

PROSTITUTION (PUBLIC PLACES) (SCOTLAND) BILL

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This briefing provides background information on the Prostitution (Public Places) (Scotland) Bill, as introduced in the Scottish Parliament on 15 September 2006. The aim of the Bill is to make it an offence to cause “alarm, offence or nuisance” through soliciting or loitering to sell or buy sexual services. The purpose of the Bill is to deal with the negative consequences of street prostitution for communities. It does not make the sale or purchase of sexual services an offence in itself.

The Bill follows on from the report and subsequent consultation “Being Outside: Constructing a Response to Street Prostitution” produced in 2004 by the Expert Group on Prostitution in Scotland established by the Scottish Executive. It concluded that addressing prostitution was as much about social policy as criminal law. It did recommend a review of the law and the Bill is broadly in line with its views.

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CONTENTS

KEY POINTS	3
INTRODUCTION	4
TIMELINE	4
BACKGROUND	5
CURRENT LAW AND PRACTICE.....	5
PROSTITUTION TOLERANCE ZONES (SCOTLAND) BILL	6
EXPERT GROUP ON STREET PROSTITUTION	6
<i>Strategic Objectives and Aims</i>	7
<i>Numbers and Factors Associated with Working as a Prostitute</i>	7
<i>Conclusion</i>	7
<i>Legal Issues</i>	7
ANALYSIS OF CONSULTATION RESPONSES	9
SCOTTISH EXECUTIVE RESPONSE TO THE EXPERT GROUP.....	9
PROVISIONS OF THE PROSTITUTION (PUBLIC PLACES) (SCOTLAND) BILL	10
OVERVIEW.....	10
SUMMARY OF THE SECTIONS OF THE BILL	11
<i>Section 1 Offences relating to prostitution</i>	11
<i>Offence</i>	11
<i>Definition of Relevant Place</i>	11
<i>Section 2 Arrest for offences under section 1</i>	12
<i>Section 3 Repeal of section 46 of Civic Government (Scotland) Act 1982 (c. 45)</i>	12
NEXT STEPS	12
SOURCES	13

KEY POINTS

- The aim of this Bill is to make it an offence to cause “alarm, offence or nuisance” through soliciting or loitering to sell or buy sexual services. The purpose of the bill is to deal with the negative consequences for communities of street prostitution. It does not make the sale or purchase of sexual services an offence in itself.
- 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.
- In October 2002 Prostitution Tolerance Zones (Scotland) Bill was introduced by Margo MacDonald MSP. The Local Government Committee did not agree the general principles of the Prostitution Tolerance Zones (Scotland) Bill at Stage 1. They called for the Scottish Executive to set up “a cross party working group (...) to examine issues surrounding prostitution in Scotland” (Scottish Parliament Local Government Committee, 2003).
- In September 2003 a Second Prostitution Tolerance Zones (Scotland) Bill introduced by Margo MacDonald MSP. This is withdrawn in November 2005
- Currently prostitution is not in itself a criminal offence. The crimes that relate to prostitution are concerned with public order or nuisance (e.g. those contained in Section 46 of the Civic Government (Scotland) Act 1982) and the exploitation that surrounds prostitution. In addition to the offences set out in the 1982 Act, offences relevant to some of the activities associated with prostitution are found in both statute law and common law.
- In 2003 the Scottish Executive established an Expert Group on Prostitution to consider the legal, policing, health and social justice issues surrounding prostitution.
- The Expert Group conclusion was that dealing with prostitution, and its effects, was as much an issue of social policy as criminal law. Indeed most of the recommendations relate to the need for local strategies, inter-agency responsibilities and services and public attitudes. The role of criminal law would be to provide support “to prevent abuse of the vulnerable and to restrict public nuisance or offence”.
- The Expert Group proposed that the law be reviewed and that proposals for new legislation should define the offence as causing alarm or offence to another person, be flexible enough to address a range of behaviours and apply to both men and women seeking to buy or sell sexual services.

INTRODUCTION

Prostitution, its implications and addressing it, has been considered at various times in the Scottish Parliament. This paper begins with a list of key events and activities concerned with the problem of prostitution in Scotland. Following this is further information on the current position, developments and the Bill.

