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Rethinking the Criminalisation of Purchasing Sex

by Jo Phoenix

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Introduction

Debates about prostitution law often pivot around two broad approaches. One favours full decriminalisation, arguing that removing all criminal penalties for selling and buying sex empowers women and improves safety. The other, sometimes called the "Nordic model," criminalises the purchase of sex while decriminalising the seller, aiming to reduce demand and shift policing away from women.

Ash Regan's Prostitution (Offences and Support) (Scotland) Bill, now defeated in the Scottish Parliament, followed the Nordic model. It proposed to decriminalise soliciting and loitering while criminalising the purchase of sex, alongside providing statutory support for women in prostitution. The Bill offered an opportunity to examine how this approach could function in Scotland and what it might mean in practice for women in prostitution.

On 29 October 2025, I gave oral evidence to the Scottish Parliament's Criminal Justice Committee in support of Ash Regan's Bill. For nearly two decades, I opposed the Nordic model of criminalising the purchase of sex. My opposition was not based on fixed political slogans like "sex work is work" or "prostitution is all male violence". In my research, I have always held both truths in view, because women describe prostitution as a way to make money while also recognising it as sex-based violence and victimisation.

I avoid abstract debates about consent. These debates skim past poverty, tend towards a facile interpretation of constraint and choice, and are not capable of holding in view the relentless realities of male violence and how this shapes women's and girl's 'choices'.

I initially opposed criminalising buyers because more urgent problems demanded action. Having studied Ash Regan's Bill and the evidence base, my view has changed. Despite major legal and policing reforms over the last 15 years, some of the most intractable harms of prostitution and male violence remain unaddressed. While no law can remove all risks, the Nordic model, as reflected in this Bill, represents a realistic policy approach whose implementation could make things a little better for women caught up in prostitution.

Solving 'the problems' of prostitution

All law reform claims to solve a problem. With prostitution, we must ask: what problem, exactly, and how does it fit the realities on the ground?

Until the early 2000s, England, Wales and Scotland treated prostitution as a problem of public nuisance. This approach was established in the Wolfenden Report, published in 1957 (the same report that led to the decriminalisation of homosexual sex between men). The report was produced by a government-appointed committee chaired by Sir John Wolfenden to review laws on homosexuality and prostitution in England and Wales. In its time, this was a landmark report. It said that where prostitution and homosexual sex between men were concerned, the law ought not meddle in matters of private morality. The law should only set limits when

private morality creates problems of public nuisance. Wolfenden and his colleagues thus thought that prostitution was "just" a moral question, except where it caused public nuisance.

What this meant in practice was that the police sought only to police the visibility of prostitution – or rather the visibility of women in prostitution.

Policing public nuisance

I started researching prostitution in the mid-1990s. Back then it was largely a local "cottage industry". Women worked from the streets, in saunas and in brothels. Local gangsters and drug dealers controlled many of the street-working women, and brothel or sauna owners set the economic terms that controlled how much money a woman working within those locations could make. Indoor work was arranged through contact magazines or small card ads in public phone booths. Most cities had a red-light district and a vice squad; brothels, massage parlours and saunas formed the indoor scene; escorting was limited. Voluntary support was thin: in Birmingham in 1993, for example, a convent offered women support, a sexual health outreach agency used a van to hand out condoms to street working women and occasionally advice (and they made the odd referral), and a probation-run day centre ran a diversion scheme for women criminalised for soliciting or loitering. That was it.

In the summer of 1994, I spent time shadowing the sexual health outreach team in Birmingham and sat in a probation run drop-in centre. I met many women and girls. Even those who called prostitution "work" or an alternative to theft, robbery or burglary also described male violence. This violence came from families, boyfriends or pimps, clients, and sometimes the police. 'Consent' talk felt beside the point then, as now. Choices were made under the force of necessity. Some of the stories of male violence were extreme: kidnapping and days-long assaults, beatings, gang rape, and total financial control. I cannot recall one woman that I met that summer who did not have a history of physical, sexual or emotional violence by men. For some women, escaping a violent man was often a push into prostitution. Back then there were very few refuges and no real statutory or third sector violence against women services. For others, male violence was just part and parcel of what happened in prostitution – an occupational hazard. For others still, violence marked their personal relationships. I remain unconvinced that much has changed.

