



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 29 October 2025

Session 6



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CRIMINAL JUSTICE COMMITTEE

28th Meeting 2025, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

Katy Clark (West Scotland) (Lab)

*Sharon Dowey (South Scotland) (Con)

*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ruth Breslin (Sexual Exploitation Research and Policy Institute)

Angela Constance (Cabinet Secretary for Justice and Home Affairs)

Teresa Medhurst (Scottish Prison Service)

Professor Jo Phoenix (University of Reading)

Ash Regan (Edinburgh Eastern) (Ind)

Dr Larissa Sandy (University of Nottingham)

Ruth Swanson (Scottish Government)

Alasdair Thomson (Scottish Government)

Dr Niina Vuolajärvi (London School of Economics)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 6

Scottish Parliament

Criminal Justice Committee

Wednesday 29 October 2025

[The Convener opened the meeting at 09:34]

Subordinate Legislation

Early Release of Prisoners (Scotland) Regulations 2025 [Draft]

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025 (SSI 2025/277)

The Convener (Audrey Nicoll): Good morning, and welcome to the 28th meeting in 2025 of the Criminal Justice Committee. We have received apologies from Katy Clark.

The first item of business is an oral evidence session on two Scottish statutory instruments, one affirmative and one negative: the draft Early Release of Prisoners (Scotland) Regulations 2025 and the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025. We are joined by the Cabinet Secretary for Justice and Home Affairs; Fiona Thom, head of parole, release and reintegration at the Scottish Government; Ruth Swanson, from the legal directorate at the Scottish Government; and Teresa Medhurst, chief executive of the Scottish Prison Service.

I refer members to papers 1 and 2 and draw their attention to the additional written submissions of evidence that we received from organisations including Victim Support Scotland and Families Outside, which are included in our meeting papers. I am grateful to all the organisations that responded to the call for views.

I intend to allow up to 30 minutes for this evidence session. I invite the cabinet secretary to make some opening remarks on the SSIs.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Thank you, convener, and good morning to the committee. I welcome the opportunity to attend today's meeting to discuss the Early Release of Prisoners (Scotland) Regulations 2025 and the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025.

The continuing rise in the prison population and its complexity is putting significant pressure on our prisons, impacting the ability of the Scottish Prison Service and its partners to ensure that prisons function effectively and safely and accommodate

those who pose the greatest risk of harm. This morning, the prison population stands at 8,404, and, on Tuesday 21 October, the population reached 8,430, which is its highest level ever. The Government has taken a range of measures to reach a sustainable population, including changing the point of release for some short-term prisoners and increasing investment to strengthen alternatives to custody. I have also established an independent review of sentencing and penal policy, to inform future action.

However, given the recent rate of increase and the associated risks, further action must be taken. It is my view that the legal test for emergency relief has been met and it is necessary and proportionate to ensure that the Prison Service can maintain the security and good order of prisons and the health, safety and welfare of prisoners and prison staff. It is not a decision that was taken lightly, but the increasing number of prisoners in custody is now at a level at which the Prison Service's assessed capacity tolerance has been breached on more than one occasion. A number of establishments are identified as being at red risk, and the SPS is at risk of not being able to comply with statutory duties and legal obligations.

Protecting victims and public safety remain my priority, and I recognise that the early release of prisoners is a cause for concern for victims. That is why, if the regulations are approved, they will have safeguards in place: only short-term prisoners with sentences of less than four years who are within 180 days of release are eligible, and there are strict exemptions for those in prison for sexual or domestic abuse offences and those with non-harassment orders. There are also statutory exclusions; details of those are included in the SSI, and they include prisoners with life sentences, registered sex offenders and those serving a sentence for domestic abuse. There is also a prison governor's veto if there is immediate risk of harm to identifiable individuals or groups. Should a prisoner pose an immediate risk of harm, they will not be released.

The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025 have been laid alongside the emergency early release regulations. They seek to amend the prison rules to allow governors to delegate the application of the governor veto to deputy governors. Deputy governors are experienced in risk management and risk-based decision making. They also chair the risk management teams in their establishments. The change is intended to provide resilience in the application of the governor's veto by allowing governors in charge to delegate it to deputy governors where required—for example, when governors are unavailable. The deputy governor cannot delegate the veto further.

Emergency release is not the answer to addressing the prison population issue in the longer term, but it is essential to provide some critical relief to those who live and work in our prisons. I am grateful for the cross-party engagement that I have had on these important issues so far and I encourage committee members to support today's regulations and to work with me on our collective goal of a sustainable prison population.

The Convener: Thank you, cabinet secretary. I have a couple of questions. The first is on some of the learning from previous emergency releases. The second is on the specific issue of orders for lifelong restriction. My first question picks up on a point that Victim Support Scotland made in its submission to the committee. It is seeking clarity on whether prisoners who were released in previous schemes and who subsequently returned to custody would be considered for future emergency release schemes. That is not a point that I had thought about, but I think that it is a valid one. Do you have any comments to make in response to that query?

Angela Constance: I am certainly aware of the submissions from Victim Support Scotland and other organisations. I know that the committee will be aware—particularly in the context of learning lessons and developing release planning, for example—that the return-to-custody figure for the short-term prisoner 40 programme, STP40, was 5 per cent in comparison with 13 per cent for the first early emergency release that we did last summer. That is in the context of a reconviction rate of 43 per cent within a year of release from custody. Those figures are encouraging and they are going in the right direction.

I think that where the difficulty would lie—and I will ask for some legal input from officials here, if that is acceptable to you, convener—is that, in terms of decision making on the management or release of prisoners, although previous behaviour informs any risk management or release plan, it is the sentence that somebody is currently serving that is the framework that we are working within. However, there is also the governor's veto, so there is not a straightforward answer to that. It would be difficult to penalise—that is perhaps the wrong word. You can take past behaviour into account in a risk assessment, but, under the law as it stands, it may well not change someone's eligibility. Ruth Swanson may want to say a bit more about that.

Ruth Swanson (Scottish Government): I do not have anything further to add to what the cabinet secretary has already said. Under the regulations as drafted, there are no specific exclusions for individuals who have been released previously under emergency release. However, as

the cabinet secretary has stated, that is all subject to the governor's veto as well, which will add an additional safeguard to any decisions regarding an individual prisoner's release.

The Convener: Thank you for that. My second question touches on orders of lifelong restriction, about which the committee has been in correspondence with you in the past. Indeed, your letter of 2 October indicates that you note that the individuals serving an order of lifelong restriction are excluded from the early release scheme, as you set out earlier. We are aware that, as of April this year, 277 people were serving OLRs, with 224 being past the punishment part but only 14 having been released.

Given recent commentary from the Scottish Human Rights Commission and Lady Poole's recent judgment highlighting the importance of access to rehabilitation, can you provide a response or some reassurance that all those who are on an OLR continue to present a risk to the public or are assessed as continuing to present a risk to the public and that no individuals are being held back just by virtue of the delays that we are experiencing across the prison estate?

09:45

Angela Constance: An order of lifelong restriction is a high-tariff disposal, and we need to be clear about that. It is a decision made by our independent courts in each individual circumstance. The same is true of life-sentence prisoners. You are not guaranteed to be released just because you have reached the end of the punishment part of your sentence. That is subject to a risk assessment, and people have to demonstrate that they are ready for release.

However, there is a more general point to make that goes beyond OLR prisoners and which is an issue for all prisoners, particularly those who are subject to OLRs and the parole system. If our prisons are so congested, the work becomes very transactional: it becomes about locking and unlocking and getting people fed, to the toilet and to necessary appointments. When the system is overpopulated, the capacity for relationship work is reduced, which has an impact on rehabilitative opportunities. That is why I have made the point on a number of occasions that, if we are making different decisions about some short-term prisoners and preventing people from coming into prison, either through good primary prevention work or alternatives to custody, we free up capacity for the in-depth rehabilitation work that will be required in many circumstances where people pose the greatest risk, if they are ever to be able to return to the community.

The Convener: I am conscious of the time, so I will open up questions to committee members.

Liam Kerr (North East Scotland) (Con): Cabinet secretary, in your opening remarks, you talked about the continuing rise in, and complexity of, the population. That is acknowledged, but that was all entirely predictable and has been known about for years—for example, as this place has been legislating. The measures to address this that you spoke about in your opening remarks clearly are not working to prevent overcrowding. In fact, in the submission that we heard about earlier, Victim Support Scotland said that the early release schemes

“are not effective in reducing the prison population in the medium or longer term.”

Therefore, how can the public be assured that, having previously endured the early release scheme and facing the release of a further 1,000 prisoners between now and, I think, April, we will not simply find ourselves in this situation again post-April?

Angela Constance: The issue for us all as parliamentarians is that, if we do not want to find ourselves constantly facing the necessity to make decisions that provide short-term relief, we have to step up to the debate and to the challenge of being prepared to discuss, engage with and work through the longer-term reforms that are needed.

It is fair to say that, for a very long time, along with the rest of the United Kingdom, Scotland has been an outlier in the sense of having a very high prison population per capita, compared with other jurisdictions. I would dispute that it has all been predictable, because there have been changes in recent times. You touched on the complexity, which certainly seems to have increased post-Covid. The remand population is higher than it was pre-Covid. Therefore, some changes were not predictable, and, with regard to the rate of increase, although we have had many periods of a high prison population, it has been stabilised at quite a high level; I am on the record as saying that it is too high. With regard to the recent rate of increase, we have seen the population shooting up by more than 250 in short weeks or short months; we experienced that at some point last year.

We are improving our understanding of the demand that is coming our way. Much work has been done by the criminal justice board. People can gather lots of data, but what we require is data that supports the justice system as a whole.

I reiterate my point that I have never described emergency early release as anything other than providing short-term relief. I have always been entirely candid about that. I have always been candid about the impact of any intervention that

has been proposed. There have been several interventions, not all of which were unanimously approved by people around this table. The fact that there is not just one contributory factor—one issue or one problem that drives up our prison population—means that there must be more than one solution. The Government has always been frank, and whether it was home detention curfew regulations, which come in next month, regulations in relation to foreign nationals, regulations around GPS, the investment in community justice, or the work that is being done to increase capacity in our prisons, we have not presented anything in isolation as getting any of us off the hook with regard to the longer-term and more radical reform that is needed.

Liam Kerr: That begs a further question: given that we are in this early release situation for short-term relief and that there have been previous early releases, what other solutions to provide short-term relief were considered in this situation that were perhaps different from last time?

Angela Constance: Other options were considered. Before I advise the committee of those, I will say that one of the factors that are different with this early release programme is that it is longer and that it will operate for the full duration that we are allowed to operate it for, within the confines of the legislation. The previous early release programme had a shorter duration and released around 477 prisoners.

On the other options that were considered, we looked at the contemplation and consideration that was being given south of the border to, yet again, changing the point of automatic early release for short-term prisoners. You will remember, from when we carried out the STP40 programme, that the advantage is that it reduces the population by around 5 per cent of what it would otherwise be. However, I discounted the option of another change to the point of automatic early release for some short-term prisoners because it was too soon. We had just done STP40 and we had just changed the regulations for home detention curfew to align with STP40. We have a commitment to evaluate STP40, so it was just too soon.

The other option that was considered was to change the definition of what is a “short-term” prisoner and what is a “long-term” prisoner, but I also discounted that option. Currently, short-term prisoners are those who serve less than four years. In theory, that definition could be changed to somebody who serves less than five years. I discounted that option, in part because the definition of “short-term” and “long-term” prisoners is not always a helpful one—it is quite blunt. There is a difference between people who are sentenced to less than a year—there are still several hundred

sentences of less than a year, despite the presumption against short-term sentences—and people who serve, say, three or four years. There is another difference with people who serve four to six years. Those are two examples of options that I considered but dismissed.

Liam Kerr: Following on from the point that you have just made, my final question is about long-term prisoners. Yesterday in the chamber, members asked about long-term prisoners, and I was not entirely clear about the response, so I will put the question to you again. You have not ruled out the early release of long-term prisoners—although, for clarity, I understand that that is not being considered as part of the Early Release of Prisoners (Scotland) Regulations 2025. How likely is it that the early release of long-term prisoners will happen? Given the greater danger that, logically, that step would pose to the public and to victims, what enhanced victim notification are you considering were such a move to happen? What analysis is the Government doing of any greater public risk posed by such a move?

Angela Constance: It is fair to raise that point, because I ran out of time in the chamber and did not address it fully, if at all. If you recall, we consulted on long-term prisoners. I am trying to remember whether that was last summer or the summer before—*[Interruption.]* It was in 2024. We consulted because we wanted to consider the issue and seek views from victim support organisations and from those who work in the field.

You will be well aware that long-term prisoners are subject to the parole process, so there is a complexity to any change to their release arrangements. As someone who used to work with long-term prisoners and write parole reports, I am more than aware of the risk profile that is associated with long-term prisoners.

There is a question—and it is a question on which I have an open mind—whether, if the prison population were to be reduced further and there were fewer short-term prisoners, thus enabling more rehabilitative work to be done with long-term prisoners, we would have the balance right for long-term prisoners who have determinate sentences, by which I mean those people who are returning to our community at some point. Is there a question in there about better progression and better step-down facilities, and about the balance of how much of their sentence they spend in custody and how much they spend under strict licence conditions—perhaps even electronic monitoring—and under the threat of recall?

There are concerns about prisoners who do not qualify for parole and are released automatically six months before the end of their sentence. They could have served several years. Does that serve

the public well, in terms of testing, managing and preparing for release people who are eventually going to return to our communities? That is an argument on which we should have an open mind, at least.

10:00

The consultation definitely showed us that, because of the risk profile, any change to how long-term prisoners are managed cannot be made in the short term. It is not something to be done as an emergency measure. It needs to be consulted on and planned for, and additional investment would need to be made in community justice social work, for example. The increase in the number of those in the long-term population—that part of the population who require statutory social work input—means that community justice social work is facing considerable demand, given the statutory work that it has to do for the Parole Board for Scotland and so on. It therefore cannot be an emergency measure.

We will have to wait and see what the sentencing and penal policy commission comes back with. I am merely saying that I am aware of the potential benefits, but I am also aware of the risks and the investment that would need to be coupled with any change to how long-term prisoners are managed.

