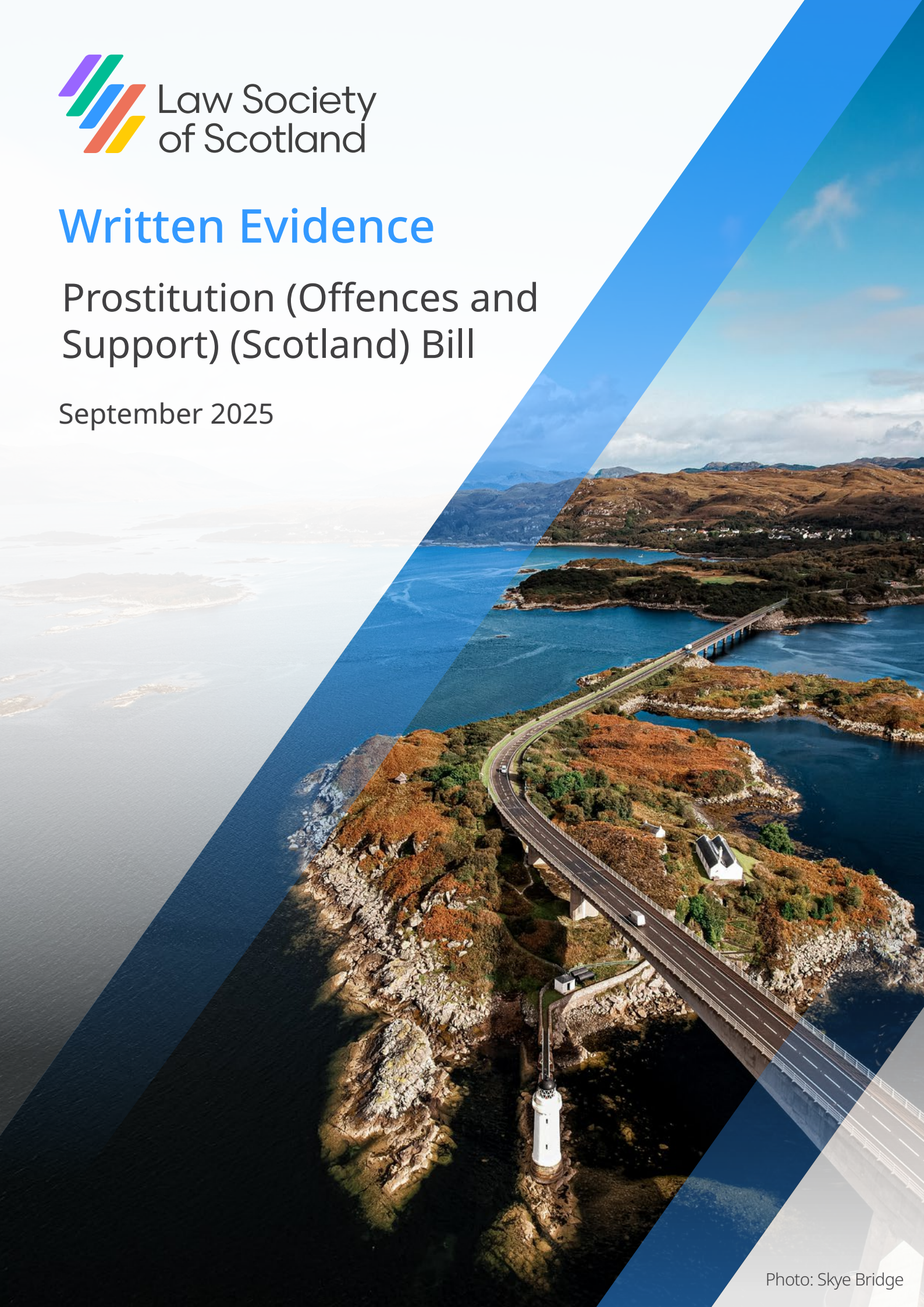


# Written Evidence

## Prostitution (Offences and Support) (Scotland) Bill

September 2025



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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Parliament's Criminal Justice Committee call for views on the Prostitution (Offences and Support) (Scotland) Bill<sup>1</sup>. The Committee has the following comments to put forward for consideration.

## Questions in the call for views

Question 1: The Bill proposes to create a new offence of paying for the performance of a sexual act by a person. The Bill (at section 1) includes details of the circumstances in which an offence would be committed. The Bill (at section 9) includes a definition of "a sexual act". The Bill states that activities such as striptease, pole dancing, lap dancing, or other erotic performances are not included in the definition of a "sexual act".

