PROSTITUTION TOLERANCE ZONES (SCOTLAND)
BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. The following documents are published to accompany the Prostitution Tolerance Zones (Scotland) Bill introduced in the Scottish Parliament on 8 September 2003:

- Explanatory Notes;
- a Financial Memorandum; and
- the Presiding Officer’s Statement on legislative competence.

The Financial Memorandum and Presiding Officer’s statement are required under Rule 9.3 of the Parliament’s Standing Orders. A Policy Memorandum is printed separately as SP Bill 7–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by Margo MacDonald MSP, the member in charge of the Bill, 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 schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Bill does not legalise prostitution in general; rather, it allows local authorities to designate an area within their area where soliciting (and related activities) will be exempted from prosecution under the criminal law. In all other respects the law will remain as it presently stands. Before designating a prostitution tolerance zone, the local authority is required to carry out consultation with local interests in accordance with the provisions of the Bill.

COMMENTARY ON SECTIONS

Section 1 – Power to designate prostitution tolerance zones

5. This section confers power on a local authority to designate prostitution tolerance zones. The power is permissive: that is, an authority may choose to exercise it, but need not do so. Where a local authority does choose to exercise the power, it must do so in accordance with the provisions of the Bill.

Section 2 – Notice of, and consultation on, proposed zone

6. Where a local authority proposes to designate a prostitution tolerance zone, it must prepare a draft designation, give notice of the draft designation, and consult on it.

Subsection (1)

7. Notice must be given both by newspaper advertisement and directly to owners, lessees and occupiers of heritable property within the boundaries of the proposed tolerance zone. Notice in the press will serve to notify the public generally; those owning or occupying property in the proposed zone will be notified directly, on the grounds that they have a more direct interest in whether a proposed tolerance zone is established.

Subsection (2)(c)

8. Amongst the matters on which the local authority must consult is a code of practice for the operation of the prostitution tolerance zone. The Policy Memorandum contains further details of the likely scope of such a code.
Subsection (4)

9. The local authority must consult with interested groups in their area. This subsection lists a number of groups or bodies which must be consulted, including the police, the Health Board for the area, community councils and owners and occupiers of property. Paragraph (f) gives the local authority discretion to consult with other individuals or bodies. The Policy Memorandum contains further discussion about the likely operation of these consultation provisions in practice.

Section 3 – Making of designation

10. After consulting in accordance with section 2, the authority may then make a final designation. This section contains the matters which must be set out in any such designation.

Subsection (2)

11. This subsection requires an authority, if it wishes to make a designation in a modified form, to repeat the consultation process in respect of the modified proposal.

Subsection (3)

12. This provision sets out the contents of a final designation. Paragraph (d) ensures that a tolerance zone cannot come into operation less than six weeks from the designation being made.

Subsection (3)(e)

13. There is maximum life of three years for the operation of a prostitution tolerance zone, though it would be open to the local authority to make a fresh designation at the end of that period, thus continuing in effect an existing tolerance zone.

Section 4 – Exemption of prostitution tolerance zones from places where soliciting etc. an offence

14. This section makes a change to the substantive criminal law. Under section 46(1) of the Civic Government (Scotland) Act 1982, loitering, soliciting or importuning in a public place for the purposes of prostitution is an offence. Section 46(2) and section 133 of the 1982 Act, read together, contain an extended definition of what is a public place.

15. Section 4 of the Bill amends section 46 of the 1982 Act to disapply the offence provision in subsection (1) of that section in the case of things done in a tolerance zone. Thus loitering, soliciting or importuning for the purposes of prostitution remain an offence if committed in a public place outwith a zone designated in accordance with the Bill, or within such a zone at any time when it is not in operation.

Section 5 – Appeals

16. This section contains a mechanism for appeals against the decision of a local authority to designate a prostitution tolerance zone. The form of appeal is similar to those which exist under the Town and Country Planning (Scotland) Act 1997.
17. An appeal is made to the Scottish Ministers, again following the well-established practice in planning matters. The Ministers have the power to deal with the matter directly or to appoint a reporter to deal with the matter on their behalf. The decision of the Scottish Ministers or the reporter is final.

