These notes relate to the Prostitution (Public Places) (Scotland) Act 2007 (asp 11) which received Royal Assent on 5 April 2007

PROSTITUTION (PUBLIC PLACES) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Offences relating to prostitution

4. Subsection (1) provides that it is an offence for a person to solicit in a relevant place for the purpose of obtaining the services of someone engaged in prostitution. "Relevant place" is defined at subsection (6) as explained at paragraphs 13 and 14.

5. Paragraphs (a) and (b) of subsection (2) clarify that the offence of soliciting (set out in subsection (1)) can be committed by a person while in a motor vehicle or on public transport. "Motor vehicle" and "public transport" are defined at subsection (6) as explained at paragraphs 11 and 12.

6. Subsection (2)(c) clarifies that where a person solicits another person for the purpose of obtaining the services of someone engaged in prostitution, it is not necessary that the person who is solicited is in fact engaged in prostitution in order for the offence to be committed.

7. Subsection (3) provides that it is an offence for a person to loiter in a relevant place so that in all the circumstances, it may reasonably be inferred that he is doing so for the purpose of obtaining the services of someone engaged in prostitution. Another example of a statutory provision which incorporates such an "inference test" is section 57 of the Civic Government (Scotland) Act 1982. See the case of *Hamilton v. Donnelly* (1992 SCCR 904) for the approach taken by the Court to section 57 of that Act.

8. Subsection 4 clarifies that the offence of loitering (set out in subsection (3) can equally be committed by a person while in a motor vehicle or on public transport.

9. Subsection (5) provides that a person convicted of an offence under subsection (1) or (3) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale. Summary conviction occurs when criminal proceedings in respect of the offence are brought before the district or sheriff court (without a jury sitting) and the person has been found, or pleads, guilty. The current level 3 fine is £1000.

10. Subsection (6) provides definitions for various terms used in the Act.

11. "Motor vehicle" has the meaning given by section 185(1) of the Road Traffic Act 1988, where it is defined as *"a mechanically propelled vehicle, intended or adapted for use on the roads"*. This definition is subject to section 20 of the Chronically Sick and Disabled Persons Act 1970 which makes special provision about invalid carriages such that they would not be classed as motor vehicles for the purposes of this Act.

12. "Public transport" means a vehicle, train, tram, ship, hovercraft, aircraft or other thing designed for carriage of members of the public when not relying on facilities of their own. The definition would include taxis and hire cars.

13. **"**Relevant place" is defined in paragraph (a) of the definition as a "public place" (as that expression is defined in section 133 of the Civic Government (Scotland) Act 1982). That section defines a public place as: "*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*". Paragraph (b) of the definition of "relevant place" expands upon this to include any other place to which the public are permitted access whether or not that requires payment. Paragraph (b) therefore operates to include sports venues, rail and bus stations, theme parks et cetera.

14. For the purpose of the soliciting offence at subsection (1), any place which is visible from a place mentioned at paragraph (a) or (b) of the definition of a "relevant place" is included within the definition. This would cover, for example, someone soliciting for prostitution related purposes from, for example, the window of a flat, or from a private car park or disused warehouse area so as to be visible from the places mentioned in paragraphs (a) and (b).