

Criminal Justice and Licensing (Scotland) Bill

Evidence to the Justice Committee

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Equality Network, 30 Bernard St, Edinburgh, EH6 6PR

Tel: 07020 933 952

en@equality-network.org

www.equality-network.org

The Equality Network is a network of around one thousand lesbian, gay, bisexual and transgender (LGBT) individuals and organisations in Scotland, working for LGBT equality. The Equality Network's policy work is based on consultation with LGBT communities across Scotland, and reflects the concerns that LGBT people have raised with us.

We welcome the opportunity to submit evidence to the Justice Committee on the Criminal Justice and Licensing (Scotland) Bill. We wish to suggest a provision which we feel should be included in Part 2 (criminal law) of the bill, under the existing heading 'sexual offences'.

The current Sexual Offences (Scotland) Bill removes gender and sexual orientation discrimination from sexual offences law. However, prostitution is outwith the scope of that bill, and is now the only remaining area of criminal law where some sexual orientation discrimination remains.

The Criminal Justice and Licensing (Scotland) Bill is the first general criminal justice bill to be considered by the Parliament for some years, and is therefore the first opportunity to deal with this discrimination. As a bill which makes general provision about criminal law, we assume that such a change would be within its scope.

Outline of the problem

The main legislative provisions on prostitution apply regardless of the gender of the prostitute or the gender of the person seeking to obtain the services of a prostitute. It is an offence for the prostitute or the person seeking their services to solicit in a public place.

However, for the case of a male prostitute offering services to a man, or a man seeking to obtain the services of a male prostitute, there is an additional offence which criminalises all soliciting or importuning, whether or not it is done in a public place. There have been no charges under that additional, gender and sexual orientation specific, offence for several years at least.

The Equality Network raised the issue of this discriminatory offence when the Prostitution (Public Places) (Scotland) Act 2007 was under consideration by the Parliament. The then Scottish Executive responded that the discriminatory offence could not be repealed by that bill, because the scope of the bill covered only public places, while the discriminatory offence applies also to soliciting and importuning in other places.

We believe that the opportunity should now be taken to remove this last sexual orientation discrimination from the criminal law.

More detailed explanation and suggested solution

Section 46 of the Civic Government (Scotland) Act 1982 criminalises loitering, soliciting and importuning, in a public place and for the purpose of prostitution, by a female or male prostitute.

Section 1 of the Prostitution (Public Places) (Scotland) Act 2007 criminalises soliciting and loitering, in a public place, for the purpose of obtaining the services of a prostitute. Again, this offence is gender-neutral.

Section 13 ('homosexual offences') of the Criminal Law (Consolidation) (Scotland) Act 1995 is largely repealed by the current Sexual Offences (Scotland) Bill. But the provisions in section 13 relating to prostitution are not amended by that bill. Some of those provisions extend the law on pimping and brothel-keeping to cover male prostitution, and are non-discriminatory in effect.

However, part of section 13(9) makes it an offence to solicit or importune any male person for the purpose of procuring the commission of a homosexual act. This criminalises both prostitutes and people seeking to obtain the services of a prostitute, wherever the soliciting or importuning takes place, in a public place or otherwise. Because it covers non-public places, the offence is wider in scope than the other prostitution offences. It discriminates on grounds of gender and sexual orientation, since it

only applies where the prostitute and the person seeking to obtain their services are both men.

Parliamentary Question S3W-16008 asked: To ask the Scottish Executive how many charges brought under section 13(9) of the Criminal Law (Consolidation) (Scotland) Act 1995 have been (a) reported to procurators fiscal by police and (b) prosecuted in each year since 2003-04.

On September 17th 2008, the Solicitor General replied: The Crown Office and Procurator Fiscal Service has not received any reports containing charge(s) under Section 13(9) of the Criminal Law (Consolidation) (Scotland) Act 1995.

Our view is that the prostitution offences in the Civic Government (Scotland) Act and the Prostitution (Public Places) (Scotland) Act are sufficient to deal with male prostitution in just the same way as they deal with other prostitution. There is no reason to provide a separate, wider offence for male prostitution. The law should not discriminate on grounds of gender and sexual orientation unless there is good reason for it.

We recommend therefore that an amendment should be made to the Criminal Justice and Licensing (Scotland) Bill, along the lines suggested below.

This would repeal the soliciting / importuning offence in section 13(9) of the 1995 Act (and would consequentially repeal section 13(11), which is a time bar provision applying to that offence). It would leave the other provisions of section 13, on pimping and brothel-keeping, unchanged.

After section 34, insert–

<Amendment of offences relating to male prostitution

- (1) Section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.
- (2) In subsection (9), the words from “or” where it occurs for the second time to “above” are repealed.
- (3) Subsection (11) is repealed.>