The short answer is that I have an open mind. I know what I am in favour of: community justice, home detention curfews and expanded use of electronic monitoring for those who are on community disposals and, indeed, those who are leaving prison. I am also very much in favour of making best use of the estate, and we have increased its capacity. I want to replace old and crumbling buildings and ensure that HMP Highland and HMP Glasgow are delivered.

Beyond the prisons that we are committed to building and beyond modernising the estate, I am not in favour of building our way out of this, because if we build, they will come. We already have a prison population of 8,400, and the challenge is to get to a more sustainable population, because that is in the interests of public safety.

The Convener: I am conscious of the time, but a number of members are still waiting to come in. In the interests of having robust questioning, I propose to let the session overrun slightly, but I ask for succinct responses.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Cabinet secretary, you have spoken about the impact of the current situation—you described a transactional relationship between staff and those who are being held in our prison estate.

I was struck by a pretty stark comment in the policy note on the impact of the current situation on

“SPS’ ability to provide a safe environment for those living and working in Scottish prisons.”

The note then goes on to talk about

“a decline in the acceptable working conditions for staff within prisons.”

Can you say a bit more about the impact of the current situation on staff safety and how the regulations might alleviate concerns?

Angela Constance: We will alleviate the extremely difficult working conditions by reducing the prison population. I am acutely aware of the challenges that our prison officers and other partners, such as social work staff and the national health service nursing staff who also work in prisons, face. They need to be supported and enabled to do the job that they wish to do.

People join the Prison Service because they are focused on public safety and the protection of the public, but they are also invested in the rehabilitation of offenders, where that is appropriate and possible. As well as the safety of prisoners, we have to take the working conditions and safety of staff very seriously. I am very aware of the work and the views of the Prison Officers Association as well as those of the Prison Governors Association.

I am trying to be brief, convener, but would you like to hear anything about staff conditions from Ms Medhurst?

The Convener: Yes.

Teresa Medhurst (Scottish Prison Service): Every day in prisons just now, staff are being redeployed from jobs that they have been selected to do, especially those connected with employability and rehabilitation, and moved into jobs and roles that ensure that people are getting access to fresh air and exercise and are being provided with meals. That is happening because the conditions in prison are such that many people have been displaced and we do not have enough specialised cells for them, which, as the cabinet secretary said, puts increased pressure on staff just to get through the transactional work.

Because of that increased pressure, we are seeing rising staff absences and have recently seen a particularly concerning increase in the number of assaults on staff. A lot of that—although not all of it—comes from frustration because people are not getting time out of their cells and access to rehabilitation and support services, and because they are being taken away from their home establishments and moved to other places as we try to even out pressures across the prison estate. Those decisions are being taken every day

and those are the conditions that our staff are working in. That is why we need to see the pressure alleviated.

Jamie Hepburn: Therefore, staff safety is central to the thinking behind those decisions.

I have a couple of other quick questions. Victim Support Scotland has responded to both of the instruments that we are considering. On the victim notification scheme, Victim Support Scotland expresses a view that the rate of subscription to that scheme is still quite low. It would be useful to know what is being done to promote the scheme and to ensure that victims are aware of it. Victims cannot be compelled to take part, but they should be aware of their right to be part of it.

Angela Constance: That is a fair comment. I would certainly like to see more people being proactively involved and included in the victim notification scheme, and we are working with partners to improve awareness. I acknowledge the relatively low take-up rate for the victim notification scheme, but people do not need to register for the scheme in order to get information about the perpetrator in their case, because they can contact the Scottish Prison Service directly or can receive information via a victim support organisation.

We have the Victims, Witnesses, and Justice Reform (Scotland) Bill and other work that is in train, particularly through the victims task force, so there is a body of work going on to improve the victim notification scheme. That work should be considered because it is germane to any developments regarding long-term prisoners—indeed, it is important even if there are no developments in the management of those prisoners. There is a body of work to show that we are committed to improving the victim notification scheme. However, there are other routes that allow people to get the information that they need when it comes to emergency early release.

Jamie Hepburn: I have a final and straightforward question that is based on the Victim Support Scotland response to the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025. On the basis of what you have already said, cabinet secretary, I think that your answer will be a yes, but I would like to get that on record. VSS is seeking an assurance that any deputy governor with delegated powers would, when making a determination, have access to the same information that a governor would see.

Angela Constance: Absolutely. It is deputy governors who chair their establishment’s risk management committees, and they would have access to absolutely the same information from the police, social work and other sources.

Ms Medhurst, do you wish to add anything?

Teresa Medhurst: That information is provided to them. Based on lessons that we have previously learned and on feedback from governors, we are centralising the process this time to make it more streamlined, to pull the information together and to take off some of the pressure. That information is provided to governors and/or their deputies.

Jamie Hepburn: Thank you.

Pauline McNeill (Glasgow) (Lab): Good morning. I thank the cabinet secretary and Teresa Medhurst for sharing their insights into why we are facing this crisis in the Scottish Prison Service. They have always been frank and open with the Opposition parties, and I appreciate that.

I would like to understand the detail of what all of this means in relation to short-term prisoners. It is quite hard to follow, but am I correct in saying that the Bail and Release from Custody (Scotland) Act 2023 changes the early release point to 40 per cent of a sentence having been served? Where does that provision come in?

Angela Constance: The legislation that changed the point of automatic early release for some short-term prisoners is not the Bail and Release from Custody (Scotland) Act 2023. The bill relating to short-term prisoners is the Prisoners (Early Release) (Scotland) Bill, which was passed earlier this year. As was done south of the border, for some short-term prisoners—not those who are serving sentences for domestic abuse or sexual offences; there were some other exclusions as well—we changed the automatic early release point from 50 per cent of time served to 40 per cent.

Pauline McNeill: Thanks. Further to that, there has also been a change to the point in a sentence at which a prisoner could be eligible for home detention curfew. It was 25 per cent into the sentence, and now it is 15 per cent into the sentence.

Angela Constance: You may recall the home detention curfew regulations that we took through committee. They were aligned with the previous arrangements for short-term prisoners, and we wanted to align them to the short-term prisoner 40 programme.

Pauline McNeill: Before we get to the powers that we are considering today, there is already a potential shortening of the time served in jail under those provisions, for some prisoners.

Angela Constance: Yes. I might ask Ruth Swanson to explain this, because I always make a wee bit of a dog's dinner of it. Although eligibility for some prisoners kicks in at 15 per cent—and there are exclusions around who is eligible for home detention curfew as well—because of the

other requirements and the assessment process, people will actually be further into their sentence. Do you want to explain a wee bit about that, Ruth?

Ruth Swanson: There is no entitlement to release under home detention curfew. An individual prisoner can be eligible from the 15 per cent point of their sentence, but, as the cabinet secretary highlighted, there are a number of exclusions to eligibility for release under home detention curfew. Someone has to serve a minimum period of, I think, three months, and there are a range of statutory exclusions for certain offences.

It is also all subject to a risk assessment, which is an individualised assessment of a prisoner's eligibility for release under home detention curfew. That is different from automatic release, which you discussed earlier, where certain short-term prisoners are automatically released after serving 40 per cent of their sentence. The position is quite different.

Angela Constance: With home detention curfew, as well as being risk assessed, everybody is tagged. There are conditions of release and curfew.

Pauline McNeill: It is quite important for us to get our heads around where we are, because the situation is complex. I understand that. I found that information helpful, thank you.

Cabinet secretary, I asked you about this in the chamber yesterday. I know that there is more than one reason for the rise in the prison population. The committee also had a discussion about that with Teresa Medhurst. However, if I understood what you said yesterday—and you are not the first person to say this—it appears that there has been a rise in the number of longer sentences that the courts are handing out, for whatever reason. Is that the case?

Do you agree that it is quite important for somebody, whether it be a committee or a Government department, to understand why that might be? You said that the rise could not have been predicted, but if there are to be changes in trends in sentencing and in how long we hold prisoners for, maybe it is an important thing to understand.

10:15

Angela Constance: The answer to your question, Ms McNeill, is that across the board people are, on average, receiving longer sentences. The average increase in sentence length is 31 per cent.

Pauline McNeill: You might not be able to answer this, but does that indicate that more serious crimes are being committed, or is it not

possible to tell? Or is it that the courts are taking a harder view on sentencing—which they are entitled to do, as the judiciary is independent?

Angela Constance: To some degree, it is difficult for me to speculate, but a range of information is certainly available, including from the Scottish Sentencing Council, to show that all prison groups are, on average, serving longer sentences. It is an across-the-board sentencing issue; inflation is how I would describe it.

It is also due to the nature of offences. Prosecutors and the Crown are now more successful in pursuing historical sexual offences and more people have the confidence to come forward about such offences.

In addition, the profile of prisoners is changing in that there are more long-term prisoners and more sex offenders.

Pauline McNeill: I heard an interview with a defence lawyer who said that some of their clients who are serving time in prison and who might be released are not ready for that. They would rather be in prison so that they can access services, including rehabilitation or whatever else they think they need. Has that happened? I do not know whether Teresa Medhurst could answer that. Do you come across prisoners who do not think that they are ready to go out into the community? Is there provision to consider that?

Teresa Medhurst: Not within the scope of these regulations. That description probably does not apply so much to prisoners who are serving short sentences; it is more apt for those who are serving longer sentences.

Someone who might have spent 10 years in a closed environment where everything is regulated and provided for them, and who is looking at release, can become extremely anxious and concerned. That is why, earlier, the cabinet secretary alluded to having a discussion about what a long-term sentence should look like in terms of the custodial environment as well as the individual's return to the community.

We come across individuals who, unfortunately, deliberately set out to take part in activities that will ensure that they are not liberated because they have heightened concerns about what is waiting for them outside.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a follow-up question to Pauline McNeill's earlier line of questioning. It is about the changing demographics in prison. I have brought that up before, both in committee and in the chamber.

An older prison population has significant health and social care needs. Some governors—most recently, the governor of Glenochil—have publicly

expressed concerns about whether typical prisons are suitable for those prisoners, and best placed to house them, or whether more of a healthcare setting is required. By that, I mean healthcare in a prison context, because obviously there are different risks. Has any further work been done on that or has there been any consideration or assessment by the Government, in conjunction with the Scottish Prison Service, about how making changes in that area might impact the prison population beneficially and perhaps relieve some of the pressure that we are experiencing?

Angela Constance: I will try to be brief, because I might be at risk of repeating what I have said to the Parliament and to the committee previously. We are scoping out work on different models of care for the older prison population. The notion of a combined hospital, prison and secure care home would involve a substantial capital investment. Nonetheless, we are looking at a range of options.

Those are not quick options, but, in the meantime, the prison healthcare group, which I chair and which is attended by all health ministers, is seeking to ensure that there is better cross-Government and cross-service working to support older people in custody and, in particular, to support the Prison Service with the task that it faces.

It is also important to highlight that the new HMP Glasgow will be built in such a way that it will have smaller, more community-type units within the much larger establishment. As part of the design, it will have improved healthcare facilities.

Ms Medhurst might wish to add to that.

Teresa Medhurst: We are experts in criminogenic need, not social care need, so I welcome the cross-Government support that we receive in relation to what is an increasing—and very problematic, in that we do not have expertise in that area—part of our population. We are reliant on partners and others. I welcome the exploration of different models of care and what those could look like, because a different model would alleviate many of the pressures that staff are facing.

To be honest, in a custodial environment, high-security facilities are not required for the individuals we are referring to. An alternative model of provision could better provide the care that they need, as well as supporting a focus on their criminogenic needs.

Fulton MacGregor: That is really positive. Thank you.

The Convener: Emergency release—in particular, the release process that we are discussing today—places significant additional

pressures on local services. Cabinet secretary, in your opening statement, you alluded to the additional pressures that it places on local authorities, health services and the third sector. Obviously, they will be familiar with previous emergency release processes. However, are you able to reassure us that local services will be supported to manage the next lot of releases, should the proposed provisions be agreed to today? If those services require additional resource or assistance, will that be forthcoming?

Angela Constance: We are continuing to engage with partners on all of that. It is important to stress that the phasing of the tranches of release is important in managing that pressure on the community. No additional financial resource was provided when we undertook the emergency early release programme last summer. Nonetheless, there are weekly planning meetings, because it is absolutely imperative for our local partners, and for individuals who are being released, that such planning is done. At the start of this journey, I met representatives of the Convention of Scottish Local Authorities and others, and we will continue to have close engagement.

The Convener: Our next item of business is consideration of the motion to approve the affirmative SSI on which we have just taken oral evidence. I invite the cabinet secretary to move motion S6M-19222, which is in her name, and to make any brief additional comments that she wishes to make.

Angela Constance: I refer members to my opening statement.

I move,

That the Criminal Justice Committee recommends that the Early Release of Prisoners (Scotland) Regulations 2025 [draft] be approved.

Liam Kerr: Thank you, cabinet secretary, for taking part in this morning's evidence session. I will oppose the draft SSI, and I believe that the committee should vote against the motion.

I will set out my reasons for taking that position. It is clear that Victim Support Scotland is right in saying that the measure is no solution. We will be in this situation next April, following the release of a further 1,000 prisoners. The knee-jerk response has now become the default response, and I can see no real progress since the previous early releases to prevent that repeatedly happening.

I note that the cabinet secretary did not expressly rule out long-term prisoner release. Her comments were helpful but she did not rule it out. The argument around a knee-jerk release of short-term prisoners becoming the default response, without ruling out long-term prisoners, suggests that the measure could be the thin end of the

wedge. I do not see enough evidence of other options being considered.

I noted the remarks made the other day, when the SPS said that a new prison the size of HMP Grampian or HMP Shotts is required to relieve the overcrowding, but the cabinet secretary suggested that there will not be any further new builds because, to use her words, if we build it, they will come. With respect, I do not find that to be a coherent argument, given that, for example, His Majesty's Inspectorate of Prisons for Scotland suggests that early release does not

"address any of the root causes"

of the problems. It is not the building of prisons that raises or lowers the prison population; it is other issues in the justice system.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Will Liam Kerr take an intervention?

Liam Kerr: I shall.

