Local Government and Transport Committee

1st Report, 2007 (Session 2)

Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill
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Local Government and Transport Committee

1st Report, 2007 (Session 2)

Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill

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Local Government and Transport Committee

Remit and membership

Remit:

To consider and report on matters relating to local government (including local government finance), cities and community planning and such other matters (excluding finance other than local government finance) which fall within the responsibility of the Minister for Finance and Public Services; and matters relating to transport which fall within the responsibility of the Minister for Transport.

Membership:

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Local Government and Transport Committee

1st Report, 2007 (Session 2)

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Local Government and Transport Committee

1st Report, 2007 (Session 2)

Stage 1 Report on Prostitution (Public Places) (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF RECOMMENDATIONS

Scope of the Committee’s work – paragraph 39
1. The Committee’s role is to consider the Prostitution (Public Places) (Scotland) Bill rather than to make recommendations in relation to the complex wider issue of street prostitution. The Committee acknowledges that the scope of the legislation is deliberately narrow: the Executive has never suggested that it represents a complete solution to the problems associated with prostitution. The Committee recognises the important issues of delivering support and access to routes out of prostitution as well as addressing concerns regarding the high level of drug use amongst prostitutes. However the wider social and economic impact of street prostitution is not directly tackled by the Executive in the Bill and thus the Committee has focused its consideration on the specific changes proposed by the Bill to the criminal law.

Loitering offence – paragraphs 44 to 70
2. The Committee has heard from residents’ groups about the fear and distress created by motorists slowly circling residential areas looking for prostitutes. This is a clear example of prostitution creating ‘nuisance, alarm and offence’ in local communities. Yet it appears that under the Bill as drafted, this behaviour would not represent an offence of loitering. Indeed it would not be an offence at all in the Bill. The Committee’s view is that this is unacceptable, and, were the Bill to be unamended, would call into question the whole point of the Bill.

3. The Committee recommends that the Executive brings forward an amendment to the Bill to expand the scope of the loitering offence to include private cars. This will be of crucial importance in order to address properly the problem of kerb crawling in residential areas. The Committee does not accept that it would be impossible to find a form of words to do this.
4. The Committee therefore welcomes the suggestion in the Deputy Minister's letter of 18 December 2006 that it might be possible to remove section 1(6) of the Bill (which provides the exemption to individuals loitering in private cars) and replace it with an alternative form of words, such as that which has been highlighted in the Deputy Minister's letter.

5. Whilst the Committee notes there may be problems associated with some alternatives to the loitering offence in the Bill, it has heard convincing evidence that including an element of persistent behaviour in the loitering offence could allow prosecutions of motorists without a legitimate reason for being in an area. This is an approach advocated by the Association of Chief Police Officers in Scotland. If the Executive chose to establish the principle of a persistent behaviour test, this should only apply in relation to the proposed loitering offence. It should remain the case that one single act of soliciting under the terms of the Bill would be an offence.

6. The Committee also notes that it will be an offence under the Bill for a person to loiter on public transport for the purposes of (a) engaging in prostitution or (b) obtaining the services of a person engaged in prostitution. The Committee seeks clarification on the circumstances in which the Scottish Executive believes that this offence might be committed.

Use of a test of 'nuisance, alarm or offence' – paragraphs 71 to 87

7. The Committee has examined carefully the evidence presented by the Deputy Minister, but remains concerned that, whilst it is not an explicit policy intention of the Bill, one possible interpretation of the Bill is that the use of a test of causing alarm, offence or nuisance to a reasonable person may mean that soliciting and loitering could take place legally in certain locations. If the Bill was unamended, this may make it easier for 'management zones' which have legal backing to be established, despite the stated wishes of the Scottish Executive. In these circumstances, it would not be the case that the law was being ignored within the zone (unlike any previous management zones). On the contrary, the law would be applied: under the Bill as currently drafted it could simply be the case that no offence was being committed, because of the application of the alarm, offence or nuisance test.

Will the new offences be enforced? – paragraphs 89 to 101

8. The Deputy Minister has told the Committee that the Executive has never been in favour of 'management zones', which he defines as an area where the law does not apply or is suspended. The Committee welcomes this assurance. The Committee notes, however, the current experience from Aberdeen, and the historic experience from Edinburgh, is that in certain locations and at certain times, the current law in relation to prostitution appears not to have been enforced. This position in Aberdeen and Edinburgh appears to have resulted from a joint approach between local authorities, the police, and prosecutors. The Scottish Executive's stated position of not supporting management zones appears not to have influenced how the current law has been enforced in Aberdeen and Edinburgh. The Committee is therefore concerned as to how any new law will be enforced.
9. The Committee notes the oral evidence from the Deputy Minister that under the Bill a Chief Constable would find it harder to justify the creation of a management zone. He also indicated that the discussions which took place on the Bill in this Committee and in Parliament would provide a guide to prosecutors and the police as to the will of Parliament in creating the new offences.

10. The Committee notes, however, the Deputy Minister’s view that, as with all offences, Chief Constables have discretion on operational policing matters and it will be for them to determine how they enforce the new offences at the local level. The Committee can understand the reasons for this arrangement in relation to many offences. The Committee can accept, for example, that Chief Constables may decide to enforce road speeding offences more rigorously at particular accident blackspots. The Committee can not, however, think of a comparable situation to that in Aberdeen and Edinburgh in relation to the current soliciting laws, where a decision appears to have been taken not to enforce the law in certain locations and at certain times which are well known within the community and beyond.

11. The Committee believes that if the Parliament passes new legislation it should be fit for purpose and therefore capable of being enforced in all parts of Scotland. The Committee wishes to see the new law applied across Scotland, and applied in a consistent manner. The Committee is encouraged that the Deputy Minister appears to agree with this view, but is not yet convinced as to how the Scottish Executive will achieve this consistency of application, given past experience enforcing the current law on prostitution.

12. The Committee asks that the Deputy Minister provides clear details as to how he will ensure that the proposed new law will be enforced in all parts of Scotland. The approach adopted by the Executive in relation to the current law has not worked: the Executive opposes management zones, but they appear to have been established in Aberdeen and Edinburgh. A new approach is needed in relation to the enforcement of the law. The Committee asks that the Executive sets out its position in a clear statement ahead of the Stage 1 debate on the Bill.

Can the new offences be enforced? – paragraphs 102 to 115

13. On the basis of the evidence it has received, the Committee considers that it will be very challenging, under the Bill as drafted, to successfully achieve prosecutions of the purchasers of sex for the offences of loitering and soliciting. The Committee notes the evidence that such prosecutions may need to rely on purchasers incriminating themselves in some way, and the Committee wonders how often such self-incrimination will realistically take place.

14. The Committee therefore considers that, under the Bill as drafted, a situation could arise whereby more prosecutions take place under the Bill of women selling sex than of men purchasing sex. This would appear to run counter to the objective in the Bill of redressing the balance between the purchasers and the sellers of sex. The Committee has discussed, above, the
concept of referring to ‘persistent behaviour’ within the loitering offence, and this might help improve the prosecution rate of purchasers.

15. The Committee notes the contents of the Deputy Minister’s letter of 18 December, which suggested that it would be possible, through amendments at Stage 2, to restrict the Bill in such a way that it would apply the new offences solely to purchasers and keep the existing law in place for sellers. The Committee would welcome such a proposal as a means of addressing some of the concerns of ACPOS and others, and recommends that the Executive brings forward amendments to this effect at Stage 2.1

Is it right to use a ‘reasonable person’ test? – paragraphs 116 to 121

16. In the view of the Committee, it should not be the sole responsibility of residents and the local community to complain about antisocial behaviour arising from prostitution in order for action to be taken. This should also be the responsibility of the police. The Committee is therefore persuaded by the argument that a test of whether or not a reasonable person would have been offended is preferable to a position whereby an offence is only committed if a complaint is received.

Amount and level of fines – paragraphs 122 to 131

17. The Committee notes that under the Bill as drafted, both the purchasers and sellers of sex would be subject to the same maximum level of fine for committing an offence, although the courts would have discretion as to the actual level of fine imposed. The Committee notes, however, that the purchaser and seller of sex are likely to have different economic circumstances, and that this could mean that the fines will have a disproportionate effect on the seller. The Committee asks the Scottish Executive to review the question of the penalty regime under the Bill, and in particular the question of whether it would be appropriate for a different regime to apply to purchasers and to sellers of sex. One issue highlighted to the Committee was that purchasers of sex should be subject to a higher fine than sellers. Another issue highlighted was that fining of purchasers could be used in conjunction with alternative penalties, and this issue is discussed below.

18. A majority of the Committee welcomed the suggestion highlighted in the Deputy Minister’s letter that it would be possible for higher penalties to be made available to courts in dealing with purchasers, and recommends that amendments are brought forward by the Executive at Stage 2 to this effect. Such an approach would reflect the view held by the Committee that the purchasers of sex should be a key target under the Bill. The Committee notes that a penalty regime which differentiated between buyers and sellers could be more easily implemented if the Executive amended the Bill so that the new offences applied solely to purchasers and the existing law was kept in place for sellers.

1 Tommy Sheridan dissented
Other disposals and rehabilitation of offenders – paragraphs 132 to 149
19. The Committee calls on the Scottish Executive to provide further information on the experience in England and Wales regarding the disqualification of drivers and confiscation of vehicles of purchasers of sex, the extent to which the powers are used, and how effective they have been in reducing the incidence of men buying sex.

20. The Committee notes the comments made by witnesses about the use of re-education programmes for purchasers of sex and rehabilitation and drug programmes for sellers of sex. The Committee invites the views of the Scottish Executive on the use of re-education and rehabilitation projects.

Title of the Bill - stigmatisation – paragraphs 150 to 153
21. The Committee notes that the issue already arises that a woman attempting to leave prostitution could be stigmatised by details of the offence appearing on her record. Nevertheless, the Committee still feels that this is an important point and therefore asks the Scottish Executive to reflect on whether there is any flexibility within the Disclosure Scotland regime to manage this information in such a way that the potential for stigmatising former prostitutes is minimised. The Committee also asks for the Scottish Executive's views on whether changing the short title of the Bill might assist in this objective. The Committee notes that if the Executive amended the Bill so that the new offences applied solely to purchasers and the existing law was kept in place for sellers, then this might reduce the possibility of stigmatisation.

Sanctions for children and young people – paragraphs 154 to 156
22. The Committee seeks the views of the Scottish Executive on the points raised by Barnardo's Scotland relating to the implications of the Bill for children and young people.

Other views on the Bill – paragraphs 157 to 170
23. The Committee notes the wide-ranging views it has received on how to address the issue of prostitution. As mentioned above, the Committee's role is to consider the Prostitution (Public Places) (Scotland) Bill, rather than to make recommendations in relation to the complex wider issue of prostitution. Indeed, the Committee acknowledges that the scope of the legislation is deliberately narrow: the Executive has never suggested that it represents a complete solution to the problems associated with prostitution. The Bill must be viewed in this context. Clearly much additional work needs to be done, and much of this will not rely on legislation to have effect. The Committee does note, however, that the weight of evidence it has received suggests considerable dissatisfaction exists with the legislative proposals brought forward by the Executive, from a wide range of different organisations with an interest in this issue.

Conclusion – paragraphs 171 to 179
24. The Committee has highlighted in this report a number of major problems with the Prostitution (Public Places) (Scotland) Bill, as currently drafted, which emerged during evidence taking on the Bill. The Committee's view is that, were the Bill not to be amended, these problems could call into
question whether the Bill will actually address the problems faced by communities affected by prostitution, and whether it can, and will, be enforced.

25. In the course of its Stage 1 scrutiny, this Committee has identified and explored a number of problems with the Bill, as drafted. As a result of the Committee’s scrutiny, the Executive’s position on a number of key issues appears to be shifting. These issues were set out in a letter from the Deputy Minister to the Committee of 18 December 2006. Whilst this letter notes that firm commitments to amend the Bill could not be made at this stage, it does indicate some of the Executive’s thinking—

Removal of reference to sellers
26. The letter from the Deputy Minister states:

‘It would be possible to restrict the Bill so that it does not relate to those engaging in prostitution. The Bill could also be amended so that it does not provide for the repeal of section 46 of the Civic Government (Scotland) Act 1982. This would have the effect of applying the new offences solely to purchasers and keeping the existing law in place for sellers. Such an approach could provide a clearer focus on challenging the behaviour of those seeking to purchase sex in public places, which, in turn, may assist in tackling the demand for street prostitution - a key component if we are to deliver our long-term objective of eradicating street prostitution.

It would, however, be a departure from the Expert Group’s recommendation in relation to sellers. We would also need to consider issues of consistency between the offences for seller and purchaser.’

Increased penalties for purchasers
27. The letter from the Deputy Minister states:

‘A number of Committee members indicated during the evidence sessions that they would wish to see heavier penalties available to courts in dealing with purchasers. There was some discussion of a higher maximum fine and the possibility of making disqualification from driving or vehicle seizure available to the courts.

If the new offences were to apply only to purchasers, then it might be possible to provide a more tailored and punitive package of penalties, particularly for repeat offenders, without risking unintended consequences for sellers.’

Inclusion of “loitering in a car”
28. The letter from the Deputy Minister states:

‘…We are carrying out detailed work into the scope for an offence which would enable charges to be brought against those loitering in a vehicle, or driving around slowly, for prostitution-related purposes. This involves complex questions of law. We need to consider the potential ECHR
implications of any approach, as well as the wider practical and legal implications.

One possibility may be to enable a person to be charged with a loitering offence, whether on foot or in a vehicle, when in all the circumstances, it is reasonable to infer that the person is loitering for prostitution related purposes. To ensure fairness, the accused would have to be entitled to advance defences or justifications for their conduct. Such a provision would not allow the accused to evade conviction by raising plainly absurd explanations for his conduct (e.g. an explanation of being lost where there is evidence of the accused being there on a number of previous occasions, or an explanation that he was waiting for his wife where it can be established that he does not have a wife).’

Management zones

29. The letter from the Deputy Minister states:

‘Several members of the Committee have expressed considerable concern over the existence of informal management zones or tolerance zones, i.e., areas where the local police force operates a policy of not charging individuals for soliciting, loitering or importuning under section 46, provided that they remain within a designated area and operate only during designated times.

The police have a general duty to enforce the law, although they have a certain measure of discretion as to the way in which this is done. Judgements may be made as to how the law is to be enforced in the public interest. As I indicated during my evidence on 28 November, it would not be appropriate for the Executive, or indeed Parliament, to interfere with operational policing decisions. However, I can confirm that existing prostitution offences apply throughout Scotland. The Executive has no plans to change the law in this respect, and the Bill will not do so.’

30. The Committee notes the apparent shift in the Deputy Minister’s position on some key issues, in response to the concerns highlighted by this Committee during the passage of the Bill. As a result, the Committee has reviewed its position on the Bill. Formerly, the Committee had not been in a position to endorse the general principles of the Bill, and would instead have made no recommendation on the question of whether or not Parliament should agree to its general principles.

31. The Committee now acknowledges, however, the apparent willingness of the Scottish Executive to revisit the Bill at Stage 2 to address the Committee’s concerns. The Committee considers that the Scottish Executive should be allowed an opportunity to amend the Bill to meet these concerns.

32. The Committee recommends, therefore, that Parliament agrees to the general principles of the Prostitution (Public Places) (Scotland) Bill, but only if the Executive states at, or in advance of, the Stage 1 debate—
That it will bring forward amendments at Stage 2, as recommended by the Committee, on (a) removing the reference to sellers in the Bill (b) increasing penalties for purchasers, and (c) including a new offence of loitering in a car;

How it will address the Committee’s concerns that the Bill could lead to the creation of management zones for prostitution; and

How it will respond to the other recommendations outlined in this report.

INTRODUCTION

Introduction of the Bill

33. The Prostitution (Public Places) (Scotland) Bill was introduced by the Minister for Finance and Public Service Reform, Mr Tom McCabe MSP, on 15 September 2006. The Bill was accompanied by a Policy Memorandum and by Explanatory Notes, including a Financial Memorandum. The Parliamentary Bureau, at its meeting of 19 September 2006 agreed to refer the Prostitution (Public Places) (Scotland) Bill to the Local Government and Transport Committee for consideration at Stage 1.

34. The report of the Subordinate Legislation Committee is attached at Annexe A.

35. Twenty-two organisations and individuals responded to the Committee’s call for written evidence. The Committee took oral evidence on the Bill from witnesses at its meetings of 3 October 2006, 24 October 2006, 31 October 2006, 7 November 2006 and 28 November 2006. Extracts from the minutes of those meetings are attached at Annexe B, and extracts from the Official Reports of those meetings, together with associated written submissions and other written evidence, comprise Annexe C. The Committee wishes to express its thanks to all those who provided written and oral evidence on the Bill.

Aims of the Bill

36. The Bill will make it an offence for an individual to solicit or loiter in a ‘relevant place’, with the intention of buying or selling of sexual services, in such a manner or in such circumstances as a reasonable person would consider it likely to cause alarm, offence or nuisance.

37. The Bill covers a person seeking to buy sexual services, regardless of whether the person approached is engaged in prostitution or not. For example, a man who approaches a woman on a street in the belief that she is a prostitute, and attempts to obtain her services as a prostitute, does not escape the possibility of prosecution simply on the basis that the woman is not in fact a prostitute.

38. The Bill provides that it is not necessary for any member of the public to be caused actual nuisance, offence or alarm. Rather, the court will need to be satisfied that the action was such or done in such a way that it would be likely to
cause, nuisance, alarm or offence to any reasonable person who might have witnessed it. Thus, there is an objective test as to the likelihood of ‘alarm, offence or nuisance’ being caused. This would, for example, allow police officers who, because of their work, may not suffer any personal alarm, provide evidence that a reasonable person who was not a police officer would have been alarmed.²

39. The Committee’s role is to consider the Prostitution (Public Places) (Scotland) Bill rather than to make recommendations in relation to the complex wider issue of street prostitution. The Committee acknowledges that the scope of the legislation is deliberately narrow: the Executive has never suggested that it represents a complete solution to the problems associated with prostitution. The Committee recognises the important issues of delivering support and access to routes out of prostitution as well as addressing concerns regarding the high level of drug use amongst prostitutes. However the wider social and economic impact of street prostitution is not directly tackled by the Executive in the Bill and thus the Committee has focused its consideration on the specific changes proposed by the Bill to the criminal law.

Consultation

40. The Bill follows on from a report and subsequent consultation ‘Being Outside: Constructing a Response to Street Prostitution’ produced in 2004 by the Expert Group on Prostitution established by the Scottish Executive.³ Submissions were made by 62 agencies and individuals and these were taken into account by the Executive before publishing its response to the Expert Group. An analysis of the responses was published in November 2005.

41. The Committee is satisfied with the adequacy of the Scottish Executive’s consultation on the proposals contained within the Bill.

Policy memorandum

42. The Committee notes the contents of the Bill’s Policy Memorandum and accepts that it provides adequate explanation of the policy intentions behind the Bill.

NEW OFFENCES PROPOSED IN THE BILL

43. The Committee wishes to highlight several issues raised by witnesses relating to the proposed new offences in the Bill.

Loitering offence

44. Section 1(4) of the Bill 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 section 1(2). The purpose mentioned in section 1(2) is engaging in prostitution

² See briefing from the Scottish Parliament Information Centre  
http://www.scottish.parliament.uk/business/research/briefings-06/SB06-69.pdf

³ http://www.scotland.gov.uk/Publications/2004/12/20410/48751
or obtaining the services of someone engaged in prostitution. However, unlike the soliciting offence introduced in the Bill, the loitering offence cannot be committed by someone in a motor vehicle (unless it is a form of public transport).

45. The Policy Memorandum describes the rationale behind this approach—

‘The loitering offence does not apply to persons who are in a motor vehicle which is not public transport, (e.g. a private motor car) as it was considered that it may not be possible to “loiter” within the confines of such vehicles. Even if it was thought possible to loiter within these vehicles, it was considered that more than simply sitting in a motor vehicle (other than public transport) should be required for the commission of an offence i.e. an act of soliciting would be necessary. The loitering offence does not apply to people in hire cars for the same reason that it does not apply to people in private motor vehicles.’

Evidence received on the proposed loitering offence

46. The Committee explored with witnesses the implications of excluding private cars from the proposed loitering offence. The Committee heard evidence from community groups about the problems created by individuals who drive around areas where prostitutes are known to work. According to the community groups, this nuisance and alarm is not only created by individuals who attempt to solicit women from their cars, but also by individuals who simply drive around in a suspicious manner without necessarily attempting to actually pick up a woman.

47. Jennifer McCarey of the Glasgow-based group Calton for All told the Committee—

‘It is a big issue for women in our community. There is almost no journey that you can make in any direction on the main streets that does not involve you being tracked by a vehicle, especially at quieter times. Men will congregate in the area, stop their cars and wait with their engines revving. People who live in the area know about and see that behaviour. The behaviour is odd and there is no other reason for it. When someone stops their car and opens their window, that is frightening or alarming, especially for young people.’

48. Alan Beatson of the Leith Links Residents Association expressed similar concerns about drivers circling slowly round an area, telling the Committee that—

‘In our area, the men tended to make several circuits to have a look at the women who were around and to work out whether some of them were prostitutes. There was a lot more interaction with local people than you might imagine. My wife is disabled and in a wheelchair. Once, when we were going across the links after being out in the evening, a chap went by slowly and stared at us out of his car window. It was unpleasant. He drove on and looked at someone else further on. Such behaviour is a nuisance and is very threatening.’

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4 Policy Memorandum, para 14
5 OR Col 4158
6 OR Col 4158
49. This issue was also highlighted in written evidence, for example, in evidence from NHS Greater Glasgow and Clyde and the Catholic Parliamentary Office.

50. In evidence to the Committee, the Association of Chief Police Officers in Scotland (ACPOS) criticised the proposed new loitering offence as being potentially ineffective due to its restricted nature—

‘Two thirds of the transactions that take place in Glasgow occur in motor vehicles. If a person who is in a motor vehicle cannot be loitering, what will happen to two thirds of transactions? Nobody will be charged and nobody will be rehabilitated. The tool will be ineffective, because a person who is in a motor vehicle cannot be loitering, although a person can loiter on a bus. I am not being critical, but the transactions do not take place in taxis or buses—the majority take place in cars.’\(^7\)

51. ACPOS suggested an alternative form of words for the loitering offence—

‘Since “kerb crawling” has been identified as a major source of discontent in communities affected by prostitution, the Bill is therefore unlikely to satisfy the needs and demands of the community. It is felt this should be reconsidered and suggested that a definition of ‘loitering’ is added to the Bill, along the lines of “when a person on foot or otherwise proceeds slowly or proceeds with many stops or remains in a public place for no obvious reason.”’\(^8\)

52. A further problem with the proposed new loitering offence which was identified in evidence was that it might not support the Bill’s aim of addressing the imbalance of treatment between the buyers and the sellers of sex. Ruth Morgan Thomas of SCOT-PEP told the Committee—

‘It is clear to us that, by stating that the loitering offence does not apply to people in cars, the bill will basically make no change to the existing law. Sex workers will be disproportionately charged, fined and imprisoned for non-payment of fines in exactly the same way that they are today.’\(^9\)

53. Anne Fallon of Routes Out made a similar point—

‘As the bill stands, both the man and the woman could be charged with soliciting. However, whereas a woman could be done for loitering, the man could not be if he was in his car. It takes two for the soliciting offence but only one for loitering.’\(^10\)

54. The Committee held a detailed evidence session with the Deputy Minister during which members drew his attention to the concerns expressed about the loitering offence in the Bill. The Deputy Minister commented in general terms about the concerns which the Committee had heard—

\(^7\) OR Col 4198
\(^8\) ACPOS written submission
\(^9\) OR Col 4134
\(^10\) OR Col 4135
'I appreciate the concerns about the loitering offence. We signal today that we are willing to listen to and reflect on the concerns, to see whether anything further can be done. The way in which the bill is drafted means that difficulties would arise in creating a reverse burden of proof, but we have not closed the door on further considering other actions or mechanisms that might address some of the concerns.'

55. The Committee went on to raise with the Deputy Minister various specific points in relation to the loitering offence. These are outlined below.

*Extension of the loitering offence to private cars*

56. On the general point of whether the loitering offence should be extended to include private cars, the Deputy Minister stated—

'It is worth noting that the kerb-crawling offence in England and Wales criminalises people who solicit from cars or in the vicinity of cars but does not criminalise loitering in a car. The offence in the bill is equivalent to the English offence in that regard. I understand the wish for a broader offence, but there are profound difficulties in proving intent if behaviour is limited to driving slowly without attempting to solicit.'

57. In light of these comments about the difficulties in proving the intent of individuals loitering in a private car, the Committee questioned the Deputy Minister on why it was possible to include an offence of loitering on foot in the Bill when similar issues of proving intent might appear to arise. The Deputy Minister told the Committee—

'The fundamental difference is that the individual on foot can be seen, but the individual in the car cannot so easily be seen, especially if the car has blacked-out windows. It is therefore hard to prove intent—to prove that the person in the car was loitering for the purposes of prostitution. We have to remember that that is the offence.'

*Requirement to provide a defence*

58. The Committee raised with the Deputy Minister the idea that in certain circumstances where a person is being prosecuted with a loitering offence under the Bill there should be a requirement for the person to show they had a defence to prove that they had a legitimate reason for loitering in the area.

59. The Deputy Minister told the Committee—

'Committee members suggested that the problem might be overcome by creating a reverse burden of proof, so that the accused would have to prove that they were not loitering in the area for prostitution-related purposes. As my officials indicated in a letter to the committee, it would not be justifiable, proportionate or necessary to establish such a reverse burden of proof. Innocent drivers might be found guilty of the proposed offence simply because they were unable to provide proof of their legitimate reasons for

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11 OR Col 4232
12 OR Col 4224
13 OR Col 4229
driving in a particular area. We are also concerned that such a reverse burden could fall foul of the European convention on human rights. Nevertheless, we are willing to listen to concerns about how the offences are framed and to consider ways in which those might be addressed.  

**Breach of the peace**

60. The Committee took evidence from the Deputy Minister and his officials as to whether an individual ‘loitering’ in a private car could be prosecuted under a charge of breach of the peace. An official suggested that this might be possible, telling the Committee that—

‘Having read in the *Official Report* of last week’s evidence-taking session some of the descriptions of what had been called kerb crawling, I felt that it would not be possible to detect any sexual element or motive on the part of the person in the vehicle and, therefore, that such behaviour would not necessarily be caught by any prostitution-related offence. I simply suggested that we would need to consider some other area of the law such as breach of the peace.’

61. The Policy Memorandum suggested, however, that a charge of breach of the peace might be difficult to achieve—

‘There is no equivalent offence applying to the clients of prostitutes who solicit or loiter for the purposes of obtaining the services of a prostitute in a public place. In some circumstances, the common law offence of breach of the peace can be used to prosecute those who cause offence or alarm by purchasing, or attempting to purchase, sex in a public place. However, there are drawbacks to relying on breach of the peace to prosecute the clients of people engaged in prostitution. There will be narrow cases where the evidence does not support a charge of breach of the peace, even where the community considers that nuisance is being caused.’

‘An alternative means of bringing about a degree of balance would have been to repeal the current soliciting offence and rely on breach of the peace to prosecute both those who sell sex and their clients. However, given the apparent difficulties in using breach of the peace to prosecute purchasers at present, this was considered by the Expert Group to be unlikely to provide effective protection to the public from nuisance or offensive conduct.’

62. Assistant Chief Constable John Neilson of ACPOS told the Committee—

‘There are difficulties with the breach of the peace law. You will be aware that, generally speaking, the women who walk the streets in Glasgow green are on their own, and the person in the vehicle is also usually on their own. The area is not covered by closed-circuit television, which means that there is usually insufficient evidence to accuse the person in the vehicle of causing a breach of the peace by accosting the woman in the street. If uniformed

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14 OR Col 4224. See also letter from Alison Douglas, Bill Team Leader, 1 November 2006
15 OR Col 4235
16 Policy Memorandum, para 6
17 Policy Memorandum, para 17
police officers are out on the street, the person in the car will not behave in that way. That is the perennial problem. We have no legislation under which we can deal with people who persistently drive around an area and are not on legitimate business.'\(^{18}\)

**Persistent behaviour**

63. The Committee heard that one possible way to prove that someone was loitering in a private car for prostitution related purposes, rather than for a legitimate purpose, might be to make the loitering offence dependent on persistent behaviour. In other words, it might be possible for a man to use the excuse that he was driving in a suspicious manner in an area because he was lost once or twice, but repeated behaviour could lead to an offence being committed. The Committee noted, for example, that the concept of ‘persistent behaviour’ formed part of the legislation on prostitution in England and Wales.\(^{19}\)

64. Andrew McIntrye of the Crown Office and Procurator Fiscal Service told the Committee—

‘The persistence element in the English offence relates to persistently soliciting and not to persistently loitering or kerb crawling. If the offence that we are creating contained the element of persistence that is in the English legislation, it would mean that we would not be able to prosecute on the basis of one offence even if the necessary standard of evidence existed, because we would need to have evidence to show that the behaviour happened repeatedly before we could prosecute.’\(^{20}\)

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\(^{18}\) OR Col 4197

\(^{19}\) The Policy Memorandum describes the legal situation in England and Wales: Section 1 of the Sexual Offences Act 1985 provides that it is an offence for a person to solicit from a motor vehicle persistently, or in such manner as to cause annoyance to the person being solicited or nuisance to the neighbourhood. Section 2 of the 1985 Act provides that it is an offence for a person to persistently solicit another person, or different persons, in a public place for the purpose of prostitution. Section 1 of the Street Offences Act 1959 creates an offence for either a male or female prostitute to loiter or solicit in a street or public place for the purposes of prostitution.

\(^{20}\) OR Col 4234
need to consider the potential ECHR implications of any approach, as well as the wider practical and legal implications.

One possibility may be to enable a person to be charged with a loitering offence, whether on foot or in a vehicle, when *in all the circumstances, it is reasonable to infer that the person is loitering for prostitution related purposes*. To ensure fairness, the accused would have to be entitled to advance defences or justifications for their conduct. Such a provision would not allow the accused to evade conviction by raising plainly absurd explanations for his conduct (e.g. an explanation of being lost where there is evidence of the accused being there on a number of previous occasions, or an explanation that he was waiting for his wife where it can be established that he does not have a wife).\(^{21}\)

Conclusions of the Committee

66. The Committee has heard from residents’ groups about the fear and distress created by motorists slowly circling residential areas looking for prostitutes. This is a clear example of prostitution creating ‘nuisance, alarm and offence’ in local communities. Yet it appears that under the Bill as drafted, this behaviour would not represent an offence of loitering. Indeed it would not be an offence at all in the Bill. The Committee’s view is that this is unacceptable, and, were the Bill to be unamended, would call into question the whole point of the Bill.

67. The Committee recommends that the Executive brings forward an amendment to the Bill to expand the scope of the loitering offence to include private cars. This will be of crucial importance in order to address properly the problem of kerb crawling in residential areas. The Committee does not accept that it would be impossible to find a form of words to do this.

68. The Committee therefore welcomes the suggestion in the Deputy Minister’s letter that it might be possible to remove section 1(6) of the Bill (which provides the exemption to individuals loitering in private cars) and replace it with an alternative form of words, such as that which has been highlighted in the Deputy Minister’s letter.

69. Whilst the Committee notes there may be problems associated with some alternatives to the loitering offence in the Bill, it has heard convincing evidence that including an element of persistent behaviour in the loitering offence could allow prosecutions of motorists without a legitimate reason for being in an area. This is an approach advocated by the Association of Chief Police Officers in Scotland. If the Executive chose to establish the principle of a persistent behaviour test, this should only apply in relation to the proposed loitering offence. It should remain the case that one single act of soliciting under the terms of the Bill would be an offence.

70. The Committee also notes that it will be an offence under the Bill for a person to loiter on public transport for the purposes of (a) engaging in prostitution or (b) obtaining the services of a person engaged in prostitution.

\(^{21}\) Letter from the Deputy Minister, 18 December 2006
The Committee seeks clarification on the circumstances in which the Scottish Executive believes that this offence might be committed.

‘Nuisance, alarm or offence’

71. The Bill provides that an offence of soliciting and loitering would only be committed if a reasonable person would be caused alarm, offence or nuisance by the behaviour. The Policy Memorandum states—

‘Ministers have [...] committed to create new public order offences covering prostitution-related behaviour which causes nuisance, alarm or offence, whether by purchasers or sellers. This will ensure that enforcement focuses on nuisance to the community and will enable the police to deal with the harm caused by those (predominately men) who purchase, rather than only appearing to target only those (predominately women) who sell.’\(^{22}\)

72. The new offences would replace the current legislation in relation to prostitution contained in the Civic Government (Scotland) Act 1982, which provides that a prostitute who for the purposes of prostitution (a) loiters in a public place, (b) solicits in a public place or in any other place so as to be seen from a public place, or (c) importunes any person who is in a public place, is guilty of an offence and liable to a fine of up to £500. Currently prostitution is not in itself a criminal offence. Instead the current law is concerned with criminalising certain activities surrounding prostitution.

73. The Committee took evidence on the implications of a new law in which causing alarm, nuisance or offence were the criteria determining whether an offence had, or had not, been committed.

74. An issue raised in evidence was the question of whether or not the purchasing of sex should in itself represent an offence, rather than the causing of nuisance, alarm or offence.

75. Councillor Kingsley Thomas of the City of Edinburgh Council told the Committee—

‘Off the top of my head, I am not sure whether we should make the act of purchasing sex illegal. If we did, we would still be talking about and trying to minimise the same problems; it would not solve prostitution all of a sudden. As Leslie Brown said, the issues are complex and we have taken different approaches in the three cities because there are three different scenes—there are different issues in the three different places—and three different solutions are needed. We are looking for more tools in the toolbox to deal with the issues better and more appropriately at a local level. However, it is worth considering criminalising the purchase of sex.’\(^{23}\)

76. The representative of Glasgow City Council told the Committee—

\(^{22}\) Policy Memorandum, paragraph 11  
\(^{23}\) OR Col 4179
Glasgow City Council would support moving towards the position that buying sex is a criminal offence. That would help to disrupt the market and would send out a helpful signal to the public and to the men that it is unacceptable to buy sex. That is one of the important things that happened after the change in legislation in Sweden. There was a lot of criticism of that change, particularly from those who lobby for the sex industry to be regulated and remain part of society, but the criminalisation of the buying and facilitating of sexual services has brought about attitudinal change in the public.\textsuperscript{24}

77. The Deputy Minister disagreed with the suggestion that the purchasing of sex should be a criminal offence, telling the Committee—

'Sweden took the route of criminalising completely the purchase of sex, but the measures do not seem to have delivered the results hoped for. We have to be aware that the offence in the bill is targeted at street prostitution and that further work needs to be done on the wider area of indoor prostitution, trafficking and so on. This is the first step, which is about tackling the nuisance, fear and alarm that are caused by both the purchasers and the sellers in prostitution. I do not agree that we should widen out the offence in the way that you suggest. There is no evidence that such an approach worked in Sweden.'\textsuperscript{25}

78. The Committee also sought evidence on whether it would be theoretically possible for prostitution to occur in a particular area without alarm, nuisance or offence being caused, and therefore without an offence having been committed.

79. The witness from the Crown Office and Procurator Fiscal Service was, reluctant to be drawn on the specific question of the circumstances in which a prosecution might be made under the Bill. He did state, however, that—

'Under the bill, if the transaction is in such discreet circumstances that no alarm, offence or nuisance are caused or it could not even be inferred that a reasonable person could be alarmed by the conduct, there could be no prosecution because we would not be able to lead evidence to get us past that necessary test, which is part of the bill.'\textsuperscript{26}

80. The witness from the Crown Office and Procurator Fiscal Service was asked whether, in his view, prosecutions would arise under the Bill for activities carried out in an area if it was an area in which prostitutes were known to work and if it was a discreet area where members of the public were unlikely to be offended by their transactions. He stated—

'It would not be for me to say in this forum whether there would be a prosecution on the basis of very specific circumstances such as those. It would be improper for me to comment; in effect, I would be binding independent prosecutors throughout the country. What I can say is that the

\begin{footnotes}
\item[24] OR Col 4179
\item[25] OR Col 4238
\item[26] OR Col 4259
\end{footnotes}
factors that I have just described would be relevant in determining whether it could be proved that nuisance had taken place.'

'The nature of the location, time of the transaction and all the surrounding facts and circumstances would be factors that would determine whether nuisance could be established. That is the best answer that I can give as a prosecutor.'

81. The ACPOS submission also raised the question of whether there might be certain locations where prostitution activities could take place legally under the Bill, because no nuisance, alarm or offence was being created—

‘The offence is based on an assessment as to whether the soliciting or loitering behaviour is likely to cause alarm, offence or nuisance to a reasonable person. Whilst it may be reasonable to assume a prostitute’s dress, manner and action may be tantamount to causing a nuisance, the location, albeit public, may be such that it is within an industrial area, and, out-with normal business hours, it could be argued that any residents in the area are unlikely to be affected by the conduct of the accused.’

82. This was a point also made in a written submission by NHS Greater Glasgow and Clyde—

‘Inadvertently, the Bill could be interpreted as sanctioning prostitution and the entitlement of men to buy sex e.g. it isn’t a problem as long as buyers and sellers conduct sexual transactions out of sight, without causing nuisance, offence or alarm in a public place.’

83. In his initial evidence to the Committee on 7 November, the Deputy Minister emphasised that he expected the laws of Scotland to be enforced. The Committee agreed to seek additional written and oral evidence from the Deputy Minister to explore further the issues surrounding using a test of nuisance, alarm or offence. The Deputy Minister provided further information in writing in a letter of 27 November and in a further appearance before the Committee on 28 November.

84. In this evidence, the Deputy Minister emphasised that the Scottish Executive does not support the concept of legal management zones where the law does not apply or is suspended.

85. The Deputy Minister also indicated that there could be circumstances in which soliciting or loitering for the purposes of engaging in prostitution could take place without an offence being committed—

‘As you are aware the Bill criminalises soliciting or loitering “in such a manner or in such circumstances as a reasonable person would consider to be likely to cause alarm, offence or nuisance”. Logically, given that the offence does
not criminalise soliciting or loitering per se, there may be circumstances in which someone solicits or loiters but does not commit an offence, i.e. where the manner or circumstances of their activity is such that a reasonable person would not consider it likely to cause alarm, offence or nuisance.32

86. The Deputy Minister told the Committee, however, that if an accused were soliciting in a residential or busy business area of a city, then the very fact that they were doing so may be considered to be likely to cause alarm, offence or nuisance. However, even in a non-residential or derelict area, the Deputy Minister suggested there will be circumstances in which the proposed offences in the Bill may be committed. The Deputy Minister cited the example that if a member of the public who was not engaged in prostitution was approached by a person seeking to buy sex, that person may be guilty of soliciting in such a manner as to be likely to cause alarm, offence or nuisance, regardless of the nature of the area he was in. Ultimately, however, the Deputy Minister told the Committee that these are matters which would fall to be determined by Chief Constables and the courts.33

87. The Committee has examined carefully the evidence presented by the Deputy Minister, but remains concerned that, whilst it is not an explicit policy intention of the Bill, one possible interpretation of the Bill is that the use of a test of causing alarm, offence or nuisance to a reasonable person may mean that soliciting and loitering could take place legally in certain locations. If the Bill was unamended, this may make it easier for ‘management zones’ which have legal backing to be established, despite the stated wishes of the Scottish Executive. In these circumstances, it would not be the case that the law was being ignored within the zone (unlike any previous management zones). On the contrary, the law would be applied: under the Bill as currently drafted it could simply be the case that no offence was being committed, because of the application of the alarm, offence or nuisance test.

ENFORCEMENT

88. As discussed elsewhere in this report, the purpose of the Bill is to create new offences in relation to prostitution. The Committee wishes to raise three questions in relation to the enforcement of the proposed new offences.

Will the new offences be enforced?

89. The Committee heard evidence that, in some circumstances, the current law relating to prostitution is not being enforced.

90. The Community Safety Strategist from Aberdeen City Council told the Committee that—

‘Since 2001, we have had a management zone in Aberdeen. It is a small part of our harbour area—which is close to Aberdeen city centre—where street prostitution has historically taken place. In that area, prostitutes will not be

32 Letter from the Deputy Minister, 27 November 2006
33 Letter from the Deputy Minister, 27 November 2006
arrested for soliciting after 5 pm—or 9 pm in certain parts of it—provided they are not involved in any other offence.

The zone is not about tolerating, encouraging or promoting prostitution; it is about recognising that it happens and that we need to try to manage its impact on local residents and businesses. It is a working harbour—there are many businesses in the area. The zone is also intended to help with issues relating to the safety of the prostitutes. It provides a focus for health and other services. Not least, it helps to prevent street prostitution spreading into other areas of the city centre.  

91. Councillor Kingsley Thomas from the City of Edinburgh Council told the Committee about the city’s experience of maintaining an ‘operational zone’ until 2001. Further information on the Edinburgh experience can be found in the former Local Government Committee’s 2003 Stage 1 Report on the Prostitution Tolerance Zones (Scotland) Bill.  

92. The Deputy Minister told the Committee in relation to the Aberdeen experience—

‘I understood from the evidence from Aberdeen City Council and the police that deciding on whether there is a management zone in Aberdeen is an operational matter. I imagine that that will still be the case when the new legislation comes into force.’

93. The Deputy Minister then stressed that he expected the laws of Scotland to be enforced and told the Committee—

‘As I said, we create the law. We expect chief constables, who have responsibility for operational matters free from political interference, to enforce the legislation that the Scottish Parliament creates.’

94. Andrew McIntyre of the Crown Office and Procurator Fiscal Office told the Committee—

‘I cannot speak for local authorities but, as a prosecutor, I am acutely aware that a lot of work is done between local prosecutors and police forces to tackle the issues that arise in their areas. That happens in Glasgow, for example. If Parliament, with a view to responding to public demands and needs in Scotland, passes legislation that criminalises for the first time certain conduct, local prosecutors, who are obliged to consider the public interest in every case, will have to work closely with local police officers to make clear the circumstances in which they expect offences to be reported to them. That will be the key to the enforcement of the legislation.’

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34 OR Col 4172
35 OR Col 4171
36 http://www.scottish.parliament.uk/business/committees/historic/x-lg/reports-03/lgr03-05-01.htm
37 OR Col 4242
38 OR Col 4242
95. The Committee sought additional evidence from the Deputy Minister in writing in his letter of 27 November and in a further appearance before the Committee on 28 November. The Deputy Minister told the Committee—

‘Let me state up front that the Executive is not - nor ever has been - in favour of legal “management zones”, i.e. areas where the law does not apply, or is suspended. We are clear that the offences which we are proposing will be applicable throughout Scotland and there is no location or “zone” where they would not apply.’

‘The Bill would not […] create legal “management zones” i.e. areas where the law does not apply. Nor would it enable the police or local authorities to establish such zones. The Executive has never supported the establishment of legal “management” or “tolerance” zones. They are not in the interests of the wider community and there is little evidence that they help to improve the safety of those involved in prostitution. However, as with all offences, chief constables have discretion on operational policing matters and it will be for them to determine how they enforce the new offences at the local level.’

96. The Deputy Minister also addressed this issue in the letter of 18 December 2006 which provided an update on the Scottish Executive’s consideration of various issues which had emerged in evidence. The Deputy Minister stated—

‘Several members of the Committee have expressed considerable concern over the existence of informal management zones or tolerance zones, i.e., areas where the local police force operates a policy of not charging individuals for soliciting, loitering or importuning under section 46, provided that they remain within a designated area and operate only during designated times.

The police have a general duty to enforce the law, although they have a certain measure of discretion as to the way in which this is done. Judgements may be made as to how the law is to be enforced in the public interest. As I indicated during my evidence on 28 November, it would not be appropriate for the Executive, or indeed Parliament, to interfere with operational policing decisions. However, I can confirm that existing prostitution offences apply throughout Scotland. The Executive has no plans to change the law in this respect, and the Bill will not do so.’

Conclusions of the Committee

97. The Deputy Minister has told the Committee that the Executive has never been in favour of ‘management zones’, which he defines as an area where the law does not apply or is suspended. The Committee welcomes this assurance. The Committee notes, however, the current experience from Aberdeen, and the historic experience from Edinburgh, is that in certain locations and at certain times, the current law in relation to prostitution appears not to have been enforced. This position in Aberdeen and

39 Letter from the Deputy Minister, 27 November 2006
40 Letter from the Deputy Minister, 27 November 2006
41 Letter from the Deputy Minister, 18 December 2006
Edinburgh appears to have resulted from a joint approach between local authorities, the police, and prosecutors. The Scottish Executive's stated position of not supporting management zones appears not to have influenced how the current law has been enforced in Aberdeen and Edinburgh. The Committee is therefore concerned as to how any new law will be enforced.

98. The Committee notes the oral evidence from the Deputy Minister that under the Bill a Chief Constable would find it harder to justify the creation of a management zone. He also indicated that the discussions which took place on the Bill in this Committee and in Parliament would provide a guide to prosecutors and the police as to the will of Parliament in creating the new offences.

99. The Committee notes, however, the Deputy Minister’s view that, as with all offences, Chief Constables have discretion on operational policing matters and it will be for them to determine how they enforce the new offences at the local level. The Committee can understand the reasons for this arrangement in relation to many offences. The Committee can accept, for example, that Chief Constables may decide to enforce road speeding offences more rigorously at particular accident blackspots. The Committee can not, however, think of a comparable situation to that in Aberdeen and Edinburgh in relation to the current soliciting laws, where a decision appears to have been taken not to enforce the law in certain locations and at certain times which are well known within the community and beyond.

100. The Committee believes that if the Parliament passes new legislation it should be fit for purpose and therefore capable of being enforced in all parts of Scotland. The Committee wishes to see the new law applied across Scotland, and applied in a consistent manner. The Committee is encouraged that the Deputy Minister appears to agree with this view, but is not yet convinced as to how the Scottish Executive will achieve this consistency of application, given past experience enforcing the current law on prostitution.

101. The Committee asks that the Deputy Minister provides clear details as to how he will ensure that the proposed new law will be enforced in all parts of Scotland. The approach adopted by the Executive in relation to the current law has not worked: the Executive opposes management zones, but they appear to have been established in Aberdeen and Edinburgh. A new approach is needed in relation to the enforcement of the law. The Committee asks that the Executive sets out its position in a clear statement ahead of the Stage 1 debate on the Bill.

Can the new offences be enforced?

102. The Committee was surprised and concerned to receive evidence from the Association of Chief Police Officers in Scotland which appeared to raise significant concerns as to whether the proposed new offences in the Bill could be enforced. This evidence was subsequently challenged by the Scottish Executive and the Crown Office and Procurator Fiscal Service. Both positions are set out below.
Evidence from ACPOS

103. A written submission from ACPOS explained—

‘ACPOS has consulted with the Procurator Fiscal Service in Glasgow in relation to the burden of proof required regarding the new offence. The view they have expressed is that the offence in relation to the selling of sex remains relatively unchanged. However, the evidence required to prove the offence in relation to purchasers may be problematic. CCTV footage was obtained of transactions in the Glasgow area and shown to the Procurator Fiscal. The incidents displayed were of the everyday transactions between prostitutes and purchasers on foot and in vehicles. The opinion of the Procurator Fiscal is that the witnessing of the approach, and subsequent departure of the purchaser with a known prostitute, would be insufficient to substantiate proceedings in relation to this offence. Police officers would require to overhear the discussions between the purchaser and seller to confirm that a relevant transaction has taken place. This presents difficulties, as it would be unlikely that a purchaser would solicit the services in proximity to the Police.’

104. This written statement was expanded upon in oral evidence from Assistant Chief Constable John Neilson of Strathclyde Police—

‘We use evidence from closed-circuit television and officers on the ground to deal with such offences under the Civic Government (Scotland) Act 1982, which is also supported by common law cautions and interviews under caution. Prosecutions have been done that way since 1982, when that act came into force. There is a process for that.

We took a Monday night snapshot—Monday night is a quiet night in Glasgow city centre—just to show the procurator fiscal and the people from the Scottish Executive what the situation is like. We said, “Here’s the reality of prostitution in Glasgow city centre. We’ve told you our reservations about the new bill and what we think about it. Look at the video and tell us how we could use the new law to prosecute anybody in it.” The response was that, despite the 23 transactions that were captured on the video, nobody could be charged.’

105. In response to questioning from the Committee, Assistant Chief Constable Neilson agreed with the assertion that on the basis of the video evidence, sellers could be prosecuted under the present law but not if the law was amended as proposed in the Bill.

106. Following his oral evidence session, Assistant Chief Constable Neilson wrote to the Committee. He emphasised that—

‘I would reinforce that ACPOS fully supports the work of the expert group on prostitution and welcomes the development of legislation which attempts to

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42 ACPOS written statement
43 Col 4207
balance the prosecution of sellers with the prosecution of buyers. At no time have ACPOS considered the drafting of this bill as a retrograde step.  

107. He went on to say—

‘In terms of section 1 of the bill which relates to both sellers and buyers the new legislation will not change the process that currently exist within Section 46 of the Civic Government (Scotland) Act in relation to sellers. To effectively prosecute purchasers, there would require to be a statement taken from the seller supported by a self incriminating response by the purchaser following common law caution. While not impossible to report such offences to the PF in relation to the purchasers, on a practical basis, it is my opinion that the incriminating reply will not be forthcoming in the majority of cases.’

Response of the Scottish Executive / Crown Office and Procurator Fiscal Service

108. The Deputy Minister and the witness from the Crown Office and Procurator Fiscal Service challenged elements of the evidence from ACPOS in relation to whether the offences in the Bill could be enforced.

109. The Deputy Minister told the Committee—

‘I am aware that ACPOS implied in oral evidence that the new offence would not be as robust against sellers as is the current offence under section 46 of the Civic Government (Scotland) Act 1982. We refute that and I am pleased that ACPOS has written to the committee to say:

"In terms of section 1 of the bill which relates to both sellers and buyers the new legislation will not change the process that currently exists within section 46 of the Civic Government (Scotland) Act in relation to sellers."

The burden of proof under the new offence will, in essence, remain unchanged. The only difference is the nuisance, alarm or offence component; the Crown Office and Procurator Fiscal Service does not consider that that component will present a particular barrier to prosecution […]

ACPOS also expressed concern about enforceability against purchasers of the soliciting offence. We accept that there are challenges in that regard, but we do not think that the offence is unworkable. Evidence could be led, for example, from individuals who were approached by someone seeking to purchase sex, from a third party who overheard the exchange, or from an admission or incriminating remarks that were made by the accused.’

110. The witness from the Crown Office and Procurator Fiscal Service challenged the assertion of ACPOS that ‘to effectively prosecute purchasers, there would require to be a statement taken from the seller supported by a self incriminating

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44 Letter from ACC John Neilson
45 Letter from ACC John Neilson, 6 November 2006
46 OR Col 4223
response by the purchaser following common law caution.’\textsuperscript{47} He told the Committee—

‘In its letter, ACPOS describes two sources of evidence that may well form the basis of a prosecution, but it is possible to envisage other circumstances in which sufficient evidence may be obtained. For example, where the purchaser makes an incriminating remark, it is conceivable that the surrounding facts and circumstances would be sufficient to form the basis of a prosecution. I am not necessarily talking about someone making a full admission or confession. It is often the case that people who are accused of crimes say enough to incriminate themselves while not suspecting that they are admitting the crime. It is then for the court to determine whether it is satisfied that the evidence is sufficient and compelling enough to return a conviction. I am not certain that the scenario that ACPOS puts forward in its letter is the only one in which criminal proceedings could be brought.’\textsuperscript{48}

111. The witness from the Crown Office and Procurator Fiscal Service challenged ACPOS’s account of the views of the Procurator Fiscal Service in Glasgow, telling the Committee—

‘A myth has been promulgated about the views of local prosecutors in Glasgow. It relates particularly to the views of the procurator fiscal for Glasgow city centre, but also to the views of prosecutors in other divisions. I was concerned, to say the least, when I read some of the views attributed to the fiscal in Glasgow. I have spoken to him in great detail about his views on how the prosecution service would deal with offences under the bill, and I would say that the letter from ACPOS has recorded his views incompletely. As I say in my written submission, the recording of his views has been misleading.’\textsuperscript{49}

112. As mentioned elsewhere in this report, the Deputy Minister wrote to the Committee on 18 December 2006, to provide an update on the Scottish Executive’s consideration of various issues which had emerged in evidence. The Deputy Minister noted that it would not be possible for him to give the Committee any firm commitments at this stage, but that he wanted to share some of his thinking with members. The Deputy Minister told the Committee—

‘As you are aware the policy in the Bill at introduction was closely based on the recommendation of the Expert Group on Prostitution, that “…the law should be changed to repeal the criminalisation of soliciting per se and replaced…with an offence targeting offensive behaviour or conduct arising from a prostitution related sexual transaction, whether caused by purchaser or seller”. That is why we gave a commitment in November 2005 to bring forward offences which apply equally to purchaser and seller.

However, in their evidence to the Committee, a number of organisations indicated that they considered that the Bill should be amended so as to

\textsuperscript{47} Letter from ACC John Neilson, 6 November 2006
\textsuperscript{48} OR Col 4228
\textsuperscript{49} OR Col 4236
address only purchasers and that the existing offence at section 46 of the Civic Government (Scotland) Act 1982 should be retained in relation to soliciting, importuning and loitering by prostitutes. My understanding is that the Committee may favour this approach.

It would be possible to restrict the Bill so that it does not relate to those engaging in prostitution. The Bill could also be amended so that it does not provide for the repeal of section 46 of the Civic Government (Scotland) Act 1982. This would have the effect of applying the new offences solely to purchasers and keeping the existing law in place for sellers. Such an approach could provide a clearer focus on challenging the behaviour of those seeking to purchase sex in public places, which, in turn, may assist in tackling the demand for street prostitution - a key component if we are to deliver our long-term objective of eradicating street prostitution.

It would, however, be a departure from the Expert Group’s recommendation in relation to sellers. We would also need to consider issues of consistency between the offences for seller and purchaser.

Conclusions of the Committee

113. On the basis of the evidence it has received, the Committee considers that it will be very challenging, under the Bill as drafted, to successfully achieve prosecutions of the purchasers of sex for the offences of loitering and soliciting. The Committee notes the evidence that such prosecutions may need to rely on purchasers incriminating themselves in some way, and the Committee wonders how often such self-incrimination will realistically take place.

114. The Committee therefore considers that, under the Bill as drafted, a situation could arise whereby more prosecutions take place under the Bill of women selling sex than of men purchasing sex. This would appear to run counter to the objective in the Bill of redressing the balance between the purchasers and the sellers of sex. The Committee has discussed, above, the concept of referring to ‘persistent behaviour’ within the loitering offence, and this might help improve the prosecution rate of purchasers.

115. The Committee notes the contents of the Deputy Minister’s letter of 18 December 2006, which suggested that it would be possible, through amendments at Stage 2, to restrict the Bill in such a way that it would apply the new offences solely to purchasers and keep the existing law in place for sellers. The Committee would welcome such a proposal as a means of addressing some of the concerns of ACPOS and others, and recommends that the Executive brings forward amendments to this effect at Stage 2.

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50 Letter from the Deputy Minister, 18 December 2006
51 Tommy Sheridan dissented
Is it right to use a ‘reasonable person’ test?

116. The Bill is not complaint led. In other words it would allow a police officer, who was not alarmed to provide evidence that a reasonable person would have been caused alarm, nuisance or offence. The Policy Memorandum states—

‘The Bill will provide for an objective test to be applied. This will enable a court to determine whether the behaviour would be likely to cause offence to a reasonable person, on an objective basis, on the basis of evidence led by, for example, police officers witnessing the behaviour.’\textsuperscript{52}

117. The Scottish Executive Bill Team Leader told the Committee—

‘The expert group's report talks about a complaint-led offence, but it acknowledges that there are arguments on both sides about whether the test should be objective. In fact, of the three options that were identified, one has an explicitly objective test, one is based on a complaint with the courts being able to introduce an objective test and the third is based on an objective test. The expert group seemed more in favour of a complaint-led approach than having an objective test, although it recognised the merits of having an objective test. The group suggested that the issue could be explored in the consultation...On balance, the Executive has been persuaded that the arguments that are in favour of an objective test are greater than the ones that are in favour of a complaint-led approach.’\textsuperscript{53}

118. Ruth Morgan Thomas of SCOT-PEP told the Committee in a written submission—

‘The fact that the proposed offences are not intended to be complaint led and use the term ‘likely to cause alarm, offence or nuisance ….’ gives no clear guidance on what sort of behaviour and under what circumstances selling or purchasing sexual services will not be seen as likely to cause alarm, offence or nuisance in a public or relevant place.’\textsuperscript{54}

119. Margo MacDonald MSP told the Committee in written evidence—

‘If the new offence is not complaint-led, and prostitutes can be charged whether or not they have actually offended etc a third party, there is no incentive for them to solicit in a discreet area, where they will not normally encounter the general public.’\textsuperscript{55}

120. A representative of Leith Links Residents Association supported the use of a ‘reasonable person’ test rather than a complaint procedure—

‘… It is suggested in the bill that any strategy to deal with the problem should not be complaints-led, which we support strongly in the community—there was unanimous support for that at a meeting that we held. The reason is that

\textsuperscript{52} Policy Memorandum, paragraph 11
\textsuperscript{53} OR Col 4078
\textsuperscript{54} SCOT-PEP written submission
\textsuperscript{55} Written submission from Margo MacDonald MSP
if the police are around, they can monitor and control the problem of prostitution by being visible. If it is simply a matter of local residents complaining, it will be much easier for prostitution to continue and it will be much harder to control. It might also victimise local residents, who will be easily identified and fingered as the people who have contacted the police to make a complaint.  

121. In the view of the Committee, it should not be the sole responsibility of residents and the local community to complain about antisocial behaviour arising from prostitution in order for action to be taken. This should also be the responsibility of the police. The Committee is therefore persuaded by the argument that a test of whether or not a reasonable person would have been offended is preferable to a position whereby an offence is only committed if a complaint is received.

PENALTIES

Amount and level of fines

122. Section 1(8) of the Bill provides that a person convicted of an offence under subsection (1) - soliciting or subsection (4) – loitering – shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale. The current level 2 fine is £500. The same maximum level of fine will apply to the purchasers as well as the sellers of sex.

123. Alison Douglas, the Scottish Executive Bill Team Leader explained to the Committee that the level of fine ‘was appropriate because we are dealing with a low-level public order offence’

124. When asked why the maximum penalties for purchasers and sellers of sex are the same under the Bill, Alison Douglas replied—

‘This is a public order offence. The aim is to protect communities from the nuisance that is associated with prostitution-related behaviour. The intention is to strike a balance for the first time between purchasers and sellers. The Crown Office and the courts will deal with individual cases on their merits.’

125. Alison Douglas then went on to tell the Committee—

‘The deterrent for the purchaser is not the fine per se but the stigma that is associated with being convicted of an offence of this nature. Prosecutors take into consideration the impact on individuals' families of their having been convicted of purchasing the services of a prostitute and the fact that some people have lost their jobs as a result.’

126. The Committee heard evidence about the possible impact of imposing a fine on those selling sexual services. Jinty Kerr from SCOT-PEP told the Committee—
‘With such a marginalised group of people, sentences usually mean fines to start with, which means that they will have to work to pay the fines. When they cannot pay the fines, they are imprisoned. What is new? The bill is not going to reduce street prostitution to zero. That is my candid opinion.’

127. Chief Inspector Cooper of ACPOS expressed similar opinions on the impact of imposing fines—

‘It is different because of the partnership approach and because of the revolving-door effect, about which we heard from previous witnesses. What good does it do prostitutes to charge them, arrest them and bring them before the courts, where they simply get fined again? That just gives them a problem with their finances.’

128. Cath Smith from Routes Out told the Committee—

‘The bill fails to address the root causes of women’s involvement in street prostitution, the consequences of their subsequent involvement in the criminal justice system and the likelihood of their being remanded in custody or imprisoned for fine default. There is no recognition of the two different offender profiles of the purchaser and the seller.’

129. The Committee notes that under the Bill as drafted, both the purchasers and sellers of sex would be subject to the same maximum level of fine for committing an offence, although the courts would have discretion as to the actual level of fine imposed. The Committee notes, however, that the purchaser and seller of sex are likely to have different economic circumstances, and that this could mean that the fines will have a disproportionate effect on the seller. The Committee asks the Scottish Executive to review the question of the penalty regime under the Bill, and in particular the question of whether it would be appropriate for a different regime to apply to purchasers and to sellers of sex. One issue highlighted to the Committee was that purchasers of sex should be subject to a higher fine than sellers. Another issue highlighted was that fining of purchasers could be used in conjunction with alternative penalties, and this issue is discussed below.

130. The Committee notes comments made by the Deputy Minister in a letter of 18 December 2006, which provided an update on the Scottish Executive’s consideration of various issues which had emerged in evidence. The Deputy Minister noted that it would not be possible for him to give the Committee any firm commitments at this stage, but that he wanted to share some of his thinking with members. The Deputy Minister told the Committee—

‘A number of Committee members indicated during the evidence sessions that they would wish to see heavier penalties available to courts in dealing with purchasers. There was some discussion of a higher maximum fine and
the possibility of making disqualification from driving or vehicle seizure available to the courts.

If the new offences were to apply only to purchasers, then it might be possible to provide a more tailored and punitive package of penalties, particularly for repeat offenders, without risking unintended consequences for sellers.'

131. A majority of the Committee welcomed the suggestion highlighted in the Deputy Minister's letter that it would be possible for higher penalties to be made available to courts in dealing with purchasers, and recommends that amendments are brought forward by the Executive at Stage 2 to this effect. Such an approach would reflect the view held by the Committee that the purchasers of sex should be a key target under the Bill. The Committee notes that a penalty regime which differentiated between buyers and sellers could be more easily implemented if the Executive amended the Bill so that the new offences applied solely to purchasers and the existing law was kept in place for sellers.

Other disposals

132. The Committee explored with witnesses their views on possible alternatives to fines, such as seizure of vehicles from offenders and disqualification of drivers. Patrick Down of the Scottish Executive Bill Team highlighted in evidence to the Committee that—

‘The courts have a general power, in addition to any other punishment that they impose, to disqualify from driving any convicted offender where the use of a vehicle is in some way connected to the crime. In England and Wales, that power has been used for repeat offenders in relation to kerb-crawling. I see no reason in principle for the same not to be done here, if the bill is passed and there is a specific offence that criminalises kerb-crawling.’

133. Ann Hamilton from Glasgow City Council told the Committee—

‘Any such deterrent would be welcome. In England and Wales, vehicles that have been used to kerb crawl can be seized. Again, that would be a major deterrent.’

