

General laws on prostitution in england and wales criminology essay



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' By failing to address domestic prostitution in the Sexual Offences Act 2003, a much needed opportunity for wholesale reform of the criminal law in this area was lost. At best, subsequent policy reviews and legislation have tinkered at the margins; at worst, they have added to the grounds upon which the current response should be criticized.' Discuss.

INTRODUCTION

In 1998, it was publicised by the Government that there was to be a wholesale assessment of sexual offences and penalties[1]. An independent review was duly set up and its recommendations were published in *Setting the Boundaries* in 2000. While proposals for reform around the areas of, amongst others, rape and sexual assault, were extensively debated and laid out, the review excluded prostitution altogether since it was considered to be beyond their remit. But the review committee did recommend that a further separate review of prostitution be carried out, and the Government responded to this proposal in 2002 by publishing its new policy on sexual offences in *Protecting the Public*, where it proposed the introduction of a few new offences relating to 'commercial sexual exploitation'. Just a year later, a Bill to give effect to the proposals was passed and received royal assent, which led to the passing of the Sexual Offences Act 2003 (SOA 2003).

This research paper will analyse the positive but limited changes made to the laws on prostitution by the SOA 2003. Then subsequent policy reviews and legislation regarding prostitution that took place from year 2004 onwards will be reviewed, detailing both the positive responses and criticisms made towards them.

THE GENERAL LAWS ON PROSTITUTION IN ENGLAND AND WALES PRE-2003

Before detailing the limited changes made to the law around prostitution by the SOA 2003, it is worth noting down some of the general laws as they were before the Act was passed. Prostitution itself was (and still is) not illegal but a lot of the associated activities surrounding it are. The Street Offences Act 1959 set out offences that include loitering and soliciting in a public place for the purposes of prostitution[2]. Sexual Offences Act 1985 made it an offence to solicit another person or persons for prostitution from a vehicle in a public place and also created an offence of persistent soliciting in a public place. These offences were very sex-specific. The accused must be male and the solicited must be female. Kerb-crawling is an offence under section 1 of the same Act. Provisions relating to brothel-keeping and associated offences were contained in sections 33 to 36 of Sexual Offences Act 1956.

CHANGES BROUGHT ABOUT BY THE SOA 2003

The Act does not establish a wide-ranging set of new prostitution-related offences[3]. However, there were a few notable changes to the law:

Section 47 makes it illegal to pay for otherwise legal sex with someone who is 16 or 17.

Sections 48 to 50 impose heavy punishments for causing or inciting or controlling or arranging or facilitating child prostitution.

Section 53 makes it illegal to control another adult's prostitution where you gain from it.

Section 55 increases the penalties for owning or running a brothel for the purposes of prostitution.

Section 56 broadens gender-specific prostitution offences, making them gender-neutral. 'Causing or inciting prostitution for gain' replaces 'living off the immoral earnings of a prostitute' which could be originally only charged against men. 'Controlling prostitution for gain' replaces 'controlling and directing the actions of a prostitute' which could be originally only charged against women. Similarly, the offences of soliciting, loitering and kerb-crawling can now be committed by both men and women.

WHAT HAS THE SEXUAL OFFENCES ACT FAILED TO ADDRESS?

Beyond those listed above, it fails to make any significant changes to the law on prostitution. The Act predominantly deals with the exploitation of people through prostitution. But the Act does not, for example, decriminalise loitering or soliciting by children who are involved in prostitution. It does not alter the definition of 'prostitution'[4] as meaning a person of over the age of 18. Unfortunately, this means that a child could be labeled as a "prostitute" regardless of any compulsion or coercion[5]. The absence of a thorough review during the process leading to the enactment of the SOA 2003 means that there are holes in this area of the law such as described above.

SUBSEQUENT POLICY REVIEWS AND LEGISLATION

Green Paper Paying the Price (2004): a consultation document

The inadequate and outdated laws on prostitution that stood at that time and the absence of a wholesale review in the stages that led to the passing of the SOA 2003 prompted the New Labour government to publish a consultation paper in 2004 entitled 'Paying the Price' which lays out information and points of views on how best to regulate prostitution in the United Kingdom (UK) and what the Home Office thought to be important issues for debate. For the first time in 'over fifty years', the government was offering its first review of all prostitution-related legislation[6]. The consultation document was described as intending to be 'the starting point for the development of a realistic and coherent strategy to deal with prostitution'[7]. It received over 800 responses and the result was published in 2006, which will be considered later on. It is worth noting on the outset that although the Home Secretary at that time, David Blunkett, visualised tolerance zones in certain areas as a way to tackle street prostitution, it was far from what the government actually ended up advocating. In particular, the government called for stricter laws on kerb-crawling to put a clamp down on street prostitution.

