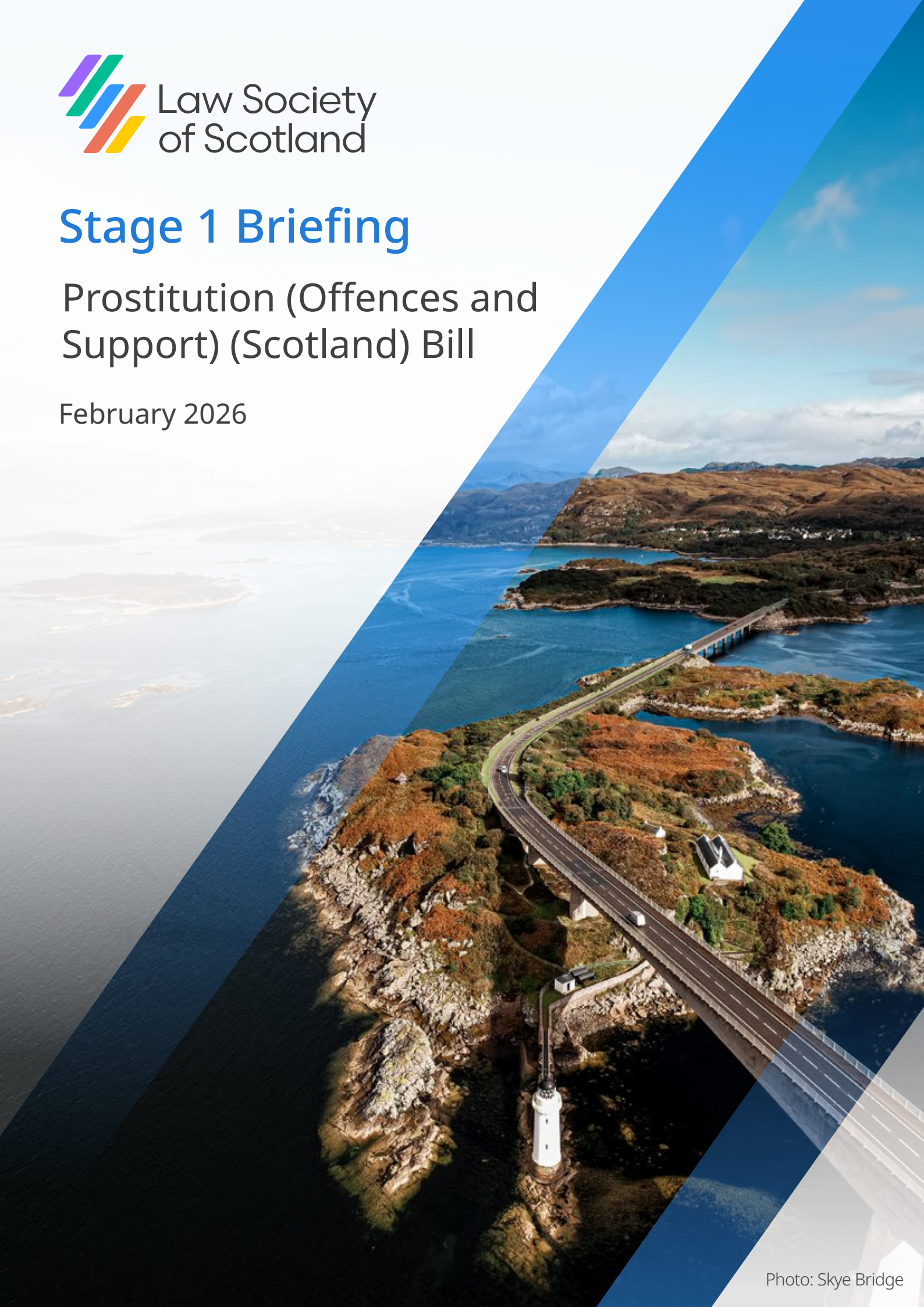


Stage 1 Briefing

Prostitution (Offences and Support) (Scotland) Bill

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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.

The Prostitution (Offences and Support) (Scotland) Bill¹ (the Bill) is a Member's Bill which was introduced by Ash Regan MSP on 20 May 2025. The Bill proposes 4 measures to reduce the amount of prostitution in Scotland:

- To introduce a new offence of paying for the performance of a sexual act,
- to repeal the offence of soliciting and importuning by prostitutes, contained in [section 46 of the Civic Government \(Scotland\) Act 1982](#),
- to quash convictions for certain offences related to prostitution, and
- to provide the right to assistance and support to people involved in prostitution.

