

**LORD ADVOCATE'S GUIDELINES  
TO CHIEF CONSTABLES ON THE ENFORCEMENT OF SOLICITING  
AND LOITERING OFFENCES BY PURCHASERS**

1. The Prostitution (Public Places) Scotland Act 2007 criminalises the act of a purchaser who attempts to engage in prostitution. These Guidelines are intended to provide guidance on the available enforcement options and prescribe minimum enforcement criteria. They should form the basis of local enforcement strategies agreed between the police and Procurator Fiscal.

2. The Prostitution (Public Places) Scotland Act 2007 (Disqualification from Driving) Order 2011 came into force on 1 December 2011, for offences committed on or after this date. The Order makes provision for a person who has been convicted of a relevant offence to be disqualified from driving where the court is satisfied that the accused was either driving or in charge of a motor vehicle at the time of committing the offence.

**Background**

3. Prostitution represents an insidious form of abuse of women and men. Those involved are not only degraded by the act itself but are exposed to a significant risk of non-consensual sexual and physical abuse. For the communities in which prostitution takes place, the activity can represent a significant nuisance and potential danger. Residents and workers are exposed to prostitution related paraphernalia and the threat of being approached by those seeking prostitution related services.

4. Those working in the justice system must aim, in the long term, to eradicate prostitution related activity, but neither the root causes of street prostitution nor its consequences can be tackled effectively by the police and prosecutors alone. Law enforcement is only one constituent of the broader, concerted approach.

5. Until street prostitution is eliminated, those with responsibility for enforcing the law and representing the public interest must seek to reconcile the competing interests of those involved in street prostitution and the communities affected by it. There is evidence that rigorous enforcement merely displaces prostitution to unknown areas, while routine non-enforcement allows the demand which sustains the industry to go unchecked and fails to address the nuisance and potential danger to local communities. It may not be possible to reconcile fully those interests in the short term but it is critical that the wider implications of any agreed approach are identified and, where possible, addressed.

6. The enactment of the Prostitution (Public Places) (Scotland) Act and the subsequent introduction of the Prostitution (Public Places) Scotland Act 2007 (Disqualification from Driving) Order 2011 has signalled Parliament's intention to address the problem of street prostitution, tackling demand by targeting the actions of purchasers.

7. Detailed guidance on the operation of the offences is contained in the Annex to the Guidelines.

### **National Enforcement Criteria**

8. The minimum criteria identified below should be applied nationally and reflected in any local enforcement strategies.

9. At every stage consideration should be given to identification of indicators of Human Trafficking. Trafficking in human beings is the illegal trade of human beings for various purposes, which can include commercial sexual exploitation. Trafficking for the purposes of prostitution is criminalised by section 22 of the Criminal Justice (Scotland) Act 2003. The United Kingdom Human Trafficking Centre (UKHTC) has developed a Senior Investigation Officer Toolkit to assist with the investigation and identification of human trafficking offences. [Add link].

### **Enforcement of the Prostitution (Public Places) (Scotland) Act 2007**

10. Chief Constables and Procurators Fiscal should ensure that offences under the 2007 Act are enforced across their jurisdictions.

11. Offences under the 2007 Act should not be regarded as minor and there is a **strong presumption in favour of formal action**, even in respect of first offenders. Where formal action is considered appropriate, and where in the opinion of the officers there is sufficient evidence to prove an offence, a report should be submitted to the Procurator Fiscal.

12. The use of direct measures is not appropriate and offences under this legislation are not included in the protocol on the use and recording of direct measures.

### **Local Enforcement Strategies**

13. The issues faced by communities and those involved in street prostitution vary across Scotland. Every area has its own issues and characteristics which develop and evolve over time. Police officers and prosecutors therefore have a duty to exercise their discretion in a manner which responds to the changing needs of communities by applying appropriate local criteria. Accordingly, in areas in which street prostitution is prevalent, police and prosecutors should agree local enforcement strategies, reflecting the criteria prescribed here and taking account of the "Guidance for Local Authorities and their Community Planning Partners on Street Prostitution" produced by the Scottish Government.

14. While the detail of local strategies may vary, the public interest demands an approach which: -

- seeks to tackle demand through enforcement against purchasers;
- minimises the impact of street prostitution on the communities affected by it; and
- does not increase the risk to vulnerable people and to communities through unplanned displacement.

### **Officers' Discretion**

15. As with all crimes, police officers may exercise discretion in individual cases when determining what course of action best serves the public interest. There may be cases, the specific circumstances of which require an approach outside that described in these Guidelines or local enforcement strategies.

### **Review of Enforcement Strategies**

16. It is essential that any locally agreed enforcement strategy is subject to regular monitoring and review to ensure that it continues to meet the public interest. In particular, the implementation of any strategy should be monitored to assess its impact on the factors listed at paragraph 14. The effectiveness of any strategy in meeting the public interest should be reviewed **at least every 6 months** until further notice.

