PROSTITUTION (PUBLIC PLACES) (SCOTLAND) BILL  
[AS AMENDED AT STAGE 2]  

REVISED EXPLANATORY NOTES

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1. As required under Rule 9.7.8 of the Parliament’s Standing Orders, the following documents are published to accompany the Prostitution (Public Places) (Scotland) Bill as amended at Stage 2.

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 obtaining the services of someone engaged in prostitution.

COMMENTARY ON SECTIONS

Section 1 – Offences relating to prostitution

5. Subsection (1) provides that it is an offence for a person to solicit in a relevant place for the purpose of obtaining the services of someone engaged in prostitution. “Relevant place” is defined at subsection (9) as explained at paragraph 14.

6. Subsections (3)(a) and 3(b) clarify that the offence of soliciting (set out in subsection (1)) can be committed by a person while in a motor vehicle or on public transport. “Motor vehicle” and “public transport” are defined at subsection (9) as explained at paragraphs 12 and 13.
7. 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 is in fact engaged in prostitution in order for the offence to be committed.

8. Subsection (4) provides that it is an offence for a person (“B”) to loiter in a relevant place so that in all the circumstances, it may reasonably be inferred that B is doing so for the purpose of obtaining the services of someone engaged in prostitution. Another example of a statutory provision which incorporates an “inference test” is section 57 of the Civic Government (Scotland) Act 1982. See the case of Hamilton v. Donnelly (1992 SCCR 904) for the approach taken by the Court to section 57 of that Act.

9. Subsections (5)(a) and (5)(b) clarify that the offence of loitering (set out in subsection (4)) can equally be committed by a person while in a motor vehicle or on public transport.

10. 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 3 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 3 fine is £1000.

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

12. “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.

13. “Public transport” means a vehicle, train, tram, ship, hovercraft, aircraft or other thing designed for carriage of members of the public when not relying on facilities of their own. The definition would include taxis and hire cars.

14. “Relevant place” is defined in paragraph (a) of the definition by reference to section 133 of the Civic Government (Scotland) Act 1982. 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.

15. 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 would cover, for example, someone soliciting for the purpose of engaging the services of a person engaged in prostitution 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).

Section 2 – Arrest for offences under section 1

16. 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 4 – Short title and commencement

17. 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.

18. 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.
This document relates to the Prostitution (Public Places) (Scotland) Bill as amended at Stage 2 (SP Bill 69A)

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