INTRODUCTION

1. This document relates to the Prostitution Tolerance Zones (Scotland) Bill introduced in the Scottish Parliament on 8 September 2003. It has been prepared by Margo Macdonald MSP, the member in charge of the Bill, under Rule 9.3.3A(b) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 7–EN.

POLICY OBJECTIVES OF THE BILL

2. The Bill enables local authorities to designate areas within their boundaries as “prostitution tolerance zones” and amends section 46 of the Civic Government (Scotland) Act 1982 to ensure that loitering, soliciting or importuning by prostitutes within such zones is not illegal.

3. The Bill is not intended to be the “last word” on prostitution. It does not seek to impose an ideological, or even practical, requirement on local authorities and the communities they serve to adopt attitudes and policies other than those best suited to their area. It would effectively decriminalise soliciting and eliminate its associated nuisance to the general public within a designated area.

4. It is being introduced for a second time because of the current requirement in Aberdeen and Edinburgh, and in any other local authority area should the need arise in future, for statutory authorities and voluntary agencies to be able, legally, to develop policies for the management of street prostitution. (There is only one change to the text of the Bill introduced in the last parliamentary session: community councils are now included in the list of consultees should a tolerance zone be proposed in their area.)

5. In its general direction, the Bill recognises that while street prostitution is not desirable, it is endemic in a number of areas of the major cities of Scotland, and thus presents a number of challenges to local authorities and the police and other public services. The objectives of the Bill are therefore:

• to enable the police, health boards and local authorities to ensure that prostitution is practised in as orderly, secure and tolerable a manner as is possible;
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- to minimize the opportunities for associated criminal behaviour;
- to maximize the practice of safer sex and to promote public health policies.

6. Thus the policy of the Bill is not legalisation of prostitution across the board; rather it allows local authorities to designate an area within their district where soliciting will not fall within the scope of 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.

7. The Bill does not promote prostitution or soliciting, nor does it militate against the objective of diminishing the numbers of street prostitutes. The evidence, over almost two decades of Edinburgh’s tolerance zone policy, is of a steadily decreasing number of street prostitutes when, in areas with more traditional prostitution management policies, numbers have increased.

8. The Bill does not impose a uniformity of management policies on local authorities. Local councils, police, health authorities and residents are best qualified to decide which management model is most suited to their locality.

9. In Edinburgh, the policy of having a recognised “informal” tolerance zone evolved over a period of approximately 20 years. The Bill draws on the experience of those concerned: prostitutes, police, Lothian Health, Leith residents and businesses, Scotpep (Scottish prostitutes’ education project) and Edinburgh City Council.

10. For the past two years, Grampian Police have also pursued a prostitution management policy similar in its aims to Edinburgh’s. The objectives in both cities were to physically contain soliciting to an agreed area, by doing so provide a safer environment for prostitutes, to enable a contact point to be established by agencies working with them, to deter pimps and under-age girls, to enable a better ability to police drug-distribution, violence and nuisance to local residents.

11. In the period since December 2001, when the Edinburgh tolerance zone policy was discontinued, there is evidence of more attacks on prostitutes and three under-16 year olds have been reported as soliciting. Scotpep also reports a drop in the number of visits by prostitutes using its facilities for advice, needle exchange or condom supply.

12. The situation has also deteriorated as regards the security of prostitutes, and residents’ enjoyment of the amenities in the areas in which sex workers now solicit. In addition, police report a diminished flow of intelligence about potential, and real, criminality associated with prostitution.

13. During the operation of the non-harassment zone in 2001, 11 attacks on women were reported. In 2002, following its discontinuation, 31 attacks were reported to Scotpep, the voluntary organisation contracted by Lothian health to supply services to sex workers. Between January and June 2003, 54 attacks have been reported. Scotpep also found women
unwilling to report attacks as this drew attention to the areas in which residents made complaints about them to the police.

14. Before the policy was discontinued because of residents’ objections to its new location, (following its displacement from its original area because of new housing developments), less than a third of the women working in the tolerance zone were injecting drug users. In this respect, Edinburgh differs markedly from Glasgow and Aberdeen where more than 90% of street prostitutes are working to feed their drug habit.