Rona Mackay: To be clear, does Liam Kerr recognise that this is an emergency situation? Is he saying that we should build our way out of the situation by building more prisons?

Liam Kerr: There is clearly an emergency, but, as I said in my remarks earlier, the situation was not unforeseeable. It has been entirely foreseeable over many years. As I have just said, there is simply no evidence that the Government has taken the steps that are required to prevent an emergency happening. I am certainly not saying that the solution is to relentlessly build our way out of the problems; the solution to the prison population is to examine the justice system holistically and to consider how to address the prison population. That has not been done.

The cabinet secretary's remark—if we build it, they will come—is simply not coherent, because it is not the availability of prison space that impacts the size of the prison population; it is the wider context of the justice system.

Yesterday, I put a point to the cabinet secretary about the new buildings—HMP Glasgow and HMP Highland—and the cabinet secretary said to me that another reason why there would be no new building was the cost. The Glasgow and Highland projects are massively delayed and are subject to massive cost overruns, and it surely cannot be correct to found on the Government's inability to deliver infrastructure on time and on budget as a way to avoid dealing with overcrowding.

10:30

Angela Constance: Will Mr Kerr give way? Am I allowed to intervene?

Liam Kerr: Yes, of course.

Angela Constance: Thanks. I am listening very carefully to Mr Kerr, as always. It is important that we critique the past as well as debating the future. However, what does Mr Kerr propose that we do right now instead of early emergency release, bearing in mind the fact that time-limited relief is required right now? What does he suggest that we do? Is he seriously suggesting that we do nothing and ignore the advice from the Scottish Prison Service, HMIPS, the Prison Governors Association and the POA? We all want longer-term action, but action is required right now. Are you seriously proposing that we do nothing?

Liam Kerr: On the contrary. With respect, cabinet secretary, the problem is that the Government has done nothing, because this is not a new situation. As I said to Rona Mackay, this has been in train for so long that there have been previous early release programmes. Were I in Government, I would have immediately accelerated. I would not have allowed the cost overruns and the time overruns on HMP Glasgow and HMP Highland to go ahead. For example, one of the other things—

Angela Constance: Will you give way again?

Liam Kerr: No. With respect, cabinet secretary, let me answer the question. HMP Kilmarnock was taken back into the public sector. By all means, cabinet secretary, correct me if I am wrong, but my understanding is that part of Serco's offer was to open a new wing as part of HMP Kilmarnock, thus increasing capacity and potentially solving the overcrowding issue. The fact that HMP Kilmarnock was taken back into the public sector for what some might suggest are ideological reasons might have ruined that possibility.

Cabinet secretary, this is an ill-thought-through and risky response to a situation that we knew and have known for a long time would occur. I will not be voting for it, and I do not think that the committee should, either.

Jamie Hepburn: I support the regulations, and I think that the committee should support them because the circumstances that have been set out require us to act.

It is interesting that the deputy convener conceded at the outset that we are in an emergency situation, and an emergency situation compels us to respond urgently. I am afraid to say that the deputy convener's response to the cabinet secretary did not indicate what would otherwise constitute an urgent and emergency response. It would be very easy to pass on by and abdicate any responsibility for trying to find a solution. With respect, I would say that that would be a knee-jerk response. It is clear that the regulations have not been proposed lightly. People will be watching.

It is important to remind ourselves that there are clear restrictions on the cohort of prisoners that will be eligible for early release—that is set out very clearly. Life prisoners will not be eligible. Untried prisoners will not be eligible. Terrorist prisoners will not be eligible. Those who are subject to proceedings under the Extradition Act 2003 will not be eligible. Those who are subject to notification requirements under the Sexual Offences Act 2003 will not be eligible. Those who are serving a sentence of imprisonment or detention for an offence that is aggravated as described in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 are not eligible. There are others—I could go on.

That is not to dismiss the reasons why those who will be eligible have been imprisoned. I recognise that the courts have made that assessment and determination, and I do not dismiss that lightly, but we must remind ourselves that there are prisoners who will not be eligible.

The governor's veto will also be extended to deputy governors. They can make a further assessment, and those who might otherwise be eligible could be vetoed.

The most compelling reason that I have heard thus far is the impact on the prison environment and on being able to undertake the rehabilitation of prisoners, which I know is sometimes dismissed as not important. As far as I am concerned, it is an essential part of the work that is undertaken in prisons, because, if it is done properly, it creates a safer society. However, for no other reason than that we have heard that overcrowding has an impact on the safety of those who work in the prison environment, we should support the regulations today.

Pauline McNeill: I start by saying that I do not find this at all easy. I can see that there is an emergency. I heard Phil Fairlie from the Prison Officers Association on the radio this morning and I know that the situation is horrendous. For that reason, the regulations must be carefully considered, but I am going to oppose the SSI and will set out the balance of my reasoning.

The issue is not straightforward, and there will be consequences whichever way we vote. We want to release the pressure on our prisons, but this is the third time that we have been in this situation, and my main concern is that I do not want to endorse an approach of managing prisoners in that way.

The situation is already complex, and I appreciated the exchange with the cabinet secretary as I tried to understand the current sentencing policy in Scottish prisons. I dearly wish that the committee had been given time to do its job, because I agree with the point about the long

term. The convener knows that I feel that this committee should be able to examine some bigger issues during the final six months of this parliamentary session because that is our job. The Sentencing Council has its job, and I will say something about that, but we have a job and do not have the time to do it, for reasons that I will not go into.

I am not convinced that the Sentencing Council is doing the job that it was set up for. That is my initial take on that, because I think that there should be clearer answers to the changing trends. You cannot take a period of 18 or 20 years and say that we could not have predicted this situation. Things do not stay the same, that is for sure: the prison population might become older, and the courts are independent and we do not know what they will do. I appreciate all that, but I think that the Sentencing Council should be more up front and should have more of an exchange with us, as elected members, about how it will deal with this in the longer term. I agree with the cabinet secretary on that.

I have to be constantly reminded that we changed the approach to long-term prisoners, who are not eligible for release on parole until six months before the end of their sentence. That shows how complex sentencing has become, for many reasons. The committee should have a legacy discussion about that.

The convener asked about lessons learned. I am sure that lessons have been learned and are learned every time that we have to go through this process. Communication with victims is not easy.

I know that we are running out of time for discussion, but I will mention that Families Outside appealed to the committee to recognise the importance of families. I know that the cabinet secretary is fully aware that families make a huge difference to reoffending rates, and that organisation has pleaded for better communication.

The decision is a very difficult one—I am not going to pretend otherwise—but I thought that I should contribute to the debate and explain my decision.

Rona Mackay: Notwithstanding the arguments that we have heard, I think that we all agree on the bigger, long-term picture. The core reason for the SSI being laid is that we are in an emergency situation. I cannot understand why committee members would not understand that an emergency situation requires immediate action. I will support the SSI.

Sharon Dowey (South Scotland) (Con): I agree with the comments that many other committee members have made, but it concerns me that we are talking about an emergency, when

an emergency is something that cannot be foreseen. My concern is that this now feels like business as usual because this is the third emergency release of prisoners. Mr MacGregor said that we know that we have an ageing prison population; Wendy Sinclair-Gieben highlighted that in a report a few years ago and asked what we were doing about that ageing population to take pressure off the Prison Service. I do not see that we have taken much action on that.

Again, the people who are in prison are there for a reason—they might have caused mayhem in their communities. I realise that we must protect prison officers, but we are going to move this cohort of people from prison back into communities where they will cause mayhem for police officers who are already struggling to deal with the amount of cases that they have. They just feel that no action is being taken on this.

I do not think that this is an emergency situation. It feels more like business as usual, and I would like to see more on diversion from prosecution. I just feel that we will be back here again.

The Convener: I think that everybody has commented, so thank you very much, indeed. I invite the cabinet secretary to wind up and to indicate whether she wishes to press or withdraw the motion.

Angela Constance: I will be very brief, convener.

I want to reassure members that this is not business as usual; this is an emergency situation, because of the risk to the health, wellbeing and safety of both staff and prisoners. Doing nothing is not an option. Our hard-working prison staff and their partners need to know that we have their back and that help is coming.

I understand very well the concerns that have been expressed here today, but I remind people that with those who were released in the first emergency release—this is the second time that we have done early emergency release—the change to the management of some short-term prisoners was set out in primary legislation. It was not some knee-jerk emergency reaction.

As I have said, this is the second time that we have done emergency release. When it was done last summer, two thirds of those who were released were within three months of their liberation date. These folks are due to return to their own communities in the very near future.

I make the plea to the committee that doing nothing right now is not an option and, in my view, would be a complete abdication of our duty. I therefore press the motion.

The Convener: The question is, that motion S6M-19222 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Against

Dowey, Sharon (South Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Motion agreed to,

That the Criminal Justice Committee recommends that the Early Release of Prisoners (Scotland) Regulations 2025 [draft] be approved.

The Convener: Are members content to delegate responsibility to me and the clerks to approve a short factual report to the Parliament on the affirmative instrument?

Members indicated agreement.

The Convener: The report will be published shortly.

I now turn to the Prisons and Young Offenders Institution (Scotland) Amendment Rules 2025. If members have no comments to make on the instrument, are they content for it to come into force?

Members indicated agreement.

The Convener: We will now have a short suspension in order to change over witnesses.

10:44

Meeting suspended.

10:49

On resuming—

First-tier Tribunal for Scotland General Regulatory Chamber (Police Appeals) (Procedure) Regulations 2025 [Draft]

First-tier Tribunal for Scotland (Transfer of Functions and Members of the Police Appeals Tribunal) Regulations 2025 [Draft]

First-tier Tribunal for Scotland General Regulatory Chamber Police Appeals and Upper Tribunal for Scotland (Composition) Regulations 2025 [Draft]

The Convener: Our next item of business today is an oral evidence-taking session on three affirmative instruments. I remind members of my entry in the register of members' interests—I am a former police officer.

We are joined again by the Cabinet Secretary for Justice and Home Affairs. I also welcome to the meeting Alasdair Thomson, senior policy officer on tribunals, and Emma Thomson, solicitor in the legal directorate, from the Scottish Government.

I refer members to paper 3. I intend to allow about five minutes for this evidence session. I invite the cabinet secretary to make some opening remarks on the Scottish statutory instruments.

Angela Constance: This suite of regulations will transfer the functions and members of the existing police appeals tribunal into the Scottish tribunal structure. The Scottish tribunal structure was created by the Tribunals (Scotland) Act 2014, which introduced a new and simplified statutory framework for tribunals in Scotland. The Scottish tribunals consist of the First-tier Tribunal for Scotland and the Upper Tribunal.

The Police and Fire Reform (Scotland) Act 2012 gives police constables the right to

"appeal to a police appeals tribunal against any decision to dismiss ... or to demote the constable in rank".

At present, police appeals tribunals are administered by the Scottish Police Authority, and the appeals are heard and decided by three members who are drawn from a list of independent, legally qualified members, which is maintained by the Lord President. It is proposed that, upon transfer, police appeals cases will be heard in the general regulatory chamber of the First-tier Tribunal for Scotland.

The first instrument before the committee is the draft First-tier Tribunal for Scotland General Regulatory Chamber (Police Appeals) (Procedure) Regulations 2025. The instrument provides for a

set of rules regarding practice and procedure to be followed by the First-tier Tribunal when hearing police appeals cases. The procedure rules are based, so far as possible, on the existing rules of procedure for police appeals cases. Opportunity is taken to update some rules; for example, around electronic signing of documents and the electronic sending of documents. To aid consistency across the Scottish tribunals, some rules that apply to all chambers in the Scottish tribunals have been added; for example, the overriding objective to deal with cases “fairly and justly” is included in the updated set of procedure rules.

The Upper Tribunal for Scotland has an existing set of procedure rules, and those are to be used for any police appeals cases that are to be heard in the Upper Tribunal.

The second instrument is the draft First-tier Tribunal for Scotland (Transfer of Functions and Members of the Police Appeals Tribunal) Regulations 2025. If passed, the instrument will transfer the functions of the existing police appeals tribunal to the First-tier Tribunal. The instrument allows for the existing members of the police appeals tribunal to be transferred into the Scottish tribunals as legal members.

The regulations will also make transitional provisions to ensure that any live appeals before the existing tribunal are transferred to the First-tier Tribunal.

The third instrument is the draft First-tier Tribunal for Scotland General Regulatory Chamber Police Appeals and Upper Tribunal for Scotland (Composition) Regulations 2025. If passed, the instrument will make provision for the composition of the First-tier Tribunal and the Upper Tribunal when hearing any police appeals cases.

The existing composition of three legally qualified members is maintained for the First-tier Tribunal. The composition rules for the Upper Tribunal are drafted in such a way as to allow the president of the Scottish tribunals flexibility when determining the composition of the Upper Tribunal. If the instruments are passed, the Scottish tribunals will be able to hear such appeals from 29 December 2025.

The Lord President and the president of the Scottish tribunals were consulted regarding the draft sets of regulations in line with the requirements of the Tribunals (Scotland) Act 2014. Feedback provided was used to further inform the development of the regulations. Public consultation that included those regulations was also conducted and closed on 22 January 2025.

It is the case that the three instruments will enable the Scottish tribunals to hear those appeals. I understand that the Delegated Powers

and Law Reform Committee considered the regulations on 30 September and that no points were raised.

The Convener: Thank you. I invite questions from members.

Pauline McNeill: It might be more appropriate to put this question to Alasdair Thomson, because it is about waiting times and the current structure.

I understand what we are being asked to do. If the function is transferred over, will that change the waiting times for police tribunals?

Alasdair Thomson (Scottish Government): It should not have any effect on the waiting times. Currently, the appeals are administered by the Scottish Police Authority. Upon transfer, they will be administered by the Scottish Courts and Tribunals Service.

It is important to remember that the police appeals tribunal is a very low-volume jurisdiction. Since 2013, only 22 appeals have made it to the police appeals tribunal, so there is an average of less than two appeals per year. Because it is such a low-volume jurisdiction, we do not have robust data on waiting times. However, the transfer should not affect waiting times for appellants. The procedure rules detail timescales for people to provide responses and for the chief constable to provide a reply to the notice of appeal from the appellant.

Pauline McNeill: Thank you—that was helpful.