TIMELINE

December 2001

Discontinuation of informal tolerance zone in Edinburgh

October 2002

The Prostitution Tolerance Zones (Scotland) Bill introduced by Margo MacDonald MSP

February 2003

Local Government Committee does not agree the general principles of the Prostitution Tolerance Zones (Scotland) Bill at Stage 1. They called for the Scottish Executive to set up “a cross party working group (...) to examine issues surrounding prostitution in Scotland” (Scottish Parliament Local Government Committee, 2003)

September 2003

Second Prostitution Tolerance Zones (Scotland) Bill introduced by Margo MacDonald MSP

October 2003

Prostitution Tolerance Zones (Scotland) Bill considered by the Local Government Committee

February 2003

Scottish Executive announces establishment of Expert Group on Prostitution

August 2003

Expert Group on Prostitution meets for the first time and focus on street prostitution

December 2004

Publication of Expert Group report “[Being Outside: Constructing a Response to Street Prostitution](#)”

March 2005

Consultation on Expert Group report Being Outside closes

November 2005

[Scottish Executive response](#) to Being Outside published

November 2005

Prostitution Tolerance Zones (Scotland) Bill withdrawn

September 2006

[Prostitution \(Public Places\) \(Scotland\) Bill](#) introduced in the Scottish Parliament

BACKGROUND

CURRENT LAW AND PRACTICE

The main legislation in regard to street prostitution is Section 46 of the Civic Government (Scotland) Act 1982. This “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” (Payne, Georghiou, and McCallum, 2004).

In giving evidence on the Prostitution Tolerance Zones Bill a witness from the Crown Office and Procurator Fiscal Service stated:

“prostitution is not a criminal offence in Scotland. The crimes that are associated with prostitution involve public order and the exploitation that surrounds prostitution” (Scottish Parliament Justice 1 Committee, 2002).

As prostitution in itself is not a criminal offence, the focus of the above legislation is the impact it has on the public.

There is other legislation that relates to exploitation in regard to prostitution. For example, the Criminal Law (Consolidation) (Scotland) Act 1995 has, under the heading of “Procuring, prostitution etc”, offences dealing with:

- Section 7 – procuring
- Section 8 – abduction and unlawful detention
- Section 9 – permitting girls to use premises for intercourse
- Section 10 – seduction, prostitution, etc. of girl under 16
- Section 11 – trading in prostitution and brothel-keeping
- Section 12 – allowing child to be in a brothel

Whilst these are not specifically concerned with prostitution in public places, they may have relevance (e.g. making it an offence for a man to live on the earnings of a prostitute).

Some common law offences, in particular breach of the peace, may also be relevant to problems associated with street prostitution such as “kerb-crawling”.

Policies and practices with regard to street prostitution have developed differently in Edinburgh, Aberdeen and Glasgow and may or may not have changed over time. For example Edinburgh operated an unofficial tolerance zone with informal agreement between prostitutes and the police in liaison with the health board, local authority and the Scottish Prostitutes Education Project. It meant that:

“no action would be taken against an agreed number (usually 20) of street prostitutes who worked in the area in a way that did not lead to complaints from members of the public, though there was not toleration of associated crime such as the presence of pimps or drugs” (Scottish Parliament Local Government Committee, 2003).

However, redevelopment in the area meant it became residential and those who lived in the area complained about being approached by men and about finding used condoms in stairwells. There was an attempt to establish an area elsewhere but again residents complained and the zones ceased operation in 2001 and prostitutes were dispersed across the city (Georghiou and McCallum 2002).

In Aberdeen an unofficial tolerance zone has operated since 2001 where:

“they would not be prosecuted for the offence of loitering in a public place, although other acts associated with prostitution, including soliciting (...) could still lead to a prosecution.” (Georghiou and McCallum, 2002)

In their evidence to the Local Government Committee in 2002, Strathclyde Police stated that there was no unofficial tolerance zone operating in Glasgow. However as a result of the evidence received on the Tolerance Zones (Scotland) Bill the Local Government Committee concluded that there “is an ‘unofficial’ or de facto tolerance zone” (Payne, Georghiou and McCallum, 2004). The Expert Group report recognised that Glasgow City Council policy defines prostitution as abuse of women and has a commitment to eradicate prostitution. Inter-agency work has provided services for those working in the streets and policing has been based on complaints regarding prostitution whilst recognising that if there is dispersal this can lead to further problems. However there has apparently been an increase in street prostitution and redevelopment in the traditional vicinities have resulted in complaints from individuals (Scottish Executive, 2004).

