further its criminal justice response:

- **The criminalisation of migrant women.** Migrant women make up a large proportion of the women selling sex in Scotland.<sup>48</sup> Research in Sweden, Norway and Finland has found that client criminalisation has rendered migrant women targets of punitive regulation implemented through immigration and third-party laws.<sup>49</sup> Police in these areas reported posing as clients in order to investigate women's immigration statuses and any third-party offences such as 'brothel keeping', when these are applied to women who are working with other women for safety.<sup>50</sup> Under these third-party offences,<sup>51</sup> women are pushed out of hotels and official apartment rentals and into more informal housing arrangements, which are more likely to be exploitative. In France, migrant women have not been able to participate in exit programmes because they have not been granted temporary residency.<sup>52</sup> This further marginalises women who sell sex, increases housing insecurity, and places migrant women at risk of detention and deportation.
- **The interaction with the UK immigration system leading to detention and deportation of survivors.** Survivors of gender-based violence, including trafficking, are regularly detained at immigration detention centres, even though

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<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/evidence-assessment-impacts-criminalisation-purchase-sex-review/documents/00514185-pdf/00514185-pdf/govscot%3Adocument/00514185.pdf>.

<sup>48</sup> Scottish Government (2017) Exploring Available Knowledge and Evidence on Prostitution in Scotland via Practitioner based Interviews. Available at:

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/exploring-available-knowledge-evidence-prostitution-scotland-via-practitioner-based-interviews/documents/00514437-pdf/00514437-pdf/govscot%3Adocument/00514437.pdf>.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> We have focused specifically on migrant women in our list of issues, but there are broader questions about how to frame 'third-party' laws to avoid criminalising women who are trying to maximise their personal safety within a context of exploitation.

<sup>52</sup> St.Denny E (2020) The gender equality potential of new anti-prostitution policy: a critical juncture for concrete reform. *Fr Polit* 18:153–174. DOI: 10.1057/s41253-020-00109-7.

this breaches Home Office policy.<sup>53</sup> It is extremely rare for a victim-survivor of trafficking to be granted indefinite leave to remain in the UK.<sup>54</sup> A victim-survivor can apply for discretionary leave, usually of around 12 months, if their personal circumstances are ‘particularly compelling’ (for example, if they need to finish a course of medical treatment that would be unavailable elsewhere); if they need to stay in the UK to pursue a claim for compensation against their traffickers; or if they need to stay in the UK to assist with police enquiries.<sup>55</sup> In 2015, which is the most recent data published, only 12% of victims of modern slavery were granted discretionary leave.<sup>56</sup> We are mindful that migrant women who sell sex are even less likely to be granted discretionary leave than women who have been trafficked, as any offence may not be aligned with the criminal justice priorities of UK Government.

- **Sexism within the police and criminal justice system.** Selling sex is highly stigmatised. Publication of social attitudes data on violence against women is expected soon, but 2014 data suggests that many people in Scotland do not understand paying for sex to be a form of gender-based violence.<sup>57</sup> Dame Elish Angiolini’s independent review into complaints handling, investigations, and misconduct issues within the police in Scotland recommends a further independent review of equality matters, including sexism, following ‘very worrying evidence’ that she received.<sup>58</sup> Women who sell sex have written extensively about police harassment.<sup>59</sup> The police response to reports of other forms of men’s violence has been so unsatisfactory that violence against women organisations have developed advocacy projects to support women to report, in order to ensure the best possible outcomes. We are alert to the negative consequences for women who live with poverty, insecure accommodation, and

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<sup>53</sup> Lousley G, Cope S (2017) We are still here: The continued detention of women seeking asylum in Yarl’s Wood. Women for Refugee Women. Available at: <https://www.refugeewomen.co.uk/wp-content/uploads/2019/01/women-for-refugee-women-reports-we-are-still-here.pdf>.

<sup>54</sup> Home Office (2020) Discretionary leave considerations for victims of modern slavery. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941844/dl-for-victims-of-modern-slavery-v4.0ext.pdf).

<sup>55</sup> Home Office (2016) Victims of modern slavery - Competent Authority guidance. Available at: [https://www.antislaverycommissioner.co.uk/media/1059/victims\\_of\\_modern\\_slavery\\_-\\_competent\\_authority\\_guidance\\_v3\\_0.pdf](https://www.antislaverycommissioner.co.uk/media/1059/victims_of_modern_slavery_-_competent_authority_guidance_v3_0.pdf).