Positive responses:

The document is praised for stressing on the protection of children involved in prostitution, its emphasis on the abuse of fundamental human rights in trafficking and the protection it gives to the welfare needs of those exiting

prostitution, while considering the various ways in which other parts of the world deals with prostitution.

Criticisms:

However, the consultation paper is not uncontroversial and disappoints many. One commentator describes its implementation as involving a 'loud bark but small bite'[8].

One of the biggest problems with the document was that, despite the fact that it claimed to be ready for wholesale reform on the regulation of prostitution, considering differing models of regulations adopted by other countries including legalisation, decriminalisation and abolition, its preference to abolition was clear from the very beginning. The document is sympathetic to the idea that women's involvement in prostitution can be reduced by attacking the demand side of the industry by enforcing stricter penalties for kerb-crawling that are intended to target clients. However, it is also important to note that commentators see a problem in taking up a model from another country and transplanting it into the UK as this could potentially lead to the brushing aside of differentials in the cultural settings of the comparative countries[9].

This lack of attention to the diversity of sex industries is added by the failure to recognise that providing sexual services are considered to be voluntary work for some women or men. The review regarded prostitution, as a whole, as almost equivalent to violence and harmful to everyone without

considering the possibility of a different picture of the industry. Phoenix and

Oerton argue that *Paying the Price* simply ignores the last five centuries of <https://assignbuster.com/general-laws-on-prostitution-in-england-and-wales-criminology-essay/>

tolerant attitudes in England and Wales towards the actual exchange of sex for money, relocating the problem to prostitution itself rather than its negative effects, which used to be the focus of prostitution laws[10].

Related to this is that the approach taken by the consultation means that there is a failure to put equal emphasis on providing routes out for women involved in prostitution and protecting those who wish to stay on selling sex as a voluntary choice as they are unable to find other sufficient means of generating income[11]. The fact that the consultation does not take full account of all contexts of prostitution suggests that the proposals are not designed to help all of those engaged in sex work.

The consultation document has also been criticised for lacking any acknowledgment of the historical legacy and legal framework in which prostitution in the UK exists. Brooks-Gordon identifies a number of key historical prostitution-related backdrops that the consultation has failed to mention[12]. First of all, it has failed to mention that the Wolfenden report importantly differentiated between public nuisance and morality and that the latter should not be something that the law be concerned with. Secondly, the document has failed to include seven reports on sex work by four government committees between 1928 and 1986: the Street Offences Committee in 1928, Wolfenden in 1957, the Vagrancy and Street Offences Committee between 1974 and 1976, and the Criminal Law Revision Committee between 1982 and 1986. Thirdly, there was no mention of an independent report which was produced by the Parliamentary Group on Prostitution which was led by Diane Abbott in 1996.

But the most important elimination would be the European Convention on Human Rights (ECHR), which became part of English law with the passing of the Human Rights Act 1998 in 2000. The relevant inclusion would have been Article 8 which protects the right to respect for private life, which has been shown by case law such as the case of *Niemetz v Germany* (1993)[13] to include a person's sex life, and criminalising paying for sex could fall foul of this right.

Related to this is the fact that the document has failed to consider one of the most relevant models of regulation of prostitution for the UK, and that is one of Germany[14]. It has been excluded from the document as a feasible model even though it is the most relevant model, designed after the ECHR was incorporated into its law. In Germany, prostitution is regarded as an economic activity within the meaning of the EC Treaty and this influences the meaning of Article 15 of the EU Charter on Fundamental Rights which accords individuals with the protection of their 'profession and the right to work.' This could mean that voluntary prostitution also comes under the Article and that women selling sex voluntarily could not be made to exit prostitution. Equally, the document has left out Thailand in its report, where the criminalisation of prostitution bred corruption and organised crime.