134. Dr Teela Sanders told the Committee about the wider implications these forms of punishment can have on the families of those who are punished—

‘They certainly have not been used widely. The removal of driving licences and naming and shaming, which brings in the media and which the Home Office sees as being an effective tool, have not been much used by magistrates because they are seen to have detrimental effects on partners and families. The majority of people who buy sex are in relationships and have families, so naming and shaming them or taking away their driving
licences, as well as punishing the individual, can have significant ramifications for families.\textsuperscript{65}

135. The issue of ‘naming and shaming’ the purchasers of sex was also raised in oral evidence by Ruth Morgan Thomas from SCOT-PEP. She expressed concern about the potential detrimental impact this can have on the families of those who are punished—

‘The strategy of naming and shaming people does not sit comfortably with me. Many men who use prostitutes are in relationships—whether they are married or are living with someone or whatever—and naming and shaming them would affect not only them but their families. The stigma that sex workers face would be spread to the clients and the clients’ families in the same way that it is spread to the partners and children of sex workers at the moment. Further, it would be incredibly naive to think that the strategy would put off significant numbers of men.’\textsuperscript{66}

136. Other suggestions for alternatives to fines were raised in evidence to the Committee. Patrick Down of the Scottish Executive stated in evidence to the Committee—

‘The draft guidance on street prostitution that was published alongside the bill considers whether measures such as acceptable behaviour contracts could be used against people who have been identified as kerb crawlers, to prevent them from entering areas that are known for prostitution.’\textsuperscript{67}

137. There was discussion during evidence to the Committee of the use of Antisocial Behaviour Orders (ASBOs). Alan Beatson from Leith Links Residents Association told the Committee—

‘Are you suggesting the use of the present regime of ASBOs? We have some experience of those, so we know that many practical problems arise. In theory, the idea of treating the problem as one of antisocial behaviour is excellent, but in practice that has proved to be a problem. In our area, ASBOs have made a difference in one or two cases. Senga Bethune has been heavily involved in keeping diaries and with the business of ASBOs.’\textsuperscript{68}

138. Senga Bethune went on to tell the Committee—

‘I do not think that such orders are a way of tackling the issue. I listened to what the experts said earlier and I think that it is about time that the whole business of street prostitution was treated as a drug problem.’\textsuperscript{69}

139. Assistant Chief Constable Neilson told the Committee—

\begin{footnotesize}
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\item \textsuperscript{65} Col 4214
\item \textsuperscript{66} Col 4139
\item \textsuperscript{67} Col 4080
\item \textsuperscript{68} Col 4153
\item \textsuperscript{69} Col 4153
\end{itemize}
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Local Government and Transport Committee, 1st Report, 2007 (Session 2)

“If we are linking the proposals in the bill to other antisocial behaviour measures, we should remember that such punishments exist under current antisocial behaviour legislation. We can seize people’s vehicles and get people disqualified from driving. Such a robust approach would certainly prevent repeat offending.”

140. The Committee calls on the Scottish Executive to provide further information on the experience in England and Wales regarding the disqualification of drivers and confiscation of vehicles of purchasers of sex, the extent to which the powers are used, and how effective they have been in reducing the incidence of men buying sex.

Rehabilitation of offenders

141. Patrick Down from the Scottish Executive Bill Team told the Committee—

“We are encouraging the use of alternative rehabilitative disposals, as outlined in the Executive’s response to the expert group. However, that is not a matter for the bill, because such disposals might apply to a range of offences.”

142. The Scottish Executive’s ‘Response to the Expert Group on Street Prostitution’, which Patrick Down referred to in evidence to the Committee, states—

“As part of this process we will examine opportunities for a wider range of discretionary disposals, such as drug rehabilitation and other support for women and re-education programmes for men.”

143. Alison Douglas explained in more detail what the Scottish Executive meant by alternative disposals—

“We want to address the underlying issues for sellers, such as drug addiction. There are also diversions from prosecution. A Sacro project in Edinburgh is trying to divert women away from prosecution. Kerb-crawler diversion schemes have been set up by police forces in England and Wales to re-educate men who have been caught kerb-crawling, instead of prosecuting them.”

144. Cath Smith raised the issue of re-education programmes. She told the Committee—

“We have to target men and challenge their perception of women by asking why they use women in this way. If the bill were to be passed, we may have the opportunity of imposing, by way of an order or a penalty, some kind of

70 Col 4203
71 Col 4068
72 Response to the Expert Group on Street Prostitution Scottish Executive
73 Col 4074
programmed intervention that addresses the men’s attitudes and value base.’

145. Cath Smith went on to tell the Committee that —

‘The aspect involving men is very important. I have responsibility and involvement in the setting up of the domestic abuse court in Glasgow. That came about because we had perpetrator programmes, which criminal justice workers delivered to men who were abusing women. It does not have to be as intense as that, but there is no doubt that it is possible to challenge and change behaviour if that is done effectively, if the programme work is established and if we know it can work. That is the challenge for us and it would be a powerful move to write that into legislation.’

146. Ann Hamilton from Glasgow City Council told the Committee about the success of re-education/rehabilitation programmes which have operated in England—

‘I cannot give the figures for Birmingham and Middlesbrough. However, this morning, I took a quick look at the figures for one of the programmes. In Hampshire, 383 men were arrested for kerb crawling over the past year, 82 of whom ended up in court. That was either because they were precluded from attending the kerb-crawling school or did not pay their fine, which meant that they could not go on the programme. The statistics from Hampshire show that only four of the 383 men reoffended.’

147. Dr Sanders from University of Leeds, however, questioned the achievements of rehabilitation programmes, she told the Committee—

‘My evidence brings together evaluations of kerb-crawler rehabilitation programmes in the United States and North America, where most of them are. Only recently have two or three such programmes—in Hull, Hampshire and Nottingham—been introduced in Britain.

All the evaluation studies of programmes in the United States highlight that effectiveness cannot be measured by the rate of reoffending [...]’

‘The evaluation is not only mine. Evaluations have been done of similar programmes, mainly in America. No programme anywhere in the world has ever existed for more than two years, because they have not been seen to be effective.’

148. The success of rehabilitation projects was also questioned by the UK Network of Sex Work Projects in written evidence.
149. The Committee notes the comments made by witnesses about the use of re-education programmes for purchasers of sex and rehabilitation and drug programmes for sellers of sex. The Committee invites the views of the Scottish Executive on the use of re-education and rehabilitation projects.

Title of the Bill – stigmatisation

150. Several witnesses highlighted to the Committee their view that the particular title of the Bill might mean that a woman found guilty of an offence but subsequently attempting to leave prostitution might be stigmatised if the offence appears on her record. COSLA, for example, noted in written evidence that—

‘The title of the Bill raises concerns which relate to women’s rehabilitation and moving on opportunities. A major obstacle to women seeking to leave prostitution is their criminal record. Prospective employees for posts, to which relevant legislation applies, are required to declare any previous offences. The implementation of the Police Act 1998 increased the range of excepted posts, to include posts in social services, health care and nursing homes. These are posts which many women previously involved in prostitution seek, but can find difficulty in obtaining due to their previous involvement in prostitution.’

151. This issue was also identified by the UK Network of Sex Work Projects in its written evidence—

‘The name of the Bill is problematic, stigmatizing and could act as a barrier to exiting for women who have been involved in street sex work. To be charged with an offence under the proposed Bill will leave someone with a “prostitution” offence on their record.’

152. The Committee raised these concerns with the Deputy Minister who told the Committee—

‘We were concerned that the title of the bill could hamper those who want to try to find a route out of prostitution because it may reveal the status of an offence that they had committed and thereby stigmatise them during attempts to find employment, or in other matters in which the offence may be revealed.

We have sent a letter to the committee that clarifies what would currently be revealed in an enhanced disclosure as a result of an application to Disclosure Scotland. Unfortunately, the offence in question would be disclosed. The letter gives as an example of what might be said on a disclosure document,

"Prostitute (Male or Female) soliciting [...] Civic Government (Scotland) Act 1982",

therefore that issue already exists.

79 COSLA written submission
80 UK Network of Sex Work Projects written evidence
We must reflect on whether any changes to the bill would prevent the stigmatisation that could result from the enhanced disclosure process. We received that information only recently after we had made inquiries as a result of concerns that had been raised with us.

153. The Committee notes that the issue already arises that a woman attempting to leave prostitution could be stigmatised by details of the offence appearing on her record. Nevertheless, the Committee still feels that this is an important point and therefore asks the Scottish Executive to reflect on whether there is any flexibility within the Disclosure Scotland regime to manage this information in such a way that the potential for stigmatising former prostitutes is minimised. The Committee also asks for the Scottish Executive’s views on whether changing the short title of the Bill might assist in this objective. The Committee notes that if the Executive amended the Bill so that the new offences applied solely to purchasers and the existing law was kept in place for sellers, then this might reduce the possibility of stigmatisation.

Sanctions for children and young people

154. In a written submission, Barnardo’s Scotland raises a number of concerns relating to the lack of age sensitivity in the Bill. The written submission states—

‘Barnardo’s Scotland firmly believes that any young people found to be engaged in prostitution must be diverted towards support services rather than criminal sanction. Under 16s should be dealt with through the Children’s Hearings system, where it is hoped that support measures would be identified. However this still leaves a dangerous gap for 16 and 17 year olds who, unless they are already subject to a supervision order, fall within the remit of adult justice services. For us this is first and foremost a matter of principle. It is simply wrong to criminalise those who are themselves the victims of crime, and who “cannot consent” in the crime.

155. Barnardo’s Scotland argues that if the Executive is to pursue a form of the Bill that is applicable to all age groups, intervention for those under 18 must be in the form of support rather than legal sanction. According to Barnardo’s Scotland, there are precedents for this type of approach, particularly the ‘arrest referral’ schemes now underway in relation to alcohol misuse and domestic abuse. Barnardo’s Scotland therefore urges that, before accepting the general principles of the Bill, the Committee considers how vulnerable young people could be impacted by the measures, and ask the Scottish Executive how it will ensure this group will be supported rather than criminalised.

156. The Committee seeks the views of the Scottish Executive on the points raised by Barnardo’s Scotland relating to the implications of the Bill for children and young people.

OTHER VIEWS

157. In this report the Committee is required to examine the specific legislation introduced to the Parliament: the Prostitution (Public Places) (Scotland) Bill. The
Committee does not consider that it is within the scope of its work to examine in
detail the wider moral and social issues associated with prostitution. The
Committee, however, wishes to record the range of evidence submissions it
received on the Bill. Some of these suggested that the Executive’s legislative
approach was broadly correct. Others argued that the Bill did not address
problems associated with prostitution or was not an appropriate solution. Some
organisations and individuals set out alternative approaches to the problem of
prostitution. These view are summarised below.

158. COSLA welcomed elements of the Bill—

‘The replacement of the Civic Government (Scotland) Act 1982, Section 46,
is….welcomed in terms of working towards creating a non discriminatory
approach to dealing with offences involving the selling or procurement of sex
through prostitution. By introducing specific legislation that includes those
who seek to purchase the services of prostitutes in a public place, it is hoped
that demand will be significantly reduced.’

159. The Scottish Episcopal Church commended the Bill as a first step in dealing
with the issue of prostitution. Other submissions, however, were more critical of
the Bill.

Legal status of prostitution
160. As discussed above, the new offences proposed in the Bill would replace the
current legislation in relation to prostitution contained in the Civic Government
(Scotland) Act 1982. This Act does not in itself provide that prostitution is a
criminal offence. Instead the current law is concerned with criminalising certain
activities surrounding prostitution.

161. Some responses to the Committee’s call for written evidence argued that the
Bill struck the wrong balance in relation to the legal status of prostitution. The
Scottish Police Federation argued in a written submission—

‘The effect of the proposals in the Bill would be to make lawful selling or
buying sexual engagement where no alarm, offence or embarrassment is
caused as a result and this would be seen as a public order offence rather
than a sexual offence. We have not ignored the subtleties of the Expert
Group on Prostitution in Scotland (EGPS) Report but we believe this
effectively legalises prostitution and sends the wrong message regarding
this.

The Scottish Police Federation does not support the legalisation of
prostitution. We do not take this position on moral grounds but for reasons of
general public safety, the safety of people involved in prostitution and the
maintenance of good order as outlined below.’

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81 COSLA written submission
82 Scottish Police Federation written submission
162. The Highland Wellbeing Alliance\textsuperscript{83}, the Community Planning Partnership for the Highlands, raised a similar point in written evidence—

‘We believe that the purchasers of sex should be criminalised for the act of buying sex, regardless of whether they “solicit[s] in a relevant place in such a manner or in such circumstances as a reasonable person would consider to be likely to cause alarm, offence or nuisance” or not. This is because the Highland Wellbeing Alliance believes men who buy sex are perpetrating and perpetuating Violence Against Women.’\textsuperscript{84}

163. CARE, a national Christian movement and charity, argued that the legislation should not be afraid to criminalise on a moral basis—

‘We are concerned by the tendency, perhaps exemplified in the Bill, not to criminalise on a moral basis. All legislation reflects the Government’s view of what is morally right or wrong. Legislation relating to fraud, murder or the sexual abuse of minors reflects a clear view within society that such activities should not be tolerated. In passing such legislation Parliament makes a moral judgement. We would argue that it is appropriate to make a similar moral judgement in relation to the exploitation of women through prostitution and other forms of paid for sex. We would argue that this applies, in particular, in the cases of women who have been trafficked with the aim of sexual exploitation through prostitution.’\textsuperscript{85}

\textit{Failure to address problems faced by prostitutes}

164. Some submissions to the Committee thought that the Bill did not do enough to address the problems faced by prostitutes. Professor Marina Barnard of the Centre for Drug Misuse Research at University of Glasgow stated—

‘This Bill therefore seems to be less about improving the lot of prostitutes, which was an explicit focus of the Expert Group, than efforts to control it through the mechanism of public nuisance.’\textsuperscript{86}

165. The Women’s Support Project, a Glasgow based charity working against violence against women and children, wrote—

‘We are concerned that the Prostitution Bill proposes using the same offence against those buying sex, and those selling sex. This sends the wrong message both to those directly involved, and to society. Prostitution is effectively a market, and like any other market it is driven by the demand from men to buy sex. Therefore the only long-term solution is to challenge that demand both through public education work and developing effective criminal justice responses.

\textsuperscript{83} Statutory members are NHS Highland, The Highland Council, Scottish Natural Heritage, Highlands & Islands Enterprise, Northern Constabulary, Highlands & Islands Fire & Rescue Service, and Communities Scotland

\textsuperscript{84} Highland Wellbeing Alliance written submission

\textsuperscript{85} CARE written submission

\textsuperscript{86} Professor Marina Barnard written submission
Having considered the draft Bill and the Policy memorandum we are convinced that this legislation will not reduce the harm caused to women in prostitution. We believe that retaining the section 46 offence for women would be preferable, until such time as safeguards are in place to allow for the decriminalising of soliciting for those selling sex (the ‘Swedish’ approach)."87

166. A submission from the UK Network of Sex Work Projects also criticised the approach of the Bill—

‘There is consensus amongst our members that the criminalization of street sex workers, through the enforcement of specific legislation linked to soliciting, paying for sex and kerb crawling, is ineffective and creates a number of problems.

The UK NSWP would welcome a legislative framework which enabled responsible authorities to have the option of managing street sex work away from residential communities for example within a “managed area”. Hence giving street sex workers somewhere to work without causing “nuisance”, “alarm” and “distress” to communities. We are clear that managed areas should not be proposed as a single “solution” to the problems of street sex work, but should be an optional part of a wider, multi-layered strategy on female street sex work.”88

167. NHS Greater Glasgow and Clyde argued that the proposals in the Bill could lead to prostitutes being worse off than under the current legislation—

‘At present, the focus of the Bill is limited to protecting communities from the public nuisance associated with prostitution. This appears to be a pragmatic, piecemeal measure aimed at achieving a short-term objective, which, in isolation is likely to have a limited impact…

Given that the proposed Bill does not improve the current situation for women and might in fact be detrimental, it may be worth considering retaining the current legislation (section 46) for those selling sex and amending the proposed bill to target the purchasers of sex, whilst strengthening the Bill in relation to kerb crawling.”89

168. The Scottish Coalition Against Sexual Exploitation criticised the Bill as representing an inappropriate response to what it considered to be violence against women—

‘Introducing legislation, which would be applied equally to those causing harm and those experiencing harm, in other words the perpetrator and the victim, is inconsistent with the Executives overall approach to violence against women—

87 Women’s Support Project written submission
88 UK Network of Sex Work Projects written submission
89 NHS Greater Glasgow and Clyde written submission
against women. In what other area of violence against women would it be proposed to criminalise the victim?\textsuperscript{90}

169. The Committee did not attempt to pursue all these wide-ranging points with the Deputy Minister in oral evidence. However, in evidence, the Deputy Minister did make the point that the Bill represented just one element of the Executive’s approach to the issue of prostitution—

‘As I have said, the bill is only the first step in the process. The decision was made to take action on the narrow subject of street prostitution. As you say, bigger issues such as indoor prostitution and trafficking will have to be tackled later. Work on that continues.

Another matter that has not been talked about much in the committee meeting is all the good work by the local authorities in Glasgow and Edinburgh to help the victims, who are the prostitutes who are out on the street, exposed to danger nightly. We have seen some consequences of that. Guidance has been given to local authorities to ensure that the same level of service is provided throughout Scotland, although prostitution is centred on the four main cities. That is an important part of the work—perhaps it is just as important as creating a new offence.’\textsuperscript{91}

170. The Committee notes the wide-ranging views it has received on how to address the issue of prostitution. As mentioned above, the Committee’s role is to consider the Prostitution (Public Places) (Scotland) Bill, rather than to make recommendations in relation to the complex wider issue of prostitution. Indeed, the Committee acknowledges that the scope of the legislation is deliberately narrow: the Executive has never suggested that it represents a complete solution to the problems associated with prostitution. The Bill must be viewed in this context. Clearly much additional work needs to be done, and much of this will not rely on legislation to have effect. The Committee does note, however, that the weight of evidence it has received suggests considerable dissatisfaction exists with the legislative proposals brought forward by the Executive, from a wide range of different organisations with an interest in this issue.

CONCLUSION

171. The Committee has highlighted in this report a number of major problems with the Prostitution (Public Places) (Scotland) Bill, as currently drafted, which emerged during evidence taking on the Bill. The Committee’s view is that, were the Bill not to be amended, these problems could call into question whether the Bill will actually address the problems faced by communities affected by prostitution, and whether it can, and will, be enforced.

172. In the course of its Stage 1 scrutiny, this Committee has identified and explored a number of problems with the Bill, as drafted. As a result of the

\textsuperscript{90} Scottish Coalition Against Sexual Exploitation written submission

\textsuperscript{91} OR Col 4251
Committee’s scrutiny, the Executive’s position on a number of key issues appears to be shifting. These issues were set out in a letter from the Deputy Minister to the Committee of 18 December 2006. Whilst this letter notes that firm commitments to amend the Bill could not be made at this stage, it does indicate some of the Executive’s thinking—

Removal of reference to sellers

173. The letter from the Deputy Minister states:

‘It would be possible to restrict the Bill so that it does not relate to those engaging in prostitution. The Bill could also be amended so that it does not provide for the repeal of section 46 of the Civic Government (Scotland) Act 1982. This would have the effect of applying the new offences solely to purchasers and keeping the existing law in place for sellers. Such an approach could provide a clearer focus on challenging the behaviour of those seeking to purchase sex in public places, which, in turn, may assist in tackling the demand for street prostitution - a key component if we are to deliver our long-term objective of eradicating street prostitution.

It would, however, be a departure from the Expert Group’s recommendation in relation to sellers. We would also need to consider issues of consistency between the offences for seller and purchaser.’

Increased penalties for purchasers

174. The letter from the Deputy Minister states:

‘A number of Committee members indicated during the evidence sessions that they would wish to see heavier penalties available to courts in dealing with purchasers. There was some discussion of a higher maximum fine and the possibility of making disqualification from driving or vehicle seizure available to the courts.

If the new offences were to apply only to purchasers, then it might be possible to provide a more tailored and punitive package of penalties, particularly for repeat offenders, without risking unintended consequences for sellers.’

Inclusion of “loitering in a car”

175. The letter from the Deputy Minister states:

‘…We are carrying out detailed work into the scope for an offence which would enable charges to be brought against those loitering in a vehicle, or driving around slowly, for prostitution-related purposes. This involves complex questions of law. We need to consider the potential ECHR implications of any approach, as well as the wider practical and legal implications.

One possibility may be to enable a person to be charged with a loitering offence, whether on foot or in a vehicle, when in all the circumstances, it is reasonable to infer that the person is loitering for prostitution related purposes. To ensure fairness, the accused would have to be entitled to
advance defences or justifications for their conduct. Such a provision would not allow the accused to evade conviction by raising plainly absurd explanations for his conduct (e.g. an explanation of being lost where there is evidence of the accused being there on a number of previous occasions, or an explanation that he was waiting for his wife where it can be established that he does not have a wife).’

Management zones

176. The letter from the Deputy Minister states:

‘Several members of the Committee have expressed considerable concern over the existence of informal management zones or tolerance zones, i.e., areas where the local police force operates a policy of not charging individuals for soliciting, loitering or importuning under section 46, provided that they remain within a designated area and operate only during designated times.

The police have a general duty to enforce the law, although they have a certain measure of discretion as to the way in which this is done. Judgements may be made as to how the law is to be enforced in the public interest. As I indicated during my evidence on 28 November, it would not be appropriate for the Executive, or indeed Parliament, to interfere with operational policing decisions. However, I can confirm that existing prostitution offences apply throughout Scotland. The Executive has no plans to change the law in this respect, and the Bill will not do so.’

177. The Committee notes the apparent shift in the Deputy Minister’s position on some key issues, in response to the concerns highlighted by this Committee during the passage of the Bill. As a result, the Committee has reviewed its position on the Bill. Formerly, the Committee had not been in a position to endorse the general principles of the Bill, and would instead have made no recommendation on the question of whether or not Parliament should agree to its general principles.

178. The Committee now acknowledges, however, the apparent willingness of the Scottish Executive to revisit the Bill at Stage 2 to address the Committee’s concerns. The Committee considers that the Scottish Executive should be allowed an opportunity to amend the Bill to meet these concerns.

179. The Committee recommends, therefore, that Parliament agrees to the general principles of the Prostitution (Public Places) (Scotland) Bill, but only if the Executive states at, or in advance of, the Stage 1 debate—

- That it will bring forward amendments at Stage 2, as recommended by the Committee, on (a) removing the reference to sellers in the Bill (b) increasing penalties for purchasers, and (c) including a new offence of loitering in a car;
- How it will address the Committee’s concerns that the Bill could lead to the creation of management zones for prostitution; and
• How it will respond to the other recommendations outlined in this report.
ANNEXE A: REPORTS FROM OTHER COMMITTEES

REPORT FROM THE SUBORDINATE LEGISLATION COMMITTEE

The Committee reports to the lead Committee as follows—

Introduction

1. At its meeting on 26 September, the Subordinate Legislation Committee considered the delegated powers provisions in the Prostitution (Public Places) (Scotland) Bill at Stage 1. The Committee submits this report to the Local Government and Transport Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Parliament with a memorandum on the delegated powers provisions in the Bill.\(^2\)

Delegated Powers Provisions

3. The Bill contains one delegated power in section 4 with which the Committee is content.

\(^2\) Delegated Powers Memorandum
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

22nd Meeting, 2006 (Session 2)

Tuesday 19 September 2006

Present:

Fergus Ewing (Deputy Convener)         Paul Martin
Bristow Muldoon (Convener)             Elaine Murray (Committee Substitute)
Mike Rumbles                            Ms Maureen Watt

Apologies were received from Dr Sylvia Jackson, David McLetchie, Michael McMahon and Tommy Sheridan.

The meeting opened at 2.06 pm.

7. **Prostitution (Public Places) (Scotland) Bill (in private):** The Committee considered and agreed its approach to the bill.

The meeting closed at 3.32 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

24th Meeting, 2006 (Session 2)
Tuesday 3 October 2006

Present:
Fergus Ewing (Deputy Convener)  Paul Martin
David McLetchie                 Michael McMahon
Bristow Muldoon (Convener)      Mike Rumbles
Ms Maureen Watt

Apologies were received from Dr Sylvia Jackson and Tommy Sheridan.

The meeting opened at 2.03 pm.

3. **Prostitution (Public Places) (Scotland) Bill**: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Alison Douglas, Head of Corporate Killing & Prostitution Team and Patrick Down, Corporate Killing & Prostitution Team

   and then from—

   Margo MacDonald, MSP and Mary Blackford, Constituency Assistant.

The meeting closed at 5.18 pm.
Present:

Fergus Ewing (Deputy Convener)          Paul Martin
David McLetchie                         Michael McMahon
Bristow Muldoon (Convener)              Mike Rumbles
Tommy Sheridan                          Ms Maureen Watt

Apologies were received from Dr Sylvia Jackson.

The meeting opened at 2.02 pm.

2. **Prostitution (Public Places) (Scotland) Bill**: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Ruth Morgan Thomas, Manager, Scot Pep and Jinty Kerr, Co-Chair, Scot Pep Board of Directors;

   Cath Smith, Routes Out Intervention Team and Anne Fallon, Routes Out Intervention Team

   and then from—

   Amanda Bell, Chairperson Calton for All and Jennifer McCarey, Committee Member Calton for All;

   Alan Beatson, Chair, Leith Links Residents Association and Senga Bethune, Member, Leith Links Residents Association.

The meeting closed at 6.14 pm.
Present:

Fergus Ewing (Deputy Convener)  
David McLetchie  
Bristow Muldoon (Convener)  
Tommy Sheridan  

Paul Martin  
Michael McMahon  
Mike Rumbles  
Ms Maureen Watt

Also present: Mr Frank McAveety, Margo MacDonald.

Apologies were received from Dr Sylvia Jackson.

The meeting opened at 2.03 pm.

2. **Prostitution (Public Places) (Scotland) Bill:** The Committee took evidence on the general principles of the Bill at Stage 1 from—

Leslie Brown, Community Safety Strategist, Aberdeen City Council, Ann Hamilton, Principal Policy Officer Corporate Policy, Glasgow City Council, Councillor Kingsley Thomas, City of Edinburgh Council

and then from—

Assistant Chief Constable John Neilson, Strathclyde Police; Assistant Chief Constable Neil Richardson, Lothian and Borders Police, Detective Superintendent James Cameron, Tayside Police and Chief Inspector Mark Cooper, Grampian Police

and then from—

Dr Teela Sanders, Senior Lecturer in Sociology of Crime and Deviance, Leeds University.

The meeting closed at 5.14 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

27th Meeting, 2006 (Session 2)

Tuesday 7 November 2006

Present:

Fergus Ewing (Deputy Convener)  Paul Martin
David McLetchie                  Michael McMahon
Bristow Muldoon (Convener)       Mike Rumbles
Tommy Sheridan                   Ms Maureen Watt

Also present: Mr Frank McAveety, Margo MacDonald.

Apologies were received from Dr Sylvia Jackson.

The meeting opened at 2.07 pm.

2. Prostitution (Public Places) (Scotland) Bill: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   George Lyon, Deputy Minister for Finance and Public Service Reform, Alison Douglas, Head of Corporate Killing and Prostitution Team, Patrick Down, Policy Officer, Corporate Killing and Prostitution Team and Paul Johnston, Solicitor, OSSE;

   Andrew McIntyre, Principal Procurator Fiscal Depute, Victims and Diversity Policy and Development Department.

4. Prostitution (Public Places) (Scotland) Bill (in private): The Committee considered the possible contents of its Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill.

The meeting closed at 4.58 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

29th Meeting, 2006 (Session 2)

Tuesday 21 November 2006

Present:

Fergus Ewing (Deputy Convener)  Paul Martin
David McLetchie  Michael McMahon
Bristow Muldoon (Convener)  Mike Rumbles
Tommy Sheridan  Ms Maureen Watt

The meeting opened at 2.07 pm.

4. **Prostitution (Public Places) (Scotland) Bill (in private):** The Committee considered a draft of its Stage 2 Report on the Prostitution (Public Places) (Scotland) Bill.

   The Committee agreed to invite George Lyon, Deputy Minister for Finance and Public Service Reform to give further oral evidence on the Prostitution (Public Places) (Scotland) Bill.

The meeting closed at 5.17 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

30th Meeting, 2006 (Session 2)

Tuesday 28 November 2006

Present:

Dr Sylvia Jackson  Paul Martin
David McLetchie   Michael McMahon
Bristow Muldoon (Convener)  Mike Rumbles
Tommy Sheridan  Ms Maureen Watt

Apologies were received from Fergus Ewing.

The meeting opened at 2.01 pm.

1. Decision on taking business in private: The Committee agreed to take item 4 and any future consideration of the draft Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill in private.

3. Prostitution (Public Places) (Scotland) Bill: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   George Lyon, Deputy Minister for Finance and Public Service Reform, Patrick Down, Policy Officer, Corporate Killing and Prostitution Team, Paul Johnston, Solicitor, OSSE and Andrew McIntyre, Principal Procurator Fiscal Depute, Victims and Diversity Policy and Development Department.

4. Prostitution (Public Places) (Scotland) Bill (in private): The Committee considered a draft of its Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill.

   The Committee agreed to request to the Parliamentary Bureau that a member of the Bureau lodges a business motion seeking the agreement of the Parliament to a 2 week extension to the timetable for the consideration of the Bill at Stage 1.

The meeting closed at 3.58 pm.
Present:

Fergus Ewing (Deputy Convener)            Dr Sylvia Jackson
Paul Martin                                David McLetchie
Michael McMahon                            Bristow Muldoon (Convener)
Mike Rumbles                                Tommy Sheridan
Maureen Watt

The meeting opened at 2.00 pm.

4. **Prostitution (Public Places) (Scotland) Bill (in private):** The Committee considered a draft of its Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill.

The meeting closed at 3.49 pm.
Present:
Fergus Ewing (Deputy Convener)                       Dr Sylvia Jackson
Paul Martin                                          David McLetchie
Michael McMahon                                      Bristow Muldoon (Convener)
Mike Rumbles                                         Tommy Sheridan
Maureen Watt

The meeting opened at 2.00 pm.

2. **Prostitution** (Public Places) (Scotland) Bill (in private): The Committee considered a draft of its Stage 1 Report on the Prostitution (Public Places) (Scotland) Bill. Subject to a number of changes, to be approved by the Convener and the Deputy Convener, the report was agreed to.

The meeting closed at 3.49 pm.
Prostitution (Public Places) (Scotland) Bill: Stage 1

15:07

The Convener: Agenda item 3 is stage 1 consideration of the Prostitution (Public Places) (Scotland) Bill. Our first group of witnesses is from the Scottish Executive. I welcome Alison Douglas, who is head of the corporate killing and prostitution team, and Patrick Down, who is part of that team. As normal, I will ask them to make introductory remarks, after which we will move on to questions and answers.

Alison Douglas (Scottish Executive Justice Department): Perhaps I can start by explaining the context for the bill. The Local Government Committee in the first session of the Parliament considered Margo MacDonald’s member’s bill—the Prostitution Tolerance Zones (Scotland) Bill—following which it asked the Executive to examine the issue of street prostitution more broadly. The Executive set up an expert group, of which Ms MacDonald was a member. The group reported in December 2004.

The report included proposals for amending the existing soliciting offence under the Civic Government (Scotland) Act 1982. The Executive put the group’s report out to consultation, which closed in April 2005. We then issued our response in November 2005 and made two commitments. One was to amend the existing soliciting offence and introduce a new gender-neutral offence, which would apply to both sellers and purchasers of sexual services and bring the purchaser into the picture for the first time.

It was decided that an objective test should be introduced, which would make it unnecessary for a complaint to be made. Although the expert group had suggested that there might be a number of possible models, the responses that the Executive received to its consultation made it clear that an objective test would be more effective.

As a result, a commitment was made to introduce new legislation that would repeal section 46 of the Civic Government (Scotland) Act 1982, which is on offences related to soliciting and importuning by prostitutes. In addition, guidance will be issued to local authorities and their community planning partners on how to deal with street prostitution at a local level to acknowledge the fact that, in Scotland’s four major cities, the picture of the number of people involved in these activities and where they take place is rather disparate.

Patrick Down will explain the bill’s provisions in more detail.
Patrick Down (Scottish Executive Justice Department): As Alison Douglas has outlined, the bill covers prostitution activity in public places and replaces the existing provisions in section 46 of the Civic Government (Scotland) Act 1982 with offences that apply to people who purchase and sell sex.

The bill makes it an offence to loiter or solicit for prostitution-related purposes

“in such a manner or in such circumstances as ... to be likely to cause alarm, offence or nuisance”

to “a reasonable person”. I should point out that the terms “loiter” and “solicit” are used to describe the actions of both purchaser and seller.

With an objective test, there will be no need for a member of the public to be caused actual nuisance, offence or alarm. Instead, the test is whether the offence will

“be likely to cause alarm, offence or nuisance”

to "a reasonable person" who might witness it.

There are two reasons for such an approach. First, if another test were applied, people might be reluctant to complain for fear of being intimidated. Secondly, the objective test will enable the police to enforce the legislation in practice. After all, we cannot rely on the prospect of an individual always being present to be caused nuisance, offence or alarm, even though, given the areas where such activities take place and the activities themselves, that is quite likely to happen.

The offences apply in what are termed relevant places, which in the bill cover public places and other places that other people would think of as such—even though, in a strict sense, they are not. For example, the term covers any place to which the public would usually have access

“whether on payment or otherwise”,

which includes theme parks, nightclubs and football grounds. The bill covers public transport separately because, strictly speaking, although buses and trains are generally regarded as public, they are not places.

In contrast with the loitering offence, the soliciting offence also applies explicitly to motor vehicles and to any

“place which is visible from”

a public place. If someone were to solicit for the purposes of prostitution or purchasing sex from a window from which they could be seen from the street, from a driveway just off the street or from a car being driven down the street, they would be committing an offence. However, the loitering offence applies only in relevant places.

I should also point out that hire cars are specifically exempted from the loitering offence.

Although hire cars are a form of public transport, they are much more analogous to private cars, to which the soliciting offence applies. If someone parks or drives around slowly supposedly for the intention of obtaining a prostitute’s services, the loitering offence will not apply.

Given that these are only low-level summary offences, the maximum penalty is a fine not exceeding level 2 on the standard scale, which is currently £500. We are encouraging the use of alternative rehabilitative disposals, as outlined in the Executive’s response to the expert group. However, that is not a matter for the bill, because such disposals might apply to a range of offences.

Section 2 gives police constables a specific power of arrest in relation to these offences over and above the general common-law power of the police. That is because the police tell us that nowadays they prefer to have statutory powers of arrest to clarify their powers in relation to individual offences.

The Convener: Thank you for those introductory remarks. We will move on to questions. Margo MacDonald is here; I am happy to allow her to ask questions, but I will take the committee members’ questions first.

Mike Rumbles: Section 1 is concerned with the sellers and purchasers of sexual services. Section 1(6) says:

“No offence under subsection (4),

which is on loitering,

"is committed by B if B is in a motor vehicle which is not public transport.”

I cannot find anything in the explanatory notes about section 1(6). Are you saying that the loitering offence for which someone can be arrested under the special powers in section 2 is not applicable to someone in a motor vehicle?

Alison Douglas: Both the loitering offence and the soliciting offence are applicable in principle to the purchaser and the seller. I was not sure whether you understood that. There is no distinction between purchaser and seller; both offences of soliciting and loitering can be committed by a purchaser or a seller.

Mike Rumbles: Section 1(6) clearly says that no offence is committed by an individual if that individual is in a motor vehicle.

Alison Douglas: Our lawyers have told us that an offence of loitering cannot be committed by an individual in a private motor vehicle.

Mike Rumbles: Soliciting is currently an offence.
There are two different types

Somebody may solicit to

I have a supplementary

Because people may be

The minute that they solicit

is committed if an individual is in a motor vehicle.

purchase their sexual services.

soliciting someone to

approaching someone in order to sell sexual

services, but it is possible to solicit someone to

purchase their sexual services.

However, you are correct that under the bill, it

will not be possible to prosecute someone in a

vehicle for loitering. There is a technical reason for

that, but there is also a practical reason, which is

that it would be difficult to prove the intent of

someone driving round the streets. That was

raised as a particular issue in Glasgow, where one

of the main areas for soliciting is in an area where

people come and go 24 hours a day to work in call

centres or to pick family members up from work,

for example. Therefore, it would be difficult to

prove that people who might be driving around an

area slowly or sitting in a stationary car intended to

buy sex. There would have to be an approach

from somebody in a vehicle—in other words,
soliciting behaviour—in order for an offence to be

committed.

I stress that I am using my

imagination here, but I understand from what I

have read and seen on television that when

prostitution takes place it normally involves a guy

in a car going round an area. Is dealing with such

behaviour not the whole purpose of the bill?

The minute that they solicit

from the vehicle they are potentially committing an

offence.

But the bill says that no offence

is committed if an individual is in a motor vehicle.

No offence is committed under

section 1(4), which is the loitering offence. The

soliciting offence applies to people operating from

a motor vehicle; however, on the loitering offence,

we decided that it was not really possible to get

evidence of somebody in a motor vehicle loitering

for the purposes of prostitution.

So section 1(1) is not just about

the seller of sexual services; it is about the

purchaser as well.

That is the point I was trying to

explain. Soliciting can be done by either the

purchaser or the seller. Traditionally, people have

understood that soliciting meant that the seller was

soliciting somebody. However, the definition of

“solicit” covers the purchaser as well as the seller.

I am pursuing this point

because I think that it is important. Section 1(1) is

not just about the seller but about the purchaser of

sexual services. What you are saying is that

somebody can solicit from a car.

Somebody may solicit to

purchase sex or to sell sex.

I understand that entirely, which

is why I am asking what the point is of section

1(6), on the offence of loitering.

Because people may be

causing a nuisance by loitering on the street or in

a relevant place—

If you are saying that section

1(1) is sufficient to catch both the purchaser and

seller of sexual services, why do you need a

further provision?

There are two different types

of behaviour: soliciting and loitering.

I am still not clear about that but

perhaps I shall come back to it.

I have a supplementary

question that follows on closely from Mike

Rumbles’s question. I think that I am clear about

the issue of someone being in a motor vehicle—

the example that you gave was of someone quite

innocently picking up a family member or friend.

However, I do not understand section 1(5), which

says:

“For the purposes of subsection (4) it is immaterial

whether or not B is on public transport.”

I do not quite grasp how someone who is on a bus

or a train could be described as loitering. How

could you ascertain whether someone was

loitering with the intention of purchasing sexual

services if they were on a bus or a train?

We would have to agree that

such a scenario would be pretty unlikely, but we

did not want to rule it out.

In all our previous
discussions on the issue and Margo MacDonald’s

Prostitution Tolerance Zones (Scotland) Bill, the

debate tended to focus on the relationship

between a man and a woman, with the woman

being the prostitute. For clarity, is any distinction

made in the bill for male prostitutes?

None whatever.

To continue Mike Rumbles’s

line of questioning, driving round slowly in cars in

an area where prostitutes are known to operate is

commonly regarded as kerb crawling, and such

conduct is regarded as offensive. Correct me if I

am wrong but, as I understand it, if someone is

simply driving slowly round an area looking at

prostitutes and perhaps establishing themselves
as a potential buyer of sexual services, that is not an offence under the bill.

**Alison Douglas:** An offence requires an approach to be made.

**David McLetchie:** Driving around slowly, or kerb crawling, which almost certainly establishes the driver as a potential customer in the eyes of a prostitute, is not an offence.

**Patrick Down:** An offence is committed the moment that the person stops the car and winds down the window or flashes their lights as a signal.

**David McLetchie:** Let us say that a person drives around the block three or four times and establishes himself as a potential customer. Then he pulls over to the kerb adjacent to an apparent prostitute who is on the street and winds down the window. If he says nothing after winding down the window, but the woman approaches him and says, “Are you interested?”—or whatever is said in such transactions—am I right in thinking that he has not done any soliciting? All he has done is wind down the window.

**Patrick Down:** I would not like to give a definitive answer, but it is at least arguable that the act of winding down the window, following which the woman might get into the car, is almost proof that he is soliciting, albeit tacitly.

**David McLetchie:** That seems bizarre. You are saying that there cannot be an offence of loitering when someone drives around in a car because intent cannot be proved, but how can you prove intent from someone pressing a button to wind down their window? The person might be asking for directions. I presume that in such a situation, the soliciting is done by the woman who approaches the driver.

Let me go back to my example. The driver has established himself as a potential customer by crawling round the block a few times. He then pulls in opposite a woman whom he believes to be a prostitute and the soliciting is then done by the woman—assuming that it is a female prostitute rather than a male one. The offence will almost certainly have been committed by her because all the driver has done is wind down the window. If there can be no offence of loitering because intent cannot be proved, why is soliciting an offence when intent cannot be proved?

**Alison Douglas:** We recognise that there are evidential issues. In most situations the person who is selling sexual services is on the street and involved in a greater number of transactions. Therefore, it is inevitable that they are more likely to be prosecuted.

However, an important purpose of the legislation is to send a deterrent message to individuals who go out to purchase sex. For the first time, we are trying to bring the purchaser into the picture, notwithstanding that there might be challenges in proving a case.

**David McLetchie:** You say that there are evidential issues with soliciting from a car, although that is to be an offence. There are also evidential issues to do with loitering in a car, but that will not be an offence. Is that not what you are saying?

**Patrick Down:** The evidential issues in relation to loitering are greater. It is worth bearing in mind that although the term “kerb crawling” is used colloquially, the English kerb-crawling legislation criminalises soliciting from a motor vehicle for the purposes of obtaining the services of a prostitute. I dare say that there are frequent evidential difficulties, but convictions are obtained under that legislation.

**David McLetchie:** But if you want to go around sending messages rather than having properly framed laws, would it not send a better message to the public about the unacceptability of kerb-crawling if, notwithstanding the evidential difficulties, you said that loitering from a car was an offence? That might be evidentially difficult to prove in the same way as proving soliciting from a car might be evidentially difficult, but surely the message should be that, in Scotland, we disapprove of kerb-crawling. We could make loitering illegal in the same way as soliciting and then deal with the evidential problems according to the circumstances of the offence.

15:30

**Alison Douglas:** There is a significant difference in contact between loitering and soliciting. Contact must be made for soliciting to be proven. You are saying that simply driving slowly around an area could be tantamount to the commission of an offence.

**David McLetchie:** What about loitering by the seller? You say that walking slowly up and down a street for an hour or so is tantamount to committing an offence. Is that not what loitering is?

**Alison Douglas:** A person must be causing nuisance—that is the public order element that is relevant to individuals who are on the street.

**David McLetchie:** So you would say that a greater nuisance is caused to the public by a prostitute—male or female—walking slowly up and down a street for an hour or so than by somebody cruising around the block four or five times in a car.

**Alison Douglas:** A combination of factors is involved. The bill uses the phrase “in such a manner or in such circumstances”,

In such a manner or in such circumstances,”
which might bring in evidence about the purpose of somebody’s activity. Evidently, it is easier to prove the intent when somebody is on the street.

David McLetchie: I do not doubt for a moment that intent in such circumstances might be easier to prove evidentially, but the point that Mr Rumbles and I are getting at is that the bill is supposed to be neutral and balanced, so it is curious that it says that one of the activities that people complain about most, which kerb-crawling undoubtedly is, is not an offence. Does not the bill say in effect that what we commonly regard as kerb-crawling is not an offence?

Alison Douglas: Kerb-crawling could be taken to mean approaching people or calling out to them from a vehicle.

David McLetchie: Most people regard it as cruising around rather than calling out, because most cruisers know that the minute they slow down, they will have all the solicitations they need and will therefore not commit an offence.

The Convener: I understand the point about excluding loitering if someone is in a car, because somebody who is perfectly innocent might be picking up a family member, for example. However, could not the offence be worded such that a person’s defence could be that they were picking up a family member from a call centre, for example? The police could check whether that person was related to them, was working in that call centre and was due to finish work.

Alison Douglas: We considered that option, but we were advised that it might have European convention on human rights implications.

Paul Martin: Margo MacDonald’s member’s bill would have introduced tolerance zones. Has any of its provisions on tolerance zones been incorporated in the Prostitution (Public Places) (Scotland) Bill?

Alison Douglas: The offences in the Prostitution (Public Places) (Scotland) Bill apply anywhere and their application is not intended to be suspended in tolerance zones or other areas.

Paul Martin: So we can be unequivocal that no element of tolerance zones is included in the bill and that the Executive has no plans to introduce proposals on tolerance zones.

Alison Douglas: That is correct.

Paul Martin: For clarity, the Executive has rejected any idea of tolerance zones.

Alison Douglas: The expert group concluded that tolerance zones were not the appropriate route to go down. That was reflected in the consultation and the Executive was unequivocal on that point.

Paul Martin: The bill proposes imposing a fine that does not exceed level 2. How was level 2 chosen?

Patrick Down: That is simply the same fine level as applies to the soliciting offence at section 46 of the 1982 act.

Paul Martin: Should the buyer be subject to a separate tariff that is higher than that for the seller?

Alison Douglas: The fine is a maximum, so there is some discretion for the courts.

Paul Martin: The Executive has said clearly that it will introduce an element of enforcement for buyers. Why is the fine set at the same level as for sellers? Was that decision made simply to ensure parity? How did you go about making it? Why should the fine not be set at level 3 or above?

Alison Douglas: We thought that level 2 was appropriate because we are dealing with a low-level public order offence. Patrick Down alluded to the fact that we will encourage the courts to consider alternative disposals, where available. We want to address the underlying issues for sellers, such as drug addiction. There are also diversions from prosecution. A Sacro project in Edinburgh is trying to divert women away from prosecution. Kerb-crawler diversion schemes have been set up by police forces in England and Wales to re-educate men who have been caught kerb-crawling, instead of prosecuting them.

Paul Martin: The point that I am trying to make is that we are dealing with two different offender profiles. A significant percentage of sellers are likely to have problems with drug addiction. I argue that the profile of buyers is different. Why is the tariff for both buyers and sellers the same? Should not buyers be subject to a different tariff, to send out a message and to ensure that there is no market for sellers? If we want to send out that message, should not we ramp up the tariff that is imposed on buyers?

Alison Douglas: This is a public order offence. The aim is to protect communities from the nuisance that is associated with prostitution-related behaviour. The intention is to strike a balance for the first time between purchasers and sellers. The Crown Office and the courts will deal with individual cases on their merits.

Paul Martin: How will repeated offenders be dealt with? If someone commits 10 offences, will they just come back to court repeatedly to be fined? I am talking about buyers, rather than sellers.

Alison Douglas: I am not sure how the courts will deal with repeat offenders. The only disposal that is available is a fine.
Paul Martin: So someone with a significant income could have to pay 10 fines of up to £500, but there would be no other deterrent. Is there no possibility of imprisonment or something similar for persistent offenders?

Alison Douglas: The deterrent for the purchaser is not the fine per se but the stigma that is associated with being convicted of an offence of this nature. Prosecutors take into consideration the impact on individuals’ families of their having been convicted of purchasing the services of a prostitute and the fact that some people have lost their jobs as a result.

Patrick Down: The courts have a general power, in addition to any other punishment that they impose, to disqualify from driving any convicted offender where the use of a vehicle is in some way connected to the crime. In England and Wales, that power has been used for repeat offenders in relation to kerb-crawling. I see no reason in principle for the same not to be done here, if the bill is passed and there is a specific offence that criminalises kerb-crawling.

Fergus Ewing: I want to pursue the line of questioning that Mr Rumbles and Mr McLetchie embarked upon. I return to the example of the kerb-crawling man, circling in his car. Characteristically, such a man circles around town late at night; the pattern is one of slowing down before circling again. Surely the bill could provide for that. Let us say that someone is charged for driving a car in that way, goes before the court, and is found, on evidence, to be guilty. That person will have a bit of explaining to do, as that is not the way in which someone normally drives a car. I can see no innocent purpose that is readily consistent with innocence only in circumstances consistent with guilt. We are talking about behaviour that would be described as being consistent with driving a vehicle in that way, late at night. The convener mentioned the example of someone saying that they had been picking up a family member. In those circumstances, the family member could easily support the driver’s version of events.

I suggest that it may be possible to use the rebuttable presumption standard, the usage of which is quite common in statutory offences such as bankruptcy offences, which I used to deal with in the courts. If that standard were used, a driver who was charged with kerb crawling because he had been circling around and slowing down—in other words, there was evidence that met the standard of proof that is required in criminal cases—would be presumed to be guilty of the crime unless he was able to rebut the presumption by transference of the burden of proof. His defence would be that he was picking up his granny or whoever and he would have to rebut the presumption by proving that that was the case.

I am familiar with the rebuttable presumption method, which is applied routinely to behaviour that most ordinary people would perceive to be consistent with guilt. We are talking about behaviour that would be described as being consistent with innocence only in circumstances that most people would consider to be pretty unlikely. Have you considered that method of draftsmanship? If you have discarded the concept, why did you do so?

Alison Douglas: As I think I mentioned, we explored whether we could place a reverse burden of proof. We were advised that that could raise ECHR implications.

Fergus Ewing: What implications?

Alison Douglas: We were advised of the potential, by requiring someone to prove that they were there for a legitimate purpose, for compromising their right of being innocent until proven guilty.

Fergus Ewing: That is merely a restatement of what you said previously; it does not answer the question. If the European convention on human rights states that this device cannot be used, it would not be used in other areas of criminal law. In bankruptcy law, someone who does not disclose his assets to his trustee will be found guilty of an offence unless he can prove that there was a reasonable excuse for not doing so. Why is the device acceptable for some criminal statutory offences but not for this one? I cannot understand how it can contravene the ECHR.

The Convener: In rejecting Fergus Ewing’s proposal, your defence seems to be the reverse of the position the Government takes with regard to people who are caught by speed cameras: someone will be convicted of an offence if they do not disclose who the driver of the car was at the time the car was caught on camera.

Alison Douglas: I am not an expert on ECHR; we can return to the committee with a more detailed explanation. My understanding is that questions of proportionality are involved, in that whereas it might be judged appropriate to require a reverse burden of proof for a more serious offence, the offence under the bill is a low-level public order offence. The advice that we have been given is that, on balance, what has been suggested would not be appropriate for the bill.

15:45

Fergus Ewing: Saying that a person who wants to buy sex from a prostitute commits a low-level offence whereas a person who is speeding commits, presumably, a high-level offence seems a very strange value judgment. It seems plain wrong, but I appreciate that you have not come here as a lawyer. Frankly, we have not had anything remotely approaching a proper
explanation of the matter. Although that is not your fault, the legal advisers who drafted the bill have lamentably failed to create a balance between the prostitute and the buyer. It seems to me that the punter will escape scot-free time and again. That is not what we want. As a committee we want—perhaps I am speaking prematurely; it is what I want—the punter to be made a criminal and stopped. The bill would not do that.

I also want to raise a general point of principle. It has been suggested that the offence under section 1 relates to public disorder. That does not seem appropriate. In many cases, a transaction is undertaken of which the public will know nothing. If there is a disorder, the public are not aware of it. In some cases a great deal of nuisance might be experienced by people if the transaction takes place in a residential area, but in many cases the problem is not that there will be a breach of the peace, a nuisance or a disorder but that a transaction will take place in which a man buys sex. From that point of view, is not the whole concept of the bill misconstrued?

You said that the bill’s aim is to change the balance between the prostitute and the punter, but it will not do that because the Executive has approached the matter from the wrong standpoint. If we are to create that balance, surely we must make it absolutely clear that the crime is a man buying sex from a prostitute. Forget the disorder—it may, or may not, be a component of the offence. The offence should be simple: the punter who crawls around in his car and acts in a way that, in the vast majority of cases, is inconsistent with any explanation other than that of seeking to buy sex should be criminalised. Would it not be better for the Executive to redraft in that way the whole basis of the offence?

Alison Douglas: The question raises a profound issue of policy. I will give a factual response: the expert group did not recommend that the purchase of sex should be criminalised, it was not the majority opinion among respondents to the consultation exercise, and it is not the Executive’s policy. That is all I can say on that point.

The Convener: Fergus Ewing might want to pursue the issue with the minister.

Mike Rumbles: I want to focus on the balance between purchaser and seller, which is the Executive’s policy objective in the bill and which I believe is absolutely the correct approach. As far as I can see, the bill redresses the balance, in practice and in theory, on the offence of soliciting. Anyone—whether man or woman—who solicits in a public place will be guilty of an offence. That is clear. However, although it is clear that, in both practice and theory, it will be an offence for a seller to loiter with intent in a public place, there will not be a similar balance for the purchaser because of section 1(6). In practice—so we are told—such people go around in a motor vehicle. As David McLetchie said, if we want to end kerb crawling, which is what I thought we wanted to do, section 1(6) should be removed from the bill. If that subsection was removed, we would have balance in both theory and practice.

Alison Douglas: I am in danger of repeating the points that I made earlier. I am not sure that I have anything useful to add.

The Convener: We can put the point to the minister.

Ms Watt: The bill focuses on prostitution in public places but the offences are defined as being in relation to any relevant place. What is your understanding of the limits of that definition? I am thinking about the nuisance that can be caused to the public by so-called massage parlours and other sorts of brothels. Are they covered by the bill?

Alison Douglas: They are not covered by the bill. The expert group’s report specifically looked at street prostitution. The intention was to take a phased approach to the wider issue of prostitution. We wanted to make the first phase manageable, which is why we focused on street activity. There is further work to be done with regard to indoor prostitution and trafficking.

The Convener: Margo Macdonald might want to comment at this point. I ask you not to say too much, Margo, as we will be hearing from you in a second.

Margo MacDonald (Lothians) (Ind): Earlier, you said that you were influenced by the response to the consultation on the report that was produced by the expert—I hope you will excuse that expression—group and that your response was to change what had been a main plank of that report, which was that the new offence should be complaint led. Why did you make that change? From where I am sitting, that was an essential part of the dovetailing of the advice that was given to local authorities with the change in the law.

Alison Douglas: The expert group’s report talks about a complaint-led offence, but it acknowledges that there are arguments on both sides about whether the test should be objective. In fact, of the three options that were identified, one has an explicitly objective test, one is based on a complaint with the courts being able to introduce an objective test and the third is based on an objective test. The expert group seemed more in favour of a complaint-led approach than having an objective test, although it recognised the merits of having an objective test. The group suggested that the issue could be explored in the consultation. Of those who expressed a preference for a particular
model during the consultation process, the majority were in favour of the Scottish Law Commission’s codification route, which uses an objective test. On balance, the Executive has been persuaded that the arguments that are in favour of an objective test are greater than the ones that are in favour of a complaint-led approach.

Margo MacDonald: Convener, I seek your guidance, as I think you might prefer to question me on this point rather than have me question the officials. I can refer to the report that the expert group produced in order to explain why the complaint-led approach was decided on.

The Convener: It would be best to deal with that when you are the witness.

Margo MacDonald: That is what I thought.

Ms Douglas, would you agree that, in some ways, the lawyers have tried to come up with something that is perfect law—I say that with all due respect to the lawyers because, were I a lawyer, that is what I would try to do—whereas what we are trying to do is come up with a pragmatic response to a defined situation?

In Aberdeen, you do not find many complaints about kerb crawling, because of the location where sexual services are bought and sold; in Dundee, you do not find any problem with kerb crawling; in Edinburgh, you do not—or you did not—find that there were many complaints; but in Glasgow, because of the locations, there is a real problem. The bill has perhaps fallen between the two stools of creating perfect law and trying to find the solution to a real problem.

Alison Douglas: Is there something specific that you would like me to respond to?

Margo MacDonald: Yes. As long as the convener does not mind, I would like you to talk about what happens in Glasgow. Two areas of Glasgow are affected. The east end concerns Michael Martin. I am sorry—I meant Paul, who does not look a bit like his father.

There is definite kerb crawling in the east end, and it is often kerb crawling of the tourist variety. People do not mean to purchase a service; they just want to be offensive or funny. According to the bill, if they are cruising along shouting obscenities—or what they would regard as great witticisms—they are not creating a nuisance unless they stop their car and approach a prostitute. But they do create a nuisance, and the bill was meant to tackle the nuisance that is experienced by the general public.

The Glasgow police are complaining that the bill would be very difficult to enforce. If it were enforced, it would be the seller—who is usually the female prostitute—who would be criminalised and who would bear the penalty. However, the situation I describe applies only in Glasgow. You have to take that into account when you try to come up with a perfect solution that fits all four cities. Do you agree?

Alison Douglas: Legislation is a tool; it would be up to local police to decide how to enforce it. In doing so, they would clearly take account of local circumstances. They have told us that the bill will provide them with another tool in the toolkit, to allow them to combat the nuisance associated with prostitution.

You spoke about people in vehicles who cause a nuisance but who do not intend to purchase sex. Even if the loitering component of the bill extended to people in cars, it would not extend to people who were, if you like, joy-riding. You might be talking about a more general driving offence.

Margo MacDonald: I wonder how the measure would be implemented. If someone were cruising around in a car and then stopped for someone to get out, a policeman might come along and say, “You’re nicked.” But the driver could say, “Why? I was only letting him out of the car. Prove otherwise.”

David McLetchie: If someone is driving around as Ms MacDonald describes—slowing down and shouting obscenities to people in the street—surely that is prosecutable as a breach of the peace, under common law. No new act would be needed.

Margo MacDonald: I agree with David McLetchie. The issue came up at the expert group. The majority opinion was that, to send out a message, we have to have a specific law. I do not think that is a reason for having a law at all, but it was the majority opinion.

Paul Martin: The power on dispersal zones can be used to prevent certain individuals from being in a vicinity for a certain period. Given that most of the issues are site specific, has the use of a measure to prevent individuals from being in an area at certain times been considered?

16:00

Patrick Down: We did not consider including such a power in the bill, but the draft guidance on street prostitution that was published alongside the bill considers whether measures such as acceptable behaviour contracts could be used against people who have been identified as kerb crawlers, to prevent them from entering areas that are known for prostitution.

Margo MacDonald: Would a conviction be needed to establish that a person was kerb crawling?
Patrick Down: I cannot answer that off the top of my head.

The Convener: We are starting to get into issues of policy, which may be best addressed to the minister, but I have one final question. Members of the committee are unclear about exactly what somebody would have to do to commit an offence under the bill, particularly if they intended to purchase sexual services. In your discussions with the police, have they been clear about what the intended law is and what someone would have to do to be arrestable, or have they raised concerns about how they will implement the proposed law?

Alison Douglas: We held a joint meeting with the police—including some with day-to-day responsibility on the matter and members of the Association of Chief Police Officers in Scotland—and the Crown Office to consider some of the issues. As I mentioned earlier, issues about evidencing arise. Ultimately, what is regarded as nuisance will be for the courts to decide, but we can reasonably assume that persistent disruptive behaviour will be considered to be causing a nuisance. As I said, the bill uses the phrase “in such a manner or in such circumstances”, which gives a reasonably wide net for evidencing. However, we accept that issues arise about proving the purposes for which somebody was soliciting or loitering. Some of those issues are inherent to the nature of the activity. We have tried to create an offence that will be as effective as possible in providing a means of tackling those nuisance behaviours.

The Convener: That brings us to the end of our questions at this stage. I thank Alison Douglas and Patrick Down for their evidence. Some of the questions were getting a bit intense, but they were our final witness today. We have invited her to give evidence because she introduced a member’s bill on prostitution and participated in the expert group. I should advise the committee that the chair of the expert group, Sandra Hood, was invited to attend as a witness, but she did not feel that, at this stage, she could represent the expert group’s overall views on the bill, given that it has not met for some time.

We continue our consideration of the Prostitution (Public Places) (Scotland) Bill by taking evidence from Margo MacDonald, who, up until this point, has been a visiting member, but whom we now welcome as our final witness today. We have invited her to give evidence because she introduced a member’s bill on prostitution and participated in the expert group. I should advise the committee that the chair of the expert group, Sandra Hood, was invited to attend as a witness, but she did not feel that, at this stage, she could represent the expert group’s overall views on the bill, given that it has not met for some time.

Margo MacDonald is supported by her personal assistant, Mary Blackford, whom we welcome. I invite Margo to make some introductory remarks on the bill, which will be followed by questions and answers.
people who believe that the bill should send out a message that we disapprove of prostitution. If we want prostitution to be less intrusive on people’s lives, we must consider how it would work if there was a non-complaint-led procedure. If that were the case, prostitutes would be able to ply their trade anywhere, as they would be treated by the law in exactly the same way as if they stood discreetly in a dark corner.

As the committee has shown, it is difficult to reconcile the one item of legal censure being used against prostitute and client; nevertheless, that is what the expert group tried to do. Without a complaint-led procedure, any prostitute standing anywhere could be arrested if the arresting officer decided that, if a member of the public had witnessed the prostitute simply standing there, that member of the public would have been alarmed, offended or have had a nuisance caused to them. That is what the bill says. That sends absolutely no message to the prostitute that she should be discreet about doing what she does.

If street prostitution is to continue, although we might not want it to continue, it requires to be managed in the interests of the wider community and the prostitutes themselves. However, the bill’s provisions cannot dovetail with the way in which the four cities currently manage prostitution, by having acknowledged areas in which prostitution takes place. If the prostitute can be lifted anywhere, why would she go to a particular area? I see that as a disincentive to the better and safer management of prostitution.

I believe that street prostitution will continue residually for some time. You might ask why, as the evidence shows that, in Edinburgh and Dundee, the number of street prostitutes is falling and that, in Aberdeen, the number is either static or falling—it is only in Glasgow that the number of women on the streets appears to be increasing. I do not pretend to know all the reasons why there is street prostitution, but I am told that the anonymity and the thrill that are associated with it mean that there will continue to be a residue of street prostitution. If we do not have a recognised area in which those women work, and if we believe that there will be a residue of street prostitution, the women will find a place to hide in order to escape the new law. If they hide away, they are at much greater risk. There is also a much greater risk of add-on criminality associated with prostitution.

16:15

That is not theory; it has all been proved, and there is documentation of the tolerance zone in Edinburgh covering almost 20 years. We have only learned from that period; no one is seeking to recreate it. The tolerance zone sought to allow leeway within the existing law for a specific place and to suspend the law within that place. Managed zones, which the expert group recognised as having a great deal of merit, would not suspend the law at all; they would simply reflect the reality that there is street prostitution and it is easier to control and manage in everyone’s interests if it takes place in a given area.

The issue is not just the nuisance to the general public, but the services that the Executive, in the policy memorandum, urges local authorities and local partnerships to supply. I am thinking of the provision of condoms, a needle exchange service if that is needed, and counselling. Those are services that we need to be able to take to where the women are, perhaps to persuade them, over a period of time, to exit prostitution. Everyone agrees that, unless we supply those services where the women are, we will not get to the women. If there are no recognised areas, how will we reach the women and take those services to them? If there are no recognised areas, how will the police have the sort of intelligence that they had in Edinburgh, that they have in Aberdeen and that they still did not have in Glasgow the last time we spoke to them? The situation is different in Dundee, as the number of women involved is so small.

The expert group saw the two aspects of the situation that are set out in the papers dovetailing. First, the change in the law would mean that both buyer and seller could be arrested and charged with an offence if, in the course of trying to buy and sell, they offended someone or caused a nuisance. However, if that procedure was not complaint led, no offence would be committed. A complaint-led system was the incentive to ensure that the activities were contained—but that has gone. Secondly, if there was an area inside which it was most unlikely that someone could commit the offence, that would make it much easier for the local partnership of the police, the health authority, the local council, voluntary organisations and so on to reach the prostitutes. The two aspects were meant to dovetail, but they do not dovetail in the bill and the policy memorandum that we now have. I sincerely hope that that can be changed and that the committee will be able to amend the bill.

The Convener: Thanks for those remarks, Margo.

Michael McMahon: That was an interesting analysis of the situation. In advocating a complaint-led procedure, you made a comparison with the misuse of drugs. Both are criminal offences and the partners in any given area must work together to reduce the harm that is caused to the people who are engaged in those practices. If there is no complaint-led procedure, the situation is comparable to that of a drug dealer. He sells a
drug to someone and that person goes away to use the drug, but if there is no complaint about that transaction, the police have no right to act. Surely you do not think that that is a good way of pursuing harm reduction.

