Executive summary

- SWOU believes that all criminal provisions related to voluntary commercial sex should be removed, including those criminalising sellers, buyers, managers and employers, landlords, etc. Sex work should be regulated by the same general provisions as any other form of work.
- The burden of criminalisation currently falls overwhelmingly on people who sell sex, as opposed to clients or third parties, despite measures to recognise sex work as 'violence against women'. This is partly because the police have extraordinary powers both to harass and to formally sanction sex workers.
- We are sceptical of laws billed as 'shifting the burden' of criminalisation onto clients, since in practice they often do nothing of the sort, and may in fact subject sex workers to further criminalisation or state harassment.
- The criminalisation of clients would compromise many of the safety measures sex workers rely upon, reduce their income and so increase their precarity and dependence on clients, force them to offer more risky sexual services, and make it more difficult for them to access police protection.
- The effectiveness of the Modern Slavery Act is undermined by its failure to protect victims from deportation, with the result that they avoid contact with state authorities.
- Proposals to reduce the number of people selling sex often implicitly rely on increasing their precarity or vulnerability to violence, which is deeply disturbing. The emphasis should be on providing non-judgemental services, which can help people transition out of sex work, if they wish.

General introductory remarks

1. SWOU is a sex worker-led collective which has branches in Glasgow, Leeds and London. Membership is open to all sex workers, defined as "people who sell or exchange their own sexual labour or performance (or who have done so in the past)". We do not consider managers or other people who profit from the sexual labour of others to be sex workers or allies, and membership is not open to them. SWOU's activities include public campaigning and advocacy for sex workers' rights, including delivering workshops at universities, consulting with human rights organisations, and taking part in or running academic seminars, conferences, public panel discussions, festivals and other events. We also run support services for sex workers, including skill-sharing workshops, weekly breakfast socials, and a confidential phone support service.

2. It is SWOU's established policy to support the decriminalisation of sex work along the lines of the New Zealand Prostitution Reform Act of 2003. It is our view that consensual sex work and the employment of sex workers should not be regulated by criminal law, but by contract law, labour law, zoning law and other general civil and regulatory measures (wherever applicable). Criminal sanctions should be applied only in cases of coercion, and most relevant offenses are already covered under statutes criminalising rape, sexual assault, sex with a minor, false imprisonment, forced labour, etc.
3. In particular, it is our view that at least the following provisions should be repealed in England and Wales:

Provisions directly criminalising sex workers:
- Street Offences Act 1959 {1}, as amended by the Policing and Crime Act 2009 {16} ("persistently loitering or soliciting for the purposes of prostitution")
- Sexual Offences Act 1956 {33} and {33A}, as amended by the Sexual Offences Act 2003 ("keeping a brothel")

Provisions criminalising clients:
- Sexual Offences Act 2003 {51A} ("soliciting")

Provisions criminalising managers, employers and/or landlords:
- Criminal Justice and Police Act 2001 {46} ("placement of advertisements related to prostitution")
- Sexual Offences Act 1956 {34} ("letting premises for use as a brothel")
- Sexual Offences Act 1956 {35} ("permitting premises to be used as a brothel")
- Sexual Offences Act 1956 {36} ("permitting premises to be used for prostitution")
- Sexual Offences Act 2003 {52} ("causing or inciting prostitution for gain")
- Sexual Offences Act 2003 {53} ("controlling prostitution for gain")

To be clear, we count the provisions related to "keeping a brothel" as criminalising sex workers because sex workers who choose to work together for safety or to share expenses are routinely prosecuted or threatened with prosecution under these provisions.

4. We are deeply disappointed to observe that the terms of reference of this inquiry presuppose that some or other "criminal sanction in relation to prostitution" is appropriate and necessary. In fact, as the example of New Zealand demonstrates, fully decriminalised sex work is possible and is the best option for protecting the human rights of sex workers. For this reason, decriminalisation is the legal model preferred by the vast majority of sex workers and sex worker-led organisations worldwide.

Responses to specific issues

"Whether criminal sanction in relation to prostitution should continue to fall more heavily on those who sell sex, rather than those who buy it."

5. It is not disputed that the burden of criminal sanction currently falls overwhelmingly on those who sell sex. For instance, CPS statistics from 2013\(^1\) show that there were 420 prosecutions targeting street sex workers ("loitering") compared to only 191 prosecutions of their clients ("soliciting"). In 2014-2015\(^2\) 83 people were prosecuted under provisions targeting specifically managers or landlords.

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agency owners ("causing or inciting" and "controlling") while 91 people were prosecuted for "keeping a brothel", some proportion of whom were doubtless sex workers.

6. Moreover, most criminal sanctions suffered by sex workers are not reflected in centralised prosecution statistics. They instead take the form of cautions, anti-social behaviour orders (ASBOs), arrests and indeed simple harassment by the police. To take one example, Ilford police station arrested no fewer than 100 sex workers, handed out 236 cautions and issued 6 ASBOs in the year to Sept 2013.\(^3\) It is of particular concern that so-called "prostitute's caution" can be issued essentially at police discretion, without the supposed offender even making an admission of guilt.