I noted that the updated rules will apply in relation to the Upper Tribunal, which the chair will have some flexibility in appointing members to. I presume that it would be expected that people who were appointed to the Upper Tribunal would be familiar with, and have had training in, the police rules specifically.

Alasdair Thomson: Because the Upper Tribunal will hear questions only on points of law, members of the Upper Tribunal are even more experienced members of the judiciary—they tend to be sheriffs and senators of the Court of Session—so they will have expertise in public administrative law and in dealing with judicial reviews and so on. Therefore, they will have suitable expertise to deal with the cases.

Pauline McNeill: That is great; thank you.

The Convener: As no other members have questions, we will move on to our next item of business, which is consideration of the motions to approve the affirmative SSIs on which we have just taken oral evidence. I invite the cabinet secretary to move motions S6M-18945, S6M-18946 and S6M-19179, in the name of Siobhian Brown, and to make any brief additional comments that she wishes to make.

Angela Constance: I have nothing further to add.

I move,

That the Criminal Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber (Police Appeals) (Procedure) Regulations 2025 [draft] be approved.

That the Criminal Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Police Appeals and Upper Tribunal for Scotland (Composition) Regulations 2025 [draft] be approved.

That the Criminal Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions and Members of the Police Appeals Tribunal) Regulations 2025 [draft] be approved.

Motions agreed to.

The Convener: Are members content to delegate to me and the clerks responsibility for approving a short factual report to the Parliament on the affirmative instruments?

Members indicated agreement.

The Convener: That will be published shortly. We will have another short suspension to allow for a changeover of witnesses.

10:58

Meeting suspended.

11:02

On resuming—

Prostitution (Offences and Support) (Scotland) Bill: Stage 1

The Convener: The next item of business is a continuation of our scrutiny of the Prostitution (Offences and Support) (Scotland) Bill. We have one panel of witnesses and I intend to allow up to 90 minutes for the panel. I refer members to papers 4 and 5.

I welcome to the meeting Dr Niina Vuolajärvi, assistant professor in international migration, London School of Economics; Ruth Breslin, director of the Sexual Exploitation Research and Policy Institute in the Republic of Ireland; and Dr Larissa Sandy, associate professor of criminology at the University of Nottingham. Professor Jo Phoenix, professor of criminology at the University of Reading, joins us online. I thank those who were able to send written submissions to the committee.

I remind everyone that we are here to look at the provisions in the bill. I would like questions and answers to stay focused on the provisions as much as possible.

I will start with a broad question, which I will direct first to Niina Vuolajärvi, then work around the room, before bringing in Jo Phoenix. What are your overall views of the bill? Is there anything that you particularly agree or disagree with or that you think could be improved?

Dr Niina Vuolajärvi (London School of Economics): Thank you for giving me the opportunity to talk about my research. I warmly support elements of the bill such as quashing historical convictions, removing the penalty for soliciting, and, of course, the general support measures for sex workers and people in the sex trade. I hope that we can talk later about what kind of measures would be effective, based on evidence.

However, I strongly oppose the criminalisation of sex buying, based on my research among sex workers, people in the sex trade, police and social workers in the Nordic region. I conducted three years of ethnographic participant observations, and my research includes more than 200 interviews, most of which were with people who sell sex. I oppose a law on criminalising the buying of sex because of the harms that that produces to people in the sex trade. I evidence that in my research. Introducing the aim to abolish commercial sex through the criminalisation of buying does not increase the policing of sex

buyers, primarily, but targets sex workers, as that is where the police find sex buyers.

It also offers a criminal model instead of a model that is focused on social support. For example, Sweden invested quite a lot of money in policing, but there was no increased investment in social services when that was introduced.

Sex-buyer law, in itself, exposes sex workers to violence and exploitation because it reduces negotiation space and safety practices for sex workers. It also produces overall stigmatisation—increased stigma and social marginalisation—that has broader effects on their everyday life.

In the Nordic countries and in other countries in which that model has been introduced, such as France and Canada, we can see that the overall goal becomes the abolition of commercial sex, which is done through the policing of sex workers. In the Nordic region, the police use other laws on commercial sex, such as immigration laws and pimping laws, to forcibly evict and deport sex workers. In that way, they try to squash the market. Some 98 per cent of my participants opposed sex-buying law, because they wanted to sell sex without criminal penalties and in peace and in safety, and they saw how that law affected their lives.

I also highlight that there is no evidence of positive outcomes from the Nordic model policies. The Swedish state claims that it has had a positive effect, has reduced commercial sex and so on, but we have to remember that that law has become a part of Swedish foreign policy and national branding, and that it has tried extensively to export that model abroad. However, according to the reports that we have, Sweden has no conclusive evidence that the model has actually reduced the market. Rather, we see a transfer of the market from the street and other visible arenas to online and indoor spaces.

As I have said, we can see similar results in France and Canada—and Ireland and Israel—where the model has been implemented. The results are increased violence, an increase in the disruptive policing of sex work, and the use of other laws—for example, on commercial sex or taxation—to squash the market. What is more important, relations with the police have worsened, which means that sex workers are less likely to report crime, and are afraid to come forward when they experience exploitation and crime, because of the possible consequences to them.

I will finish there and am happy to answer any questions that you might have.

The Convener: Thank you, Niina, for your comprehensive opening comments.

Ruth Breslin (Sexual Exploitation Research and Policy Institute): Thank you so much to the committee for inviting me to attend and share our evidence from Ireland. I am with the SERP Institute, and I have been writing on and researching prostitution and sex trafficking for about 17 years.

I will say a bit about us and the institute. We began as a research programme in 2017 in University College Dublin. About two years ago, we transitioned into an independent research and policy institute, focusing on all aspects of commercial sexual exploitation. In that period, we have done about eight studies on the sex trade in Ireland, so we have really developed our knowledge and expertise in that time. We have focused on a number of different perspectives, including the health impacts of prostitution for women in the Irish sex trade and the impact of the Covid-19 pandemic. We have done many interviews with women to understand their experiences coming into the trade, being in it and coming out the other side—so the experiences of women who have left the sex trade.

A number of years ago, we also did a big piece of work looking at the legislation in this context—the legislation as it has been operating in Ireland, which is our Irish version of the equality or Nordic model. I am very keen to share some of the lessons that we have learned through that research and our experience in Ireland, including some of the pitfalls—some areas where the legislation has not worked for us—that Scotland could perhaps avoid.

Our legislation was reviewed by our Department of Justice, Home Affairs and Migration. The review, which was published earlier this year, clearly says that the legislation is, in fact, making progress towards its objectives. I want to remind everyone—because this connects very much to what you are planning in Scotland—that the kind of law that we are talking about is multipurpose. The law has a range of purposes, and, when we were developing the law in Ireland, the Government and ministers were thinking about a number of purposes.

The first purpose is the protective purpose, and, based on the review and the evidence that we have gathered, that has been the most successful aspect of the legislation in Ireland. It has totally changed the way that the sex trade is policed—particularly how those who sell sex are policed. The police changed from taking a very punitive approach to taking a very protective approach, whereby everyone in the sex trade, regardless of the circumstances, is approached as someone who is vulnerable, and that is because it is recognised that the sex trade is an extremely violent and vulnerable place to be. Therefore,

despite what has been said previously, positive engagement with the police has greatly increased, and women are coming forward far more often when they experience violence in the trade.

It is also important to say that all sex trades, regardless of the legislation, are inherently violent. We have seen violence before the legislation, and we see violence continuing, but the legislation has not led to an increase in violence, which is something that has been suggested before. I think that I heard that evidence in the committee's previous evidence session, so I just want to correct that, because that is not the case.

Where Ireland has struggled is in relation to the punitive aspect—the targeting of the buyers. Yes, buyers are criminalised, but there have been a number of implementation problems in that area. An Garda Síochána—our police force—is very honest and upfront about the difficulties in securing convictions. I can say more about that as we get into questions, but it is an area where we have struggled.

However, the legislation also has a deterrent purpose, which has been quite successful in Ireland overall. There is an understanding that the state has said that it is not acceptable to purchase sexual access to the body of another person, particularly when, in almost all cases, that person is somebody who is much more vulnerable than you. Our legislation has been able to hold the size of the sex trade at bay. Despite many push factors over the past few years—things that have happened internationally to push more women into the trade, such as various humanitarian crises, wars and conflicts—our sex trade has remained static.

The issue of scale in this area is really important, and I refer you to some of the evidence that I have shared on paper—I have a two-page document that I have shared with everybody. We see a link between having the Nordic model in place and having a smaller sex trade. At the same time, anywhere where another model, such as decriminalisation or legalisation, is introduced, we see a growing and expanding sex trade. The figures are very clear about that, so we are confident that we are holding the trade at bay.

We have also seen progress in relation to the normative and declarative purposes of the law, which are about an understanding in society in Ireland that, as I said, the purchase of sexual access is not something that can be sanctioned by the state.

I have made a number of very broad statements, but I hope that, through the questions, we can dig into those matters more deeply. I want the record to reflect that some of the things that have been said about Ireland in previous evidence

sessions are not the case, and we can perhaps talk more about the data and some of the visuals that I have shared.

The Convener: Thank you very much indeed.

Dr Larissa Sandy (University of Nottingham):

Thank you for inviting me to come here today. I have about 25 years' worth of research experience with sex workers in Australia, south-east Asia and the UK. I will speak mostly about my experience with decriminalisation in Australia.

11:15

I support some of the bill's aims. The quashing of historical convictions is very important, so I support that. I support the bill's measures around support provisions, but I also have some reservations about them that I am happy to go through as part of my evidence. I support the repeal of solicitation laws, which I will also go through in my evidence.

However, I really cannot support the criminalisation of clients that would be introduced through the bill. Contrary to what has been said, in Australia and New South Wales, decriminalisation actually changed the approach to policing. It involved policing sex work as work and seeing sex workers as workers with labour rights, which totally transformed the way that the industry was policed and the way that workers worked with and reported to the police.

Another reason why there is very strong support for decriminalisation is that about 10 years ago *The Lancet* published an absolutely landmark scientific study on HIV and sex work. The study actually showed that decriminalisation would reduce HIV infections by about 33 to 46 per cent globally over the next 10 years. The promise of that has not been realised, because decriminalisation has not been introduced in some places. Some of that has also been because of client criminalisation, and we have very little evidence to support that it achieves its aims.

Australia remains one place where states and territories are actually pursuing more evidence-based policy and policy making. Several jurisdictions have recently decriminalised sex work: Northern Territory, Victoria and Queensland. I believe that Western Australia is also considering decriminalisation. Where decriminalisation has been introduced, there has not been an increase in the industry or the number of workers. I can expand on that as part of my evidence.

We have very strong, robust and extensive evidence on the harms of criminalisation. I point the committee to a 2018 study that was done by Professor Lucy Platt and her colleagues, who undertook a systematic review of 40 quantitative

studies and 94 qualitative studies that were published between 1990 and 2018 on sex-work-related legislation and policing and health outcomes. It is one of the largest systematic reviews that we have on sex work research, and it is methodologically robust and rigorous. It found that all forms of sex work criminalisation, including the criminalisation of clients, did not prioritise sex workers' health and safety, which is particularly the case for more marginalised sex workers. They found that sex work decriminalisation actually worked to facilitate sex workers' access to health, services and justice.

In my evidence today, I hope that I can share more about my experiences of researching sex work under decriminalised settings in New South Wales and New Zealand.

The Convener: Thank you very much indeed.

Professor Jo Phoenix (University of Reading): Thank you for the invitation to speak. Before I say what I think about the provisions, I note that I have been doing research in this area since 1993. However, I stopped doing so around 2010 for a very simple reason: I began to feel that the research base itself was becoming moribund. I will talk about that in a second. Having said that, I have kept my eye on the research as it has come through. In one way or another, I have been involved in thinking about prostitution policy reform for a very long time.

If you had asked me my views on this bill perhaps 15 to 20 years ago, I might have said, similarly to some of the panel members, that I did not support the criminalisation of sex purchasers. However, I have changed my mind.

To cut to the chase, I support all aspects of the bill, not just warmly but very strongly. The reason for that—and I am happy to go into detail on any of this—is that, after 35 years, we know many things. We know that prostitution is both work and violence. It is not just one thing or the other, despite what people will tell you. We know that it is an incredibly diverse industry that has people working from the street right the way up to hotels, and so on. We know that prostitution has always been connected to illegal markets, organised crime, and so on. We know that the effects of prostitution can devastate the lives of women and girls—we must not forget the girls—who are involved in it.

We also know something else. In Scotland, Wales, England and Northern Ireland, we have benefited from 20 years of reform to prostitution policy. We are not dealing with the same landscape that we were dealing with when I began.

I say that because, when I began researching the area, England and Wales had something like

10,000 convictions for soliciting and loitering for the purposes of prostitution. In the 2021 figures, which are the latest figures I looked at, there were only 301 such convictions. That is a massive change that has taken place over a relatively short period of time. In the past 20 years, we have seen a de facto decriminalisation of soliciting and loitering for the purposes of prostitution. However, at the same time, no support has been put in place. We have therefore ended up with this Janus-faced approach to dealing with prostitution generally that distinguishes between forced and voluntary prostitution and a rhetoric of victimisation for the women and girls who are involved without necessarily providing support measures.

We are seeing the legacy of that in the grooming gang crisis in England. What we saw there was a reformation of the policy on girls and prostitution that was based on a rhetoric of victimhood but there were no corresponding support services.

To wind up, the thing that I support most in the bill is the criminalisation of the purchase of sex at the same time as making the right to support services statutory. I am happy to talk as broadly as you would like, and I am happy to take questions on why I think that the evidence that has been presented to the committee is highly problematic, but I will end there because I know that the committee wants to ask questions.

The Convener: Thank you all for your helpful opening remarks. Although there are different views in the room, you have articulated those views very well in a way that is helpful to members.

I will bring in the deputy convener to ask questions in a moment but, in the interests of getting through as much as we can this morning, I ask for succinct questions and answers, although I know that that is sometimes difficult. I also draw members' attention to the research and studies that have been mentioned this morning, which we can access if members would find it helpful.

With that, I hand over to Liam Kerr and then I will bring in Sharon Dowey.