### What are your views on this proposal?

According to the Policy Memorandum, the Bill aims to reduce the amount of prostitution in Scotland<sup>2</sup>. The Member who introduced the Bill, Ash Regan MSP, considers that prostitution endangers the physical and mental health of the people that sell sexual acts<sup>3</sup>; is linked with violence offences and human trafficking<sup>4</sup>; and is often undertaken by vulnerable women and girls<sup>5</sup>.

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<sup>1</sup> [Prostitution \(Offences and Support\) \(Scotland\) Bill call for views – parliament.scot](https://parliament.scot/bills/prostitution-offences-and-support-scotland-bill-call-for-views)

<sup>2</sup> [Policy Memorandum \(para.4\) – parliament.scot](https://parliament.scot/policy-memorandum-para-4)

<sup>3</sup> Policy Memorandum (para. 30-33).

<sup>4</sup> Policy Memorandum (para. 24-29 and 43-52).

<sup>5</sup> Policy Memorandum (para. 36-38).



At consultation stage, we indicated that our comments were focused on the legal impact that the proposed Bill may have<sup>6</sup>. We maintain the same approach in this written evidence.

At consultation stage, we highlighted the importance of narrow and precise definitions in any potential new offence that reflect the Member's policy intentions.

The Bill introduces the offence of paying for the performance of a sexual act by a person. We note that the offence criminalises paying for the performance of a "sexual act" rather than a "sexual service". Whilst other statutes that criminalise the purchase of sexual activities use the term "sexual services"<sup>7</sup>, we understand that the member preferred the term "sexual act" due to the analysis of the consultation responses. The analysis indicated:

*"Respondents supporting the Bill raised two language issues: that the term 'sexual services', used in some parts of the consultation, was misleading as it gave the impression that prostitution is a service industry, and buyers are merely customers buying a service. Use of this term was strongly criticised as undermining the Bill in itself – if prostitution is merely a service industry and buyers just customers buying a service, why would there ever be a need to criminalise the buyers? Several respondents highlighted that the report of prostitution published by Reem Alsalem, quoted on pages 5,9 and 11 of the consultation, defined prostitution as selling 'sexual acts' instead and explained why 'sexual services' was a term Ash Regan should not be using in the wording of the Bill<sup>8</sup>".*

We also note that the Bill's definition of the "performance of a sexual act" (section 9(1)) covers only in-person performances. We welcome this precision, as the initial proposal at consultation stage<sup>9</sup> was not clear on whether online performances would be also criminalised.

However, we consider that the definition of "performance of a sexual act" requires further precision. We noted that Section 9(1)(b) excludes from the referred definition activities such as striptease, pole dancing, lap dancing, or "other erotic performances". If "other erotic performances" are excluded from the scope of the offence, we suggest that the Bill defines what an erotic performance is.

Section 1(2) contains the penalties for the proposed offence. On summary conviction, the proposed penalties are imprisonment up to 6 months or a fine not exceeding the statutory maximum or both. On conviction on indictment, it is

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<sup>6</sup> [Proposed Prostitution \(Offences and Support\) \(Scotland\) Bill consultation response – lawscot.org.uk](https://www.lawscot.org.uk)

<sup>7</sup> For example, [Section 9 of the Protection of Children and Prevention of Sexual Offences \(Scotland\) Act 2005 – legislation.gov.uk](https://www.legislation.gov.uk)

<sup>8</sup> Proposed Prostitution (Offences and Support) (Scotland) Bill – Ash Regan MSP. Summary of Consultation Responses. Page 9 – [parliament.scot](https://www.parliament.scot)

<sup>9</sup> [Proposed Prostitution \(Offences and Support\) \(Scotland\) Bill. Consultation by Ash Regan MSP. Page 40 – parliament.scot](https://www.parliament.scot)

proposed that the court will have the power to impose imprisonment of up to 12 months or a fine or both.

The penalties proposed in the Bill do not seem to align with the statutory limits for solemn and summary proceedings. Sheriffs who conduct summary proceedings can impose a sentence of up to 12 months<sup>10</sup>. By contrast, sheriffs who conduct solemn proceedings can impose a sentence of imprisonment of up to 5 years<sup>11</sup>. If the maximum custodial sentence provided for in the new offence is within the limits of summary proceedings, in our view it is not clear why the offence is also triable on indictment.

In addition, as we indicated at consultation stage, the penalties proposed do not seem to align with the presumption against short sentences. [Section 204 \(3A\) of the Criminal Procedure \(Scotland\) Act 1995](#) prevents courts from imposing sentences of imprisonment for a term of 12 months or less, unless the court considers that no other method of dealing with the person is appropriate. This presumption was introduced to encourage the use of community sentences and reduce reoffending<sup>12</sup>.