**Frank Mulholland QC**

**Lord Advocate**

**October 2012**

**LORD ADVOCATE'S GUIDELINES  
TO CHIEF CONSTABLES ON THE ENFORCEMENT OF SOLICITING  
AND LOITERING OFFENCES BY PROSTITUTES**

1. Section 46 of The Civic Government (Scotland) Act 1982 criminalises the act of an individual who for the purposes of prostitution loiters or solicits in a public place. These Guidelines are intended to provide guidance on the available enforcement options for those involved in prostitution and prescribe minimum enforcement criteria. They should form the basis of local enforcement strategies agreed between the police and the Procurator Fiscal.

**Background**

2. Prostitution represents an insidious form of abuse of women and men. Those involved are not only degraded by the act itself but are exposed to a significant risk of non-consensual sexual and physical abuse. For the communities in which prostitution takes place, the activity can represent a significant nuisance and potential danger. Residents and workers are exposed to prostitution related paraphernalia and the threat of being approached by those seeking prostitution related services.

3. Those working in the justice system must aim, in the long term, to eradicate prostitution related activity, but neither the root causes of street prostitution nor its consequences can be tackled effectively by the police and prosecutors alone. Law enforcement is only one constituent of the broader, concerted approach.

4. Until street prostitution is eliminated, those with responsibility for enforcing the law and representing the public interest must seek to reconcile the competing interests of those involved in street prostitution and the communities affected by it. There is evidence that rigorous enforcement merely displaces prostitution to unknown areas, while routine non-enforcement allows the demand which sustains the industry to go

unchecked and fails to address the nuisance and potential danger to local communities. It may not be possible to reconcile fully those interests in the short term but it is critical that the wider implications of any agreed approach are identified and, where possible, addressed.

5. Detailed guidance on the operation of the offences is contained in the Annex to the Guidelines.

### **National Enforcement Criteria**

6. The minimum criteria identified below should be applied nationally and reflected in any local enforcement strategies.

7. At every stage consideration should be given to identification of indicators of Human Trafficking. Trafficking in human beings is the illegal trade of human beings for various purposes and can include commercial sexual exploitation. Trafficking for the purposes of prostitution is criminalised by S22 of the Criminal Justice (Scotland) Act 2003. The United Kingdom Human Trafficking Centre (UKHTC) has developed a Senior Investigation Officer Toolkit to assist with the investigation and identification of human trafficking offences. [Add link].

### **Enforcement of the Civic Government (Scotland) Act 1982**

8. Section 46 of the Civic Government (Scotland) Act 1982 applies to a prostitute (male or female) who loiters or solicit in a public place as a prostitute.

9. Where an offence has been committed it is open to the police to consider either formal or informal action.

10. Offences under s46 of the 1982 Act can only be committed by "a prostitute" and, as such, a pre-requisite for the prosecution of sellers is that the accused has received at least two police warnings (whether formal or informal). Accordingly, on the first and second occasions on which an offence is detected, officers should have discretion to use direct measures; including discretionary (verbal) police warnings or the use of a

formal police warning. First offenders cannot be prosecuted and in these circumstances a police report should not be submitted to the Procurator Fiscal.

11. Where an offender has been the subject of direct measures on at least two previous occasions, consideration should be given to the submission of a report to the Procurator Fiscal on the third or any subsequent occasion.

### **Local Enforcement Strategies**

12. The issues faced by communities and those involved in street prostitution vary across Scotland. Every area has its own issues and characteristics which develop and evolve over time. Police officers and prosecutors therefore have a duty to exercise their discretion in a manner which responds to the changing needs of communities by applying appropriate local criteria. Accordingly, in areas in which street prostitution is prevalent, police and prosecutors should agree local enforcement strategies, reflecting the criteria prescribed here and taking account of the "Guidance for Local Authorities and their Community Planning Partners on Street Prostitution" produced by the Scottish Government.

13. While the detail of local strategies may vary, the public interest demands an approach which:

- minimises the impact of street prostitution on the communities affected by it;
- does not frustrate the efforts of those providing vital health and support services to those engaged in prostitution; and
- does not increase the risk to vulnerable people and to communities through unplanned displacement.

### **Officers' Discretion**

14. As with all crimes, police officers may exercise discretion in individual cases when determining what course of action best serves the public interest. There may be cases, the specific circumstances of which require

an approach outside that described in these Guidelines or local enforcement strategies.

### **Review of Enforcement Strategies**

15. It is essential that any locally agreed enforcement strategy is subject to regular monitoring and review to ensure that it continues to meet the public interest. In particular, the implementation of any strategy should be monitored to assess its impact on the factors listed at paragraph 13. The effectiveness of any strategy in meeting the public interest should be reviewed **at least every 6 months** until further notice.

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