

**EXPLANATORY MEMORANDUM TO**  
**THE PROSTITUTION (PUBLIC PLACES) (SCOTLAND) ACT 2007**  
**(DISQUALIFICATION FROM DRIVING ) ORDER 2011**

**2011 No. 2490**

**1.** 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 This Order provides courts in Scotland with a power to disqualify a person from holding or obtaining a licence to drive a motor vehicle for such a period as the court considers to be reasonable if convicted of the non-motoring offence under section 1 of the Prostitution (Public Places) (Scotland) Act 2007 (“the 2007 Act”) of soliciting or loitering for the purpose of engaging the services of someone engaged in prostitution. Disqualification may only be imposed where the offender is driving, or is otherwise in charge of, a motor vehicle at the time of the commission of the offence.

2.2 The Order requires that a person subject to such a disqualification surrender any UK, Northern Ireland or Community licence held by them along with the counterparts to those licences. Provision is made in the Order enabling a person upon whom a disqualification order is imposed to appeal against the order as if it were a sentence imposed by the court on summary conviction.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Order is to be made in exercise of powers conferred by section 104, 112(1) and 113(3) of the Scotland Act 1998 (“the 1998 Act”). The Order is subject to negative resolution procedure and is to be laid in the UK Parliament. Section 104 of the 1998 Act provides that subordinate legislation may make such provision as the person making it considers to be necessary or expedient in consequence of any Act of the Scottish Parliament; in this case, the 2007 Act.

3.2 This Section 104 Order is expedient in consequence of the 2007 Act. It will bring the powers of Scottish courts in sentencing persons convicted of offences relating to soliciting or loitering for the purpose of obtaining services of a person engaged in prostitution into line with those of courts in England and Wales. Section 146(1) of the Powers of Criminal Courts (Sentencing) Act 2000 provides courts in England and Wales with a general power to disqualify an offender from driving on conviction for any offence, in addition to, or instead of, any other penalty. Home Office Circular 2003/59 refers to its possible use for persons convicted of kerb crawling offences. The power contained in this Order is restricted to persons convicted of an offence under section 1 of the 2007 Act – for the non-motoring offences involving kerb crawling only.

**4. Legislative Context**

4.1 The power to determine the circumstances in which a court may disqualify an offender from driving is reserved to the UK Parliament under paragraph E1 of Schedule 5 to the Scotland Act 1998.

4.2 A Section 104 Order is required to provide Scottish courts with a power to disqualify from driving persons convicted of offences under section 1 of the 2007 Act. Section 146(1) of the Powers of Criminal Courts (Sentencing) Act 2000 provides courts in England and Wales with a general power to disqualify an offender from driving on conviction for any offence.

4.3 No equivalent power has been rolled out to all Scottish Courts and their power to disqualify an offender from driving is restricted to, in the main, motoring offences. While the 2007 Act offences are not 'motoring offences', a motor vehicle is commonly used to commit the offence, and it is considered that a power to disqualify from driving persons convicted of these offences would act as a substantial deterrent to those persons convicted of offences relating to soliciting or loitering for the purpose of obtaining services of a person engaged in prostitution.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Scotland.

## **6. European Convention on Human Rights**

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The 2007 Act provides for a specific offence, criminalising the act of soliciting or loitering for the purpose of obtaining the services of someone engaged in prostitution. The 2007 Act came into force in October 2007. Prior to this time, there was no specific offence in Scotland which criminalised the acts of those seeking to purchase sexual services in a public place.

7.2 During the passage of the 2007 Act through the Scottish Parliament, the Scottish Parliament Local Government and Transport Committee requested that the Scottish Executive provide information concerning the disqualification from driving of offenders as a possible penalty on conviction of purchasing sexual services in a public place. Following this response from the Committee the Scottish Executive, supportive of the principle of disqualifying those persons convicted for the non-motoring offence of kerb crawling from driving, sought an Order from the UK Government under Section 104 of the 1998 Act.

## **8. Consultation outcome**

8.1 This Order has not been the subject of a separate consultation exercise; Orders taken forward under the Scotland Act 1998 are not usually consulted on as the terms of the Bill have previously been the subject of a separate consultation exercise. The Prostitution (Public Places) (Scotland) Act 2007 was developed in response to a consultation on the report *Being Outside: Constructing a response to Street Prostitution* (see <http://www.scotland.gov.uk/Publications/2004/12/20410/48751> and <http://www.scotland.gov.uk/Topics/Justice/crimes/Response/streetprostguidecons/expert-group-report/Responses> for responses). The then Local Government and Transport Committee of the Scottish Parliament took written and oral evidence on the Bill as introduced and details of their consideration of the Bill can be found at <http://www.scottish.parliament.uk/business/committees/lg/inquiries/ppp/ProstitutionBill.htm>.

8.2 Drivers in England and Wales can already face disqualification from driving as a possible penalty on conviction of purchasing sexual services in a public place. Following disqualification for this offence in England and Wales, a fee is chargeable to drivers to renew their driving licence following the period of disqualification. This fee is provided by the Motor Vehicles (Driving Licences) Regulations 1999 (as amended). However, there is a statutory requirement to consult on the introduction of a similar fee for drivers disqualified for the offence in Scotland. Once this Order is laid, work can commence to introduce the legislative power to charge a fee for licence renewal following this offence in Scotland.

## **9. Guidance**

9.1 The Scottish Government will write to Scottish courts once the Order comes into force, to inform them of that this Order will provide them with the power to disqualify from driving persons convicted of offences under the 2007 Act. This letter will also be placed on the Scottish Government website at <http://www.scotland.gov.uk/Topics/Justice/crimes/Response>

9.2 The Driver and Vehicle Licensing Agency (DVLA) will issue guidance to Scottish courts on the charging regime in place for the renewal driving licences following disqualification for this offence.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

10.2 We do not consider that the instrument will have any financial impact on the public sector.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Scottish Government will continue to monitor the effect of the 2007 Act via Criminal Justice statistics and in doing so, will monitor the impact of the provision of a power to disqualify offenders from driving.

## **13. Contact**

13.1 Lizzie Walker at the Scotland Office, Email: [lizzie.walker@scotlandoffice.gsi.gov.uk](mailto:lizzie.walker@scotlandoffice.gsi.gov.uk), can answer any queries regarding the Instrument.