Liam Kerr: I will ask two questions and will give each of our witnesses an opportunity to respond, starting with Dr Vuolajärvi. I want to pick up on the point about evidence that you raised during your opening remarks. What does the evidence tell us about the impact of the Nordic model—the criminalisation of the buyer—on the number of people who are involved in prostitution; the experience of those people of safety, stigmatisation and access to support; and the involvement of organised crime, including trafficking, in prostitution?

Dr Vuolajärvi: I am happy that you brought up the issue of evidence. It is very difficult to get numbers from the trade. Journalists, policy makers and so on ask us all the time to give them numbers, but it is hard to assess the extent of the sex trade or of trafficking and it is difficult to make comparisons between the two. Trafficking can be registered in different ways and the detection of those crimes is very much dependent on how much police investigation is done.

On the number of people in sex work or prostitution, we have some evidence from Sweden that street prostitution has decreased by 50 per cent. That is quite well documented. However, the problem is that the law came into force in 1999 when online platforms and the use of the internet started to rise. It is hard to say what happened, but we can see that there has been a high increase in online advertisements. For example, between 2006 and 2014, there was an increase from 304 ads to 6,965 ads. Of course, people may have several profiles, but there has been a clear transfer from street sex work to online sex work. That change—we have evidence that it is happening everywhere—makes it hard to assess the situation.

The problem with Sweden is also that there was no effort to make a before and after comparison and no systematic effort to look at the changes. Of the other countries where such legislation has been implemented, the only place for which we have reliable before and after knowledge is Northern Ireland. Peter Backus, from the University of Manchester, carried out research that involved comparing the number of advertisements, which showed that, at the beginning, there was a decrease in the number of advertisements, but they returned to the same levels 18 to 24 months after the law was enforced. There was a scare effect, and then activity continued.

Coming back to Sweden, there has been no data collection to show what has happened to trafficking levels as a result of the law. The police claim that the law has created a hostile environment. In my field research, I found evidence that, when the police use pimping law and the hotels are policing sex work, it makes it more difficult for sex workers to operate on their own by finding apartments or places to sell sex. Some have to turn to people who know that the apartments that they are renting are being used for commercial sex. That means that those people ask for higher prices, because they are taking the risk of being accused of pimping. Therefore, in a way, the way in which the police enforce the law in Norway and Sweden actually increases the vulnerability of sex workers and their chance of exploitation.

There are many reliable qualitative studies showing sex workers' experience under the Nordic law. The law hampers their safety practices and makes client screening difficult, because clients do not want to identify themselves. Rather, sex workers need to show that they are real people and not police. Many of my interviewees talked about those issues. There is also more demand for out calls, meaning that sex workers go to places that they do not know. For example, they may go into a private apartment where they do not know how many people are there or who is there, instead of a client coming to their place where the sex worker can be aware of their surroundings, which is safer.

11:30

As I said, street sex work accounts for quite a minor section nowadays, but the street workers I talk with have said that, on the street, clients hurry negotiations, so the workers have less time to assess the client before jumping into their car. Also, clients might want to do the transaction in the car or in other locations that are unknown to the sex worker, instead of in a hotel, for example, or another safer location. That poses a risk. We can see how, in those ways, street sex work increases individuals' exposure to violence.

I might stop there, although I would also say that policing in this area has, in the Nordic region, severely endangered the relationship between the police and sex workers. Generally, sex workers said that they did not want to go to the police and that they were worried about other problems, such as losing their apartment, being deported or being reported to social workers, which would mean trouble with the custody of their children and so on. That presents a really big risk for sex workers when it comes to violence, because, as my field work evidenced, some criminal elements use the knowledge that sex workers will not go to the police to target them, for example, in robberies and so on.

Liam Kerr: Dr Sandy, I think that you would take a similar view of the Nordic model. Do you have any evidence to add to that from Dr Vuolajärvi?

Dr Sandy: The experience in decriminalised settings would support what Niina Vuolajärvi talked about. In New South Wales, Australia, we have very robust longitudinal data on the three questions that you asked. One of the largest studies was done in 2012 and was commissioned by the New South Wales Ministry of Health. It is a very comprehensive report on decriminalisation that was carried out by the law and sexual health team—LASH—at the Kirby Institute, the law department of the University of New South Wales and the Sydney Sexual Health Centre. I can share

that report with the committee if you would like me to do so.

Over 200 sex workers were surveyed, and the researchers also analysed the Sydney Sexual Health Centre database from 1992 to 2009. They did research with New South Wales councils—that is how decriminalisation works in New South Wales. As I said, it is a very rigorous and high-quality piece of research that was carried out by global experts. The LASH report concluded that the size of the sex worker population in New South Wales had not increased since decriminalisation was introduced, which is marked as 1995, although it was gradually brought in over a period starting from the 1970s.

In 2017, Rissel and colleagues confirmed the findings of that study by surveying buyers of sexual services. Their study was based on over 8,000 interviews with men in New South Wales. The size of the sex worker population has remained steady since the introduction of decriminalisation.

Often, a big argument about the Nordic model relates to the demand for sexual services. With the introduction of decriminalisation, demand for sexual services in New South Wales has been no different to that in other states and territories. Although women and men purchase sexual services, a lot of research in Australia has involved Australian men. By world standards, Australian men are pretty infrequent consumers of sexual services. Rissel and colleagues did a study in 2003 with Australian men, in which 2.3 per cent of New South Wales men reported buying sex in the last year and 16 per cent reported ever buying sex. The statistics for New South Wales men were the same as those for Australia overall—there was no difference on that at all.

In 2010, Harcourt and colleagues compared the Perth, Melbourne and Sydney sex industries. That is a very interesting study, because sex work is criminalised in Perth—it works through de facto legalisation with police-operated illegal brothels in the city—and, at the time of the study, Melbourne had legalisation, which resulted in a two-tier legal and illegal sector, and Sydney was decriminalised. It was a very interesting study. The study found a very active and diverse sex industry in each of those three cities. The number of brothels was about the same per capita in each of those cities. The finding was also consistent with population-based data on rates of buying sex within the Australian population.

That led the authors to the conclusion that the legal climate had no impact on the prevalence of the purchase of commercial sex; what it did have an impact on was health and safety for workers and in businesses. It also had an impact on rights and legal protections, and on accessing health

programmes. In Melbourne, which had licensing, there was an illegal sector: the study said that there were somewhere between 30 and 70 illegal businesses operating. Those businesses were not supported by outreach or health services; they were pretty much invisible and inaccessible to health promotion programmes. Police-operated illegal brothels in Perth also meant reduced access for health services and peer educators. The research showed that, in Sydney, the Sex Workers Outreach Project in New South Wales—SWOP NSW—had access to all brothels and sex premises.

Therefore, although the research showed that the legal context did not seem to matter to or have an impact on demand, it did affect health promotion programmes in the sector, and it introduced isolation from peer education and support in Melbourne and Perth. It was also a significant issue in ensuring occupational health and safety, and health promotion. Similar results have come from New Zealand on the size of the sex industry with decriminalisation. The New Zealand Health Research Council and the Ministry of Justice commissioned two projects, one in 2007 and the other in 2008—

Liam Kerr: Dr Sandy, forgive me for interrupting, but the question that I need evidence on is less about decriminalisation and specifically about criminalisation of the buyer. What is the evidence on the impact there?

Dr Sandy: The evidence on the impact of criminalisation of the buyer is that most of the policing happens through sex worker surveillance, and that forces sex work further underground. The evidence that we have shows that it is a form of indirect criminalisation, because it is through clients that sex work is criminalised. We also see the introduction of brothel-keeping legislation, which makes it difficult or almost impossible for sex workers to work safely. That is what the research shows. The picture is different in models of decriminalisation.

Liam Kerr: I am very grateful. Ruth Breslin, you take a different view of the Nordic model—the criminalisation of the buyer. We have just heard evidence that tends to a view that criminalisation of the buyer will not achieve the ends of the bill. You would take a different view.

Ruth Breslin: Yes.

Liam Kerr: What is your evidence?

Ruth Breslin: Before we talk about the criminalisation of the buyer, it is important to understand the nature of how the sex trade operates. I speak from the Irish experience; we also need to think about who is in there and who is selling sex. Over the past decade, we have developed a profile of who is involved in

prostitution in Ireland. It is, of course, primarily women—it is a highly gendered trade; the vast majority of those who are selling sex are women and the vast majority of those who are buying it are men. Every day, about 800 or 900 women are advertised online in Ireland—or, at least, there are 800 or 900 advertising profiles—and fewer than 1 per cent of those are male.

As I shared in the written submission, we have developed a bell curve profile. We have found that about 10 to 15 per cent of the women in our trade fit that classic definition under the Palermo protocol of having been trafficked, which is what our legislation is linked to. They are migrant women who have been brought into Ireland; they have been forced, coerced or deceived into that situation. Then, there is a small group of approximately 5 per cent of the women, who would say, “This is something I chose. This is labour—I had many choices, but this is what I decided to do to earn money.” Many of them would describe themselves as sex workers, but they are quite a small percentage of the group.

Right in the middle is what we would call the vulnerable majority, of about 80 per cent of the women, who would say that they chose to be involved in the sex trade—but, looking at the circumstances in which they entered it, theirs was a choice from no choice and from constrained circumstances. A lot of those women are migrant women, who arrived in Ireland with very limited English and very limited social capital. Their families are back home in South America, Asia and Africa, desperately waiting for the money that the women are going to send from Europe. These women have no choice but to get into something where they can earn money as quickly as possible, and they remain in a vulnerable and precarious situation.

We have interviewed many women who are involved in prostitution now, as well as women who have come out the other side and exited. Most of those women do not describe themselves as sex workers. Many of them will say, “I am working,” and they will often say, “I am escorting,” as the trade is almost entirely indoors and online. They do not adopt the idea of “sex workers” in their identity, however. They say, “Prostitution is not who I am. It is just something that I have to do.” That relates to the profile of the women.

Then we think about the profile of the buyers. Although the majority of the women who have been drawn in are migrants and are vulnerable in many different ways, including the fact that many of them do not speak English and are experiencing poverty and coercion, particularly in the case of trafficked women, most of the men who are buyers are Irish and middle class. They enjoy incomes above the average, they are well

educated and most of them are in a relationship. In our work, that is where the understanding of sexual exploitation comes in. Those men are using their superior status in society and their superior economic power to purchase sexual access to the bodies of vulnerable women, who generally do not enjoy the same status or power. In almost all circumstances we see that power imbalance between the buyer and the seller, and that is where we feel the sexually exploitative context comes in.

I have interviewed so many women who have told me that it is of course unwanted sex. They do not want to go out every day and have sex with multiple unknown men they have not met before, but the money is holding them there. They are desperately in need of the money, so they are exchanging sex to get that money, which they desperately need.

Liam Kerr: Forgive me for interrupting, but I am conscious that I am monopolising the floor here. Given the context that you have set out, what happens if the bill criminalises the buyer?

Ruth Breslin: When Ireland developed its legislation, people started to understand the exploitative dynamic that was going on there. The idea involved using the declarative and normative purposes of the law to send the message to men that it is not acceptable to purchase sexual access to the body of another person, particularly one who is more vulnerable than them. That is exactly what we did in Ireland.

Although one of the weaknesses in our implementation is that we have had very few successful prosecutions, buyers are at least aware that the law now targets them. The women are also very much aware of that. The women now report quite positive experiences of the way that prostitution is policed in Ireland. The police entirely changed their policing approach to shift the burden of criminality away from the women and on to the shoulders of the buyers—and, of course, the organised crime gangs that run the trade. You asked about organised crime and trafficking. As is still the case to this day, the trade is rife with the involvement of organised crime. The idea of the legislation was to place the burden of criminality on those shoulders.

You can see that in some of the data that I have shared with the committee. The first bar chart is on “The decriminalisation of those who sell sex”. You can see that the level was falling year on year, even slightly before the legislation came in, when people were starting to understand that criminalising women was the wrong thing to do. Then, in the chart on “The criminalisation of sex buyers & profiteers”, which is the second graph that I have shared, you can see the numbers represented in the red bars going up, showing

policing attention. The data are from official crime statistics showing how the attention of policing is placed on the buyer.

One issue with our legislation is that it involves a summary fine on conviction, which means that the buyer is required to go to court to plead their case. The recorded crime statistics show that more than 300 buyers were progressed against and about 160 cases made it to court, but there were only 15 convictions. That was because, in the intervening period, the buyers had armed themselves with good lawyers, and they were able to argue their way out of the situation. With the review in Ireland, we have recommended ways to address that situation. The Department of Justice, Home Affairs and Migration is now considering on-the-spot fines for buyers, so that the criminalisation element can be realised a little more easily.

Liam Kerr: Thank you very much for that. You will probably be asked about how it can be made better going forward.

I will bring in Professor Phoenix by asking a straight question. If this bill comes in and criminalises buyers, what will the impact of that be, based on the evidence that you have seen?

11:45

Professor Phoenix: After 35 years of paying attention to the evidence, I know that there will be one direct impact: it will resolve some of the Janus-faced policing that we have. Let me talk you through that for a tiny bit.

Any regulatory framework that distinguishes between voluntary and involuntary prostitution forces the police to focus on the women who are involved in prostitution to assess whether their involvement is voluntary or involuntary. If we remove that framework altogether and say that prostitution is decriminalised and that we are going to criminalise only the purchasers of sex, it forces the police's attention towards the punters.

You have heard from all of us today that there is a real problem with the policing of prostitution. That is what unites all of us, weirdly. My other learned colleagues have talked about the challenges of implementing criminalisation and how the police have failed in Sweden and so on. We know that the black box underneath all this is what the police do. If you remove the necessity for the police to assess whether somebody's involvement is voluntary or involuntary, it removes that altogether and it refocuses attention. Ruth Breslin's evidence provided some helpful insights on that.

I will come back, though, to one thing about the evidence base. I said earlier that I stopped doing direct research in this area. I did so because of the

nature of the research that was being done. We have a real problem with the evidence base, one way or the other, and the problem is that research tends to proceed from an a priori assumption about what prostitution is.