Under-protected and over-policed

The policing asymmetry was stark. Women were arrested for prostitution offences; the men who raped, abused, controlled and profited from them were rarely pursued. In the mid-90s there were nearly 10,000 convictions for soliciting/loitering but only a few hundred for "living off immoral earnings." The problem was obvious: women and girls were over-policed and under-protected. We already had laws against kidnapping, rape, violence and pimping, but they were not enforced for these victims, who seldom reported for fear of being treated as offenders. Hence, when the Nordic model was first introduced in Sweden in 1999, I did not have much time for it. What good would it be to just expand the police's attention from the women to those purchasing sex? How would that address the poverty, the complex social and welfare problems the women had or the male violence they

experienced? We needed police and court enforcement against male violence. We needed real protection for the women and girls. We needed services for the trauma that women and girls endure and for the addictions that are so common amongst women in prostitution. We needed government action on poverty and the homelessness that funnels women into prostitution. Most of all, we needed to stop criminalising the women and to consistently police and deal with the men who made their lives in prostitution a misery. Criminalising clients didn't seem to touch those deeper problems.

Shifting definitions of 'the problems' of prostitution

Everything changed in the early 2000s. In less than a decade, 15 changes of law or policy took place, all intended to address violence and exploitation experienced by women and girls in prostitution. New measures sought to set limits to the circumstances in which a person could consent to their involvement in prostitution.

Prior to 2000, girls under the age of sexual consent could be arrested for soliciting and loitering for prostitution. But that year, the Department of Health and Home Office issued guidance that said that any girl under the age of 18 should be treated (in the first instance) as a victim of sexual abuse, not an offender. Other laws followed, focusing on making unlawful other forms of commercial sexual exploitation and other forms of prostitution that were intimately intertwined with exploitation (such as human trafficking). Support for women who experienced violence from clients was formalised in 2012, when the Home Office and police funded the National Ugly Mugs Scheme. When first set up, this scheme allowed women to report violent punters and become aware of violent punters in their locality. Following this, new Crown Prosecution Service guidelines were established to deal with the commercial exploitation of both women and girls, and finally the law changed such that no girl under the age of 18 could be prosecuted for a prostitution related offence.

This policy revolution had two effects. First, arrests and convictions of women for soliciting/loitering fell sharply in England and Wales (see Figures 1 and 2 overleaf). The old revolving door—arrest, fine, unpaid fine, custody, back to the street—that characterised the life of so many women in prostitution in earlier decades was effectively closed. In truth, the criminalisation of street working women had already begun to decline by the mid-90s. Elsewhere, I argued that this was a result of the expansion of sexual health outreach projects that followed in the wake of the HIV/AIDS epidemic.

Figure 1: Numbers of convictions for soliciting or loitering for the purposes of prostitution from 1985–2003 (adapted from Ministry of Justice figures)