7. It bears stating that new legal provisions criminalising the clients of sex workers do not automatically remove all, or even any, burden of criminalisation from sex workers themselves. Nevertheless, proposed or actual legal changes in several countries have been misleadingly described by their proponents as 'shifting the burden'. To take a few examples:

a. Section 15 of the Human Trafficking and Exploitation Act 2015 (Northern Ireland) criminalises the purchase of sex and has been lauded as "decriminalizing prostituted individuals"\(^4\). However, under the terms of the legislation, street sex workers are newly subjected to an offence under the Public Order Act 1994 if they are "acting in a manner which consists of loitering in a public place for the purpose of offering his or her services as a prostitute". So a Bill that claims to 'shift the burden' has in fact increased the criminal burden on street-based sex workers.

b. The Swedish Sex Purchase Act 1999 and the Norwegian Sex Purchase Law 2008 criminalise not only clients but also landlords who knowingly rent to sex workers. In many cases, the police have intentionally notified sex workers' landlords, thus essentially exploiting this provision to force evictions. As documented by Amnesty International\(^5\), this practice has been especially systematic in Norway, where it has been formalised as "Operation Homeless". The Swedish authorities have systematically deported both trafficking victims and voluntary migrant sex workers, in at least one case stating on a deportation order that the deportee "has not supported herself in an honest manner".\(^6\) Moreover, in order to obtain evidence against clients, the police routinely harass sex workers and conduct raids on their premises.

c. When the Modern Slavery Act 2015 was being debated in Parliament, Fiona Mactaggart MP proposed an amendment that would have

\(^3\) Nunn, A (2013) "100 arrested for prostitution related offences in Ilford Lane, Ilford" Ilford Recorder Available: http://www.illfordrecorder.co.uk/news/crime-court/100_arrested_for_prostitution_related_offences_in_ilford_lane_ilford_1_2369256
criminalised the purchase of sex, and was described as 'shifting the burden', but included no provisions for removing criminal sanctions from sex workers themselves.

8. It is not disputed that that a significant proportion - quite possibly a majority - of sex workers in England and Wales stay within the law by working independently and indoors. So criminalising the purchase of sex would in effect criminalise many interactions between sex workers and their clients that are currently legal. Increased criminalisation would have systematic and harmful effects on the sex workers so affected, as it already does on sex workers currently operating in criminalised contexts.

9. The criminalisation or increased criminalisation of clients would increase the risk of violence to sex workers in the following ways:
   a. Currently, many indoor sex workers demand personal details about clients as a security measure, including: phone numbers, copies of identity documents, proof of employment, proof of address, etc. If they were criminalised, clients would generally be less willing to provide this information, allowing violent criminals posing as clients to target sex workers without any risk of being traced and thus apprehended.
   b. In outdoor settings, sex workers rely on in-person negotiation to determine whether a prospective client seems intoxicated, aggressive, or otherwise potentially violent. The existence of a clear verbal agreement also reduces the risk of violent disagreements about rates and services. Since clients facing increased criminal penalties will be nervous of police detection, the ability of sex workers to demand negotiation in a public place will be limited, so reducing the effectiveness of these safety measures.
   c. Sex workers are 'over-policed and under-protected'. That is, they are likely to experience harassment and other ill-treatment by state authorities, but also less likely than the average citizen to secure police protection when needed. Criminalisation of clients will only exacerbate this tendency. Often the only feasible way for the police to arrest clients is to target sex workers themselves. At the very least, sex workers will resent police monitoring and interference, as this will cost them clients and income. Moreover, in practice the police do not simply uphold the law - they also participate in and propagate social stigma against sex workers, subjecting them to undignified treatment and police brutality. This is illustrated by the raids against working flats in Soho carried out by the Met Police in 2013. Although the targeted sex workers were not prosecuted, they were nevertheless hauled out onto the street by heavily armed police - some of them in their underwear, on a cold December night - to be photographed by journalists. It is obvious that increased numbers of interactions of this type would worsen the already oppositional mood that exists between sex workers and the police. Sex workers will become even less willing to report or assist in the

investigation of crimes, resulting in decreased deterrence for criminals who might contemplate violence against them.

d. To the extent that criminalisation does succeed in deterring prospective clients of sex workers, it would bring about significant adverse selection in the quality of clients available. In general, the people who are least deterred by the threat of criminal sanction are those with risk-seeking personalities who are also relatively more likely to commit violence offences. This danger is exacerbated by the reduced ability of sex workers to screen effectively when clients are criminalised, as discussed above.