**Margo MacDonald**: No. The only parallel is in the need to accept that we cannot immediately eliminate the practice of prostitution. Therefore, for as long as it is with us, we must try to reduce the harm that is done by it.

**Michael McMahon**: You say that the police should not act until there is a complaint, but harm is being done where the transaction takes place.

**Margo MacDonald**: That is where the importance of the policy memorandum comes in. If the behaviour takes place within a managed area, such as there is in Aberdeen, it is true that no offence is committed. The harm done to the public is not all that great. The health services can get to the women to help to prevent the transmission of diseases and so on. If you want to get to them, you have to get to them where they work. The add-on criminality is likely to be diminished because the police know where they are and they know who should not be there—drug dealers and so on. I hate to use the word “minimise”, because that is too grand a word, but that is how the harmful effects of a trade that nobody likes but which has persisted for a very long time can be reduced.

**Michael McMahon**: But you are advocating a complaint-led procedure only in relation to prostitution. You used the analogy of harm reduction, which is comparable with harm reduction in relation to drugs, which is what I did not understand.

**Margo MacDonald**: Nobody wants people to use drugs that abuse their body and destroy them, but neither does anybody expect drug use to end tomorrow, so there is a programme of harm reduction.

**Michael McMahon**: I just do not see the comparison.

**Paul Martin**: Margo Macdonald talked about tolerance zones. In Glasgow there have been high-profile cases in which one girl lost her life and another was severely injured. What kind of message would we send out with tolerance zones? Are you saying that if a tolerance zone had operated in Glasgow, what happened to those young women would not have happened?

**Margo MacDonald**: I would never make such a claim. However, there is some sort of record of the security offered by working inside a managed area—do not call it a tolerance zone—such as the one that is still operational in Aberdeen. You must look at what happens there. The word “tolerate” might suggest approval of or going soft on prostitution, but it has nothing to do with that; it is about trying to ensure that the harm that can be done is minimised and that we look to the security of the prostitutes and the comfort, security and privacy of the general public. That is not to send the message that we approve of prostitution, but to admit that prostitution is there and to work out a way of dealing with it.

In 10 or 12 years there were two murders in Edinburgh and, I think, eight in Glasgow. The people who murdered in Edinburgh were caught within 24 hours and at the time the police said that that was because of the intelligence that they had from managing street prostitution in a different way that suited them. Perhaps the Glasgow police manage street prostitution in Glasgow in the only way that it can be managed—I do not know and I would not dare to say. I do not think that the two cities should be compared, because their geography is so different that the policing and management of prostitution are different.

**Paul Martin**: You would have said to the young woman who was tragically murdered, “You continue with this very dangerous practice and we will support and manage you.” The word you used was “manage”; I will move away from saying “tolerate”. Should we not have moved that young woman away from the practices that she was involved in to the Routes Out processes that have formed? That is not about the management of areas; it is about processes.

**Margo MacDonald**: No—that is to assume that, by adopting the Routes Out programme, prostitution can be eliminated. It does not happen like that. For a start, women go in and out of prostitution. It is a long process. Secondly, it is not about saying to a woman that she should carry on with her lifestyle. In each city, women are told, “Come in and see us.” They are shown the support group that will ensure that they go in for safer sex; that if they meet an overly abusive client, they can come to the group and report him, getting him on to the ugly mug scheme, which the Scottish prostitutes education project—SCOT-PEP—in Edinburgh ran; and that they get help in obtaining some educational qualifications.

The reality is that it is not Julia Roberts going into the drop-in centre; it will often be people with really sad personal histories, who are ill equipped to compete in today’s labour market. That is what we are referring to when we talk about managing prostitution—this time, from the point of view of the prostitute. How can that be done if the services cannot be provided where the prostitutes are working? As you will remember, I said that the women do not simply stop working. It is a long process. We must be able to reach them.
Mike Rumbles: I asked the previous panel about the parity of fine level between the seller and the buyer. Would you support the fine level being increased for the buyer, taking into account their different profiles?

Margo MacDonald: The absolute truth is that I do not know. I have not given it all that much thought. I was worried that the bill had not managed to achieve what the expert group had wanted: an equalisation of the penalty for offending. We wanted it to be made as difficult as possible to commit the offence. We wanted to avoid people commencing the offence. Standing and watching somebody circling round Cadogan Street and Bothwell Street and that area involves a lot of police hours, and to what effect? Is that a good use of public resources? I was worried that the bill had not managed to capture what the expert group wanted in principle: an equalisation of treatment. If there is to be stigma, there should be equal stigma.

Mike Rumbles: As I said, I do not know. I will think about it, talk to folk about it and tell you sometime.

Paul Martin: You accept that the respective profiles are very different, with the buyer normally having a higher economic profile. The economic and social profiles are different—albeit not on all occasions.

Margo MacDonald: That is the trouble—we are trying to make law. I do not know how such qualitative judgments should be made.

Paul Martin: I draw your attention to paragraph 18 of the policy memorandum, which says:

"Consideration was also given to the broad approach proposed in Margo MacDonald MSP’s Prostitution Tolerance Zones (Scotland) Bill ... However, the Expert Group found little evidence that prostitution tolerance zones helped to protect women involved in prostitution, or that they protect communities from the nuisance associated with it."

Therefore, the Executive has adopted the approach in the bill. It is about reducing the demand for prostitution, keeping the offence for soliciting and loitering by the prostitute, but changing the whole approach so that we create a new offence to attempt to reduce the demand. My criticism of the bill is that it fails on the issue of motor cars that we considered, but do you not accept that the key to making progress is to reduce demand?

Margo MacDonald: Once again, I am too impatient for that. I do not think that we would manage that by next week. Obviously we want to do that, but it involves a much wider process of education and changing public attitudes. That was gone into in great detail in the expert group’s report, backed up by loads of research on the work that we would need to do.

Can I draw your attention to what the expert group actually said? It said:

“The management of street prostitution in the locality where it is occurring offers a number of advantages which are evidenced from Scottish and international experience. It:

• confines the public nuisance...to a specified area;
• allows the enforcement authorities to set up rules for operating in the location, particularly for those involved in prostitution, e.g. only to operate within specified hours;
• facilitates the exchange of intelligence between those involved in prostitution and the police e.g. through reports of incidents with clients involving violence or risk of harm;
• concentrates those involved in prostitution in a particular area where they can look out for each other, e.g. by noting descriptions of clients and their car numbers;
• discourages under-age girls from operating in an area, since they will be readily visible and will be discouraged or reported upon by adults involved in prostitution”—

that would now also include foreign people who come here illegally in one way or another.

The report continues to say that management

• assists with the safety of women involved in prostitution by means of reducing the areas in which unobserved violence might take place;
• facilitates the provision of surveillance by C.C.T.V. and police patrols;
• protects the women involved in prostitution from a repeated cycle of arrest, prosecution, unpaid penalties, short sentences of imprisonment and re-offending;
• facilitates the provision of outreach services, such as needle exchange, condoms, health checks, drug services and advice, including assistance to exit prostitution, subject to resources”.

Will I go on? There is more.

Mike Rumbles: I have not got that material in front of me, but I have got the Executive’s policy memorandum.

Margo MacDonald: But it is wrong.

Mike Rumbles: Are you saying that the Executive is wrong in its interpretation of the expert group’s report?

Margo MacDonald: The policy memorandum is wrong in that it makes the assumption and draws the conclusion that the expert group saw no advantages. I have just read you some of the advantages, and the report concludes that
"the designation of a particular area for management of street prostitution will act as a step towards significant reduction of levels of harm, and perhaps total numbers involved in prostitution, and thereby a diminution of need for such localities in the long term."

**Mike Rumbles:** So the policy memorandum is wrong in saying that the expert group

"considered that the creation of tolerance zones would send out the wrong message about the acceptability of street prostitution more generally, and might be seen to run counter to the Executive's longer term objective of reducing and...eradicating street prostitution. On a practical level, it was thought that local authorities would be likely to have great difficulty in identifying suitable locations for tolerance zones."

**Margo MacDonald:** No, that was said too. There is an argument and a counter-argument. I said that there were two ways of approaching the issue, and the memorandum tries to bridge the gap. The idea of tolerance zones has been overtaken by events. The proposed change in the law was for a tolerance zone—an area inside which illegality would be tolerated; a suspension of the law inside a specified geographical area—but that has been overtaken by events. Forget tolerance zones: that is why I said that it is important to think of managing prostitution.

**Mike Rumbles:** The bill does not do that. As far as I can see, the purpose of the bill is to remove the demand for prostitution. If the bill is passed, do you believe that the Executive will be successful in reducing demand by focusing a new criminal offence on people who want to engage prostitutes?

**Margo MacDonald:** I think that the demand for prostitutes' services may—I stress "may"—diminish, but I certainly do not think that there will be a speedy change in the sheer presence of prostitution in communities.

Since we started work on a bill, the whole business of prostitution has moved on apace and that is what worries me. The kind of prostitution to which the bill refers is only one small part of what is happening in prostitution—for example, there is much more indoor prostitution now. Since the discontinuation in Edinburgh of what was called the non-harassment or tolerance zone, which was different from what the bill seeks to establish, some women in Edinburgh have been working indoors. No one knows where they are doing so or under what conditions, or whether they are working for themselves. I believe that some are doing so, but others may not be and may be being exploited in a way in which they were not when they worked within the known parameters of the zone.

Reports and a lot of evidence from the women are available and they said themselves that once they were in the zone they did not need to have there the boyfriend, partner, minder, pimp or whatever you want to call him because rules had been agreed about how the zone would operate. Provided there was no add-on criminality—drug trafficking and so on—the women would probably not be lifted. The zone was a much safer environment.

**Mike Rumbles:** I have a final point on what you just said. You firmly believe that prostitutes were not exploited when working in the zone. That is what you just said.

**Margo MacDonald:** No, I did not say that.

**Mike Rumbles:** You did. I wrote it down.

**Margo MacDonald:** I think that some prostitutes are exploited—some may be exploited all the time. However, some of the prostitutes who are not found hanging around street corners are not exploited much, though some are.

**Mike Rumbles:** The whole point is that prostitution involves exploitation.

**Margo MacDonald:** Of course it does. I do not deny that. However, it is too simple to say that that is all prostitution is.

**Ms Watt:** What are the implications of not needing a complaint to be made by a member of the public for it to be deemed that an offence has been committed?

**Margo MacDonald:** I think that that puts police officers in a bad position because they must be judge and jury. In Aberdeen, the women stand around the closed-up factories and storage buildings in the docks area; I am not exaggerating when I say that only about six houses at the most can see anything of that area. It is remote from most of Aberdeen. Who are such women alarming or causing a nuisance or offence to, if nobody can see what they are doing? Who are the guys who go down there in cars alarming, offending or causing a nuisance to? It is really only prostitutes who are down there. It cannot be good law for a policeman to come along and say to them, "If somebody was here or if somebody saw you, they would be alarmed or offended." That is why I am saying that, rather than thinking theoretically, you should think in practical terms.

Glasgow is a bit different. The area that Paul Martin is particularly concerned about—his area—is overlooked by lots of houses.

**Paul Martin:** Convener, can I just confirm for the record that it is Frank McAveety's area that is involved?

**Margo MacDonald:** I was not blaming you.

**Paul Martin:** I have a very small part of the area in question. I was going to call you Jim, there.
Margo MacDonald: That is just because I get you mixed up with your father.

The situation is completely different in Glasgow because of the geography of the place. I described what the Aberdeen docks area is like and I did not exaggerate. In Aberdeen, there is now a drop-in centre, which is located as close as possible to the area. No matter what law the Parliament passes, Aberdeen will—very sensibly—carry on with what it is doing.

Ms Watt: Margo MacDonald has hit the nail on the head. Unless there are very strict guidelines, how the law is enforced will depend on the police constable who is patrolling the area or the patrol car that is going round. The door will be left wide open to—God forbid—police harassment and so on.

Margo MacDonald: That does not happen at the moment, because everyone knows what the rules are inside the area.

David McLetchie: We are talking only about street prostitution, not about prostitution generally.

Margo MacDonald: We think that under the bill there may also be scope for test cases for indoor prostitution. That was not meant to be the case, because indoor prostitution is a completely different scene.

David McLetchie: Yes, but we are talking about counteracting street prostitution. By its nature, that activity is highly visible. We know who is committing the offence, where it is being committed and when it is being committed. From the evidence that you and others have given, the background papers and the policy memorandum, we know that 150 to 200 women in four areas in four cities may be involved in street prostitution. Why is an offence that is so highly visible not being eradicated under the present law?

Margo MacDonald: As I tried to explain, the expert group considered that question. The majority view was that an offence of breach of the peace did not send out a sufficiently strong message. I disagreed with that line of reasoning. I thought—and still think—that it is more important for us to allow local authorities, together with health boards, the police and so on to decide how best to manage a potential problem. In Edinburgh, it has certainly proved to be a problem and a nuisance. For that reason, I did not object strongly to the creation of a specific offence.

David McLetchie: I am talking about the present law. Section 46 of the Civic Government (Scotland) Act 1982 refers to soliciting, importuning and loitering for the purpose of prostitution. That is pretty clear. As I said, we know who is committing the offence, where it is being committed and when it is being committed.
Margo MacDonald: There is residual street prostitution, as we understand it, but the numbers are nothing like they used to be. Women can use their mobile phones to make arrangements with clients on their lists, so they do not need to stand in one spot. However, there are still the odd one or two women who use Leith Links and—as far as the residents are concerned—create a nuisance. I would not deny that the detritus associated with prostitution is a nuisance.

David McLetchie: Where in Edinburgh does street prostitution happen?

Margo MacDonald: It is difficult to say. SCOT-PEP had its funding cut when the women disappeared from the area in which it was located. SCOT-PEP is out only two nights a week for about four hours a night but, in the past year, it has contacted nearly 90 women. It estimates that about 100 women in Edinburgh are still involved in street prostitution. They will not all be out on the one night—they will be out on different nights.

David McLetchie: In a variety of locations.

Margo MacDonald: They are all over the place, so it is very much more dangerous. In statistics for the first year following the discontinuation of the tolerance zone, the reported gratuitous attacks—let us call them that—on women were up by about 1,000 per cent. That is because the women are scattered and the police and SCOT-PEP do not know where they are. There is a big danger in thinking that if we do not have an area that is acknowledged to be where prostitution is practised, we somehow disperse and minimise the problem. We do not—we probably spread the problem.

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David McLetchie: But if the police do not know where they are, how do the clients know where they are?

Margo MacDonald: Mobile phones. That is what I am telling you—everything has moved on.

David McLetchie: If someone can order a service by mobile phone, the old system will not apply anyway, will it?

Margo MacDonald: It has changed. A lot of the women—remember the numbers I have just given you—congregated around Leith Links. They could run and hide if there was a problem with the police or residents—I think that is why they congregated there. If Mary Blackford or I were out and about in Edinburgh of an evening, we would go down to the Links to see how many women were there. There are very few women there; they are scattered. I have heard—

David McLetchie: You said that contact is predominantly made by mobile phone. Such contact constitutes neither soliciting nor loitering.

Margo MacDonald: Do not be difficult.

David McLetchie: I am genuinely interested in what you are saying. If that is the case, there is no soliciting and loitering.
Prostitution in Public Places Bill

Although the Committee will examine the provisions of the Bill itself, and although the Policy Memorandum has no legal standing and is not part of the Bill, its purpose is to establish and explain the context in which the Bill is set. Therefore, its tone and contents require to be neutral and accurate, simply recording and reproducing the intention and spirit of the proposed legislation.

The Policy Memorandum heparks from this in Para 2.

The Expert Group established by the Executive produced a Report on the management of street prostitution aimed at reducing violent attacks on street prostitutes, and ensuring that the nuisance the practice is capable of generating is eliminated so that the public, residents, employees or visitors to the area unconnected with either buying or selling sexual services, will be able to go about their business without harassment. The Group also proposed an equality of treatment if either buyer or seller had a complaint against them upheld.

The Policy Memorandum fails to establish the context for these objectives, which rests on the Group’s acceptance that although the numbers of street prostitutes are shrinking, there will be a residual continuation of this form of buying and selling sex for the foreseeable future, even though policies are put in place to help women exit a very dangerous life-style. The Expert Group, drawing on the experience of the support given to prostitutes in Scotland’s three biggest cities, advised that these services must be located in the areas where prostitutes are known to work.

The Memorandum (in common with the draft guid ance for local authorities) does not provide a clear picture of how the Expert Group intended the change in the law to dove-tail with the practical application of the policy objectives and guidelines for local agency partnerships instigated by local authorities.

At this point, it is important to stress that any law concerning the conduct, containment or management of street prostitution will in reality only affect Aberdeen, Glasgow, Edinburgh, and to a much lesser extent, Dundee. Therefore it is relatively easy to test the feasibility of the Expert Group’s recommendations regarding the new offence’s being complaint-led, and local agencies deciding on where and how to deliver the services needed by prostitutes.

Both the Policy Memorandum and the Guidelines for Councils omit to report the Expert Group’s observation that local partnerships should be free to choose to deliver these services in a zonal manner if that is appropriate to circumstances, and geography, in their areas, and if that is the way in which they can best discharge their duty of care both towards a vulnerable group of their citizens and the general community.

The Group did not argue in favour of Tolerance Zones, which are a completely different concept. But it did record that women felt safer working in them, were attacked less frequently and, provided local geography allowed, were viewed as being much less of a nuisance by the wider community. The Expert Group stressed the importance of any managed zone being isolated from residential or 24hr commercial areas such as in Aberdeen and Dundee, and was the case in Edinburgh until the red-light area changed by redevelopment and new housing.

As was shown during the Salamander Street exercise in Leith, and is patently obvious in Aberdeen, if prostitutes know they are much less likely to be charged with soliciting if they operate in an area at a distance from, or screened from, the general public’s attention, they will confine their soliciting to that area. Consequently, the complaints from the public are minimised.

But if the new offence is not complaint-led, and prostitutes can be charged whether or not they have actually offended etc a third party, there is no incentive for them to solicit in a discreet area, where they will not normally encounter the general public.
Aberdeen

Dropping the idea of a charge for an offence (alarm, offence or nuisance) being activated on the complaint by a third party, could have little effect on the present system of managing street prostitution in Aberdeen, as it is contained in a dockside area designated and policed by Grampian Police. The only change might be to charge noisy car-loads of young men, who sometimes cruise round the managed area, with creating a nuisance or causing alarm as per the new offence. Precisely whom they would be alarming could be problematic as the selling and buying of sexual services takes place after the factories etc are shut.

Dundee

In Dundee, a similar situation exists. Probably fewer than ten women work in the area where prostitutes are. This commercial area also has workplaces that are shut at night, and some years ago became the city's de facto red light area when, following prompting from the Tayside police, the women moved there from their previous location that had become unsuitable due to new building developments.

Glasgow

In Glasgow, the geography and history of managing street prostitution is different from the other three cities. The red light area used to be centred on Blythswood Square but some years ago moved down the hill towards the Waterloo St bus station. Enforcement of the old law on soliciting meant that Glasgow prostitutes commonly were imprisoned for non-payment of fines, unlike the women working in the managed areas in Aberdeen or Edinburgh, who were seldom prosecuted. (Dundee also pursued a policy of enforcement, but the surprisingly high figure of convictions reflected the activities of only one lady.)

The policy for dealing with street prostitution in Glasgow in fact is very similar to the range of support and harm reduction services offered by voluntary and statutory services in Aberdeen and Edinburgh. The main differences are firstly, the sheer numbers of street prostitutes, the regularity with which many of them are goaled and the changing nature of the area in which they have worked and the advent of another area being used for soliciting.

Edinburgh

The Capital is the city most in need of clarity as regards the change in the law and the Executive’s guidelines on dealing with street prostitution. Due to the activity of soliciting being displaced from a relatively discreet location agreed between police, the prostitutes and their support agency, women moved to Leith Links, a residential area. This provoked the formation of a Residents' group and much criticism of the idea of Tolerance Zones, quite incorrectly based on the idea that they could be imposed on a residential area. But as stated above, nobody is arguing for a re-instatement of the former Non-harassment or “Tolerance” Zone.

It’s likely most Edinburgh Councillors would opt for a managed area in which to deliver the health and support services if an out-of-the-way location can be identified. The Expert Group believed the Council should be able to decide this for itself.

It’s difficult to see any change in Edinburgh’s situation if there isn’t a complaint-led process to provide an incentive for prostitutes and their clients to frequent a discreet area: under the proposals as they stand, even if no member of the public is present to be offended etc, they can be charged as though they had given offence.

Also, if the prostitutes are scattered, or if they hide from the police (or residents), it becomes almost impossible to deliver the services recommended in the Guidance for Councils.

Conclusion

The change to the general thrust in the Expert Group’s Report on the need for a complaint-led process, locally-decided strategies of reconciling the different interests of street prostitutes and the
general community, including managed areas in which services would be delivered, and an 
equalisation of treatment for the buyers and sellers of sexual services.

Unfortunately, there are some ambiguities in the proposed legal changes, and misleading 
 inaccuracies in the Policy Memorandum and draft guidance for local authorities. But these can be 
amended on the recommendation of the Committee.

SUPPLEMENTARY LETTER FROM SCOTTISH EXECUTIVE BILL TEAM

I write further to the Committee’s request for additional information regarding the use of a reverse 
burden of proof in relation to the new offences contained in the draft Bill.

As the question arose in relation to a possible offence of loitering in a car for prostitution related 
purposes, it may be helpful if I provide some further background on the possibility of such an 
offence before I address the reverse burden point specifically.

There is doubt as to whether, in the proper sense of the word, it is possible to “loiter” in a motor 
vehicle. The issue is not clear cut, but in the High Court case of Williamson v Wright, dating from 
1924 and concerning a bookmaker’s clerk who was charged with loitering for the purpose of 
receiving bets, there was a difference of opinion over whether it was possible to loiter in a car. 
Lord Hunter stated:

“It is hardly appropriate to say that a man who is a motor car in which he is being driven about is 
loitering…; I think that there is a great deal to be said in favour of the view that the only mode of 
committing this statutory offence is that you should do it upon your feet and not when you are in 
motor vehicle being driven by someone else."

However, Lord Anderson took the view that it was possible to loiter in a car and another judge 
reserved his opinion on the matter.

Ultimately, if the Bill were to refer to “loitering in a motor vehicle” for prostitution related purposes 
then we recognise that this would signal to the courts that the Parliament considers that it is 
possible to loiter in a vehicle.

However, the principal reason for excluding loitering in a car relates to the fact that the prosecution 
and the police consider that it would be very difficult, if not impossible, to prove that a person 
driving slowly in an area known for prostitution – but doing nothing more that this - was there for the 
purposes of obtaining the services of someone engaged in prostitution. Proving an individual’s 
intention by corroborated evidence beyond reasonable doubt is a general requirement of Scots 
criminal law and would be essential to proving this offence.

It is important to emphasise that, in terms of section 1(1) of the Bill, an individual who solicits from a 
vehicle (or on foot) for prostitution related purposes would be committing an offence if the manner 
or circumstances in which they do so would be likely to cause nuisance, alarm or offence to a 
reasonable person.

This approach is very similar to the kerb crawling legislation in England and Wales where soliciting 
by a purchaser from a vehicle, or in the vicinity of a vehicle, is an offence. Loitering in a vehicle for 
prostitution related purposes is not an offence under the kerb crawling legislation in England and 
Wales, and we understand that there are no plans to make it an offence. Soliciting is always 
required in the context of kerb crawling, and yet this has not acted as a barrier to successful 
prosecution of purchasers.

Committee members suggested that creating a reverse burden of proof might provide a way 
around the evidential difficulty in relation to loitering in a car, by putting the onus on the driver to 
establish that he was there for a non prostitution related purpose. In the absence of such evidence 
a court would be entitled to infer that an individual was there to seek the services of a person 
engaged in prostitution and as such was guilty of the offence.
Creating a reverse burden of proof could cause considerable problems for innocent drivers who would then be required to prove that they had legitimate reasons for being in the area. There could be many reasons why someone was driving slowly in a given area - looking for a particular address, trying to find a parking space, or simply being lost. Innocent drivers could find it very difficult to provide proof as to the intention behind their actions. In the absence of such proof, they could be found guilty of the proposed offence.

Furthermore, there is a risk that a reverse burden of proof in relation to loitering in a car would be contrary to the presumption of innocence which is guaranteed by Article 6(2) of the European Convention on Human Rights (ECHR).

The law on reverse burdens is complex and is developing through successive court decisions. Reverse burdens of proof can be justified in certain situations. One of the leading authorities on reverse burdens is Sheldrake v DPP. The House of Lords set out a number of considerations that can help when assessing whether a reverse burden infringes the presumption of innocence. Among these considerations include:

- whether the public interest would be prejudiced without a reverse burden;
- the more serious the punishment the more compelling the reason must be for the burden; and
- the extent to which the burden on the accused relates to matters that are readily provable by him.

An example of an offence which contains a reverse burden is the offence of unlawful sexual intercourse with a girl under 16, contained at section 5 of the Criminal Law (Consolidation) (Scotland) Act 1995. The offence of sexual intercourse with a girl under 13 is in effect a strict liability offence. If the Crown establishes that the act took place, they do not need to prove intent on the part of the accused. However, in relation to girls aged 13 to 15, the accused can seek to establish that the girl was his wife or (provided he is under 24 and a first offender) that he believed the girl to be 16 or over.

In this context we consider that the reverse burden is justified. A serious offence has taken place. Only the accused knows what he believed in relation to the age of the girl in question. It is therefore appropriate to require him to show why he believed the girl to be 16 or over.

In relation to loitering in a car, however, there is considerable doubt as to whether a reverse burden could be justified. There is nothing inherently objectionable about someone sitting or driving slowly in a motor vehicle and, as indicated above, there are many perfectly legitimate reasons why a person might do so. It is therefore difficult to demonstrate why a person who had been doing nothing more than sitting or driving slowly in his car should be required to establish that he was not doing so for prostitution related purposes. It is unclear as to what evidence the person could be expected to produce to show that this was not the case. There is no need to keep a record of your purpose for being in your vehicle, or to justify each journey.

It is also difficult to envisage how the public interest would be compromised if the burden of proof were to remain on the Crown. Loitering in a car is not an offence in England and Wales, let alone one which carries a reverse burden. Although the penalty in relation to the offence would be a low-level fine, the stigma attached to the offence would be significant not only for those prosecuted but also for those charged or reported but not proceeded against. There is also a danger that if innocent parties were regularly to be prosecuted for this offence it could bring the law into disrepute.

Our view is therefore that a reverse burden would not be considered justifiable, proportionate and necessary in the kerb crawling context and could fall foul of ECHR.
Prostitution (Public Places) (Scotland) Bill: Stage 1

15:35

The Convener: We move on to the second item on our agenda, which is further evidence taking on the Prostitution (Public Places) (Scotland) Bill. I inform the witnesses and any members of the public who are listening that we are running a little bit late, largely because of a fire alert that took place earlier. We apologise for any inconvenience that that may cause.

I welcome the witnesses. Ruth Morgan Thomas is the manager of SCOT-PEP and Jinty Kerr is the co-chair of SCOT-PEP’s board of directors. Cath Smith and Anne Fallon are from the Routes Out intervention team. Before we move on to questions and answers, I invite one representative of each organisation to make some introductory remarks.

Ruth Morgan Thomas (SCOT-PEP): Most of my comments will be based on our submission. There are diverse ideological perspectives and political stances around sex work, but regardless of those, what remains undeniable is the vulnerability of sex workers in society today, the most vulnerable of whom are those who are involved in street prostitution.

Zero tolerance of the sex industry does not work. The sex industry adapts to whatever strategy is implemented in an attempt to eradicate it. Globally, such approaches have all too often had the result of driving prostitution further underground, thereby opening it up even further to criminal influence and the exploitation and abuse of sex workers, as has been witnessed in the street prostitution environment in Edinburgh over the past five years.

It is important to note that prostitution—

The Convener: It seems that you are simply reading out your written evidence, which members have in front of them. Perhaps you could identify the main points.

Ruth Morgan Thomas: Okay. It is important to note that the selling of sexual services is not a criminal offence. Sex workers do not break the law by selling sex; they are criminalised because of the public nuisance that they cause.

It is also important to note that SCOT-PEP firmly believes that in an ideal society there would be no need for people to sell sex in order to survive or for purchasers to buy sex because everyone would be sexually fulfilled, as well as having the economic security and independence that sex work gives some individuals. However, we are a long way from living in such a society.

We have major concerns about the bill because it fails to address the issues that the expert group on prostitution set out to address, which were about creating equality in the treatment of sellers and buyers of sexual services. As the committee has previously identified, in reality the offence of loitering will be applicable only to sellers of sexual services because it does not apply to anyone in a vehicle. We know for a fact that 95 per cent of clients come to the street prostitution environment in a car and seek contact with sex workers from vehicles. That places the burden on the people who are selling sex on our streets—who are primarily women—and means that the inequity that was highlighted in the expert group’s report and when the committee reviewed Margo MacDonald’s Prostitution Tolerance Zones (Scotland) Bill will not be addressed.

There is also an issue about the retention of the terms “soliciting” and “loitering”. Although those terms are not defined in the bill, they have specific meanings in law, whereby it is difficult to charge anyone in a vehicle with loitering. In our view, other solutions could be considered.

Given that the bill defines activity that is “likely to cause alarm, offence or nuisance” as an offence, sex workers have asked us how they can engage in what they do without causing offence. If soliciting and loitering will not be criminalised and the offence will be one of public nuisance and causing alarm and fear, they want to know how they can engage in their activity without breaking the law. The wording of the bill means that that is a difficult question to answer. There are no significant changes for women and men who sell sex on the streets in terms of the offences in the new bill. The only addition is what I believe to be a weak offence that can be used against purchasers.

We also raised the issue of the new power of arrest. The matter is one of concern for us because, in English cities, the norm is that women are taken to the police station and are held overnight until they appear in court. That has major implications for women who are drug dependent—and we know that more than 95 per cent of women who are involved in street prostitution are drug dependent—given that, in the cells, there is no prescribing and there are no appropriate facilities for women who are withdrawing from opiate-based drugs. We also have concerns about women who have custody of their children, because child care arrangements cannot be extended for long.

The expert group did not want to up the ante for an already vulnerable group of women who are
engaging in a behaviour that is seen as a survival behaviour. It was felt that we might be increasing the burden on a group that is already carrying a phenomenal burden in our society.

The final issue that we raised in our paper was about the title of the bill. We know that, if someone has a conviction for a prostitution offence, that acts as a disincentive to employers to consider those individuals as fit individuals to be employed. We are a long way away from removing the stigma that sex workers face when they seek employment in an attempt to move on from the industry. Ensuring that people have a conviction on their criminal record that refers to a piece of legislation containing the word "prostitution" will do nothing to remove the barriers that face women who are trying to move on and look for alternative employment.

We in SCOT-PEP have been discussing the fact that the proposed legislation does not have an age level. In its report, the expert group highlighted the fact that, in England and Wales, 16 and 17-year-old prostitutes are considered to be victims of abuse rather than offenders. It is important that we do not criminalise young people who are involved in street prostitution. Instead, we should put in place appropriate support packages to assist them.

It is essential that we analyse the impact that the bill will have on the vulnerability of sex workers. All of us in this room are all too well aware of how many women in the sex industry have been attacked, murdered and raped. It is important that any new legislation does not increase their vulnerability. Further, it is important that it address the vulnerabilities within the communities and residential areas in which street prostitution occurs.

The Convener: Thank you. I invite Cath Smith, of Routes Out to make some introductory remarks.

Cath Smith (Routes Out): I apologise if in my remarks I repeat anything that Ruth Morgan Thomas has already gone over in her extremely clear presentation.

The Routes Out intervention team has gained considerable experience of working with women who are currently or were previously involved in prostitution and has gathered knowledge of the long-term trauma and harm that are caused to women through involvement in prostitution. The work is challenging and innovative and a partnership approach to addressing the issue of prostitution, underlined by the Glasgow policy on prostitution, has been integral to service development, service delivery and raising awareness of the harm that is caused through prostitution.

Routes Out welcomes any measures that will make the purchaser of street prostitution more visible and will hold them accountable for their behaviour. The bill, which proposes to use the same legislation against the seller and the purchaser, fails to address the inequality in respect of the buyer, who makes an informed choice in buying sex, and the seller, whose involvement in street prostitution is primarily an aspect of survival behaviour.

The information that we have about the women who are involved in street prostitution in Glasgow indicates that the vast majority of them are chaotic drug users and have significant issues that need to be addressed in addition to their substance misuse, including past and current abuse, mental and physical health difficulties, homelessness and poverty.

15:45

The bill fails to address the root causes of women's involvement in street prostitution, the consequences of their subsequent involvement in the criminal justice system and the likelihood of their being remanded in custody or imprisoned for fine default. There is no recognition of the two different offender profiles of the purchaser and the seller.

Prosecuting the buyer and making him more visible is a positive step, but there is no commitment in the longer term to challenge the buyer's attitude, which is the driving force behind street prostitution. Under the proposed legislation, it appears that the seller—the woman—will continue to be the most likely to be prosecuted.

The proposed offence of causing "alarm, offence or nuisance" might carry a greater stigma than the offence of soliciting, and in respect of women who have exited prostitution and are seeking employment it could create an additional barrier to women moving on with their lives and fully exiting prostitution.

I hand over to my colleague Anne Fallon, who has much more direct contact with women who are involved in street prostitution and is a manager of the intervention team.

Anne Fallon (Routes Out): Members might be aware that Glasgow has a zero tolerance approach to prostitution—the same approach that we have to domestic abuse, child abuse, rape and sexual assault. Prostitution will still happen, but we do not want to dilute the message that we regard prostitution as being on the continuum of violence against women. Street prostitution, in particular, is sexual exploitation of women.

Glasgow also takes an holistic approach to prostitution and offers women harm reduction
services and exit strategies. Our team works with women in the long term to enable them to exit prostitution, but we also have other projects such as Base 75 and a relatively new drop-in centre for women who are out on the streets. We now have centres in both areas of Glasgow where prostitution occurs.

Members might know that most of the street prostitution in Glasgow takes place in two areas. One is a city-centre area called the drag and the other is in the east end. The Routes Out partnership is part of the east end community safety forum, within which we work with residents and other agencies. Prostitution is one of the issues in the east end action safety plan. As well as being manager of the intervention team, I have lived in the east end all my life. I have lived exactly where prostitution takes place—in and around the Calton area—for 24 years.

We are concerned that the bill fails the community. Women are the only visible source of the prostitution in and around the east end. We are concerned that, because the community feels let down, there might be a reaction to the visible signs of prostitution—that is, the women—in the community. I have worked with women who have been attacked by young people in the east end because of their involvement in prostitution. Prostitution is understandably a major issue for residents. That is why we want to work closely with them, but our concerns are both for the community and for women who are prostituting.

We are also concerned about the relationship between women and the street liaison team. There might be more of a duty on the street liaison team to contact their uniformed colleagues in relation to offences. The women have very good relationships with the street liaison team and we are concerned that those relationships might change. We are also concerned about the implications for gathering intelligence on abusers of women.

We also have fears that more charges might be brought because of the points that Ruth Morgan Thomas and Cath Smith mentioned about the loitering and soliciting offences. The women will be more visible but, because the bill contains nothing on kerb crawling, it will be extremely difficult to get verbal evidence to prove an offence. The women will be out on the streets, but the men are in cars and will be able to drive away. Because of the way in which the loitering elements of the bill are drafted, the women will be left standing on the street, which concerns us.

We are also concerned about the impact that the title of the bill, which we regard as going against the principles of social justice, will have on the women's vulnerability. The bill adds the offence of causing “alarm, offence or nuisance” to the offences of soliciting and loitering. In the past, if a woman wanted to access training or education, potential employers or colleges would have to dig deep to find out what a conviction under section 46 of the Civic Government (Scotland) Act 1982 was. However, the title of the Prostitution (Public Places) (Scotland) Bill will leave nobody under any illusion as to what an offence is.

I will give a couple of examples. One woman was automatically sacked from a major company when it was found out that she had been involved in prostitution. That was before the introduction of a bill on prostitution; her conviction was under section 46 of the 1982 act. Another woman's experience was that, in the huge food chain where she worked, it leaked out that she had been involved in prostitution and men started to come up and ask her about free services. She had to leave that job. We are worried about the implications of the bill's title for women.

I will stop there.

The Convener: I thank the witnesses for their introductory remarks and open up the meeting for questions from committee members.

David McLetchie: I address this question to both organisations that have presented evidence. Is it your view that there should be no law at all on the buying or selling of sexual services in public places?

Ruth Morgan Thomas: Are you asking for SCOT-PEP’s view as an organisation?

David McLetchie: Yes.

Ruth Morgan Thomas: We accept that there is some degree of social nuisance attached to street prostitution and that that needs to be managed. As a general principle, we do not believe that the buying or selling of sex should be criminalised.

David McLetchie: As you point out in your submission, it is not criminalised at the moment. It is the manner of the transaction that is criminalised, is it not?

Ruth Morgan Thomas: It is. The important factor is that SCOT-PEP was set up by sex workers for sex workers 17 years ago and continues to try to represent the voice of an incredibly marginalised group of citizens.

David McLetchie: What characteristics should a public nuisance offence in relation to the purchase or sale of sexual services in a public place have, given that you have accepted that there is a public nuisance aspect to the transaction?

Ruth Morgan Thomas: Members of the community in Edinburgh have failed to use an opportunity that current legislation presents. I am really clear that, if a potential client approaches a local woman who is not involved in sex work and
asks her if she wants to do business, that is enough to cause that woman fear or alarm, but I think that breach of the peace covers that. There are occasions when some of the women with whom we work display inappropriate and unacceptable behaviour in public streets and I think that that too would fall under breach of the peace.

David McLetchie: I am grateful for that answer.

In your paper, you say that

“The sex industry adapts to whatever strategy is implemented to try and eradicate it”.

I do not think that any one would demur from that. You go on to say that prostitution is being driven

“further underground opening it up even further to criminal influences”

and so on. From that statement, is the selling of sexual services in a public place—in other words, street prostitution—in some respects a safer forum and environment in which to sell sexual services than others?

Ruth Morgan Thomas: It can be. I will give a practical example. The French Government has introduced an internal security law that has made passive soliciting by sex workers on the streets of France a criminal offence. The penalties are up to two months’ imprisonment and a €3,750 fine. However, in Paris, inner-city street prostitution, which sometimes occurred in non-residential areas, has been driven out to forests on the very edge of the city. Sex workers in Paris now have absolutely no contact with ordinary members of the public and no protection. They are reporting phenomenal rises in violence from clients and others. The question was whether I think that street prostitution can be safer than the alternatives, and the answer is, yes, I do.

David McLetchie: In your example, you compared working in a forest with working on the street. I am more interested in the comparison between a street and an indoor facility such as a sauna. What is your assessment of the relative risk factors?

Ruth Morgan Thomas: The evidence is undeniable. Research shows that street-based sex workers are far more vulnerable to violence and assaults than indoor workers are. Back in 1999, a Medical Research Council study covered indoor and street-based sex workers in Edinburgh and Glasgow. I believe that 81 per cent of the street-based sex workers had experienced crimes of violence from clients, compared with 48 per cent of those who worked indoors. The assumption is that indoor prostitution is safe per se, but it is not. Many men view sex workers as a group that is outside the law. Those men have assaulted, raped and, on occasions, murdered; they feel that they face no penalty in society.

David McLetchie: I see that.

Cath Smith: The member mentioned the safety of women. It is important to restate today that women who are involved in street prostitution are never safe. Improving safety is very difficult. In Glasgow, personal alarms have been issued. We also have third-party reporting, under which women can report to the police incidents or descriptions of men who they believe are causing alarm and who may become a risk, for example to younger women.

It is also important to look at the harm that those men cause not only to the women who are involved in street prostitution but to families and communities. It is more than likely that those men have a relationship—they may well be married—and may well have a sexually transmitted disease. We have to look at the broader picture.

I return to the point that prostitution is harmful. We cannot accept going down the route of saying that we should tolerate behaviour that is harmful and dangerous to these women and to communities. We have to target men and challenge their perception of women by asking why they use women in this way. If the bill were to be passed, we may have the opportunity of imposing, by way of an order or a penalty, some kind of programmed intervention that addresses the men’s attitudes and value base.

On awareness raising, we have to remember that vast numbers of men—the majority of men—never use women street prostitutes. They also have to be part of the solution.

16:00

David McLetchie: It is evident from the submissions that we have received, particularly Anne Fallon’s evidence about two areas in Glasgow that are venues for street prostitution, that the selling and purchasing—the marketing, if you like—of sexual services is a visible offence. On an average night—I imagine that a weekend night will be busier than other nights—how many women in the two areas that have been mentioned would be engaged in that activity? How many would be arrested?

Cath Smith: It is very difficult to give you those figures off the top of my head. However, I can tell you that, on average, 20 to 40 different women call regularly into Base 75’s drop-in centre in Glasgow city centre, which operates between 7 pm and 11.30 pm six nights a week and is our first point of contact with women involved in street prostitution. I can certainly come back to the committee with the exact numbers.
David McLetchie: How many people would be arrested in a week?

Cath Smith: I cannot give you those figures at the moment, but I can come back to the committee on that matter. Certainly women will tell us about police presence on certain nights, and the number of women who are arrested very much depends on their visibility and the number of police on the streets at a given time.

David McLetchie: So the frequency of arrests depends on the police’s willingness to enforce the law.

Witnesses indicated agreement.

David McLetchie: So could the police end street prostitution in those areas simply by enforcing existing laws?

Cath Smith: No, it is not as simple as that. Women and men will always find ways of ensuring that street prostitution continues to take place, no matter where that might be. For example, we— and, I am sure, SCOT-PEP—are concerned about the fact that women are making more use of mobile phones, because that means that they are perhaps not tying into and using services such as Base 75, where they can receive a really good package of support including methadone prescribing and health checks.

David McLetchie: I understand that, but we are talking about changing the law in specific areas where street prostitution is seen to be a problem. You are critical of some of the proposed changes, and I imagine that you are also critical of some of the existing laws. The fundamental question is whether we are changing the law to eradicate an activity that many people perceive to be a public nuisance, which will require enforcement, or whether we are simply changing the way in which the current system is managed.

Anne Fallon: The fundamental point is that women prostitute themselves in order to survive. For example, 90-odd per cent of the women involved in street prostitution in Glasgow do it to fund not only their own drug habit but the drug habits of their partners or other people. On the other hand, men can choose freely whether to buy sex. What we need to address is the inequality between the women who sell sex and the men who buy it. That is not a matter of simply juggling laws, but tackling real issues such as the reasons why men buy sex and the abuse experienced by women involved in street prostitution.

I should also point out that some women have moved from street prostitution to working in saunas and flats. Indeed, we are now getting more referrals from women who work in flats. Women are also telling one another about our team, and it is clear that women are moving off the streets because, with the regeneration of Glasgow’s east end and city centre, they are more likely to be arrested if they work there.

We fear for women who are then hidden from, and will not come near, services. The use of mobile phones also increases the risk to women of being attacked or raped. For us, the fundamental issue is the reasons why women prostitute—the survival reasons. Even when women want to get out of prostitution, a lot of them cannot because they are still funding their partners’ habits. We are working with one woman who was involved in prostitution from her parents’ flat and was told that she could not stop because they would then not be able to pay the mortgage. She has been emotionally blackmailed for years. Those are the real issues for women in street prostitution.

David McLetchie: I understand that there is a much bigger picture, and that we are addressing a very narrow part of it, which is street prostitution. Accepting that we have a very narrow focus—and I fully accept that you have raised many wider issues in your evidence—is the bill going to make any difference at all to the incidence of street prostitution? Is it really about how street prostitution is managed under the present law and the legislation that might be passed?

Jinty Kerr (SCOT-PEP): I think that you have put your finger on an important point. If anyone has a pious hope that when, or if, the bill passes into law it will eradicate street prostitution, or prostitution in general, I have to tell them that that has never happened in history and it is not going to happen because of the bill. As you say, many other issues must be addressed and a main plank of any action to address street prostitution is that it has to be managed. An act of Parliament will not do that. It will prescribe offences and sentences. With such a marginalised group of people, sentences usually mean fines to start with, which means that they will have to work to pay the fines. When they cannot pay the fines, they are imprisoned. What is new? The bill is not going to reduce street prostitution to zero. That is my candid opinion.

The Convener: Cath Smith may make a brief comment, but I want to try and get to questions from other members.

Cath Smith: I have a brief point on what the bill will do. It looks as if women will be prosecuted much more often than men, given that they will be visible in the street and will be seen to be the ones who cause alarm and nuisance. It is difficult to see how the bill will make a difference in relation to the prosecution of men.

Tommy Sheridan: I will address my question to Anne Fallon and Cath Smith first. Routes Out has been working for many years now; I visited you
away back for your inauguration and I applaud the work that you are doing. Do you have figures that would indicate that the wider social problems that are driving women into prostitution are being addressed at a legislative, social or political level to deliver a reduction in the client group that you are working with? In other words, when David McLetchie asks how many women would drop into Base 75 during an average evening, I want to know what the trend has been during the past three or four years. Is there a discernible decrease and, if so, is some of that a result of the factors that you mentioned, such as the use of flats and saunas, rather than the achievement of the Routes Out objective? The answer is important because if, unfortunately, it is no, we are obviously doing something wrong. We are told every day in the Evening Times about Glasgow’s regeneration and how wonderful Glasgow is becoming. There is no doubt that there are changes in Glasgow—I am sure that Anne Fallon can testify to some of the changes in the east end. However, if you are finding no significant reduction in your client group, why are those changes in Glasgow not reaching that group? I hope that you can give me some answers on that.

Cath Smith: We are raising awareness of the issues of prostitution across the board. For example, four or five years ago, prostitution was rarely spoken about in public even in social work and health services. I recently received figures—unfortunately, I do not have them with me, but I can give a copy of them to the committee—from community addiction teams in Glasgow. I am sure that members are aware that we now have five community health and social care partnerships. Using the figures, I tried to assess how many women have been involved in prostitution in Glasgow and how many women are currently involved. Base 75 and the intervention team do not work with all those women, but they all use the health and social care partnership services. The numbers, which I will provide to the committee, are considerable.

We have an opportunity to talk about street prostitution and indoor prostitution. More important, we have an opportunity to get women into services and to make them feel that there is no shame and that they can talk about their issues. That needs workers to be confident and to understand what prostitution is about and how we have to work with women. We need mainstreaming into all public services, so that everyone is aware of the issues. There is no evidence that street prostitution has reduced. I am more than happy to provide the committee with the figures that I have for Glasgow.

Anne Fallon: The intervention team currently works with 72 women—that is 72 women in Glasgow who are not prostituting. Those women might have gone to Base 75 or received services elsewhere. As was mentioned, the intervention team has been working with women for about six years as part of the Routes Out partnership. We do not work with women on our own, because women have criminal justice, mental health, housing and child care needs. The women’s needs are extremely complex. However, we have an understanding and knowledge of the issues for women who are involved in prostitution. Some of the women whom we work with will lapse, but that is part of the moving on process. As I said, we are working with 72 women who are not currently prostituting.

Ruth Morgan Thomas: I will talk briefly about the experience in Edinburgh. I agree that fundamental issues lead men, women and transgender individuals into sex work in order to support themselves. Those issues, which we are not addressing in our societies, include poverty, drug dependency and homelessness. In Edinburgh, 50 per cent of the individuals in the sex industry each year are new to prostitution that year. That figure is not declining. Each year, 50 per cent move on, because prostitution is not an easy job—it is not easy work or easy money. There is a rapid changeover in population. Regrettably, Government policies are not having an impact on that.

Tommy Sheridan: Anne Fallon said that the intervention team works with 72 women who were formerly involved in prostitution and Cath Smith referred to some figures from Glasgow. Do those figures show a trend that is not falling anywhere near as fast as you had hoped? Will you share the figures with us?

16:15

Cath Smith: It was interesting doing the work on this. The figures indicate that there are many more women in Glasgow who are or have been involved in street prostitution who use other services. However, when they use those health, education or social work services, they do not disclose their current street prostitution or their past involvement in it. That is very much to do with the sense of shame and of how they might be judged or treated.

In the Routes Out partnership, we are keen to ensure that all council workers in Glasgow who come into contact with those women are aware of how they should be working with them, of what services the women require and of how they can make significant changes to their lives and move on. The intervention team can provide good examples of women who have done really well. It is a long-term process, however—it is not an easy fix.
Tommy Sheridan: I will come on to something that is a big question for all of you. You have expressed serious doubts about some big aspects of the bill. There is even the ideological point about whether you should be managing what is a form of abuse. Will your organisations track the bill with a view to suggesting amendments to make it better? You might start with the point of view that we all start off with, which is that we would rather not be here discussing this at all. Nevertheless, could some serious amendments be presented by each of your organisations to improve the bill, and are you able to dedicate resources to do that?

In particular, Cath Smith spoke about a male being prosecuted and whether there should be an attachment of some sort of behaviour order to address the behavioural pattern that compelled that male to purchase the services of a woman. Could we get that written into the bill? Could we also write it into the bill that, if a woman is prosecuted, the services that might be required to assist her, perhaps with a drug dependency, should be made available? You will all be aware of cases involving people who seek help but who do not have services available to them. If the Executive is serious about adopting an holistic approach to the problem, it needs to provide serious resources so that, when someone has been charged, that will trigger help. I wish that we did not have to have somebody getting charged to trigger help being given, but could that, at least, be written into the bill so that services become more available than they are at present?

Cath Smith: I have no doubt that that would involve a huge cost. However, Glasgow is pretty well served by way of services for women in street prostitution. We are tapping into different services. We do not want to rely entirely on specialist services such as Routes Out or Base 75 to deal with the issue. I agree that it is unfortunate that we are here discussing this today. I hope that, at some point, Base 75 and the intervention team will not be required.

The aspect involving men is very important. I have responsibility and involvement in the setting up of the domestic abuse court in Glasgow. That came about because we had perpetrator programmes, which criminal justice workers delivered to men who were abusing women. It does not have to be as intense as that, but there is no doubt that it is possible to challenge and change behaviour if that is done effectively, if the programme work is established and if we know it can work. That is the challenge for us and it would be a powerful move to write that into legislation.

The Convener: I call Mike Rumbles.

Tommy Sheridan: Sorry—I was hoping that Ruth Morgan Thomas was also going to answer that question. I am talking about the bit to do with tracking the bill and suggesting amendments.

Ruth Morgan Thomas: We will be examining and tracking the bill and we will be drawing up amendments in line with what we believe is right. I would add that we are clear about what the offence is. We certainly support the expert group’s opinions. This is not a moral judgment. We are talking about a public nuisance offence, not about the criminalising of the buying and selling of sex.

Mike Rumbles: This has been a wide-ranging discussion so far, but I want to focus on the bill, which is what we are supposed to be focusing on. The bill is very narrow indeed in its remit. It creates two offences: soliciting and loitering. It is quite clear about soliciting. It refers to someone who is

"engaging in prostitution"

or

"obtaining the services of a person engaged in prostitution."

That is clear, and I do not think that there is anything wrong with that.

I want to focus on the second offence, which is loitering. The bill’s intention is not to end prostitution—no one thinks that we will ever be able to do that—but to reduce prostitution and the harm that it causes by making both sides of the arrangement subject to the criminal law. The problem that I have with the bill is that loitering will not be an offence if the individual concerned is

"in a motor vehicle which is not public transport".

The written evidence from SCOT-PEP highlights the fact that

"95% of the purchasers of sexual services in public places do so from a vehicle”.

The issue on which I want to focus—I put the same question to our previous set of witnesses the other week—is whether the provisions will work. The whole point of the bill is stop so-called kerb-crawlers, but it will not do that. I would like to hear your assessment of the matter. I had thought that the purpose of this very short bill was to stop that.

Ruth Morgan Thomas: We made that point in our submission. It is clear to us that, by stating that the loitering offence does not apply to people in cars, the bill will basically make no change to the existing law. Sex workers will be disproportionately charged, fined and imprisoned for non-payment of fines in exactly the same way that they are today.

Another point is that lawyers defending women against loitering charges in Edinburgh sheriff court have argued that not all the women are loitering in a public place. Such case law has resulted in a reduction of the number of women on loitering charges to virtually zero. The legal definition of “to
loiter” that was accepted by the courts is
“to travel indolently and with frequent pauses”.

None of the women in their right minds travel
indolently and pause frequently when a police car
or policeman is near. Therefore, the loitering
charge cannot be used effectively against the
women who are sellers. By retaining the two terms
“loitering” and “soliciting”, you are tying yourselves
up in knots by tying yourselves to current legal
definitions, whereas you really aim to do
something broader.

Anne Fallon: I completely agree with that.
Women loiter on foot; men are usually in cars and
will circle round and round. Over the years, I have
been followed I do not know how many times.
When I was pushing my pram 19 years ago, I was
followed by men in cars. Under the bill as it
stands, nothing would come of that.

Mike Rumbles: Let me give you a scenario on
which I would like to hear your comments. In the
bill, the offence of loitering does not cover people
who are in a car, so kerb-crawling will not be
illegal. Only when the kerb-crawler stops, winds
down the window and communicates with another
person will he be engaged in soliciting the services
of that person. The kerb-crawler will break the law
only at the point at which he communicates with
the person. That is my interpretation of the bill. Is
that your interpretation?

Cath Smith: Yes.

Anne Fallon: Yes.

Ruth Morgan Thomas: Yes, that is our
interpretation. I might add that very few clients will
stop to speak to a woman when a police officer is
present.

Anne Fallon: As the bill stands, both the man
and the woman could be charged with soliciting.
However, whereas a woman could be done for
loitering, the man could not be if he was in his car.
It takes two for the soliciting offence but only one
for loitering.

Mike Rumbles: The Executive says that the
purpose of the bill is to put everybody on an equal
footing, if I may put it that way, so that both parties
are charged. However, it seems to me—and, I
think, to you—that the bill will not do that.

Anne Fallon: No.

Ruth Morgan Thomas: No.

Fergus Ewing: I recognise that much of the
evidence that the witnesses have given relates to
issues that are wider and perhaps more serious
than those that are dealt with in the bill. However,
like Mike Rumbles, I want to focus on the
committee’s job, which is to consider whether the
bill will add anything of benefit to deal with the
problems of prostitution. Following the evidence
that was given at our previous meeting, which you
may have heard about, I thought that the whole
concept behind the bill was fatally flawed. If I may,
I would like to find out what your reactions are to
two or three aspects of it.

According to section 1(1), an offence relating to
prostitution is committed by a person who
“solicits in a relevant place in such a manner or in such
circumstances as a reasonable person would consider to
be likely to cause alarm, offence or nuisance”.

That does not mean that a person who was
soliciting would be committing an offence. The
soliciting would become an offence only if it were
done

“in such a manner or in such circumstances as a
reasonable person would consider to be likely to cause
alarm, offence or nuisance”.

It seemed to me in interpreting what the bill says
that it would be possible for a prostitute and a
punter—who is usually a man—to have sex and
that nobody would know about it. No nuisance
would have been created and no offence caused
because nobody would know what had happened;
indeed, that might be the norm when sex acts are
purchased and sold as a commodity. In your view
and with your knowledge of the problem, do you
think that I am right to interpret the bill in that way?

Anne Fallon: I think that we would agree with
you, but there is another aspect to consider. If the
soliciting is not done in a public place

“in such a manner ... as a reasonable person would
consider to be likely to cause alarm, offence or nuisance”

and no one sees it because it is hidden, the
questions of decriminalisation and whether what
has happened does not matter must be
considered. Indeed, there are several issues for us
to consider. We should consider the phrases “in
such a manner” and “a reasonable person”.

Ruth Morgan Thomas: I have a slightly
different take on the bill. The words “likely to
cause” leave enormous scope for police officers to
interpret what could be caused. I absolutely
support the expert group’s proposal to repeal the
offence of soliciting and instead have a public
order offence. However, the soliciting offence that
is framed in the bill does not focus on where the
alarm, fear or nuisance is caused. There is no
objective test. My understanding is that the expert
group recommended that there should be a
complaint-led offence—a member of the public
would have to have been caused offence, alarm,
or nuisance by actions that had taken place and it
would then be up to the court to decide whether
that was a reasonable assumption to draw. The
bill will make it incredibly difficult for local
authorities to manage street prostitution—I know
that some members are opposed to such
management, but it reduces the vulnerability not only of sex workers but of our community. The bill will make that highly difficult and could be used in any circumstances, even if things are done out of the way.

**Fergus Ewing:** You referred to the police’s possible interpretation of the phrase “likely to cause”. Did you have a particular scenario in mind or an interpretation that the police could be inclined to put on those words?

**Ruth Morgan Thomas:** I can give examples of situations in which women have been charged by the words “prostitution. That perception is extended in the bill places, even when they are not engaging in perceived to have the right to walk in public many cases, women sex workers are not not committing an offence. There are individual costs for known sex workers in our society. In many cases, women sex workers are not perceived to have the right to walk in public places, even when they are not engaging in prostitution. That perception is extended in the bill by the words “likely to cause alarm, offence or nuisance”.

16:30

**Fergus Ewing:** Another point occurs to me about a worrying scenario that could be encouraged by the form of words that the Scottish Executive has used in section 1. If a male buying sex knows that that wording means that, in order to solicit in such a way as not to cause a nuisance, he must ensure that nobody is around who could witness the soliciting, he will be determined to ensure that there are no potential witnesses. I guess that those acts will be carried out in private places, away from public gaze, which must be part and parcel of the intention behind the wording, but if punters realise that they might be done for soliciting unless they are well away from any potential witness, is there not a risk that that will drive the act further underground, thereby exposing the female to even greater levels of risk than might be the case at present?

**Ruth Morgan Thomas:** We certainly have evidence from England that shows that the introduction of kerb-crawling legislation there led to an increase in violence against women who are involved in street prostitution. The evidence showed clearly that street prostitution was being driven out to the peripheries of cities, where women were more vulnerable.

**Fergus Ewing:** So that wording could make things even worse and could increase the already high risk of violence for women?

**Ruth Morgan Thomas:** Yes.

**Fergus Ewing:** Do other witnesses share that view?

**Cath Smith:** It is almost as if that wording gives men information about what will happen if they solicit in such a way. We are almost alerting them to the fact that the authorities will be increasingly vigilant about their presence on the streets in cars. I am not sure how many men will go out with the city centre because of that, but they will be much more vigilant. Men who regularly use women in prostitution are pretty skilled individuals and are very much alert to the police presence.

**Fergus Ewing:** I want to pursue a couple of other points. I personally think that the man should be committing a criminal offence and should be prosecuted for soliciting sex. The man who buys sex should be prosecuted and, when convicted, should automatically be named and shamed in the newspapers by law. If that happened, that would surely deter many men who currently entertain these transactions from so doing. However, I appreciate that witnesses have different views and that members of the panel have knowledge and experience that I do not profess to have. I would be interested in hearing your views on whether my argument is correct. If buying sex is made a crime, and if due publicity is made of any man who is convicted of such a crime, will that—if it does not eliminate the issue—deter some men from taking the risk of attracting such publicity and therefore reduce the number of men who seek to buy sex from women?

**Ruth Morgan Thomas:** I do not believe that there is hard evidence from Sweden, where the buying of sex has been criminalised. There was a reduction in street prostitution there after 1999, when the legislation came in, but, if you talk to health departments in Swedish cities, you will discover that the levels are back where they were before buying sex was criminalised. What has become clear from the discussions that I have had with Swedish sex workers is what sort of consequences that legislation has had for sex workers. Any legislative change must analyse the impact and consequences for all the stakeholders. Sex workers should be valued as citizens and we should not put them in situations of greater vulnerability. However, reports from Sweden indicate that that might be happening as a consequence of the legislation.

It is also interesting that, prior to 1999, the majority of sex workers in Sweden worked
independently. Further, there were low levels of drug dependency among sex workers—it was estimated that there were only 800 drug-dependent sex workers in the country, which is fewer than there are in either Glasgow or Edinburgh. However, the change in the situation in Sweden has driven sex workers into organised crime networks that are offering protection. I do not believe that the criminalising of the purchasing of sex is effective with regard to reducing prostitution.

The strategy of naming and shaming people does not sit comfortably with me. Many men who use prostitutes are in relationships—whether they are married or are living with someone or whatever—and naming and shaming them would affect not only them but their families. The stigma that sex workers face would be spread to the clients and the clients’ families in the same way that it is spread to the partners and children of sex workers at the moment. Further, it would be incredibly naive to think that the strategy would put off significant numbers of men.

Anne Fallon: Cath Smith mentioned education schemes. That is an important issue, as is awareness-raising work. There is an imbalance of power between buyer and seller in street prostitution. The harm that is caused to women needs to be considered. It is true to say that if a buyer is prosecuted and named and shamed, women and children will be affected. I do not think that we are necessarily talking about going down that road.

We need to look at the impact that the buying of sex from a woman has on a woman who is selling sex for survival purposes. That is probably an area in which significant changes can take place through awareness raising.

Margo MacDonald (Lothians) (Ind): I have the figures from Sweden, if anyone is interested in seeing them. They substantiate what Ruth Morgan Thomas said about what happened there. After the criminalisation of the buyer, it took about a year to a year and a half for things to go back to what we might call the normal state of affairs. Sweden is a relevant international comparison as it is roughly the size of our country and has three big cities. The lesson that we can draw from Sweden is that each city has its own pattern.

This afternoon, we have been in danger of confusing the bill—which seeks to change the law—and the advice that was given by the Executive in the explanatory notes.

The Convener: Margo, can I ask you to address your points in the form of questions to the witnesses? I am conscious that we still have another panel of witnesses to hear from.

Margo MacDonald: I wanted to outline where my questions are coming from. If I appear to be ignoring much of the witnesses’ evidence, it is because we are supposed to be considering the bill, not the explanatory notes.

I agree that this is not a good bill and that it does not do what the expert group wanted it to do. Does Routes Out want the law to stay as it is?

Cath Smith: No, I do not think that the law should stay as it is. We must make men more visible and hold them to account for their behaviour. The bill will not do that.

Margo MacDonald: So you want to use the law to change behaviour and the culture.

Cath Smith: The law is one of many strands to changing behaviour and culture. It is one option that we should consider.

Margo MacDonald: The primary objective was to consider the law from the point of view of public order, which Ruth Morgan Thomas raised. We know why that objective was set—it was because people in an area of Edinburgh were being disturbed. Will the bill go any way towards making life more tolerable for the people who live around Leith Links, for example?

Ruth Morgan Thomas: I do not believe so.

Margo MacDonald: That is the sort of question in which I am interested. I say with all due respect that the committee must decide whether to amend the bill to ensure that it meets the criteria that experts have set out.

The Convener: The committee is well aware that several witnesses have expressed concerns about the bill. We will address that in our stage 1 report to Parliament. Members are aware of the issues.

Margo MacDonald: My other question is for Routes Out and is for clarification for the committee. I am steeped in the issue, but many committee members are coming to it for the first time. Anne Fallon said that we should not tolerate prostitution.

Anne Fallon: That is not what I said.

Margo MacDonald: What is it that we should not tolerate?

Anne Fallon: I said that we have a zero-tolerance approach to prostitution, as we have to domestic abuse, child abuse, rape and sexual assault. We are saying that, yes, prostitution is here and probably will not go away, but that does not dilute the message that we see prostitution on the continuum of violence against women.

