

# **PROSTITUTION (OFFENCES AND SUPPORT) (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. As required under Rule 9.3.2A of the Parliament’s Standing Orders, these Explanatory Notes are published to accompany the Prostitution (Offences and Support) (Scotland) Bill, introduced in the Scottish Parliament on 20 May 2025.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 69–FM);
  - a Policy Memorandum (SP Bill 69–PM);
  - a Delegated Powers Memorandum (SP Bill 69–DPM);
  - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 69–LC).
3. These Explanatory Notes have been prepared on behalf of Ash Regan MSP, the Member who introduced the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

### **OVERVIEW AND SUMMARY**

5. The Bill:
  - a. Introduces a new criminal offence of paying for sexual acts;
  - b. Repeals the offence of soliciting for the purposes of prostitution in a public place under section 46 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”);
  - c. Quashes historic convictions (under section 46 of the 1982 Act);
  - d. Gives people in prostitution, or people who have previously been in prostitution, the legal right to support and requires the Scottish Ministers to make provision for that support including in regulations.

6. The Bill provides that the Scottish Ministers must ensure the provision of appropriate assistance, including by provision of accommodation, financial and other material assistance, and healthcare. It gives the Scottish Ministers the power to confer functions on Health Boards, Special Health Boards, the Common Services Agency, local authorities and integration joint boards.

7. The Bill is in 11 sections.

## **COMMENTARY ON SECTIONS**

### **Offence of paying for the performance of a sexual act by a person**

#### **Section 1 – Offence of paying for the performance of a sexual act by a person**

8. Subsection (1) makes it an offence for a person (A) where it can be reasonably inferred that A has obtained or intended to obtain for themselves the performance of a sexual act by another person (B) by paying or promising to pay B or a third person for the performance of that act. It also makes it an offence for A to obtain for themselves the performance of a sexual act by B where a person other than A (for example, an acquaintance of A) pays or promises to pay B or a third person for the performance of that act, so long as A knows that another person has made or promised that payment before obtaining performance of that act.

9. The commission of the offence does not require that A pays or promises to pay for the performance of the act before the act takes place. The offence will also be committed by A where A makes payment or promises payment after the act. It is not necessary for the purposes of conviction for the prosecution to prove that A intended to pay for the act before the act took place.

10. Where the payment or promise to pay for the sexual act is made by a person other than A, the prosecution must prove that A knew about that payment or promise before obtaining performance of the act.

11. “Sexual act”, for the purposes of this Act, means any act involving physical conduct carried out by a person (B) with the intention of causing sexual arousal, gratification or stimulation of another person (A), where that act is provided in exchange for payment or the promise of payment.

12. Activities such as striptease, pole dancing, lap dancing, or other erotic performances are not included in the definition of “sexual act”.

13. Subsection (2) provides that the maximum penalties for the offences created by the Bill are to be 6 months imprisonment or a fine not exceeding the statutory maximum on summary conviction and 12 months imprisonment or a fine not exceeding the statutory maximum on conviction on indictment.

14. Subsection (3) provides that B does not commit an offence by being art and part - that is, by acting as an accomplice to, or otherwise aiding in, the commission of the offence by A without directly committing the offence themselves. This includes conduct such as aiding, abetting, counselling, procuring, or inciting the commission of the offence by A. This is to prevent B being charged with an offence based on B’s involvement in A’s commission of the offence.

## **Repeals of certain offences relating to prostitution**

### **Section 2 – Repeal of the offence of soliciting and importuning by prostitutes**

15. Section 2 repeals section 46 of the 1982 Act. Under this section, a person who is found guilty of loitering, soliciting or importuning in a public place for the purposes of prostitution commits an offence and is liable, on summary conviction, to a fine.

### **Section 3 – Repeals: further provision**

16. Subsection (1) provides that on or after the date on which section 3 comes into force, no person can be convicted of an offence under section 46 of the 1982 Act or, where the conviction has occurred prior to that date, no penalty may be imposed upon them. Section 3 will come into force the day after Royal Assent. This gives immediate effect to the repeal of the offence of soliciting and importuning and displaces other statutory rules that would mean the law as it applied before the Bill comes into force would continue to apply in those circumstances.

17. Subsection (1) refers to sections 16 and 23A of the Interpretation Act 1978. Section 16 preserves the legal effects of a repealed law, ensuring that rights, obligations, penalties, and ongoing legal proceedings remain unaffected by the repeal. Section 23A of the 1978 Act extends this rule to Acts of the Scottish Parliament. While repeals generally do not impact past offences, subsection (1) makes an explicit exception by preventing convictions under section 46 of the 1982 Act, even for offences committed before its repeal.

18. Subsection (2) refers to section 119 and 185 of the Criminal Procedure (Scotland) Act 1995. Section 119 and section 185 of the Criminal Procedure (Scotland) Act 1995 relate to specific scenarios where new prosecutions may be brought after certain proceedings have occurred. Section 119 applies when the High Court grants authority for a new prosecution after the original case has been appealed, typically when the court finds that new evidence has emerged, or a legal mistake was made in the original case. Section 185 is like section 119 but applies to cases where the Sheriff Appeal Court grants authority for a new prosecution.