10. Many people sell sex simply because they are unable to access other means of earning an income, or earning a level of income that matches their obligations. Many people also sell sex intermittently, to accumulate savings and to cope with one-off or occasional financial needs like debts or buying gifts for the holiday season. Even if the criminalisation of clients succeeds on its own terms - i.e. by reducing the number of people willing to buy sex - it cannot address this underlying reality. If demand were reduced, it might paradoxically encourage more sex work, rather than less, because sex workers in these situations would essentially be forced to sell sex for longer in order to meet their requirements for income. The reduced pool of clients would also give additional bargaining power to those clients who remain, allowing them to demand more unpleasant or risky sexual services for relatively less money. Under these circumstances, sex workers might also feel less able to refuse clients who seem aggressive or disrespectful, further undermining safety. An independent review commissioned by the Norwegian government shows that these concerns have been borne out in practice. It states that the criminalisation of clients had created a "buyer's market", and writes, "the prices are lower now than before the introduction of the ban. More travelling, more advertising and somewhat lower prices show that the competition is tougher and the demand is lower nowadays. Men and women in prostitution need to work harder now in order to secure 2008 income levels."

"What the implications are for prostitution-related offences of the Crown Prosecution Service's recognition of prostitution as violence against women."

11. The CPS produced a "Violence Against Women" strategy document in 2008, which takes the position that 'prostitution' is fundamentally a crime of exploitation in which women are most often the victims. However, prosecution statistics in recent years do not support the conclusion that the CPS in fact views sex workers as 'victims' in need of protection. Focusing specifically on street-based offences for the years 2003 to 2013, a few trends are visible. Firstly, there has been a steady decline in prosecutions for loitering, decreasing from about 3000 per year in 2003 and stabilising at around 400 in each of the most recent years. Prosecutions for soliciting have increased, from around 70 to around 200 per year. Thus, although there has been an increased emphasis on prosecuting

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clients, sex workers in fact continue to be prosecuted in greater numbers than clients. Moreover, although the most significant increase in prosecutions for soliciting came after 2010, there is no evidence that any effort was made around this time to further reduce prosecutions of sex workers or in any other way to recognise them as 'victims'. In the statistics from 2010-2013, which list the genders of defendants, it is also clear that the vast majority of prosecutions for loitering and soliciting are directed at women and men respectively. One is led to the conclusion that, for the CPS, "protecting women" simply amounts to prosecuting more men, as opposed to actually halting prosecutions against supposed victims.

12. As noted above, the vast majority of criminal sanctions against sex workers take the form of cautions and other measures that are at the discretion of police officers rather than prosecutors. Thus, even if the CPS actually did implement a policy of recognising sex workers as victims of violence, this would not necessarily remove all or even most of the harmful effects of criminalisation. The protection of sex workers cannot be left to prosecutorial discretion, but must involve the repeal of the laws that directly or indirectly criminalise them.

"What impact the Modern Slavery Act 2015 has had to date on trafficking for purposes of prostitution, what further action is planned, and how effectively the impact is being measured."

13. Our view is that the Modern Slavery Act is excessively focused on criminal sanctions and does not do enough to protect victims of coerced migration or migrants who have been subjected to coercive labour practices. In particular, the law should have guaranteed that victims of these practices would be protected from deportation. This is particularly pertinent in the current political climate, where it is evidently a government priority to reduce inward migration by all means available. Even migrants in highly coercive environments may fear deportation, because they expect even worse conditions in their home countries or because they fear losing whatever proportion of their earnings they are allowed to keep. Failing to protect victims from deportation therefore undermines efforts to prevent coercive practices, because people in these situations will often avoid contact with the police and other authorities. They are effectively forced to become accomplices in their own victimisation.

14. Another major weakness of the Act is that, under section 2, a trafficking offence is committed if a person facilitates travel for another person with a view to 'exploiting' them, even if this is consensual. This means that someone could, with fully informed consent, accept a job selling sex and accept assistance in travelling to that job and nevertheless be counted as a victim of trafficking. Large numbers of voluntary employment relations are thereby unnecessarily criminalised, driving them underground and leading to harmful consequences, as discussed above.

"Whether further measures are necessary, including legal reforms, to: 
- Assist those involved in prostitution to exit from it

12 See fn. 1
- Increase the extent to which exploiters are held to account
- Discourage demand which drives commercial sexual exploitation

15. Our view is that the single most important intervention that would help sex workers who wish to stop selling sex is to decriminalise them and their clients. As argued above, criminalising clients and other measures to "discourage demand" can have the perverse effect of forcing people to sell sex for longer, until they achieve the level of income or savings that they need. Criminalising sex workers themselves is even more perverse, and effectively 'traps' many people into sex work. This is obvious in the case where fines are levied, since the only way many people will be able to pay fines is by selling sex. The social and legal marginalisation associated with criminalised conditions also makes it more difficult for sex workers to transition into work in the formal economy. The most obvious examples of this are when 'prostitution' offences are included on a person's criminal record, which can bar them from various jobs.

16. We support well-designed, well-resourced and non-judgemental services to help anyone who wishes to transition out of sex work to do so. Indeed, as part of our community skill-shares, we run our own workshops that offer help with leaving sex work. However, we reject the idea - often implicit in proposals to criminalise sex workers or their clients - that sex workers should be pushed into 'exiting services' through being made even more precarious or more vulnerable to violence. The emphasis should be on offering services that are genuinely useful to and trusted by sex workers, which they can then access voluntarily.