Margo MacDonald: Does the bill exhibit tolerance of prostitution?
Anne Fallon: What we were saying—we have mentioned it a couple of times—is that the bill does not redress the imbalance in prostitution between the seller and the buyer of sex.

Margo MacDonald: I will come to that later.

Does the bill do anything to encourage prostitution?

Cath Smith: Perhaps the bill does not encourage prostitution but, as Fergus Ewing said, the concern is that men will be more alert to how they will be prosecuted and will be more vigilant, which may mean that women are pulled into much more dangerous situations. We are concerned because the bill does not talk clearly about the harm that is caused to women; instead, it deals with legislation that is not fair or equitable, ostensibly to target men, although I do not believe that it will do that.

Margo MacDonald: I am trying to get at whether the bill has any provisions of merit and whether it meets any of the intentions of the expert group, with which I think you agreed. The expert group’s intention will be completely lost if we cannot identify any provision of merit in the bill. That concerns me, but I wonder whether amending the bill could take care of that.

Anne Fallon: The intentions and recommendations of the expert group were and are there. We were all very excited about the bill. We have waited a long time for it, and communities, agencies and women are disappointed with what we have. The bill presents our chance to change things but, as it stands, we do not think that it will do that.

Margo MacDonald: It might be remiss of me to say this, but if we do not get this bill right, we do not get a bill.

16:45

Ms Watt: There seems to be a fair degree of consensus that the bill does not do what it set out to do and that things have moved on in prostitution since Margo MacDonald’s member’s bill was considered. Much prostitution is now arranged by mobile phone, we have seen a big increase in workers coming in from eastern European countries and many people are now working out of flats through pimps. Given all that, is there a case for saying that we should have a completely new bill that covers saunas and brothels—or whatever you want to call them—as well as street prostitution, rather than tackling the problem piecemeal in the way that this bill does?

Ruth Morgan Thomas: I had hoped that the bill would improve the situation in which women in Edinburgh have found themselves in the past five years. The deterioration that we have witnessed, with increasing levels of violence, has been extreme and the women have just been left to fend for themselves. There was an urgent need to address the situation, which merited the bill. We are a long way from having done the necessary research and analysis of the indoor industry or of male sex work to be able to put together a bill to cover all that. I do not think that women on the streets have the time to give you to get that right.

Anne Fallon: There are differences between street prostitution and indoor prostitution, for example in drug use. Our experience is that some women are moving off the streets and going into flats. I do not know whether they have pimps; they usually have partners. We need to consider the issues separately.

The Convener: That brings us to the end of questions for this panel. I thank all four witnesses for their evidence.

I welcome our second panel. We will hear from Amanda Bell, chairperson of Calton for all; Jennifer McCarey, committee member of Calton for all; Alan Beatson, chair of Leith Links residents association; and Senga Bethune, member of Leith Links residents association. Before inviting representatives of both organisations to make introductory remarks, I extend an apology to you all for the fact that we are running a bit later than we expected, partly as a result of the fire alert and partly because some of the question-and-answer sessions have overrun.

Jennifer McCarey (Calton for All): I thank the committee for giving us the opportunity to come along on behalf of our local community group to talk about the issues that affect us. Nobody managed to let us know that we were expected to make introductory remarks, so I am going to ad lib. I hope that you will be patient with me, as I am a bit nervous.

Our area has been mentioned on several occasions. It is becoming notorious in Glasgow for the problems that are caused by street prostitution, but local people have a different feeling. We are very pleased to live in the area and we want to stay there. Many of our families have lived there for generations. Although the problem is serious and we want to tackle it, we do not want to be defined by it—we do not want it to be what our community is known for.

The community group of which I am a member wants to emphasise that the problem of street prostitution is expanding beyond the Calton area. Community groups and mums in Bridgeton and parts of Dennistoun have told us that the area of the east end of Glasgow in which street prostitution occurs is widening. That can be seen in the infamous Evening Times statistics, which did not concentrate on the five or six streets that...
have been known as red-light areas for the past few years. The issue is expanding geographically.

Street prostitution is also a 24-hour activity in our community. It is not something that happens when our curtains are closed and our children are tucked up in bed; it happens when we take ourselves off to our cleaning jobs at 5 o’clock in the morning, when we go to the local health centre and when we take our children to school at 9 o’clock in the morning. It happens all through the day. At 3 o’clock in the afternoon, the head teacher of our local primary school has to phone the police to say that there is street prostitution going on around the school. That happens frequently and has been recorded by the police. There is activity throughout the early evening, which restricts people’s comings and goings in the community, and it continues into the evening when, as we look out of our windows or lie in bed, we hear shouts, screams and things going on. It is frightening to be around.

Our group started as a group of local mums who came together because we wanted to find activities for our children. We met at nurseries and schools, which is how we became a community group. One of the issues for us was the way in which street prostitution in the area was affecting our children’s lives. I do not know whether committee members have any idea what it is like to live with the issue or how it affects a mother’s life. All of a sudden, she has to have conversations with her eight, nine or 10-year-old children about prostitution and explain why the vulnerable-looking young women they see are stepping into cars with what look like strangers. In Scotland in this day and age, it is appalling that we need to discuss that with our children.

For our children’s personal safety, we have to have serious conversations with them and, at times, restrict them in certain ways even if we would like to give them a bit of leeway as they get older. They cannot walk around the streets as we would like them to do, to enable them to gain confidence and freedom as young people; we have to restrict their movements. They are exposed to a particular side of life in a powerful way, and we think that that is a social problem in which the committee should be interested. Tackling that should be a priority alongside tackling the other issues that have been eloquently spelled out today. It is not a competition; these are serious issues that affect our community and that are caused by street prostitution.

The Convener: Thank you for those introductory remarks, Jennifer. I am sorry that you were not made aware that there was an opportunity to make introductory remarks. I make the same opportunity available to the representatives of Leith Links residents association.

Alan Beatson (Leith Links Residents Association): I am not going to follow the pattern that I had intended to follow, because—not for the first time—I have been made rather angry by what I have heard.

About 1,000 people live in the vicinity of Leith Links. It has always been a residential community, but the problem emerged when prostitution was imported into the community in early 2002. At the moment, if you go out into Leith Links at night, there will probably be only two or three prostitutes. The low number is due largely to greatly increased police activity in the past six months. The problem was at its worst in 2003, when perhaps 15 or 20 prostitutes would be out on a typical night. That was before we were forced to set up patrols to reprotect our community from the devastating effects that Jennifer McCarey described. At that time, at one o’clock in the morning, there could be 30 cars going round and round a particular circuit around Leith Links. The noise was much greater than at any time during the day, and the disruption at every level was catastrophic to the community.

This afternoon, we have heard a tremendous amount about the genuine problems of prostitutes. However, as Jennifer and people in other communities would agree, we should also consider the people who live in the area. On the one hand, we have 15 or 20 women with serious problems whom we all want to help, but on the other hand we have around 1,000 people in the community around Leith Links whose interests are not being given equal standing with the interests of those women. We have felt that from the beginning.

I will not bore the committee with the details, because we have gone through them many times, but our lives were devastated by what happened around Leith Links in 2003 and 2004. Large numbers of people moved out and, in effect, we had a curfew. Women in our communities would not go out at night. Around 15 or 20 prostitutes were operating, but around 400 women could not leave their houses because they would be approached or threatened. All sorts of things would happen to them. The problem was hugely important for the community—and ours was not the only community to be affected. The needs of local residents have been ignored.

In 2003, we were forced to set up patrols. They were not vigilante patrols but simply groups comprising dentists, cleaners, mothers and other typical groups of people. The patrols went out with placards and simply said, “Go away.” In doing so, we managed to break the link between the kerb-crawlers and the prostitutes. After six months of going out seven days a week, we managed to...
reduce the problem. We were about 250 people, and it took a lot of commitment. That will give the committee some idea of the impact that the problem was having on the community.

We gave evidence to the expert group. We were a bit disappointed that the group did not give more credence to the interests of residents. Page 10 of the briefing paper that I have been given for this meeting gives the five conclusions of the expert group on the objectives for changes in the law. All five of them are meritorious and we agree with them. However, we are bound to ask: where is any reference to the residents? Number 4 says that changes to the law should provide

"effective protection to the general public from offensive behaviour and conduct".

Local residents are not the general public; they are a very specific group. They are a group to which all of us like to think we belong—law-abiding people, doing their jobs, living with their children and families, and wanting to be left alone to enjoy their civic and human rights as ordinary people living quietly in their homes. We were disappointed that the expert group did not give more credence to such issues.

17:00

We felt that the expert group’s total failure to deal with pimps in its conclusions was a serious omission because many of the women have pimps, as we know from personal experience. The prostitutes are exploited by pimps and by the groups of men who use them.

We were disappointed that kerb-crawlers were not isolated as the group that ought to be penalised. We agree with everyone today who has said that there is a serious lack of balance in the bill between the women, who are likely to be prosecuted, and the men, who are not. After all, the men are wealthy and have less reason to do what they do than the women who are prostitutes to survive. Judging by the cars that the men drive, they are pretty well-off. One is bound to ask what sort of deviancy they want to indulge around Leith Links that they cannot indulge in a safer place such as a sauna. We know that women are at risk from kerb-crawlers, so we were disappointed by the lack of emphasis on that in the report and consequently in the bill, on which we have been asked to comment. Loitering is so vaguely and ambiguously defined in the bill that it is more or less worthless and in practice the provisions on soliciting will not change the situation very much.

I do not want to go on for long because I realise that time is short, but I have a couple of final points. The first is about the role of the police, which is absolutely central. In 2002-03, they totally disregarded us as a local community because they did not regard prostitution as an issue with which they wanted to be involved. The police were noticeable by their invisibility. Whenever we phoned up they would not give us incident numbers. We had months of problems when they were downplaying the situation. They were embarrassed when the patrols were established and when members of the residents association were talking to the national press and the “PM” radio programme. That emphasised the problem and City of Edinburgh Council responded to a degree. However, the lack of police co-operation to begin with is an important matter.

In the past six or seven months, we have been struck by how the police around Leith Links have suddenly become much more committed to our cause. The change has been quite dramatic. At the moment, it is unusual to see more than two or three women about the links. We know that, because hundreds of people live there and they experience much more than SCOT-PEP what is happening on the streets on a daily basis. Why has that happened? It is because the police are present in quite large numbers, they are visible and they are stopping women. The result is that the number has reduced. When I was out with my dog late one night, I heard a woman say to her pimp, “It’s just too much hassle these days.” Many women who might get involved on the margins of prostitution have been driven away from our area by the level of police involvement, although I do not know about other areas. What has happened is remarkable. It has been a learning exercise for us to find out how effective the police can be if they want to be.

There is one worrying aspect of the bill that we must put to the committee today. It is suggested in the bill that any strategy to deal with the problem should not be complaints-led, which we support strongly in the community—there was unanimous support for that at a meeting that we held. The reason is that if the police are around, they can monitor and control the problem of prostitution by being visible. If it is simply a matter of local residents complaining, it will be much easier for prostitution to continue and it will be much harder to control. It might also victimise local residents, who will be easily identified and fingered as the people who have contacted the police to make a complaint.

The comments that I have made are not what I intended to say originally, but my thoughts have evolved as I have listened to the discussion. I emphasise strongly that we feel that sufficient regard has not been paid to communities in this process by the expert committee or in the bill. We have rights that are not always thought about and addressed in the way in which they ought to be. Street prostitution does devastating damage to a community that is very hard to describe, although
Jennifer McCarey went some way towards doing so.

The Convener: I thank both groups for their introductory remarks. On behalf of members of the committee, I reassure you that we want to hear the views of communities that are experiencing difficulties associated with this issue. We are open to listening to your ideas and views on the bill.

Paul Martin: I have a question for Alan Beatson about the Prostitution Tolerance Zones (Scotland) Bill that Margo MacDonald introduced. I accept that that bill is not connected to the bill that we are considering, but I understand that Margo MacDonald’s member’s bill emerged from discussions with the Leith Links residents association. Can you elaborate on that?

Alan Beatson: It did not emerge directly from discussions with the association. When the problem suddenly arose in 2002, it was a new experience for us. Margo MacDonald had discussed the issue previously. We had discussions with her about the best way forward for us as a community and about whether there should be what is called a tolerance zone. Originally there was an unofficial tolerance zone in Edinburgh, in Coburg Street. That worked extremely well, because everyone accepted that it existed, it was run according to some unofficial rules and no one seemed to bother about it. Problems arose when the local police chief unilaterally closed down the zone and declared that it was to move somewhere else.

Our association held a meeting to discuss the possibility of setting up a tolerance zone. As liberally inclined persons, many of us were sympathetic to the idea in principle. However, at the meeting, which went on for a long time, practical problems began to emerge. For example, it was suggested that if the areas around the docks and the old esplanade, which are quite isolated from the rest of Leith, were chosen as a tolerance zone, its existence would be publicised and people would come from far and wide to one corner of Leith—it would become a sort of leisure activity.

The zone might not be next to our community, but what about the policing of the fringes of our community? We raised that issue at one meeting with the police. Because they are always short of numbers, they could not commit themselves. The fear was that if areas near the esplanade or other parts of Leith that are quite isolated were designated as a tolerance zone, people would be attracted in for sexual purposes. How would we stop that activity spreading from the zone into the community? A high level of fringe policing would be necessary to do that. People would be attracted into the wider area for sex tourism.

Paul Martin: You are now advocating the establishment of what amounts to a dispersal zone, similar to those for which the Antisocial Behaviour etc (Scotland) Act 2004 provides. You are suggesting that there should be a heavy, intensive police presence to ensure that people are deterred from taking part in such activities.

Alan Beatson: No. It is not fair to say that. The police do not have a heavy policy on Leith Links; they are simply doing their job, which is to enforce the law. There is a law on soliciting and the police are visible, which in itself is having an effect because they were not visible before. That proves to us that, if administered rigorously, the present law works. That is what people in the west of Scotland said to us at many meetings. They asked why liberal Edinburgh did not apply the law more rigorously, as it is done in the west. They told us that we would find that that works.

We do not take a moral stance on this at all—far from it. We want to support the women because they are members of the community and we have obligations to them. It is in everyone’s interests to sort out the problem, but we think that it ought to be done with proper policies to help people to get out of prostitution, particularly through drug support. SCOT-PEP is unique to Edinburgh; as far as I am aware there is no equivalent organisation elsewhere in Britain. It is not specifically dedicated to getting people out of prostitution or to getting them off drugs. Drugs are the central issue here. We think that a lot of resources ought to be put in to helping the women to get out of drugs. We have some experience with antisocial behaviour orders as they are applied at the moment, but they have been slightly hit or miss. My colleague Senga Bethune has been more involved with that.

Paul Martin: I have a question for Jennifer McCarey and Amanda Bell. From your experience in Calton, if we increased the tariff served on the perpetrators—those who are purchasing sex in the first place—would it deter them from kerb crawling in the Calton area?

Jennifer McCarey: I am not here to analyse how sentencing works or what is effective. What I will say is that men—middle-class men, working-class men and upper-class men—come into our community looking for street sex. They think that that is acceptable behaviour. Society tells them that that is acceptable behaviour. Our community group says that that is unacceptable. It is inappropriate for a man to come into a community for that purpose—there is something wrong with it. However, it is also about the other men who come to our community. There is a whole layer of dangerous men who partake in that activity for their own reasons. The women and children in our community are more likely to be exposed to those dangerous men. There have been frequent reports
of assaults in our community and there have been incidents that women have not reported.

Kerb crawling has been mentioned. People think that kerb crawling is when someone drives up to you, rolls down their window and makes a comment. Kerb crawling is not just that. It is a car slowly following you and creeping along beside you. Often you are the only person in the street. The car stops you, then it drives slowly beside you and stops. It is tremendously intimidating behaviour, which does not involve rolling down a window and talking to you. As others have said, including the folk from Leith, we see the same cars going round and round our area. These men are persistent. They spend their evenings going round our community, observing. That kind of behaviour is unacceptable. We have to do something about it.

Dispersal was mentioned. That is an issue for our community. The policing changed in the centre of Glasgow. There used to be an area where women could work, where they were unlikely to be prosecuted. That stopped about 18 months ago. Women had always used parts of the east end. It is traditional. For 200 years, women worked in the green. It is not a new problem. Then the Glasgow green area was completely regenerated to prevent cars going right through the park and to prevent kerb crawling. However, what happened was that the women moved up three streets. They moved out of the city centre, not towards the leafy west end but towards the east end. Dispersal is an issue, because it affects another community. We cannot close our eyes to that and pretend that it is not happening.

17:15

David McLetchie: I want to ask Alan Beatson about enforcement, of the existing law and of any new law that we might get. You said that the problem on Leith Links developed because the senior police officer closed down the unofficial tolerance zone in Coburg Street and the surrounding area. Am I right in saying that he changed his mind not just on a whim, but because those streets had become increasingly residential as a result of new property developments and the residents decided that they did not want to tolerate that activity on their doorstep?

Alan Beatson: I believe that that is true. The change occurred in November or December 2001 and was the senior police officer’s parting shot. Some of the local police were not happy about it because the decision was made unilaterally—the city did not know about it.

There is no doubt that you are right about the reason for the change being made. Part of Coburg Street was being developed and there had been some complaints.

David McLetchie: Basically, what happened was that the present law started to be effectively enforced in Coburg Street, which resulted in the closing down of what had previously been an unofficial tolerance zone.

Alan Beatson: Yes.

David McLetchie: That resulted in displacement, which is the problem that Jennifer McCarey has just highlighted, which led to a problem developing in Leith Links. You were saying that the same senior police officer must have said to the chief constable that, as far as the Leith Links area was concerned, the displacement was acceptable and the situation could be tolerated, but that your activities compelled the law to be enforced. Is that correct?

Alan Beatson: No, that is not what I said. A public announcement was made—I saw it in the paper but did not realise its significance at the time—that the unofficial tolerance zone was being moved to Salamander Street, which, at that time, was semi-industrial and mostly contained warehouses. The problem was that that was not a perfect place for the women, so they spread through the roads that connect Salamander Street to Leith Links. Because Leith Links has a natural circuit, it started to become the natural place for people to go to look for prostitutes. That had never happened there before.

David McLetchie: I am aware of that. What I am saying is that when you found yourself being impacted on by the activity, as a result of the displacement from Coburg Street and the unsuitability of Salamander Street for the purposes of prostitution, your initial experience was that the police were not enforcing the law in your area. If I understood your evidence correctly, you had to shame the police into enforcing the law. Is that correct?

Alan Beatson: In many senses, it is. I will ask Senga Bethune to speak, as she has a lot of experience of what you are asking about.

Senga Bethune (Leith Links Residents Association): When the unofficial tolerance zone was moved from Coburg Street to Salamander Street, the new zone was marketed as an official zone. Although the area is mostly industrial, it is a small street, which meant that the women would go into tenement stairs and Leith Links, which is a playground area for many local people.

In conjunction with SCOT-PEP, the police decided that Salamander Street would be a good place to have the new tolerance zone. There was no consultation with local residents and businesses. However, everything fell through and,
because the police had had their fingers burned previously, they washed their hands of the whole thing and we were left to pick up—literally—the detritus of the experience. You are right that we had to start going on patrols and collecting signatures for a petition to Parliament because no one was listening to us. There came a point at which we, as residents, could not take the abuse that we receive nightly from kerb-crawlers—that relates to the incident that Jennifer McCarey mentioned—and also from the prostitutes themselves and their pimps. That abuse is a common occurrence.

David McLetchie: As I understand your evidence, your problem arose from displacement.

Senga Bethune: Yes.

David McLetchie: When the problem arose as a result of prostitution moving from Salamander Street to your area, your initial experience was that the police were not particularly sympathetic to your situation in enforcing the law.

Senga Bethune: That is correct.

David McLetchie: Through the actions of your community, we arrived at the present situation. If I understand your evidence correctly, whereas three years ago there might have been 15 or 20 women engaged in street prostitution in your vicinity, there are now just a handful—two or three—and the police are enforcing the law.

Senga Bethune: Yes. There is much more positive policing.

David McLetchie: I ask Jennifer McCarey and Amanda Bell to comment on their experience of enforcement of the law in Calton and the wider areas of Bridgeton and Dennistoun, which they mentioned in their evidence.

In your perception as residents, what efforts do Strathclyde police make to enforce the law in dealing with what I think you described as a 24-hour activity?

Jennifer McCarey: We had a series of meetings with Chief Superintendent Kenny Scott. There has been quite a heavy police presence in our community in the past few years and no shortage of arrests and convictions for prostitution. For a while, the number of women who had been charged with prostitution on Glasgow green was daily front-page news in the Daily Record. The women certainly seem to be lifted, but the police tell us that the women walk out of the police station and go straight back to where they were standing before, or maybe to a more discreet corner. They go out again and again.

The police tell us that lifting those women has zero impact, because whatever forced them out there in the first place forces them back. We see them at 3 o’clock in the afternoon, standing outside a primary school. It is not callousness that brings them there, but desperate circumstances, which are not changed by the women being lifted by the police.

David McLetchie: But what do you think we should do in the narrow context of the laws that we are considering?

Jennifer McCarey: I do not have the solution. I am sure that, if you gave me plenty of resources, our community group could come up with a solution for our area. I can tell you what we need but I cannot tell you the solution to the problem.

David McLetchie: What do you need?

Jennifer McCarey: We need women not to be in such desperate circumstances that they will put themselves through anything to get a bit of cash to get through the next 24 hours. We need men not to think that it is acceptable to wander into the area looking for street sex at 5 o’clock in the morning, 9 o’clock in the morning or 3 o’clock in the afternoon. Men wander around the area with no regard for the way in which we live our lives.

The men who come with the women are a problem as well. I do not know whether they are pimps or boyfriends, but they are there while the women go in cars. They are often violent men and they often deal in drugs. They need to be dealt with as well, because they pose as much of a threat to our community as the men who come looking for sex.

In the community that we live in, the problems that we face are intensified. Our community is not laid out very well. It is a bit run down in some places and nobody has bothered about it for a wee while. That is intensified by street prostitution because every dark alleyway becomes a dangerous place. We have areas that need ripped up and done again, but no resources are available to make such communities safer places and to reduce the problems that they face.

That does not answer your question about the bill. If the bill was effective in targeting kerb-crawlers, we would welcome that, because we see kerb crawling daily. We have evidence that the bill will not have any impact on the women’s behaviour, because they are in desperate circumstances. We are not too confident that the bill will give us the result that we want on that. The most important thing for our community is to have effective action.

David McLetchie: You acknowledge the wider social problems that relate to the supply of women who are engaged in prostitution and the need to address those problems. However, if I understand what you have just said, you feel that what we can do is to pass laws that will choke off the demand—
the customers or kerb-crawlers. Is it a fair assumption that, for you, the key thing is to try to ensure that the laws on kerb crawling are tightened up to reduce the demand?

**Amanda Bell (Calton for All):** Kerb-crawlers are at the schools every day. I have two girls—one goes to St Mungo’s academy and the other goes to St James’ primary school. I am only two minutes away, but I have to get somebody to go and pick them up, because the situation is so bad.

**David McLetchie:** So kerb crawling is the key issue.

**Jennifer McCarey:** Absolutely.

**Amanda Bell:** Yes.

**Michael McMahon:** My questions will not be dissimilar to those that you have heard already. I want to get to the bottom of what we need to do to make the bill as effective as local communities would like it to be. We understand that there are many complex reasons why women are in prostitution. Equally, in tackling other antisocial behaviour, there may be underlying problems, such as drug and alcohol abuse or domestic problems that cause young people to wander the streets at night. We understand that antisocial behaviour can have causes that we want to address. However, in dealing with antisocial behaviour that causes disturbance to local communities, we do not take an easy line; we take a hard line and ask for that behaviour to be addressed, while considering the other issues along with that. Is that the type of approach that we need to make the bill effective? Do we need to address antisocial behaviour and try to eradicate the problem by making people aware that the behaviour is not acceptable?

**Alan Beatson:** Are you suggesting the use of the present regime of ASBOs? We have some experience of those, so we know that many practical problems arise. In theory, the idea of treating the problem as one of antisocial behaviour is excellent, but in practice that has proved to be a problem. In our area, ASBOs have made a difference in one or two cases. Senga Bethune has been heavily involved in keeping diaries and with the business of ASBOs.

**Senga Bethune:** I do not think that such orders are a way of tackling the issue. I listened to what the experts said earlier and I think that it is about time that the whole business of street prostitution was treated as a drug problem. Earlier, we were given a figure that 50 per cent of people who are involved in prostitution are new to it. One must wonder whether that is because of the availability of cheaper drugs. That must be considered. Basically, women sell themselves to pay for either their drugs or someone else’s drugs. If a young man burgled houses to pay for his or someone else’s drugs, the law would come down hard on him. However, the women are in a different position, because they are being abused and are vulnerable. We think that targeting kerb-crawlers is a way of cutting the demand. If the demand was cut, organisations such as Routes Out and drugs organisations could get together to help the women.

If there is no demand, they will not earn as much money and might come forward voluntarily. As far as we are aware, there have not been many cases in which a pimp has been charged, simply because the prostitute would have to give evidence to the effect that the pimp was living off immoral earnings. That will not happen when a woman is terrified. We need to examine prostitution as a drug problem. Using the bill to target kerb-crawlers would definitely represent a way forward, but at the moment it does not go far enough.

**Jennifer McCarey:** I can give you only our issue and pick them up, because the situation is so bad.

17:30 **Michael McMahon:** Is that the view of Calton for all?

**Jennifer McCarey:** I can give you only our impressions. Many of the women who stand on corners in the streets of our communities are very young—some of them barely look 16—and they are extremely vulnerable. To a mother, they look like highly vulnerable young people. If I think about the vulnerable young people that I know, I recognise how easy it is to slip into that world. Would a hard regime of arresting and sentencing those young people to teach them a lesson achieve the result of reforming their characters and getting them on the right road? In my experience and in the experience that we have heard about, that would not happen. We are talking about extremely vulnerable women. We have no experience of people being attacked. If folk do not look completely drug fuelled, they look as if they are in a really bad place. We can only feel sadness and pity for them.

We have been involved in dealing with cases of antisocial behaviour. The deployment of police officers in specific areas to deal with some of the issues that have been outlined has been quite effective. However, the issue that we are discussing is different and different problems are causing it. The tougher approach that you outlined can be successful—I have seen it used successfully to deal with specific antisocial behaviour problems that arise at certain times in particular parts of my community. However, I do not think that prostitution is the same problem.

**Michael McMahon:** That is helpful. I wanted to explore whether we are talking about a general problem of antisocial behaviour or a more specific
issue. You can correct me if I am wrong, but you seem to be saying that kerb crawling is the problem and that we must get the bill to address that.

Jennifer McCarey: Absolutely. We must also help to provide some support for the women.

Senga Bethune: The other organisations that have been represented at today’s meeting have all said the same thing. I have met Ruth Morgan Thomas on several occasions and we do not always agree on everything, as I am sure the committee will understand, but we certainly agree on the need to go for the kerb-crawlers. Everyone here is saying that.

Tommy Sheridan: I am sorry to go over old ground, but will you tell the committee how Calton for all was formed? Over what timescale did you come together and how did that happen?

Jennifer McCarey: Amanda Bell was in the group first; I joined about six months later. A group of local mums got together because we did not have a community centre in our community—it was as simple as that. We wanted to provide clubs, youth activities and summer holiday activities for our children, so we got together to organise them. Incidents happened in our community—for example, I would be kerb crawled going to a meeting. Things happened as we went about our business. It became evident that prostitution was a big issue in our community that we were all distressed about. The problem was getting worse and there did not seem to be a way out, so we decided that we would call community meetings.

Amanda Bell: Calton for all started because there were two murders in our area, one of which was caused by a pimp and his girlfriend. There were two murders in the same place. That is how things started. We all got together after that.

Tommy Sheridan: When was that?

Jennifer McCarey: We had the first public meetings in May—no, March. We have had five meetings since then, and at no public meeting have fewer than 50 people been present.

Our community is a tolerant one. We live next to Celtic football park, the Barrowlands and the Barras—Europe’s biggest market—so we are used to being in the middle of a lively community. We like that and we are used to tolerating lots of different kinds of people and their behaviour, but, as mothers, grandmothers and parents, we feel that our area has become unsafe. We see the cars going round and round and the vulnerable young women standing in corners as we go about our day, and the situation has become intolerable. We have had meetings and have tried to take the issues on board for the community.

We have small delegations that meet certain people. We have had the police along to the big meetings, but we now have a small delegation that has meetings with Kenny Scott on a fortnightly basis to tackle five key areas. We are working with people and that is going well in some ways although not so well in other ways, as you would expect.

That is how we came to where we are today. I think that we probably tolerated things a lot more than we might have done because of the nature of where we are and the community in which we live. A lot of other communities would probably have been in uproar a long time before us. It has taken us quite a long time to get to where we are.

Tommy Sheridan: I asked about that because your group was formed to tackle a plethora—a myriad—of problems, not just street prostitution.

Jennifer McCarey: Absolutely. It is not just about that.

Tommy Sheridan: Do you have any input from residents associations, tenants groups and community councils? Do you subsume all of those or do you not have linkage with them?

Jennifer McCarey: Lots of folk have been involved in the big public meetings, which have been attended by lots of community groups from the area. Members of our committee are also on the community council in Calton, so we are involved in those activities. There was not much community activity in Calton before, which is why we started up our group. There were no mother-and-toddler groups, no youth groups, no football clubs—there was nothing, really. We started up our group to try to create a bit of community activity in the area.

Tommy Sheridan: Did you have any input to the expert group that was established to consider the prostitution issue? Did you have any way of inputting before the bill appeared? Did anybody ask you for your opinions before the bill was written?

Jennifer McCarey: The short answer is no, we did not. However, in the past two years, we have been in touch with Frank McAveety, who has come to our committee meetings and attended every public meeting. A councillor and another MSP have attended some of the meetings as well. We have managed to get the politicians interested in our community recently, which is a good thing. That is why we have been able to have a bit of an input to the process.

Tommy Sheridan: I would like to involve Alan Beatson and Senga Bethune in the discussion. I asked about your input because it is clear that the bill’s big weakness is that it does not deal with the problem of kerb crawling; yet, the single biggest
problem that you highlight is kerb crawling. Calton for all did not have an input into the bill, but Alan Beatson said that the Leith Links residents association had had an input via the expert group, to which it gave evidence.

Alan Beatson: Yes. We gave a presentation to the group on one occasion, but we were disappointed when we read the report. We highlighted the role of pimps, which is difficult to deal with but is a real part of the problem, but that was not addressed fully—if at all—by the expert group. We also made it clear in our submission that kerb-crawlers are, in our view, the major problem. They are the only ones who have the option of cutting the circle.

Tommy Sheridan: I asked those questions—I am sorry that you have had to go over some old ground—because it appears from what Mike Rumbles and others have said that the bill’s biggest weakness is that it does not address kerb crawling. You come from community groups that represent real people and you are telling us that that is the biggest problem. That poses a big question in relation to the bill. You listened to the previous discussions: do you agree that the fact that the bill does not deal with kerb crawling is a big problem?

Alan Beatson: Yes. That caught our attention as soon as we read the expert group’s report. Many people have talked about what is happening in Sweden. We know that nothing is perfect in this world. Consider the problems that we see—or that we saw, given that they are now much reduced. Middle-class men came into our area, sometimes from many miles away—the fact that they were middle class did not really matter: the point is that they were, by and large, pretty wealthy, although some were not. People came to Edinburgh and into our community from 30 or 40 miles away for this purpose; they were not part of the community and they put the women at risk. Our perception has always been that kerb-crawlers are the real problem; if kerb crawling is cut out and the women have no clients, they disperse.

Our evidence is that that has happened to an extent at Leith Links over the past few years. Our patrols were very effective against kerb-crawlers. We have identified them and got to know the people who come along two or three nights a week. They go round and round. Some of them do that as potential voyeurs and do not pick up women. They just go round and round all evening. There is a lot of dispute about how we can define a kerb-crawler; we often say to the police, “How do you define a kerb-crawler?” However, if someone is slowly going round a defined area five or six times or more—they do it continuously for hours—that behaviour is demonstrably odd. They cannot reasonably say that they are lost, although that is often what they say. Some of our members’ daughters have been stalked—that is the best way to describe what has happened—by kerb-crawlers.

Tommy Sheridan: Do the other witnesses share that experience?

Amanda Bell: My daughter has been followed.

Jennifer McCarey: It is a big issue for women in our community. There is almost no journey that you can make in any direction on the main streets that does not involve you being tracked by a vehicle, especially at quieter times. Men will congregate in the area, stop their cars and wait with their engines revving. People who live in the area know about and see that behaviour. The behaviour is odd and there is no other reason for it. When someone stops their car and opens their window, that is frightening or alarming, especially for young people.

Alan Beatson: In our area, the men tended to make several circuits to have a look at the women who were around and to work out whether some of them were prostitutes. There was a lot more interaction with local people than you might imagine. My wife is disabled and in a wheelchair. Once, when we were going across the links after being out in the evening, a chap went by slowly and stared at us out of his car window. It was unpleasant. He drove on and looked at someone else further on. Such behaviour is a nuisance and is very threatening. As I said in our submission, there really was a curfew at Leith Links in 2003. Approximately 500 women were frightened to come out of their doors at night. The kerb-crawlers caused that fear.

Margo MacDonald: I want to check something with you. You said that you had noticed—in your group, I presume—a difference in the style of policing in Glasgow about 18 months ago. I think that you were talking about the area around Bothwell Street and Cadogan Street that was traditionally used for such activities. You said that more women were being lifted.

17:45

Jennifer McCarey: Policing changed in Glasgow city centre; that is a well-reported fact. Anyone who works in the area will tell you that, from 8 o’clock in the evening until 4 o’clock in the morning, there was an unofficial zone that women were working in and they were not arrested. That stopped, and the police decided to arrest every woman who was working. That resulted in people being scared to work in the area.

In an Evening Times article two weeks ago, the police referred to the halving of the number of arrests for prostitution in the city centre in the past
year as a great success, but the problems that bring women into prostitution have not halved. Someone else inherits those problems.

Margo MacDonald: There was more stringent policing and more women were lifted. Are there still women around Cadogan Street and Bothwell Street?

Jennifer McCarey: Yes.

Margo MacDonald: That is the first thing that we ought to bear in mind. When we are trying to construct a law in the interests of the general public, we do not want to have intrusive soliciting and attempts to buy and sell sexual services. I heard that the police move was made because there was a call centre in Cadogan Street, but that is by the by.

The other issue that I want to ask about is the change that has been made on Glasgow green. You said that the younger women, in particular—many of them drugged-up women—were going on to the green, so a physical change was made to prevent people from taking their cars there. What happened? The change did not shrink the market—the women went elsewhere.

The Convener: Please ask questions, rather than making statements.

Margo MacDonald: I agree that kerb crawling is the big issue that we must tackle. Why do you think that the introduction in the bill of a punitive measure against kerb crawling will decrease the number of women who are involved in prostitution, or are you not concerning yourself with that issue? Is your aim simply to rid yourself of a nuisance on your doorstep?

Senga Bethune: After suffering from the problem for four years, the association and I would not wish to disperse it to anyone else. I do not want anyone else to have the problems that we have had. We have experience of many kerb-crawlers, who are of all ages and classes. The threat of punitive action will cause many of them not to come down. As I said earlier, I hope that it will be a question of supply and demand. If the demand drops, the supply will drop. Hopefully, some women will find the strength to get out of prostitution and will decide to get rid of the idiot at home who lives off them.

Margo MacDonald: The evidence that we have received suggests that the women find somewhere else to go.

Senga Bethune: That is the situation at the moment.

Margo MacDonald: If the women are soliciting in a place that is away from your and other people’s homes, is that more acceptable than the current situation?

Senga Bethune: You are asking whether I agree that there should be a tolerance zone further away. I do not.

Margo MacDonald: I am not talking about a tolerance zone—we have gone beyond that point. I put the same question to the witnesses from Calton for all.

Jennifer McCarey: Are you talking about an area to which the problem could be moved?

Margo MacDonald: Yes—an area where there are not residents like you, schools and so on.

Jennifer McCarey: Are you asking whether it would be okay for the problem to be moved to such an area?

Margo MacDonald: Not whether it would be okay, but whether it would be an improvement on the current situation.

Jennifer McCarey: If street prostitution were to be moved from our streets, that would be an improvement. However, it would absolutely not address the issues that have been described to the committee today.

Senga Bethune: If kerb crawling is made an offence and we target the man, as I think we should do, and the man knows that he faces prosecution and possible publicity, will that have the effect of reducing the number of men who engage in this activity for fear that they will be caught, prosecuted and possibly exposed to publicity? Will it reduce demand, albeit not to zero?

It is to be hoped that a lot of men would be persuaded not to do—or would be made afraid of doing—what they are doing at the moment. Surely that would reduce the number of men who, by buying sex, also make your lives a misery. Would you like to see the Parliament make kerb crawling a criminal offence, as a means of both tackling this problem and reducing the incidence of men kerb crawling in your area and other areas in Scotland?

Amanda Bell: Yes.

Jennifer McCarey: Yes.

Senga Bethune: Yes.
Alan Beatson: We had a meeting at which that was carried unanimously by our 250 members.

Fergus Ewing: Thank you.

Jennifer McCarey: It would also send out a message to the young people in our community that we do not tolerate that behaviour. We must remember that children watch this going on. Do we want that example to be set for our young people, including our young men?

Fergus Ewing: You have persuaded me.

The Convener: I thank all four panel members for their evidence on behalf of Leith Links residents association and Calton for all. As I said at the outset, we want to hear from communities that are affected by the problems of street prostitution and kerb crawling. Your evidence was effective and will be useful to us when we report on the bill.

We are running late, but the evidence sessions—with the Minister for Transport on the transport budget and the two panels on the Prostitution (Public Places) (Scotland) Bill—were important, so I decided to allow members to ask all their questions. I apologise to all those who are here a little later than was planned. I hope that we can deal speedily with the remaining three agenda items.
There are diverse ideological perspectives and political stances around sex work, but regardless of those, what remains undeniable is the vulnerability of sex workers in society today, and the most vulnerable are undoubtedly those involved in street prostitution. Zero tolerance of the sex industry does not work. The sex industry adapts to whatever strategy is implemented to try and eradicate it and the result of such approaches globally have all too often been seen to drive prostitution further underground opening it up even further to criminal influences and the exploitation and abuse of sex workers - as witnessed in the street prostitution environment in Edinburgh over the last five years.

It is important to note that prostitution – the selling of sexual services by an individual – is not illegal in Scotland or the rest of the United Kingdom. Sex workers are not criminals for selling sex, but street based sex workers have been criminalised to date as a public nuisance.

In an ideal world the need for individuals to sell or buy sexual services would not exist in that world. The root causes of an individual’s entry to the sex industry such as debt and poverty, gender inequality and gender politics, lack of economic opportunity, low educational attainment, childhood neglect and abuse, drug dependency would have been eradicated and every citizen would be able to achieve both economic independence and security and sexual fulfilment without recourse to selling or buying sexual services. There can be no disagreement that this is the aim of any civilised society.

However, we are a long way away from such a society. The selling and buying of sexual services can not be viewed in isolation from the sexual – economic behaviour continuum that exists within our society today or the reality of the current economic order. It is essential that a holistic approach is developed to deal with the social phenomenon of the sex industry, which includes respecting the human and civil rights’ of sex workers and their clients.

Sex workers should not be perceived purely as victims to be assisted, criminals to be arrested or targets for public health interventions - they should be considered as citizens, with needs and aspirations, who have the potential to make a real contribution to our community.

The Expert group put forward a holistic approach, which was accepted by the Scottish Executive and which SCOT-PEP is for the most part supportive of. However, if such an approach is to be effective any legislative change must explore and take cognisance of any unwanted consequences that could potentially conflict with other components of the strategy.

The Expert Group stated\(^93\) that it was important that in considering legislative change that the following be taken into account:

- Not criminalise on a moral basis.
- Address the imbalance between purchasers and sellers.
- Seek to reduce stigma which attaches disproportionately to the seller as against the purchaser.
- Minimise the use of imprisonment of women selling sexual services.
- Ensure protection to vulnerable groups from exploitation.
- Provide effective protection to general public from offensive behaviour.
- Avoid tendency to increase risk to vulnerable people and to communities through unplanned displacement.

\(^93\) Page 73 12.5.7 Being Outside: constructing a response to street prostitution
• Provide a constructive legal framework to support achievement of broader strategic obligations for tackling prostitution in Scotland.

• Repeal the criminalisation of soliciting per se and replace with an offence targeting offensive behaviour or conduct arising from a prostitution related sexual transaction.

It is SCOT-PEP’s opinion that the Bill in its current form does not measure up to the findings and recommendations of the Expert Group or the Scottish executive’s commitment to equalise the treatment of sellers and purchasers of sexual services.

In making the offence relate to public order the proposed legislation is not founded on a moral basis. However, the proposed legislation:

• Fails to equitably address the imbalance between purchasers and sellers.

• Fails to address or reduce the stigma and thereby discrimination against street based sex workers – and is likely to result in increased stigma and thereby discrimination against purchasers of sexual services and their families.

• Fails to address alternatives to fines as a sentence, which results in women having to work more often or face imprisonment for non-payment, and thereby does not address the imprisonment of women selling sexual services.

• Fails to ensure protection to vulnerable groups from exploitation.

• Fails to provide effective protection to general public from offensive behaviour.

• Fails to consider and avoid tendency to increase risk to vulnerable people and to communities through unplanned displacement such as happened in Edinburgh at the loss of the designated area.

• Fails to provide a constructive legal framework to support achievement of broader strategic obligations for tackling prostitution in Scotland.

• Fails in reality to repeal the criminalisation of soliciting per se and replace with an offence targeting offensive behaviour or conduct arising from a prostitution related sexual transaction whether caused by purchaser or seller.

SCOT-PEP remains to be convinced that the proposed legislation gives serious and in-depth consideration to the above or its impact on the broader holistic strategy. In addition we remain to be convinced that the legislative changes proposed will support and lead to a reduction in street prostitution in Scotland or positively impact on the vulnerability of either street based sex workers or local communities and residents affected by street prostitution.

There are a number of specific concerns that we wish to raise in relation to the Bill, its notes and their relationship to the Draft Guidance to local authorities on street prostitution.

• The fact that the proposed offences are not intended to be complaint led and use the term ‘likely to cause alarm, offence or nuisance ….’ gives no clear guidance on what sort of behaviour and under what circumstances selling or purchasing sexual services will not be seen as likely to cause alarm, offence or nuisance in a public or relevant place. This fails to allow the flexibility recommended by the Expert Group, the original intention was to reduce the burden on what is recognised as a vulnerable group but in reality there will be no significant change for those selling sexual services. The current proposal leaves individual police officers significant scope to interpret what they believe may cause alarm, offence or nuisance. It will be a potential barrier to enabling the management of street prostitution and prevent safer areas evolving for women to work in if they are outwith residential areas. There is no incentive for street based sex workers to move out of residential areas, which offer them some concealment...
and protection. Nor is there an incentive for their clients to avoid residential areas if they may be charged regardless of whether they have caused anyone alarm, offence or nuisance.

- The proposed offence relating to loitering will disproportionately affect sex workers, in that it has excluded any individuals in private motor vehicles. It thereby fails to remove the inequity of current legislation in retaining an offence that is defined in such a way that it can in reality only be used against those selling sexual services - as 95% of the purchasers of sexual services in public places do so from a vehicle.

- The legislation has retained the terms ‘soliciting’ and ‘loitering’ and has not defined them - despite the fact that they have defined other terms such as ‘relevant places’. The retention of the terms ‘soliciting’ and ‘loitering’ limits the offence of causing alarm, offence and nuisance in relation to street prostitution to only the buyers and sellers of sexual services and does nothing to address members of the public who specifically target street based sex workers with abuse, harassment and violence. In reality the individuals who commit these offences do not see themselves as breaking any current laws since sex workers are seen as outside of the law and are not perceived to have the right to the same protection of the law as other ‘decent’ citizens.

- The legislation proposes a new power of arrest which will result in sex workers being taken to the police station and potentially detained until their appearance in court (this is the norm in many English cities) which may significantly affect the financial projections made in the Financial Memorandum. This is upping the ante for women. It is well known that the vast majority of the women are drug dependent and that no prescribing occurs while women are held in custody. In addition it also has implications for women who have children in their care who have made arrangements for short term child care but for whom overnight detention may create problems.

- The title of the Bill may in itself present additional barriers to those wishing to move on from prostitution. It is well known that cautions and convictions for prostitution related offences are a barrier to women being able to move into alternative employment when they are ready and wish to do so, even when convictions are listed under the Civic Government (Scotland) Act. The fact that convictions will potentially refer to a Prostitution Act offence will do nothing to promote and support women moving into alternative employment as sex workers have no legislative protection from discrimination. Given the emphasis of supporting women to move on from prostitution in both the Expert Group Report and Scottish Executive Response this requires urgent thought.

Given that no government, legislation or law enforcement strategy has managed to eradicate prostitution or provide real choices and routes out of prostitution for all sex workers, please do let us not abandon those who are working in the sex industry today and those who will be working in it next week, next year and next decade to fend for themselves.

It is essential that the impact of the proposed legislation be assessed in relation to reducing vulnerabilities of street based sex workers and removing barriers to their moving on from prostitution, reducing vulnerabilities within communities, and reducing street prostitution.

SUBMISSION FROM ROUTES OUT PARTNERSHIP GLASGOW

The Board of the Partnership met on 20 October to discuss the Bill in a forum where the detail of the Bill was introduced by our Police partners and the further criminal justice aspects were informed by our partners from the Scottish Prison Service. The summary and conclusions of our discussions are set out below.

We would also like to acknowledge the opportunity afforded to our Intervention Team to present oral evidence to the Committee on the 24 October 2006, based on their extensive experience and contact with women engaged in and seeking to move away from street prostitution.
The direct work of the Team informs the position taken by the Partnership where decisions are then made to ensure that service provision in Glasgow is appropriate, coordinated, and responsive to change and fundamentally meets the needs of women. The evidence of significant increase in activity across the work of the Partnership is viewed by us, as indicating that our approach is in line with stakeholder experiences and is based on evidence of good effective practice that delivers. The views of the Partnership are well known regarding prostitution as being harmful to women, their families and the communities that women are part of. This submission should be read in that context.

As a Partnership we have welcomed the principal of each step that has led us to the introduction of this Bill, agreeing that legislative change was overdue, although we have simultaneously raised our concerns. We have always probed to ascertain the context of any statements made by the Executive. We therefore were pleased to read in the Bill’s policy memorandum that:

“Ministers recognised the need to address street prostitution within the context of an overarching approach to tackling violence against women and also of building safer, stronger communities. Whilst the Executive’s long-term policy objective is to eliminate both demand for and supply of sexual services on our streets, Ministers recognise the need to protect communities now from antisocial activity associated with street prostitution.”

Again we were pleased to read the support for the view previously expressed by the Expert Group that any reform of the law on street prostitution should:

• Address the imbalance between men and women arising from the present emphasis on the person soliciting, with little comparable legal impact on the potential purchaser.

• Seek to reduce the stigma which attaches disproportionately to the person soliciting, as against the potential purchaser.

• Not criminalise on a moral basis.

• Provide effective protection to the general public from offensive behaviour and conduct.

• Avoid any tendency to increase risk to vulnerable people and communities through unplanned displacement.

However, it is the view of the Partnership that the proposed legislation faces significant barriers in its aim to deliver positive change and due to these concerns, we are not in a position to fully support this Bill as presented.

From the outset this Bill is introduced with the purpose of dealing with the negative consequences of street prostitution for geographic communities. From this statement the legislation will rightly raise expectations of change within communities where street prostitution currently takes place. However we can only see a future reality of failure against this purpose, through the difficulties that we believe will be associated with the practical application of the legislation. This will then lead to a very real sense of disappointment and disillusion within a community, as legislation introduced, will not deliver for that community. Additionally for our “community of interest”, the women, this may lead to further negative impacts as they will remain as the clearly visible source of the “problem” from the communities perception.

From the Partnership’s position, set as we are within a Community Planning structure, this then makes the Bill the worst of all proposals across three counts, having a significant potential detrimental impact on the women engaged in prostitution, failing to tackle the root cause of prostitution and failing to deliver a workable solution for communities impacted by prostitution.

Our concerns with the Bill focus across three areas:

• Inconsistencies - in approach across the Bill.
• Unintended harm - arising both for women and communities by the Bill.

• The name of the Bill - and long term impact of this on women.

We consider that the opportunity for legislative reform presented us with a once in a generation opportunity to set a direction and establish an approach, which would deliver positive societal change, in line with the long term policy objective of the Executive, unfortunately this legislation in its current form, in our opinion, fails to deliver for the following reasons.

• The legislation does not address the imbalance between men and women.

• The exemption of loitering in a private vehicle will enable the current practice of “tourist” kerb crawling to continue, this is an activity that is reported as causing damage to communities currently – this activity could not be challenged within the Bill.

• Several of our partners, including Glasgow City Council, Strathclyde Police and Barnardo’s Scotland will, we know, present individual responses which will expand these arguments further from their individual perspectives and areas of expertise.

• Issues of practicality, how to observe and respond to an offence or potential offence of soliciting on an equal basis across sellers and purchasers, where the purchaser is in a car and the seller is on foot will make it virtually impossible to raise this charge.

• The seller will be able to be charged against both counts of loitering and soliciting whilst the purchaser will only be able to be charged in reality with soliciting – where any charge can be raised.

• The seller on foot will be further pressurised to make no fuss, respond instantly and get into a car quickly, which we know increases danger.

• We also have concerns surrounding the potential impact of police activity to secure charges in line with this Bill. This could see a change of role evolving for the police street liaison teams that could result in changes in the relationships that currently exist between these teams and sellers. The street liaison teams are able at present to gather intelligence, promote access to harm reduction and exiting agencies and promote personal safety strategies to sellers; this may change if they are in a position in future, to alert uniformed officers to the presence of purchasers in an area.

• The presence on the street and the fact that sellers can be charged with both loitering and soliciting makes it more likely that sellers will be charged more frequently than purchasers. This evidences the failure in the aim to provide a balance between purchaser and seller.

• Being charged with an offence which is likely to cause alarm, nuisance or offence to a reasonable person who might witness it, by its very description conveys a message of extreme behaviour. Which also by implication sets that if the transaction does not take place, in a manner likely to cause alarm, nuisance or offence, that the transaction is within the law, which could have the impact of legalising prostitution.

• The wide definition of public places will not deter sellers – as the majority of sellers use prostitution as a means of making money and are not deterred by the police, but may have the impact on encouraging purchasers to travel further which will result in sellers then being in more vulnerable areas.

• The aspect of equal fining will have a greater impact on sellers both in terms of potential frequency of charges and disproportionate relative income than the purchasers.

• Debate surrounding what will or will not constitute evidence of loitering and soliciting and likely to cause alarm nuisance or offence to a reasonable third party; means that the potential to
raise legal challenge will be introduced to this proposed new charge by a group – the purchaser who will have more ready access resources to undertake such action.

- The title of the Bill itself is considered by the Partnership to be against the principals of social justice which are the bedrock of the operational context of the Partnership. If we accept that the Executive seeks to address street prostitution “within the context of an overarching approach to tackling violence against women”, then a future where a woman has a conviction which has the potential to identify a Prostitution Act will do little to support that woman either in terms of her self esteem, her ability to take decisions to move and will present even more problems when a woman is approaching any future education or training provider or employer. Here it should be noted that our concerns are based on previous experience where women’s past (under the current legislation) has been leaked with very negative consequences. We fear that through the name on the Bill and then charge sheet there will be clear, unambiguous information on the woman’s previous history of prostitution, which will then bring exposure to all the known, potential and well documented dangers associated with this history being exposed. We would argue that this presents not merely a barrier for the woman but represents an unintended additional burden of confidentiality on education and training providers and potential employer.

In summary the only aspect that we can support, is that the legislation achieves the objective of not criminalising on a moral basis and proposes to introduce an objective test which although flawed, would have our support against the option of a complaint led offence.
Scottish Parliament
Local Government and Transport Committee
Tuesday 31 October 2006

[THE CONVENER opened the meeting at 14:03]

Item in Private

The Convener (Bristow Muldoon): Under item 1 on our agenda, I ask committee members to agree to take in private agenda item 3, which concerns a draft report. Is that agreed?

Members indicated agreement.

Prostitution (Public Places) (Scotland) Bill: Stage 1

14:03

The Convener: Agenda item 2 is further consideration of the Prostitution (Public Places) (Scotland) Bill. Also attending the committee today we have Margo MacDonald MSP and Frank McAveety MSP. I welcome to the committee representatives of three of Scotland’s local authorities that have views on the bill: Councillor Kingsley Thomas, from the City of Edinburgh Council; Leslie Brown, the community safety strategist for Aberdeen City Council; and Ann Hamilton, the principal policy officer for corporate policy for Glasgow City Council. I invite them to make some introductory remarks.

Councillor Kingsley Thomas (City of Edinburgh Council): After talking to the three of us, you will have an insight not only into the views of three councils but into the views of officers and elected representatives, which will be quite handy.

I think that this is the third time I have given evidence on the matter to which the bill relates. The first time was back in 2001—

Margo MacDonald (Lothians) (Ind): It was in 1800.


The committee is well aware of Edinburgh’s experience of prostitution issues and knows about the police’s operational zone which, until 2001, operated with minimal impact on the community and residents in the area. You will also be aware that regeneration of the Leith area led to increasing problems with new residents who had moved into the area.

In 2001, a decision was made to move the zone to another part of town. It did not work out and the idea was abandoned. That led to dispersal of the problems associated with prostitution to other areas, such as the Salamander Street area and the residential areas around Leith Links. Since then, the council has worked hard with the police, the national health service, the Procurator Fiscal Service, voluntary organisations and others to try to reduce the impact on the local area and to help more women get out of prostitution.

We have a sex industry interagency strategy group that is doing good work at the moment. There are four strings to our bow: we are dealing with the enforcement and antisocial behaviour issues; we are trying to prevent people moving into prostitution; we are doing harm-reduction work around those who are already in prostitution; and we are helping with routes out of prostitution and into other things.

We are concerned that the bill does not provide an offence of loitering in a private car, which means that it would not address residents’ concerns about kerb crawling or nuisance issues.

We also have issues with the test of the offence being that it is “likely to cause alarm, offence or nuisance to a reasonable person”.

We feel that that requires greater clarification.

We have noted that particular issues have arisen in Edinburgh—and, no doubt, elsewhere—with regard to the burden of evidence that is required in the courts. We hope that the bill can resolve those issues.

Leslie Brown (Aberdeen City Council): I am the community safety strategist in Aberdeen City Council’s strategic leadership service. I take the lead for the council on a range of community safety issues, including prostitution, the joint sex industry forum and antisocial behaviour, which is not unlinked to the issues the bill seeks to address. The forum is concerned with the cross-cutting issues that need to be dealt with in relation to tackling street prostitution.

Since 2001, we have had a management zone in Aberdeen. It is a small part of our harbour area—which is close to Aberdeen city centre—where street prostitution has historically taken place. In that area, prostitutes will not be arrested for soliciting after 5 pm—or 9 pm in certain parts of it—provided they are not involved in any other offence.

The zone is not about tolerating, encouraging or promoting prostitution; it is about recognising that it happens and that we need to try to manage its impact on local residents and businesses. It is a working harbour—there are many businesses in
I thank all three of you and that is an interesting question. Our work has proved to be particularly difficult and intensive over the past five years. Supporting women out of prostitution, which we have developed over the past week in evidence from colleagues—and exiting opportunities and management, and we have two other interagency groups that are designed to look at the changing nature of street prostitution in the city. As the committee heard last week, prostitution has changed significantly in the past few years. Two areas that are particularly affected, the city centre and the east end, are different in nature. One is a commercial and financial centre with tourism and so on, the other is a residential area. Street prostitution causes problems for both areas.

We welcome the intent of the bill but are concerned that the detail will not give the police the powers necessary to make a difference. We recommend that section 42 of the Civic Government (Scotland) Act 1982 be retained as a means of supporting women into diversionary opportunities and that the bill be amended to consider kerb crawling. As Leslie Brown and Councillor Thomas have mentioned, we hear time and again from local residents, workers and so on about the distress and fear that is caused by kerb crawlers.

**The Convener:** I thank all three of you and invite questions from the committee.

**14:15**

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I have been reading the written submissions. My first question is addressed to Leslie Brown and relates to the submission from Aberdeen City Council. Your submission states that you aim to

"ensure that the very vulnerable and damaged group of people"—

women—

"involved in street prostitution are not further exploited."
It also states that, five years ago,

"Grampian Police established a prostitution management zone"—

where prostitutes

"are not subject to arrest for soliciting".

Clearly, they are not going to be arrested. As I understand it, the whole purpose of the bill is to equalise the criminality of prostitution so that not just the women but the men are prosecuted. Will the bill have any effect if there is a prostitution management zone in Aberdeen in which the current powers are not used and people are not prosecuted? What is the point of having a bill to equalise the prosecution if people are not going to be prosecuted?

**Leslie Brown:** That is an interesting question. As I understand it, the bill seeks to introduce an offence to tackle the nuisance that is associated with street prostitution rather than prostitution itself, which is what the soliciting offence covers. The management zone is a very small area of the harbour and works only from 5 o’clock at night. In one street, where businesses work late, it works from 9 o’clock at night to protect the workers there.
We are reviewing the future of the management zone. What is the point of our changing the law by passing the bill if nobody is prosecuted for those criminal offences? There is no point equalising an offence if nobody is prosecuted.

Mike Rumbles: As we all know, prostitution is not illegal. The bill would create two offences, the first of which is soliciting. That is what the women would be prosecuted for doing. To equalise that, and to try to take away the demand, the bill would also create the offence of loitering, which would ensure that so-called kerb-crawlers were hit as well. My question goes back to the fundamentals. What is the point of our changing the law by passing the bill if nobody is prosecuted for those criminal offences? There is no point equalising an offence if nobody is prosecuted.

Leslie Brown: We are reviewing the future of the zone for a variety of reasons, not least of which is the potential impact of the new legislation and the draft guidance on tackling street prostitution. Also, the zone is five years old and things have changed. If the bill is passed, the zone may not operate as it currently operates—but we are not at that stage yet.

Mike Rumbles: I cannot understand how the bill would impact on the zone. The police do not prosecute people in the zone under the current law, even though they are committing a criminal offence. If we change the law to have two offences rather than one, the police will still not prosecute people in the management zone that has been agreed by Aberdeen City Council and Grampian police. You say that the zone was set up by Grampian police, so my question may be more appropriately addressed to the police on our next panel of witnesses, but I would like to know the view of Aberdeen City Council, which you represent. Do you agree with my interpretation of your evidence, which is that the bill would have no effect in the Aberdeen management zone?

Leslie Brown: It is too early to say. If it looks as though the bill will be passed, we will need to sit down with the police and other partners and discuss whether the management zone is still a reasonable and viable thing to have. My reading of the offence that would be created by the bill is that it would be left to the discretion of the police, as is the case with many other offences.

Mike Rumbles: Okay, I will ask the police when they come to give evidence.

Paul Martin (Glasgow Springburn) (Lab): You mentioned the management zone and said that you would consider the position. My question is similar to Mike Rumbles’s. Do you think that you would be legally entitled to continue with the management zone?

Leslie Brown: At this point, I cannot see why not if we felt that it was still an appropriate thing to do. As I understand it, the offence would be much like breach of the peace, in that it would be left to a police officer to decide what priority should be given to using the offence. Unless I have missed something at this early stage in the game, I do not think that putting the offence on the statute book would preclude our operating the management zone.

Paul Martin: I take it that management zones are set up in non-residential areas.

Leslie Brown: They are largely non-residential. There are residential areas on the periphery of such zones. The people who live in Footdee, a village on the Dee, have to travel through part of the management zone, but most of the zone is occupied by oil-related businesses.

Paul Martin: I have been looking at page 3 of your submission, which says that you are “keen to dispel myths and misconceptions about prostitution,” but how can you do that if you are at the same time setting up a management zone, effectively putting the activity out of sight and out of mind? If you set up the zone in an area that is as far away as possible from residential areas, surely it will also be more difficult to police.

Leslie Brown: It is not really out of the way. Anybody who knows Aberdeen will understand the relationship of the harbour area to the city centre. It is very close and there are a lot of businesses there, as well as the village of Footdee and all the entertainment at the beach. It is not a particularly out-of-the-way area. We have set up a zone in an area where street prostitution seems always to have taken place, to try to minimise the effects of prostitution on the wider harbour area and to keep it from spilling into other areas. It is not a matter of putting prostitution into an estate on the periphery of Aberdeen where it will be out of the way. We are managing on the ground an issue that is real and has been for some time.

Paul Martin: Given that we are crystallising the legislation and providing a legal remedy—although we all have different views on how enforceable it will be—do you accept that, with the management zone, you will effectively be managing people while they break the law? You will be assisting people who are involved in an illegal activity.

Leslie Brown: As I said, prostitution is a complex issue. The bill seems to be tackling only a fairly narrow issue related to prostitution—the nuisance behaviour associated with street prostitution.
prstitution. It does not seek to tackle the wider social issue or the moral problems of prostitution. I do not think that a local authority, a police force or a management zone can tackle those wider issues. We are concerned, as are colleagues in Edinburgh and Glasgow, about the revolving-door effect: prostitutes are picked up for soliciting, taken to court and fined—and then have to go out and work even harder to make up the money that they have lost in fines. That is not a helpful approach to tackling prostitution or to working with women to build up their self-esteem.

However, on the other hand, we have a responsibility to protect wider communities. This is a compromise in an ill-divided world. We do not claim that it is a perfect solution. We have to compromise and balance our big aim with the need to manage the situation on the ground.

Paul Martin: Glasgow City Council has given significant resources to Routes Out, whose success we have talked about. Leslie Brown said that the issue is complex and that it is difficult to gauge how effective programmes have been. Is that the case with the Routes Out programme? Is it difficult to say, “We’ve had this many women through the project and here are the success stories”? How easy is it to evaluate?

Ann Hamilton: An evaluation report has been produced that shows that the team is working well. In fact, the team has doubled in size over the past year, so we will see more success there. We know that it is really difficult to help women out of prostitution. The work is intensive, it takes a long time and in many instances the women fall out of the support systems. However, we can certainly point to a number of successes.

Paul Martin: You have facts and figures that show how many women have gone through the project and where they have gone?

Ann Hamilton: Absolutely. And now that we have doubled the size of the team, we are hoping to expand that information.

In Glasgow, we are trying to use mainstream services. It is not just about the specific services that we have provided for women involved in street prostitution; community addiction teams and other criminal justice disposals have been really important. The 218 centre, which has been supported by the Scottish Executive, has been very important in providing a way out for women involved in prostitution.

Paul Martin: What would be the impact on your work of the bill being passed? Is there a need to look at the purchaser? At the moment, there is parity in the enforceable legal remedy for the purchaser and the seller. Do you think that the available fines for the purchaser should be ramped up rather than stay at the same level as the available fines for the seller?

Ann Hamilton: We need powers to deal with kerb-crawlers in a number of ways. The first thing we have to do is send out to men who are causing fear and alarm night after night in residential and commercial areas the message that their behaviour is not acceptable and describe to them the experience of the residents who live in such areas. The evidence that some of those residents gave the committee last week showed how difficult it is to live in an area that is plagued by street prostitution.