19. Subsection (3) makes clear that a person charged with an offence under section 46 and with another offence may still be convicted of another statutory offence if that other offence can be proven.

## **Quashing of historic convictions for certain offences relating to prostitution**

### **Section 4 – Quashing of convictions for relevant historic offences**

20. Subsection (1) provides that any conviction for an offence under section 46 of the 1982 Act (soliciting and importuning by prostitutes) that preceded section 4 coming into force is quashed immediately upon section 4 coming into force.

### **Section 5 – Quashing convictions: further provision**

21. Subsection (1) places the duty on the Scottish Ministers to instruct Police Scotland and the Scottish Courts and Tribunals Service to update their records. This update must reflect the quashing of convictions as outlined in section 4(1).

22. Subsection (2) requires the Scottish Ministers to ensure they receive formal confirmation from Police Scotland, or, the Scottish Courts and Tribunals Service, that the convictions under section 46 have been quashed. This confirmation serves as evidence that the process has been completed.

23. Subsection (3) requires the Scottish Ministers to provide a letter of confirmation to an individual who requests confirmation that their conviction under section 46 of the 1982 Act has been quashed. This letter serves as official confirmation of the quashing of the conviction.

### **Right to assistance and support**

#### **Section 6 – Right to support**

24. Subsection (1) places a duty on the Scottish Ministers to ensure that a person who is or has been in prostitution is provided with assistance and support.

25. Subsection (3) provides that the assistance and support to be provided to a person in accordance with that duty may not be made conditional on them agreeing to act as a witness, may only be provided with their agreement, and must take due account of their needs as regards their safety and protection from harm.

26. Subsection (5) sets out a non-exhaustive list of the types of assistance and support that may be provided in accordance with the duty set out in subsection (1).

27. Subsection (6) sets out the duty on Scottish Ministers to ensure the appropriate support and assistance is in place for those in receipt of support even after that person leaves Scotland.

28. Subsection (7) provides that a person is in prostitution if they are in the position of “B” for the purposes of the offence in section 1(1) and that a person has been in prostitution if they have ever been in that position.

#### **Section 7 – Regulations about assistance and support**

29. Subsection (1) allows the Scottish Ministers, by regulations, to make further provision for or in connection with the provision of assistance and support in accordance with their duty under section 6.

30. Subsection (2) sets out a non-exhaustive list of what may be included in such regulations and allows the Scottish Ministers to confer functions on Health Boards, Special Health Boards,<sup>1</sup> the Common Services Agency,<sup>2</sup> local authorities<sup>3</sup> and integration joint boards.<sup>4</sup>

31. Subsection (3) requires Scottish Ministers to consult with various bodies, such as health boards, medical experts and other relevant stakeholders likely to be affected by the decision before implementing regulations relating to assistance and support.

32. Subsection (4) provides that the various regulation making powers under the Act may make different provision for different purposes and includes the power to make a range of ancillary provision (that is: incidental, supplementary, consequential, transitory, transitional or saving provision). The ability to make different provision for different purposes enables a regulation making power to be used in different ways in different circumstances. This section does not apply to commencement regulations which have a more limited range of ancillary powers (relating to making transitional, transitory or saving provision).

33. Subsection (5) provides that regulations made under subsection (1) are subject to the affirmative procedure. This means that regulations under subsection (1) must be laid in draft before the Parliament for approval by resolution.

## **Final provisions**

### **Section 8 – Ancillary provision**

34. This section allows the Scottish Ministers, by regulations, to make ‘standalone’ ancillary provision in relation to the Bill or any provision made under it. However, this ancillary provision does not extend to being able to modify Acts. This type of power is used to ensure that the Bill has its full intended effect.

### **Section 9 – Interpretation**

35. This section contains definitions of terms used in the Bill. Such terms have been explained in these Notes in relevant places.

### **Section 10 – Commencement**

36. Section 10 sets out when the provisions of the Bill will come into effect as a matter of law. It provides that the sections on the repeal of the offence of solicitation, ancillary provision, regulations, interpretation, commencement and short title will automatically come into force on the day after the Bill receives Royal Assent. All other sections of the Bill will take effect in accordance with regulations made by the Scottish Ministers. Those regulations will require to be

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<sup>1</sup> Health Boards and Special Health Boards are constituted under section 2 of the National Health Service (Scotland) Act 1978. Available at: [National Health Service \(Scotland\) Act 1978 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1978/35/section-2).

<sup>2</sup> The Common Services Agency is constituted under section 10 of the National Health Service (Scotland) Act 1978. Available at: [National Health Service \(Scotland\) Act 1978 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1978/35/section-10).

<sup>3</sup> Local authorities are councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994. Available at: [Local Government etc. \(Scotland\) Act 1994 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1994/20/section-2).

<sup>4</sup> Integration joint boards are established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014. Available at: [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2014/12/section-9).

*This document relates to the Prostitution (Offences and Support) (Scotland) Bill (SP Bill 69) as introduced in the Scottish Parliament on 20 May 2025*

laid before the Scottish Parliament but, by virtue of section 9(4), they will not otherwise be subject to any parliamentary procedure.

**Section 11 – Short title**

37. Section 11 is the short title of the Bill so needs no further explanation.



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