18. The scheme for appeals is:
   - an appeal must be made within 28 days of notification of the making of the designation (subsection (1));
   - the appeal must be in writing – no form is prescribed, since the grounds of appeal to be set out (subsection (2)(a) and (b));
   - the appeal must state upon which of the permitted grounds of appeal it is made (subsection (2)(b));
   - the designation made by the local authority and the notice of the making of the designation require to be appended to the grounds of appeal (subsection (2)(d));
   - the appeal must be intimated to the local authority at the same time (subsection (2)(e));
   - an appeal may be made only on specified grounds: (a) that the zone designated consists of an area or includes a place inappropriate to such a zone; (b) that the period or times of the day during which the zone is to operate is inappropriate; or (c) that the code of conduct is inappropriate in whole or in part (subsection (3)). Generalised opposition to prostitution tolerance zones is not a valid ground of appeal;
   - the appellant must state at the outset whether written or oral disposal of the appeal is sought (subsection (3)(c)).

19. In determining an appeal, the reporter or the Scottish Ministers may vary a designation, revoke the designation entirely or refuse the appeal and allow the designation to proceed (subsection (5)).

20. There is power for the Scottish Ministers to make rules by statutory instrument governing the detailed conduct of appeals (subsection (8)).

Section 6 – Power to suspend or modify operation of zone

21. This section enables the police to apply for suspension or modification of a tolerance zone which is in operation. The grounds for such an application, and the period of suspension or type of modification that may be sought are not prescribed, as there may be a range of circumstances requiring a range of responses.

Subsection (1)

22. This confers on the chief officer of police in the area of a tolerance zone power to apply to the local authority to suspend the operation of the zone, or to modify its operation. “Chief officer of police” is defined in section 7 to include the British Transport Police.
Subsection (2)

23. Because it is impossible to anticipate all the circumstances which may give rise to an application for and granting of a suspension, the local authority is given discretion in the length of any suspension and in the nature of any modification to the designation that may be required.

Subsections (3) and (4)

24. The authority is required to give public notice of any application to suspend or modify a tolerance zone, and of their decision on such an application. Where their decision is to modify the zone, the authority must comply with the notice and consultation provisions in sections 2 and 3 (which apply to the initial making of the designation to designate the tolerance zone) when a revised designation is made.

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FINANCIAL MEMORANDUM

COSTS ON THE SCOTTISH ADMINISTRATION

25. As the Bill allows for appeals to the Scottish Ministers, some cost may require to be met by the Executive; but this will constitute such a minimal amount that it is likely to be absorbed in normal departmental running costs.

COSTS ON LOCAL AUTHORITIES

26. As this Bill simply enables, rather than requires, local authorities to establish tolerance zones inside which soliciting will not be an offence, and since each local authority will organise this according to conditions and facilities pertaining in its own area, the cost of implementing this policy will vary among authorities.

27. In general, however, the Bill is unlikely to lead to significant expenditure for local authorities, Health Boards or the police. Grampian and Lothian and Borders police incurred no additional costs in managing the informal tolerance zones in Aberdeen and Edinburgh.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

28. Scotpep (Scottish prostitutes education project) received a grant of £129,000 from Lothian Health in year 2001/2002 to provide services, including a drop-in and counselling service and outreach work. Additional to its obvious benefits to public health, this small expenditure represented an unquantifiable cost saving in treatment for sexually transmitted infections (including HIV) amongst prostitutes, their clients and contacts.

29. Further grants to Scotpep were: £15,000 per annum for 2001 and 2002 from Lloyds TSB to fund a Volunteer Development Co-ordinator; £5,000 for the current year from Edinburgh City Council’s Community Safety Fund to provide safety training for service users; National Lottery funding of £50,000 spread over 2001 and 2002 for the Young Persons Projects (ends 1 October
These documents relate to the Prostitution Tolerance Zones (Scotland) Bill (SP Bill 7) as introduced in the Scottish Parliament on 8 September 2003

2002); £10,000 from the Social Inclusion Partnership of Edinburgh City Council to keep Young Persons Project running until the end of March 2003; and £63,000 per annum from Scottish Enterprise for the three years to 31 March 2002 for the New Futures Project.

30. Edinburgh City Councillors have acknowledged that, depending on the location and facilities afforded by a site deemed suitable for a tolerance zone, the Council might require to install lighting and/or CCTV and provide a cleansing service. In advance of a suitable area being designated it is not possible to indicate an exact figure, but any cost is not expected to be of a significant amount.

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

31. On 19 August 2003, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the Prostitution Tolerance Zones (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PROSTITUTION TOLERANCE ZONES (SCOTLAND) BILL

EXPLANATORY NOTES

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