We also need the power to do something about the men who are engaged with street prostitution. We know an awful lot about the women, how vulnerable they are and the violence that they experience, but we know very little about the men who are using women in prostitution. England and Wales, which have had kerb-crawling legislation for some time, have more information about the men. The men who are kerb crawling are quite often involved in other serious sexual or violent offences. It has been helpful for the police forces in England and Wales that kerb crawling is a specific offence.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Thank you for your evidence, which is most reassuring. Last week, we heard evidence from three ladies from various parts of Scotland. All of them said that they would like kerb crawling to be made an offence. Am I right in saying that that is also the position of the three councils that you represent?

Leslie Brown: Yes.
agree that the lack of effectiveness, which each of you has talked about in different ways, would be tackled if we took the basic approach that it is morally wrong and should be a criminal offence for men to buy sex?

**Councillor Thomas:** It is worth thinking about that, but it will not solve the problem. Prostitution is the world’s oldest profession, as is often said. Local authorities, health boards and the police are often left having to deal with such issues. In different ways, we have tried not to bury our heads in the sand and pretend that prostitution does not go on in our three cities. We know that it does and we are trying to minimise its impact on local people and women who are involved in prostitution.

Off the top of my head, I am not sure whether we should make the act of purchasing sex illegal. If we did, we would still be talking about and trying to minimise the same problems; it would not solve prostitution all of a sudden. As Leslie Brown said, the issues are complex and we have taken different approaches in the three cities because there are three different scenes—there are different issues in the three different places—and three different solutions are needed. We are looking for more tools in the toolbox to deal with the issues better and more appropriately at a local level. However, it is worth considering criminalising the purchase of sex.

**Ann Hamilton:** Glasgow City Council would support moving towards the position that buying sex is a criminal offence. That would help to disrupt the market and would send out a helpful signal to the public and to the men that it is unacceptable to buy sex. That is one of the important things that happened after the change in legislation in Sweden. There was a lot of criticism of that change, particularly from those who lobby for the sex industry to be regulated and remain part of society, but the criminalisation of the buying and facilitating of sexual services has brought about attitudinal change in the public. That is what we would want to happen. We would not want to lock up lots of people but would want people to see prostitution for what it is: a very exploitative, very harmful trade that targets the most vulnerable men and women in the cities that are represented here.

**Fergus Ewing:** That was certainly the view that Jennifer McCarey expressed last week. She said of men who solicit sex:

> “Society tells them that that is acceptable behaviour. Our community group says that that is unacceptable.”—[Official Report, Local Government and Transport Committee, 24 October 2006; c 4148.]

I do not quite understand the difference between saying that buying sex is a crime and “moving towards that position”, which is what you called for. I do not understand how, in law, we can move towards that position. Is it not the case that either we have that position or we do not?

**Ann Hamilton:** I suppose that we have not had an opportunity to look at taking that forward. Certainly, we in Glasgow have supported the idea. We see the issue as being to do with violence against women. We are not regulating any other form of violence against women. The council has not agreed a policy approach to the issue of criminalising the buyers but, certainly, the idea would be supported.

**Fergus Ewing:** I am not suggesting that the measure would remove prostitution, but I would hope that it would substantially reduce prostitution and, as you say, change attitudes.

Paragraph 5.43 of your submission says that, in England and Wales, under the Sexual Offences Act 2003, an offence is committed if a man persistently solicits women for the purposes of prostitution. That suggests that buying sex is a crime in England and Wales.

**Ann Hamilton:** Yes, my understanding is that it is an offence to buy sex on the street in England and Wales. That has been part of the discussions that we have had with the Scottish Executive on the bill. The Association of Chief Police Officers supports that policy and uses it as one of the ways in which it deals with street prostitution in England and Wales.

**Fergus Ewing:** Last week, Jennifer McCarey from the Calton area of Glasgow told us about kerb crawling. She said:

> “Kerb crawling is … a car slowly following you and creeping along beside you. Often you are the only person in the street. The car stops until you catch up, then it drives slowly beside you and stops. It is tremendously intimidating behaviour, which does not involve rolling down a window and talking to you.”—[Official Report, Local Government and Transport Committee, 24 October 2006; c 4149.]

In your submission, you say that the bill that we are discussing should include provisions similar to the ones that exist in legislation in England and Wales, which involve disqualifying kerb crawlers from driving.

**Ann Hamilton:** Any such deterrent would be welcome. In England and Wales, vehicles that have been used to kerb crawl can be seized. Again, that would be a major deterrent.

It is not only residents who have had the experience that you described. Yesterday, a couple of our outreach workers told me that they were regularly approached by cars. They said that, sometimes, there was no discussion, but the cars would follow them around and around. They told me that they could identify who was kerb crawling and looking to buy sex. They wanted those men to
be identified and for something to happen about that activity.

Fergus Ewing: I hope that we can consider forfeiture of the cars as well. I am most grateful for that information. I hope that we can amend the bill to incorporate your suggestions.

The Executive’s bill says that there will be no offence if the man—it will usually be a man—is in a motor vehicle. That seems to me to suggest that this is not so much the Prostitution (Public Places) (Scotland) Bill as it is the Kerb Crawling (Enabling) (Scotland) Bill because it specifically states that kerb crawling is legitimate. I presume that all three councils that are represented here today believe that that is wrong and should be changed when we proceed to stage 2.

Ann Hamilton: Yes.

Councillor Thomas: Yes.

Leslie Brown: Yes.

Michael McMahon (Hamilton North and Bellshill) (Lab): My concerns about the bill have largely been addressed by the answers that Ann Hamilton gave to the questions relating to the ways in which we can tackle the demand. However, I am also concerned about the management issue. I have some concerns about the perception that, somehow, something that is considered by society to be wrong and which creates offences is considered to be okay if it is contained within a geographical area but is to be frowned on if it is not. Perhaps we should move away from such a perception and take a more generic approach, by treating the issue as one of supply and demand. The real concern is demand and not whether the activity is managed or not, so perhaps we should focus on demand.

Leslie Brown: Aberdeen operates a management zone, so I will go first.

You are right. If we want to tackle prostitution seriously, we need to tackle demand. That has to happen at national level; we cannot significantly address the issue locally. Until there is a national approach to tackling demand, we must deal with what is happening on the ground.

We struggled with the decision about what to call the management zone. For a while, we called it the “tolerance zone”, but we did not want to send a message that tolerating prostitution is a great idea, so we changed the name to “management zone” for want of a better description. Of course, we do not go out and manage acts of prostitution; we manage problems on the ground in an area in which prostitution has probably taken place for hundreds of years, because it is the working harbour area.

I talked about the need to try to work with the women, to break the cycle in which they have to work harder to pay fines. We must live in the real world, but we are all aware that in doing so we potentially compromise our greater ideals. Unless we witness the sea change that Fergus Ewing talked about and make a quantum leap to the criminalisation of the purchase of sex, so that we can tackle demand, we must be realistic about the situation on the ground.

As I said, the management zone is an area in which there has always been prostitution. If the harbour area were developed to provide much more residential accommodation, as happened in Leith, I cannot envisage our being able to set up a zone elsewhere. When we consulted on Margo MacDonald’s Prostitution Tolerance Zones (Scotland) Bill, we received good feedback from communities. People had sympathy with the principles behind the bill, but thought that the practicalities would be a nightmare. As we have learned more about the issue, we have realised that all that we can do in the current legislative climate and given current public awareness is to manage the situation on the ground and try to secure as many wins as possible without compromising our ideals too much.

Councillor Thomas: That is right. Someone asked why we still need managed zones if we are considering increasing legislative powers to deal with demand. In an ideal world, we would not need managed zones. However, there will be a transitional period when a city might decide that, short of clearing the whole prostitution scene out of the city, it will use managed zones alongside changes to legislation.

When we operated the zone in Edinburgh in the 1990s, we did not face the issues that we now face in residential areas, in particular around Leith Links. The city has changed since then and it would now be difficult for us to find a zone and try to operate it. That is why we are taking more of a multi-agency approach. We are considering different aspects involving demand, for example trying to deal with or manage demand, and we are trying to deal with routes out and harm reduction. Those issues are not mutually exclusive. I suppose that what we are looking for is more and better ways to try to tackle the problem. It looks as if we will get some things out of the bill, while retaining some local flexibility to deal with local issues.

14:45

Ann Hamilton: One of the reasons for the establishment of management zones and tolerance zones was to provide services to the women. We all struggle with that because they are probably the most vulnerable of any group. They
have the highest drug use of any group, certainly in Glasgow. They have often lost care of their children, they have no financial support and, despite the fact that they are obviously getting money each day, they have no goods or belongings. There is also a high level of homelessness among the group. It is that concern that has led to the introduction of management zones in some places.

In Glasgow, we have chosen to develop services to meet the needs within areas. In the east end, where there has been prostitution for a long time, there is increasing recognition of the situation. We do outreach work for women—we make contact with them—and a drop-in service is available to them. One of the real movers for approaches such as management zones is that they allow services to be provided in different ways. That is one of the approaches that we have taken.

Michael McMahon: That information is helpful, but one issue that has come up in previous evidence and statements from some of you is the name of the bill. There is the idea that it might stigmatise the women involved and create difficulties as you try to help them out of prostitution. What could we call the bill to reduce that?

Ann Hamilton: At the moment, as far as I understand it, the words “prostitution” or “soliciting” do appear when the women go through Disclosure Scotland or when they fill out criminal convictions forms. However, the problem that arises is very much about attitudes, as soliciting and prostitution are seen as sexual crimes. The fact that the bill will say “Prostitution … Bill” in big letters and that it will talk about public nuisance may make it more difficult for women to make the case that they are out of prostitution—that they are no longer involved in that activity. Many women are blackmailed or targeted for sex after they have come out of prostitution by colleagues in whom they may have confided or who may have heard about their background. Nobody wants to hide the nature of the offence, but if it becomes known as a public nuisance offence, it may make rehabilitation more difficult.

Margo MacDonald: I start by asking Ann Hamilton about one or two of the details. You said that there are stats on the success of the approach in Glasgow—the diffuse services and so on. Do you have those statistics? You have been running the same sort of strategy for eight years. By what percentage has the number of street prostitutes in Glasgow dropped? I want to try to work out whether your approach has a proven record of success, if success is a reduction in the number of women on the streets.

Ann Hamilton: I do not think that we can say that there has been a reduction in the number of women on the streets. What we can say is that we have supported women out of prostitution. Until such time as we stop or diminish the demand, it is very difficult to stop the supply.

If, for example, we were to sort the drugs problem in Glasgow tomorrow, a different group of women would be out on the streets of the city the next day; there are other vulnerabilities that result in women having to sell sex. Our success has been in supporting women out of prostitution. I hope that we have also had success in preventing women from becoming involved. Unless we get more powers—even some powers—to tackle demand, we will not be able to show a reduction in the number of women on the streets.

Over the past few months, the police and the council have targeted indoor prostitution, as a result of which three sauna owners have pled guilty to the offence of running a brothel. We have also brought about one closure. That has reduced the number of men who attend those saunas or brothels. We are looking to cause that sort of disruption on the streets of Glasgow.

Margo MacDonald: I agree with the analysis that if we can bring about a drop in demand, supply will drop off, too. I have seen statistics on that—I think that they were from Birmingham and Middlesbrough, where kerb-crawling legislation is applied more rigorously and consistently. Have you seen those statistics? Is there a proven record of success in reducing demand from men? Why do you assume that the men who were named and shamed in the places in England where that is done no longer use prostitutes? There is such a thing as a mobile phone.

Ann Hamilton: I cannot give the figures for Birmingham and Middlesbrough. However, this morning, I took a quick look at the figures for one of the programmes. In Hampshire, 383 men were arrested for kerb crawling over the past year, 82 of whom ended up in court. That was either because they were precluded from attending the kerb-crawling school or did not pay their fine, which meant that they could not go on the programme. The statistics from Hampshire show that only four of the 383 men reoffended.

Margo MacDonald: What about the second part of the question? The men might not own up to what they have done.

Ann Hamilton: That is right. However, many men will be deterred to the point that they will not engage again. Others will become involved again. We know that women are using mobile phones. That is a major concern, as they may be drawn to areas where there is no closed-circuit television coverage or police presence.
Margo MacDonald: In our evidence taking last week, we heard that there has been stronger enforcement of the law over the past few months in Glasgow. We were told that, up until that point, the police had operated a de facto management strategy or policy.

Ann Hamilton: I read that evidence in the Official Report of the meeting, but that is not the case at all. Assistant Chief Constable John Neilson will appear before the committee later this afternoon. He can give the committee the figures. I have just checked the figures for the past six years. Six years ago, there were 353 charges and thereafter the annual totals were 266, 280, 343, 786, and 246. There was a large increase in 2004-05—that is the figure of 786. It is a widely reported myth that the police have not charged women in prostitution in Calton, even with heavy enforcement by the London Road division of Strathclyde police in response to public concerns about intrusion. We are talking not just about weekends, but about early mornings, 11 o’clock or half past 12. It happens in the daytime as much as the early or late evening, and there have even been occasions when delegations visiting the area to try to address the issue have been approached by some of the girls who are involved.

The community in Calton knew that and has known it for years but, over the past six or seven years, the situation has become markedly more difficult for the residents, which is why the committee heard a cry of despair last week. The evidence from the Calton residents was about the need to try to find other ways of dealing with the problem. There are different views on prostitution among the people in this room, never mind in wider society, but we need to find measures to deal with the issues.

I would like to get a sense of the language that the witnesses would like in the bill. They all touched on definitions, and the submission from the Association of Chief Police Officers in Scotland goes into more detail about that issue. How do we make the definitions more accurate? What wording might provide the greater powers that the witnesses want? To date, even with powers under breach of the peace and with support by the local police force, we have not succeeded in tackling the demand. We have had minor successes on road traffic offences with individuals in cars, but the community suffers intimidating behaviour at all times of the day from men who are seeking sex.

The witnesses also talked about multi-agency work. I worry a wee bit about that. I do not know whether the witnesses have seen the ACPOS submission. ACPOS went to the Procurator Fiscal Service in Glasgow and showed the PF evidence from CCTV footage. It worries me that the Procurator Fiscal Service seems to think that some of the actions in that footage are not worth dealing with. I am pretty sure that, if the PF lived in the close where it was happening, they would say that something should be done about it. I would like to hear your views about how we can get the various agencies to realise the seriousness and severity of the problem.

Councillor Thomas: I am not a lawyer or an expert in semantics but, in any bill, the wording is crucial. Members have put it to me that if I can tell them what I want the bill to say, they will try to include it. In other parts of the UK and in other European countries, particularly in Scandinavia, the legislation seems to be stronger than the legislation that is proposed here. I see no harm in looking beyond Scotland to find out what is happening and judging whether that would fit here. The wording is crucial. If, collectively, we can provide assistance, we are happy to do that.
15:00

**Ann Hamilton:** It would be useful to use the term “kerb crawling”, as most of us understand what it means and kerb crawling is certainly what causes distress to residents in Leith and Calton. We would have to come up with a definition. We are keen to work with people to consider a helpful definition. As reaching a definition does not seem to have been a problem in England and Wales, it is worth considering the provisions that have been used there.

**David McLetchie (Edinburgh Pentlands) (Con):** I have questions for Councillor Thomas about the Edinburgh experience and its lessons for us. I think that he said that further legislation is necessary, otherwise we might be thought to be letting down people in Leith. Is it fair to say that people in Leith were let down for a considerable period by a wilful failure to enforce the present law, never mind any new law, and that that was the basis for the abandonment of the tolerance zone policy?

**Councillor Thomas:** No. The problems have got worse since the abandonment of the managed or tolerance zone. The zone was a reaction to particular issues that were well known in Edinburgh at the time, such as the drugs and AIDS problems and the effect that prostitution could have had on the spread of that disease. The problems in the city now, which tend to be concentrated in Leith, are not a result of the operation of the zone; they are a result of the zone not working out.

**David McLetchie:** After the original zone around the Coburg Street triangle was abandoned because of protests from residents, an attempt was made to relocate the zone around Salamander Street, which dispersed the problem into the wider Leith Links area. If I understood the evidence that we heard last week correctly, that was not a result of the enforcement of the zone; they are a result of the zone not working out.

**Councillor Thomas:** My information is that about five or six women are usually out at night, although the figure can go up to 10. The numbers are certainly reduced from what they were in the immediate aftermath of the ending of the zone.

**David McLetchie:** So effective policing reduced the particular narrow problem of street prostitution as a public nuisance.

**Councillor Thomas:** The reduction is not just a result of policing. The joint agency approach involving the council, the health board, the police and the Procurator Fiscal Service has helped.

**David McLetchie:** The effective measures must be the abandonment of the tolerance or management zone and the more effective and visible approach to policing. All the other factors to which you refer were in place previously, so the difference is that prostitution is not being tolerated and the law is being enforced. Is that correct?

**Councillor Thomas:** If you are suggesting that the abandonment of the tolerance zone has led to a reduction in the problem, that has not been the case.

**David McLetchie:** I am asking whether the evidence that we heard last week is correct. Residents of the Leith Links area told us last week that whereas a major nuisance problem had resulted from a considerable number of women being engaged in street prostitution, as a result of more effective and more visible enforcement of the present law by the police the number of women who engage in street prostitution in the area has significantly declined and is nowhere near the nuisance that it was. Do you agree that the factual case is that the activity has declined?

**Councillor Thomas:** If we are talking about 2006 in comparison with 2002-03, for example, the answer is yes.

**David McLetchie:** Can you identify other areas in the city that, as a result of the actions that have been taken in and around Salamander Street and Leith Links, have developed as centres for the activities of street prostitutes?

**Councillor Thomas:** Not really, but other non-street prostitution scenes exist throughout the city.

**David McLetchie:** Yes, but our focus is on the public nuisance of street prostitution. All of us accept that a much wider issue of prostitution and the buying and selling of sex exists, but the bill will amend the law on the narrow issue of street prostitution. If I understand your evidence, we come back to the idea that enforcement of the present law has resulted in a diminution in street prostitution, the public nuisance of which we are meant to address. If I interpret what you say fairly, there is no evidence that that enforcement has increased the level of street prostitution activity anywhere else in the city. Is that correct?

**Councillor Thomas:** I suppose that it is, but we believe that we could do more with different and strengthened legislation. Resources can be concentrated in an area, a lot of money can be spent and extra staff can be involved, but sometimes maintaining such presence levels is difficult. My concern is that, without being given
different approaches to deal with the different issues, we might be reasonably successful but not as successful as we could be.

**David McLetchie:** Do you agree that you will succeed only if you enforce any law that is passed?

**Councillor Thomas:** Of course, any law that is passed can work only if it is enforced.

**David McLetchie:** If we passed a law that prevented people from loitering in a car for the purpose of buying sexual services, your view is that that would be effective only if the police enforced it.

**Councillor Thomas:** Of course.

**David McLetchie:** So if prostitution is tolerated, as in the situation in Aberdeen that Mr Rumbles described, that will not reduce the incidence.

**Councillor Thomas:** The issue is the problems that street prostitution causes to residents and people who live on the periphery of affected areas. We are dealing with the street prostitution scene and we want the legislation to be improved so that we can tackle the nuisance that that causes to residents. Through various mechanisms, we will continue to work with vulnerable women to prevent them from becoming involved in the scene in the first place or to help those who are caught up in it to get out of it. We are trying to contribute to increased legislative powers to help to reduce the impact on communities where the problem exists.

**David McLetchie:** The impact will be reduced only if more people are arrested and prosecuted.

**Councillor Thomas:** Another way to reduce the impact is to stop people from going to those areas or to help them out in the first place.

**David McLetchie:** Would not a more visible police presence in an area deter people from going there?

**Councillor Thomas:** Possibly. That is an aspect. There is no simple solution—if there were, we would have adopted it years ago.

**David McLetchie:** No, but we are not talking about the wider social ill of prostitution; we are talking about a bill with a narrow purpose, which is to deal with street prostitution. That is not the same thing as phoning a mobile number and arranging a liaison in another spot. We are talking about street prostitution and the nuisance that it creates for people who live in the area where it happens. The bill will be judged not by its effectiveness in tackling every other aspect of the problem of prostitution but by its effectiveness in tackling street prostitution as a public nuisance that affects people who live in the neighbourhoods where it is carried on. Do you agree?

**Councillor Thomas:** I am not sure what point you are trying to make. If you are asking whether more effective policing of the current legislation would help and that extra legislation is therefore not required, I would say no. It is true that there could be police officers on every street corner in Leith 24 hours a day if we had the resources for that, but we do not. We need a combination of better enforcement of the current legislation and improved legislation. Ann Hamilton made the point that people in the affected areas know when a car is kerb crawling and somebody is looking for a prostitute, because they stop their car and do not ask for directions. Police officers know that too, so it should not be too difficult to accommodate that in a new legislative framework.

**David McLetchie:** But if there is no offence of loitering in a car, you are not accommodating it all, are you?

**The Convener:** You have pursued that point sufficiently, David. Tommy Sheridan is the last member yet to ask a question, and I will allow two other members brief supplementaries.

**Tommy Sheridan (Glasgow) (Sol):** I will try to address three areas as quickly and concisely as possible. First, Margo MacDonald asked Ann Hamilton whether figures from the past five years indicate a reduction in the prevalence of street prostitution. I hope that I do not misquote you, Ann, but you said that there are no such figures. Has the prevalence increased? Has the problem grown? I invite Councillor Thomas and Leslie Brown to answer the same question about their areas. Is what you are currently doing reducing street prostitution or is there no discernible reduction in the associated problems?

**Ann Hamilton:** There have not been seasonal differences exactly, but there are certainly patterns of change in each year. However, we have not seen any significant decrease in the number of women out on the streets.

I do not know whether this helps to answer David McLetchie’s point, but we rigorously enforce the law among the women and we have not seen any decrease in numbers. That is because we do not have any powers to address the problem of demand, so the women are on the streets despite the highly visible police officers and rigorous enforcement.

There were about 800 or 900 women on the streets in 1998 and we are looking at about 1,200 now. That is partly because our figures are better, but we are not seeing a decrease and we will not see one unless we do something about the demand.

**Councillor Thomas:** It is difficult to know whether there has been a decrease in Edinburgh, because it depends on who you ask. The feeling
from the statutory organisations is that the numbers might be stable or reducing, but voluntary groups in the field would probably argue with that. We have seen in recent years a reduction in the nuisance problems, but whether that is as a result of there being fewer women on the streets or more effective policing of the area is difficult to know. With better-focused legislation we could do more than we are doing at the moment.

15:15

**Leslie Brown:** Like in Glasgow and Edinburgh, the extent of the problem in Aberdeen is roughly the same as it has been for the last few years, for which we have reasonably reliable figures. There are 150 to 200 women involved. We are aware of changes in the nature of street prostitution. David McLetchie mentioned mobile phones. There is a lot of evidence to suggest that a number of street prostitutes are using mobile phones to arrange pick-ups. That can mean nuisance being caused within a wider area. Although the women are on the streets to get business, they take people back to their own flats or flats that are provided for them, which causes a nuisance to other residents.

There is a concern that anything that stems from the bill could simply shift the nuisance, if we are not careful. We need to be aware of that. It is a complicated subject. David McLetchie is right to say that the bill essentially deals with one issue, but it is not a narrow issue, and we have to think about the potential knock-on effects.

**Tommy Sheridan:** I will explain why I asked that question of all three of you. I do not think that there is a disagreement among local authorities about the root causes of women being driven to prostitution—it relates to poverty and, primarily, drugs. The fact that each of you is saying that there has been either an increase or relative stability in the number of women involved is worrying from a societal point of view. Perhaps that means that we have not been tackling the root causes of poverty and drugs. The bill is not designed to do that, but it is not a narrow issue, and we have to think about the potential knock-on effects.

According to police evidence, currently it is not clear from a woman’s record that she has been found guilty of soliciting. Do you agree that the title of the bill is unhelpful and should be changed, so as not to draw attention to the prostitution element on the employment record of a woman who has exited prostitution and is seeking other employment and so as not to cause problems with exit strategies?

**Ann Hamilton:** My understanding is that, at the moment, convictions for prostitution or soliciting appear as offences under the Civic Government (Scotland) Act 1982. There is a whole issue around the rehabilitation of women and the fact that they must carry the stigma with them. The title of the bill and the fact that it is linked to fear, alarm and nuisance will exacerbate the concerns of employers when considering women. We have done some work on the issue with employers and within Glasgow City Council, focusing on the nature of the offence, explaining how women become involved in prostitution and emphasising that it is not a sexual offence but is to do with survival behaviour, poverty and so on. It is about changing people’s attitudes, which is why it is so complicated. The issue is with us now, but it might be exacerbated by the public nuisance element of the bill.

**Councillor Thomas:** Given that one of the most effective routes out of prostitution involves helping women into training or finding them employment, anything that gets in the way of that is clearly not helpful.

**Leslie Brown:** I share Councillor Thomas’s views but, in all honesty, I have not given any deep thought to the issue. I share Ann Hamilton’s concerns about the impact that a conviction can have on the ability of women who have been prostitutes to get a job. If the bill serves only to exacerbate that problem, it would be sensible to try to find a way around it.

**The Convener:** I ask Tommy Sheridan to be brief in making his final point. We have two more panels to come.

**Tommy Sheridan:** My final point relates to Leslie Brown’s answer. In all our evidence-taking sessions to date, we have tried to address not prostitution as a whole but a problem that relates to prostitution, which is the nuisance that kerb crawling causes to communities. Every witness has told us that the bill is not up to scratch. In dealing with the problem, it will be as effective as a chocolate teapot.

**The Convener:** Tommy, I think that we have covered kerb crawling. Do you have a new angle?

**Tommy Sheridan:** Do each of you or each of your local authorities intend to submit amendments to the bill to define kerb crawling or are you hoping that amendments will come from elsewhere? Are you going to be proactive in recommending amendments to the committee?

**Ann Hamilton:** Given our track record in Glasgow, it is likely that we will want to influence what happens. Obviously, we will let the bill go through stage 1, see the impact of the discussion and consider how to take things forward. We want to influence matters.
Councillor Thomas: We will give the issue serious thought, whether we do so individually, collectively through the Convention of Scottish Local Authorities or by way of the three cities joining forces to knock heads together.

Leslie Brown: Even before today, like Glasgow and Edinburgh, we had concerns about how the bill is going to pan out. We hoped that we would get some clarity on the matter, but we will have to take the issue back to our respective local authorities and do some further work together to see if we can be helpful.

The Convener: Two members have supplementary questions. I ask them to be concise. We have a lot of evidence to take today.

Margo MacDonald: Leslie Brown was the only witness to mention the guidance and yet, having been on the expert group, I know that the guidance is meant to dovetail with the proposed change in the law to make kerb crawling a public disorder offence.

I am most interested in hearing the City of Edinburgh Council’s answer to my question. With regard to the services that the guidance says local authorities should provide—we have not even mentioned the duty of care that should be shown to prostitutes—does the City of Edinburgh Council foresee the delivery of those services in a way other than in the concentrated manner in which they were provided in the past?

For information, the stats that we heard earlier probably came from SCOT-PEP, as its figures back up what was said about there not being a big increase.

Councillor Thomas: We will look seriously at the matter. I mentioned the sex industry interagency strategy group, which brings together officials from the council and other agencies. The group will shortly report to the council on the way forward. I hope that some of those issues will be picked up in its report.

Margo MacDonald: That was all I wanted to know. We know about Glasgow and Aberdeen.

The Convener: I ask Frank McAveety to be concise.

Mr McAveety: We have had a discussion about enforcement, but even if enforcement has taken place under existing legislation, do you agree that a better form of enforcement—such as we have in the bill—will assist in tackling the issues that are of greatest concern to local residents? Police officers on the ground say that they do not have enough powers to tackle that aspect of the problem, never mind all the other aspects. Do you agree that that is the broad view that is held?

Councillor Thomas: Yes.

The Convener: I thank Ann Hamilton, Councillor Kingsley Thomas and Leslie Brown for giving us such helpful evidence.

I welcome our second panel of witnesses, which consists of police representatives. They are Chief Inspector Mark Cooper from Grampian police, Assistant Chief Constable Neil Cameron from Tayside police, Assistant Chief Constable Neilson from Strathclyde police and Detective Superintendent James Cameron from Lothian and Borders police.

We are looking forward to hearing from you on concerns that we have heard about the enforceability of the proposed legislation. Your views will be of great value to the committee. You may make some introductory remarks. Do all four of you intend to do so, or have you agreed among yourselves that certain individuals will do so?

Assistant Chief Constable John Neilson (Strathclyde Police): If you do not mind, I will make the introductory remarks.

ACPOS welcomes the report of the expert group and the subsequent work. It is important to recognise, as we have always done, that prostitutes are victims. For the first time, we are starting to think about policing the demand. There have never been any powers for us to do that.

I have worked in the east end and the city centre of Glasgow throughout the years, have dealt with prostitution and have a good grasp of the community’s needs. I have also been involved in the consultation on the bill. From the perspective of Strathclyde police, the bill has missed an opportunity to deal with two issues. If we are going to deal with demand, which appears to be the way that we are going, we need to deal with people in communities being accosted by people in motor vehicles and with prostitutes being uplifted by people in motor vehicles. The bill meets the needs of neither communities nor victims, that is, the prostitutes.

Michael McMahon: Before we talk about the issues that you have raised, I will ask about the bill’s financial implications for the police, which the ACPOS submission mentions. The Scottish Executive believes that policing the new offence will cost the police forces £15,000 per annum. Do you find that credible or can you give us what you consider to be a more realistic assessment of the bill’s financial implications?

Assistant Chief Constable Neilson: We cannot consider the financial implications in isolation. We have to consider the legislation that has been provided for us to deal with prostitution. In our submission, we outline the difficulties of prosecuting prostitutes and clients under the bill. I am sure that, if we get appropriate legislation to deal with demand, our street offences unit in
Glasgow will be happy. As far as I am aware, nobody on the demand side has ever been charged and, if we start to charge them under appropriate legislation, it will cost an awful lot more than the figure that is indicated in the financial memorandum.

15:30

Michael McMahon: Do the other witnesses agree?

Assistant Chief Constable Neil Richardson (Lothian and Borders Police): Most definitely. I would not like to put a figure on it, but the figures in the financial memorandum do not strike me as particularly realistic. That is the strong view of ACPOS.

The Convener: You might have heard Fergus Ewing earlier drawing attention to the fact that among the powers that are available to courts in England and Wales to deal with kerb-crawling is the power to disqualify a driver from driving or to seize their motor vehicle. Are those appropriate punishments for a kerb-crawling offence?

Assistant Chief Constable Neilson: If we are realistic about dealing with demand, we need punishments that work. I have problems with the bill, but why not disqualify people from driving? We could try a different approach. We have to get rid of demand. Why are the same numbers of prostitutes still doing what they were doing in 1988? The answer is that they are victims. They are forced into it, and as long as there is demand, people will take advantage of it. The prostitutes do not want to be on the street; other people want them to be there. As long as there is demand, people will be forced into prostitution.

Ms Maureen Watt (North East Scotland) (SNP): There was a slight suggestion that because the managed zone in Aberdeen is away from residential areas it is out of sight and out of mind. Does Chief Inspector Cooper agree that that is not the case and that there are regular police patrols of the area? Will he tell me whether he gets a lot of complaints from people who live or work on the periphery and ask the police to deal with particular problems? Perhaps the police from other areas can tell us how many complaints they get from residents compared with how many incidents they deal with on their normal street patrols.

Chief Inspector Mark Cooper (Grampian Police): I assure you that the management zone and areas just outwith it where we also see street prostitution are heavily patrolled. For the past two years, we have run operation equation in that zone to provide a bit of protection, to manage the serious and violent crime that can occur there and to prevent people who are inclined to seek female prostitutes from going into those areas.

What was the second part of your question?

Ms Watt: Do you get calls from the general public who live on the edge of the zone asking you to deal with nuisance?

Chief Inspector Cooper: Sporadically, as Councillor Thomas suggested about his area. Our zone operates predominantly from 5 pm onwards and a certain part of it from 9 pm onwards. However, because of the correlation with drug abuse, in particular the spiralling crack cocaine scene in Aberdeen, prostitutes do not always respect the operating times of the zone and from time to time we get complaints about women working out with those times. We also get complaints from people in the private sector and from the few residents who live there about the remnants from the management zone, for example the nuisance of finding used condoms in their close.

Assistant Chief Constable Richardson: The question underlines one of the broader issues, which is the overemphasis on the police and their enforcement role. As has already been highlighted, this is a pretty complex social problem and, in truth, although the enforcement element is important, it is only one strand. There are also risks associated with enforcement. Whether or not we are talking about prostitution that takes place in a less visible area, enforcement carries with it the risk that it simply moves on the problem, makes it more difficult to manage and takes it further away from the helping agencies and partners with whom we work routinely to provide a meaningful service. The issue is not as simple as it might appear.

That is underlined further in the Edinburgh experience. The committee heard from the previous panel about the changing dynamics in Edinburgh. As the Leith area has been redeveloped, more residents have come into the area who have been less accepting of what has been in place in the area for a long time, which I suspect has driven a shift in policy. One of the reasons for welcoming the principles of the bill is that they represent a move towards achieving a sustainable remedy and away from the need for localities or cities to deal with the consequences that unfold.

We have concerns about too much emphasis being put on enforcement, which also raises public expectations that we will be unable to fulfill.

Assistant Chief Constable Neilson: Mr McAveety spoke about the Glasgow experience. The horror for people in Calton, particularly women, is that they are accosted every time they go out in the street, especially after 5 pm at night and during the winter. That happens throughout
Calton, right down to Glasgow green and the High Court building. Some people in the Calton area do not go out of their houses at night. Our difficulty is that people complain not about the prostitutes, but about the people who are looking for prostitutes.

In the city centre, we get complaints from people who work late at night, including single females who have to walk to the train station. The problem is particularly bad in one area where the prostitutes hang around because a number of fun pubs have opened there. It is difficult to detect who are the prostitutes and who are the pubs' patrons; there is no visible difference between them. When I showed the video to the fiscal and officials, they had difficulty in identifying who were the prostitutes and who were women just heading to the pub. The situation is not like it was in "Pretty Woman". The real difficulty is that we cannot easily distinguish the prostitutes; they are just normal girls who have been forced into prostitution.

When we opened our information resources department, which works a three-shift system, we had to consider the welfare of our staff who were leaving the office at 10 pm or 11 pm at night. We had to provide alternative transport because the fear of crime is so high in the area. The issue for women in those parts of the city is the fear of being accosted in the street by people in motor vehicles. We have plenty of complaints to support that.

**Mr McAveety:** Six years ago, I raised that issue in the Parliament and invited a number of residents from the Calton area to speak to the then Deputy Minister for Justice and senior civil servants. They told us that if the police enforced the existing breach of the peace law, it was more than sufficient to deal with the problems. Assistant Chief Constable Neilson has put a pretty positive argument for stronger powers. Were people utterly wrong in what they told us six years ago? What are we edging towards more likely to take us in the right direction?

**Assistant Chief Constable Neilson:** There are difficulties with the breach of the peace law. You will be aware that, generally speaking, the women who walk the streets in Glasgow green are on their own, and the person in the vehicle is also usually on their own. The area is not covered by closed-circuit television, which means that there is usually insufficient evidence to accuse the person in the vehicle of causing a breach of the peace by accosting the woman in the street. If uniformed police officers are out on the street, the person in the car will not behave in that way. That is the perennial problem. We have no legislation under which we can deal with people who persistently drive around an area and are not on legitimate business.

**Mr McAveety:** So the bill needs to include something to address that. At present, your submission is that the bill’s provisions are insufficient. You have given two or three examples of language that needs to be made more precise and have also said that definitions need to be more accurate.

I return to a question that I have asked before, on which I seek your help. When you come to present a charge to the procurator fiscal and they say, “I cannot deal with that,” how do you solve the issue? How do we make the language in the bill stronger and better so that it is right for the men and women police officers who need to enforce the law? I know that officers in my area are frustrated because they cannot tackle what they know is an important issue.

**Assistant Chief Constable Neilson:** I am glad that you did not ask me an easy question. The bill must be framed in a workable way. The reason why I showed a video to people from the Crown Office and Procurator Fiscal Service and the people who produced the bill was to show them that those who are involved do not negotiate contracts. A driver in a car goes down a street and flashes the car's lights, then a prostitute gets into the car. In those circumstances, how would the bill allow us to charge the client or the prostitute?

The Crown Office and Procurator Fiscal Service's opinion is that we would have to hear such a transaction. On a tape, such transactions take five to 10 seconds—they happen quickly. A client will walk past a prostitute on the street and we will not even see them speaking. The next minute, the prostitute will meet the client in a lane. Therefore, under the bill, how would we prove that an offence had occurred?

Loitering is another issue. Two thirds of the transactions that take place in Glasgow occur in motor vehicles. If a person who is in a motor vehicle cannot be loitering, what will happen to two thirds of transactions? Nobody will be charged and nobody will be rehabilitated. The tool will be ineffective, because a person who is in a motor vehicle cannot be loitering, although a person can loiter on a bus. I am not being critical, but the transactions do not take place in taxis or buses—the majority take place in cars.

Something needs to be built into the bill to prevent people from stopping people in the street. If the bill specified three instances, as the English legislation does, we could use CCTV and automatic number plate recognition that could be linked to CCTV. Those are effective measures that we do not use now and which we could at least try. My opinion is that the bill gives us no powers and will frustrate the powers that we have.
Mike Rumbles: My question is for Mark Cooper and is the same as the question I asked Aberdeen City Council. The council said:

“In January 2001, Grampian Police established a prostitution management zone in” Aberdeen, in which prostitutes “are not subject to arrest for soliciting”.

The bill’s purpose is to achieve equality between the seller and the purchaser of the service. My question is simple. If at the moment you do not seek to prosecute people for selling, you ain’t going to use the powers in the bill to prosecute people for buying, are you?

Chief Inspector Cooper: We prosecute prostitutes who operate outwith the zone.

Mike Rumbles: What about those who operate in the zone?

Chief Inspector Cooper: In the zone, we will have a difficulty. I do not think that Grampian police introduced the management zone—

Mike Rumbles: That is what Aberdeen City Council said.

Chief Inspector Cooper: I think that the question whether to operate a management zone is devolved to local authorities. The council put in place the zone in partnership with Grampian police. If the bill is passed, it will be incumbent on us to get round the table quickly to review the zone’s purpose.

We should not forget why the zone was established back in 2001. As we have heard, prostitutes at all levels are very vulnerable. They become prostitutes because it is a means to an end. Some people are forced into prostitution. We have not spoken about the support that is in place in the management zone. The drop-in centre gives prostitutes access to services to which they might not otherwise have access.

Mike Rumbles: I will pursue the question. The police have decided not to enforce the current law in an area. It is not the local authority’s job to decide which laws of the land are not to be enforced. As an operational matter, the police have established that they will not enforce a law. Have you decided not to enforce any other laws in any area?

Chief Inspector Cooper: Not as far as I am aware. That is a matter for police forces’ discretion.

Mike Rumbles: Why is this subject different?

Chief Inspector Cooper: It is different because of the partnership approach and because of the revolving-door effect, about which we heard from previous witnesses. What good does it do

prostitutes to charge them, arrest them and bring them before the courts, where they simply get fined again? That just gives them a problem with their finances.

15:45

Mike Rumbles: I hope that you appreciate that I am pursuing this point not because we are examining the whole issue of prostitution. We are not doing that; the committee’s job is simply to consider the Executive’s bill. The Executive has told us that the bill’s purpose is to ensure equality of treatment in order to take away the demand. My question is focused on the police service. If the police service does not enforce the current law in a particular area, what is the point of us introducing that equality to the legislation?

Chief Inspector Cooper: As I said at the outset, it would be incumbent on Grampian police, with the partner agencies, to review the existing management zone.

Mike Rumbles: I found the evidence from John Neilson about how to prosecute under the proposed new legislation very effective. If we assume that if the bill is brought into force it will be effective across the country, without exception, will it be practical? Will it achieve the object of the exercise as I have described it, which is to equalise the position of the seller and purchaser of this activity in law? Will prosecutions be effective if we accept the bill as drafted?

Chief Inspector Cooper: I accept the observations that you have made. Has the management zone in Aberdeen reduced crime within that zone? No, it has not—or there is no evidence to suggest that it has. We have evidence of prostitutes coming to Aberdeen from other parts of Scotland and, indeed, from elsewhere in the United Kingdom to take advantage of the services there and of the fact that they will not be arrested. There is also the displacement of prostitution outwith the management zone. The prostitutes operate there for a number of different reasons. Together with the sex industry forum, Grampian police will be examining the management zone as a matter of urgency.

Fergus Ewing: Is it possible that there could be buying and selling of prostitution services without committing an offence of causing nuisance?

Assistant Chief Constable Neilson: We raise that issue in our written response. How do we prove intent? What nuisance are the people who are involved creating, other than for the two police officers who see what is happening, which is two people speaking on the street and a woman going into a man’s car? To whom are they causing annoyance? We had difficulty understanding that. In the Calton area of Glasgow, the standing
complaint from residents, which can be supported, is that they have a problem with being accosted on the street and with the prostitutes being there. In the city centre, it is an entirely different kettle of fish. Who is making complaints after 5 o’clock in the evening? Who is being caused annoyance?

There are many ifs and buts, but the legislation lies totally with the perception of police officers. It is difficult enough to get evidence through the court when it comes solely from police officers. As the bill stands, it is about individual officers’ perceptions.

**Fergus Ewing:** I accept that the evidential difficulties are considerable. Where the act of soliciting is done in the Calton area, where there are residents around, there is plainly a nuisance. The point that I wanted to move towards is this: if the act of soliciting takes place in an area where there are no witnesses, for example in an industrial estate, where there is no one around in the evening, it seems quite possible that the eventual act will not criminalise the behaviour. There would be no nuisance, no members of the public and probably no police; therefore, there would be no crime.

The effect of that is that punters will be driven into areas where there are no witnesses—dark, dangerous places. Perversely, the effect might be to place the women at even more risk of violence. The punters will know that it is not worth taking the risk of picking up a prostitute in a residential area because, under the legislation, they can be lifted for the crime. They will also know that, unwitnessed, in some secret, dark place, they will not be committing a crime. Does that scenario have some justification?

**Assistant Chief Constable Neilson:** That scenario occurs at the moment. That is exactly what someone does after they have picked up a woman; they go to places like that. The legislation is not in place yet to prevent that from happening. Many of the provisions in the bill would have to be tested in court. We would have to test our perception of soliciting and loitering and what constitutes a nuisance. The first couple of years will be testing for the Procurator Fiscal Service and the police. If the bill goes through with those provisions intact, the only way in which the position will be clarified is through stated cases and legal challenge in the courts.

**Fergus Ewing:** I appreciate that precise wording is key; one word can make all the difference.

I turn to the approach that is taken in England and Wales. As the policy memorandum sets out, “Section 1 of the Sexual Offences Act 1985 provides that it is an offence for a person to solicit from a motor vehicle persistently, or in such manner as to cause annoyance to the person being solicited or nuisance to the neighbourhood.”

I understand that that provision was designed to criminalise both the punter and the voyeur. The latter category of offender may not solicit but may cause a nuisance. I will focus on the word “persistently”. Do you agree that if it is wrong for a person to solicit from a motor vehicle—to kerb crawl—it is wrong to do it once? Surely the use of the word “persistently” suggests that their action becomes an offence only if they kerb crawl more than once—indeed, perhaps more than twice or three times. The meaning of the word “persistently” invokes an action that is repeated several times.

Do you agree that when we are trying to get the wording right at stage 2, we should consider the English approach? Is there merit in suggesting to the minister that we scrap the inclusion in the bill of the word “persistently” on the basis that the evidence that we have taken shows that communities want kerb crawling to be an offence full stop. Surely kerb crawling is kerb crawling even if it happens only once.

**Assistant Chief Constable Neilson:** I am quite comfortable with the use of the word “persistently”. Already in Edinburgh and Glasgow a prostitute cannot be convicted unless two official warnings have been issued. The third warning is issued just before a court appearance. A series of warnings is required before the woman is convicted, as it indicates the pattern of events that shows that she is a known prostitute. It also allows us to divert people away from prostitution and into other activities at an early stage and without criminalising the individual.

People travelling through the area that prostitutes use in Glasgow who are stopped by officers say things such as, “I’m going to pick up my wife at the local pub,” or “I was looking for the M8 on-ramp and took a wrong turning”—the on-ramp is right at the end of the area and the man can quite rightly say that, because he missed the turning, he had to go through the whole area again. However, if we have to provide evidence of persistent behaviour, the man can get away with that excuse only once. The use of the word “persistently” is positive. When we take someone to court, we need to be able to prove that persistent behaviour was involved. Someone cannot get lost every night.

**Fergus Ewing:** Yes, but surely the other interpretation is that, if you have to pursue a charge on the basis of a persistent course of behaviour, the prosecution will fail unless there has been repetition of the behaviour. Single women such as Ms McCarey, who gave evidence last week, would become intimidated if someone did it even once. Surely women like her are
entitled to be concerned about such behaviour and to be protected by the criminal law against such experience, even if it happens only once. Is not the question of proving it a separate, evidential question?

Assistant Chief Constable Neilson: It is not separate. If Ms McCarey gets stopped once by a person driving a car and there is no corroboration of the incident, that is it. There is nothing that anyone can do about it because, if there is no corroboration, we cannot take someone to court. We can give the man a warning, but he will say either that he did not do it or that he was lost. If a series of events has taken place and it is possible to document it, we can prove that persistent behaviour is involved. I referred earlier to the three significant events that allow us to build up the evidence that is required.

I am comfortable with the use of the word. If we are going to do this, we need to do it right. If we take cases to court, we need to get prosecutions. We cannot take cases to court only to have them written off. If we are to support the communities that are making these complaints, people need to see that we are achieving successful prosecutions.

Fergus Ewing: I hear what you are saying, but I am not convinced by it. If an offence happens once, it is wrong—it is simply more difficult to prove that it happened because a person could argue that they were doing what they were doing for other purposes.

I will move on. You commented on the convener’s questioning following Ann Hamilton’s evidence on Glasgow City Council welcoming the powers to disqualify kerb-crawlers from having driving licences. I think that she also said that powers exist in England that allow cars to be confiscated in some circumstances. Should the courts be able to impose such a remedy in the appropriate circumstances?

Assistant Chief Constable Neilson: If we are linking the proposals in the bill to other antisocial behaviour measures, we should remember that such punishments exist under current antisocial behaviour legislation. We can seize people’s vehicles and get people disqualified from driving. Such a robust approach would certainly prevent repeat offending.

Fergus Ewing: Finally, it has been suggested that because the bill deals primarily with street prostitution, it will not really prevent prostitutes’ services from being arranged by mobile phone. Do you agree that if an offence does not directly cause nuisance but simply involves a punter purchasing sex, it would be perfectly open to investigating officers and the police to obtain the punter’s mobile phone records as evidence of contact with the prostitute to prove that a transaction had been arranged by mobile phone? Do you agree that mobile phone records constitute perfectly acceptable evidence in other forms of criminal cases and that using the approach that I have described would allow us to start to stamp out—or at least reduce—prostitution in the street or anywhere else and thereby reduce the degradation of women and the violence towards them that prostitution causes?

Assistant Chief Constable Neilson: That takes us back to Mr McMahon’s question. How much would such an approach cost and who will pay? We are talking about very expensive evidential tools.

Secondly, in such circumstances, there would be no evidence of corroboration other than evidence that a phone call had taken place between a male and a female. There would be no transcript of what had been said. Currently, people in the street can be watched on video. A person can phone a prostitute at the end of the street and disappear into a car or a lane as a result of a phone call. Is it in the public interest to spend all the money that we would be talking about to try to prosecute one person, who might never appear in court, over a phone call? That is a question for the Executive rather than me to answer, but the cost of taking such a course of action would be enormous. The issue also brings in the Regulation of Investigatory Powers (Scotland) Act 2000.

Fergus Ewing: I will recast my question. I did not suggest that evidence that a phone call had been made would constitute evidence that a crime had been committed—that is plainly not the case. Perhaps I did not make myself absolutely clear. I was suggesting that if other evidence existed—whether that was evidence from a closed-circuit television camera, oral evidence from a witness or evidence from a police officer—of sex having been purchased and of the punter and the prostitute having been together, phone records could be a useful means of corroborating the primary evidence. I was not suggesting that mobile phone records by themselves could ever constitute sufficient evidence that a crime had been committed and I apologise if I gave you the impression that I was saying that. However, it would be possible in theory and in practice to use such evidence as corroboratory evidence in circumstances in which other evidence is available to investigating officers.

Assistant Chief Constable Neilson: We would have real difficulties with the RIP(S)A commissioners in utilising such means of evidence gathering. Getting access to people’s phone records is difficult enough in investigations into serious crimes, and even more difficult when the investigation involves a really serious crime and
life is at risk. I do not think that the RIP(S)A commissioners would agree to access becoming routine, although I am not an expert on the act.

16:00

Fergus Ewing: I appreciate that access may be difficult, but I would like to see it become easier to help you in your efforts to tackle crime. I was not criticising the police in any way but simply suggesting that, as a citizen, I for one would like to see your job and your obtaining access to people’s phone records made much easier for all types of crime, including what I would regard as a serious crime—buying sex, with the degradation of women that that entails.

Detective Superintendent James Cameron (Tayside Police): I want to make a follow-on point. Such access would be cost prohibitive and would not add any value to most investigations. The identification of two people together far outweighs the possibility that two individuals used a telephone to talk to each other.

Paul Martin: We are trying to deal with the most difficult areas of the bill. Am I right in saying that the witnesses have a difficulty with one key aspect, which is that the police would be required to overhear the discussion between the purchaser and seller? Is there an analogy with other crimes—racially aggravated crimes, for example—for which such evidence is required?

Assistant Chief Constable Neilson: The bill says that anybody who solicits or tries to secure the services of a prostitute commits an offence, but how do we prove that? If someone drives a car to an area and flashes their lights and a woman gets in, how do we prove that they have breached the law? It is impossible. On persistency, if somebody did it three nights in a row, they would breach a piece of legislation that can be enforced.

Paul Martin: Would the first situation come under circumstantial evidence? If we deleted the section that refers to officers having to overhear the transaction, would that help?

Assistant Chief Constable Neilson: To be fair, the idea that we had to hear the transaction came from the Procurator Fiscal Service at our last meeting. It would be impossible for us to enforce the law as the Scottish Executive wants if the Crown Office and Procurator Fiscal Service says that we have to overhear the conversation. That is not going to happen.

Assistant Chief Constable Richardson: A further concern for ACPOS is the risk that if the legislation is passed in a shape not too dissimilar from its present shape, enforcement will ultimately be a matter for local negotiation between the PF and police in Edinburgh, Glasgow and elsewhere.

The one thing we know about the prostitution culture is that it is extremely transferable. If there is a spate of attacks against women in Glasgow, the number of prostitutes in Edinburgh and elsewhere in Scotland increases overnight.

For me, that underlines the need to have a consistent approach across the country, and that will come from workable and effective legislation. There is an issue of proportionality in proving an offence, as prostitution is not the only issue that our communities are concerned about. We have to direct our scarce resources into a number of different areas, and if disproportionate resourcing is required to obtain evidence to pursue prosecution, the reality is that it will be extremely difficult to do and will not happen that often. That is the basis of the ACPOS concern.

David McLetchie: I wanted to ask Mr Neilson about something that arose in the evidence that was given by Ann Hamilton from Glasgow City Council on the number of prosecutions under the existing law. I was particularly interested to note—if I noted her numbers correctly—that the number of prosecutions in 2003-04 was 393. In 2004-05, it doubled to 786. In the most recent year for which you have statistics, the number fell again to 246. There was a substantial spike, as if there was some operational reason why, all of a sudden, the number of people prosecuted doubled in 2004-05 from the figure in the previous year, and then fell again significantly in the following year. Was there an operational reason, and could you describe the operation that gave rise to that substantial number of prosecutions?

Assistant Chief Constable Neilson: The reasons are easy to describe. There were operations in two areas—in the city centre and in the east end of Glasgow, where Mr McAveety was involved. The operation in the Calton area was aimed at reassuring the public, and it reduced the fear of crime in that area. More importantly, it related to the Emma Caldwell murder: the number of police officers who were involved in intelligence gathering and prosecuting was increased tenfold, which coincides with the spike in the statistics.

David McLetchie: So, in that instance, there was a specific operation to target street prostitution, which came about as the collateral consequence of another operation relating to a murder. However, the number of prosecutions increased because of the number of officers who were working in those areas. What is the operational difference between the number of officers who were busy going around arresting people, leading to prosecutions in 2004-05, and the number of officers who do that in the normal situation, if I can call it that, that applied again in 2005-06?
Assistant Chief Constable Neilson: I do not have those figures; any answer I gave you would be anecdotal. There has always been a street offences unit of 10 officers who work on prostitution. They do not work only on enforcement—they also do diversionary referrals, drug referrals and referrals to Routes Out and other support teams. Intelligence is gathered and there are good reasons for that, but that unit is seen as a positive and proactive approach to prostitution in the area, and the numbers never change too much. Only if we need to increase the numbers as a result of a serious crime do we put in more officers down there.

David McLetchie: I am interested in the video test that you did in conjunction with the Procurator Fiscal Service, as described in your written evidence, which seemed to suggest that it would be difficult, under the bill, to prosecute a significant number of people. In making that assessment of the impact of the bill, based on the video, what did the Procurator Fiscal Service say about that same evidence vis-à-vis the current law?

Assistant Chief Constable Neilson: We use evidence from closed-circuit television and officers on the ground to deal with such offences under the Civic Government (Scotland) Act 1982, which is also supported by common law cautions and interviews under caution. Prosecutions have been done that way since 1982, when that act came into force. There is a process for that.

We took a Monday night snapshot—Monday night is a quiet night in Glasgow city centre—just to show the procurator fiscal and the people from the Scottish Executive what the situation is like. We said, “Here’s the reality of prostitution in Glasgow city centre. We’ve told you our reservations about the new bill and what we think about it. Look at the video and tell us how we could use the new law to prosecute anybody in it.” The response was that, despite the 23 transactions that were captured on the video, nobody could be charged.

David McLetchie: Could some of the transactions that were filmed and shown be prosecuted under the current law?

Assistant Chief Constable Neilson: Yes, particularly in respect of the prostitutes. There is no law at present that deals with clients.

David McLetchie: That is another issue that is related to whether the law deals with the nuisance or whether it is about an equalities agenda. In terms of dealing with nuisance, the current law could allow you to prosecute more people on the basis of that test than could the proposed new law. Is that right?

Assistant Chief Constable Neilson: Under the current law, we can prosecute only prostitutes. The bill is intended to introduce a balance and to reduce demand. The current law does not allow us to reduce demand, but we feel that the law that is proposed in the bill will not allow us to reduce demand either.

David McLetchie: I presume that if the evidence that was shown in the video was not good enough to prosecute the purchaser, it was not good enough to prosecute the seller, either.

Assistant Chief Constable Neilson: No—that is different. If the person was a known prostitute, we could take further action under the 1982 act.

David McLetchie: That may be the case under current law, but it would not be the case under the law that is proposed in the bill. On the basis of the video evidence that was presented to the Scottish Executive, are you saying that sellers—prostitutes—could, in the opinion of the police and the procurator fiscal, be prosecuted under the present law but not if the law was amended as proposed in the bill?

Assistant Chief Constable Neilson: Yes.

David McLetchie: That seems to be an extraordinary state of affairs.

Margo MacDonald: I have specific questions, but I will first pick up where David McLetchie left off. I do not expect you to comment on a matter of policy but, regardless of whether people think that the bill would create “an extraordinary state of affairs”, the intention behind it was that prostitutes would not be committing an offence if they stood in a discreet or relevant place without offending, alarming or causing nuisance to a third party. I just want to put the matter in context.

First, if the process was triggered by a complaint from a third party, would that make it easier for the police to enforce the proposed new law?

Assistant Chief Constable Neilson: It would make it easier from the point of view that the issue would not depend on the police officer’s perception that an offence had taken place, because there would be supporting evidence. In my experience, particularly in the Calton area, it is difficult for people to come forward to provide such evidence. They might give the police officer evidence on a one-to-one basis, but complaints tend to be by anonymous letter or anonymous telephone call. People in the area would not stand up in court to support a complaint.

Margo MacDonald: I take it that the same does not necessarily apply in Edinburgh and Aberdeen.

Assistant Chief Constable Richardson: I think that the broad principles are correct, but for me the issue is about the gap between perception and reality. People who live in an area that is affected by prostitution become sensitised to what is
happening around them. People can become more irritated by activities that they perceive to be linked to prostitution in the making.

The reality of what happens has changed since I last worked in the street and had to deal with prostitution, when the mode of dress, conduct and so forth of prostitutes were fairly self-evident. However, that has changed dramatically. When I looked at the video to which John Neilson referred, I found it very difficult indeed to say that anything caused me alarm or annoyance, although I can understand why the people who live in a neighbourhood where cars routinely drive by and stop briefly to let someone jump in will associate that activity with the on-going problem of prostitution. There is a perception and a reality, but how we take a matter to court and prove that there was a nuisance is another thing altogether.

Margo MacDonald: You are saying that it would make it easier to prove that an offence had taken place and to enforce the provisions in the bill if there was a complaint from a third person. I wanted to get that straight.

My second question is on a matter of detail. I accept all the criticisms about kerb crawling and so on, but I want to ask about people who are not engaged in seeking sexual services but are cruising just for the sheer hell of being there. Would they also be considered to be committing an offence under the bill?

Assistant Chief Constable Neilson: That comes back to the point that Mr Ewing made. People are allowed a one-off incident, but once there has been a series of events we can put them off because they would need to justify being in the area for three nights in a row. That would legitimise, I hope, any action that we took after that.

Margo MacDonald: What if the person was only looking? Could that person be prosecuted?

Assistant Chief Constable Neilson: That would still be an offence, especially in areas where there had been complaints.

Margo MacDonald: What would happen if no complaint had been made? The point is that the bill will require police officers to determine whether the activity would be likely to cause offence, alarm and so on.

Assistant Chief Constable Neilson: That comes back to the issue of perceptions. I should say that, when we raised that issue with the procurator fiscal, the fiscal did not think that driving round three times was sufficient to meet the demands of the bill.

Margo MacDonald: My next question arises from something that you said about the film, in which it was evident that everything took place very quickly—a car flashed its lights, drew up, a woman got in and the car went away. Would you agree that the experience of the management zone in Aberdeen and the zone that used to exist in Edinburgh, where it was accepted that a man who was there in a car was there for one purpose alone, shows that in such zones the women have better protection in that they have more time to find out who is in the car?

Assistant Chief Constable Neilson: We have never worked a management zone, so that is a question for Grampian police.

Chief Inspector Cooper: That is difficult to answer. A positive aspect of the management zone is that it gives the women the opportunity to engage in conversation with the gentlemen. From intelligence, we are aware that known sex offenders have admitted to their monitoring officers that they are visiting the zone, which is cause for concern. They would go wherever the street prostitution was.

Margo MacDonald: You said that in the Glasgow unit the same officers are responsible for enforcement and gathering intelligence. If they are nicking people, it cannot be easy to obtain intelligence.

Assistant Chief Constable Neilson: No—it is one of the hardest jobs in the city centre policing division. The officers are hand picked and are specially trained in joint-working practices and communication skills. Intelligence gathering is only one part of their role; the other part is to divert the women from prostitution and to provide them with support. However, when those women break the law and people make complaints about them, they have to be prosecuted.

Margo MacDonald: Would it be feasible to provide a rehabilitation programme for people who are convicted or cautioned for kerb crawling and would it produce the results that we want?

Assistant Chief Constable Neilson: There have been such programmes down south, but I do not know what results they have had. I would be happy to try anything that would reduce demand. We could try rehabilitation: if it does not work, it does not work.

Margo MacDonald: Are you aware of the guidance notes that were sent to local authorities and their partner agencies? Have you examined them?

Assistant Chief Constable Neilson: In what regard?
Margo MacDonald: Have you considered whether they fit with the notion of a complaint-led offence, which was the intention?

Assistant Chief Constable Neilson: No. I am not aware of that.

The Convener: That brings us to the end of the evidence taking. I thank our four witnesses from the police. The session has been useful and has given members a great deal to think about before we question the minister and move into the amendment phase of the bill’s consideration—assuming that we progress to that phase.

Assistant Chief Constable Neilson: If it would be helpful, I can leave the video that has been mentioned, which is five minutes long, for the committee to watch. It would need to be viewed in private, though.

The Convener: Yes, that would be helpful.

Assistant Chief Constable Neilson: It would certainly need to be viewed in private.

The Convener: We will take your guidance on that.

Margo MacDonald: We did not ask Tayside police a single question, even though it has the issue sewn up.

Detective Superintendent Cameron: I am quite relieved about that.

The Convener: I welcome to the meeting Dr Teela Sanders, who is a senior lecturer in the sociology of crime and deviance at the University of Leeds. Dr Marina Barnard, who was also due to give evidence this afternoon, is unable to attend of Leeds. Dr Marina Barnard, who was also due to give evidence this afternoon, is unable to attend because of unforeseen circumstances.

I give you the opportunity to make some introductory remarks on the bill, after which we will move to questions from members.

Dr Teela Sanders (University of Leeds): Thank you for the invitation to give evidence. I have submitted written evidence that details recent research on street prostitution and policing. I feel that the bill does not reflect current research in three respects, the first of which is the way in which the sex industry, particularly street prostitution, can change and adapt to the law, especially with regard to displacement. Secondly, there has been an overall increase, both globally and in the United Kingdom, in demand for commercial sexual services; indeed, recent statistics indicate that demand has doubled, which raises the question of the motivation for buying sex. Thirdly, the bill does not really take into account the dangers that women face as a result of increased policing or further criminalisation, even though the expert group highlighted that issue.

Mike Rumbles: The final conclusion of your written submission, which I read with great interest, says:

“The criminalisation of both purchasers and sellers of sex on the street increases the stigma attached to prostitution and does not meet the objective that any change to the law ‘should seek to reduce the stigma which attaches disproportionately to the person soliciting’.”

I do not quite understand that. After all, the bill is trying to address the issue of disproportion by seeking to equalise the stigma that attaches both to those who buy and those who sell sex.

Dr Sanders: Irrespective of what the law says, the question is how it will be enforced in practice. We have heard a lot about that today. The fact is that there are always more women selling sex than there are men buying it. There is no specific evidence that men consistently buy sex on the street. Unlike the women, who might well sell sex on the street every day, the men who are arrested for demand or kerb-crawling offences do not buy sex, say, every week. Although, the law might well be equal in theory, the equality of enforcement is a different matter.

Mike Rumbles: Thank you. That has cleared that up.

Fergus Ewing: I do not know whether you heard the evidence from Ann Hamilton, who was speaking on behalf of Glasgow City Council. She alluded to the effectiveness of a programme in Hampshire, as a result of which, of the 383 kerb-crawlers who had been arrested and the 82 who went to court, only a handful—four, I believe—reoffended. I wonder whether you could comment on that, as it appears to contradict the conclusion in the fifth section of your submission, on “The ineffectiveness of Kerbcrawler Rehabilitation Programmes”.

Dr Sanders: My evidence brings together evaluations of kerb-crawler rehabilitation programmes in the United States and North America, where most of them are. Only recently have two or three such programmes—in Hull, Hampshire and Nottingham—been introduced in Britain.