We previously submitted written evidence on the Bill² to the Criminal Justice Committee of the Scottish Parliament (the Lead Committee) and provided oral evidence as part of the Committee's stage 1 consideration of the Bill on 5 November 2025³.

The Criminal Justice Committee's Stage 1 Report on the Bill (the Stage 1 report) was published on 23 January 2026. The Lead Committee was split on its view of the general principles, with 4 members recommending to agree on them, subject to substantial amendments at Stage 2⁴ and 4 members recommending that the Bill should not proceed beyond Stage 1⁵.

¹ [Prostitution \(Offences and Support\) \(Scotland\) Bill – as introduced | Scottish Parliament website](#)

² [Prostitution \(Offences and Support\) \(Scotland\) Bill written evidence | Law Society of Scotland website](#)

³ [Criminal Justice Committee of the Scottish Parliament. Official report \(draft\) of the 29th meeting 2025 conducted on 5 November 2025 | Scottish Parliament website](#)

⁴ [Prostitution \(Offences and Support\) \(Scotland\) Bill – Stage 1 report | Scottish Parliament website](#) (para. 408).

⁵ *Ibid* (para.409)/

We welcome the opportunity to consider and provide comment for the benefit of MSPs ahead of the Stage 1 debate scheduled to take place in the Scottish Parliament on 3 February 2026.

General comments

According to the Policy Memorandum, the Bill aims “to reduce the amount of prostitution in Scotland because of the evidence of exploitation and the harms that it is causing”⁶.

We have a neutral position regarding the policy intentions of the Bill. We have indicated that it is a matter for the Scottish Parliament to consider the public policy element of the proposals⁷. Our comments on the Bill are focused on the legal effects that such proposals may produce.

We note that, the offence of soliciting and importuning by prostitutes, contained in section 46 of the Civic Government (Scotland) Act 1982 is rarely, if ever, enforced⁸. Practitioners do not see soliciting charges being prosecuted before the courts. We consider that, if Parliament expects that the proposed offence will be prosecuted, more resources will be needed, in particular for the Police.

Our briefing includes the following key points:

- We consider that the definition of the offence of paying for the performance of a sexual act by a person should be reviewed. We envisage that the behaviours excluded from the scope of the proposed offence may lead to confusion.
- We have concerns about provisions that allow to the Scottish Parliament to quash historic convictions under Section 46 of the Civic Government (Scotland) Act 1982. To achieve the policy intentions of the Bill, we suggest the establishment of a statutory pardon with a disregard scheme for those convictions.

Comments on sections of the Bill

Section 1 – Offence of paying for the performance of a sexual act by a person

Section 1 introduces the offence of paying for the performance of a sexual act by a person. The proposed offence is committed when it can be reasonably inferred

⁶ [Prostitution \(Offences and Support\) \(Scotland\) Bill – Policy Memorandum | Scottish Parliament website](#) (para. 4).

⁷ [Proposed Prostitution \(Offences and Support\) \(Scotland\) Bill consultation response | Law Society of Scotland website](#).

⁸ For further information, please read the [letter from the Crown Office and Procurator Fiscal Service sent to the Criminal Justice Committee on 11 December 2025](#).

that someone has obtained, or intended to obtain, the performance of a sexual act in exchange for a payment.

The Bill proposes a penalty on summary conviction of up to 6 months of imprisonment or a fine not exceeding the statutory maximum or both; and in solemn proceedings, up to 12 months' of imprisonment or a fine or both.

Section 9(1) contains the definition of "performance of sexual act" for the purpose of Section 1. It involves engaging in or procuring in-person performances intended to cause sexual arousal, gratification, or stimulation. However, activities such as striptease, pole dancing, lap dancing and "other erotic performances" are excluded from the definition.

In the Stage 1 report⁹, the Lead Committee highlighted that Section 1 as drafted may produce some enforcement difficulties. Some of the evidence provided at Stage 1 indicates that evidential challenges may arise when investigating and prosecuting the proposed offence, related to securing evidence from vulnerable individuals who are frequently reluctant to engage with the criminal justice system. In the view of the Lead Committee, this issue may impact negatively on achieving the Bill's policy intentions.