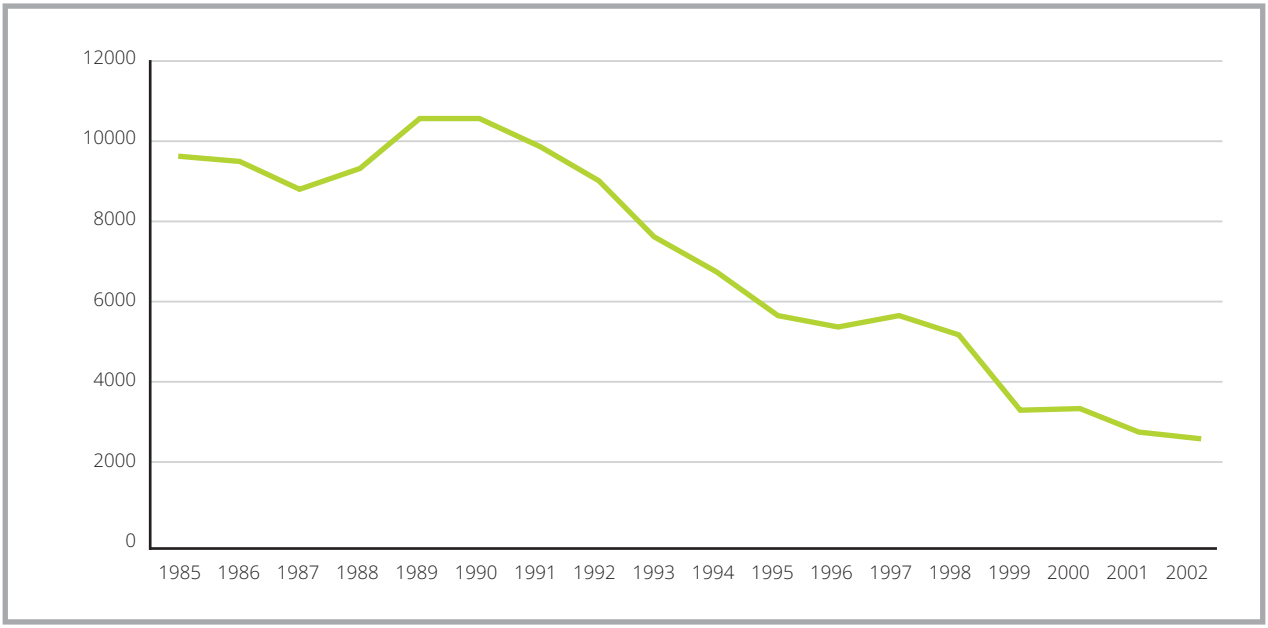
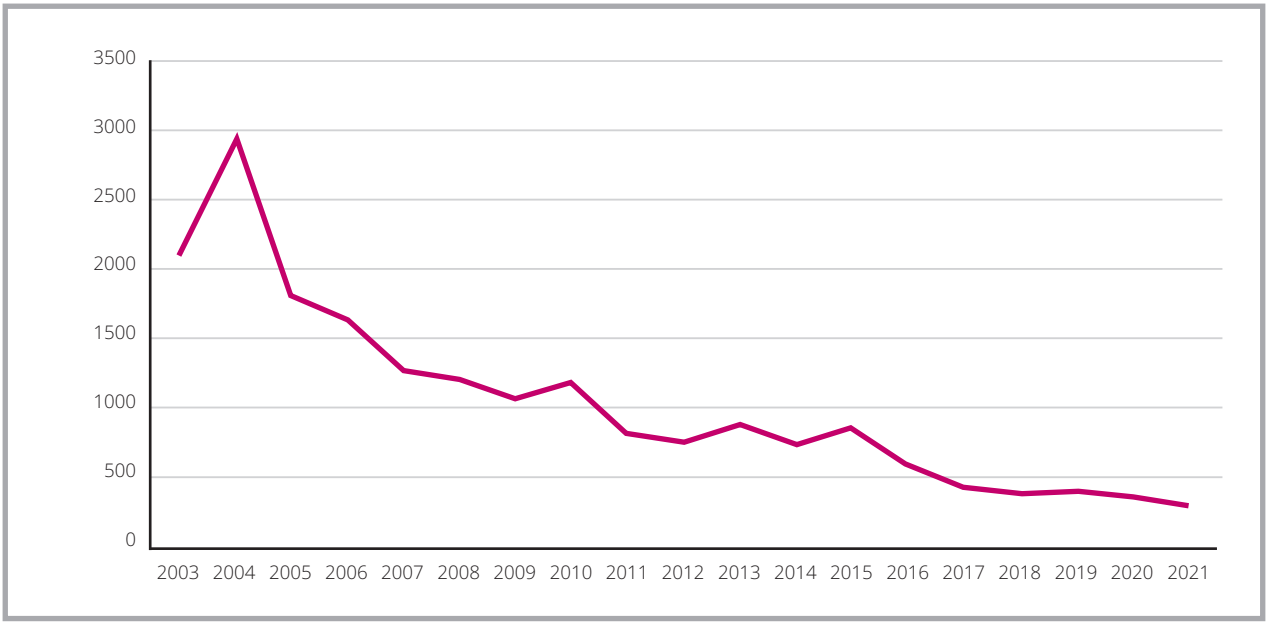


