PROSTITUTION (PUBLIC PLACES) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Prostitution (Public Places) (Scotland) Bill introduced in the Scottish Parliament on 15 September 2006:
   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 69–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL – AN OVERVIEW

4. The Bill provides that it shall be an offence for a person to solicit or loiter in a relevant place for the purpose of engaging in prostitution, or for the purpose of obtaining the services of someone engaged in prostitution, in such manner as to be likely to cause nuisance, alarm or offence to a reasonable person. The provisions replace the current offence of soliciting or importuning by a prostitute found in section 46 of the Civic Government (Scotland) Act 1982.

COMMENTARY ON SECTIONS

Section 1 – Offences relating to prostitution

5. Subsection (1) provides that, for a purpose mentioned at subsection (2), it is an offence for a person to solicit in a relevant place in such manner or such circumstances as a reasonable person would consider to be likely to cause nuisance, alarm or offence. “Relevant place” is defined at subsection (9) as explained at paragraphs 16 and 17. For an offence to be committed, it is not necessary for any member of the public to have suffered nuisance, alarm or offence. The court has only to be satisfied that the behaviour was conducted in such manner or circumstances as to be likely to cause nuisance, alarm or offence to any reasonable person who might witness it.

6. Subsection (2) lists the purposes for which an offence may be committed under subsections (1) and (4). These are engaging in prostitution and obtaining the services of a person engaged in prostitution. The former is intended to apply to those selling or attempting to sell sexual services, whether operating on behalf of themselves or others, and the latter to those purchasing or attempting to purchase sexual services.

7. Subsections (3)(a) and 3(b) clarify that a person who is in a motor vehicle or on public transport can commit an offence at subsection (1). “Motor vehicle” and “public transport” are defined at subsection (9) as explained at paragraphs 14 and 15.

8. Subsection (3)(c) clarifies that where a person solicits another person for the purpose of obtaining the services of someone engaged in prostitution, it is not necessary that the person who is solicited be engaged in prostitution for an offence to be committed.
9. Subsection (4) provides that it is an offence for a person to loiter in a relevant place in such manner or such circumstances as a reasonable person would consider likely to cause nuisance, alarm or offence for a purpose mentioned at subsection (2). An offence under subsection (4) can also be committed on public transport. But unlike the soliciting offence in subsection (1), the loitering offence cannot be committed by someone in a motor vehicle (unless it is a form of public transport described in subsection (9)). Subsection (7), however, makes clear that a person in a hire car, which would otherwise be caught by the definition of public transport, cannot commit the loitering offence.

10. “Hire car” is defined at subsection (9) as explained at paragraph 13.

11. Subsection (8) provides that a person convicted of an offence under subsection (1) or (4) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale. Summary conviction occurs when criminal proceedings in respect of the offence are brought before the district or sheriff court (without a jury sitting) and the person has been found, or pleads, guilty. The current level 2 fine is £500.

12. Subsection (9) provides definitions for various terms used in the Bill.

13. “Hire car” has the meaning given to it at section 23(2) of the Civic Government (Scotland) Act 1982. This defines a “hire car” as “a motor vehicle with a driver (other than a vehicle being a public service vehicle within the meaning of section 1(1)(a) of the Public Passenger Vehicles Act 1981) which is, with a view to profit, available for hire by the public for personal conveyance”. This would include licensed taxis and private hire cars, as well as other hire cars such as chauffeur-driven cars.

14. “Motor vehicle” has the meaning given by section 185(1) of the Road Traffic Act 1988, where it is defined as “a mechanically propelled vehicle, intended or adapted for use on the roads”. This definition is subject to section 20 of the Chronically Sick and Disabled Persons Act 1970 which makes special provision about invalid carriages such that they would not be classed as motor vehicles for the purposes of this Bill.

15. “Public transport” is defined such that it does not include facilities provided by members of the public to get themselves around. Such facilities would include a car which belongs to someone other than the driver of the vehicle, whether this be a hired car or one borrowed informally.