<sup>56</sup> Newton MP S (2017) Victims of Modern Slavery Inquiry. Available at: <https://www.parliament.uk/globalassets/documents/commons-committees/work-and-pensions/Letter-from-Sarah-Newton-MP-to-Chair-re-modern-slavery-session-17-2-2017.pdf>.

<sup>57</sup> Scottish Government (2015) Scottish Social Attitudes Survey 2014: Attitudes to violence against women in Scotland. Available at: <https://www.gov.scot/publications/scottish-social-attitudes-survey-2014-attitudes-violence-against-women-scotland/pages/8/>.

<sup>58</sup> Angiolini E (2020) Policing - complaints handling, investigations and misconduct issues: independent review. Available at: <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>.

<sup>59</sup> Mac J, Smith M (2020) Revolting Prostitutes: The Fight for Sex Workers’ Rights. London ; New York: Verso Books.

mental health issues that may arise if they are brought into closer contact with the police.

- **Adequacy of funding.** Engender has visited Sweden as part of a fact-finding visit on their law on prostitution, where they described a slow start to investment and training as undermining implementation.<sup>60</sup> Analysis of the French law has also identified substantial underperformance, particularly with regard to funding and delivery of exit, support, and health programmes.<sup>61</sup>

## 4. CONCLUSION

As we outlined in section 2, the system of prostitution is sustained not only by men's demand but also by social systems that perpetuate women's income inequality and inadequacy, housing inequality, health inequalities, and over-criminalisation. All of these factors must be tackled if Scotland is to respond to the UN CEDAW Committee's charge to address the four root causes of women's sexual exploitation.

There are currently only tentative links between the policy response to prostitution, which is located in criminal justice, and the policy responses to the gender pay gap, housing inadequacy, and women's health. To realise Equally Safe's ambition to prevent men's violence before it happens, Scottish Government must scale up its work to eradicate women's poverty, ensure that every woman and her dependent children has a warm, safe place to sleep, and maximise the health and wellbeing of every woman and girl.

In our response to the consultation in 2015 we advocated for a 'Scotland model' in response to prostitution. We repeat that call now and set out some proposals for some of the elements of such an approach below:

1. **Women who sell sex or exchange sex should be decriminalised.** Previous convictions for selling sex should be expunged from women's records, and should not show up in PVG checks.<sup>62</sup>
2. **Policy frameworks for social security, poverty (including child poverty) and socio-economic inequality, housing, health, and migrant and refugee integration must contain explicit strategic approaches to preventing prostitution.** Initial

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<sup>60</sup> Engender (unpublished) Notes from Sweden Fact-finding Trip.

<sup>61</sup> St.Denny E (2020) The gender equality potential of new anti-prostitution policy: a critical juncture for concrete reform. *Fr Polit* 18:153–174. DOI: 10.1057/s41253-020-00109-7.

<sup>62</sup> There are also broader questions about how to frame 'third-party' laws to avoid criminalising women who are trying to maximise their personal safety within a context of exploitation.

policy frameworks where this should be delivered include: Child Poverty Action Plan, Fairer Scotland Action Plan, Fairer Scotland for Women: gender pay gap action plan, Housing to 2040, Women's health plan, New Scots: refugee integration strategy.

3. **The next iteration of Equally Safe should include specific actions on primary prevention of prostitution.** The evidence base for primary prevention of prostitution should be expanded, including additional research to gather and analyse specific factors 'pushing' women into selling sex that are being disclosed to non-specialist services.
4. **Criminal justice developments should disrupt and not entrench women's inequality, including that of migrant and refugee women, Black and minoritised women, and women living with poverty.**
5. **Given the centrality of the police's role in implementation, an independent inquiry into sexism within Police Scotland should be established, as recommended by Dame Elish Angiolini.<sup>63</sup>**

In addition:

6. **Women's rights, including those enumerated in the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR), must be incorporated into Scots law.**
7. **Gender budget analysis must be integrated into the Scottish Budget process.** Spend on large programmes such as social security, housing, and health should integrate consideration of women's distinct needs.

#### **FOR FURTHER INFORMATION**

Contact: Emma Ritch, Executive Director, Engender

Email: [emma.ritch@engender.org.uk](mailto:emma.ritch@engender.org.uk)

#### **ABOUT US**

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.

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<sup>63</sup> Angiolini E (2020) Policing - complaints handling, investigations and misconduct issues: independent review. Available at: <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>.