The Lead Committee also expressed concerns on the effect that the offence proposed at Section 1 may produce to the safety of women involved in prostitution¹⁰.

We have two concerns regarding the proposed offence.

We consider the definition of "performance of sexual act" may lead to confusion. In our view, "other erotic performances" should be defined in order to clarify the behaviours that will be excluded from the scope of the offence.

Our second concern is related to the proposed sentences. We note the proposed maximum sentence for conviction on indictment can be imposed under the limits of summary proceedings. If an imprisonment sentence of up to 12 months can be imposed at summary level, we are unsure about the need for a solemn procedure. This was a concern shared also by the Scottish Sentencing Council, which indicated in its written evidence:

"If the view is taken that the appropriate maximum penalty is 12 months' imprisonment, there would, on the face of it, appear to be no need for trial on indictment to be a necessary option, as this could be provided for in the Bill as the maximum sentence for the offence under summary procedure."¹¹

⁹ [Prostitution \(Offences and Support\) \(Scotland\) Bill – Stage 1 report | Scottish Parliament website](#) (para. 279 and 280).

¹⁰ Ibid, para. 282 and 283.

¹¹ [Prostitution \(Offences and Support\) \(Scotland\) Bill – written evidence from the Scottish Sentencing Council | Scottish Parliament website](#)

The Lead Committee shared both concerns in the Stage 1 report. The committee recommended that the new proposed offence should have a clear definition consistent with current legislation and the policy intentions of the Bill¹². We support that recommendation.

Sections 2 and 3 – Repeal of the offence of soliciting and importuning by prostitutes, and further provisions

Section 2 repeals the offence of soliciting and importuning by prostitutes contained in Section 46 of the Civic Government (Scotland) Act 1982.

Section 3 contains some interpretation provisions intended to prevent any prosecution or conviction for the offence contained in Section 46 after Section 2 comes into force.

The Lead Committee recognises in the Stage 1 report that there is merit in the proposal contained in Section 2. However, it recommends to the member in charge to meet with the Scottish Government to address its concerns related to “sensitivities and complexities around prostitution”¹³.

We do not have comments on these sections.

Sections 4 and 5 – Quashing of convictions for relevant historic offences and further provisions.

Section 4 indicates that convictions for the offence contained in section 46 of the 1982 Act will be quashed once the section comes into force.

Section 5 provides that the Scottish Ministers must require Police Scotland and the Scottish Courts and Tribunal Service to amend their criminal records to reflect that offences under section 46 were quashed. If someone convicted under section 46 requires a confirmation that their conviction was quashed, the Scottish Ministers must provide such confirmation.

We expressed some concerns about these provisions at Stage 1. In our view, it is a matter for the Scottish courts to review and quash convictions, when they consider an appeal should proceed. We have reservations about the principle that an Act of the Parliament can quash legally sound convictions, imposed on a lawful basis. This may undermine the principle of separation of powers and the rule of law.

We are aware that previously the Scottish Parliament quashed convictions under the [Post Office \(Horizon System\) Offences \(Scotland\) Act 2024](#). However, in that case, the fundamental issue concerned the integrity of the evidence used to secure the convictions, rather than the validity of the offences themselves.

¹² [Prostitution \(Offences and Support\) \(Scotland\) Bill – Stage 1 report | Scottish Parliament website](#) (para. 284).

¹³ Ibid, para. 307, 308 and 309.

We consider that a better approach to fulfil the policy intentions would be introducing a statutory pardon on a similar basis to the [Historical Sexual Offences \(Pardon and Disregards\) \(Scotland\) Act 2018](#). A statutory pardon combined with a disregard scheme would have a symbolic effect for those convicted of the repealed offence and would provide a procedural remedy to mitigate the negative consequences of such convictions.

In the Stage 1 report, the Lead Committee noted our concerns regarding the proposed provisions and indicated that the Member in Charge intends to bring forward amendments to address these concerns¹⁴.

Sections 6 and 7 – Right to support

Section 6 introduces a duty to the Scottish Ministers to provide assistance and support to people involved in prostitution. Some of the services that may be provided under this section include:

- Appropriate and safe accommodation,
- Material assistance, including financial assistance,
- Assistance in obtaining healthcare services,
- Translation and interpretation services,
- Assistance in obtaining legal advice or representation.

We do not have comments on those sections.

¹⁴ Ibid, para. 345 and 346.



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