All the evaluation studies of programmes in the United States highlight that effectiveness cannot be measured by the rate of reoffending. A figure such as four reoffenders out of 390 individuals does not have any weight and does not mean much, because of the displacement issues. I documented all the different factors in my written evidence, such as the fact that men may not be caught or they may go to different areas. On the Hampshire project specifically, no systematic evaluation has been carried out and, although the project is mentioned in a Home Office document, it...
has no weight, as it has not been evaluated effectively.

Fergus Ewing: Plainly, you have studied the programme but, on the face of it, only four men reoffended out of the 82 who were prosecuted and the 382 who were arrested. Even if we accept that some of those men continued to buy sex and were not caught, on the face of it, the study contradicts clearly your conclusions that rehabilitation programmes are ineffective. I am not sure why you simply dismiss the study out of hand.

Dr Sanders: The evaluation is not only mine. Evaluations have been done of similar programmes, mainly in America. No programme anywhere in the world has ever existed for more than two years, because they have not been seen to be effective. The results of the measurement or evaluation of the effectiveness of such programmes is only one criticism of them. I documented several other criticisms in my written evidence that show why such court diversion programmes are not seen to be successful. The criticisms are about the resource intensiveness, the bias of the programmes and the fact that legal theory and due process are not adhered to.

Fergus Ewing: Is it your view that kerb crawling should not be an offence?

Dr Sanders: My view is not particularly relevant. I am here to present research from empirical studies on prostitution throughout the world. The point is that there is no evidence from any of the countries that have kerb-crawling legislation that it has affected the levels of demand or reduced street prostitution in any way, shape or form.

Ms Watt: Following on from that, from your experience and studies, is there any place internationally where buying sex is an offence and where prostitution has reduced as a result?

Dr Sanders: The most recent example of that is Sweden, on which the committee has no doubt heard evidence. After the law was introduced, there was an initial lull for two years, but that seems to have changed and people are returning to the streets. The law there significantly changed markets elsewhere—there has been a huge rise in internet markets and men are beginning to go to different countries or places to buy sex. So, although the law had an initial impact on street prostitution, there seems to have been no long-term effect on demand. One recent figure is that 13 per cent of men in Sweden buy sex.

Ms Watt: You paint a bleak picture. Are you saying that there is no way in which we can affect men's sex-buying behaviour?

Dr Sanders: I am not saying that there is no way we can do that. However, ultimately, the strong laws on kerb crawling in the UK—which I know most about—do not seem to have affected demand because of the nature of buying sex and the prostitution market. Even if individuals are arrested, named and shamed or given another punishment, other people always come along to take their place.

The Convener: Earlier, Mr Ewing asked the witnesses from the police and local authorities about the alternative disposals that are available to the courts in England, such as seizure of vehicles and disqualification from driving. In your studies, have you found that those disposals have been used widely?

Dr Sanders: They certainly have not been used widely. The removal of driving licences and naming and shaming, which brings in the media and which the Home Office sees as being an effective tool, have not been much used by magistrates because they are seen to have detrimental effects on partners and families. The majority of people who buy sex are in relationships and have families, so naming and shaming them or taking away their driving licences, as well as punishing the individual, can have significant ramifications for families.
Under point 4(4), “Change in target”, you say that “instead of buying sex from the street based market men will venture into new markets to act out the same behavioural patterns.”

That suggests that, although you may be correct in saying that kerb-crawling legislation does not reduce the incidence of prostitution overall, it certainly reduces street prostitution of the type that the bill is concerned with. Is that correct?

Dr Sanders: No, I do not think that it is. There are four methods of displacement. It is key that the bill considers temporal and spatial displacement—displacement in time and geography. There are different methods and tactics that we can use—we have heard about the use of mobile phones—and there are different markets that the bill is not concerned with, into which people can move.

Temporal displacement is when men seek sex at different times to avoid police detection. Birmingham, where I studied, has had intense policing by both community police officers and the state police. Essentially, that has just changed the nature of the beast. It has become a 24-hour problem dispersed across different streets, and men have adapted to that. It is significant that certain streets and areas gain a reputation that lasts for years and sometimes for centuries. Having studied the websites that men use to locate sex, I know that those reputations go before what is happening at the current time and place. People know where it is traditional to be able to buy sex in Edinburgh, Birmingham and other places in Britain. Those areas hold a certain relevance in being known as red-light districts.

Temporal and spatial displacement may happen as a result of kerb-crawling laws. Whenever there have been crackdowns in areas—where there have been kerb-crawler programmes, and so on—the problem has, essentially, been spread further and wider, causing more distress to communities.

David McLetchie: So, what you call tactical displacement and change in target, in points 4(3) and 4(4) of your written submission, are not significant in numbers terms.

Dr Sanders: No; they may still happen—

David McLetchie: I am trying to get some sense of the balance. I understand from what you say about tactical displacement, as described in point 4(3), and change in target, as described in point 4(4), that in traditional street prostitution—in which the prostitutes solicit on the street and the transaction is made on the street in a defined area—those strategies change the location of the transaction.

Dr Sanders: The location may change. Yes.

David McLetchie: To what extent is that a result of kerb-crawling laws rather than what you call temporal and spatial displacement?

Dr Sanders: I apologise if I am repeating myself or if I have misheard you, but those kinds of displacement are all effects of kerb-crawling laws.

David McLetchie: Yes, but in the narrow context of reducing traditional—if one might call it that—street prostitution, according to points 4(3) and 4(4) in your written statement, the kerb-crawling laws have the effect of reducing that traditional street prostitution. Is that not correct?

Dr Sanders: They may have that effect.

David McLetchie: Okay. Further on in the same section, in talking about dispersal and spatial displacement, you refer to “the creation of a more complex, invisible and underground sex industry that avoids any contact with official agencies.”

This may be an unfair characterisation of your argument, and you may want to comment on it, but that suggests to me that transactions that are arranged in the street—that is, street prostitution—is almost a preferable activity to prostitution that is carried out in other locations. Is that fair?

Dr Sanders: Can you repeat the question? I did not quite understand.

David McLetchie: You talk about spatial displacement, changes in markets and tactical displacement. You say that all those elements together result in “the creation of a more complex, invisible and underground sex industry that avoids any contact with official agencies.”

The implication is that highly visible street prostitution, which is overground and facilitates contact with official agencies, is in some respects almost preferable to prostitution that is carried out in other environments.

Dr Sanders: That is so for certain types of men, in terms of their motivations for buying sex on the streets. Some men will always go to the street because of their desires related to street prostitution.

David McLetchie: Yes, but I am talking about it from the standpoint of the women—the prostitutes themselves.

Dr Sanders: The women may decide to work in different, not particularly formalised, indoor markets. They may prefer to make negotiations with clients at indoor locations to avoid detection.

David McLetchie: But from the standpoint of a prostitute, is working with other prostitutes, in a street where there is the type of activity that the bill is directed towards, a safer working environment than a more dispersed environment of the type that you describe?
Dr Sanders: Working together is obviously much safer for the women. Where there is significant displacement, women will go to streets where they feel that they can avoid detection by the police. They will work on their own much more and go into unlit areas. They will change their patterns of behaviour. They will not use the screening strategies that keep them safe, such as taking down car registration numbers and checking on each other if they are working together. All those collective strategies decrease because of the more intense policing and the concern that their clients may be arrested.

David McLetchie: So, you are saying that, from the standpoint of the prostitute, it is safer to work on the street with a group than to work elsewhere.

Dr Sanders: Yes.

David McLetchie: Thank you.

Margo MacDonald: I want to pick up on the issue of safety. We have not heard all that much about safety. The working group wanted to try to balance the duties of care towards prostitutes and towards the general community. Frankly, we are in danger of losing that perspective.

To put it bluntly, the committee is concerned that there would be an increase in the number of women who work as prostitutes if there were managed zones for them to work in, inside which they would know—according to the intentions of the bill—that they would be most unlikely to trigger the offence. Given your research, do you think that that is a safer environment for the women?

Dr Sanders: Working together in an area where the women know that they will be free from arrest also reduces the likelihood of their experiencing violence from men who pose as clients.

Margo MacDonald: Once again, I am asking for your opinion, which I hope that you do not mind giving. One of the intentions of the expert group was to try to ensure that the women were safe. It was thought that having a complaint-led procedure would provide an incentive for women to work in an area where a complaint would be unlikely to be made by a third person, because the women would not be causing alarm. Were we naive to assume that women could work like that?

Dr Sanders: No, I do not think so. The complaint-led procedure would enable women to work safely and they would not fear that they had to leave the street as quickly as possible in case they were charged with an offence.

Margo MacDonald: The other side of the coin is kerb crawling. There is no doubt that in one area in Glasgow in particular kerb crawling is genuinely alarming for women. Do you think that the bill can achieve the objective of minimising or eliminating the fear and alarm caused to third parties?

Dr Sanders: Are you talking about women who are not selling sex being approached?

Margo MacDonald: Yes, mainly.

Dr Sanders: It is quite difficult to get legislation to address that, because women who are approached deal with it in different ways. Some women are not offended, but others can be very alarmed. If the bill created a complaint-led offence whereby a non-working woman who was approached could make a complaint it would be more powerful for them.

Margo MacDonald: The experience is different in Aberdeen, Glasgow and Edinburgh. In Glasgow there was displacement of a newer and young crowd of prostitutes, who went to work in another area. My question is on displacement of the kerb-crawler. In places in England where studies have been carried out, has the experience been that a crackdown on kerb crawling simply means that kerb-crawlers move to another area? I have seen studies that suggest that that has happened; the problem is simply moved for a while.

Dr Sanders: Yes, definitely. In Birmingham, where I did my original research, there was prostitution in Balsall Heath for more than 10 years. There was intense policing, with two police officers working full-time on the beat as well as a strong streetwatch residents group. The prostitution got moved two miles up the road to Edgbaston, where the problem persists. It has spread out from what was a very small triangle and has dispersed to a much wider area and to places where there is more cause for harassment, such as near schools.

Paul Martin: I have two questions. Margo MacDonald asked you about complaint-led procedures. Do you have any statistics about how many complaints are being made? Do you think that there will ever be an environment where a woman who is the seller will make a complaint?

Dr Sanders: Do you mean a non-working woman?

Paul Martin: No. I mean somebody who is working.

Dr Sanders: Are you talking about somebody who does not want to work in that environment?

Margo MacDonald: I was asking Dr Sanders about the third-party complaint.

Paul Martin: I appreciate that.

Dr Sanders: I do not know of any statistics on women who feel harassed in areas of street prostitution. I refer you to a recent piece of work called “Living and working in areas of street sex work”, which looked at five places in Britain and which highlighted that, although there are anxieties for people living there, some women who
are approached by kerb-crawlers are not distressed and alarmed. Ways of dealing with that, such as community mediation, have been pushed forward in recent years.

16:45

Paul Martin: I take it that you have looked into the reasons for displacement. In seven or eight out of 10 cases, there is community concern about activities that are taking place in an area. Is that a reason for displacement? An argument against having a dispersal order, for example, might be that when police look to enforce the legislation because a community is concerned about activities in an area, those activities will be dispersed or displaced to other areas. Is that the case that you are making?

Dr Sanders: Yes. I am talking both about spatial displacement and about displacement in respect of time—people operating at different times, when the police are not there. The sex industry is very good at adapting. People involved in the industry know that the police will not police prostitution on Friday or Saturday nights, because they have other things to do. People will start to work at 4 in the morning, rather than at midnight. Patterns can fluctuate on a weekly basis. In Leeds, where I live, there will be a busy beat if there is a football match, because people know that there are clients and that the police are busy policing football. Legislation must be mindful of the fact that the market is very adaptable.

Paul Martin: Do you accept that street prostitution is antisocial activity?

Dr Sanders: It can be antisocial activity, if people are harassed and distressed, but that is not always the case.

Paul Martin: So it is not antisocial activity if it is in an area that is a managed zone or is industrial.

Dr Sanders: Yes. It is not antisocial if no one in the area has complained about or been offended or distressed by it.

Paul Martin: Are women who are not involved in such activities not allowed to loiter in, pass through or go anywhere near the managed zones to which you refer?

Dr Sanders: Regulation is not that strict in Utrecht and Cologne. However, there are areas that are known for commercial sexual interactions and people would not necessarily use them.

Paul Martin: Do you accept that a woman has a right to go to any part of her local community? Why should women be restricted from entering areas such as those into which you have carried out research?

Dr Sanders: I do not know of a zone that anyone is restricted from entering. Areas are known for certain activities. There is no argument or call for privatising space. In the UK we have a lot of informal arrangements for tolerance zones or managed zones between the police, health authorities and the women concerned, which ensure that they are not arrested from certain times. There is strong evidence that such arrangements reduce the amount of violence against women. In the zones in Utrecht and Cologne there have been no murders in the past 15 years—since the zones were set up. That is not the case in England, Wales and Scotland, where homicide against women working in the sex industry is rife.

The Convener: That completes our questioning. Thank you for your evidence this afternoon and for your contribution to our consideration of the bill.

The next item on the committee’s agenda will be taken in private.

16:48

Meeting continued in private until 17:14.
The Aberdeen Harbour area has historically been associated with street prostitution. In January 2001, Grampian Police established a prostitution management zone in a small part of the harbour area.

The zone was set up to manage the effects of street prostitution in the area, improve the safety of both the women prostitutes and the businesses and residents in and around the harbour area, and to limit environmental problems and other nuisance activity associated with street prostitution. The zone also contributes to deterring street prostitution from spreading into other residential areas of the harbour and the city centre.

Prostitutes are permitted in the management zone after normal business hours (5pm onwards) with the exception of Clarence Street which is after 9pm on weekdays and 5pm at the weekends. They are not subject to arrest for soliciting, providing they commit no other offences.

The zone is about practically managing the effects of street prostitution in an area where this activity has historically taken place. The zone does not seek or intend to legitimise or encourage prostitution. The zone does however provide a focus for drugs and other services to engage with street prostitutes.

The most recent report by Drugs Action estimates there are approximately 150 – 200 women involved in prostitution in Aberdeen over a six-month period. The majority are from Aberdeen and nearby. As elsewhere, the vast majority of women have a drug addiction, and many are also funding their partners’ drug habit.

There are different views on the management zone – prostitutes generally feel that the zone is too small, leading to territorial disputes; however this has to be balanced with the needs of businesses and residents in the area.

Grampian Police has recently produced a problem profile of prostitution in Aberdeen and they will separately be providing evidence to the Committee.

Local Approach to Prostitution

Aberdeen City Council leads the Sex Industry Forum, which is part of Aberdeen Community Safety Partnership. This is an interagency group set up to look at the safety, social and health issues associated with sex industry. Its main aim is to minimise the adverse effects of the sex industry on areas of the city (particularly residential areas) to try to limit the danger to residents, visitors and prostitutes, and ultimately to help those caught up in prostitution to find ways out of the sex industry.

The Forum works with relevant agencies to implement ways of making the existing Management Zone and surrounding area a safer environment for all concerned, including both physical and environmental safety, and to assist those involved in prostitution to find ways out of the sex industry.

Drugs Action has been working with street prostitutes for 12 years, including street work, and recently established a drop in centre near the management zone. The drop-in is now open 4 evenings per week, and provides a safe space for women, health and other advice, and currently a pilot sexual health clinic once a month.

The expansion of the drop-in was funded from Scottish Executive Violence Against Women funding, and also involves another local voluntary sector organisation, Rape and Abuse Support, who provide counselling and other support. This highlights the high levels of domestic abuse, sexual abuse and other violence suffered by those involved in street prostitution currently or in their past.
The Council and its partners are over the next few months considering the impact on our current local approach of the Police profile, along with the new Bill and the recently issued draft guidance for Councils and their community planning partners on tackling street prostitution. It is too early to determine the likely outcome of this on the future of the zone.

The Council and its partners are currently considering the potential impact of the draft guidance on local services. Work to support street prostitutes to leave prostitution is challenging and complex. We are aware from best practice in Glasgow and elsewhere of the need for intensive work and quick access to services including drugs and mental health services and the associated costs. Whilst there may be some opportunities to adapt existing mainstream services to address some of these service needs, Aberdeen/Grampian receive amongst the lowest public sector funding settlements, which impacts on availability and development of these services.

Comments on the Bill

There is concern that street prostitution – and other forms of prostitution – is increasing and/or moving into other residential and city centre areas, and moving into the daytime. There is also concern about increased crime associated with street prostitution – between prostitutes, attacks on prostitutes by ‘punters’ and muggings etc of ‘punters’ by prostitutes and/or minders. The increased involvement of ‘minders’ and similar and the potential spread of nuisance activity associated with prostitution into other areas of the city are also of concern.

The Council and partners are keen to deter the spread and impact of prostitution in the city, to help those involved in street prostitution find ways out, and deter others from becoming involved.

We are also keen to dispel myths and misconceptions about prostitution, particularly street prostitution, and ensure that the very vulnerable and damaged group of people involved in street prostitution are not further exploited.

The Bill as it stands will for the first time send a message to those buying sex on the streets as well as those selling sex on the streets that nuisance behaviour is not acceptable. We welcome this message and would be keen to see further, stronger messages sent out about the reality and impact of street prostitution on those caught up in prostitution as well as the wider community.

At this stage, it would appear that the Bill could potentially have some limited impact on the nuisance activity associated with street prostitution, and there are a number of challenges to be clarified and resolved around how the proposed new offence would be policed and prosecuted.

There is concern that it may be more difficult to target the buyers of sex than the sellers, leading potentially to higher numbers of prostitutes being prosecuted for this offence. This would cut across the aim of the Executive to equalise the treatment of buyers and sellers of sex.

We are also concerned that the public may have expectations of this Bill which cannot be realised, particularly in relation to ‘kerb-crawling’.

Conclusion

Grampian Police is leading a recently launched long term city centre operation – Operation Oak – to tackle a range of antisocial behaviour in and around the city centre and beach/harbour area. This operation is supported by the Council and includes tackling prostitution related activity. Analysis of the first phase of this operation is currently under way, which will include the identification of ‘repeat offenders’ who can be targeted for enforcement action under the antisocial behaviour or other appropriate legislation.

There is already in Aberdeen strong joint working around the sex industry, and more widely antisocial behaviour and community safety. The Council will continue to work with the police and other partners to tackle antisocial behaviour and other nuisance behaviour, including that associated with street prostitution.
This report sets out the Council’s response to the Prostitution (Public Places) (Scotland) Bill. It provides some general views, comments on specific aspects of the Bill and makes 2 recommendations. The appendix sets out Glasgow’s policy and approach.

Background

The Council welcomes the intentions of the Bill, which was introduced to the Parliament on 15 September 2006. It aims to deal with the alarm, offence or nuisance caused by the presence of street prostitution and to address the current inequality which sees only women in prostitution dealt with under the law. The Council acknowledges the very complex and challenging issues, which characterise prostitution in a modern Scotland.

The Council’s policy has been that we should not accept that prostitution is inevitable but rather acknowledge and tackle the negative impact of prostitution and other forms of sexual exploitation on women’s equality. At the same time, the Council explores societal norms and the demand created predominantly by men. The Council’s policy on prostitution, attached, views it as violence against women and a major factor in social exclusion and poverty.

The Council and partners in Glasgow recognise the severe mental and emotional consequences of prostitution for women. These include stigma, shame and emotional trauma that make exiting so painful and difficult and which have major implications for support services.

The length of time that it takes for women to exit is only now being appreciated with women’s support services in Sweden estimating 7 years and the Routes Out Intervention Team providing support to individual women 4 years after first referral.

The Council understands prostitution in itself to be abusive and harmful and requires legislation which criminalises, undermines and makes unacceptable the practice of buying women in prostitution. The role of local and central government in tackling the pessimistic view of the inevitability, normalisation and acceptability of prostitution is crucial.

The Council is of the opinion that prostitution must be viewed as one form of commercial sexual exploitation and that a holistic analysis of sexual exploitation must be developed. It is recognised that if you merely concentrate on minimising the harm and damage rather than addressing the root causes you will not address the intrinsic harm to individual women or the impact on gender equality more broadly. The result then is to see indoor prostitution as being less harmful i.e. less physically dangerous and more controllable and see trafficking as most exploitative. In reality the similarities between the forms are more obvious than the differences. All are fed by the demand of men, all depend on women who are vulnerable and have limited opportunities and/or debts. Physical safety and health cannot be guaranteed, mental and emotional health consequences are significant, stigma and shame is experienced by women and others make money or benefit from the practice.

There is a need therefore to have an integrated strategy and approach which addresses all aspects of commercial sexual exploitation including street prostitution. It is also necessary to have a clear analysis of the nature and causes of the issue and a long term commitment to fundamentally challenging the normalising of the sex industry and its proponents.

Street Prostitution in Glasgow

There are estimated to be approximately 1200 women involved in street prostitution in Glasgow primarily in 2 areas of the city – south west section of the city centre and a more disparate area in the East End of the city.

Using information from staff at Base 75 and Strathclyde Police it is estimated that there are on average 60 women in Glasgow receiving £150 per day from involvement in street prostitution. This means that men are spending £9,000 per day, £63,000 per month and £3,276,000 per year on
street prostitution and we know that this goes directly to drug dealers. All evidence would suggest that the proceeds from involvement in prostitution are spent in the main on illicit street drugs.

Women using Base 75 rarely have money for food or clothing and predominantly meet these needs through charitable organisations operating in the city centre. The deprivation that women involved in prostitution experience is endemic, acute and can be evidenced by their continued health and welfare needs.

Agencies in Glasgow meet regularly to exchange information and report specific concerns such as complaints from residents and businesses, associated waste etc. The Working Groups take forward co-ordination of activity to best assist women to access appropriate services and gather information about the changing patterns observed e.g. locations, increase or decrease in activity.

A high level of violence including rape and sexual assaults is experienced by women involved in street prostitution. A 3rd party reporting system provides police with information about crime and offenders. It is noted that a significant percentage of men charged with kerb crawling in England have previous records of offences of a sexual or violent nature. This enables English Police Officers to be more proactive when it comes to dealing with men frequenting areas known to have street prostitution activity.

The lack of powers to deal with the demand which sustains prostitution has been a major barrier in terms of fully implementing Glasgow's co-ordinated, strategic and inter agency approach. Concerns include kerb crawlers, men on foot and the ‘voyeurs’ - men who cruise around an area just watching women involved in prostitution.

The Council concurred with the Expert Group’s statement in 2005 that “The law remains the key means to ensure continued protection from exploitation through prostitution to vulnerable groups, including young people and vulnerable adult women. Effective enforcement of these aspects of the law should be a priority in the local plan.” However it also commented that the lack of any legal sanctions to tackle the men who exploit and use others in prostitution is a major barrier which requires urgent attention.

The terms of this Bill include the repeal of Section 46 of the Civic Government (Scotland) Act 1982 and whilst the Council abhors the fact that only women soliciting are criminalised and suffer the long term consequences of criminal records it would not at this time favour decriminalisation without other means to tackle the problem. Within Glasgow there is a range of measures in place to support women who are charged with soliciting to access a range of services. These include Time Out and a pilot Arrest Referral Scheme in the East End of the city.
Kerb Crawling

The fact that kerb crawling is not an offence in Scotland is a significant barrier in using civil remedies to tackle the nuisance caused by men seeking sexual services and in reducing the demand for such services.

The Council previously made representation to the Scottish Executive in the consultation on the review of the Civic Government Act that kerb crawling should be an offence. A similar view was made to the Scottish Executive’s Expert Group on prostitution. It was welcomed when kerb crawling was included within the first announcements on the Anti Social Behaviour Bill in 2003 but then remitted to the Expert Group on Prostitution.

Under the Sexual Offences Act 1985 in England and Wales an offence is committed if a man persistently solicits women for the purposes of prostitution (kerb crawling). Since 1 October 2001 it has been an arrestable offence. This enables police to take DNA samples, administer a progressive cautioning scheme and request vehicle seizure orders in persistent cases. Additionally Local Authorities are able to work in partnership with local police forces in order to raise ASBOs as a means of dealing with persistent offenders in order to restrict their movements and activity.

In England and Wales there is legislation allowing the courts to disqualify from driving those who are convicted of kerb-crawling, which is a big deterrent - Under Section 146(1) of the Powers of the Criminal Courts (sentencing) Act 2000: All criminal courts have the power to include a driving disqualification instead of, or as part of another type of sentence for an offence. The period of disqualification ordered, is for as long as the court thinks fit. Drivers can be prevented from obtaining a driving licence or have their licence removed.

The power is available for any offence; however there are certain anti-social behaviour offences where it may be particularly appropriate as the offence has a particular link to the use of vehicles. These offences include kerb crawling - using the power to remove the offender’s driving licence is considered not only a fitting sanction and deterrent, but also a means for diminishing the opportunity for further offending.

Successful initiatives in areas/cities in England include high profile public education and awareness campaigns on the illegality and anti social and harmful impact of kerb crawling. These include radio and press advertising, street signs, name and shame

Current constraints and barriers

Strathclyde Police and Council officers over the past 2 years have discussed the possibility of using ASBOs or other civil means in the absence of new legislation on kerb crawling. Advice from the Strathclyde Police Force Intelligence Officer who deals with the Regulation of Investigatory Procedures (Scotland Act) RIP(S)A is that the main purpose of surveillance is to bring offenders before the courts, and the fact that kerb crawlers are not offenders means that justifying surveillance would be difficult. Moreover, the deployment of such a covert technique does not appear to be proportionate to what is sought to be achieved. The target of surveillance should be suspected of committing offences, have previous convictions for similar offences or have convictions for serious crime. This proposed activity, kerb crawling, would seem to target individuals who may not meet any of these criteria.

The City Council and Strathclyde Police are now looking at the piloting of ASBOs for persistent kerb crawlers using Glasgow Community and Safety Services CRU investigators and expert witnesses.

The lack of powers in this area is a major barrier in dealing with street prostitution activity and perpetuates the assumption that this is a problem created and maintained by women. Of the 3 legal options that were outlined in the report from the Expert Group on prostitution the Council favoured option 3 - “To follow the Scottish Law Commission codification route which would retain the penalisation of soliciting and add the penalisation of the purchaser, but only if, by objective tests, fear, alarm or offence can be demonstrated.” However the Council noted that, whilst this
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would allow the police to address the behaviour of both the men and women involved there were concerns that this was restricted to the evidence of ‘fear’, ‘alarm or ‘offence’ when most concerns regarding street prostitution relate to ‘nuisance’. The Council also pressed for the evidence of police officers being sufficient to secure prosecution and/or conviction, rather than the onus being on members of the public to evidence the offence. The Council would still support this option with the same caveats.

Many local authorities and their partners are committed to tackling this issue and to addressing the impact on residents, workers, tourists and others living in, or frequenting areas where there is street prostitution. The major gap in Scottish legislation is the power to intervene in the behaviour of men who are kerb crawling and looking for the services of women involved in prostitution. The lack of powers to deal with this nuisance and harmful behaviour means that street prostitution continues to blight lives and communities.

Specific concerns about the Prostitution (Public Places) (Scotland) Bill

The title of the Bill raises concerns which relate to women’s rehabilitation and moving on opportunities. A major obstacle to women seeking to leave prostitution is their criminal record. Prospective employees for posts, to which relevant legislation applies, are required to declare any previous offences. The implementation of the Police Act 1998 increased the range of excepted posts, to include posts in Social Services, Health Care, and Nursing Homes. These are posts which many women previously involved in prostitution seek.

At present it is most likely that the conviction will be for “Soliciting” or “Loitering for the purposes of prostitution” under the Civic Government (Scotland) Act 1982, Section 46 (1). The new Bill will ensure that the offence will be declared as a public nuisance offence under the Prostitution Bill and this may further disadvantage women’s prospects for selection for interview, training and employment.

The main issue of concern is primarily attitudinal. Prospective employers informed of prostitution offences may make assumptions about the applicant’s “moral” suitability for employment. This may be particularly so if they view prostitution to be “a free choice for women” as opposed to sexual exploitation. The nature of the new offences may further complicate these subjective deliberations.

The fact that the Bill does not include loitering in a private car means that the nuisance and alarm currently being experienced within communities because of men kerb crawling is a major failing. Residents are particularly concerned about the presence of these predatory and alarming men.

The Bill appears to be concerned primarily about prostitution in public places where nuisance and alarm could be expected by residents etc and this also raises concerns. The Council is concerned about the significant harm caused to women by their involvement in prostitution and not only the harm caused to residential or commercial areas. It is therefore as much of an issue that prostitution will happen in non residential, quiet areas and indeed this may in fact increase the level of violence and harm which women experience.

Whilst the Council does not accept the myth that women involved in street prostitution are safe guarded by self risk assessment and management there is concern about men demanding that women solicit in quiet non residential locations.

The proposed offence is that of soliciting “in such a manner or in such circumstances as a reasonable person would consider to be likely to cause alarm, offence or nuisance”. There is concern that this could imply that there is an inoffensive manner of engaging in street prostitution and this would not recognise the intrinsic harm involved.

There is also a concern that there will a reluctance to prosecute this offence if committed in a non-residential area. If this were to happen then soliciting would effectively be decriminalised without any safeguards being put in place to reduce demand and to prevent coercion and pimping. This would result in increased risk and harm to women. This is not consistent with the Executive’s stated wish to “avoid any tendency to increase risk to vulnerable people and communities through unplanned displacement.”
There is concern about the level of evidence required to prove that persons are indeed

- engaging in prostitution
- obtaining the services of a person engaged in prostitution.

It is assumed unlikely that those involved will not wish to testify against themselves or each other. It is understood that the existence of separate soliciting and kerb crawling offences assists in providing supporting evidence for charges to be laid as is the case in England and Wales.

**Conclusion**

There is an opportunity for the Scottish Executive to lead the UK on this issue and criminalise kerb crawling and the purchase of sexual services in Scotland, to acknowledge the impact on those who sell sexual services and challenge once and for all the myth of the ‘oldest profession’. The recent guidance to local authorities is enlightened and helpful and will assist in the development of local, strategic, co-ordinated inter agency responses and this is a very welcome development.

Current policy and practice in relation to prostitution and commercial sexual exploitation and has informed policies at national and international levels. The major obstacle to progress in the city is the lack of powers to deal with the perpetrators of this ongoing and systematic targeting and abuse of vulnerable women.

It is therefore proposed that in order to support this work and to address current gaps in legislation,

- Section 46 of the Civic Government (Scotland) Act 1982 be retained and that the full range of diversion and support measures be used in order to support women and to assist them to exit prostitution; and
- the Bill be amended to address kerb crawling and the buying of sex, in line with legislation currently operating in England and Wales.

**Appendix 1**

**GLASGOW CITY COUNCIL**

**Prostitution policy statement**

Glasgow City Council recognises street prostitution as a significant social problem in Glasgow, which affects women, families and communities. As with other social problems the Council has a lead role to play in tackling the causes and the impact of prostitution. The Council is therefore publicly stating its commitment to taking action on this issue, which has blighted the lives of so many Glasgow women for so long.

The majority of women involved in prostitution are citizens of this city who find themselves socially excluded and unable to participate in the life of the city. Their views are not heard and their needs are not addressed. This Council is determined to take a proactive and radical approach to women involved in prostitution and to social exclusion. This Council will support the development of a strategic, long term approach in the context of the Council’s Objectives and other policies such as Social Inclusion, Equality, Community safety, and Violence against women.

Violence, experience of abuse, homelessness, poverty and drugs are at the root of street prostitution in Glasgow. The Council absolutely rejects the view of prostitution as work, which merely requires legalising and regulating. The Council absolutely rejects the argument that prostitution is a civil right – no woman wants the right to be sexually exploited, abused and demeaned.
Women are often involved in prostitution because of their need to fund drug use and because they have no other viable or legitimate means of earning the amount of money which they require. There is overwhelming evidence that the money which women make in prostitution primarily goes straight to those supplying drugs and that women themselves do not benefit apart from ensuring their own and their partner’s drug supply.

The Council is particularly concerned that it is the women involved in prostitution who are consistently blamed for the existence and continuation of prostitution. Women’s accounts of involvement in street prostitution are harrowing and involve a range of abusive behaviour by men. The Council calls for the men who use women in prostitution to be called to account and that these men’s actions be recognised as anti-social and consequently diminishing the quality of life of the city.

The Council is committed to working towards eliminating street prostitution in the city whilst providing support to, and opportunities for, women involved in prostitution and their children. It is the view of the Council that prostitution is one form of commercial sexual exploitation.

The Council will seek to minimise the harm done to women involved in prostitution and their families whilst also seeking to reduce the number of women entering prostitution and increase the number who leave. The Council recognises and acknowledges the complex issues surrounding prostitution and the need for public agencies to work together in addressing the situation in Glasgow. The key elements of this approach will be:

- Respect for women involved in prostitution.
- Concern for women’s safety and well being.
- Recognition of the harm done to women and their families through prostitution.
- Recommending that Council services take a non-judgmental and confidential approach to women involved in prostitution and ensure that attitudes to prostitution do not adversely affect the service which women receive e.g. child care, housing allocation.
- Preventative strategy, particularly aimed at young women which recognises that young women are victims of sexual exploitation.
- Concern about men’s use of prostitution and other forms of commercial sexual exploitation.
- Interagency working with other public, private and voluntary sector agencies.

Appendix 2

GLASGOW’S APPROACH AND NATIONAL AND INTERNATIONAL INITIATIVES

Glasgow’s Experience of Dealing with the Issue of Prostitution

Until May 1998 there was limited liaison between agencies in Glasgow on the issue of prostitution. Contact tended to be as a result of joint working to access provision for a woman experiencing a particular crisis or in the provision of harm reduction services e.g. free condoms, needle exchange, food and warmth, health care and screening, social support and access to advice.

An Officer Working Group on Prostitution was established by Glasgow City Council in May 1998, comprising senior representatives and specialists from a range of Council Services, Strathclyde Police, Greater Glasgow Health Board, Glasgow City Council, Base 75 (Drop in service for women involved in prostitution) and the Women’s Support Project. The remit of the Working Group was to explore relevant issues, audit current provision, identify gaps in service provision, identify best practice elsewhere and draw up an action plan for consideration by the Council and other partner
agencies. Subsequently the Council agreed a policy on street prostitution and established a Member/Officer Working Group to oversee progress.

It was recognised by agencies in the city that there was a need for a co-ordinated and proactive approach. A small steering group was established in July 1998 to develop a Social Inclusion Partnership proposal in order to provide a strategic partnership to develop policy and practice required to address prostitution issues in Glasgow, to secure additional funding for the issue and to develop a co-ordinated and proactive response by partner agencies.

The Routes Out of Prostitution SIP was agreed and funded by the Scottish Executive. The SIP Board was established in July 1999, and now comprises Glasgow City Council, Strathclyde Police, Greater Glasgow NHS Trust, local MSP, Base 75, The Women's Support Project, Barnardos, Corntonvale Prison, Turning Point and Glasgow Drug Action Team.

SE Funding is also provided for a small, specialist Intervention Team to respond to women wishing to exit prostitution and to work with relevant agencies to make their mainstream services more accessible to women. During the past couple of years priority has been given to developing an integrated service for women involved in prostitution in order to improve the quality of service provided at all stages and to maximise women's opportunities to exit. The team's work and practice with women has recently been written up and the findings are attached.

National and International Initiatives

It is disappointing that the recent policy initiatives within bodies such as ACPOS and the LGA and recent reports such as the Home Office Research study 'Tackling street prostitution: Towards an holistic approach' have not been acknowledged or been used to inform the Group's deliberations. Glasgow has made a point of learning from, and contributing to, the ongoing debates and policy development.

The ACPOS (Association of Chief Police Officers) strategy agreed in 2004 'promotes an holistic approach to the policing of prostitution which keeps in balance the 3 elements of individual, community, and the investigation and prosecution of those who exploit and abuse'. The ACPOS strategy identifies 4 motivating factors in prostitution – need (economic, drug dependency, survival), opportunity (relatively easy to become/remain in prostitution), rewards (quick, easy money?) and demand (key driving factor). The report concludes that 'It is by tackling, simultaneously and sustainably, each of these motivating factors that the best opportunities exist for assisting victimised individuals and communities'.

The Local Government Agency strategy agreed in October 2004 concludes that 'Prostitution is preventable, manageable and escapable. We believe that local government should work with its partners to eradicate prostitution in the long term, and to ensure the safety and welfare of people involved in prostitution and local communities in the short term.' 'The overwhelming majority of people involved in prostitution are vulnerable due to youth, drug addiction, poverty, coercion or other factors, and that those profiting from prostitution and users of prostitutes are exploiting those vulnerabilities.'

The US Government recently adopted a strong position against legalised prostitution in a December 2002 National Security Presidential Directive based on 'evidence that prostitution is inherently harmful and dehumanising and fuels trafficking'. Funding is now not provided to programmes in countries where prostitution is legalised and regulated as this is seen to support, strengthen and grow sex industry activity. Evidence cited included a 2003 study first published in the Journal of Trauma Practice, which found that 89% of women in prostitution want to escape. Research in 9 countries which concluded that 60-75% of women in prostitution are raped, 70-95% were physically assaulted, 68% met the criteria for post traumatic stress disorder (PSTD) in the same range as treatment seeking combat veterans and victims of state-organised torture. The prevalence of PSTD is one of the issues facing staff at the Intervention Team supporting women in Glasgow to leave prostitution.
SUBMISSION FROM ACPOS

Members agree that the Bill in question clearly indicates current law in Scotland focuses on those who sell sex on the street, not those who purchase, and in general terms seeks to redress the existing imbalance whereby the seller is solely liable under the current legislation.

Experience in Strathclyde, where the main focus of street prostitution is in the city Centre and East End of Glasgow, has shown that over the past five years there has been a significant increase in the volume of soliciting throughout the day, particularly in residential communities in the East End of the City. Communities such as this require legislative assistance to improve their overall quality of life, upon which prostitution is undoubtedly having a major negative impact.

After reviewing the implications of enforcing the provisions of the Bill as it presently stands, ACPOS would wish to highlight a number of practical concerns, which have been raised by practitioners in this area.

The proposed legislation creates an offence, which enables the nuisance caused by those seeking to purchase prostitution services to be tackled, whether they are “kerb crawling” from vehicles or operating on foot. This offence is only complete once a purchaser has solicited the sexual services of a person selling sex. However, this does not include persons driving slowly in an area or parked without soliciting taking place, as intent cannot be proven. The legislation further states that the loitering offence does not apply to persons who are within motor vehicles (not public transport) since it is considered it may not be possible to “loiter” within such vehicles. Whilst it is understood this is intended to protect innocent parties passing through relevant areas, it does not allow the police to prove or demonstrate the nuisance caused by such behaviour without same having been independently witnessed. Even then, it is suggested this may be difficult to prove, as the occupant of a vehicle may be able to suggest, albeit falsely, that they are there for legitimate reasons. Such vehicles increase the fear of crime of the local residents and this act alone may create nuisance.

Since “kerb crawling” has been identified as a major source of discontent in communities affected by prostitution, the Bill is therefore unlikely to satisfy the needs and demands of the community. It is felt this should be reconsidered and suggested that a definition of ‘loitering’ is added to the Bill, along the lines of ‘when a person on foot or otherwise proceeds slowly or proceeds with many stops or remains in a public place for no obvious reason’. This would allow persons, whether on foot, in a motor vehicle or any other mode of transport e.g. pedal cycle, who are committing an act specified in subsection 1(4) of the Bill to be appropriately dealt with.

It is perhaps worthy to note the approach taken in England and Wales includes the stipulation that it is an offence for a person to solicit from a motor vehicle persistently or in such a manner as to cause annoyance to the person being solicited or nuisance to the neighbourhood. This legislation is more practical in that evidence is gained of persons who persistently attend within the relevant areas in order to solicit the services of a prostitute. The police are required to compile evidence of the nature of this persistence, thus preventing innocent parties being charged with such an offence. It also allows police to address behaviour of those individuals who attend these locations as a voyeur and who have no intention of soliciting the services of a prostitute. These individuals obviously create the same nuisance as those intent on purchasing the services of a prostitute. This legislation does draw a distinction between the actions of the purchaser and seller in that the purchaser’s behaviour requires to be persistent, however, it would be easier to enforce.

There are clear issues for policing in terms of evidence gathering and level of proof, and therefore enforcement challenges. The offence is based on an assessment as to whether the soliciting or loitering behaviour is likely to cause alarm, offence or nuisance to a reasonable person. Whilst it may be reasonable to assume a prostitute’s dress, manner and action may be tantamount to causing a nuisance, the location, albeit public, may be such that it is within an industrial area, and, out-with normal business hours, it could be argued that any residents in the area are unlikely to be affected by the conduct of the accused.

Evidence would require to be provided that the acts of soliciting or loitering were beyond all reasonable doubt for the purposes of prostitution or obtaining the services of a prostitute.
However, the Bill provides no definition of ‘solicits’ or ‘loiters’ which leads to questions in relation to what would constitute soliciting or loitering and how these would be evidenced.

For the purposes of Section 46 of the Civic Government (Scotland) Act 1982 the individual must be identified as a ‘known prostitute’ and in order to prove this there has to be some form of history. At present, persons suspected of prostitution are given two independent cautions prior to being charged with the offence. On being cautioned a ‘Prostitution Caution Report’ is submitted by the cautioning officer and recorded on his/her SCRO record. When two cautions have been administered the individual can be charged on each occasion thereafter. It is unclear in the Bill whether the prosecution is required to prove that the person charged is a ‘known prostitute’ i.e. possessed that capacity prior to, and independently of her conduct on, the occasion charged (Bryceland v Allan 1985). The use of the caution is also an opportunity for police to signpost prostitutes to other services, rather than criminalizing at the first stage.

It is unlikely that a prostitute or person attempting to obtain the services of a person engaged in prostitution would provide a statement under caution to the police as it would criminalise them. It is also unlikely the police or a witness will have overheard a conversation between prostitute and client; therefore sufficient evidence may be difficult to obtain in terms of soliciting. The Bill is complainer led but where a pro-active approach by police is taken, and in the absence of statements from members of the public, it is questionable whether police observations would be realistically sufficient to secure conviction?

ACPOS has consulted with the Procurator Fiscal Service in Glasgow in relation to the burden of proof required regarding the new offence. The view they have expressed is that the offence in relation to the selling of sex remains relatively unchanged. However, the evidence required to prove the offence in relation to purchasers may be problematic. CCTV footage was obtained of transactions in the Glasgow area and shown to the Procurator Fiscal. The incidents displayed were of the everyday transactions between prostitutes and purchasers on foot and in vehicles. The opinion of the Procurator Fiscal is that the witnessing of the approach, and subsequent departure of the purchaser with a known prostitute, would be insufficient to substantiate proceedings in relation to this offence. Police officers would require to overhear the discussions between the purchaser and seller to confirm that a relevant transaction has taken place. This presents difficulties, as it would be unlikely that a purchaser would solicit the services in proximity to the Police. In fact, the mere presence of the police would in most cases cause purchasers to leave the area. Whilst the Police presence may reduce the harm and nuisance caused to communities by the purchasers at a particular time, it is not a sustainable position in the longer term. It could be suggested that if the legislation is difficult to enforce and few prosecutions are obtained, then only a marginal effect will be achieved as the legislation may prove to be an ineffective deterrent.

With regard to the cost implications referred to in the Financial Memorandum, and whilst it is acknowledged the Police are ‘already involved in the policing of street prostitution’, it would be wrong to say the only additional costs would be those relating to the reporting and prosecuting of purchasers under the new legislation.

In dealing with such cases, the following require to be taken into consideration

- Initial police attendance at an incident
- Number of officers involved
- Obtaining witness statements
- Detention of any offenders
- Processing of custodies
- Interviewing of custodies
- Arrest and further processing
Fingerprinting and photographing

Preparation of report to Procurator Fiscal

Court Attendance(s)

Notwithstanding, there are also multiple variations associated with estimating the costs involved in carrying out the work required and as such the estimation contained within the Memorandum of 6 hours of police time per case, at a cost of £150 per case or £15,000 per annum is not an accurate reflection of the costs involved. In addition, the extrapolation of a single force’s costs is likely to distort the final outcome.

In light of the foregoing, and given the significant amount of variables involved, an estimation of the likely costs is difficult and a scoping exercise would be required to provide an accurate reflection of actual costs. It is possible, also, that the title of the Act will present further difficulties in relation to the rehabilitation of women involved in prostitution. The current offence, if viewed by an employer on a list of previous convictions, can be relatively anonymous in its presence due to the lack of stipulation of the offence in its title. The new act will be instantly recognisable to all as an offence in relation to prostitution. In the event of a woman exiting prostitution and wishing to re-enter the labour market or education, this may restrict the opportunities available to her.

SUBMISSION FROM DR TEELA SANDERS

I am a Senior Lecturer in the Sociology of Crime and Deviance at the School of Sociology and Social Policy, University of Leeds. My work sits between the disciplines of criminology, social policy and sociology. I give this evidence and concerns raised by the Bill based on eight years experience as a researcher in the sex industry in the UK. I am the author of ‘Sex Work. A Risky Business’ (Willan, 2005) and currently writing a new book ‘Paying for Pleasure: Men who Buy Sex’. In addition I contributed to the Home Office (2004) consultation Paying the Price and have been exploring the implications of the Coordinated Prostitution Strategy. I am also the Chair of the sexual health outreach charity Genesis, in Leeds.

Dangers of criminalisation and increased policing of women involved in prostitution

Displacement & Danger

The Policy Memorandum reflects the conclusions from the Expert Group, and proposes that any changes in the law ‘should avoid any tendency to increase risk to vulnerable people and communities through planned displacement’. Research suggests that intense policing for soliciting and loitering increases risks to women in prostitution and causes additional concerns for communities because of displacement.

Levels of violence and vulnerability on the streets have been linked to dangerous working conditions and environments that are exacerbated by intense policing (Barnard, 1993; Church et al., 2001; Day and Ward, 2001; May, Edmunds and Hough, 1999; McKeganey and Barnard, 1996). It has been documented how policing affects how women involved in prostitution use public space (Hubbard and Sanders, 2003) and that increased surveillance means that traditional ‘red light districts’ are dispersed across a wider area. Not only does geographical dispersal reduce the protection that women are afforded by working together, but women increasingly change their strategies of safety. They work in dark, unlit areas away from places of visibility that can be of assistance if attacked and often work later into the night. They are keen to find a customer and move from the public street as quickly as possible for fear of arrest. This means that the stringent screening strategies women apply to judge whether the potential customer will be trustworthy (Sanders, 2005), are abandoned as women jump into strangers cars without checking for vital signs. Equally, where there is visible policing there are less customers because of the fear of arrest. This increases competition, drives down prices and encourages women to sell sex unsafely and have encounters with more men to make the same amount of money. Women who use street prostitution as a means of making money are not deterred by the police but instead adopt a set of strategies to avoid detection (Sanders, 2004). In Birmingham, which has been a heavily policed
area (also by community residents through the Streetwatch group) for over a decade, prostitution continues and women continue to evade arrest. The effects of policing essentially pushes the most vulnerable and marginalised women into an invisible ‘underworld’ which is difficult to locate for key harm reduction services. With migrant women (of both legal and illegal status) starting to appear on the streets in UK cities (London, Manchester,) target hardening against women involved in street prostitution will further marginalise this group. This in turn causes more dispersal and, in the absence of containment, more communities experience problems associated with prostitution.

Criminalisation reinforces stigma amongst women involved in prostitution.

The Policy Memorandum states that a change in the law should be introduced that ‘seek(s) to reduce the stigma which attaches disproportionately to the person soliciting’.

Increased policing, punitive fines (see Point 2) that sustain prostitution involvement and policy that promotes unsafe environments only increases the stigmatisation of women as deviant, nefarious criminals. ‘Social boundaries are constructed through geographical boundaries’ (Pratt and Hanson, 1994:25) and messages from policy and policing practice that reinforce the idea that women involved in prostitution are criminals to be removed reinforces derogatory cultural messages that encourage sexual victimisation (Sanders and Campbell, 2007). This could increase the risks of hate crime directed at women in prostitution and vigilantism from communities who are frustrated because no reduction is visible in either the demand or supply of street prostitution.

Level 2 fines and the process of ‘exiting’

The Bill proposes fines are issued to those who solicit at Level 2 which can be up to £500.

It has long been established that the fine system is inappropriate and futile as a sanction against women involved in prostitution (Kennedy, 1993). Most women earn approximately £20 for each customer. Issuing a fine of £500 is essentially encouraging the woman to seek 25 customers in order to meet the payment. She will have no other means of paying the fine as often welfare benefits are not fully claimed. The other alternative is that the fine will be paid through other acquisitive crimes, such as shop lifting and selling stolen goods. Court diversion schemes for women are much more appropriate than fines. The Coordinated Prostitution Strategy promotes a system whereby women arrested are offered court diversion options rather than financial sanctions. Court diversion programmes that are run independently of the criminal justice system provide women with the holistic services and support they need to begin processes of change and transition in order to exit prostitution (Pitcher and Aris, 2003). Recent research (Sanders, 2007) establishes how leaving prostitution is only hampered by involvement with the criminal justice system and that support through harm minimisation schemes can stabilise women and assist them through the complex exiting process. Non payment of fines could result in an increase in prison for women. This process does not meet the Expert Groups objective of ‘minimising the use of imprisonment for women involved in prostitution’.

The changing nature of the ‘street beat’

There have been changes the nature of the ‘street beat’ over recent years across the UK (in particular in large cities such as London, Birmingham, Manchester, Leeds). There has been a reduction of the traditional patterns of women standing on corners, in dark hours, plying their trade. Largely in response to increased surveillance and visible policing (see point 1), women have adopted other strategies of advertising and finding customers. Streets that have reputations for prostitution have become 24 hours beats – the same number of women are working at different times of the day as they look for customers on an ‘as and when’ basis. Many women now work from mobile phones and will have lists of customers. When they need money (this is not all the time as often women work when they need to pay a bill or their other source of drug finance has dried up), women will call various clients. Women also work by seeing regular clients every week and have permanent arrangements to meet in indoor locations. Women also frequent places which are known to supply a steady flow of custom such as late night cafes, bars, pubs, betting shops, truck stops, taxi ranks, car parks (etc). This essentially means that prostitution is continuing in different forms and that the street is home to only a small group of women. These different forms are increasingly difficult to detect as women go ‘underground’ and are not visible to essential harm reduction services (Cusick and Berney, 2005; Jeal and Salisbury, 2004). Equally, it will be difficult
to establish loitering and soliciting by purchasers because of these informal arrangements, making the proposed law unenforceable.

Policing men who ‘kerb crawl’: Limited effect in the face of increased demand.

In relation to the increased legislation against kerb crawlers in the UK, the effect of policing on kerb-crawling levels has been minimal. Even after the powers of arrest were introduced in 2001, numbers of prosecutions have remained low: 726 (2000); 856 (2001); 993 (2002); 884 (2003); 808 (2004) (Home Office, 2006:33). In places such as Nottingham, Hull, Leeds and Birmingham where high profile sting operations on kerb crawlers have regularly taken place, street prostitution still exists. Research demonstrates that there is a steady increase in demand for sexual services. From a UK survey, Ward et al (2005:468) show that there had been a significant increase in the prevalence of buying sex over the decade with 8.8% of men in 2000 admitting to buying sex in their lifetime, compared to 5.6% in 1990. In a survey at a sexual health clinic in Glasgow, 10% (n=267) of men had purchased sex (Groom and Nandwani, 2006). This has been attributed to wider changes in sexual attitudes, divorce rates, commercialisation of other sex markets etc. Laws that are punitive against the customer reflect little understanding of the myriad of motivations for buying sex (Campbell, 1998: Lever and Dolnick, 2000; Monto, 2002).

The effect of policing the kerb crawler has not been understood in the context of the wider crime prevention literature and what is known about displacement effects. Hakim and Rengert (1981) describe four types of changes to offending behaviour that cause displacement. These types can be explained in relation to the displacement of purchasing commercial sex.

- Temporal displacement results in men seeking sex at different times to avoid police detection.
- Spatial displacement: men seek sex in different geographical spaces which also causes a displacement of sellers.
- Tactical displacement means that men would still seek out street based sex but they would use other mechanisms to make contact with women. For instance, mobile phones, regular arrangements or visit women at indoor locations such as crack houses or homes.
- Change in target: instead of buying sex from the street based market men will venture into new markets to act out the same behavioural patterns.

These different types of displacement taken together will result in the dispersal of male clients and the creation of a more complex, invisible and underground sex industry that avoid any contact with official agencies.

The ineffectiveness of Kerbcrawler Rehabilitation Programmes

Although there has been no mention in the Bill about court diversion schemes for men arrested for soliciting, it is important to share the English experience. The Government in England and Wales has endorsed the use of ‘Kerbcrawler Rehabilitation Programmes’ with the claim that re-offending rates are reduced by attendance on the programme. There have been several programmes (Nottingham, Hull, Hampshire). Criticisms have been made of such programmes in the USA and North America:

- Measuring effectiveness: Monto and Garcia (2001) evaluated a programme of 215 participants and suggest that recidivism is not due to an education program as there are no differences in the rates of re-offence between those who attend and those who do not. These findings are typical from a range of evaluations studies (Fischer et al; 2002; Kennedy et al., 2004).
- Resource intensive: The Clubs and Vice team in the Metropolitan police demonstrated how such kerb-crawler operations were time consuming and very resource intensive (Shortland, 2006). Approximately 12 kerb-crawler crackdowns are initiated each year in London and each
operation yields between 25 and 35 arrests. To obtain these small numbers of arrests, 20 police officers are needed for operations that each last a week.

- Content of the programme: The content of the rehabilitation programmes is significantly biased towards the extreme view that prostitution is violence against all women and provides only very cursory information that can assist men to make more responsible and safe choices about buying commercial sex (Campbell and Storr, 2001). Van Brunschot (2003) evaluated a Prostitution Offender Program in a Canadian city and highlighted how the John’s school did not provide a balanced view of prostitution or give the other side of the exploitation story but re-told ‘worse case scenarios’ that are not the whole reality.

- Legal theory: Brooks Gordon (2005:436) asks ‘how can the programme be justified if the main activity of buying sex is not against the law?’ From their analysis of the Toronto John’s School, Fichser et al (2002: 406) state that the ‘diversion’s supposed ‘voluntariness’, in reality, unfolds as a coercive mode of operation’ and ‘the ambiguous practices surrounding the presumption of innocence for an offence that may or may not have been committed, as well as the monetary ‘purchasing’ of freedom from prosecution under the umbrella of an ‘educational fee’, render ‘due process’ an evasive phantom”.

- The damaging effects of the programme: Programmes that are organised and administered by criminal justice personnel are not appropriate or adequate for the complexity of some men’s psychological difficulties, but in fact could be dangerous if emotions and issues are exposed and not addressed (Sawyer, Rosser and Schroeder, 1998).

**Conclusion**

- The negative effects of criminalisation on the safety of women involved in prostitution does not meet the objectives of the Expert Group to ‘ensure continued protection to vulnerable groups’ or to ‘safe guard people involved in prostitution and reduce harm’. Criminalisation of the purchaser only increases negative effects and further creates a dangerous environment.

- Level 2 fines sustain prostitution and do not meet the Expert Group’s objective of ‘providing a constructive legal framework to support achievement of broader strategic obligations for tackling prostitution in Scotland’.

- The criminalisation of both purchasers and sellers of sex on the street increases the stigma attached to prostitution and does not meet the objective that any change to the law ‘should seek to reduce the stigma which attaches disproportionately to the person soliciting’.

**SUPPLEMENTARY SUBMISSION FROM ACPOS**

I have been asked by Alison Douglas to clarify some views regarding the above Bill which may be of benefit to the Committee.

I would reinforce that ACPOS fully supports the work of the expert group on prostitution and welcomes the development of legislation which attempts to balance the prosecution of sellers with the prosecution of buyers. At no time have ACPOS considered the drafting of this Bill as a retrograde step.

In terms of section 1 of the Bill which relates to both sellers and buyers the new legislation will not change the process that currently exists within Section 46 of the Civic Government (Scotland) Act in relation to sellers. To effectively prosecute purchasers, there would require to be a statement taken from the seller supported by a self incriminating response by the purchaser following common law caution. While not impossible to report such offences to the PF in relation to the purchasers, on a practical basis, it is my opinion that the incriminating reply will not be forthcoming in the majority of cases.
However, while highlighting the above, it is difficult to determine what alternative wording of legislation could replace that which is proposed, therefore the law in relation to sellers is appropriate and in relation to purchasers, would in reality be tested as case law by the court.

There is an opportunity however to enhance the proposed legislation in two areas i.e. when a purchaser accosts women generally within the community and where a transaction takes place whether by a purchaser on foot or in a private motor vehicle and no actual verbal transaction takes place. Examples of this are when a purchaser would flash the lights of his vehicle and a seller would enter the vehicle and no verbal exchange would take place and where a purchaser would arrange a transaction by mobile phone on the street where they are walking or otherwise. The second scenario is the type of transaction where the PF outlined the difficulty of prosecution. In my opinion it would be beneficial if the Bill could be developed further in relation to the approach taken in England and Wales relative to individuals who persistently attend areas for the purposes of soliciting the services of a prostitute.

SUPPLEMENTARY SUBMISSION FROM ASSISTANT CHIEF CONSTABLE JOHN NEILSON, STRATHCLYDE POLICE

I refer to the aforementioned Bill and would offer the following comment which I hope is of assistance to the Local Government and Transport Committee in considering the possible revision of the proposed legislation.

Without doubt kerb crawling is an insidious and antisocial activity which causes distress and concern in communities where it occurs. It has an effect on public confidence and can erode levels of reassurance amongst residents particularly those who find themselves the unwitting recipients of attention from those seeking to engage with street prostitutes. It is my position as the person responsible for Community Safety in my Force that there must be an effective enforcement option available to my officers to assist their response to legitimate public concerns in this area. Without this option it is difficult to see where real progress can be made in reducing the harm caused by those who engage persistently in this practice. It may be useful, in addition, to look at the provisions in England and Wales put in place to address kerb crawling. These provisions make it an offence to “persistently solicit another person or solicit another person in such circumstances as to be likely to cause annoyance or nuisance to that person or other persons in the neighbourhood”. These provisions relate to a person soliciting from a motor vehicle or in the vicinity of a vehicle he has just got out of. The inclusion of such provisions in the Scottish legislation would assist police enforcement capabilities greatly.
Prostitution (Public Places) (Scotland) Bill: Stage 1

14:08

The Convener: Agenda item 2 is further consideration of the Prostitution (Public Places) (Scotland) Bill at stage 1. Today marks the last of our evidence-taking sessions. I welcome George Lyon MSP, the Deputy Minister for Finance and Public Service Reform. Supporting Mr Lyon are Alison Douglas, who is head of the Executive’s corporate killing and prostitution team; Patrick Down, who is a policy officer in the corporate killing and prostitution team; Paul Johnston is a solicitor in the office of the solicitor to the Scottish Executive; and Andrew McIntyre is principal procurator fiscal depute. I welcome the officials to the meeting.

I invite George Lyon to make some introductory remarks, after which we will move to questions from the committee.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): Thank you, convener. I begin by apologising for the fact that Paul Johnston, the solicitor on the bill, did not appear with officials at the first meeting at which the committee considered the bill. I welcome him to the meeting today. I hope that he will answer some of the questions that were asked at the first meeting and which have continued to be asked throughout the committee’s consideration of the bill. I thank the committee for giving me the opportunity to address some of the issues that have arisen in the evidence so far and to hear members’ concerns at first hand.

I will start by providing a bit of context. In 2003, we established an expert group on prostitution to review the legal, policing, health and social justice issues to do with prostitution in Scotland. The first phase of the group’s work focused on street prostitution involving women. The group recommended a change in the law to cover purchasers and sellers and to protect the public from offensive conduct. Following a broadly supportive consultation on the group’s report, the Executive made a commitment to reform the law along the lines that the group proposed.

The Association of Chief Police Officers in Scotland said in its response to the expert group’s proposals that the criminal law alone will never eliminate prostitution from our streets. We agree: we need local multi-agency strategies that address all facets of the problem. For that reason, we have issued draft guidance for local authorities and their community planning partners in order to help them tackle street prostitution by preventing individuals
from becoming involved in prostitution, by reducing the harm that such individuals—the victims—experience, by helping them to leave prostitution and by protecting communities.

However, the criminal law has an important role to play in addressing the nuisance that street prostitution can cause in our communities. Legislation can signal the kind of behaviour that society regards as unacceptable and it can help to deter such behaviour. Legislating on prostitution is not easy. It is an essential requirement of Scots criminal law that persons are presumed innocent until proven guilty and that guilt must be established beyond reasonable doubt. That is challenging in this context, given that behaviour might amount to no more than a conversation between two individuals. However, that is not an argument for doing nothing. We need to ensure that offences are as effective as possible and we are willing to listen to suggestions about how they might be improved.

During evidence taking, two main criticisms of the proposed offences emerged: first, they might be unenforceable, and secondly, they do not go far enough. The first criticism is more fundamental. I am aware that ACPOS implied in oral evidence that the new offence would not be as robust against sellers as is the current offence under section 46 of the Civic Government (Scotland) Act 1982. We refute that and I am pleased that ACPOS has written to the committee to say:

“In terms of section 1 of the bill which relates to both sellers and buyers the new legislation will not change the process that currently exists within section 46 of the Civic Government (Scotland) Act in relation to sellers.”

The burden of proof under the new offence will, in essence, remain unchanged. The only difference is the nuisance, alarm or offence component; the Crown Office and Procurator Fiscal Service does not consider that that component will present a particular barrier to prosecution. Andrew McIntyre, who is here to represent the COPFS will address the matter in more detail. It is also worth noting that in its response to the expert group’s consultation, ACPOS requested that nuisance be added to the offence.

ACPOS also expressed concern about enforceability against purchasers of the soliciting offence. We accept that there are challenges in that regard, but we do not think that the offence is unworkable. Evidence could be led, for example, from individuals who were approached by someone seeking to purchase sex, from a third party who overheard the exchange, or from an admission or incriminating remarks that were made by the accused. Again, Andrew McIntyre will address that in more detail.

The second criticism was that the bill does not go far enough because it will not criminalise loitering in a motor vehicle. It is worth noting that the kerb-crawling offence in England and Wales criminalises people who solicit from cars or in the vicinity of cars but does not criminalise loitering in a car. The offence in the bill is equivalent to the English offence in that regard. I understand the wish for a broader offence, but there are profound difficulties in proving intent if behaviour is limited to driving slowly without attempting to solicit.

Committee members suggested that the problem might be overcome by creating a reverse burden of proof, so that the accused would have to prove that they were not loitering in the area for prostitution-related purposes. As my officials indicated in a letter to the committee, it would not be justifiable, proportionate or necessary to establish such a reverse burden of proof. Innocent drivers might be found guilty of the proposed offence simply because they were unable to provide proof of their legitimate reasons for driving in a particular area. We are also concerned that such a reverse burden could fall foul of the European convention on human rights. Nevertheless, we are willing to listen to concerns about how the offences are framed and to consider ways in which those might be addressed.

I hope that members will agree that the overall objective of the bill to address the nuisance behaviour—whether by the purchaser or the seller—that is associated with street prostitution is worthy of support. I am happy to answer any questions that the committee may have. First, however, I ask Andrew McIntyre to provide more detail on the enforcement aspects. I understand that you specifically asked for Elish Angiolini or a representative of the Crown Office to come along to deal with that issue.