PROSTITUTION TOLERANCE ZONES (SCOTLAND) BILL

In 2002, during the first session of Parliament a Members’ Bill – the [Prostitution Tolerance Zones \(Scotland\) Bill](#), introduced by Margo MacDonald MSP, was considered at Stage One by the then Local Government Committee. Although the Local Government Committee did not recommend that the general principles of the Bill be approved the [Committee report](#) made the following recommendation:

“the Committee has not found the current legislative situation acceptable. Despite its rejection of the general principles of the Bill the Committee does not find that the current legal situation with regard to prostitution adequately serves the interests of those women involved in prostitution or of the wider community. The Committee also believes that more needs to be done. Indeed, the Committee believes strongly that if the women involved are to be supported out of prostitution, the Executive must conduct a full examination of prostitution in Scotland. The Committee therefore calls on the Executive to establish a cross party working group with the involvement of experts in the field and under ministerial chairmanship to examine issues surrounding prostitution in Scotland including the effects of drug abuse on those women involved and to recommend appropriate measures in primary and secondary intervention” (Scottish Parliament Local Government Committee, 2003).

In September 2003 a Prostitution Tolerance Zones (Scotland) Bill was again introduced by Margo MacDonald MSP. This was substantively the same as the previous Bill apart from the fact it included “community councils in the list of organisations that must be consulted by the local authority when designating a tolerance zone” (Payne, Georghiou and McCallum, 2004). The Local Government Committee took evidence on the Bill but the Stage 1 report was held over pending the Independent Review on prostitution. The Bill was withdrawn on 30 November 2003.

EXPERT GROUP ON STREET PROSTITUTION

In 2003 the Scottish Executive established an [Expert Group on Prostitution](#) to consider the legal, policing, health and social justice issues surrounding prostitution in Scotland. It decided to focus on “street prostitution involving women” as a specific subject in the first instance. The Expert Group published their report [Being Outside: Constructing a Response to Street Prostitution](#) in December 2004.

Strategic Objectives and Aims

The Expert Group's strategic objectives for its work on prostitution in public places were to:

- safeguard people involved in prostitution, reduce harm and provide support for a permanent exit from street prostitution
- protect residential and commercial communities from the effects of soliciting and prostitution
- prevent children and vulnerable adults becoming involved in prostitution
- influence the attitudes that lead to abuse and violence against women through street prostitution (Scottish Executive, 2004).

Numbers and Factors Associated with Working as a Prostitute

It is notoriously difficult to obtain accurate figures on the numbers of people involved in street prostitution because of its nature, social and legal status and indeed those involved. However the Expert Group drew on information from those working with prostitutes to obtain some idea of figures. It concluded that it is an "urban phenomenon" involving Glasgow, Edinburgh, Aberdeen and to a lesser degree Dundee. In total there are between 155 and 225 women engaged in street prostitution in any one night. This is a small proportion of the estimated pool of 1500 women who may be involved in prostitution. These figures may have changed since the Expert Group reported. The Scottish Executive (2006) refers to research that suggests that between 5% and 10% of men have paid for sex at least once.

The Expert Group stressed that street prostitution is a survival behaviour, practically always involving vulnerable, abused women. The key factors associated with women involved in street prostitution include:

- drug and alcohol misuse/addiction
- debt/low income
- family breakdown/abuse
- physical/sexual abuse that continued into adulthood
- poor educational achievement
- mental illness/learning disability
- homelessness/lack of secure accommodation

Women without at least one of these factors "were so rare as to be discountable" (Scottish Executive, 2004).

Conclusion

The Expert Group conclusion was that dealing with prostitution, and its effects, was as much an issue of social policy as criminal law. Indeed most of the recommendations relate to the need for local strategies, inter-agency responsibilities and services and public attitudes. The role of criminal law would be to provide support "to prevent abuse of the vulnerable and to restrict public nuisance or offence" (Scottish Executive, 2004).

Legal Issues

After consideration of the legal issues, the Expert Group stated:

"The Group concluded that it was difficult to see consistency in the present state of the criminal law on prostitution. Section 46 of the 1982 Act is a part of consolidation legislation which has its origins in much older laws and a different social climate. It has, therefore, evolved over time and is not necessarily reflective of present day social attitudes – although sensitivity to rights of children and other vulnerable people, and to decency issues, remains powerful providing research and information services to the Scottish Parliament

considerations. Growing but sometimes competing considerations, such as public sensitivity to rights of equality and personal freedom, and to quality of life issues and the impact on residential communities, and are sometimes difficult to reconcile satisfactorily” (Scottish Executive, 2004).