If we start from the presumption that prostitution is sex work, every part of the research process thereafter is going to lead to what we in academia call a confirmation loop. We have seen consistently during the past 15 to 20 years research that continually reproduces its own assumptions, which is a real problem. It means that, for all of you, trying to pick through that evidence is challenging, to put it mildly, which is why I am going back to some very basic principles. What are the police going to assume? Do they need to focus on the women? Do they focus on the punters? Anyway, I hope that that was helpful. I will keep my comments relatively short.

Liam Kerr: It was all very helpful. I am very grateful to you all.

The Convener: It was fascinating and very helpful but, again, I urge succinct responses, if that is possible.

Sharon Dowey: I will ask about assistance and support, which a lot of you mentioned in your opening statements. The importance of support for people who are or have been involved in prostitution has been highlighted in evidence to the committee. What should that support look like? Secondly, are the provisions of the bill on that issue helpful? Thirdly, are you able to comment on the estimated costs of providing support as set out in the bill's financial memorandum?

Dr Vuolajärvi: Do you want to know what kind of support I think would be needed based on my research?

Sharon Dowey: Yes.

Dr Vuolajärvi: When it comes to services for sex workers, I think that we have all established that people who sell sex—sex workers—are a very diverse group of people, who often have various needs and various understandings and interpretations of commercial sex. What is needed is services that are non-judgmental, which means that they do not assume that sex work is violence against women or that it is necessarily work that someone identifies with. Rather, services should take an open view on the interpretations of people who sell sex.

My research demonstrates that there is a significant need for various types of support services. Many people want to move away from sex work—it is not a long-term career choice—but that often requires several types of support to be provided. For example, support with housing and

income support are very important for some people, and vocational training services are important in enabling people to acquire skills. It is also important that vocational services are directed towards professions in which people can earn enough money, because many people who do sex work—especially the migrant workers I often met—have families to support in their home countries. Therefore, working in a nail salon will not be the right option for them, as they need work that will enable them to support themselves and their families. Of course, support such as mental health assistance and help with drug use will also be required.

It is very important that those support services have a low threshold, are non-judgmental and start from the viewpoint of the person who wants to access them. Stopping sex work should not be a condition for accessing services—as it has been in France, for example, where the Nordic model has been introduced—because, as I said, many people need to feed their families and children, pay rent and so on. It is important that people have enough economic support, and, in some cases, it might be important for people to be able to do sex work while they transfer to other forms of labour.

As I understand the bill, no money is earmarked for such services. In countries such as Sweden, we have seen that, if the money is not earmarked in that way, it might simply go towards the policing of sex work. It is important that we do not introduce another criminal law without thinking about what is needed on the ground. As many of us have said, many people engage in sex work because of their need for money—because of poverty—and criminalising the buying of sex will not remove that need for money.

In addition, I emphasise that, when such services are planned and executed, it is extremely important to start from the viewpoint of people who sell sex—sex workers—so that we do not end up creating policies and services that do not reflect the needs of people in the field. I often see that happening.

Sharon Dowe: Dr Sandy, would you like to respond?

Dr Sandy: Yes, I would be happy to. I will not reiterate what Niina Vuolajärvi said, all of which I fully agree with.

With regard to my work, I did a large project in Melbourne on exiting or transitioning programmes for sex workers. That was a very large project that looked at best practice and tried to establish what best practice was in service provision. The project involved a Melbourne-based sex worker support agency that provided an exiting or transitioning programme for sex workers. As well as reviewing

the evidence base, we did that work with sex workers.

One of our key findings was that it is absolutely necessary to do a needs assessment. That assessment needs to be carried out with sex workers to find out what supports they need. It also needs to be a very diverse needs assessment, because we are talking about a very diverse range of workers who have a diverse range of needs. The first thing that would need to be done would be to establish a comprehensive needs assessment.

As I said, leaving sex work should not be the mainstay of that work; it should be about the provision of support and services for sex workers. It must not be conditional on sex workers reducing their hours or exiting sex work.

Those services also need to be part of general services that are provided by sex worker organisations, and quite significant funding is needed for that. I can go into that a bit more. Those services need to be based on quite a few different things. We did a literature review of the global evidence base on programmes and found that a lot of those that are offered come from the perspective that sex work is not work. For best practice, you need to understand that sex workers view it as work. That is how the majority of sex workers understand it. Not all of them see it that way, but it is the dominant view.

A lot of programmes see sex work as unskilled labour, but they need to be provided from the point of view that sex work is skilled labour. There is also the idea that sex workers have never done anything but sex work, so you are starting from a sort of ground zero. That is not the case at all. Sex workers have diverse employment histories and trajectories, and sex work is just one part of that. You need to take into account sex workers' skills, education and experiences.

The biggest issue that we came across was stigma and discrimination that sex workers face in the community, which is a barrier to them accessing services and retiring or moving out of sex work to do other sorts of work. It is important therefore that programmes address that and work with the community to reduce stigma and discrimination. One of the big things that we noted was the need for sex work to be recognised in equality legislation as a protected characteristic and occupation. That would give sex workers access to legal rights under discrimination and vilification laws.

I will quickly address funding. In the work that was done on the exiting programmes that were offered in Melbourne, 4 million Australian dollars was earmarked by the state Government before decriminalisation to review the services that were

being provided. That was part of the work that I did, and it included a needs assessment and a review of the funding that was needed to provide services. That took place over a short period. It is work that requires significant support, resourcing and long-term funding.

Sharon Dowey: Ruth Breslin, do you have anything short to say?

Ruth Breslin: I will be as brief as possible. It is essential that support is provided. We are in a situation in which women are trying to survive and rely on that income, which is not just for them but for their families, particularly in their country of origin. Those women are feeding children and sending them to school, and caring for sick parents, so we cannot just take that income stream away overnight. It is important that supports step in and offer women other options.

It was suggested here previously that support services in Ireland require women to leave or exit. That is absolutely not the case. The services describe themselves as meeting women where they are at. That might be a woman who is saying, "This is what I'm doing right now. I'm happy doing it and it's going well, but I still need some support," or it might be a woman who is saying, "I really need to get out. Please help me." There need to be a multitude of supports. Harm minimisation and keeping women safe while they are in the sex trade is important, but that sells women extremely short, because the vast majority of women, and certainly the women who I have met, want to get out of the trade as quickly as possible and need specialist support to do that.

We did a whole study on women's barriers to leaving, and to recovering and rebuilding a new life, and the top barrier is not stigma but the deep trauma that women have experienced in the sex trade as a result of multiple counts of unwanted sex, rape, sexual assault, violence, beatings, attacks and robberies, on such a frequent basis that, when they come to services, the first thing that needs to be addressed is that deep trauma. The women need help to rebuild their lives and create new identities for themselves.

Sharon Dowey: You said that there was a big cohort of people in Ireland in the middle of the curve who had no choice. If we get the services right, do you think that a lot of people will leave the sex trade?

Ruth Breslin: Absolutely. Women need options, and what they tell us in the research all the time is that this is not what they want to do. They all have hopes and dreams for the future. They all have other plans. Even unprompted, many women tell me that they want to set up their own business, go back to school or learn English. They say, "I don't want to be here for ever." If you have the right

supports in place, women will engage with them, and most of them will not choose to stay inside this very dangerous trade.

12:00

Sharon Dowey: Professor Phoenix, do you have anything to add?

Professor Phoenix: I have only four short points to add.

We have heard a lot about diversity. There is diversity, but it is not symmetrical or even. From 200 years of research into prostitution, if not more, we know that the vast majority of women in prostitution have come from backgrounds in which there is physical or sexual abuse. We know that the vast majority have drug and alcohol problems and economic problems. We know that, at least contemporarily in the UK, some of the social and welfare needs of women in prostitution are profound and complex. I am talking about the majority. Even though there might be diversity within prostitution, we know that there is an intensity of women with profound needs.

We also know that, to deal with the issues that women have, we have to look at the drivers further upstream. I suggest to you that the main drivers are poverty and male violence against women. If we can address some of the connections with male violence against women and poverty, we can create support services that help women to get out of prostitution. However, more importantly, if we divert some of the women who have the type of risk factors that make it likely for them to end up in prostitution—if we divert them before they get there—we do tremendous work.

I want to highlight two programmes that have been hugely successful down here in England—I am happy to send the reports on them afterwards. They were run by the Nelson Trust, by a woman who was formerly involved in prostitution. One was the Griffins programme; the other was the Phoenix project. The success rate of those projects was phenomenal. I am happy to send information about that.

However, all I want to do is underscore the fact that what makes the bill unique in my mind is that it puts such support services on a statutory footing. That is critical, because we know another thing about women in prostitution: when it comes to the funding of support services, they tend to lose out to many other needs. They are a forgotten and easily ignored population, partly because their needs are so complex.

Sharon Dowey: Thank you. If you could send us information on those two projects, that would be helpful.

Jamie Hepburn: Thank you very much for your evidence thus far. I have a few questions—I flag that early. If you can assist me by not testing the patience of the convener in working through them, that would be—

The Convener: In that spirit, I ask members to consider the option of putting their questions to specific witnesses. It is not necessary to put each question to all the witnesses, although I am sure that they all have a contribution to make; we can come back if we have time.

Jamie Hepburn: As I am going to draw on the written submissions, I probably will operate on that basis.

The first issue that I want to ask about, which Liam Kerr touched on, is the impact of any legislative change on the safety of those who are involved in selling sex. That must be absolutely paramount in our consideration. We should not do anything that makes their circumstances more harmful; anything that we do should improve their situation.

Dr Vuolajärvi, in your written submission, you provide some pretty stark information. You say that

“criminalizing sex buyers increases rather than reduces harm to sex workers.”

That seems to be based on the evidence that you gathered in speaking to those who are involved in selling sex, who cited “increased violence exposure” and “reduced safety practices”. It would be helpful if you could speak about that.

However, I was also struck by Ruth Breslin’s point that that has not been the experience in Ireland, so it would be helpful if you could speak about that as well.

Dr Vuolajärvi: As I said in my written submission, we can see how the will to get rid of commercial sex leads to repressive policing. Such policing is supposed to target the sex buyers, but where do you find the buyers? You find them through people who sell sex.

The impetus to see sex work as a harm to society has led to the will to suppress the market. In Norway, for example, just before the sex purchase law was implemented, the police engaged in what they called operation houseless, which meant clearing the indoor market before the law was enacted, because they were worried that the market would move indoors. The police have retained that practice. They might be able to catch one or two buyers outside a flat, but after that, they will use other laws to forcibly evict, such as the pimping law, or they will say that the landlord—

Jamie Hepburn: I have a question about policing, so could we come back to that later? I am thinking more about the increase in violent incidents and the adoption of more unsafe practices. Could you say more about those? We can come back to the issue of policing.

Dr Vuolajärvi: Okay. Rather than policing, I will talk about what the sex purchase law does. It reduces the negotiating space of the buyer, which means that less can be demanded from the buyer. Instead, the sex worker might be forced to take a picture of themselves with that day’s newspaper to prove that they are not the police, to meet in a place that is decided by the client at the last minute or to go to the client’s house. Those are all factors that expose people to violence when it comes to the sex purchase law.

The same goes for street-based actions, where the clients are worried about being caught, so they rush the negotiations, they want to go further away from the street location and so on. Does that answer your question?

Jamie Hepburn: That is helpful. Ruth, you talked about that exact experience.

Ruth Breslin: One thing that I mentioned that we have observed in our research is the success of the protective factors of the law in Ireland. I described that as shifting the burden of criminality away from the women. I mentioned that the police decided to approach everyone in the sex trade as vulnerable because of the incredibly risky environment that they operate in.

It is very clear that the police’s approach changed—they moved away from raids and battering down a door and frightening everyone, which is an experience that the women always told us in the research that they hated, to welfare visits, which involve a much more gentle knock on the door and a quick word to say, “Just to let you know, we’re the specialist police in this area. We’re here if you need us. Here’s our contact details.”

On those welfare visits, the police are sometimes now accompanied by specialist workers from the front-line support services, who are not police and do not represent the state because they are members of non-governmental organisations. That means that, if a woman is very wary of interacting with the police—it is absolutely understandable that many women are—she can interact with someone who is more independent. It is all about offering support.

The gardaí, our Irish police, tell me that, on the day, the women will often say, “I’m fine. I don’t have any problems. I’m grand.” However, the police will leave their details and then—in a week, a month, six months or a year—they will hear from

one of those women when something really serious has happened to her inside the sex trade.

Jamie Hepburn: Forgive me, but can we come back to that later? I am actually asking whether the evidence suggests that there has not been an increase in violent incidents.

Ruth Breslin: I point to the wider context, which is the violent nature of the sex trade. We looked at the data from about three years before the law was introduced and the data since then, and it showed that the violence levels have remained high but consistent throughout that time. It was previously suggested that there has been a 92 per cent increase in violence. That is categorically not the case—that statistic cannot be proven in any way, shape or form.

Women say that they now feel more comfortable about getting in contact with gardaí, our police, if they have a problem. Women are also gaining an understanding of the law. Sometimes, sex buyers threaten women by saying that they will call the police on them if they do not do a certain thing for them, if they do not give them a discount or if they do not perform the act that they want them to. As women have told me in interviews, they are now able to say, “No, you’re the one in the wrong—I’m going to call the police on you.” Women have told me numerous stories about such interactions.

A key change that I want to emphasise has been in relation to women’s access to justice. Over the course of the last number of years—before and since the law—there have been some extremely violent attacks against women in the sex trade by individuals who go out to target them because they know that they are very vulnerable. I am talking about robberies, severe beatings, rapes and sexual assaults. Since our law came into place in 2017, we have documented dozens of cases that have come in front of the courts in which those perpetrators have been prosecuted and the women have achieved justice. The women felt comfortable enough to interact with the police, to give evidence and to be witnesses in court. We have heard about many successful prosecutions of very violent men who have deliberately targeted women in the sex trade. That did not happen before 2017, when women were still criminalised and there was no way that they would interact in a court environment. Therefore, we have seen a very significant increase in women’s access to justice, which is extremely positive and did not happen before we had the legislation.