15. Now that prostitutes are scattered all across Leith and Edinburgh, it is very difficult for Scotpep outreach workers to contact them and they are consequently more vulnerable to exploitation by drug suppliers. Before the ending of the tolerance policy an estimated 25% of prostitutes in Edinburgh used the needle exchange. Currently this figure has risen to 38%.

16. Scotpep reports a considerable change in the age profile amongst street sex workers with younger, drug-using women replacing those who solicited in the tolerance zone. In 1999, 25% of street based prostitutes accessed the needle exchange, this rose to 31% in 2000, and 48% in 2001/2002, after the zone was discontinued. That this figure has now fallen to 38% is attributed by Scotpep to the loss of co-operation established amongst police and prostitutes during the 20 years of the “non-harassment” zone. Prostitutes now fear being stopped and searched for possession of drugs by police.

17. The Director of Public Health in Lothian is concerned that a consequence of there being no tolerance zone will be a rise in the number of HIV+ women to the level common amongst prostitutes elsewhere. During the period when the Leith tolerance zone was operational, not a single case was recorded of the virus being transferred via a prostitute.

18. Policing street prostitution in Edinburgh was assisted by the intelligence built up by local officers and the liaison amongst prostitutes, Scotpep and police. A consequence of this was the very low number of recorded attacks on women, or other violence, theft or extortion associated with prostitution. During the tolerance zone era, two prostitutes were murdered. In both cases, because of the intelligence built up by the police, the murderers were identified and charged within 48 hours.

19. Arguably, this represents a saving of police, and court, resources. Both Grampian and Lothian and Borders Police report no extra expenditure on policing tolerance zones.

20. As a result of there being no acknowledged non-harassment or tolerance zone women have started to solicit in residential areas, resulting in the formation of residents’ groups which patrol their communities in an effort to dissuade the women from soliciting, giving rise to obvious opportunities for disorder and subsequent calls on police resources.

21. Three out of the four local authorities in Scotland with traditional patterns of street prostitution, Aberdeen, Edinburgh and Glasgow all report changes in how women, clients and the general public view soliciting. This Bill seeks to enable all local authorities that wish to
cope with these changes by pursuing controlled decriminalisation, non-harassment or tolerance zones to do so from a basis of legality.

22. Opinion poll evidence suggests that the policy of having tolerance zones has public support, for the reasons listed above. Practical experience from Edinburgh, Aberdeen and Glasgow indicates difficulty in implementation is likely to lie in finding a location which does not create nuisance or embarrassment to nearby residents or businesses.

23. That is why the Bill seeks only to enable local authorities to implement a tolerance zone policy if circumstances, including local opinion, make it both possible and suitable to local conditions. Local authorities, in consultation with other agencies, are best equipped to decide the most suitable means of managing prostitution in their communities.

ALTERNATIVE APPROACHES

24. One alternative to the approach taken in the Bill would be to continue with the current position where “informal” tolerance zones have operated with police consent. In the four cities with a history of street prostitution, there are variations of the same approach to sensitive policing of the requirements of section 46(1) of the Civic Government (Scotland) Act 1982 as regards soliciting for the purpose of prostitution.

25. In effect, until the ending of the tolerance zone in Leith’s Salamander Street, Edinburgh, Glasgow, Aberdeen and Dundee had informally designated areas in which soliciting was known to be commonly practised. The police forces each pursued operational policies which they considered suited to their areas.

26. There are, however, disadvantages to continuing with tolerance zones that have no statutory underpinning. For example, the informal arrangements in Edinburgh proved insufficient to the requirements of re-locating the zone when re-development of the area in which it had operated gave rise to complaints from residents about noise, nuisance and litter. Something of the same situation pertains in Aberdeen, and in Glasgow there have been reports of similar complaints by businesses operating in the same streets as are used by prostitutes for soliciting during evening and night hours.