16. “Relevant place” is defined with reference to section 133 of the Civic Government (Scotland) Act 1982, under paragraph (a) of the definition. This section defines a public place as: “any place (whether a thoroughfare or not) to which the public have unrestricted access and includes--a) the doorways or entrances of premises abutting on any such place; and b) any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses”. Paragraph (b) expands upon this to include any other place to which the public are permitted access whether or not that requires payment. Paragraph (b) therefore operates to include sports venues, rail and bus stations, theme parks et cetera.
These documents relate to the Prostitution (Public Places) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 15 September 2006

17. For the purpose of the soliciting offence at subsection (1) any place which is visible from a place mentioned at paragraph (a) or (b) is included within the definition of a “relevant place”. This means that someone soliciting for prostitution-related purposes from, for example, the window of a flat, or from a private car park or disused warehouse area so as to be visible from the places mentioned in paragraphs (a) and (b) would be committing an offence if they did so in such a manner or in such circumstances as to be likely to cause nuisance, alarm of offence to a reasonable person.

Section 2 – Arrest for offences under section 1

18. This section provides that where a constable reasonably believes that a person is committing, or has committed, an offence under section 1, the constable may arrest that person without warrant. Subsection (2) states that this power does not prejudice any other power of arrest conferred by law.

Section 3 – Repeal of section 46 of Civic Government (Scotland) Act 1982

19. This section repeals section 46 of the Civic Government (Scotland) Act 1982, which sets out the current offence of soliciting and importuning by prostitutes.

Section 4 – Short title and commencement

20. Subsection (2) provides that the Act shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

21. Subsection (3) provides that any order made under subsection (2) may include such transitional and saving provisions as the Scottish Ministers consider necessary or expedient.

——— FINANCIAL MEMORANDUM ———

INTRODUCTION

22. This document relates to the Prostitution (Public Places) (Scotland) Bill, introduced in the Scottish Parliament on 15 September 2006. It has been prepared by the Scottish Executive, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

23. The Bill provides for a reform of the law on soliciting and loitering for prostitution. The provisions are broader in scope than the current legislation (section 46 of the Civic Government (Scotland) Act 1982), in that they apply to the purchasers, as well as the sellers, of sex in public places. However, in another sense, they are narrower in scope, in that the existing legislation applies to sellers regardless of whether nuisance, alarm or offence is likely to be caused by their behaviour, whereas the new offence provisions require that nuisance, alarm or offence are likely to be caused for an offence to be committed. Any increased costs from the Bill will be the result
These documents relate to the Prostitution (Public Places) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 15 September 2006

of prosecutions being brought against the purchasers of sex, who were not previously criminalised by any statutory provision.

24. There may be cost-savings resulting from a reduction in the number of cases brought against sellers of sex. There are two reasons for this. The new provisions should serve to deter would-be clients from engaging in street prostitution related activity, and, if successful, this will have the effect of reducing the scale of street prostitution in Scotland, so reducing the number of cases brought against sellers. Furthermore, the fact that under the new offence, it is necessary for nuisance, alarm or offence to be likely to be caused for a person to be convicted of soliciting or loitering for the purpose of prostitution, may result in a reduction in the number of people convicted for these offences. However, no assumptions have been made about any reduction in the number of cases brought against sellers in this financial memorandum, as it is difficult to quantify the effect, if any, of the two factors listed above.

25. The exact extent of any increased costs arising from the new offence provisions will depend on the number of additional cases brought against people under the new offence for soliciting or loitering for the purpose of obtaining the services of a prostitute. To attempt to estimate the number of additional cases, we considered the situation in England and Wales, where kerb-crawling provisions have existed since 1985. In England and Wales in 2004 (the most recent year for which data are available), 1743 people were convicted of prostitution-related offences (the English and Welsh equivalent of the section 46 of the Civic Government (Scotland) Act 1982) and 1185 people were convicted of kerb-crawling offences. It thus might reasonably be assumed that the number of persons against whom proceedings will be brought for offences relating to obtaining the services of a prostitute will be around two thirds the number currently brought under section 46 of the Civic Government (Scotland) Act 1982.

26. The number of people proceeded against for soliciting, importuning or loitering for the purpose of prostitution under section 46 of the Civic Government (Scotland) Act 1982 has varied significantly from one year to another. In 2002/03 for example, 101 people were proceeded against for these offences. By contrast, in 2004/05 233 people were proceeded against. By taking an average of the last three years for which figures are available (2002/03 to 2004/05), a reasonable estimate for the number of people typically proceeded against for street prostitution offences under the 1982 Act in a year is 156. It is therefore reasonable to assume that the introduction of the new offence might result in around 100 additional prosecutions each year. However, there is a significant margin of uncertainty around the figure of 100 cases per annum, which could in the event reasonably be anywhere between 50 and 150, with corresponding implications for the associated cost estimates. The additional costs falling to the Scottish Administration, to local authorities and to other bodies are detailed below.