The specific criticisms of the law included:

1. it is not gender neutral in practice
2. there is a moral undertone inferred about unacceptable behaviour for women that stigmatises women but has little to say on male purchasers and may undermine civil rights and not be helpful for vulnerable people
3. the punitive approach does not support addressing the core issues for those involved
4. the structure of penalties does not lend itself to rehabilitative or other support programmes
5. it seems to fail to protect “even those defined as vulnerable in statute, such as women suffering mental illness or with learning disability, who continue to engage in prostitution” (Scottish Executive, 2004)
6. there is nothing that specifically protects communities from the negative consequences of prostitution
7. criminalising of soliciting may make it more covert and more difficult to work with those involved in harm reduction and exiting

It proposed that the law be reviewed and that proposals for new legislation should:

- define the offence as causing alarm or offence to another person rather than soliciting in itself
- be flexible enough to address a range of behaviours, e.g. “unwanted importuning of passing men, or unwanted attempts to purchase by men approaching women from cars or on foot” (Scottish Executive, 2004)
- apply to both men and women seeking to buy or sell sexual services

The Expert Group proposed three options for altering the law to support meeting its conclusions. All would be dependent on the repeal of section 46 of the Civic Government (Scotland) Act 1982 (c. 45).

“Option 1 would repeal Section 46 and rely on breach of the peace with its objective test of whether the behaviour would cause alarm, offence or embarrassment to a reasonable person.

Option 2 would create a new offence based on selling or purchasing sexual engagement in a way which causes alarm, offence or embarrassment to the wider public. This would require to be initiated through a complaint that a member or members of the public have been offended. The court may then introduce an objective consideration of whether, objectively, it was reasonable in the circumstances, for them to have been offended.

Option 3 would follow the Scottish Law Commission codification route, which retains the penalisation of soliciting and adds the penalisation of the purchaser, but only if, by objective tests, fear, alarm or offence can be demonstrated” (Scottish Executive, 2004).

Only 18% of respondents to the consultation provided specific comment on the three options. Of these almost half opted for option 1 and one fifth for option 3 and the remainder gave no particular view (Scottish Executive, 2005b).

The Expert Group considered “managed areas” (tolerance zones) but did not recommend an option to specifically establish them. However the report does discuss managed zones in the

context of the legal options given. As a result of the policy, strategy and legislative changes proposed by the Expert Group, the case for managed areas was altered. It was noted that a local authority strategy could potentially find it useful “to focus the conduct of street prostitution into specific locations” (Scottish Executive, 2004). This could, it was argued, enable the issues of safety, ability to offer services, work on harm reduction and exiting to be more easily addressed. Under the legal proposals, given that soliciting itself is not illegal the area would not have “immunity from prosecution for soliciting.” Rather, where it caused nuisance behaviour the law would be in place. It was the view of the Expert Group that this would still contain a strong message about the unacceptability of women having to sell sexual services in public. Whether it would deal with the other potentially negative consequences of a “managed areas” such as associated criminality (e.g. drugs), potential increased numbers of prostitutes, etc. was not specifically addressed.

ANALYSIS OF CONSULTATION RESPONSES

This section gives a brief overview of the responses to the consultation on the Expert Group report (Scottish Executive, 2005b). This found that there was general agreement to review the existing law. However there was some concern that repealing section 46 of the Civic Government (Scotland) Act 1982 (c. 45) would “send the wrong message” to the public. It was also argued that a “moral stance” should be taken against the continuation of prostitution. It was suggested that the legislative changes proposed could be seen to legalise and regulate prostitution where no “alarm, offence or nuisance” is caused.

Some respondents thought that legal changes should “protect not penalise women” and overall that there should be greater emphasis on prostitution being considered as violence against women. The model in Sweden of outlawing the purchase but not sale of sexual services was highlighted by some who believed that the Expert Group had been dismissive of this approach and that it should be explored further.

Finally a respondent challenged some of the conclusions regarding the view of the women involved. They argued that it is not the case that sex workers see themselves as victims of abuse (Cusick, 2005). Indeed they believe “victims” can be a stigmatising label that denies “sex workers the human rights to be treated as a person of sound mind who has made a rational choice under difficult circumstances”. Rather those engaged in this do it “basically because they need the money” (Cusick, 2005).