27. Local authorities are in the invidious position of attempting to assume a duty of care towards prostitutes by installing, or approving, safety features such as CCTV, but by so doing, placing themselves open to accusations of aiding and abetting an illegal activity.

28. Another alternative would be to go further, and legislate to make prostitution, or more of the activities associated with it (in particular, soliciting) legal. The Bill does not legalise prostitution, or soliciting. That is a much wider debate than the local management of street prostitution. This Bill does not impact on possible future policy change on prostitution per se.
CONSULTATION

29. A consultation paper was issued in March 2002 to 133 organisations, statutory bodies and individuals. Replies were sought by 31 May, this period being extended to accommodate the cycle of meetings of City of Edinburgh Council and some other groups.

30. Of the 36 local authorities circulated, only Aberdeen, Edinburgh, Glasgow and Dundee have a direct interest in the Bill. Aberdeen and Edinburgh are generally supportive, Glasgow does not support the Bill’s approach and Dundee did not respond. However, at a meeting with officers from Tayside Police the Bill’s sponsor ascertained that given the small number of street prostitutes in the city, the police did not foresee any need for change in their management of prostitution in Dundee. They expressed no opposition to the approach in the Bill being adopted in other areas.


32. Ayrshire and Arran NHS, Tayside NHS, Lanarkshire NHS and Lothian Health all expressed support for the Bill’s objective of extending public health benefits to prostitutes, their clients and the wider community. Responses from groups representing the churches expressed sympathy with the Bill’s aims as regards harm reduction and public health considerations. Various reservations were also recorded reflecting the moral questions surrounding prostitution per se.

33. Of the voluntary organizations responding to the consultation paper, Scotpep, Turning Point Scotland and Open Secret expressed support for the Bill. The Women’s Support Project (Glasgow), Greater Easterhouse Women’s Aid (Glasgow) and Rape Crisis Centre (Glasgow) expressed their opposition to the Bill’s approach.

34. After expressing its legal concerns arising out of its reading of the consultation paper the Faculty of Advocates was approached for assistance by the Bill’s sponsor. Neil Brailsford, Treasurer of the Faculty, and Kenneth Campbell, Advocate, have given enormous assistance in drafting the Bill. The Public Defence Solicitors’ Office expressed strong support for the Bill’s approach. The Centre for Research into Law Reform of the University of Glasgow expressed general support for the Bill’s immediate effect but added that it would not wish any change in the law to obstruct the long term aim of facilitating women in accessing alternatives to prostitution. The Law Society of Scotland replied that it could “see the merit in making provisions to allow local authorities to designate areas within their boundaries inside which soliciting would not be prosecuted”.

35. Neil McKeeganey, Professor of Drug Misuse Research at Glasgow University responded, “Whilst I can understand the objections of local residents to the siting of a tolerance zone there really does not seem to me to be a single credible argument against such provision. Clearly prostitution is going to continue irrespective of whether such a zone is in existence ... there are additional benefits in trying to reduce the connection between prostitution and criminality that would arise from operating such a zone.”
36. A resident of the original tolerance zone in Leith responded in a private capacity, “I believe, for reasons as to public order, public health and the well-being of prostitutes, that a zone in a non-residential area should be found so as to allow the problems arising from prostitution to be contained and alleviated.”

37. A member of the Steering Group, assembled by the Bill’s sponsor at the request of the police officer in charge of the area in which the tolerance zone was sited, concluded in his response to the consultation paper, “… the positives associated with some form of regulation outweigh the negatives … the tolerance zone in Edinburgh has been removed, the women are still working … but are having to work the quieter, darker side streets, with the additional problems that brings.”

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC

38. The Bill should have no impact on human rights, equal opportunities, island communities and sustainable development policies. Local government legislation is affected to the extent of the change to section 46(1) of the Civic Government (Scotland) Act 1982, and the requirement placed on an authority to designate a tolerance zone, if it so decides, as described earlier in this Policy Memorandum.
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PROSTITUTION TOLERANCE ZONES (SCOTLAND) BILL

POLICY MEMORANDUM

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