GENERAL COSTS ON POLICE FORCES

27. The police are already involved in the policing of street prostitution. The only additional costs would be those relating to the reporting and prosecuting of purchasers under the new offence. This would consist of the time required to prepare a report to the Procurator Fiscal and

---

of giving evidence in court, if required to do so. On average, it is estimated that this could take about 6 hours of police time per case, at a cost of £150 per case, or £15,000 per annum in total.

**COSTS ON THE SCOTTISH ADMINISTRATION**

28. Each case reported to the Procurator Fiscal would carry costs for the Crown Office and Procurator Fiscal Service (COPFS), the courts service and legal aid. Assuming that all went through a District Court Hearing, on average, the costs are estimated at £122 for COPFS (the weighted average cost of a case marked to proceed through the district courts) and £394 for legal aid (the average cost to the Scottish Legal Aid Board for a district court case). This gives a total cost per case of £516. The total costs for 100 cases would, therefore, be around £52,000 per annum.

**COSTS ON LOCAL AUTHORITIES**

29. The only non-policing cost falling on local authorities will be that arising from the cost of administering additional district court cases. Detailed figures on the costs of district court cases are not available at present. However, an estimate, based on the total cost of the district courts system and the number of cases it processes each year, would be that an average case costs £120. The total cost to local authorities each year would therefore be around £12,000 per annum. It should be borne in mind that, if the relevant provisions of the Criminal Proceedings etc (Reform) (Scotland) Bill are passed, then in future, as court unification proceeds, these costs will fall to the Scottish Courts Service, rather than local authorities.

30. There will however be savings on this figure for local authorities as, under section 23 of the District Courts (Scotland) Act 1975, local authorities are entitled to retain income from fines imposed by the district courts unless it is specifically stated otherwise. Assuming, conservatively, that 50% of all cases result in a fine being imposed, and assuming an average fine of £200 (this is the average fine imposed on kerb-crawlers in the Hampshire Police Force area - more comprehensive data not being available), this would result in savings of £10,000. However, there will be costs associated with administering the collection of fines. Detailed figures for the cost of administering and collecting court-imposed fines do not exist, but, based on limited internal figures, this might be estimated at around £2,000 (or 20% of the value of the fines imposed), resulting in net savings of £8,000.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

31. The Bill has no financial implications for other bodies, individuals or businesses.

**SUMMARY OF COSTS**

32. The total additional costs incurred by the Prostitution (Public Places)(Scotland) Bill are summarised in the table below:
These documents relate to the Prostitution (Public Places) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 15 September 2006

<table>
<thead>
<tr>
<th>Cost Type</th>
<th>Cost</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecution Costs (COPFS) per case.</td>
<td>£122</td>
<td>Para 28</td>
</tr>
<tr>
<td>Court costs per case, taking into account estimated savings from retained fine income.(^2)</td>
<td>£120 less £80 = £40</td>
<td>Paras 29 and 30</td>
</tr>
<tr>
<td>Legal aid costs per case.</td>
<td>£394</td>
<td>Para 28</td>
</tr>
<tr>
<td>Police costs per case</td>
<td>£150</td>
<td>Para 27</td>
</tr>
<tr>
<td><strong>Total cost per case</strong></td>
<td><strong>£706</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total cost per annum assuming 50 cases per year:</strong></td>
<td><strong>£35,300</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total cost per annum assuming 100 cases per year:</strong></td>
<td><strong>£70,600</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total cost per annum assuming 150 cases per year:</strong></td>
<td><strong>£105,900</strong></td>
<td></td>
</tr>
</tbody>
</table>

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

33. On 15 September 2006, the Minister for Finance and Public Service Reform (Mr Tom McCabe MSP) made the following statement:

“In my view, the provisions of the Prostitution (Public Places) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

34. On 7 September 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

\(^2\) These costs will fall initially to local authorities, who administer the District Courts. On the assumption that court unification proceeds, these costs will then fall to the Scottish Court Service in future years.
These documents relate to the Prostitution (Public Places) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 15 September 2006

“In my view, the provisions of the Prostitution (Public Places) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Prostitution (Public Places) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 15 September 2006

PROSTITUTION (PUBLIC PLACES) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006

Applications for reproduction should be made in writing to the Licensing Division, Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.