Yesterday, I spoke to the head of our garda national protective services bureau, because the policing of prostitution and sex trafficking comes under protective services in the police. I spoke to Detective Chief Superintendent Colm Noonan, who let me know that he has been in conversation with Police Scotland over the past few months

about the whole approach of the Nordic model that we are using in Ireland and the fact that, although, as I said, we have faced a number of implementation difficulties, he, representing the Irish police, is very much recommending that approach to Police Scotland. Those conversations are on-going.

Jamie Hepburn: That is useful, and I take your point about violence, which tallies with the evidence that we heard in the previous evidence session. One witness who supports the bill made the point—which I think we all understand—that no change can ever make the selling of sex truly safe.

Dr Vuolajärvi: Ruth Breslin can correct me if I am wrong, but before the Irish law was introduced, the selling of sex was criminalised. If the criminal penalties for the selling of sex are removed, it has exactly those effects, but that has nothing to do with the sex buyer law itself; it is the decriminalisation of the act of selling sex that produces more safety, because it means that someone who is a target of crime can report it to the police. That is extremely important.

With the Nordic model, we see that, in many cases, sex workers become de facto criminalised through other policing measures, which is why I am against increasing criminalisation around commercial sex. The Northern Ireland Department of Justice has noticed an increase in reported assaults on sex workers—but I am not an expert on Ireland; that is just the knowledge that I have of the Irish case.

Dr Sandy: New Zealand has a lot of research that shows that workers felt protected by the Prostitution Reform Act 2003. They were more able to refuse clients; there was less client blackmail, extortion and violence; and more workers reported those incidents to the police. Therefore, there was a significant increase in access to justice, which came about through the decriminalisation of sex work.

Jamie Hepburn: However, that is not on the table here—we are not considering that as part of the list of propositions.

Dr Sandy: Yes, but I wanted to present that evidence for the committee to consider.

Jamie Hepburn: I appreciate that. Ruth Breslin has pre-empted my question—

Ruth Breslin: I think that we are all agreed that the women should be decriminalised—of course they should; they should not be criminalised for the exploitative circumstances that they are in. However, decriminalising the buyer and the pimps is a whole different ball game. I have two things to say about that, very briefly, convener—

The Convener: I will pause you there. I am conscious that a number of other members want to come in. I would like to bring them in and then come back to Jamie Hepburn's second question, to ensure that everybody has a chance to ask their questions. I will bring Ash Regan in, too.

Rona Mackay: Good afternoon. My first question is a quick question for Professor Phoenix.

In your opening statement, you said that sex work is always linked to violence, organised crime and so on. Is the logical conclusion not that decriminalising it would improve the situation? If sex work is decriminalised, it would not have those implications.

12:15

Professor Phoenix: No, not necessarily. Sorry—I was trying to figure out what you meant.

If we decriminalise the entire industry, would that reduce the amount of criminality connected to it? No—it would introduce a two-tier system, because there will always be men who are violent and who exploit women.

A lot of the problems with prostitution have to do with male violence, gender stereotypes and women's life chances and histories of violence and abuse. There will always be a system in which men exploit women, so the idea that if we simply get rid of all the laws, the market will sort out the problems is naive, to say the least. The idea is that if we decriminalise this thing called prostitution, the market will regulate it, but the invisible hand of the market has never been the sort of thing that helps women, much less provides safety for them, if that makes sense.

Rona Mackay: Conversely, one could say that the industry would be easier to police if it was decriminalised. I agree that there are violent men and there always will be, but if it was decriminalised, that could be the case. That is just a different viewpoint. I agree with my colleague Jamie Hepburn that the overriding concern for us all, regardless of what side of the issue we are on, is women's safety; I do not think that anybody would disagree with that.

I come to Ruth Breslin, again on the aspect of women's safety. We heard in previous evidence about general changes that would make sex workers less safe under the proposed model. One of those relates to the potential impact on an app that sex workers currently use to flag up dangerous customers, clients or whatever we want to call them. That is quite a concern.

On your point about migrant women, I am struggling to see how they would be safer if the buyer was criminalised. Again, we heard in previous evidence about a migrant woman who

was charged with brothel keeping. She was trying to keep herself safe with colleagues, but she was arrested by police, who appeared—we were told anecdotally—with a battering ram, and they made stigmatising comments about her.

I hear what you are saying, but we have heard evidence that that is not the case. I want to ask you, and the other witnesses, what your thoughts are about the fact that brothel keeping is not in the bill.

Ruth Breslin: It has been suggested that the brothel-keeping legislation that remains on the statute books in Ireland has been used against individual women in prostitution. You mentioned one case, but that is one case that has occurred. It is a very problematic case indeed, in which the standards of policing really fell down. Nevertheless, it is one case in all the years for which we have had the legislation in place, since 2017.

If you look at the data that I have provided, you can see that, overall, recorded crime for brothel keeping has been going down. If you dig into current cases in which people were proceeded against, you will find that police are targeting not individual women who are operating together for safety, but crime gangs who are organising a network of brothels.

In all the cases that are now being reported on, we are talking about individuals—not always men; it is men and women—who are organising a network of brothels in which they move groups of vulnerable women around from location to location. To correct that suggestion, the brothel-keeping legislation is not being used in a negative way against individual women.

There is the idea of women working together for safety, but so many of the attacks that we see happen in those circumstances. There may be two or three women in a premises together, but what can they do when nine men armed with knives come in? I think that there is a bit of false hope in the idea of working together for safety.

There was some concern that an app on which women can make reports would somehow be legislated against or be seen to be facilitating prostitution. We have an app like that in Ireland, and that has not happened—the app continues to run and has not been the target of any kind of policing.

I want to pick up on the wider issue of decriminalisation, and decriminalising those who organise prostitution. You asked whether, if we decriminalise everything, that makes it safer, but who continues with the organisation of prostitution after decriminalisation? It is not your local greengrocer or florist who decides to become a brothel owner—it is the organised criminal who

was previously organising prostitution in your jurisdiction, who has been given carte blanche to grow that business even further, because suddenly his illegal activities have become legal. That is what happens with decriminalisation or legalisation, as we have seen in other countries.

Rona Mackay: Do you have evidence of that?

Ruth Breslin: Yes, absolutely. New people do not enter the market and say, “I was a florist yesterday, but now I’m going to become a brothel owner.” That is simply not what is happening. It is those who are profiting and benefiting under the illegal regime, who then find that their activities suddenly become legal under the legalised or decriminalised regime.

Dr Sandy: Can I speak to the Australian experience of decriminalisation?

Rona Mackay: Of course.

Dr Sandy: The industry is not regulated by the market—it is actually still quite a heavily regulated industry. It is regulated through council planning laws, development laws, zoning applications and so on. There is rigorous regulation of sex work in New South Wales; I am happy to provide a lot of research to show that.

The evidence shows that it is really not organised crime—actually, bringing in decriminalisation has stopped the link with organised crime and criminality. Brothels are regulated like all other businesses in New South Wales and must face those legal obligations that all other businesses have—

The Convener: I will ask you to pause there, if that is okay, given the time.

Rona Mackay: I have one final quick comment. To go back to Ruth Breslin’s point about the difficulties with prosecutions and possibly bringing in an on-the-spot fine, my instinct would be that men who pay for sex would pay a fine; I do not think that that would be any great deterrent. That is just my view.

Ruth Breslin: There are some who are entrenched in their behaviour, but I think that there is still a deterrent element with a fine, because there is still potentially paperwork involved. Men do not want their employer or their family to find out, and there is still the opportunity for that to happen, so there is a deterrent effect in that regard.

The Convener: I will bring in Jo Phoenix, as I think that she wants to respond—I ask you to be brief, Jo.

Professor Phoenix: I will be exceedingly brief—I will just highlight some evidence about the nature of organised crime and its connection with prostitution.

In 2023, the International Labour Organization estimated that forced labour generates something like £236 billion globally in illegal profits, and that around 73 per cent of that total comes from sexual exploitation. The idea that we can have a nice little cottage industry of prostitution in which sex workers are in control of what they do, and which does not have a connection with organised crime, is, I would suggest, extremely naive. That is all that I wanted to say.

The Convener: There are a couple of members still to come in. If folk can bear with us, we will run the session for another 10 minutes or so in order that we can get through as much as possible.

I say to committee members that I propose that we defer our final agenda item to a future meeting, if that is okay.

I will bring in Pauline McNeill and then Fulton MacGregor.

Pauline McNeill: Good afternoon, everyone. I will start with the global exploitation of, and sexual violence committed against, women and girls—mainly by men; I would like to think that we probably all agree on that.

I am not probing whether you are for or against decriminalisation; that has been well covered. I am interested in hearing, in particular from Dr Sandy and Dr Vuolajärvi, what happens if we go down the path of removing stigma.

I know that there are various levels of stigma attached to the industry, which you have articulated very well; I agree with that. However, the normalisation of the sale of sex is what concerns me most and what I want to ask about. Niina Vuolajärvi, are you not concerned about going down that path? Can we really stop men sexually exploiting women by normalising the sale of sex?

Dr Vuolajärvi: I am not completely sure that I understand the question correctly. The sale of sex is not the same as sexual exploitation, and it is important to make that difference, legally and in a common sense way. For example, if we think that, every time that somebody sells sex, it is rape or sexual exploitation, how can that person demand justice when they actually get violated? So—

Pauline McNeill: I am sorry to interrupt. I have listened to some sex workers who talk about their experiences of being exploited—sexually exploited—by men who ask them to do things that they did not want to do so that they went beyond what, I suppose, the initial agreement was. Surely that happens.

Dr Vuolajärvi: Of course—that is what I am concerned about. What I see is that criminalising the sex buyer increases the vulnerability of women who sell sex to that exploitation—

Pauline McNeill: That is not what I am talking about. Maybe we do not agree on this. The global exploitation of women and girls is, primarily, carried out by men; organised gangs are mainly male; and the buyers are mainly male. There is lots of evidence that men are exploiting women in these situations, even though the women are entering into an agreement for the sale of sex. That is what I have heard. Surely you must agree.

Dr Vuolajärvi: Yes. Maybe I am now getting the gist of your—

Pauline McNeill: Men cannot be trusted, is what I am really saying. Can they be trusted?

Dr Vuolajärvi: Trafficking and exploitation of women in the sex trade is a really big issue. The law can serve different purposes. First, it is a question of resourcing. Where do we put the police resources? In my opinion, and from my research, policing the clients does not seem to be the wisest way to use police resources. For example, I think that it would be wiser to direct more resources to detecting and investigating trafficking and sexual exploitation or the sexual abuse of children.

Then there is the symbolic message that proponents of this kind of law often argue for. However, in Sweden, we see that, okay, the stigma around buying sex has increased but so has the stigma around selling sex, and people in general see engaging in commercial sex as something that is harmful for the person. That has led to the marginalisation of women who sell sex. They experience stigma in health services and from social workers. If they say that they sell sex, they might get in trouble with their social worker or their child welfare officer. Therefore, in a way, I understand the bigger concern about male sexual violence, which we know is rife—we see the evidence all the time—but I do not think that that means that we should have this symbolic law, which does not necessarily have the effect of reducing violence against women. What we see on the ground is that it actually increases violence towards people who are already vulnerable and marginalised. That is where I struggle with regard to the symbolic messaging of this law. I am sorry that that was a bit of a convoluted answer.

Dr Sandy: The experience of decriminalisation in New South Wales has not really led to normalisation at all. We need to make a distinction between sex work and sexual exploitation, as Niina Vuolajärvi has been saying. However, one aspect of what has happened is that understanding sex work as work provides boundaries for someone as a worker, a labourer and a person who is providing a service. That is one of the ways in which a lot of workers have been able to address some of the issues around exploitation, and to challenge clients, too.

However, I think that what is at the heart of what you are asking is the financial need and the need to address it—

12:30

Pauline McNeill: It is not, really, no. I do not think that you have understood me. I hear loud and clear what you are saying about the pros and cons of legislating. I understand that, and that is the balance—we have got to decide whether we think that the legislation protects women or not. My concern is about the wider harm. If we agree that men tend to exploit women and if we agree that men are the main problem, the question, whatever we do—even if we protect women who sell their bodies, reduce the stigma and all of that—is whether we can really stop men exploiting women. That is at the heart of what I am saying. Can we really stop the wider harm to other women who are not in the sex trade by saying that it is a perfectly acceptable thing in society? For me, those who are against the bill need to answer that question.

Dr Sandy: For me, it is a pragmatic response. There is the financial need, and, if you are not going to do anything to address that financial need, which has been discussed by everyone around the table and by the committee's previous witnesses, too, the question is how we can make sex work safe. That is the issue that the New South Wales Government faced in making its decision around decriminalisation: how can we improve safety for people working in the sex industry, make that paramount and prioritise it? That was the decision-making process behind the decision to go with decriminalisation rather than further criminalisation.

Pauline McNeill: Do you think that your argument harms women who are not involved in the sex trade who are exploited by men? Does not wanting to protect the sale of sex in any country, which is what I think that you are arguing for—for all the right reasons; I understand that—cause harm to other women, because of the very nature of men's attitudes to women? Alternatively, do you think that it does not harm them? If so, that is fine, but I would like to know.

Dr Sandy: I do not think that it harms other women, because, if you think of sex work as work—if you think about it within that framework—you are starting to change those gender ideologies, which are what you are talking about. It is a way to transform those gender relations, too. Fundamentally, looking at sex work as work is one way in which we can address that.

Pauline McNeill: Professor Phoenix, do you think that there could be wider harm? I am not taking a view on criminalisation or

decriminalisation. I do not know what I am asking, really—I am asking about the fundamentals. Can any law really protect women with regard to this global issue?

Professor Phoenix: You have basically asked the big money question. I want to talk specifically about whether decriminalising prostitution will create more or less harm, broadly. The simple fact of the matter is this: we have a problem with male violence. We have a massive problem in the UK; we have a complete crisis in the policing of male violence in the UK. Any move to reinforce women as a commodity is always going to be a problem.

Does prostitution have a knock-on effect on other women? Yes, absolutely—100 per cent it does. We are not talking about a small cottage industry. For instance, I draw the committee's attention to OnlyFans. It comes as no surprise that we are looking at a global industry that has now gone viral on the internet and has all sorts of different manifestations. It is not surprising that street prostitution has moved online and elsewhere, and that connects to the global scale of the issue.