SCOTTISH EXECUTIVE RESPONSE TO THE EXPERT GROUP

The Scottish Executive responded to the Expert Group report in November 2005 (Scottish Executive, 2005c). Their overarching position was to:

- acknowledge their role in taking the lead to address prostitution and establish a policy and legislative framework
- agree with the Expert Group that street prostitution is “overwhelmingly a survival behaviour for the women involved” and is an abuse of women which should be dealt with as a form of violence against women
- provide the legislative framework which will enable anti-social activity associated with prostitution to be addressed
- eradicate both demand for and supply of street prostitution

It made commitments to:

- address street prostitution within the context of an overarching approach to tackling violence against women and of building safer, stronger communities

- issue guidance to local authorities on their powers and on how they (and other participants in Community Planning) should address street prostitution as part of the Community Planning process in order to prevent involvement in prostitution, to reduce the harm to the women involved, to assist those ready to exit and to ensure the safety of local communities
- promote good practice in developing local responses which involve all agencies in the delivery of services
- establish a new offence which will focus on harm, offence and nuisance caused to communities from prostitution-related activities, whether by sellers or purchasers (to replace the existing offence of soliciting) (Scottish Executive, 2005c)

PROVISIONS OF THE PROSTITUTION (PUBLIC PLACES) (SCOTLAND) BILL

OVERVIEW

The aim of this Bill is to make it an offence to cause “alarm, offence or nuisance” through soliciting or loitering to sell or buy sexual services. The purpose of the bill is to deal with the negative consequences for communities of street prostitution. It does not make the sale or purchase of sexual services an offence in itself. This is in the context of wider work by the Scottish Executive, as stated in the Policy Memorandum:

“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 recognised the need to protect communities now from anti-social activity associated with street prostitution.”

The Policy Memorandum reflects most of the conclusions of the expert group regarding the objectives for changes to the law:

- “It 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
- It should seek to reduce the stigma which attaches disproportionately to the person soliciting, as against the potential purchaser;
- It should not criminalise on a moral basis;
- It should provide effective protection to the general public from offensive behaviour and conduct; and
- It should avoid and tendency to increase risk to vulnerable people and communities through unplanned displacement”

The Expert Group had also included the following objectives to:

- “minimise the use of imprisonment for women involved in prostitution
- ensure continued protection to vulnerable groups, including young people and vulnerable men and women, from exploitation;
- provide a constructive legal framework to support the achievement of broader strategic obligations for tackling prostitution in Scotland” (Scottish Executive, 2004).

SUMMARY OF THE SECTIONS OF THE BILL

Section 1 Offences relating to prostitution

Offence

Specifically this 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”.

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.

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. It is not clear if this will impact on the ability to have “managed zones” under this legislation.

This Bill follows the thrust of the second option proposed by the Expert Group (see above). However it differs in that the Expert Group proposed that a complaint from a member of the public who had actually been offended would be required.

Definition of Relevant Place

The Bill focuses on prostitution in public places. However, the offences in the Bill are defined in relation to any “relevant place”. This phrase covers:

1. The definition of public place set out in section 133 of the Civic Government (Scotland) Act 1982 (c. 45):
"public place" means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes--
 - (a) the doorways or entrances of premises abutting on any such place; and*
 - (b) any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses".*
2. A place to which at the material time the public are permitted to have access (whether on payment or otherwise).
3. In relation to the soliciting offence only, “a place which is visible from a relevant place”.
4. Activities within various modes of transport may also be included within the offences. However there are major differences in regard to:
 - Soliciting – includes public transport, private cars and taxis
 - Loitering – includes public transport but not private cars or taxis

The Executive’s response to the Expert Group specifically mentioned the need to deal with the problems caused by those purchasing prostitution services “whether they be ‘kerb-crawling’

from vehicles or on foot” (Scottish Executive, 2005c). In the Bill, justification for the differentiation between modes of transport included for loitering and soliciting is stated in the Policy Memorandum as follows:

“The offences also apply to people travelling on or in public transport. This was specifically provided for as it might otherwise be argued that public transport was not a ‘place’ and therefore did not fall within the definition of ‘relevant place’. However, the loitering offence only applies on those forms of public transport on which it was thought possible that a person could loiter, such as buses, trains and ferries (but not, for example, a taxi).

In addition, 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 that 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.”

Section 2 Arrest for offences under section 1

A constable who “reasonably believes” that this offence is being committed will be given statutory powers of arrest without warrant. After consultation with Association of Chief Police Officers in Scotland this position was agreed to enable enforcement of the new provisions, rather than relying on “common law powers which require constable to assess whether or not it is in the interest of justice to exercise their powers of arrest” as stated in the Policy Memorandum.

Section 3 Repeal of section 46 of Civic Government (Scotland) Act 1982 (c. 45)

The Bill would repeal the current provisions on soliciting by prostitutes in public.

NEXT STEPS

The Local Government and Transport Committee has been designated as the lead committee on the Bill. The Committee agreed its approach on the Bill on 19 September 2006 and will begin its scrutiny of the Bill at Stage One on 3 October 2006.

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