We consider that further consideration should be given to the penalties proposed for the new offence to ensure they are consistent with the current sentencing provisions.

**Question 2: The Bill proposes to repeal [section 46 of the Civic Government \(Scotland\) Act 1982](#). Under this section of the 1982 Act, a person who is found guilty of loitering, soliciting or importuning in a public place for the purposes of prostitution commits an offence.**

**What are your views on this proposal?**

Sections 2 and 3 repeal the offence of soliciting and importuning by prostitutes. We do not have further comments on this proposal.

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<sup>10</sup> Section 5 (2d) of the Criminal Procedure (Scotland) Act 1995 – [legislation.gov.uk](https://legislation.gov.uk)

<sup>11</sup> Section 3 (3) of the Criminal Procedure (Scotland) Act 1995 – [legislation.gov.uk](https://legislation.gov.uk)

<sup>12</sup> [Extended presumption against short sentences: monitoring information – January – December 2020 – gov.scot](#)

Question 3: The Bill proposes to quash historic convictions under [section 46 of the Civic Government \(Scotland\) Act 1982](#), which relates to the offence of loitering, soliciting or importuning in a public place for the purposes of prostitution.

What are your views on this proposal?

At consultation stage, we mentioned a few examples of statutory pardons for people convicted of historical offences<sup>13</sup>. One example is the [Historical Sexual Offences \(Pardon and Disregards\) \(Scotland\) Act 2018](#). When introduced, the Policy Memorandum of the Bill indicated:

*“Same-sex sexual activity between men was, in itself, a criminal offence in all circumstances as late as 1980. This law applied wherever the activity took place including in, for example, private homes. And it was only in January 2001 that the age of consent for sexual activity between men and sexual activity between opposite-sex partners was equalised at 16 following the commencement of the Sexual Offences (Amendment) Act 2000. It can be said that the earlier laws were in and of themselves discriminatory”<sup>14</sup>.*

The 2018 Act has a dual approach: it provided a statutory pardon with “symbolic effects”<sup>15</sup> and set up a scheme in which people convicted by historical sexual offences listed in the Bill can apply to have their conviction disregarded<sup>16</sup>.

We note some similarities between the policy intentions of the 2018 Act and the proposed Bill. Both challenge the criminalisation of specific behaviours and provide symbolic and procedural remedies to stop the effects of any potential conviction for the offences that were challenged.

Despite the former conclusion, the Bill proposes quashing convictions of the relevant offences rather than providing a statutory pardon. This was the approach taken by the [Post Office \(Horizon System\) Offences \(Scotland\) Act 2024](#). In this case, the policy intention of the Act was not to challenge the criminalisation of specific offences, but to recognise significant concerns<sup>17</sup> on how the judicial system operated in the context of the Post Office scandal.

As we indicated in the scrutiny of the Post Office (Horizon System) Offences (Scotland) Bill, we consider that it is a matter for the Scottish Courts rather than the Scottish Parliament to review and quash convictions, when appropriate<sup>18</sup>.

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<sup>13</sup> E.g.: [Miners’ Strike \(Pardons\) \(Scotland\) Act 2022](#)

<sup>14</sup> [Historical Sexual Offences \(Pardons and Disregards\) \(Scotland\) Bill. Policy Memorandum \(para. 5\) – parliament.scot](#)

<sup>15</sup> Ibid (para. 16).

<sup>16</sup> Ibid (para. 23).

<sup>17</sup> Those concerns were focused on the use of the evidence obtained from the Horizon IT system, that produced unfair convictions. Cfr. [Post Office \(Horizon System\) Offences \(Scotland\) Bill. Policy Memorandum \(para. 5\) – parliament.scot](#)

<sup>18</sup> [Post Office \(Horizon System\) Offences \(Scotland\) Bill Stage 1 briefing – lawscot.org.uk](#)

We have some reservations about the principle of an Act of the Parliament quashing convictions which were imposed on a legal basis. We are concerned that this approach may undermine the rule of law, affecting the principle of separation of powers.

Because of that, we are of the view that if the principles of the Bill are approved by the Scottish Parliament at Stage 1, a similar approach to the Historical Sexual Offences (Pardon and Disregards) (Scotland) Act 2018 should be considered and preferred, and the Bill amended accordingly at Stage 2.

Question 4: The Bill proposes (at section 6) to place a duty on the Scottish Ministers to ensure that a person who is or has been in prostitution is provided with assistance and support. The Bill sets out a non-exhaustive list of the types of assistance and support that may be provided.

What are your views on this proposal?

We do not have any views on this proposal.

Question 5: Do you have any other comments on the Bill which you have not already covered elsewhere?

Please read these important notes below.

We do not have anything else to add.



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