Although the Dutch model, where there exist 'toleration' zones, is one of the models that the document does consider, it simply dismisses the model as a failure because some workers work outside the toleration zones. It seems that 'the baby...have been thrown out with the babywater'[15] and this is unacceptable because it is argued that grey markets exist in any economic market. An acceptable reason of dismissing such a model would instead be, <https://assignbuster.com/general-laws-on-prostitution-in-england-and-wales-criminology-essay/>

for example, if murder rates are higher with the existence of tolerance zones than without it. On the other hand, the document uncritically accepts the Swedish model, where it is a crime to purchase or attempt to purchase sex. But the major problems that have been caused after the Swedish model has been implemented have been omitted from the analysis. For instance, it has failed to mention that official reports have shown that street solicitation has not declined, and that the media has reported that women with drug addiction have turned to suicide because of the new law. In effect, the presentation of policy options in the document proves to be both lacking in balance and flawed.

Another important issue that has been raised about the document is that concerning the evidence and research used, that they were very selective and biased. For example, sex workers tend to be marginalised and viewed as the 'other'. This status, O'Neill argues, leads to a lack of recognition and sex workers being treated like a 'pariah'[16]. She argues that there needs to be a 'politics of inclusion' so that the voices of sex workers can be heard within safe spaces through inclusive research methodologies such as Participatory Action Research (PAR). The English Collective of Prostitutes has also pointed out that statistics regarding sex workers are used selectively. Research that found 74 per cent of off-street sex workers sold sex because they need to pay for domestic expenditure and support their children was mentioned in passing and then ignored, while claims that 80 to 95 per cent of sex workers are drug users provide the backdrop of many recommendations[17].

The policy reform process had also hushed the views and experiences of male sex workers almost entirely, concentrating only on the role of men in <https://assignbuster.com/general-laws-on-prostitution-in-england-and-wales-criminology-essay/>

prostitution as mainly the abusers of women and children involved in sex work[18]. Although the SOA 2003 made prostitution laws gender-neutral, it is argued that it is not entirely accurate to be assuming that the same conditions exist for 'men selling sex to men, men selling sex to women, women selling sex to men, and women selling sex to couples'[19], the consequence of which neglects the needs of male sex workers.

Not only does the document not pay enough attention to the voices and experiences of both female and male sex workers, it also fails to conduct a systematic review of the literature on clients. Research literature on clients are only mentioned six times, five of which were research published during the last century. Obviously, much has been written since the last century and these have been omitted. For instance, recent research on clients shows useful demographic profiles that have important implications on the supply and demand for sexual services. *Paying the Price* describes the demographic profile of clients as 'around 30 years of age, married, in full time employment', ignoring research by the Home Office in *Tackling Street Prostitution* that found that less than half of the men researched were married. Additionally, *Tackling Street Prostitution* showed that the mean age was 35 years instead of 30. Obviously the omission of recent studies such as *Tackling Street Prostitution* has led to *Paying the Price* quoting inaccurate information.

Another obvious area that the document has paid little attention to is indoor sex work. Only in the final chapter do indoor markets appear, where the key focus is those experiencing 'serious exploitation'. Also, the consultation document neglected to mention models of policing indoor sex work that are <https://assignbuster.com/general-laws-on-prostitution-in-england-and-wales-criminology-essay/>

generally considered as successful (Las Vegas, Nevada, Germany), at the same time describing only the limitations of the Australian and Austrian models[20].

In essence, the consultation paper did not commence a full review of the law on prostitution. What it did was concentrate on a number of issues. It sought to prevent young people being forced into prostitution, provide exit strategies for those adults involved in sex work and ensure justice against abusers and exploiters for those affected by the industry[21].

White Paper A Coordinated Prostitution Strategy and a summary or responses to ‘ Paying the Price’ (2006); The Strategy

The result of the consultation was produced in the form of The Strategy, a series of guidelines that have to be followed by the police, local authorities and other agencies that are involved in tackling prostitution.

The Strategy prioritises five key aims: prevention, developing routes out for sex workers, tackling off-street prostitution, ensuring justice and tackling demand. But the paramount emphasis is to ‘ disrupt the sex markets’ (Home Office 2006: 1) and this is done by taking a non-tolerant approach to the sex industry, opting for the criminalisation of sex workers and a strict re-enforcement of kerb-crawling laws.

In fact, before The Strategy was even published, on 28 December 2005, the Home Office announced through the media that a policy of zero tolerance would be pursued against clients. MP Fiona Mactaggart said:

“ Prostitution blights communities. We will take a zero tolerance approach to kerb crawling. Men who choose to use prostitutes are indirectly supporting drug dealers and abusers. The power to confiscate driving licenses already exists. We want the police to use that power more”[22].

