

# Prostitution (Offences and Support) (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This Delegated Powers Memorandum has been prepared on behalf of Ash Regan MSP, the Member in Charge of the Bill, in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Prostitution (Offences and Support) (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 69–EN);
  - a Financial Memorandum (SP Bill 69–FM);
  - a Policy Memorandum (SP Bill 69–PM);
  - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 69–LC).
3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

### Outline of Bill's provisions

4. The Bill introduces a new criminal offence of paying for sexual acts, repeals section 46 of the Civic Government (Scotland) Act 1982 (the offence of soliciting for the purposes of prostitution in a public place) and quashes historic convictions under section 46 (sections 1-5).
5. The Bill also provides that people in prostitution have a legal right to support when in and when exiting prostitution and places a corresponding duty on the Scottish Ministers to ensure the provision of appropriate assistance and support for individuals to leave prostitution, including by provision of accommodation, financial and other material assistance and healthcare (section 6). The Bill confers on the Scottish Ministers the power to make provision for that assistance and support in regulations.

## Rationale for subordinate legislation

6. The Bill contains three delegated powers provisions, enabling the Scottish Ministers to make regulations to ensure effective implementation. These powers allow for the establishment of assistance and support under section 7, including eligibility criteria and public body responsibilities, the creation of ancillary provisions under section 8 to address incidental or transitional needs, and commencement provisions under section 11 to bring different parts of the Act into effect at appropriate times. Each delegated power provision is described in more detail below.

7. In considering what should be left to subordinate legislation, the Member has had regard to the need to strike a balance between the importance of ensuring full parliamentary scrutiny of the policy that the Bill seeks to deliver whilst recognising the relatively better position of the Scottish Ministers when compared with an individual member in making decisions as to how the various public bodies, working together, can deliver this assistance and support in practice.

## Delegated powers

### Section 7(1): Regulations about assistance and support

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

#### Provision

8. Section 6(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. 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).

9. Section 7(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 that duty under section 6. 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, the Common Services Agency, local authorities and integration joint boards.

#### Reason for taking power

10. As set out in paragraph 7 above, the Member understands that the Scottish Ministers are best placed to know how health and social services are delivered in practice, how persons looking to exit prostitution can best be identified and supported and how the various bodies listed in subsection (2)(c) work together. The detail of how, in practice, the rights conferred by the Bill are to be delivered (including the body or bodies on which

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functions should be conferred, eligibility criteria, conditions and administrative and procedural matters), is therefore left to the Scottish Ministers to set out in regulations.

### Choice of procedure

11. Section 9(2) provides that regulations made under section 7(1) would be subject to the affirmative procedure. As it is anticipated that the regulations would be substantial in nature, imposing significant statutory duties and operational responsibilities on public bodies to facilitate the effective provision of assistance and support, the use of the affirmative procedure is considered appropriate to allow for a higher level of parliamentary scrutiny.

### Section 8(1): Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

12. Section 8 enables the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or savings provision for the purposes of, in connection with, or for giving full effect to the Bill.

13. This is a standalone power enabling ancillary provision to be made where the Scottish Ministers consider it appropriate to ensure the Bill can be given its full effect.

### Reason for taking power

14. As with any new body of law, the Bill may give rise to a need for further provision to be made to ensure that policy objectives can be achieved.

15. Whilst the Member has given careful consideration to the provisions of the Bill, and the detail of how it will operate in practice will be set out by the Scottish Ministers in regulations under section 7, there may, in addition, be some ancillary provisions that require to be made in order for the policy to be fully delivered. This power ensures that issues of an ancillary nature which may arise can be dealt with effectively by the Scottish Ministers.

### Choice of procedure

16. As the ancillary power is limited and does not extend to modifying “any enactment (including this Act)” (“enactment” being defined in the Interpretation and Legislative Reform (Scotland) Act 2010 as including primary and secondary legislation), the negative procedure is considered appropriate.

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## Section 11: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

### Provision

17. Section 11 sets out when the provisions will come into force (i.e. begin to have effect). Section 2 and sections 8 to 12 will come into force on the day after Royal Assent. Section 1 and sections 3 to 7 will come into force on the day, or days, as the Scottish Ministers appoint in regulations.

18. Regulations made under this section will be laid before the Parliament but will not otherwise be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

19. In addition, section 11 provides that commencement regulations may include transitional, transitory or saving provision and may make different provision for different purposes. In particular, this allows different sections of the Bill to be commenced on different days.

### Reason for taking power

20. Whilst section 2 will come into force on the day after Royal Assent (repealing the offence of soliciting for the purposes of prostitution in a public place), sections 1 (offence of paying for the performance of a sexual act), 3 (preventing prosecution or the imposition of penalties in respect of offences that predate the repeal of the solicitation offence), 4 and 5 (quashing historic convictions) and 6 and 7 (the right to assistance and support and power to make regulations) will come into force on a day or days to be decided by the Scottish Ministers. This will allow the Scottish Ministers to ensure that these provisions come into force at a time when necessary steps have been taken to prepare for the enforcement of the new offence and to prepare for the administrative and financial requirements that will be imposed by the provisions relating to ongoing prosecutions, quashing historic convictions and the provision of assistance and support. Such provisions may require to include transitional or transitory provision, or the saving of repealed or amended provisions.

### Choice of procedure

21. As is usual for commencement regulations, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies.

22. Commencement regulations bring into force provisions, the substance of which have already been considered by the Parliament during the passage of the Bill. Any regulations under this section will be laid before the Parliament as soon as practicable after being made (and in any event before the legislation is due to come into force).



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