Figure 2: Police recorded offences of soliciting or loitering for the purposes of prostitution from 2004-2021 (adapted from Ministry of Justice figures)

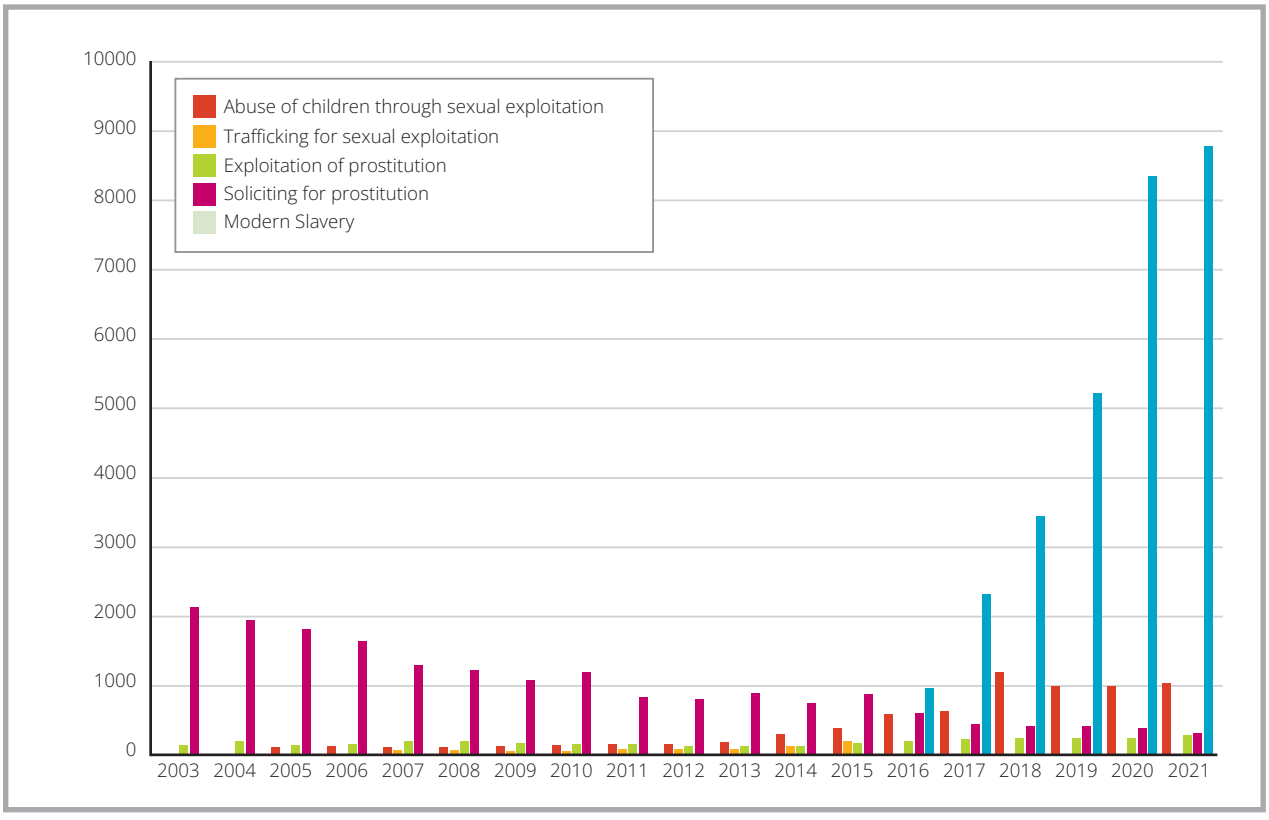


Note: Figure 1 shows the number of court convictions for soliciting or loitering, while Figure 2 shows the number of offences recorded by the police. Recorded offences reflect incidents logged at the reporting stage, whereas convictions represent cases that resulted in a guilty verdict in court.