Andrew McIntyre (Crown Office and Procurator Fiscal Service): There are a couple of areas that I want to comment on from the perspective of a prosecutor. They are issues that are expanded on in the letter that I submitted to the committee, which you should have to reflect on.

The bill will extend the scope of the criminal law to cover, for the first time, the acts of people who purchase for the purposes of prostitution; it will not criminalise only the acts of sellers. That is a necessary extension if people who purchase for the purposes of prostitution are to be criminalised. Under the current law, there is no basis on which to prosecute people who purchase for the purposes of prostitution unless the acts of the people who do so contravene some other criminal law: unless, for example, they commit a breach of
the peace or an act of public indecency, there is no basis at present on which to prosecute people who purchase.

It is important to record that experience of prosecuting this type of crime shows that the intentions of those who operate in discreet circumstances for the purposes of prostitution have always been difficult to prove and will continue to be a challenge for prosecutors, especially—as has been alluded to—in the context of Scottish criminal law, which requires corroboration and proof beyond reasonable doubt.

The offences in the bill are broadly similar to the current offence of prostitution in so far as it requires that there has been loitering or soliciting for the purposes of prostitution. In a moment, I will talk about the additional element—the nuisance part. However, the principal part of the offence will remain broadly unchanged. That is important because it means that prosecutions against purchasers will proceed on the basis of the same type of evidence on which prosecutions currently proceed against sellers.

The essential difference is in the introduction of the test of alarm, offence or nuisance. That creates an additional evidential threshold and changes the nature of the conduct that will fall foul of the criminal law if the bill is passed. As prosecutors, we do not, for several reasons, see that as an insurmountable evidential threshold. Because the test is an objective one, it would not be necessary to prove under the provisions of the bill that actual alarm, offence or nuisance had been caused; it would be necessary to prove only that that was likely to have been the impact of the conduct on the reasonable person. That is important because it means that prosecutions would not require to be predicated on the basis of evidence from the individuals who had been affected by the conduct and who, for good reasons, may be reluctant to become involved in criminal prosecutions.

The test is also very similar—but not identical—to the test that currently applies in relation to the offence of breach of the peace. That is important because it is a test with which prosecutors in the criminal courts in Scotland are familiar. Convictions are achieved daily through the test for breach of the peace. That is important because it means that prosecutions against sellers and buyers the new legislation will not change the law on selling sex and that, if we want to change the law to allow purchasers of sex to be prosecuted, the bill will not do that effectively.

My question therefore focuses on the second offence that we seek to create. If the bill will not be effective on the first offence, perhaps we can catch people under the second one—that of loitering. However, if people are to be prosecuted for loitering to purchase sex or kerb crawling—we are all interested in enabling that—what is the point of having a section that states that no offence is committed if a person loiters in a motor vehicle? From the evidence that has been given to us, we know that 95 per cent of people who purchase sex loiter in a vehicle. What is the point of that measure?

George Lyon: I will answer your point that the soliciting offence that will be created for purchasers will be of no value. As we have outlined in our evidence, the offence is drawn from the English law that aims to tackle kerb crawling, and which creates basically a soliciting offence. In 2004, 761 people were convicted of kerb-crawling offences south of the border. The figure was 837 in 2003 and 891 in 2002. Although no one doubts that it will be challenging to secure the soliciting offence, we believe that it will be possible. I will pass to Andrew McIntyre to give a further detailed explanation of the legalities. The policy is not without merits and we believe that prosecutions will be secured under the offence. We would not have put the measure before the committee if we did not think that it has merit.

Mike Rumbles: Before Andrew McIntyre speaks, I ask him for clarification. We are comparing English law with Scots law. Please correct me if I am wrong, but it is my understanding that the law of evidence is different
in Scotland from that in England and that the difference hinges on corroboration. Therefore, is it not the case that a comparison of the English laws on kerb crawling with what we are trying to do here will come unstuck in respect of corroboration?

Andrew McIntyre: It is certainly the case that prosecutors in England do not require corroboration to take criminal proceedings or to prove an offence, whereas prosecutors here do. That is an essential element of Scots law and is an issue for prosecutors in securing the necessary evidence in relation to a range of criminal conduct. I cannot speculate as to the impact that the rule has on the number of prosecutions or resulting convictions, but the rule certainly gives us a much more stringent test to apply in Scotland on whether a prosecution can be taken in the first place.

Mike Rumbles: If that is the case, I will return to the point on which I would like to concentrate, which is about section 1(6). We are all interested in ensuring that we have a practical law to tackle purchasers of sex or, in other words, kerb-crawlers. You have specifically ruled out the offence of loitering in a motor vehicle. I understand that that decision stems from a worry about a ruling from back in the 1920s, when motor vehicles first came on the scene. Things have changed dramatically since then, so why are we persisting in retaining section 1(6), which excludes the offence of loitering in a car?

George Lyon: First, the main reason for framing the bill in a way that excludes loitering in a car relates to the fact that the prosecution service and the police consider that it would be difficult to prove that a person was loitering in a motor vehicle for prostitution-related purposes rather than for any other reason. It would be difficult to prove intent.

We have discussed the matter with the police and the prosecution service and have concluded that it would be extremely difficult to gather sufficient evidence to prove that someone who was driving slowly in an area that was known for prostitution, but who was doing nothing more than that, was there to obtain the services of someone who was engaged in prostitution. The kerb-crawling offence in England and Wales does not cover loitering—it focuses purely on soliciting. As I said, significant numbers of convictions have been secured down south on that ground.

Andrew McIntyre: If I may, I will come in at this point. I did not get a chance to answer earlier the principal question on corroboration. In its letter of 6 November, ACPOS states:

“To effectively prosecute purchasers, there would require to be a statement taken from the seller supported by a self incriminating response by the purchaser following common law caution.”

I am aware of the discussions that have taken place at previous committee meetings. In terms of the discussion around what may or may not constitute evidence, there has been a tendency to focus on the specifics of what may be sufficient in a given case, which has caused some confusion. In terms of forming the basis of a prosecution, it is not absolutely necessary to require a “statement … from the seller”—speaking to the fact that she was approached for the purposes of prostitution—and

“a self-incriminating response by the purchaser”

when asked about his conduct under caution.

In its letter, ACPOS describes two sources of evidence that may well form the basis of a prosecution, but it is possible to envisage other circumstances in which sufficient evidence may be obtained. For example, where the purchaser makes an incriminating remark, it is conceivable that the surrounding facts and circumstances would be sufficient to form the basis of a prosecution. I am not necessarily talking about someone making a full admission or confession. It is often the case that people who are accused of crimes say enough to incriminate themselves while not suspecting that they are admitting the crime. It is then for the court to determine whether it is satisfied that the evidence is sufficient and compelling enough to return a conviction. I am not certain that the scenario that ACPOS puts forward in its letter is the only one in which criminal proceedings could be brought.

It is important to note that the procurator fiscal at the local level is the expert in assessing the current state of the criminal law, the current state of evidence and what, at any given time, constitutes sufficient evidence. The prosecutors make those decisions. Although evidence as suggested in the ACPOS letter would be sufficient, it is perhaps a bit misleading to suggest that that is the only circumstance in which a prosecution could be brought.

George Lyon: There could be other sets of circumstances. For example, we have had reports that ordinary people—females—coming out of work at night in the financial district in Glasgow, are being stopped and propositioned. The soliciting offence in the bill would allow action to be taken against individuals who do that. At the moment, that cannot happen.

Mike Rumbles: I will stick to the point that I am trying to pursue, which is—as the minister said—the difficulty of trying to prove an offence of loitering in a motor car. However, it is also difficult to prove an offence of loitering outwith a motor car. The minister may grimace, but I see no
difference between trying to prove the offence of loitering on foot for prostitution and trying to prove the offence of loitering in a motor vehicle. Can someone please explain the difference?

George Lyon: The fundamental difference is that the individual on foot can be seen, but the individual in the car cannot so easily be seen, especially if the car has blacked-out windows. It is therefore hard to prove intent—to prove that the person in the car was loitering for the purposes of prostitution. We have to remember that that is the offence.

14:30

Mike Rumbles: We have just watched a video in which all the loitering is done in cars, except in two incidents. The committee has received complaints from citizens of Leith Links and other places who have been upset by people kerb crawling, then purchasing sex and creating demand for prostitution. The point of the bill is to remove that demand. We will have a real problem if we do not stop people loitering in cars.

Paul Johnston (Scottish Executive Legal and Parliamentary Services): It might be worth saying a little more about kerb crawling. It seems to me that some offences that have been described as kerb-crawling offences in evidence are more akin to breach of the peace offences because no evidence can be produced of any intent to purchase sex. A person may slowly drive a motor vehicle along a street, slow down and stare at and intimidate people, but there could be no evidence at all in such incidents that the intention of the person in the vehicle was to purchase sex—indeed, that person could intend to commit a much more serious offence against the person who was being followed. The reality is that a person in a vehicle who intimidates a member of the public can be prosecuted for breach of the peace. Once the person in the vehicle makes an approach to someone and asks for sex or sexual services, the incident takes us into the realm of soliciting, which is what section 1(1) of the bill and what the kerb-crawling offence in England and Wales catch.

Michael McMahon (Hamilton North and Bellshill) (Lab): It has been suggested in evidence to us in the past couple of weeks that women who want to move out of prostitution and away from the stigmatisation that it causes could be hampered by the title of the bill. People are concerned about that. I am sure that the minister will have heard the arguments relating to the issue. Will you say something about those arguments, minister, and whether any consideration has been given to changing the title of the bill?

George Lyon: ACPOS first raised the matter with me when we were involved in the initial round of consultation on the bill, just before it was published. We were concerned that the title of the bill could hamper those who want to try to find a route out of prostitution because it may reveal the status of an offence that they had committed and thereby stigmatise them during attempts to find employment, or in other matters in which the offence may be revealed.

We have sent a letter to the committee that clarifies what would currently be revealed in an enhanced disclosure as a result of an application to Disclosure Scotland. Unfortunately, the offence in question would be disclosed. The letter gives as an example of what might be said on a disclosure document,

“Prostitute (Male or Female) soliciting … Civic Government (Scotland) Act 1982”,

therefore that issue already exists.

We must reflect on whether any changes to the bill would prevent the stigmatisation that could result from the enhanced disclosure process. We received that information only recently after we had made inquiries as a result of concerns that had been raised with us. A copy of the letter was sent to the committee at the end of last week.

Michael McMahon: So, you are prepared to reflect on the matter.

George Lyon: We will do so if the committee thinks that it may be an issue. Since our initial discussions with ACPOS and others, we have made it clear that if it is thought that the title of the bill may be a barrier for victims of prostitution who are trying to find a route out of prostitution, we are willing to re-examine the matter. We are interested in the committee’s views at this stage of the process.

Michael McMahon: I want to ask a question on another issue, which we have already discussed. The creation of a reverse burden of proof seems to be causing a problem for the Executive. In her letter to the committee, Alison Douglas addresses the heart of the matter by pointing out that people might have legitimate reasons for driving slowly in an area. They might be looking for a parking space or an address, or they might simply be lost. However, ACPOS told us last week that the police would take further action that might lead to a conviction only if there had been persistent activity. If I was driving around looking for a parking space and the police pulled me over and said, “You might be causing a nuisance, because there’s a problem with street prostitution in this area,” but I went back to the area twice to look for somewhere to park, I should be arrested for my stupidity. It is not believable that someone would be arrested because they were driving around
looking for a parking space. That is a poor argument for not taking action on the burden of proof.

George Lyon: Our view is that the creation of a reverse burden of proof that would apply to a person who was doing no more than loitering in a vehicle could cause considerable problems for many innocent drivers. Everyone who was stopped by the police in those circumstances would be required to prove that they had legitimate reasons for being in the area. They might have to appear in court. There could be many reasons for driving slowly in an area and we would be very nervous about creating a reverse burden of proof.

Many people work late at night in the financial district in Glasgow, in call centres, for example. Those people’s friends, relatives or husbands might pick them up from work and could be caught by the proposed offence if they drove round the area a couple of times. We do not want to go down that road, which would raise ECHR issues. Paul Johnston might clarify the legal position.

Paul Johnston: I am happy to do so. I am aware that there are many reverse burdens in statutory offences, as one or two members have noted. However, it is important that every reverse burden of proof that is to be included in a statutory provision is assessed carefully in its context, to establish that it is justifiable, proportionate and necessary, because a reverse burden of proof might conflict with the presumption of innocence that is guaranteed in article 6 of the ECHR.

There is a lot of complex case law around particular reverse burdens on the statute book. A number of reverse burdens have been found to be justifiable and ECHR compatible, but a number of others have been found to be incompatible with the convention. We have tried to assess whether a reverse burden in the context of an offence that relates simply to loitering in a vehicle would be ECHR compatible. We asked whether it would be possible to have an offence whereby it would be assumed that, unless they could prove the contrary, someone who was loitering in a vehicle was doing so for the purposes of obtaining the services of a person engaged in prostitution. Our assessment of the ECHR authorities is that such an offence would risk being incompatible with the convention.

Michael McMahon: Whose rights are we talking about? The committee has heard from people in communities—especially women—who think that they have the right to live peacefully and not be harassed and subjected to nuisance because of the behaviour of some men who drive round in cars. What does the ECHR say about those women? Are you telling me that the criminal justice might of Scotland cannot come up with an ECHR-compliant justification for a police officer stopping a person in a car and saying, “Did you know that you might be causing a nuisance in this area?” The person might then take on board the community’s concerns and behave differently. Would that really constitute a breach of the ECHR?

George Lyon: I appreciate the concerns about the loitering offence. We signal today that we are willing to listen to and reflect on the concerns, to see whether anything further can be done. The way in which the bill is drafted means that difficulties would arise in creating a reverse burden of proof, but we have not closed the door on further considering other actions or mechanisms that might address some of the concerns.

Fergus Ewing: Are prostitution offences serious?

George Lyon: Yes. Prostitution and the nuisance that it causes to communities are serious offences.

Fergus Ewing: In the letter that we have from Alison Douglas of the Justice Department, she says that an example of an offence for which a reverse burden is justified is the offence of sex with a girl who is under 16. That is described as a serious offence, which implies that prostitution offences are not serious. That is at odds with the views of people who have given evidence.

As I was the committee member who raised the burden of proof issue, I will say that using the phrase “reverse burden” is misleading. I did not suggest that the burden of proof should be automatically transferred to the accused so that he had to prove beyond reasonable doubt that he was not guilty. I mentioned that such a transfer occurs in bankruptcy law, a breach of which many people would regard as less serious than prostitution, which concerns violence against women. In bankruptcy law, such a transfer may occur when someone has not disclosed assets to his trustees. However, he can exculpate himself simply by proving on a balance of probabilities that he had a reasonable excuse for his failure to comply with a technical measure. That does not fall foul of the ECHR. I hope that the minister will reconsider the matter.

The Executive’s thinking seems confused. The Executive says that because it is difficult to prove offences relating to prostitution, we should not make them a crime. It is difficult to prove some murders and to obtain evidence to prove that someone has committed murder, but no one suggests that murder should not be a crime. Having studied all the evidence, does the minister think that we have heard strong evidence from the police, from people from Calton in Glasgow and from the councils that kerb crawling should be a
crime and that the bill is inadequate in that respect?

**George Lyon:** I say with due respect that the Executive proposes to introduce the offences to tackle kerb crawling. I said that the soliciting offence that we are creating for purchasers is the mirror-image of the offence south of the border, where substantial convictions have been secured to tackle kerb crawling. You cannot accuse us of wanting to do nothing. We have acknowledged the challenge of obtaining a conviction in court and I will not gloss over that. However, our proposals go significantly further than what is on the statute book and they will tackle the purchaser, which is what the working group wanted to happen.

**Fergus Ewing:** I return to the minister’s arguments in response to Mr McMahon. The minister said that it would be difficult to prove that somebody who was leaving work was going to pick up a colleague or his wife. In those circumstances, would the colleague or wife not be happy to give evidence that they were being picked up?

**George Lyon:** In that instance, I have no doubt that people would do that. However, it might not be possible to prove that in other instances. You take us into difficult territory. The way in which the offence is constructed means that ECHR issues would arise from creating a reverse burden of proof. As I said, we are willing to re-examine the loitering offence, about which the committee has expressed concern. I reinforce the point that although we believe that the committee will support the policy intent, we hear what the committee says about technical issues relating to the loitering offence and we will reflect on that.

14:45

**Fergus Ewing:** It was the minister who gave those examples as justification for the Executive’s approach of not transferring the burden of proof to the male to provide a reasonable explanation. If someone were picking up his wife, girlfriend or friend, that person would be willing to give evidence and tell the truth and that would be an end to the matter. The minister did not deal with Mr McMahon’s other point, which was made by ACPOS in its original letter to us, that in England

“it is an offence for a person to solicit from a motor vehicle persistently”.

The word “persistently” means that in England there has to be more than one instance. Does that not deal with the point that the minister tried to make, namely that someone who is innocently in a red light zone or an area that prostitutes are known to frequent might be caught up and charged on the basis of one occasion? As ACPOS stressed, a persistent pattern of behaviour must be demonstrated in England. Therefore, if the police have evidence that they believe establishes a pattern, presumably because the car registration number has been taken, the person has been warned or the police have other such factual evidence, what is the risk of breaching the ECHR compared with the risks to the community?

I remind the minister of what Jennifer McCarey said about kerb crawling. She described it as

“a car slowly following you and creeping along beside you. Often you are the only person in the street. The car stops until you catch up, then it drives slowly beside you and stops. It is tremendously intimidating behaviour, which does not involve rolling down a window and talking to you.”—[Official Report, Local Government and Transport Committee, 24 October 2006; c 4149.]

That seems a serious offence. The arguments that the minister adduces do not deal with the fact that, in England, kerb-crawlers are perfectly well dealt with by the requirement to show persistent behaviour. Surely the adoption of a similar formula in Scotland would allow us to transfer the burden of proof, start deterring men from buying sex and thereby protect women from the associated violence. According to Ann Hamilton of Glasgow City Council, we could then find out about the men who are kerb crawling, as is done in England, where such men are often found to be involved with serious sexual or violent offences. Surely the transfer of the burden of proof would allow us to tackle prostitution in a way that the bill patently will not.

**George Lyon:** I am not sure whether you misheard me, but I made it clear in my introduction that the soliciting offence that we will create in Scotland is the same as that down south, where the offence does not require a reverse burden of proof—

**Fergus Ewing:** It is not the same.

**George Lyon:** I am sorry, but we believe that it is. The only difference down south is that evidence of persistent behaviour is required. Under our bill, the men need to commit only one offence, they do not need to do it repeatedly and they can be arrested the first time that they are spotted soliciting. The offence that we are creating might be more easily enforced than the similar offence in England.

**Andrew McIntyre:** There is some confusion because the wording of the most recent ACPOS letter is slightly misleading. The persistence element in the English offence relates to persistently soliciting and not to persistently loitering or kerb crawling. If the offence that we are creating contained the element of persistence that is in the English legislation, it would mean that we would not be able to prosecute on the basis of one offence even if the necessary standard of evidence existed, because we would need to have
A myth has been promulgated about the views of local prosecutors in Glasgow. It relates particularly to the views of the procurator fiscal for Glasgow city centre, but also to the views of prosecutors in other divisions. I was concerned, to say the least, when I read some of the views attributed to the fiscal in Glasgow. I have spoken to him in great detail.

Mr McAveety: I welcome your comment that you might look at a number of issues that have been raised in evidence. Indeed, compelling evidence was produced by my constituents in Calton, which is markedly different from the business district where, historically, much of Glasgow’s street prostitution has taken place. As the business district has undergone regeneration, this activity has become more of a problem for and had more of an impact on the community in Calton.

My first question is for Paul Johnston, who said that if people feel intimidated by the behaviour of an individual in a vehicle, that individual could be charged with breach of the peace. Local residents have already made it clear that they feel intimidated by that kind of behaviour. How many breach of the peace arrests and prosecutions have there been in that respect?

Paul Johnston: I have no information on the number of prosecutions that have been brought.

Andrew McIntyre: It is a question for the Crown Office, but I do not have that information.

Mr McAveety: I suggest that there have not been many such prosecutions. I remember civil servants and the police telling me seven years ago that the breach of the peace provisions in existing legislation would be sufficient to deal with these matters. However, they have had little or no impact, even in cases in which the police have taken action. As I am concerned that this breach of the peace argument might be acting as some kind of comfort blanket, I wonder whether you will expand on your earlier comments before I ask my next question.

Paul Johnston: I did not mean to suggest that breach of the peace would be enough to tackle kerb crawling. Having read in the Official Report of last week’s evidence-taking session some of the descriptions of what had been called kerb crawling, I felt that it would not be possible to detect any sexual element or motive on the part of the person in the vehicle and, therefore, that such behaviour would not necessarily be caught by any prostitution-related offence. I simply suggested that we would need to consider some other area of the law such as breach of the peace.

Mr McAveety: I have twice accompanied Strathclyde police officers on their evening duty and have experienced the pleasure of the Friday night shift; I saw that some men who were kerb crawling were picked up largely because they had committed road traffic offences or because of the sheer stupidity of other aspects of their behaviour. The police felt that they could not deal with the men’s core behaviour under the existing legislation. The focus of the committee’s deliberations—and I hope that the Parliament will reach some good conclusions on this matter—is the question whether we can put in place powers that provide a genuine response to a genuine cry of despair from communities such as Calton. After all, none of us would feel comfortable living in a neighbourhood where such activity took place daily—and nightly. It would be helpful if, between now and stage 2, the minister could think seriously about how we can address this issue and ensure that people feel safer and more secure.

George Lyon: We acknowledge the fact that you have consistently expressed concerns about this matter from day one. The proposed offence of soliciting, which can be used against the purchaser of sexual services, will, at long last, give the police the ability to tackle this problem. For example, they will be able to stop people who they believe are engaged in soliciting, no matter whether those individuals are on foot or in a vehicle. If we were to do something more about the loitering offence with regard to vehicles, we would go further than they have down south. After all, the offence proposed in the bill is similar to that introduced south of the border, which has been significantly successful in increasing the number of prosecutions and convictions on this matter.

As I have said, I acknowledge the concerns of members such as Mr McAveety who have to deal regularly with these problems. I am willing to reflect on the matter, but I should point out that, by creating this new offence, we have taken a significant step towards giving the police the ability to tackle these problems.

Mr McAveety: When I read in ACPOS’s written submission about the scenario that it had run past the Procurator Fiscal Service in Glasgow, I have to say that alarm bells started ringing. I might be wrong, but it strikes me that any reasonable individual who saw such activity would conclude that something rather dodgy was taking place. Are the comments in the ACPOS submission right, or have things moved on since that evidence came to light?

Andrew McIntyre: A myth has been promulgated about the views of local prosecutors in Glasgow. It relates particularly to the views of the procurator fiscal for Glasgow city centre, but also to the views of prosecutors in other divisions. I was concerned, to say the least, when I read some of the views attributed to the fiscal in Glasgow. I have spoken to him in great detail.
about his views on how the prosecution service would deal with offences under the bill, and I would say that the letter from ACPOS has recorded his views incompletely. As I say in my written submission, the recording of his views has been misleading.

A lot of discussion has focused on a video that was made available for committee members to see. Many of the views attributed to the fiscal were based on that video. I have seen the video and—as has always been the case in proving that such crimes are taking place—such a video would not provide a sufficient basis on which to take proceedings. The video, which shows any number of transactions that might seem suspect, would not provide a basis to allow us to prove to a court beyond all reasonable doubt that what was happening was soliciting or loitering for the purposes of prostitution.

The procurator’s views have not been recorded completely. To say that the video showing those transactions would not prove matters beyond all reasonable doubt is not to say that it would not be admissible or would not be a very important source of evidence—perhaps compelling evidence—in prosecutions against purchasers under the legislation. However, the video would not be enough on its own; additional investigative work would be required. For example, the drivers of the cars would have to be cautioned and interviewed as to their purpose, to find out whether they had an explanation. Also, the people selling could be questioned about a purchaser’s intentions; they could be asked, “What did this man say when he approached you in his car?” Such investigations might yield further evidence to corroborate the evidence of the video. It is not that nothing could be done about what is seen in the video; it is simply that the video itself is not a sufficient basis on which to prosecute. That is the case under the present law and it would be the case under the provisions in the new bill.

George Lyon: All that applies to both purchaser and seller.

Andrew McIntyre: Yes.

George Lyon: Obviously, the video could play a part in securing a conviction against the purchaser. It would be one part of the evidence. There might also be other evidence, especially if incidents were caught on more than one occasion in the same area.

Andrew McIntyre: At present, there is no basis on which to prosecute purchasers, unless they commit some other criminal offence such as breach of the peace, which requires a higher standard of proof than does the nuisance element in the bill. Under the bill, it would be necessary to prove that there had been a nuisance element, but nuisance alone does not constitute a breach of the peace. A breach of the peace prosecution would therefore not be open in all cases that are covered by the provisions of the bill.

Fergus Ewing: The role of Parliament is not to try cases, hear evidence or decide whether evidence is sufficient; that is a role for sheriffs, juries and the courts. We are here to make the law, to protect the public and—I hope—to buttress the values of society.

I want to put a point of principle to the minister. In the bill, we should be making it a crime for men to buy sex from women or from other men, rather than making it a crime to solicit in a way that would be “likely to cause alarm, offence or nuisance”.

Does the minister not agree that there is a strong moral case that men who buy sex, from men or women, are behaving in a way that many people in Scotland—perhaps the majority—think is morally wrong, is entirely unacceptable, and should, in itself, be a crime?

15:00

George Lyon: I would not agree with your view. Sweden took the route of criminalising completely the purchase of sex, but the measures do not seem to have delivered the results hoped for. We have to be aware that the offence in the bill is targeted at street prostitution and that further work needs to be done on the wider area of indoor prostitution, trafficking and so on. This is the first step, which is about tackling the nuisance, fear and alarm that are caused by both the purchasers and the sellers in prostitution. I do not agree that we should widen out the offence in the way that you suggest. There is no evidence that such an approach worked in Sweden. We need to consider the wider issues involved in the whole gamut of prostitution, including indoor prostitution and the trafficking industry. Further work is being undertaken and once it is completed it will have to be taken forward in the next session.

Fergus Ewing: We will have to agree to disagree about that. If it is a crime for men to buy sex, surely the fear of being caught—setting aside the fact that there might always be an element of difficulty about that—would have a significant deterrent effect on those who currently do so.

George Lyon: I would argue that the offence that we are creating will have a similar effect because, for the first time, purchasers will face the real possibility that they will appear before a court. That will send out the strong message that those who are involved in purchasing on the street will come under the full gamut of the law and could be prosecuted for their activities. That would send out
a strong signal to those who are engaged regularly in purchasing.

Fergus Ewing: Again, we will have to agree to disagree. I simply do not believe that the offence will have such a significant deterrent effect, although I hope that it turns out that the minister is right and I am wrong.

The minister referred to the gamut of measures that would have a deterrent effect. We have heard evidence that in England and Wales those who are found guilty of kerb crawling can have their motor vehicles confiscated and can be disqualified from holding a driving licence. Can those remedies be applied in relation to the offences in the bill? If not—and I see no provision in the bill that would allow us to use that part of the gamut of measures, to use the minister’s term—will the minister introduce comparable measures in Scotland, so that the courts would have the powers to disqualify men who are found to be soliciting from driving and to confiscate their vehicles? Does the minister agree that that might have a severe deterrent effect?

George Lyon: The sanction that we propose is a level 2 fine of up to £500, which is the same for both purchaser and seller. We might choose to reflect on these issues as we proceed.

Fergus Ewing: I am grateful that the minister will reflect on the issues. I hope that he will consider specifically disqualification from driving and confiscation of vehicles. It might be appropriate for the relevant authorities to provide the committee and Parliament with evidence of the experience in England, the extent to which the powers are used and how effective they have been in reducing the incidence of men buying sex.

George Lyon: We will try to provide that information; I have already asked for it for my own use. I am keen to pass it on to the committee as soon as we can get hold of it.

Paul Martin (Glasgow Springburn) (Lab): This is a question for Andrew McIntyre. The reverse burden, which we discussed in previous evidence sessions, sounds appealing. However, could not those accused of particular crimes be quite creative about the reasons why they are in a particular area?

Andrew McIntyre: The reverse burden question is properly for Paul Johnston to answer. However, as a prosecutor, I can say that the experience of prosecuting crime in general is that accused people can be creative in giving all sorts of excuses and reasons for their conduct. Equally, accused persons can be less than wise in comments that they make. As I said earlier, very often, they will make incriminating remarks, if not give full confessions.

Paul Martin: Do you agree that an individual who works in one of the areas that we are talking about might always have an excuse for being in that particular area? Might that be a loophole in the legislation?

Andrew McIntyre: Yes, that would be a natural risk of a reverse burden of proof. The system of criminal prosecution in Scotland is predicated on the basis that we do not assume that people are guilty of the offences that the police and prosecutors allege that they are guilty of.

Paul Johnston: I am not sure that I can add a lot to what has been said already. However, if the loitering offence in the bill were to be accompanied by a reverse burden, my understanding is that the accused person would have to prove, on a balance of probabilities, that they were not doing a particular thing for purposes relating to prostitution. They might be able to come up with convincing evidence to prove that, but our concern is that there could be innocent drivers who could not satisfy the requirement to prove, on a balance of probabilities, that they were not loitering in their vehicles for purposes relating to prostitution.

Paul Martin: What kind of dialogue has taken place on ECHR? As you can appreciate, in our evidence sessions, someone always mentions ECHR. You say that someone has given you an initial view, but has the issue been probed further with the compliance team? If so, has that team said that there is no way that the proposal can be delivered? How comprehensive is that view?

George Lyon: We have taken advice on the matter and know that there are significant challenges around the issue of creating a reverse burden of proof.

Paul Martin: You will appreciate that we are looking at the matter from the outside and that you have more information than us. Has a solicitor given you a verbal view or has someone written to you to say that there is no way that we can go down that road?

George Lyon: As always, we have received internal advice from the law officers. As I said in my earlier response to Michael McMahon, we believe that there are significant ECHR problems with regard to the way in which the proposed offence is currently structured. We are willing to reflect on that and consider whether alternative approaches can be taken.

Paul Martin: I can speculate about the ECHR issues that might have arisen with regard to the proposed offence. Would you be happy to share with us the legal advice that you have received?

George Lyon: We have already sent the committee a letter that outlined the advice and our position on it.
Paul Martin: Did the letter give specific details of where the proposed offence would not comply with ECHR law?

Paul Johnston: That letter referred to the leading ECHR authority on reverse burdens of proof, which is Sheldrake v the Director of Public Prosecutions. It drew conclusions from that case about why, in the context of the loitering offence, a reverse burden could be problematic.

Paul Martin: A number of organisations have given us evidence that has made a powerful case for the argument that women are victims in many of the situations that we are discussing. It has been argued that we should upgrade the sentencing tariffs that are available in respect of the purchaser. Has the Executive considered that suggestion, which adds to the possibilities that Fergus Ewing raised?

George Lyon: At the moment, the proposal is that the penalty should be a level 2 fine of up to £500. However, we will listen to what the committee has to say and will reflect on the committee’s views on whether particular sanctions are appropriate.

Paul Martin: Last week, we heard evidence from Aberdeen City Council that, after we have passed the bill, which will in effect make purchasing sex an illegal act, the council would consider the possibility of a management zone similar to the zone that is already in place in Aberdeen. Would a management zone be illegal under the new arrangements?

George Lyon: I understood from the evidence from Aberdeen City Council and the police that deciding on whether there is a management zone in Aberdeen is an operational matter. I imagine that that will still be the case when the new legislation comes into force.

Paul Martin: I want to be clear about this. For the first time, purchasing sex will in effect be an illegal act. Are you saying that, in tolerance or management zones, the police will turn a blind eye to, or manage, such acts? Will that be compliant with the bill?

George Lyon: What I am saying is that we create the laws of Scotland and we should expect those laws to be enforced. As I said, that is an operational matter.

Paul Martin: Will management zones be illegal or legal?

George Lyon: They are not currently legal, as I understand the matter.

Paul Johnston: At present, section 46 of the Civic Government (Scotland) Act 1982 makes it an offence for a prostitute to loiter or solicit in a public place. I cannot comment on the legality or otherwise of management zones at present. I simply point to the fact that we have a law that makes it an offence throughout Scotland to solicit or loiter in a public place for purposes relating to prostitution.

Paul Martin: I assume that, once the bill receives royal assent, if someone goes into a management zone to purchase sex, they will be charged with an offence. Therefore, management zones cannot continue.

George Lyon: Clearly, it would be for the police to charge such an individual and take action against them. We are creating the legislation to allow them to do that.

Paul Martin: So if a management zone is in place or if somebody proposes a management zone, you expect the police to take action against that.

George Lyon: As I said, we create the law. We expect chief constables, who have responsibility for operational matters free from political interference, to enforce the legislation that the Scottish Parliament creates.

David McLetchie (Edinburgh Pentlands) (Con): I want to follow up on that discussion. The issue about management zones is that the present law, as a deliberate act of policy, is simply not being enforced, and it appears that that will happen with the proposed law. The minister says that the issue is not a matter for political interference but is operational. However, the issue is not purely an operational policing one, because, as we heard in evidence, the zone in Aberdeen is the result of a policy determined by the police and the local authority. The decision not to enforce the present law is not an individual policing one; it is a political decision in which the police play a part. Is that not the case?

Andrew McIntyre: I cannot speak for local authorities but, as a prosecutor, I am acutely aware that a lot of work is done between local prosecutors and police forces to tackle the issues that arise in their areas. That happens in Glasgow, for example. If Parliament, with a view to responding to public demands and needs in Scotland, passes legislation that criminalises for the first time certain conduct, local prosecutors, who are obliged to consider the public interest in every case, will have to work closely with local police officers to make clear the circumstances in which they expect offences to be reported to them. That will be the key to the enforcement of the legislation.

David McLetchie: Yes, but my point is that the decision is reached not simply as a result of discussions between people in the justice system—the procurators and the police—but is a
deliberate act of policy that involves the local authority.

The management zone in Aberdeen is the result of a political decision. You suggest that it has arisen simply because of an aggregation of individual decisions taken by police and prosecutors, but all the evidence that we have taken says that that is demonstrably not the case.

15:15
Andrew McIntyre: I cannot comment on the role of the local authority in that case. What I can say is that it would be for local prosecutors to give clear instructions to police forces regarding the circumstances in which they expected offences to be reported to them.

David McLetchie: Are you saying that the local procurators fiscal in Aberdeen—and in other places where people purport or attempt to run management zones—are entitled to say to the police that they are not going to play ball with the management zone any more and that they want those who are engaged in these acts, whether under the present law or under the new law, to be prosecuted?

Andrew McIntyre: I am not aware of the specific arrangement in Aberdeen, but on a range of issues, it is open to prosecutors to give guidance to the police on the circumstances in which they expect to receive reports of alleged crimes.

David McLetchie: Is it the business of procurators fiscal in Aberdeen—and in other places where people purport or attempt to run management zones—are entitled to say to the police that says that they should not arrest anyone who is engaged in these acts within defined areas?

Andrew McIntyre: I am not aware of any such guidance having been issued.

David McLetchie: So, nowhere in Scotland have the procurators fiscal said to the police that the law of the land should not be enforced in a defined part of a city.

Andrew McIntyre: I simply cannot comment on that. I do not know. I do not have enough information about the local circumstances.

David McLetchie: It makes me wonder how a management zone came into being in the first place. It did not just appear out of thin air.

George Lyon: I recall that there used to be management zones in Edinburgh, but because local residents and local representatives objected to them, that policy was discontinued. The policy was the result of an operational decision by the local police force, and the council played a role in it.

David McLetchie: Indeed. That is my point. The council played a role in that policy: it was a political decision. The reason why there is no management zone—or tolerance zone, or whatever it was called—in Edinburgh is that the law is now being enforced. As a result of that, according to the evidence that has been presented to the committee, the incidence in Edinburgh of street prostitution—in its narrow sense—has diminished. That has happened because the law is being enforced.

George Lyon: Yes, but there was always a pretty low incidence of street prostitution in Edinburgh in comparison with Glasgow. The comparative figures show that an average of six females are on the streets in Edinburgh of a night, whereas there are around 85 in Glasgow. There has been a much lower level of street prostitution in Edinburgh over a long period of time.

David McLetchie: The evidence that we have heard from residents is that there are significantly more than six women on the streets in Edinburgh. However, we will leave that issue.

I want to ask about the video that I saw at lunch time with Mr Ewing and the clerks. It does not quite merit the X-certificate rating that was suggested at our previous committee meeting. I hope that no one in the public gallery is too disappointed that they have not seen it. How many members of the panel have seen the video and participated in the discussion about cases?

Andrew McIntyre: I saw the video immediately before today’s meeting. I am aware that reference has been made to an earlier discussion about the significance of the video and what it was used for, but I was not party to that.

David McLetchie: Were you part of that discussion, Mr Johnston?

Paul Johnston: No, I have not seen the video.

Alison Douglas (Scottish Executive Justice Department): Patrick Down and I were at the meeting, but at no point did we systematically go through each and every instance, as is implied in the letter from ACPOS. We did not look at every case, and there was no detailed discussion of the video and the evidence that it provided. It was just provided as an illustration of what happens on the streets in Glasgow.

David McLetchie: Assistant Chief Constable Neilson told us last week that, after the video was shown, there was a discussion involving yourselves and others from the Executive as well as members of the Crown Office and Procurator Fiscal Service. He said that the question was asked whether, under the proposed law, any person—a buyer or a seller—could be charged having regard to the incidents portrayed in that
video. According to Assistant Chief Constable Neilson, the response to that question—which he posed as a senior police officer—was that, despite 23 transactions being captured on video, nobody could be charged. Is that correct or incorrect?

George Lyon: I think that the matter has been dealt with by Andrew McIntyre in his response to another question. There would need to be corroboration, as is required for the current offence; a conviction could not be secured purely on the video evidence.

David McLetchie: No. The question is not whether the only evidential item is the video evidence. I want to move away from that.

George Lyon: Sorry. I must have misunderstood you.

David McLetchie: The question is not whether the video may be used as evidence; it is whether the incident and everything that surrounded it—the man driving up in the car, the fact that that may have been observed by others, the fact that it was captured on video and so on—could have given rise to charges and successful prosecution under the new law. The answer that we were given was that they could not.

Andrew McIntyre: Again, I think that there is confusion around this. If the question is whether the conduct that is portrayed would fall foul of the new law—which is separate from the question whether it could be proved—the answer is that, yes, to all intents and purposes the conduct that is portrayed in the video is of men in cars soliciting women for purposes relating to prostitution. The reason why the video alone would not be sufficient evidence is that we can only surmise such conduct from seeing the video; we cannot prove it without further evidence. I am talking not just about proving the matter in law. If further evidence confirmed that a transaction had taken place that involved a purchaser soliciting a seller for purposes relating to prostitution then, yes, the conduct of itself would fall foul of the criminal law as proposed by the bill.

David McLetchie: Well, that is nothing like how the matter was presented by a police officer last week.

As you will be aware, I then asked the police officers whether anybody could be prosecuted under the current law having regard to the incidents portrayed in the video. The emphatic answer was yes, because the video captured and observed the behaviour of known prostitutes who were loitering in a public place. Therefore, the incidents portrayed in the video could lead to a successful prosecution under section 46 of the 1982 act. However, that could not happen under the proposed law, as the proposed law does not include the concept of a known prostitute loitering in a public place. Is that correct?

Andrew McIntyre: You refer to a comment to which I was not privy at your previous meeting, but I see the logic in that argument. However, I would not necessarily say that it would be more difficult to prove the offence in relation to the prostitute. At present, there would generally be questioning of the prostitute and, as I understand it, the vast majority of prosecutions against prostitutes proceed on the basis of admissions by the prostitutes of their purpose. I cannot see that the removal of the known prostitute element would make it more difficult to prove that the prostitute was soliciting for purposes relating to prostitution.

David McLetchie: Yes, except that if a known prostitute with characteristic behaviour is standing around on a street corner and is challenged by a police officer, it is likely that they will admit that that is why they are there.

Andrew McIntyre: That may be the case.

David McLetchie: That is what the police said to us.

George Lyon: That is correct. No doubt, they could be arrested every time that they appeared in the street. The information that we were given when we spoke to the various organisations is that known prostitutes tend to plead guilty immediately, receive a fine and go back out on the streets in order to get enough money to pay the fine. The point that we are making is that, because they always admit to the offence, a prosecution can usually be obtained. I suggest that that will not change under the new proposals.

David McLetchie: Ah, but it will—because the concept of the known prostitute with a history of convictions will not exist any more.

Paul Johnston: My understanding is that the existing offence requires a number of elements to be in place. First, there must be a prostitute, and that is where the known prostitute concept comes in. If somebody has been cautioned a couple of times, the court can take it—Andrew McIntyre can correct me if I am wrong—that that person is a prostitute, so that element of the offence will have been established. It must then be established that, for purposes relating to prostitution, that prostitute was loitering or soliciting.

The offence in the bill does not use the word prostitute. It refers simply to “a person”, and it must simply be established that “a person” was soliciting or loitering for purposes relating to prostitution. In a way, the whole argument about whether or not that person was a prostitute becomes irrelevant.
David McLetchie: That is not an argument, because the fact that the person is a known prostitute is known.

Paul Johnston: At the moment, it can be established that the person is a prostitute because they have been cautioned twice. My point is that, in relation to the offence in the bill, there will be no requirement for those two cautions, although that is not to say that they could not have been given. There is no such requirement in the bill to establish that somebody is a prostitute. The bill applies to any person who, for purposes relating to prostitution, solicits or loiters in a relevant place.

David McLetchie: I quite understand that, but my point is that, under the present law, the 1982 act already takes you over a substantial evidential hurdle. Given the person’s previous history and their presence loitering in the street, that hurdle having been crossed will almost inevitably result in a successful prosecution, an admission of guilt and a conviction. Under the proposed new law, that will be a lot harder to achieve—that is exactly what the police said in evidence last week. They said that fewer people will be prosecuted successfully under the new law proposed in the bill than are prosecuted successfully at present.

Andrew McIntyre: I have to say that there is a grave misunderstanding here. Under the present law, although the current provisions apply only to known prostitutes, it is still necessary to prove that they were loitering or soliciting for the purposes of prostitution. That is identical to what is being proposed, so there is no change in relation to that part of the offence. The current law requires there to be two cautions, meaning that the person is a known prostitute. There is no difficulty for the prosecutor in proving that, because unless it is challenged it is taken as a given. However, once that hurdle is overcome—this happens frequently in prosecutions—the prosecutor must still establish that the person was loitering for the purposes of prostitution, and that is what is being proposed under the new legislation. The types of evidence and the standard of evidence in relation to the principal part of the offence would be the same under the proposed legislation as under the current legislation.

The Convener: You seem comfortable with the concept of the offence of loitering with intent to solicit for prostitution in the case of someone on foot, but not for somebody in a car. If somebody is loitering on the street on foot, you cannot prove that they are there for purposes relating to prostitution until the point at which they actually solicit for purposes related to prostitution. Why cannot you have a similar offence for someone in a car? Is it just because the present practice is that many prostitutes will admit the offence, so that a prosecution results? Is it the case that equality under the law falls down because you do not anticipate that the man in the car will admit the offence, and that that is the evidential difference?

George Lyon: I do not think that that is a correct interpretation. As was said earlier, it will be easier to prove the loitering offence for the individual on foot because you can see what they are up to and what their actions are, and you will be able to lead that evidence in court. However, if an individual is in a car, you cannot see what their actions are, so we believe that it would be extremely difficult to lead evidence proving such an individual’s intent under the loitering offence.

The Convener: Presumably, you cannot prosecute that loitering offence unless the person attempts to solicit.

George Lyon: That is right. That is why the current proposal is that the soliciting offence will apply to people in vehicles. That provision is used to tackle kerb crawling down south, where there has been significant success in achieving prosecutions.

The Convener: Unless I am missing something, somebody loitering on foot before they solicit can be prosecuted. How do you prove that they intend to solicit? How do you prove that they are not waiting for a bus?

Paul Johnston: Under the current offence, there is no need to prove an intention to solicit. All that must be established is that a person is loitering for purposes relating to prostitution.

The Convener: That is my question: how can you prove that with any more conviction than you can prove that someone in a car intends to solicit?

15:30

Andrew McIntyre: I wish to be clear about my role in this. As an independent prosecutor, it is not for me to talk about the policy intention behind the legislation or whether the legislation should go further. I shall comment purely on questions of proof—for example, how prosecutors can prove offences. The act of loitering on foot is overt rather than—as is the case for people in cars—covert, so there may be better grounds for suspicion on the part of the police, and thereafter for questioning a suspect with a view to yielding sufficient evidence.

George Lyon: To be fair, I have signalled that I understand the committee’s concerns on that issue and that I will reflect on it after this evidence session.

Mike Rumbles: A letter to the committee from the Justice Department mentions a ruling of Lord Hunter in 1924. It also says:

“Ultimately, if the Bill were to refer to ‘loitering in a motor vehicle’ for prostitution related purposes then we”—
that is, the Justice Department—

"recognise that this would signal to the courts that the Parliament considers that it is possible to loiter in a vehicle."

The Scottish Executive is saying, “If we decide to signal to the courts that loitering in a motor vehicle for prostitution-related purposes is illegal, it will be illegal.” It is as simple as that, is it not?

George Lyon: I think that that is correct, but the question has always been about how we then take the offence forward, prosecute and establish the intent.

Mike Rumbles: Committee members cannot see any difference between—

George Lyon: I understand where you are coming from, which is why I signalled that I would be willing to reflect on the issue.

Mike Rumbles: I would like you to say that you will change the bill.

George Lyon: I shall reflect.

David McLetchie: We all appreciate the problems of proving intent or motive and the whole business about something being done for the purposes relating to prostitution. Why is it not possible to address the behaviour of someone who is driving around, with there being a more tenuous relationship to the question whether the driver is intending to buy sexual services? Why is it not, for instance, possible to say that it is an offence persistently to drive a car in a manner that might cause offence, nuisance and alarm in an area where prostitutes are known to consort? In other words, you would basically say to someone, “To drive slowly and persistently in this kind of area, in which, as everyone knows, prostitutes ply their trade, is offensive behaviour and we won’t tolerate it.” You would not have to prove anything specific, other than that they were driving around for, one would assume, no good reason—unless they could demonstrate a good reason—in an area where prostitutes consort.

George Lyon: How would the driver know that they were in such an area if they were a stranger to the city? That is pretty fundamental—

David McLetchie: The issue is persistence—it is about the same people doing something again and again; they would not be a stranger for long. It comes back to the issue of persistence that Mr McMahon raised. It is not too difficult to establish that someone is persistently driving their car in a manner that causes nuisance, alarm or offence to people in an area in which prostitutes are known to consort—there will be strings of conviction records to show that. If they are a new boy in town, that is fine and they will not be prosecuted, but if they come back week after week, why not prosecute them?

George Lyon: That type of evidence could be used to ensure that a conviction is secured under the soliciting offence. I imagine that the prosecutor would be able to lead evidence in court that the individual in the car had been seen circling around the area on previous occasions. That is one part of the evidence that could be led to secure a conviction—

David McLetchie: I do not think so, because no one has solicited. That is the problem.

Andrew McIntyre: Yes, to prove the soliciting offence, there would need to be an act of soliciting—the behaviour would have to go further. On Mr McLetchie’s question, again, as an independent prosecutor, it is not for me to comment on whether the policy intent should be extended in that way.

George Lyon: As I said, it is an area that we will reflect on and examine. Clearly, the committee has concerns on the issue.

Ms Maureen Watt (North East Scotland) (SNP): Most of what I was going to say has been covered in questioning. My understanding is that one of the intentions of the bill is to establish equality of treatment between the seller and the buyer of sex. In all that has been said today, I note that members have come to the conclusion that the bill will make it easier to prosecute someone for soliciting but that the difficulty of prosecuting someone for kerb crawling remains. That is not equality.

George Lyon: As I said earlier, the bill introduces the offence that has been successfully prosecuted down south. In terms of the purchaser, the offence is the mirror image of the offence down south.

Our argument is that the bill starts to tackle the problems with the purchaser. Certainly it puts the purchaser and the seller on a more level playing field. That provision was one of the key recommendations of the expert group’s report, which I am sure Maureen Watt has read.

Ms Watt: We have just heard that the offence of kerb crawling in England is very different—

George Lyon: No.

Ms Watt: We heard that it will be led differently under Scots law. Does the minister accept that most of the prostitution in public places is done by way of individuals in private vehicles picking up prostitutes?

George Lyon: Yes. Most of the offences will involve that. The member may have seen the video evidence that Strathclyde police prepared. I
understand that some of what took place was on foot. I do not have the exact split.

Ms Watt: Yes, but most of it is done using vehicles. The minister has admitted that it will be very difficult to prosecute someone who is just kerb crawling.

George Lyon: I said that we propose a new offence in Scotland that is equivalent to the kerb-crawling offence down south, which is based on soliciting. Successful prosecutions have been achieved down south each year since the offence was introduced. If we went further and dealt with loitering, which is of concern to the committee, we would be going beyond the bounds of the kerb-crawling offence. I have signalled that I am willing to reflect on that issue. I hope that that clarifies exactly where we are.

Ms Watt: Yes, but I return to something that was said earlier. We have agreed that prostitutes normally hold up their hands and admit guilt, but I think one of your officials said that the prostitute would let slip the name of the person she was going to meet. With all due respect, that will not happen. Given that the purchaser provides a lifeline for drugs and so forth, no prostitute will incriminate their client. It is naive to suggest that that will lead to a charge of soliciting being brought against the purchaser.

Under the new offence, the police can, for the first time, stop purchasers and interview them as to what they are doing in the area. The hope is that that will lead to a change of soliciting being brought against the purchaser.

George Lyon: That is not the only scenario that was envisaged. Corroborative evidence can be led over a range of circumstances. It may be that, in his interview with the police, the purchaser will let slip something that helps with the conviction. Other evidence may also be led to secure the conviction. We are not suggesting for one minute that we should rely only on the seller grassing up the purchaser. That is not what we envisage. They have signalled that I am willing to reflect on that issue. I hope that that clarifies exactly where we are.

Ms Watt: Yes, but I return to something that was said earlier. We have agreed that prostitutes normally hold up their hands and admit guilt, but I think one of your officials said that the prostitute would let slip the name of the person she was going to meet. With all due respect, that will not happen. Given that the purchaser provides a lifeline for drugs and so forth, no prostitute will incriminate their client. It is naive to suggest that that will lead to a charge of soliciting being brought against the purchaser.

Under the new offence, the police can, for the first time, stop purchasers and interview them as to what they are doing in the area. The hope is that that will lead to a charge of soliciting being brought against the purchaser.

George Lyon: I will take up that point. We have heard in evidence that if that happens the problem is likely to be moved on to another area that probably makes prostitutes much more vulnerable, such as a suburb or woodland. Given all the problems that have been highlighted in the evidence, which you have read, would it not be better to forget about the bill? As you said, other work needs to be done on saunas and the illegal sex trade. Should all public prostitution be dealt with in one bill?

George Lyon: As I have said, the bill is only the first step in the process. The decision was made to take action on the narrow subject of street prostitution. As you say, bigger issues such as indoor prostitution and trafficking will have to be tackled later. Work on that continues.

Another matter that has not been talked about much in the committee meeting is all the good work by the local authorities in Glasgow and Edinburgh to help the victims, who are the prostitutes who are out on the street, exposed to danger nightly. We have seen some consequences of that. Guidance has been given to local authorities to ensure that the same level of service is provided throughout Scotland, although prostitution is centred on the four main cities. That is an important part of the work—perhaps it is just as important as creating a new offence.

Tackling the issue by supporting the individuals concerned and by trying to take them out of prostitution is one of the bigger challenges, along with creating the offence to tackle the problem of the purchaser and of the individuals who unfortunately find themselves on the street selling. Much good work has been done. We have worked closely with local authorities and health boards to ensure that service provision is as good as it can be. We help those unfortunate women to find a route out of prostitution. I hope that the committee supports that.

The Convener: The committee heard evidence about that previously, in relation to Margo MacDonald’s bill. That was in addition to and in accordance with the evidence on the Executive’s bill. We are now scrutinising the impact of the Executive’s bill.

Ms Watt: No committee member who has heard all the evidence does not appreciate all the work that is being done, but any witness from a local authority or any prostitute will say that the bill creates the danger that people will move away from areas such as the managed zone in Aberdeen to areas that make prostitutes more vulnerable and that, if we do not tackle more fully the problem of kerb crawling, prostitutes will not access the services that are provided. Even if prostitutes are assisted out of prostitution, as long as demand continues and it is thought that purchasers will get away with it, more people will enter prostitution. We will get nowhere until you signal that you are taking a much stronger attitude towards purchasers, and the bill does not do that.

George Lyon: I disagree. At the moment, no offence can be attached to the purchaser, apart from breach of the peace. The bill presents a significant step forward as, for the first time, people who solicit and purchase will be open to prosecution. As I have heard today, the committee wants us to consider the loitering offence in relation to vehicles. Extending the offence would take us a step further than England and Wales.
have gone. I will reflect on the concerns that have been expressed.

**Tommy Sheridan:** You have said that we have listened to much evidence, much of which you have read. We have heard from the police and councils and perhaps the most powerful evidence was from communities. Given your comments about reflection, do you accept that you are isolated on creating an offence of loitering in a vehicle?

**George Lyon:** We are not isolated. The issue has been genuinely discussed. We are having the debate because the Executive has proposed an offence that tackles purchasing for the first time. The evidence from down south is that the soliciting offence, which is the kerb-crawling offence in England and Wales, is securing a significant number of convictions. I hope that the same will happen in Scotland when the bill comes into force. I understand the concerns that have been expressed and that you want us to go beyond the England and Wales legislation, and I intend to reflect on those matters.

15:45

**Tommy Sheridan:** You and some members of the committee have been members of the Scottish Parliament for more than seven years. In that time, there has rarely been such unanimity that the Executive has got things wrong in proposed legislation. Does not the fact that the police, communities and councils are all saying the same thing indicate that you have got things wrong?

**George Lyon:** No. However, I have said that I am willing to listen to people’s concerns. I hope that the parties that are represented in the Parliament and people outside it support our desire to take action against purchasers of sex. The offence that we have proposed will mean that action will be taken against them. We do not underestimate the challenges that will be faced in trying to secure convictions, but the evidence on what has happened as a result of the similar soliciting offence in England and Wales seems to demonstrate that the offence is tackling the problem down there.

**Tommy Sheridan:** I think you said that the bill’s primary aim is to tackle the nuisance, fear and alarm that street prostitution causes. I am sure that the committee supports such a laudable aim. The proposals do not aim to tackle prostitution or the sex industry as a whole, which are issues that are so large that they cannot be dealt with by one piece of legislation. However, we have heard—particularly from the communities in Edinburgh and Calton in Glasgow—that kerb crawling is the big cause of fear and alarm, although it seems to be the one problem that the bill does not deal with.

You gave the example of someone driving in the financial district of a city—you may have been referring to Glasgow or to Aberdeen—but let us consider a person driving in Calton. What excuse could they use for driving slowly, stopping, starting and driving slowly again in a residential area?

**George Lyon:** We believe that such behaviour could constitute a breach of the peace but that we will strengthen the police’s ability to tackle such matters by introducing the new offence of soliciting. The point of the bill is to tackle the general public’s concerns about the nuisance, fear and alarm that are caused to communities. That is why we want to create the extra offence. I hear and understand the community’s concerns about taking the offence further and have said that I am willing to reflect on them.

**Tommy Sheridan:** You are probably aware that the Association of Chief Police Officers in Scotland suggested in its written evidence that loitering should be defined in the bill as taking place

>”when a person on foot or otherwise proceeds slowly or proceeds with many stops or remains in a public place for no obvious reason”.

ACPOS suggested that that definition could strengthen the bill to meet communities’ demands and concerns. Finding words that could address those concerns would not be a scientific impossibility.

**George Lyon:** I have said that I am willing to reflect on that matter and that there are ECHR issues to do with the creation of a reverse burden of proof with the current offence. There are issues relating to securing prosecutions as a result of removing section 1(6) of the bill, which is why I have undertaken to reflect on the concerns that have been expressed. I will read the committee’s stage 1 report on the bill, which I am sure will flag up the area as an area in which action needs to be taken.

**Tommy Sheridan:** Surely you accept that proportionality and context must be looked at when ECHR compliance is being considered. The letter from the Justice Department states that there is

>“nothing inherently objectionable about someone sitting or driving slow, in a motor vehicle and, as indicated above, there are many perfectly legitimate reasons why a person might do so.”

If a person is legitimately lost in a residential area, seeking a parking bay in a residential area or delivering a Chinese meal in a residential area because they work for a Chinese carry-out, there is no problem, but if someone is persistently driving slowly in an area in the manner that was described to us by community representatives, surely we need the law to tackle that now. If you are suggesting that the law on breach of the peace
would tackle it now, you are saying that the police are not enforcing the current law to address a community problem that has been raised with them consistently. I do not think that that is fair. Everyone knows that the offence of breach of the peace is notoriously difficult to prove. From that point of view, what your letter to us says about ECHR compliance is out of context. If someone drove so slowly on a motorway, for instance, it would be against the law. If someone does that in a residential area, it will clearly cause nuisance or alarm. Would it not be better to create the offence, to give communities some extra assistance?

George Lyon: I return to the fact that we are creating a kerb-crawling offence that is based on the law on soliciting that has been successful in tackling the problem down south. We believe that that will go a substantial way towards addressing the concerns of communities. I hear what the committee is saying about the need to go slightly further. We have undertaken to reflect on that and investigate it.

Tommy Sheridan: I have a final question. None of us believes that a new offence of loitering in a vehicle would tackle the myriad problems related to prostitution, but do you accept that if that new offence were created, we could deter or change purchasing behaviour? If individuals knew that it was an offence persistently to arrive in an area looking to purchase prostitution or sexual services, would that not influence their behaviour? We have talked about tackling the demand instead of always concentrating on the supply. Do you accept that that new offence could help?

George Lyon: I think that the creation of the new kerb-crawling offence based on soliciting, which is used down south, where a significant number of people are convicted every year, will send a strong signal to those who are currently immune from any form of prosecution because their behaviour does not constitute an offence on the statute book. The creation of—

Tommy Sheridan: But what about corroboration, minister?

George Lyon: If you would let me finish my point—

Tommy Sheridan: I raise the point about corroboration because you cannot compare England and Scotland without—

George Lyon: With respect, the two offences are equivalent; that is the purpose of creating them. In England, the new offence has been successful. That will send a strong message to those who are engaged in the purchase of sex through street prostitution that, for the first time, they could be open to charges. For the first time, the police will have a reason to stop and interview those people about their activities.

The Convener: I will allow a brief supplementary question from Michael McMahon.

Michael McMahon: In relation to the questions that Tommy Sheridan has been asking, I need to get my head round the possibility that someone not using a car and the offence still being called kerb crawling. If you rule out the possibility that someone can commit the offence from a car, can you explain to me how someone can kerb crawl on foot?

George Lyon: But the offence does not rule that out.

Michael McMahon: You keep saying that you are creating an offence of kerb crawling, but you rule out the possibility that that can be done from a car. How can someone kerb crawl on foot?

George Lyon: No. The new offence is of soliciting from a vehicle.

Michael McMahon: That is not kerb crawling—that is soliciting.

George Lyon: Well, I am sorry, but that is the offence down south. It is called kerb crawling, and the offence under the English legislation is soliciting from a vehicle. We are proposing exactly the same offence here.

Tommy Sheridan: Where does the loitering element come in?

George Lyon: That does not apply to those people.

Tommy Sheridan: That is the point.

The Convener: I ask members to speak through the chair, please. Margo MacDonald was next.

Margo MacDonald (Lothians) (Ind): Do you mean to criminalise consensual sex between adults?

George Lyon: No.

Margo MacDonald (Lothians) (Ind): Do you mean to criminalise consensual sex between adults where there is a monetary consideration, I wonder why we are going to all this trouble. On kerb crawling, the people in whose name the proposed legislation has been introduced are those who are offended or alarmed by an approach from someone, usually in a car. We have heard that if someone goes to an area where prostitutes are known to consort, they are more likely to be charged with the proposed new offence. Therefore, it is accepted that there are areas were prostitutes are known to consort. Is that right?

George Lyon: The offence will not be designated to any particular area; it will cover the whole of Scotland. The offence will be applicable no matter where the fear and alarm is caused to
residents or would be caused to a reasonable person.

Margo MacDonald: Yes, but how many cases are on record of fear and alarm being caused to a resident as a result of their being propositioned by someone driving a car outwith an area that is known to be one where prostitutes consort? Are there any?

George Lyon: I suspect that there are very few, but I do not have that information.

Margo MacDonald: All the mess that we have got into—forgive me for saying that, convener—might have been resolved if we had stuck to the expert group's original recommendation, which was that the new offence of causing alarm and nuisance should be triggered by the complaint of a third party. The idea was that only someone who was alarmed or put in a state of agitation would complain. If we had stuck with that, we would not have had to go through all the hoops on proof that we have gone through this afternoon. If the process were complaint led, a person—the third party—would have to be offended or alarmed. Would that not be the simplest way in which to deal with the matter? Can we hear from the prosecutor on that? The police made it plain last week that they would prefer the process to be complaint led.

Andrew McIntyre: To be clear, is the proposition that actual alarm or nuisance would need to be caused to an individual before the offence would be triggered?

Margo MacDonald: The expert group's proposition was that, on the complaint of a third person that nuisance was caused or that they were alarmed or put into a state of fear, in the normal way, the police officer would exercise their judgment and, if they decided that the complaint was reasonable, they would proceed to act on it, as, I presume, happens with other offences.

Andrew McIntyre: I will not comment on the policy behind the bill or any change to it, but under the current proposals—Paul Johnston can correct me if he disagrees—it would be possible to prove the alarm or nuisance element without the need to rely on an individual reporting the matter but, equally, if an individual reported that they were annoyed or alarmed by the conduct, that, too, would be relevant evidence in the proof of the alarm and annoyance aspect of the offence.

Margo MacDonald: If there are no recorded cases of anyone being accused of causing fear or alarm outwith areas that are known to be places where prostitutes consort, why on earth are we making assumptions about that?

Andrew McIntyre: We may be veering into a policy issue. I am not entirely clear about what is being proposed.

Margo MacDonald: I think that the policy has got screwed up and you have to try to make sense of it. Sorry, convener.

George Lyon: As you will recall, the expert group proposed three options and the Executive eventually decided to pursue option 3, which was "the Scottish Law Commission codification route, which retains the penalisation of soliciting and adds the penalisation of the purchaser", but only with an objective test. That was the policy decision.

16:00

One of the arguments for not making the offence complaint led is that that approach would require the individual to testify in a court of law as to what alarm, nuisance or concern was caused to them. Whether individuals would be willing to do that is a question that was asked. We decided to choose option 3 from the recommendations of the expert working group.

Margo MacDonald: I think that you went for the wrong option.

George Lyon: There were three options: two used objective tests, the other offered a complaint-led approach.

Margo MacDonald: The complaint-led procedure would get rid of many of the objections that we have heard.

You said that kerb-crawling legislation in England has been a success. I listened carefully to everyone this afternoon. With the possible exception of Maureen Watt, they seemed to imply that they want the legislation to eliminate prostitution. How, therefore, do we judge the success of prosecutions for kerb crawling in England? Are there fewer prostitutes? Is there less prostitution? Has it moved to another area? Are fewer men purchasing sex? How do we know that, if they now use phones as an alternative means to purchase?