In relation to kerb-crawling, The Strategy designs a three-staged approach in enforcing the laws. The first stage would be an informal written warning to owners of car registration numbers seen in red light districts. The second stage would involve a ‘ re-education program’ funded by the person arrested, an awareness program that highlights the criminal sanctions and impact of street prostitution, but this is only available to those arrested for the first time. For non-first offenders and for those who refuse ‘ re-education’ programs, the third stage kicks in, which is prosecution.

Medical treatment is enforced on street sex workers to give into effect the proposals under the 2007 Criminal Justice and Immigration Bill. And if they do not accept referral to services offering routes out of sex work, they will be cautioned with ‘ pre-charge diversion’ which will subject the sex workers to rules such as compulsory attendance on Drug Intervention Programmes.

Another important change to the law is the re-definition of brothel in a bid to regulate off-street prostitution. It is now legal for two or three individuals and a maid to share premises for safety.

Positive responses:

The Strategy boasts potential for positive changes, especially from what is outlined on pages 3 and 4 under 'action for government' and 'action for local partnerships'[23]. For instance:

There is a focus on strengthening approaches to child exploitation by ensuring a holistic approach that includes work with schools

Inclusion of communities through consultation processes like community conferencing

Expanding court diversion and reforming the soliciting law

Expanding the Ugly Mugs scheme through Crime Stoppers

Recruiting police liaison officers

Development of an action planning on trafficking

Criticisms:

The same sort of criticisms thrown at the consultation document preceding the published responses in The Strategy remain. There is the same lack of detail that leaves many questions unanswered. For instance, the experiences of male sex workers are still excluded. The only mention of that particular group is only in an account by respondents in the beginning criticising that Paying the Price provides 'scant information on male prostitution' (Home Office, 2006: 9)[24].

But a particular issue that is met by a lot of disapproval is the proposal that two to three women (or men) are allowed to work together in the interest of

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safety. It is argued that the government has overlooked the discrepancy in off-street working, and that problems might arise in regulating such a wide range of premises.

Another step forward that The Strategy has taken which looks more than sensible from the outset but is actually inadequate on a closer inspection is the focus on protection against sexual exploitation and abuse of children and young people. The underlying problem with this is that it reinforces the idea that the young person is only seen as a victim. There is a possibility that some will not choose to stick to a victim label and seek to take control of their lives by, for example, calling the people who groom them their 'friends' and selling sex for food and a roof on top of their head[25]. To prevent this and to make sure that young people are not trapped in a vicious cycle of violent relationships with their abusers or those who groom them, it is essential for the government, local authorities and social welfare agencies to work together to supplement the already existing child protection interventions with employment and housing schemes. Just as how exit strategies are put in place for adults involved in sex work, it is equally as important to design exit strategies that cater more specifically to youths.

The first of the three-staged approach that The Strategy takes in dealing with kerb-crawlers has also been attacked as being flawed. There is an assumption that the driver of the car caught on CCTV is looking to pay for sex and the possibility that the car may not even belong to the driver is ignored[26]. It may also be possible that the driver is only a friend who is giving a sex worker a lift. Additionally, it has been argued that sending

letters to men at home when they may be innocent could disrupt family life.
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Essentially, no new laws have been introduced by The Strategy. Instead, the existing laws against kerb-crawling have been emphasised as the key setting for the enforcement strategy in order to change the attitude that prostitution is the “ oldest profession” that cannot be eradicated[27].

This leads commentators such as Melrose to argue that ‘ the “ new” strategy is not very new at all’ and that ‘ the government has missed an important opportunity to radically rethink its approach to prostitution’[28].

So far, the law on prostitution is piecemeal and contradictory and sex workers continue to be thought of as the ‘ other’ and the victim, which posed a barrier to a holistic strategy for prostitution reform. Indeed, this problem is reinforced by the laissez-faire stance the law has taken to the term ‘ common prostitute’, which has been repeatedly called to be abolished and which the Criminal Law Revision Committee thought was unreasonably discriminatory to sex workers. There obviously was a need for a wholesale review of the law but The Green Paper Paying the Price and the subsequent Government Strategy proved to be a disappointment to many, especially because of the many omissions and factual errors made in the presentation of legal evidence and research.