Secondly, "support" often meant little more than referrals to mainstream services. With no statutory duty on local authorities to support women in prostitution, most women still couldn't access the money, housing, or protection they needed. Sexual health harm-minimisation projects helped many women. Such projects, however, could not tackle women's poverty, endemic male violence, or homelessness—nor could they keep up with the rapidly changing forms of prostitution that started to emerge in the 2010s.

By the early 2010s prostitution transformed. A local "cottage industry" became a globalised market. Street work dwindled; indoor work expanded. Contact mags and phone-box cards gave way to internet platforms. The street pimp was replaced by quasi-legitimate, profit-driven third parties, often linked to organised crime. 'The prostitution market' globalised, organised and 'professionalised' into the multi-billion dollar a year global industry that it is nowadays. We can see this shift in other police recorded offences. There was a dramatic decline in police recorded crime for soliciting or loitering and a concomitant increase in the numbers of police recorded figures for modern slavery.

Figure 3: Police recorded crime by offence, number of offences, England and Wales, year ending March 2003 to year ending March 2021 (adapted from Ministry of Justice figures).



What does this mean for the Nordic model?

Several developments in law enforcement and criminal justice over the past two decades help to explain the current gap between policy and practice in addressing prostitution and exploitation. First, *de facto,* we've already decriminalised selling sex while criminalising modern slavery. Women are no longer routinely arrested—whether because the street scene shrank or because forces now divert women into services. Second, we're only beginning to police child sexual exploitation actively. And despite the very high-profile attention that grooming gangs have received recently, there is evidence that policing efforts are improving. Third, policing attention to the exploitation of adult prostitution remains stubbornly low. Either such exploitation is rare (highly unlikely), the police are looking away (likely), or such exploitation is now normalised "business practice" in the globalised prostitution market (most likely). In short, after nearly two decades, the enforcement and protection of women in prostitution still lags despite a plethora of very good laws and policies.

Has England and Wales' informal decriminalisation made women safer?

So far, the changes haven't translated neatly into greater safety. Women First found that only 18 per cent of local authorities commission any service for women in the sex trade. Where services exist, they resemble the late-1990s mix: charities, sexual health outreach, addiction services, and the occasional dedicated project. Women in prostitution remain at extreme risk of violence; centuries of research—and today's homicide disparities—bear that out. The idea that simply stopping arrests delivers a safe, "sex-positive" sexual marketplace is delusional. When did the invisible hand of 'the market' ever curb male violence or address exploitative business practices? Those who argue for decriminalisation and those sex-positive proponents of 'sex work' also say that to treat 'sex work' as ordinary work requires also destigmatising it as well as stopping the arrests. In fact, one of the academics (Dr Larissa Sandy from Nottingham University) giving evidence on 29th October made the case that decriminalisation works best when 'sex worker' is included as a protected characteristic in the Equality Act 2010. She said:

> *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.*

This is a legally illiterate approach, meaning that it fails to grasp the very basics of what the Equality Act 2010 is there for. 'Sex work' or prostitution – whichever is one's preferred nomenclature – is an economic activity. Sex workers are women (usually) who engage in that economic activity. Equality legislation protections do not exist to protect occupations from stigma and discrimination. They exist to provide protection to individuals on the basis of personal attributes, inherent to that person. There are no occupations that are covered by Equality Act 2010. It

is also a highly regressive suggestion that is dressed up as a progressive one. The only way 'sex workers' could be conceivably brought within remit of the Equality Act is if one made an argument that to be a sex worker is an immutable attribute of a person. In other words, some women are born as sex workers. This is not a position that I would ever support.