George Lyon: I do not have such figures to hand. When it comes to tackling street prostitution, the proposed legislation will for the first time deal with the purchaser and signal that if they purchase such services they are open to being charged. We hope that that will tackle demand. I am not saying that it will reduce demand; it might just shift it elsewhere, but that is the nature of prostitution and part of the bigger discussion on what we do about other issues, such as indoor prostitution and trafficking, with which Margo MacDonald is familiar.
Creating the offence is the first step in trying to tackle street prostitution and the problem of the purchaser, and trying to influence demand if possible.

Margo MacDonald: As you know, I think that it is absolutely correct to prosecute if offence and alarm are caused to the general public by the buyer, seller or both of sexual services—that is right in my book—but if the attempted buying and selling is done in a discreet manner out of the way of the public, why would we bother to prosecute? May I find out from the prosecutor?

Andrew McIntyre: The question why we should bother is probably not for me. Under the bill, if the transaction is in such discreet circumstances that no alarm, offence or nuisance are caused or it could not even be inferred that a reasonable person could be alarmed by the conduct, there could be no prosecution because we would not be able to lead evidence to get us past that necessary test, which is part of the bill.

Margo MacDonald: If the area in which prostitutes were known to consort was a discreet area where members of the public were unlikely to be offended by their transactions, there would not be many prosecutions.

Andrew McIntyre: The nature of the location, time of the transaction and all the surrounding facts and circumstances would be factors that would determine whether nuisance could be established. That is the best answer that I can give as a prosecutor.

Margo MacDonald: If it was in a dockside area after 9 o'clock at night and there were no houses or places of work for someone in a car to be going to, it is unlikely that there would be any offence.

Andrew McIntyre: It would not be for me to say in this forum whether there would be a prosecution on the basis of very specific circumstances such as those. It would be improper for me to comment; in effect, I would be binding independent prosecutors throughout the country. What I can say is that the factors that I have just described would be relevant in determining whether it could be proved that nuisance had taken place.

Paul Martin: If police in a patrol car passed by and saw the offence being committed, would they be in a position to refer that for prosecution or would they have to say, "Sorry, but this is a third-party complaint"?

Andrew McIntyre: There is confusion between a number of issues here. The point is that to form the basis of a prosecution it would be necessary to show that the circumstances were such that if a reasonable person had seen the offence, they would be alarmed or annoyed. The prosecution could be founded on the basis of evidence from police officers of the surrounding facts and circumstances. The prosecutor would lead evidence of all the facts and circumstances before the court, which would decide not on the basis of someone saying, "I was annoyed," or, "I was alarmed," but on the basis of whether those were circumstances from which it was reasonable that annoyance or alarm would ensue.

Paul Martin: How do you frame legislation in that respect? You seem to be saying that there has to be a complainer, but regardless of whether there is a complainer there will be a set of circumstances in which the police could refer the matter anyway.

Andrew McIntyre: Again, I am slightly confused about what is being asked of me. It is not for me to comment on whether there should be a change to make the offence complainer-led, as that is a matter of policy. What I can say is that, as the bill currently stands, there could be prosecutions regardless of whether people were alarmed by the conduct.

The Convener: I will draw this session to an end. I thank the minister and his supporting officials for their evidence this afternoon. It has been a long session. There are areas in which some committee members have concerns about the bill as it is proposed. I am sure that many of those concerns will be reflected in the committee’s stage 1 report to Parliament and that the minister will await the report’s content with interest.

George Lyon: Thank you, convener—it has been a genuine exchange of views. Everybody wants to ensure that the offence tackles the problems that we have identified.
SUBMISSION FROM CROWN OFFICE AND PROCURATOR FISCAL SERVICE

In advance of the Committee’s next evidence session on 7 November, at which I will attend, I thought it might be helpful to record the comments of the Crown Office and Procurator Fiscal Service (COPFS) on some of the issues which have been the subject of recent discussion. I would be grateful if these comments can be copied to Committee members.

I have read the submission made on behalf of ACPOS and am aware of the views expressed there. I have also consulted with the Divisional Procurator Fiscal for Glasgow A Division (City Centre) whose views are alluded to in the ACPOS submission. In particular, I have noted the views expressed on page three of the submission, attributed to the Procurator Fiscal Service at Glasgow. I should record that, as expressed in the ACPOS submission, the views attributed to the Procurator Fiscal are incomplete and to that extent cannot be taken as accurate, or as representative of the views of the prosecution service.

The views in this letter are those of COPFS, discharging our role to consider the impact for the prosecution of proposed legislation, rather than issues of policy. I will therefore focus on the legal issues relating to the proof of the proposed offences in the Scottish courts.

Soliciting

At present, Scots law makes it an offence for a prostitute to solicit in public place; the act of “purchasing” is not an offence. The Bill therefore extends the scope of the offence of soliciting by making criminal, for the first time, the act of the purchaser as well as the seller. As is noted by ACPOS, the Bill does not define soliciting and the word would therefore be given its ordinary meaning. The absence of a statutory definition of the term has not been problematic under the current law and would be unlikely to present a problem in proving the offence contained in the Bill.

In order to bring a prosecution for soliciting against either a seller or a purchaser there would require to be sufficient evidence to prove that the accused was soliciting for the purpose of prostitution.

The rule of corroboration would apply and, as such, there would require to be two sources of evidence to prove that the accused (either the seller or the purchaser) was actually soliciting for the purpose of prostitution. This is the same standard of evidence as is required under the current law to commence criminal proceedings against prostitutes who solicit.

Proving that the accused was soliciting for the purpose of prostitution

The circumstances in which sellers and purchasers solicit mean that securing the necessary standard of evidence can present a challenge to police and prosecutors.Transactions between purchasers and sellers often take place in discreet circumstances and where there are few eyewitnesses. While eyewitnesses may be able to speak to the the actions of two individuals and form a reasonable belief about their purpose, such evidence may not prove to the requisite legal standard that the purpose was related to soliciting. Where the nature of the exchange cannot be spoken to by independent witnesses there is obvious scope for either or both of the parties to provide an innocent explanation for their conduct.

It is important to recognise, however, that, with the exception of the requirement to prove the nuisance element, the proposed offence is defined in broadly similar terms to the current offence of soliciting. Despite the discreet circumstances in which soliciting takes place, prosecutors are currently able to bring proceedings and secure convictions against those who solicit. Those prosecutions generally proceed on the basis of evidence from a number of sources including, for example, evidence of an admission made by the prostitute in response to questioning by police.
officers, evidence from police officers of the surrounding facts and circumstances, including the
behaviour of the prostitute, or evidence from police or civilian witnesses who overhear the
“transaction”.

Under the Bill’s provisions soliciting by sellers would continue to be proved in the same way;
likewise, the same types of evidence would be admissible to prove the offence against purchasers.
In a prosecution against a purchaser, the evidence of the prostitute that she was approached for
the purposes of prostitution, or the evidence of any individual mistakenly approached by a
purchaser, could found the basis of a prosecution providing that the necessary corroborative
evidence was available. Other sources of evidence might come from the surrounding facts and
circumstances as seen by an eyewitness or captured by a CCTV recording, or evidence of an
incriminating remark made by the accused when questioned by police officers.

There remains the question, raised in the paper submitted by ACPOS, whether those suspected
of soliciting for the purpose of prostitution are likely to admit to the nature of their activity. Such a
question properly arises in relation to most offences. Nonetheless, experience shows that
suspects often make incriminating comments when questioned by the police; those comments
might not amount to a full admission but can be sufficiently incriminating to provide the necessary
corroborative evidence on which a prosecution can be founded. In the context of prostitution, it is our
experience that prosecutions under the current legislation often proceed on the basis of admissions
made by the prostitute. Indeed, prosecutors report that such cases rarely proceed to trial, with the
accused almost invariably pleading guilty. In extending the offence to purchasers, it is possible that
those suspected of purchasing may be less likely to make admissions. The circumstances of the
purchaser will often be very different from those of the prostitute, with the result that purchasers
may be less inclined to incriminate themselves. It is also possible that, where there is sufficient
evidence to prosecute, purchasers may be less likely to plead guilty. These are fairly speculative
comments, but the basis of that speculation is in factors which are perhaps inevitable given the
nature of the conduct which is being targeted, rather than a consequence of the Bill’s provisions.

Soliciting from within a car (“Kerb Crawling”)

The Bill provides that to solicit from within a private vehicle will become a criminal offence. This
provision is broadly similar to the English provision on “Kerb Crawling”. It is important to note that
the offence of “kerb crawling” in England and Wales is actually an offence of soliciting from within a
vehicle rather than an offence of loitering within a vehicle.

As the essence of this offence is soliciting, it would be proved according to the same standard and
on the basis of the same types of evidence as soliciting on foot, as considered above. This will
allow prosecutions to be brought against purchasers who solicit prostitutes from within their cars,
where there is sufficient evidence to prove that the purchaser was soliciting for the purpose of
prostitution.

Loitering

An offence of loitering can, of course, be committed before the prostitute or purchaser actually
solicits for the purpose of prostitution. This offence currently exists under the present legislation,
but applies only to prostitutes who loiter. This provision will be necessary if the actions of
purchasers who loiter for the purposes of prostitution are to be criminalised.

In order to prove that a seller or purchaser is loitering for the purpose of prostitution it will be
necessary to prove the intention of the seller or purchaser. As with soliciting, there would require to
be two sources of evidence. While it may be difficult to prove that a person who is loitering is doing
so for the purposes of prostitution where there is no evidence that they have actually solicited, it is
possible that the person’s behaviour (i.e. the loitering) may be observed by either civilian or police
witnesses, providing police officers with a basis on which to question the individual. Any
incriminating remark made by the seller or the purchaser might provide the necessary
corroborative. In circumstances where there was evidence of actual soliciting then the soliciting
charge rather than the loitering charge would be appropriate.
The Bill does not define “loitering”, but it is a term with which the courts are familiar. Given that the offence of loitering currently applies in relation to prostitutes without statutory definition of the term, it seems unlikely that it would present a problem in proving the offence contained in the Bill.

The Bill does not make it an offence to loiter in a car for the purposes of prostitution. This means that those who loiter by visiting an area in their car but who do not actually solicit a prostitute do not commit a criminal offence.

I am aware that it is the position of ACPOS that the provisions of the Bill should be extended to make such conduct criminal. The question of whether the Bill should include such an offence is a matter of policy and, as such, I do not offer a comment on that.

The “alarm, offence or nuisance” test

The Bill does not make either soliciting or loitering for the purposes of prostitution an offence in itself. The act becomes criminal only where it takes place in circumstances which are likely to cause alarm, offence or nuisance. The proposed offence would therefore require the prosecutor to prove an additional element, which is not part of the current offence of soliciting by prostitutes.

Importantly, the test is an objective one and prosecutors will not require to prove that actual alarm, offence or nuisance was caused by the act. Accordingly, it would be possible to prove this aspect of the offence by evidence of the nature of the conduct and the circumstances in which it took place. That evidence could come from civilian or police witness or from CCTV footage. It would then be for the court to determine whether the circumstances disclosed that the conduct was such that a reasonable person would consider it to be likely to cause alarm, offence or nuisance. Any available evidence from people actually affected by the conduct, for example local residents or other members of the public, might be relevant and important to the proof of the nuisance element of the offences. However such evidence may not be available or, where it is, members of the public may be reluctant to become involved in a criminal prosecution. For these reasons it is important that the test is an objective one. It is also worthy of note that this test is similar to the test for the offence of Breach of the Peace and it is therefore a concept with which prosecutors and the courts are familiar.

Police Cautions

Finally I note the comments of ACPOS on the use of police cautions. The use of cautions can be an important means through which prostitutes are given an opportunity to address the causes of their offending rather than facing prosecution. I would simply add that the new provisions do not interfere with the capacity of the police to continue to operate on this basis.

Conclusion

This is an area in which proof will always be difficult. Proving the intentions of those who operate in discreet or at least clandestine circumstances for the purposes of prostitution will continue to be a challenge, particularly within the framework of Scottish criminal law which requires a high standard of proof. As with all offences, there will be cases in which the evidence does not meet that standard. Where the required standard of evidence is available, the provisions of the Bill would provide prosecutors with a basis on which to take criminal proceedings against both purchasers and sellers who solicit for the purpose of prostitution where that conduct is likely to cause alarm offence or nuisance.

SUPPLEMENTARY LETTER FROM SCOTTISH EXECUTIVE BILL TEAM

An issue has been raised during the Committee’s evidence taking regarding the potential implications of the new Bill for rehabilitation of individuals convicted of prostitution related offences, in particular for those involved in selling. We have been in contact with Disclosure Scotland to check what appears on Disclosure certificates in practice and I thought it might be helpful to share their explanation with the Committee.
Disclosure Scotland draw their data from two systems; the Police National Computer and the Criminal History System. In relation to section 46 offences, Disclosure Scotland tell us that in most cases the Police National Computer (PNC) record is what would appear on the disclosure certificate, as this is more descriptive than the alternative record on the Criminal History System (CHS). An example of this would be:

01/01/06 Edinburgh Sheriff

*Prostitute (Male or Female) soliciting*    *Civic Government (Scotland) Act 1982 s 46(1)(b)*

In some cases, where there is no PNC record for some reason, the record which would appear on the certificate would be that which appears on the Criminal History System (CHS). The same offence as above would appear in the following format:

01/01/06       PLB000101010101010/06 Edinburgh Sheriff

*Civic Government (Scotland) Act 1982 Section 46 1(B)   Fine £20*

Although it might not be immediately apparent from a CHS record what the nature of the offence is, Disclosure Scotland provide a plain English translation on their website to assist organisations in receipt of such information in interpreting it. It would be expected that employers would refer to this, or contact police force’s disclosure units in order to assess whether an offence was of relevance to the post or profession applied for. In the case of the above offence the Disclosure Scotland website would read:

CGOV198200461B00   CIVIC GOV 1982 S46(1)(B) PROSTITUTION - SOLICIT 1011982    N

*Civic Government (Scotland) Act 1982  S46(1)(b)   Prostitution – solicit*

The Executive’s policy to enhance public safety by providing potential employers and organisations with criminal history information is delivered by Disclosure Scotland. In doing so we stress that if any information is revealed then it should be used as part of good recruitment practice and that it should not be the sole reason judging a person to be unsuitable, unless that person is disqualified from working with a particular client group.

Clearly it is important for employers to understand the specific nature of the offence. However, employers should not disqualify someone solely on the basis of having been convicted of an offence. (The nature of some offences or inclusion on certain lists, such as the Protection of Children (Scotland) Act 2003, can be enough to disqualify someone from specific posts, but this does not apply to a section 46 offence). Employers are encouraged to reach a balanced judgement having regard to factors such as:-

- the nature of the offence;
- its relevance to the post, position or profession in question;
- how long ago the offence took place;
- the person’s age at the time;
- whether it was an isolated offence or part of a pattern of offending;
- what is known about the person’s conduct and character before or since.
Prostitution (Public Places) (Scotland) Bill: Stage 1

14:05

The Convener: Item 3 is further consideration of the Prostitution (Public Places) (Scotland) Bill. I will allow a short period in which the officials who are supporting the minister can take their seats. I welcome Paul Johnston, who is a solicitor from the office of the solicitor to the Scottish Executive; Patrick Down, who is a policy officer from the corporate killing and prostitution team; and Andrew McIntyre, who is the principal procurator fiscal depute from the victim, witness and vulnerable accused team.

At last week’s meeting, during its discussion of stage 1 evidence on the bill, the committee agreed that it wished to invite the deputy minister to today’s meeting to provide further oral evidence on the bill. I wrote to the minister, indicating some of the areas that we wanted to cover. For the record, the committee is interested, in particular, in the possible implications of using the test of causing alarm, offence or nuisance to a reasonable person to determine whether an offence has been committed under the bill. The committee also wishes to explore with the Executive whether such an interpretation of the bill could make it easier for management zones to be legally established. I draw members’ attention to the fact that the minister has given the committee a written reply in advance of his attendance today, of which members should have a copy.

Before you make your introductory remarks, minister, I thank you for attending the meeting at fairly short notice. We appreciate that. I hope that it has not caused any great inconvenience to your diary.

You now have the opportunity to make some introductory remarks on the areas that the committee wants to pursue with you and with the Executive. After that, we will move to questions from members.

George Lyon: I thank the committee for giving me the opportunity to address it on the issue of legal management zones. I have provided a detailed answer in my letter to the committee. I apologise for the fact that we could get the letter to you only at close of play last night; it took us some time to turn it round and to answer the questions that were contained in your letter of last week. I am happy to be here today to outline the position.

I make it clear that our proposals do not create or allow legal management or tolerance zones. The Executive has never been in favour of such zones and we are clear that that is not the effect of our proposals. Nevertheless, the new offences represent a deliberate departure from the existing offence in two key respects. First, they specifically target the negative impact of street prostitution on our local communities. Secondly, they explicitly include purchasers for the first time.

Why has the Executive proposed those changes? We have done so in the light of the recommendations that were made by the expert group on prostitution, which were broadly supported by consultees. Like the expert group, we recognise that changes to the criminal law alone cannot deliver our ultimate goal of eradicating street prostitution. We need local, multi-agency strategies that address all the facets of this extremely complex problem. That is why we have issued guidance to local authorities on how to tackle street prostitution. We must also ensure that whatever action we take now on street prostitution does not have unintended effects. That is why we have indicated that further action is likely to be required in the light of our on-going work on off-street prostitution and trafficking.

Convener, your letter outlined the committee’s concern that the way in which the proposed offences are formulated could compromise enforcement and prosecution. I will address the question whether there are circumstances in which soliciting or loitering would not be an offence.

The bill criminalises soliciting or loitering for the purposes of prostitution in circumstances in which a reasonable person would consider it likely to cause alarm, offence or nuisance. Clearly, there may be some circumstances in which a reasonable person would not consider that the behaviour would be likely to cause alarm, offence or nuisance and therefore no offence would be committed.

It is worth noting that, under the current law, no charge can be brought unless and until the seller has received two police warnings for their conduct. However, under our proposals, the police would be able to charge an individual on the first occasion that a reasonable person would consider that their conduct was likely to cause alarm, offence or nuisance.

Furthermore, the offence does not require that actual nuisance, alarm or offence has been caused to a member of the public—it requires only that a reasonable person would consider that the behaviour would be likely to cause alarm, offence or nuisance. It will be for the courts to determine in any particular case whether the test is met, taking into account all the circumstances of the case. We adopted that objective test precisely because both
the Crown Office and the Association of Chief Police Officers in Scotland said that that would aid enforcement and prosecution.

As I have said, the Executive is not—nor ever has been—in favour of legal management or tolerance zones. Such zones are not in the interests of the wider community—especially not those of people who live or work near the zones—and there is little evidence that they do anything to improve the safety of those who are involved in prostitution. We are clear that the bill does not create legal management zones. The law will apply throughout Scotland. There will be no location or zone where it does not apply.

As with all offences, chief constables have discretion in operational policing matters and it will be for them to determine how they enforce the new offences at the local level. It will then be for the courts to determine in each individual case whether the test for the offence is met. In doing so, they must take account of the nature of an area and who was around at the time. They must also take account of the conduct of the accused, such as whether it was persistent, aggressive or targeted towards innocent passers-by.

However, soliciting or loitering in a manner that a reasonable person would consider likely to cause nuisance, alarm or offence, or in circumstances in which they would consider it likely to do so, will be an offence wherever it takes place. It is wrong to consider that there will be areas where the law cannot be enforced. We are clear that there is nowhere that public disorder arising from street prostitution should be tolerated.

I am happy to answer any questions that the committee may have. Andrew McIntyre, from the Crown Office, is also available to answer any detailed questions that you may have on prosecuting the proposed offences.

The Convener: Thank you.

Michael McMahon (Hamilton North and Bellshill) (Lab): Thank you for your comments and for the letter, which I have read a few times. I wanted to be clear about exactly what is proposed. On the face of it, you have given the committee the answers that it was looking for, following our serious discussion of the matter. However, the last sentence of the second-last paragraph of your letter almost snatches defeat from the jaws of victory. It states:

"as with all offences, chief constables have discretion on operational policing matters and it will be for them to determine how they enforce the new offences at the local level."

To me, that undermines everything that you say in the previous three pages of the correspondence. That was the essence of what we were trying to clarify. Are the new offences going to be enforced because they are offences? Can you give us that bottom line?

George Lyon: I can say that there is no location or zone where the new offences will not apply. I made that clear in my introduction. Also, as I said, each case will have to be assessed on its individual merits. There will be no zones or areas where the offences will not apply. However, as I said in my introduction, as with all offences, it is for the chief constables to determine how they enforce the new offences at the local level. That is absolutely the correct position. I do not think that there is an appetite for the introduction of politicians telling the police how to operate at the local level. It is for the police to decide how to do that. We have created offences that are enforceable throughout Scotland and we expect the police to enforce them.

Michael McMahon: Except where the police get a nod and a wink from the local authority to set up a wee zone where they will tolerate prostitution and allow things to happen because they have come to an agreement on how they will operate.

14:15

George Lyon: I return to my original point. It is correct that there is a separation between politicians and police and that the local police decide on operational policing matters. That applies to every offence. It is, rightly, up to the chief constable to decide on operational matters, and it will always be that way unless Parliament decides that it wishes to instruct chiefs of police on how to conduct such matters at the local level.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): We all accept that it is up to the police to decide how they conduct themselves and enforce the law. However, I do not think that anybody would agree—I am sure that the minister would not—that it is entirely appropriate for the police to ignore the will of Parliament and ignore the laws that Parliament passes.

Like Michael McMahon, I thought that your letter was a very good one. It makes it absolutely clear that the Executive has never supported the establishment of legal management zones. Nevertheless, when a representative of Grampian police gave evidence to the committee on that issue, he said that there was a management zone in operation in Aberdeen. Can your legal advisers explain to the committee the legal position of that so-called management zone in Aberdeen under the current law? If we pass the bill, will the status of that management zone change?

George Lyon: I will respond first and then let the lawyers add their comments.
I understand that there is an informal arrangement in Aberdeen whereby women who are involved in prostitution are not charged for soliciting or loitering provided that they do so within a certain area and at certain times. However, as a representative of the local authority told the committee, it will review that position in the light of the new offences that are being created. We believe that it will be harder for the police to justify not charging people for what is explicitly a public order offence than it is currently under section 46 of the Civic Government (Scotland) Act 1982. We believe that it will be harder for such justification to be made.

I will hand over to Paul Johnston to explain the legal position.

Paul Johnston (Scottish Executive Legal and Parliamentary Services): I am not sure that there is an awful lot further to add. Section 46 of the Civic Government (Scotland) Act 1982 applies throughout Scotland whenever a prostitute loiters or solicits for the purpose of prostitution. Ultimately, however, it is for the local police to decide how they enforce that law. The provisions in the bill, similarly, will apply throughout Scotland. The minister has made it clear that there are no locations where the law will not apply. Nevertheless, we simply cannot say that the police will be compelled to enforce the law in a particular way.

Mike Rumbles: I do not think that anybody would be asking the police to enforce the law in a particular way; we would be asking them just to enforce the law. Nobody would suggest to a chief constable how he should operate, but we suggest to every chief constable in Scotland that they enforce the law that the Parliament lays down.

The matter is still not clear to me from your responses, although I thought that my questions were fairly simple. Is the management zone that is operating in Aberdeen—it was called a management zone by Grampian police in evidence to us—legal under the current law? If we pass the bill, will it still be legal?

Andrew McIntyre (Crown Office and Procurator Fiscal Service): Your questions highlight an issue with the use of the term “management zone”, which suggests that there is some formality in the arrangement or its status. The law does not prescribe that it is legal to have management zones but, equally, the law does not prohibit their status or existence. Essentially, a management zone is the police taking a decision that they will exercise their discretion in a particular way in a particular area. Whereas usually—this applies to any kind of offence—the police have discretion not to charge, caution or report for prosecution any individual who is alleged to have committed any offence, a management zone arises when the police say that they will exercise their discretion in a blanket way in a particular area. I cannot think of any offence in relation to which the police are always obligated, as a matter of law, to take some form of action, but they have a duty to enforce the law. Management zones are lawful under the current legislation.

Mike Rumbles: They are lawful?

Andrew McIntyre: Yes. It is lawful for the police to decide that they will enforce the law in a particular way in a particular area. Whether that will change under the new legislation is a different question. I cannot see that the new legislation will make it unlawful for the police to take a particular approach to the investigation of crime or enforcement of the law in a particular area, but the offence will be a different kind of offence. It will be a public order offence. The police will need to consider their policy and justify it on a different basis because, under the new law, if a decision were made to tolerate a particular type of offence, the offence that would be being tolerated would be a public order offence. That is different from the current position. I am speaking about decisions that would require to be taken by the police, so I am a little bit out of my territory, but I imagine that it would be reasonable to expect the police to review their practice.

Mike Rumbles: You make it clear that under current practice the management zone is lawful, but I will ask you the question that I asked the representative of Grampian police. I asked them whether there was any other law applicable in Scotland that the police took a conscious decision not to pursue in a particular area. They responded with a negative because they could not think of any other examples. That is on the record.

I think that you can see the frustration of committee members. As you have outlined, it is lawful for management zones to exist, but I think—I may be wrong—that a majority of committee members do not want there to be management zones in Scotland. From the evidence that you have given to us, it appears that the only way for us as legislators to ensure that we do not have management zones in Scotland is to include in the bill a reference to the fact that we do not have management zones in Scotland.

Andrew McIntyre: This is a slightly different issue, but the way in which the bill is framed ensures that it certainly would not be possible for a prosecutor to say that there are areas of the country in which someone would not be liable to prosecution. Even in remote, quiet or derelict areas there is always the risk that someone will cause alarm, offence or nuisance. Therefore, it does not all hinge on having a management zone. However, that is a separate question from the question whether the police would thereafter
choose to caution or report for prosecution people who are breaking the law. If the police chose not to report what has become a public order offence and refused to apply the new law in relation to public order, your concern would relate. You would need to get reassurance from the police on the matter, but it is certainly not the case that the law would disappear or could not be enforced in certain zones. As I see it, the bill does not make it easier for management zones to be created.

George Lyon: It would be for chief constables to consider Parliament’s intention behind the creation of the new offence. Our discussion makes it clear on the record the intention behind how the offence will be applied throughout Scotland. The police will have to draw on the will of Parliament, the spirit of the legislation and what has been said in Parliament in coming to decisions on how they police the matter locally and enforce the legislation that we have created.

If I can take the analogy with speeding, not every speeding offence throughout the country will necessarily result in a prosecution.

Mike Rumbles: But the police do not say, “We will not stop speeding on the A90.”

George Lyon: No, but the police have flexibility in determining whether they will prosecute various offences at certain times.

Mike Rumbles: I will ask a final question, which goes back to what Andrew McIntyre said about the bill making it harder for a chief constable to justify management zones. That is the crux of the issue. I am heartened by what the minister has said. I think that he is going as far as he can without legislation to make the situation clear. However, although Andrew McIntyre has said that it will be harder for a chief constable to justify having management zones if we pass the bill as it stands, although Andrew McIntyre has said that it will be harder for a chief constable to justify such an approach, unless Parliament binds chief constables.

Patrick Down (Scottish Executive Justice Department): I should stress that there is no area where the offence will be unenforceable. That is not the same thing as saying that there is no area where the police will have the discretion to choose, in a particular instance, not to charge somebody for a soliciting or lottering offence.

The Convener: I would like to pursue this matter a little further. Mike Rumbles has been trying to draw out an analogy. He is not saying that the police will have to enforce every single law in the same way in every circumstance. Of course there is discretion. Mike Rumbles’s point is that we cannot find any other example of a law for which the police, in agreement with a public authority, designate an area where they will have the discretion to not enforce that law and it becomes well known that they will choose not to enforce the law there. The analogy that Mike Rumbles uses is that it is unthinkable that the police would agree with the local authority to choose a particular road on which they would not enforce speed limits and that that would become public knowledge.

I do not see how you can justify the statement that it will be harder for the police to justify such an approach under the new law as opposed to another law. Surely the police, and possibly the local authority, could say that, because of the nature of the area, it is unlikely that alarm and distress will be caused and public order offences will not result and that therefore they do not see a need to enforce the particular law in the particular area.

Andrew McIntyre: It is the very last part of that which makes me say what I have said. It is not possible to say that, just because an area is quiet or derelict, a public order offence will not arise there. It could take place for a number of reasons, such as the nature or circumstances in which the
soliciting takes place, regardless of the quietness of the area.

The point that I am trying to articulate to the committee is that it would be more difficult for the police to operate a management zone in the sense that they have done until now. To do that would mean having to take a blanket decision not to caution or report people to the procurator fiscal in respect of a certain type of offence. In this case, it would be a public order offence. The police would be making a decision that, regardless of the nuisance, the police should not be reporting the offences. That would be fairly different from what I understand happens with a management zone at present, where it is offences of soliciting per se that are tolerated.

14:30

Paul Martin (Glasgow Springburn) (Lab): We have been discussing management zones and we have raised concerns about the need for police officers to enforce the new legislation. For example, in an earlier evidence session we heard from residents of Calton. Could a situation be envisaged in which, following representations from such residents in which they raise concerns about the offence, a chief constable decides to give notice to their officers that they do not want to enforce the legislation in that particular location? That would be very much against the spirit of the bill. Is there anything that the Parliament could do to intervene in that situation? I appreciate the issue concerning the operational responsibilities of police officers. Legally, could we make any representations to ensure that the chief constable reversed such a decision?

George Lyon: There has been a set of circumstances in Edinburgh in which concerns were raised by local residents about the very situation that you described. Ultimately, chief constables report to their police boards. I would imagine that a chief constable would have to answer to the board if there had been complaints or concerns that they were not enforcing the legislation in an area. They would be forced to account for their actions. I imagine that, if there were concerns, they would be forced to take action.

Paul Martin: The point that that raises—

The Convener: I want to question one thing that the minister has said. Is it not the case that the relationship between the police force and the police board is such that the board cannot instruct the chief constable on operational matters?

George Lyon: They would still have to account to the board for their actions. The board is the forum for that discussion.

Paul Martin: I suppose that the—

The Convener: I think that Andrew McIntyre wishes to come in on that point.

Andrew McIntyre: We have been discussing what the legislation does and does not allow. Enforcement is an issue for the police. It is always open in a particular category of case and in a particular area of crime for local prosecutors to give instructions to the police about the circumstances in which they expect to receive a report on a particular type of crime. That is not required under law, and there is never an obligation on the local prosecutor to do that.

It comes back to the point about relying on discretion. There is a discretion on the local prosecutor to issue instructions to the police. That prosecutor has a duty to act in and reflect the public interest. As far as the prosecutor's decisions are concerned, it would be for the prosecutor to reflect the will of the Parliament in taking cognisance of the public interest. The fact that Parliament had considered the legislation necessary to protect communities against nuisance is a factor that would influence an assessment of the public interest. If the situation arose, there would be a role for local prosecutors to consider whether the current practice of the local police force was required and whether instructions were justified. Prosecutors could issue instructions if the law was not being enforced according to the spirit of the legislation. However, that is not required by law.

George Lyon: The Lord Advocate would also have a role in that because that post holds the same public interest role. Therefore, the Lord Advocate would have a role in ensuring that the will of Parliament was recognised and enforced. Perhaps Paul Johnston could explain the point a little further.

Paul Martin: Before Paul Johnston speaks about that, I want to ask whether there is an issue around the police having to gather the evidence in the first place in order for prosecutors to become involved. Are you saying, Andrew, that prosecutors could make direct approaches and gather evidence from a community themselves?

Andrew McIntyre: The police must be involved. If, when reviewing the situation, the local prosecutor or the Lord Advocate, to whom the minister has referred, decided that, as a matter of public interest, it was necessary for the police to use the new legislation in a particular way, and if there was a need to give an instruction because the law was not being used in the way that was required to reflect the public interest, an instruction could be given to police forces that the legislation should be enforced and used in a particular way. It
would still be the police who would investigate and report the offences.

That does not happen routinely in relation to all crimes. The Lord Advocate and procurators fiscal do not routinely issue the police with directions on how to investigate and enforce all sorts of crimes. The power is there, however, if it is necessary to issue such an instruction in the public interest.

Paul Johnston: The enforcement of the law is not a matter for a bill. It is not a matter that would require to be included in legislation and I am not aware of any criminal law that seeks to specify how that law is to be enforced. To reiterate what Andrew McIntyre said, if the Parliament had concerns about the enforcement of a particular offence, it could make those concerns known. The Lord Advocate has ultimate responsibility for the prosecution of all offences in Scotland and could, at her discretion, issue guidance or instructions to prosecutors if appropriate.

Paul Martin: We are talking about something that already happens and to which a blind eye is turned. That is why we are probing the point. If somebody decided to attack somebody else with a knife in Sauchiehall Street, it is unlikely that police officers would decide to turn a blind eye, but soliciting happens in various parts of Scotland and a blind eye is turned to it. How do we ensure that we put in place effective, enforceable legal remedies? Is the minister considering stage 2 amendments on inciting soliciting behaviour? Would setting up a management zone count as inciting soliciting behaviour?

George Lyon: I am not sure. We would need to reflect on that.

Paul Johnston: Inciting the commission of an offence or attempting to commit an offence is generally covered under Scots law. We do not normally need to specify in law that it is also an offence to incite the offending conduct, attempt to do it or be part of it in some way. It would be an entirely different issue to say who would be responsible for incitement.

Ms Maureen Watt (North East Scotland) (SNP): I ask for the convener’s guidance on whether we are restricted to asking the minister about the contents of his letter. We raised other points that we thought needed clarification.

The Convener: I will allow you to ask other questions of the minister within reason, but I will not allow you to go over the whole of his previous evidence.

Ms Watt: No, that is absolutely not my intention.

Minister, is it not the case that the bill will result in more prosecutions, particularly of women and particularly—as members of the committee would like—in Aberdeen? Is that to the benefit of women who are in prostitution and will it help them to get out of it or will it continue the vicious cycle that we have talked about in the committee for long enough?

George Lyon: I cannot predict how many prosecutions the new offence will create in future. However, I draw your attention to the experience down south, where significant numbers have been prosecuted under a similar offence. The new offence that we are creating in Scotland is the equivalent of the English offence, so we expect significant numbers of prosecutions to take place. I refer, of course, to prosecutions of the purchaser as well as the seller, which is not the case at the moment.

The criminal law on its own is not the answer to the problem for the victims of prostitution, who are the people who are involved in the selling. It has a small role to play, but there needs to be investment in support and help for women to allow them to find routes out of prostitution. That is just as important as the criminal law aspect of tackling the problem.

There is a vicious cycle that consists of the seller being arrested, inevitably pleading guilty because that gets the case over and done with quickly, being fined and being back out on the street within a couple of hours, desperately needing to go out and sell to raise the money to pay the fine. I do not know whether you have heard about that in evidence but, when I spoke to the various support groups for the women, I was shown evidence of it. Criminal law does not stop people being caught up in prostitution, and we must take that into consideration when we discuss the bill.

The bill does not stand on its own. A range of other measures need to be taken to ensure that we provide routes out of prostitution for the victims, who are the women. Simply to bang them up, fine them, then put them back on the street—the circumstances in which they find themselves mean that they are back out on the street within hours to try to raise the money for the fine through selling their services—perpetuates rather than ends the problem. That must be factored into the discretion that police forces have to tackle the problem. If simply constantly arresting those victims brought an end to prostitution, it would have ended long ago.

Ms Watt: Under the bill, prostitutes may scatter all over a city, for example, so street workers and all the agencies that try to help prostitutes will have a much bigger job to do in finding them to offer them services. If the bill is intended to help women involved in prostitution, that situation will not achieve that.
George Lyon: As I tried to explain in my previous answer, the bill is just a small part of the action that needs to be taken to address prostitution and to find routes out of prostitution for the women who are caught up in it. The statistics, which I am sure members received in evidence, show that more than 95 per cent of those women have a drug habit that needs to be fed, and some women have partners who force them to go out on to the streets to earn money. A set of social circumstances must be taken into consideration.

We must be careful not to take action that drives prostitution underground, because we need to ensure that those people are identified and that the help that Glasgow City Council and others give them can reach them to assist them in finding a way out of prostitution and into a normal lifestyle. That is not easy, given the chaotic lifestyles that many such women have.

Ms Watt: You mentioned examining evidence from down south. In relation to the prosecution of purchasers, what is your attitude to rehab programmes? We did not receive conclusive evidence about whether confiscating vehicles or disqualifying drivers helped purchasers to address their offending behaviour. Should punishment affect the families of purchasers?

George Lyon: In my previous evidence, I assured committee members who raised the issue that we take seriously their concerns about the punishment of purchasers and that we would reflect on them and consider how to address them.

Ms Watt: Have you gone further along that line?

George Lyon: I assure you that work has been done on those matters.

Tommy Sheridan (Glasgow) (Sol): At the previous meeting at which you appeared, you agreed to reflect on the extent of the law. You have repeated that we will come into line with England and Wales, but you heard at the previous meeting the concern of some members that we should go further, and you said that you would reflect on that. Has any reflection taken place? Is there anything to report? Are you waiting to receive a report?

George Lyon: I assure you that work has been undertaken to address the concerns that the committee expressed. We hope to respond to the committee once that work is concluded.

Tommy Sheridan: On chief constables’ discretion for policing in their areas, will the Executive jealously guard the right of the police to decide on operational matters in their areas rather than be instructed by politicians about alleged lawbreaking or alleged criminality? Do you suggest that the bill will lead to greater pressure on chief constables to act on a particular form of alleged criminality and alleged lawbreaking?

George Lyon: No. In my opening statement and in my answers to questions, I have made it clear that, in operational matters, chief constables have discretion and I hope that the committee supports that position. It is not for politicians to instruct chief constables on how they apply the law because that would take us into difficult territory as regards chief constables’ independence and how that applies to the work of the officers in their areas. We have suggested that there are mechanisms whereby guidance could be issued, if it was felt that it would be in the public interest for that to happen.

14:45

Margo MacDonald (Lothians) (Ind): You mentioned the services that require to be delivered to the people who work as prostitutes and you said that the delivery of those services was as important as a change in the criminal law. Has there been discussion of how services can be delivered to the prostitutes who need them if they are not working in what is recognised as a red light area? I know that people are hung up on the business of management zones and so on, but I do not think that anyone would deny that there are red light areas. The whole point of drawing attention to such areas was to enable the delivery of services to be targeted where it was known that prostitutes were. That was a simple practical point. Have you given any thought to what would happen if you were unable to locate where the prostitutes were because red light areas were somehow magicked away?

George Lyon: If all prostitution is driven underground—or even indoors—the provision of services and support to enable the unfortunate victims to find routes out of prostitution will become much more difficult. We are talking about an even-handed approach, involving both the criminal law and the provision of support to the victims. We must ensure that we get the balance right.

Margo MacDonald: The minister made it plain that whether we are talking about a red light area or a management zone—frankly, I do not care what we call it—we should just recognise what the normal practice is and how, up until now, the police have been left holding the baby.

I wonder whether the minister is aware of what Assistant Chief Constable Neilson said when Fergus Ewing asked:

"Is it possible that there could be buying and selling of prostitution services without committing an offence of causing nuisance?"
Assistant Chief Constable Neilson replied:

“How do we prove intent? What nuisance are the people who are involved creating, other than for the two police officers who see what is happening, which is two people speaking on the street and a woman going into a man’s car? To whom are they causing annoyance? We had difficulty understanding that. … In the city centre … Who is making complaints after 5 o’clock in the evening? Who is being caused annoyance?”—[Official Report, Local Government and Transport Committee, 31 October 2006; c 4200-01.]

If the committee wants to get rid of soliciting in the street, I suggest that the bill will not do that. The bill recognises that street soliciting will continue and seeks to make the practice tolerable for people who may be affected by it, but who have no part in it.

George Lyon: The circumstances of each case will determine whether an offence has been committed, not the location. When the police decide whether to take action, the reasonable person test will have to be brought to bear by the officer who observed the transaction and that will have to be taken into account when the court comes to a view on whether an offence has been committed. In other words, the offence does not have to be witnessed by an individual—it is simply subject to the reasonable person test. The issue comes back to the circumstances of the case. That is why we believe that it will be harder for the police to justify not charging people for what is explicitly a public order offence than is the case under the existing section 46 offence.

Margo MacDonald: I fail to see any difference between the bill and any other piece of legislation. The bill does not seem anomalous to me.

David McLetchie (Edinburgh Pentlands) (Con): I want to explore the difference between the present law and that proposed in the bill. Mr McIntyre, you may be able to help with this point. Let us take the scenario of a known prostitute—someone with previous convictions for prostitution—who is in a non-residential, quiet industrial area like the one that you described earlier. Let us imagine that that person is dressed for work and engaging with people driving backwards and forwards slowly in motor cars. Am I right in thinking that, under the present law, such a person is guilty of the offence of soliciting and loitering?

Andrew McIntyre: Providing that they are a known prostitute, have received two cautions and are soliciting or loitering for the purposes of prostitution, they commit a criminal offence and can be prosecuted. There is no additional requirement for nuisance under the present law.

David McLetchie: Exactly—you have come to my point perfectly. In the situation that I described, the act of a long-standing sex worker being in such an area and engaging with the drivers of slow cars would be an offence under the present law.

Andrew McIntyre: I am not commenting on the evidential significance of the scenario that you described. It is not possible to say what would constitute sufficient evidence, but under the present law if someone is a known prostitute and it can be proved that they are soliciting for the purposes of prostitution, they can be prosecuted. In effect, they can be prosecuted on the third occasion that the police detect and can prove that they are soliciting for the purpose of prostitution. A different category of people would be liable to prosecution under the proposed offence.

David McLetchie: Yes, but I am talking about the old hands—the experienced industry workers. We are having to deal with known prostitutes, rather than recruits who may come into the industry in future.

We have discussed the situation under the present law. For any offence to be committed under the proposed law, it would not be enough for someone to solicit, loiter or be a known prostitute. In fact, it would not matter at all whether someone was a known prostitute. There would be another hurdle to cross: the circumstances would have to cause—in the eyes of a reasonable person, not a blushing, delicate creature—alarm, nuisance and offence. Is that right?

Andrew McIntyre: That is exactly it. Under the new law, the offence would be triggered not by the fact that it is the third time that someone solicited but by the circumstances in which they solicit. The causing of nuisance would make someone liable to prosecution rather than the fact that they solicited per se.

David McLetchie: So, under the law at present a prostitute who is engaged in work is liable for prosecution, but under the proposed law a working prostitute would be prosecuted only if the circumstances in which they worked caused alarm, nuisance and offence. Is that right?

Andrew McIntyre: That is exactly it—there are different categories of offence.

David McLetchie: Therefore, one would have to assume that, given the additional hurdle to be overcome, it would be more difficult under the proposed law to prosecute known prostitutes.

Andrew McIntyre: The situation would be different. Someone would be prosecuted only if they caused a nuisance. At present, it is not relevant whether they cause a nuisance.

David McLetchie: That is exactly my point.

Andrew McIntyre: It would be a different offence—a public order offence. However, under
the bill, a prostitute could be prosecuted on the first occasion if they were causing a nuisance, which is another difference. There should be no misunderstanding about the fact that it would be a different offence. From my perspective as a prosecutor, the proposed offence tackles a different type of conduct.

David McLetchie: We understand that a first offence could be prosecuted under the proposals. However, the main problem in the areas that we have heard evidence about is not with novice prostitutes who have never previously been convicted, but with the nuisance caused by prostitutes who have been involved in prostitution for a considerable time. It is reasonable to conclude from the evidence that we have received that the real problem is with a significant number in Glasgow, Edinburgh and, to a lesser extent, Aberdeen, of known prostitutes who almost always have convictions.

Andrew McIntyre: I cannot comment on the policy intention or worthiness of any of the approaches, but the offence will be different and we will be prosecuting people in different circumstances.

George Lyon: It is worth remembering the reasonable person test in relation to the causing of nuisance. In the circumstances that David McLetchie described, most reasonable people would think that a nuisance was being caused if cars were driving by regularly and pick-ups were taking place.

David McLetchie: I am not wholly convinced of that, minister, but neither of us are prosecutors, so we will move on.

Andrew McIntyre: I want to be clear about my previous evidence. If the policy intention is to prosecute people who solicit in circumstances in which they cause a nuisance, the test that is laid down for proving the nuisance—as opposed to another test—is acceptable and would give us a basis for prosecuting them. That is why we said that it was important that the test was objective.

George Lyon: ACPOS made that comment, too.

David McLetchie: Does the Scottish Executive think that the current management zone in Aberdeen and the previous tolerance or management zone—or whatever it was called—in Edinburgh arose simply because of operational policing decisions taken by the chief constables?

George Lyon: Yes. That is the position.

David McLetchie: So, that whole policy arose simply because the chief constables of Grampian police and Lothian and Borders police decided, in consultation only with other officers, that that was how they would police the offence, and there was no input whatever from councils, prosecutors or civil servants in the Scottish Executive or Scottish Office. It was generated entirely by the decisions taken by police officers. It that your view of the situation?

George Lyon: I understand that there is an informal arrangement in Grampian police, in which representatives of Aberdeen City Council have been involved, but I am certainly not aware of any written policy statement on the management zone from the council.

David McLetchie: So, at no time since 1999 has any Scottish Executive minister or official expressed approval for the policy that was pursued in Aberdeen or, latterly, in Edinburgh. Is that correct?

George Lyon: I am certainly not aware of any statement to that effect by ministers or officials, but I will double check and get back to the committee if you want further evidence on that.

David McLetchie: I take it that the fact that that allegedly purely operational policy was being pursued would not be unknown to officials in the Scottish Executive and prosecutors in the Crown Office.

Andrew McIntyre: You asked about that when we gave evidence previously. I have been able to clarify the position in relation to Aberdeen and Edinburgh. There is certainly not an instruction from local prosecutors that a management zone should operate in either area, but it is clear that prosecutors are aware of the police policy and have not issued any instructions that the zone should not operate or that they should always receive reports in these cases. That reflects the current position.

David McLetchie: Can you say anything more about the Scottish Executive’s view, minister?

15:00

George Lyon: Let us look back at how we arrived at where we are today. A bill was introduced by Margo MacDonald, and the committee examined it and recommended that the Executive set up a working group to look at the whole issue of prostitution, including management zones. The working group reflected on that for a couple of years—representatives from all over were involved in that group—before making a series of recommendations, one of which was to introduce the new type of offence that we are now considering. The working group also made other recommendations about the need to support victims and to provide services to those involved in prostitution, to help them find a way out. That is the approach that the Executive has taken. The Parliament was well aware of management zones,
as a result of Margo MacDonald's bill, and the Executive went ahead and set up the expert working group to consider how we could take the matter forward. That approach was recommended by the committee—I think, convener, that you were the committee's convener at that time.

David McLetchie: I understand all that, minister, and that is a fair analysis of how we got to the current situation. I just find it somewhat odd, as I am sure other members of the committee and the public would, that we have a policy that seems to emerge from the ether, although the official position is that it was never written down and is only an operational decision by the police. I put it to you that nobody believes that that is how it actually happened. I would like you to respond to that.

George Lyon: My understanding is that it is an informal arrangement, pursued by Grampian police and Aberdeen City Council. That is all that I can say, and I am saying it in good faith.

David McLetchie: I understand that, but I am simply asking how we have got to a situation in which this significant policy seems to operate entirely on a nod-and-a-wink basis, while the official position of the Scottish Executive—if I have understood your answers to my previous questions—is that it all happened simply because the chief constables in Aberdeen and in Edinburgh decided one morning that that was how it was going to be. Given the welter of other evidence, the expert group's investigation and the narrative described in chapter 4 of the expert group's report about the development of the zones and the policies, is it still your view that that all happened just because the chief constables decided that it was going to happen? Is that the official position?

George Lyon: As I said, I have given you my answer in good faith. The Executive clearly took the matter seriously, which is why the working group was set up with a view to looking at all those matters. The group originated from the bill that was promoted by Margo MacDonald and brought to the Parliament. It was decided, on the recommendation of the Local Government and Transport Committee, to set up the expert working group, which has now made recommendations for action. That is why we have introduced the change to the offence itself.

The Convener: I am advised by the clerks that, in fact, Margo MacDonald introduced her bill in the first session of Parliament. She will correct me if I am wrong, but I think that it was considered by the Local Government Committee during the previous session, and that it was that committee—a predecessor of part of the Local Government and Transport Committee—that made the recommendation to which the minister referred. Subsequently, the expert group was set up. Margo reintroduced the bill during the current session of Parliament and, after some of the interim recommendations had been placed before Parliament by the expert group, she made the decision not to proceed with her bill, on the expectation that the Executive would take some action or introduce some legislation based on the expert group's recommendations. That is the chronology of events.

George Lyon: I stand corrected, convener.

Margo Lyon: On a point of information—

Mike Rumbles: Excuse me. I do not think that it is Margo MacDonald's turn to speak.

The Convener: If your point relates to what we have said about the chronology of events, Margo, you may speak.

Margo MacDonald: My point relates to the considerable length of time that David McLetchie has spent trying to get the information that he seeks. In fact, Grampian police explained what their policy was, but as they did so a number of years ago I would not necessarily expect the minister to know about that.

In all cases, in all cities, there is co-operation. Assistant Chief Constable Richardson from Lothian and Borders police talked about the helping agencies and partners with whom we work. There was consultation over how the business was managed in all the various cities. The police did not make a unilateral decision about it.

The Convener: Has David McLetchie finished asking his questions?

David McLetchie: I have indeed.

Mike Rumbles: The evidence that the committee has received is that the Aberdeen management zone was set up in 2001 as a result of a joint decision of the chief constable at the time and the administration of Aberdeen City Council. It was not just an operational decision by the police.

I want to focus on your evidence, minister. Your letter said—and you have repeated it today—that the Executive has “never supported the establishment of legal ‘management’ ... zones”.

However, since 2001 there has been a legal management zone that the Government of Scotland does not support and which I do not think the Parliament would support. I think that I am fairly representing the views of the committee when I say that we do not want to turn a blind eye to the situation; it is our duty to consider the issues as the legislation goes through Parliament. It would therefore be very helpful if the Government and you, as the minister involved with the bill,
could back up your written and oral evidence that you do not support the establishment of management zones by lodging an amendment at stage 2 to make that absolutely clear. I would like you to make it clear that the so-called management zone is not operating within the law. It would be quite straightforward for a stage 2 amendment to be lodged that would make management zones illegal.

George Lyon: I reiterate what I said in my opening statement and what is in the letter: the Executive is not and never has been in favour of legal management zones. I am happy to restate that and I will certainly reflect on Mike Rumbles’s proposal, in the same way as I have said that I will reflect on several other issues that the committee has raised during its evidence sessions. I cannot say much more than that at the moment.

The Convener: Are there any further questions?

Margo MacDonald: When the minister reflects on all the evidence, he should take into account the fact that there are members of this committee—they might be in the majority, for all I know—who would like to outlaw prostitution and the act of soliciting. That might be a counsel of extremity that we cannot hope to see expedited under the law. Even if a provision is inserted into the bill at stage 2 that makes management zones illegal, what will the minister do about red light zones?

George Lyon: I am not sure whether Margo MacDonald is asking me for a response. If there was a magic bullet that could eradicate street prostitution overnight, I am sure that it would have been found many years ago. The issue is complex and very difficult. It involves very unfortunate females who are driven into prostitution through a need to feed their drug habits or raise money for partners or other individuals who have control over them because they are vulnerable adults. The notion that a change in the law will change that overnight is overstretching things.

A range of work needs to be done—Glasgow City Council is one of the leaders in the field—on the services that can be provided to help such individuals address their drug habits and chaotic lifestyles and find a way out of prostitution. The legal remedy that we are discussing here is a small part of the work that needs to be done to tackle the problem, and I hope that the committee will bear that in mind and consider the bigger picture of how to address the needs of the victims—the women engaged in prostitution who are driven by their circumstances and their habits. We need to provide proper support to give those people an opportunity to find a way out of that life. I hope that that will be the committee’s overriding concern.
LETTER FROM GEORGE LYON MSP, DEPUTY MINISTER FOR FINANCE AND PUBLIC SERVICE REFORM

Thank you for your letter of 22 November regarding the Prostitution (Public Places) (Scotland) Bill. In your letter, you seek further clarification as to the implications of the fact that the Bill criminalises soliciting or loitering “in such manner or in such circumstances as a reasonable person would consider to be likely to cause alarm, offence or nuisance”, rather than criminalising soliciting or loitering per se. Specifically, you ask whether this means that there are circumstances, or locations, in which soliciting or loitering for the purpose of prostitution would not constitute an offence. You also ask whether this would result in it being easier to establish legal “management zones”.

Firstly, let me state up front that the Executive is not - nor ever has been - in favour of legal “management zones”, i.e. areas where the law does not apply, or is suspended. We are clear that the offences which we are proposing will be applicable throughout Scotland and there is no location or “zone” where they would not apply.

In addressing your concerns in more detail, it may be helpful to outline why the Executive has adopted the approach that it has in the Bill. The Expert Group (which involved representatives from a range of organisations, including the police, local authorities and the Crown Office), stated in their report on street prostitution that “the role of the criminal law is best confined to protection of the vulnerable, tackling coercion, promotion of community safety and prevention of public alarm and offence”. On this basis, they indicated that they “would wish to see criminal law offence provisions which are explicit that the mischief they target is public alarm and offence, rather than criminalising the sale or purchase of sex per se”. This does not mean that the Expert Group was of the view that street prostitution was not a problem where no nuisance or offence was caused to members of the public, but they recognised that “the responsibility for impacting beneficially on prostitution…should become the responsibility of social policy as much as criminal law”.

The Executive agrees with the Expert Group’s assessment. We are clear that our long-term objective is to eradicate street prostitution. We believe that the best way to achieve this is by seeking to address the underlying problems which lead individuals to become involved in it, whilst protecting communities from the public nuisance associated with it. That is why we produced draft guidance for local authorities on developing local strategies to address all facets of the problem of street prostitution, on which we are currently consulting. It is also why we have brought forward new offences which seek to protect the public, in particular creating, for the first time, an explicit offence for purchasers.

I understand that much of the concern expressed by the Committee, and those who have given evidence to you, is driven by a belief that we should go further. However, we consider that our approach takes significant but proportionate steps towards tackling street prostitution, whilst limiting the unintended consequences, such as displacement, which might arise from a more radical approach. We have made it clear that we see this as a first step in tackling prostitution more generally and that further measures are likely to be required in light of future work on off-street prostitution and trafficking.

Turning to the proposed offences themselves and their implications, as you are aware the Bill criminalises soliciting or loitering “in such a manner or in such circumstances as a reasonable person would consider to be likely to cause alarm, offence or nuisance”. Logically, given that the offence does not criminalise soliciting or loitering per se, there may be circumstances in which someone solicits or loiters but does not commit an offence, i.e. where the manner or circumstances of their activity is such that a reasonable person would not consider it likely to cause alarm, offence or nuisance.

The proposed offences do not require actual alarm, offence or nuisance to be caused to a member of the public. Instead, the manner or circumstances in which the soliciting or loitering takes place must be such that a reasonable person would consider it likely that the behaviour would cause alarm, offence or nuisance. We opted for an objective test precisely because ACPOS and Crown
Office indicated this would facilitate enforcement and prosecution. Ultimately a court will have to look at all the relevant facts in a particular case to determine whether, in that instance, a reasonable person would consider that the conduct was likely to cause alarm, offence or nuisance.

It follows from the need to consider “the manner or circumstances” of each individual case that there are no locations or “zones” in which the new provisions would not apply. The provisions of the Bill would apply everywhere in Scotland. That is to say, soliciting or loitering which, in the view of a reasonable person, is likely to cause alarm, offence or nuisance would be an offence wherever it took place. A court may take into account the nature of the area in which an alleged offence took place and who was likely to be around at the time, however, these will be amongst a range of factors which the court has to consider. The proposed offence would enable a court to convict based on the circumstances in which the soliciting or loitering takes place (this may include the time of day, the place, the persons affected by the activity). However, the court can also convict based on the manner in which the soliciting or loitering took place (this may include consideration of the conduct of the accused, e.g. evidence of persistence or aggression, and the persons approached by the accused).

If an accused were soliciting in a residential or busy business area of a city, then the very fact that they were doing so may be considered to be likely to cause alarm, offence or nuisance. However, even in a non-residential or derelict area, there will be circumstances in which the proposed offences in the Bill may be committed. For example, if a member of the public who was not engaged in prostitution was approached by a person seeking to buy sex, that person may be guilty of soliciting in such a manner as to be likely to cause alarm, offence or nuisance, regardless of the nature of the area he was in. Again these are matters which would fall to be determined by the courts.

The Bill would not therefore create legal “management zones” i.e. areas where the law does not apply. Nor would it enable the police or local authorities to establish such zones. The Executive has never supported the establishment of legal “management” or “tolerance” zones. They are not in the interests of the wider community and there is little evidence that they help to improve the safety of those involved in prostitution. However, as with all offences, chief constables have discretion on operational policing matters and it will be for them to determine how they enforce the new offences at the local level.

SUPPLEMENTARY LETTER FROM GEORGE LYON MSP, DEPUTY MINISTER FOR FINANCE AND PUBLIC SERVICE REFORM – 4 DECEMBER 2006

Further to my evidence to the Committee on Tuesday 28 November, I thought it might be helpful if I wrote to summarise my understanding of the Committee’s main concerns regarding the Bill and to indicate that we are considering these issues as a matter of urgency.

Remove reference to sellers

After reviewing and reflecting on the evidence sessions and Committee questioning, I believe the Committee may prefer to leave the existing section 46 offence in place for soliciting, importuning and loitering by prostitutes, and to apply the new offences only to purchasers.

Increased penalties for purchasers

After reviewing and reflecting on the evidence sessions and Committee questioning, I believe the Committee may favour a higher level of maximum penalty for purchasers than the proposed level 2 fine. They would also like further consideration to be given to whether disqualification from driving and/or vehicle seizure should be made available to the courts.

Inclusion of ‘loitering in a car’

After reviewing and reflecting on the evidence sessions and Committee questioning, I believe the Committee wishes to have ‘loitering in a car’ for the purposes of prostitution criminalised.
Management zones

After reviewing and reflecting on the evidence sessions and Committee questioning I believe that the Committee seeks assurance that Ministers do not support the existence of management zones or “tolerance zones” and considers that the law on street prostitution should be enforced throughout Scotland.

I can assure you we are actively considering ways in which we can address the Committee’s concerns on these points. I hope to be able to provide the Committee with an update on our position with the next couple of weeks. You may wish to consider whether it would be beneficial for the Committee to incorporate this further update into your consideration before finalising the Stage 1 report.

SUPPLEMENTARY LETTER FROM GEORGE LYON MSP, DEPUTY MINISTER FOR FINANCE AND PUBLIC SERVICE REFORM – 18 DECEMBER 2006

Further to my letter of 4 December, summarising what I understand to be the Committee’s main concerns regarding the Bill, I am now writing to provide an update on our consideration of the issues identified. You will appreciate that it is not possible for me to give the Committee any firm commitments at this stage, however, I did want to share some of our thinking with you.

Removal of reference to sellers

As you are aware the policy in the Bill at introduction was closely based on the recommendation of the Expert Group on Prostitution, that “…the law should be changed to repeal the criminalisation of soliciting per se and replaced...with an offence targeting offensive behaviour or conduct arising from a prostitution related sexual transaction, whether caused by purchaser or seller”. That is why we gave a commitment in November 2005 to bring forward offences which apply equally to purchaser and seller.

However, in their evidence to the Committee, a number of organisations indicated that they considered that the Bill should be amended so as to address only purchasers and that the existing offence at section 46 of the Civic Government (Scotland) Act 1982 should be retained in relation to soliciting, importuning and loitering by prostitutes. My understanding is that the Committee may favour this approach.

It would be possible to restrict the Bill so that it does not relate to those engaging in prostitution. The Bill could also be amended so that it does not provide for the repeal of section 46 of the Civic Government (Scotland) Act 1982. This would have the effect of applying the new offences solely to purchasers and keeping the existing law in place for sellers. Such an approach could provide a clearer focus on challenging the behaviour of those seeking to purchase sex in public places, which, in turn, may assist in tackling the demand for street prostitution - a key component if we are to deliver our long-term objective of eradicating street prostitution.

It would, however, be a departure from the Expert Group’s recommendation in relation to sellers. We would also need to consider issues of consistency between the offences for seller and purchaser.

Increased penalties for purchasers

A number of Committee members indicated during the evidence sessions that they would wish to see heavier penalties available to courts in dealing with purchasers. There was some discussion of a higher maximum fine and the possibility of making disqualification from driving or vehicle seizure available to the courts.

If the new offences were to apply only to purchasers, then it might be possible to provide a more tailored and punitive package of penalties, particularly for repeat offenders, without risking unintended consequences for sellers.
Inclusion of “loitering in a car”

Many of the members of the Committee, and those who gave evidence to you, have concerns over the fact that the Bill does not criminalise loitering in a car. As I have indicated previously, we consider that simply removing section 1(6) of the Bill might not deal with the issue satisfactorily and we have concerns over creating a reverse burden of proof. However, we are carrying out detailed work into the scope for an offence which would enable charges to be brought against those loitering in a vehicle, or driving around slowly, for prostitution-related purposes. This involves complex questions of law. We need to consider the potential ECHR implications of any approach, as well as the wider practical and legal implications.

One possibility may be to enable a person to be charged with a loitering offence, whether on foot or in a vehicle, when in all the circumstances, it is reasonable to infer that the person is loitering for prostitution related purposes. To ensure fairness, the accused would have to be entitled to advance defences or justifications for their conduct. Such a provision would not allow the accused to evade conviction by raising plainly absurd explanations for his conduct (e.g. an explanation of being lost where there is evidence of the accused being there on a number of previous occasions, or an explanation that he was waiting for his wife where it can be established that he does not have a wife).

Management Zones

Several members of the Committee have expressed considerable concern over the existence of informal management zones or tolerance zones, i.e., areas where the local police force operates a policy of not charging individuals for soliciting, loitering or importuning under section 46, provided that they remain within a designated area and operate only during designated times.

The police have a general duty to enforce the law, although they have a certain measure of discretion as to the way in which this is done. Judgements may be made as to how the law is to be enforced in the public interest. As I indicated during my evidence on 28 November, it would not be appropriate for the Executive, or indeed Parliament, to interfere with operational policing decisions. However, I can confirm that existing prostitution offences apply throughout Scotland. The Executive has no plans to change the law in this respect, and the Bill will not do so.

I hope that this is helpful to the Committee and that it demonstrates to you our active consideration of the issues which you have raised. As I have said above, we are considering these issues carefully before reaching a concluded view on these matters.
ANNEXE D: LIST OF OTHER WRITTEN EVIDENCE

Copies of the written evidence received by the Committee can be found on the Scottish Parliament website (www.scottish.parliament.uk) or can be provided, on request, from the Clerk to the Committee.

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Aberdeen City Council
Professor Marina Barnard
Barnardo's
CARE
Catholic Parliamentary Office
COSLA
Equality Network
Glasgow City Council
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Margo MacDonald MSP
NHS Greater Glasgow and Clyde
NHS Greater Glasgow and Clyde Male Prostitution Support Project
Routes Out Partnership Glasgow
Dr Teela Sanders
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