

# **PROSTITUTION (PUBLIC PLACES) (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### **THE ACT – AN OVERVIEW**

3. The Act provides that it shall be an offence for a person to solicit or loiter in a “relevant place” for the purpose of obtaining the services of someone engaged in prostitution.

### **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

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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).

### ***Section 2 – Arrest for offences under section 1***

15. This section provides that where a constable reasonably believes that a person is committing, or has committed, an offence under section 1, the constable may arrest that person without warrant. Subsection (2) states that this power does not prejudice any other power of arrest conferred by law.

### ***Section 3 – Short title and commencement***

16. Subsection (2) provides that the Act shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
18. Subsection (3) provides that any order made under subsection (2) may include such transitional and saving provisions as the Scottish Ministers consider necessary or expedient.

## **PARLIAMENTARY HISTORY**

17. The following table sets out, for each Stage of the proceedings in the Scottish Parliament for this Act, the dates on which the proceedings at the Stage took place, the references to the Official Report of those proceedings and the dates on which the Committee Reports and other papers relating to the Act were published, and the references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>Reference</i>
<b>Introduction</b>	

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<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
Bill As Introduced, 15 September 2006	Bill as introduced (SP Bill 69)
<b>Preliminary Discussion</b>	
<b><i>Local Government &amp; Transport Committee</i></b>	
22 <sup>nd</sup> Meeting – 19 September 2006	Item in private
<b><i>Finance Committee</i></b>	
23 <sup>rd</sup> Meeting – 26 September 2006	Col 3933
<b>Stage 1</b>	
<b><i>Subordinate Legislation Committee</i></b>	
26 <sup>th</sup> Meeting – 26 September 2006	Col 1997
<b><i>Local Government &amp; Transport Committee</i></b>	
24 <sup>th</sup> Meeting, 3 October 2006	Col 4066
25 <sup>th</sup> Meeting, 24 October 2006	Col 4121
26 <sup>th</sup> Meeting, 31 October 2006	Col 4171
27 <sup>th</sup> Meeting, 7 November 2006	Col 4222
29 <sup>th</sup> Meeting, 21 November 2006	Item in private
30 <sup>th</sup> Meeting, 28 November 2006	Col 4339
31 <sup>st</sup> Meeting, 5 December 2006	Item in private
33 <sup>rd</sup> Meeting, 19 December 2006	Item in private
<b>Stage 1 Report – 1<sup>st</sup> Report, 2007 (SP Paper 711)</b>	Report
<b><i>Consideration by the Parliament</i></b>	
Stage 1 Debate, 17 January 2007	Col 31130
<b>Stage 2</b>	
<b><i>Local Government &amp; Transport Committee</i></b>	
3 <sup>rd</sup> Meeting, 6 February 2007	Col 4531
<b>Stage 3</b>	
<b><i>Consideration by the Parliament</i></b>	
Stage 3 Debate, 28 February 2007	Cols 32512-32549 – Debate and Col 32579 – Decision Time
Royal Assent	
5 April 2007	Prostitution (Public Places) (Scotland) Act 2007 (asp 11)