Leaving aside the ludicrous suggestion that being a sex worker is a personal attribute, even if prostitution were to be brought truly into employment laws, the health and safety requirements typical of other hands-on kinds of employment would make it unattractive to many buyers. And if it is not to be governed by employment law, then it would become the wild west of employment practices, where anything goes. For me, this is a dystopian vision of neo-liberal market forces regulating the sale and purchase of sex. It is not one I have ever supported or could support.

What's wrong with a twin-track approach to policing prostitution?

The legacy of the drive to reform prostitution policy to make violence and exploitation in prostitution unlawful has created a 'twin track' approach to policing prostitution. Police attention and energy is spent on policing the exploitative and violent end of the market. This has created an intractable problem at the heart of how we deal with the problems of prostitution. In order to prove that the women in a brothel that the police have just raided are, in fact, victims of human trafficking or are, in fact, being exploited, the police have to collect evidence *from the women*. This necessarily forces police attention onto the women themselves. It also means that all the same old problems with establishing whether each individual woman *consented* to what happened to her emerge. And what we know from 50 plus years of feminist research on sexual exploitation and sexual violence is that we have yet to rid ourselves of the sexist stereotypes that shape how 'consent' is made sense of within the criminal justice system.

It is my belief that because we now have a half decent legal framework that addresses exploitation and violence in prostitution, if we then also criminalise the purchase of sex, we may well address the problems of having a twin-track approach to policing prostitution. Regan's Private Member's Bill was designed around this shift: decriminalising soliciting and loitering so that those selling sex are no longer treated as offenders, while redirecting enforcement toward those who buy sex.

Conclusion

Many researchers and activists who support fully decriminalising prostitution (i.e. removing all the current laws which make it illegal to own or run a brothel, to solicit or loiter in a public place for prostitution and so on) will argue that criminalising the purchase of sex will have several effects. Police will try to 'get to' the purchasers via the women, and thus women will remain the target of police attention. They also argue it will drive prostitution underground, as purchasers try to evade police attention. However, these claims are not well established by evidence. Similar arguments were made when Sweden introduced its sex purchase law in the late 1990s, yet subsequent evaluations did not show the predicted large-scale displacement into hidden or more dangerous markets.

One final note on policing: as Figure 1 above shows, we have a crisis in the policing of "prostitution related" crimes against women and girls. This is a crisis driven, in my opinion, by the reforms of 20 years ago that emphasised the distinctions between voluntary prostitution and forced prostitution, retained the criminal justice measures against women whilst only paying lip service to addressing the crimes committed against women. I know from my own research into child sexual exploitation that early attempts to treat girls in prostitution as victims of sexual exploitation fell flat because police officers and others focused on the conditions in which the girls were being prostituted rather than the activities of the men. The inability of the police to consistently deal with all girls as victims and all punters as criminals arguably was the precondition for the grooming gang scandals that we are dealing with at the moment. Criminalising the purchase of sex will give police absolute clarity when policing prostitution. All sellers of sex, regardless of their circumstances, are not offenders. All purchasers are. It is a simple framework legal framework that may well help the police do their jobs.

Ash Regan's Bill merited support because it placed support for women in prostitution on a statutory footing, providing a clear legal framework for their protection. Ideally, such support should be integrated within local authorities' broader strategies on violence against women. Criminalising the purchase of sex would then help shift policing attention away from women and onto the men who create the market and who make women in prostitution's lives a misery.

We tried just criminalising the really problematic end of prostitution. Look where it led: grooming-gang scandals, and countless women living with the trauma that money-for-sex brings, while high-profile scandals continue to emerge (referencing Epstein and others only to illustrate the wide scope of unpunished abuse). We stopped arresting women in prostitution —but we didn't guarantee support or send a national message that women are worth more than a few quid for a stranger's gratification. Isn't it about time we did something more?

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