To me, the idea that decriminalising prostitution can somehow keep safe just a particular group of women from the broader problem of male violence—I have said this before, and I will say it again—seems naive in the extreme.

Ruth Breslin: There was a very helpful piece of research a number of years ago from the University of Edinburgh in which men who had been sexually violent towards women were interviewed. One of the key takeaways from those interviews was that the men saw the women against whom they had aggressed as slightly less human than them. Those men did not see that the women had quite the same human value as themselves. There is nowhere in the world where women are more dehumanised than in the global sex trade, with prostitution being the sharp end of that.

I do not think that the inside of a woman's body is a workplace or some kind of service provider. The message from the sex trade seeps out into our wider culture through prostitution and pornography. It is telling young girls that their body, and how they look and how sexually attractive they are to the opposite sex, is their primary currency.

Professor Phoenix mentioned the likes of OnlyFans. Given the way that the trade has been glamorised in the online world in particular, I very much feel that the bar to entry is being lowered, because young women are being told that it is a quick and glamorous way to make good money, it is empowering and sexy and so on. However, when we talk to women who have been in

prostitution, they say that it is the least empowering thing that has ever happened to them and that it was not about them expressing their sexuality, but about sex buyers acting out their own sexuality on the women's bodies.

I will leave it there.

The Convener: We move to Fulton MacGregor, and then I will bring in Jamie Hepburn.

Fulton MacGregor: Good afternoon. As in the previous evidence sessions, we have heard two strong arguments for and against the bill. In general, opponents of the bill seem to imply that its implementation will put women at more risk—that seems to be the general feeling from the witnesses on the previous two panels who are opposed to the bill.

Although this is not my final position, at this point I am not overly convinced by that argument. I find myself inclined to identify with what Ruth Breslin said: that prostitution is inherently dangerous and violent, regardless of any legislation.

I want to look at the other side of the question. You might have a view on whether or not the bill should have been introduced, but it has been, by the member in charge, and it is here in front of us. If the Parliament does not pass it, what are the implications? What would that say to vulnerable women and girls, to those who are currently sex workers and to those who purchase sex? In addition, what message does it send to our young men and boys in Scotland? I have real concerns about that, because we now have the bill in front of us.

To go back to what the convener said earlier, I will pick one person on each side of the debate. What, in your view, are the implications of starting a conversation on this issue in our national Parliament and then not acting?

As I mentioned you, Ruth, I ask you to come in as somebody who is for the bill.

Ruth Breslin: If you accept the argument that we have been making about an inherently and intrinsically violent trade—I do not know exactly the profile of those in prostitution in Scotland, but if it is anything like the profile that we have in Ireland, which I show on the bell curve in my submission—and if you do not act and you continue with the current approach, or even with some of the decriminalisation approaches that have been mentioned, the trade grows.

Right now in the world, there are a lot of push factors for women going into the sex trade that are related to a host of reasons such as migration, international crises and cost of living crises. There are really tough push factors that are pushing vulnerable women into the trade. If you leave

things as they are and decide not to tackle the buyer who is creating the demand for the trade in the first place, there is a risk that the trade will grow.

With regard to the bell curve, if you leave things as they are and do not address the buyer, there is the opportunity for the numbers of everyone inside the curve to grow. That includes not only the people who choose the trade and describe it as work, but the trafficked women and the vulnerable majority that I describe in the middle of the curve.

I come back to the point about scale, which is important. New Zealand has been mentioned a number of times as a positive example of decriminalisation, but it happens to have almost exactly the same population size as Ireland, and it has a trade that is between six and nine times larger than ours. If you want to take a laissez-faire or decriminalisation approach, you risk a growth in the trade, and that means more trafficking, more violence and more trauma, which I think is not something that Scotland wants.

Fulton MacGregor: I go to Dr Sandy next. While I am not opposed to the bill—it would not be right to say that I am opposed to it—I have some concerns about it as currently drafted.

Dr Sandy: First, I highlight that in New South Wales, where sex work is decriminalised, instances of trafficking and modern slavery practices are very rare. I am happy to share the data that we have on that.

With regard to the situation that Scotland is facing and the question that you ask, I think that the law in Scotland needs to change; I do not think that it should stay as it is. However, my advice would be to talk with sex workers and take time to consult with them to find out what it is that Scottish sex workers think might be best for them and how their work might best be regulated.

That was what the Victorian Government in Australia did in bringing in decriminalisation. It spent a very long time consulting with sex workers, non-governmental organisations, service providers and the police, and through that consultation process, which involved all key stakeholders, it came up with the model of decriminalisation in the legislation that it put through in 2022.

My advice would be to talk with sex workers and find out what it is that they think would be best in respect of how their work can be regulated.

The Convener: I will bring in Jamie Hepburn and then Ash Regan.

Jamie Hepburn: I said that I was going to return to the issue of policing, but I am not going to do so, I am afraid, simply because I do not have time. I think that the witnesses have said enough

for us to be able to pick up the issues with Police Scotland directly.

I have a question about demand reduction. Part of the notion behind the bill is that it will drive down demand. I think that I heard Ruth Breslin say that that has been the experience in Ireland—you can correct me if I am wrong, Ruth.

Niina Vuolajärvi has presented some information. Perhaps you can clarify something, Niina, as there is seemingly a contradiction, from my reading, in what you say in your submission. You state that in Sweden, after the law was introduced, there was a

“Decrease from 13 percent to 8 percent of men reporting having bought sex”.

However, you go on to say that in Sweden,

“10-15 percent of men have bought sex”.

If you could explain that difference, that would be helpful. You also say that there is

“No significant difference between countries with full sex buyer criminalization (Sweden, Norway) and other Nordic countries”.

Could you speak to that a bit more?

Ruth, if you then want to come in and speak about the Irish experience, that would be helpful.

Dr Vuolajärvi: That part of the submission refers to separate studies. The mention of a

“Decrease from 13 percent to 8 percent of men reporting having bought sex”

refers to a survey that was done before and shortly after the Swedish sex purchase legislation, which was implemented in 1999.

There have then been other studies that show the extent of people who have bought sex in the Nordic countries. In those, the numbers are a little bit different. In Sweden, it was found that

“10-15 percent of men have bought sex”.

Another survey, in Finland, found that it was 11 to 13 percent; in Norway and Denmark, the figure was 13 per cent. Of course, those figures are approximate, so in Sweden it could be between, let us say, 8 and 15 per cent, or 17 per cent; it depends on the number of people who responded to the survey.

The point is that we do not see a massive difference in the percentages of men buying sex in countries in the Nordic region, which have very similar welfare state models and levels of gender equality. That is very important in relation to women's engagement in commercial sex, with regard to the types of supports that are in place and so on.

Jamie Hepburn: I am putting words in your mouth, so you can tell me if I am wrong, but the conclusion that you are drawing is that changing the law to criminalise the purchase of sex does not alter the dynamic.

12:45

Dr Vuolajärvi: The study showed that after the law was introduced, the proportion of people reporting buying sex went from 13 to 8 per cent. After buying sex was criminalised, they might not have wanted to state their response in the same way, but I am sure that if you criminalise something, some law-obedient people will not do it. Therefore, I am not saying that such a law would not have any effect, because laws have effects.

Jamie Hepburn: Okay. Is the point that you are making about the comparison between jurisdictions?

Dr Vuolajärvi: The point is that the law did not lead to a massive change. In general, the figures are not massively different across the different countries in the region, which have similar social models.

Misogyny and violence against women and women's sexual exploitation are very serious issues, but they cannot be solved by introducing laws that regulate prostitution. The issues need different approaches—that is my bigger point, because I share the concerns of others.

Jamie Hepburn: What is the Irish experience, Ruth?

Ruth Breslin: I understand that Sweden's own review observed a reduction in demand.

The Irish review of the legislation says that, overall, the legislation is making progress towards its various objectives, which I have talked about, but it has yet not been successful in really having an impact on demand, which speaks to some of the implementation issues that I referred to. Instead of throwing the baby out with the bath water, the Department of Justice has decided to go back and look at how to strengthen the law's provisions. That means that the police must be well resourced to do the work effectively.

Also, I recommend that a proper public awareness-raising campaign is undertaken across Scotland, which, unfortunately, we did not do in Ireland. We needed to get the message out more widely that we had decided that the purchase of sex was now an offence and that everybody needed to be informed of that.

We have hope that we will make inroads in reducing demand in future, because, again, the aim is to reduce demand in order to shrink the size

of the trade so that fewer vulnerable women and girls end up in it.

Jamie Hepburn: It is maybe too early to conclude, but is the bigger challenge societal and attitudinal? Cultural change would reduce demand more than the law per se.

Ruth Breslin: Yet, what we saw in Ireland was that the law came first and policy followed. There was a bit of a national conversation about the issues at the time and policy followed because when we developed a new strategy on gender-based violence, just a few years ago, for the first time ever, prostitution and sex trafficking were placed in the framework of violence against women and girls.

Jamie Hepburn: Okay, that is helpful.

My final question relates to the bill's provisions around support and assistance for women—it is primarily women—who seek to exit prostitution. I think that I am right in saying that three of the submissions highlight the need to support women, whether or not they intend to leave prostitution. Support does not necessarily have to be predicated on the desire to leave. Could you speak to that?

Ruth Breslin: In the committee's previous evidence session, it was suggested that, in Ireland, only women who want to leave get support, but that is just not the case. In my submission, I talked about the idea of services meeting women wherever they are at. Whenever the woman comes in through the door—she might describe herself as a sex worker or a victim of trafficking, and she might want to leave or she might want to stay—it is essential that the service is non-judgmental and holistic, that it meets a woman where she is at and that it assesses her needs and provides support from that point.

Dr Sandy: I absolutely concur with Ruth. Services must be non-judgmental, so in order to access the services, there must be no condition that you are leaving sex work or reducing your hours. Those services need to be provided to all workers within a non-judgmental framework, and they need to be properly resourced and funded.

Dr Vuolajärvi: I concur.

Jamie Hepburn: Professor Phoenix, do you have anything to add?

Professor Phoenix: I have nothing to add.

Jamie Hepburn: Thank you, all.

Ash Regan (Edinburgh Eastern) (Ind): One of the difficulties for the committee is that research, evidence and a number of studies have been presented to the committee—in writing or through oral evidence sessions—that appear at face value to directly and completely contradict each other.

One side says one thing and the other side says the other. Is there any guidance or criteria that the committee can apply in order to spot whether research or evidence meets a high bar?

When we look at things that are presented as evidence, I suggest that we need to look for high sample sizes and at whether the research is statistically representative, and we need to ensure that any research that has been undertaken does not have any links at all to the sex industry. It must not be funded by the sex industry; it should be independent.

I direct that question to Jo Phoenix, in particular, because I think that she mentioned that, but Ruth Breslin might also want to comment. How should the committee work its way through all the research? If it is possible to work it out, what percentage of the research meets a very high bar of robustness?

Professor Phoenix: Wow, okay. That is a really big question, so I will answer you in bite-sized chunks. I said that there is a problem with research in this area, the extent of which must not be underestimated. If I were to guide you on how to find good research that does not suffer from some of the classic problems, I would say that you should get skilled up on what those classic problems are.

There are some simple things that help you almost immediately see the good and the less good. I do not want to say that any research is bad; it is just good and less good, or robust and less robust. You can literally see that by looking at the researcher's assumptions, which can be seen by how they define their terms of reference. The second that you see a research study that starts with, "We are going to be looking at the effects of criminalising the purchase of sex," or "we believe that sex is work," that means that that assumption is hard baked in there—it is a "sex work is work" approach. That means that everything in that study will have been designed on the basis of that assumption, so you will end up with confirmation bias.

I suggest that any research that starts from an a priori political position that individuals ought to be free to sell sex, if the conditions are right, is problematic, because that assumption will be baked into what has been done. However, the problem is that the research on the other side also suffers from that same confirmation bias. The question then is, how can you sift through all that? I suggest that you do not so much look at high sample sizes—although that helps—but rather look across all the research and at what it says. For example, we know that all the research describes particular problems in prostitution and particular problems around the policing of prostitution.

I will add one more thing, because I do not want to go on too long. Let us have a little think about the confirmation loop and where else you can find that. The confirmation loop problem has an associated problem, which is the false causality problem. With the greatest of respect to my academic colleagues on the panel, when I hear things such as, "The evidence shows that there are more harms when we criminalise the purchase of sex," the first question that I ask is, how? What is the causal mechanism? In fact, the research never shows the causal mechanism beyond the myth that we have heard—I have heard it, at any rate—since people started talking about criminalising kerb crawlers, which is that women do not have the chance to assess potential purchasers. That is the only causal mechanism that I can see in the research.

Therefore, I suggest that you keep in mind how a priori political positions shape the very nature of the research. Do not buy into the bottom-line numbers; look at how the research was conducted and for the causal mechanisms that researchers offer.

That is not a complete response, but if the committee would find it helpful, I can certainly add a little note about some of the main problems. I can select some of the main studies that the committee may have looked at and pick out some of the logical academic errors in those.

Ash Regan: I cannot speak for the committee because I am not a member, but I am sure that it would be interested in taking up that suggestion. Do you have anything to add, Ruth?

Ruth Breslin: Yes, just briefly. In the run-up to the review of our legislation, Dr Geoffrey Shannon, who is quite an eminent legal professional in Ireland, prepared a report for our Government that made a number of recommendations on how the review should be conducted. He noted the need to rely only on evidence that was reliable, verifiable and gathered in a rigorous way. He said that the "origin of data" must be "verifiable" and, if possible, able to be triangulated from other sources. He added:

"Researchers should have no past or present association with or financial relationship with the sex trade organisers or those profiting or benefiting from or promoting the sex trade."

Some of the evidence that ended up in our review does not essentially meet those conditions. The same is true of some of the data that was gathered about the law in Northern Ireland.

Dr Sandy: If I can—

The Convener: I am afraid that I will have to close the session there. We are well over time, so I am sorry, but I have to draw things to a close.

Thank you all for joining us. Thank you for coming online, Jo Phoenix. It has been an invaluable session and there is lots for us to think about.

12:56

Meeting continued in private until 13:08.

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