Ipswich 2006 serial murders

Meanwhile, the murders of five prostitutes in Ipswich in November and December 2006 reignited calls for a new approach to tackling the issue. Claims that the laws as they stood were inadequate and that there needed to be a re-examination came from both those who called for decriminalisation and those who wanted tighter controls[29]. The former

advocated that the New Zealand model should be followed, where seven years ago the laws against prostitution were repealed, as it was argued that decriminalising prostitution is a diversion from prosecuting violent men. The latter supported instead the model used in Sweden, where in 1999 it became a criminal offence to pay for sex but not to offer sex for sale.

In early 2008, spurred on by the high-profile Ipswich case, the government headed by Home Secretary Jacqui Smith declared that it would conduct a new six-month review on ways to tackle the demand for prostitution and went to Sweden to look at its policies. The findings of the review were published in November 2008 in *Tackling the Demand for Prostitution* and at this point, the government has taken a tough stance on street-based prostitution, declaring that “ they are not inevitable; they are not here to stay”.

Policing and Crime Bill (2008) & Act (2010)

The Policing and Crime Bill initially came about following recommendations in government reports that showed that there was a demand for an increase of police accountability to the public, but provisions including those that deal with alcohol, proceeds of crime, gang-related violence and prostitution were later included following the six-month review, turning itself into a comprehensive criminal law bill.

It received royal assent on 12 November 2009 and the Act came into effect from 1st April 2010. Part II of the Act concerns sexual offences and sex establishments, and the laws were described by the government as meant for protecting vulnerable women and dampen the demand for prostitution.

The key changes effective from the 1st of April 2010 include:

Under section 8, men hunting for sex on the street can now be arrested on their first offence. There is no longer a requirement for the police to be satisfied that the men have been “ persistently” kerb-crawling before they can be arrested.

It will become an offence under section 14 to pay for sex with someone who has been forced, threatened or exploited or otherwise coerced or deceived into providing the sexual services by someone else who has engaged in such conduct for gain. It will be no defence for a person to say that they did not know the prostitute was being forced or threatened.

Conviction of the offence could mean a fine of up to £1, 000, a court summons and a criminal record. Additionally, there is a risk that the name of the defendant will be mentioned in newspapers as part of the “ name and shame” strategy that the government now takes.

Section 16 amends the term ‘ common prostitute’ in section 1 of the Street Offences Act 1959 and inserts the word ‘ persistently’ and ‘ person’ into the offence of loitering or soliciting for the purposes of prostitution. The changes now also require that loitering or soliciting is ‘ persistent’, although it is defined as only two times in a three month period.

On the ‘ supply’ side, section 17 replaces fines with therapy. When sentencing a person for soliciting, a judge will be able to issue an order that the prostitute must meet with a supervisor three times within six months of the conviction. This is designed to help them to leave street prostitution.

Under section 21 of the Act, the police have more powers to close brothels. Previously, they could only put a clamp down on premises associated with prostitution if anti-social behavior or when class A drugs were involved.

It did not take long for these laws to be applied. On the first day that the laws came into force, two men were arrested for having allegedly paid for the sexual services of a prostitute who had been subjected to force and a woman was arrested on suspicion of managing a brothel[30].

Positive responses:

For the first time ever, a man will not be able to claim ignorance as a defence if he is caught paying for sex. Typical excuses given to the police in the past have included: “ I thought this was a massage parlour” and “ I thought she was over 18”[31]. Any explanations and excuses will now be ignored.

Researcher Ruth Brisling, from the charity Lilith Project said:

“ the old law only found men who paid for sex with a girl aged 13 or under guilty of a crime. Above that, they could plead ignorance, were given a slap on the wrist and sent home. This new law changes that. Pleading ignorance will no longer be acceptable and paying for sex with a vulnerable woman working against her will now be completely illegal.”

Others found that targeting clients is the way forward to end prostitution because just relying on laws against trafficking and pimping is inadequate.

Helen Atkins of the Poppy Project said:

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“ There is no point in just going for the pimps when there is a potentially limitless supply of traffickers and victims. We need to frighten off the clients. Prostitution has become part of a lads’ night out – we need to scare the hell out of them.”

Criticisms:

A major campaign group that opposes the changes made to prostitution laws under the Policing and Crime Act 2009 is the English Collective of Prostitutes, who argue that laws that target only at women suffering exploitation such as increased police powers to close down brothels would drive prostitution, even where no violence is involved and the sex workers are selling sex on their own choice, further underground. They argue that the new laws risk sex workers to greater dangers and deter them from coming forward to authorities for help[32].

The Christian Institute argues that the laws do nothing to ensure that the counseling will be inadequate. They assert that ‘ there is all the difference in the world between c