



Policing and Crime Bill - Part 2

Suggested amendments for Committee Stage House of Commons

February 2009

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Introduction and summary

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.

2. These amendments focus upon our most serious concerns regarding Part 2 of the Policing and Crime Bill - in particular, that:
 - **Many of the provisions on prostitution will, we believe, be counter-productive and will make conditions less safe for sex workers, leading to a greater risk of violence against them;** and
 - **The Bill fails to decriminalise children who are victims of child sexual exploitation.**

3. We have not dealt with Northern Ireland provisions in these amendments but would suggest amendments to similar effect in that jurisdiction. Consequential amendments may also be necessary if any of our suggested amendments are adopted.

Part 2: Sexual offences and sex establishments

Clauses 13 and 14: Paying for sexual services of a controlled prostitute

Amendments

Clause 13, page 13, line 32, leave out 'for gain'

Clause 13, page 13, line 32, at end insert –

, and

- (c) A knows, or is reckless as to whether, any of B's activities relating to the provision of those services are intentionally controlled by a third person.

Clause 13, page 13, line 36, leave out lines 36 and 37 and insert –

- (b) whether A is aware of the identity of C.

Clause 13, page 14, leave out lines 1 and 2 and insert –

- (3) An activity is 'controlled' by a third person (C) if:
 - (a) B participates in the activity because of the use or threat against B or another person of one or more of:
 - (i) violence,
 - (ii) blackmail,
 - (iii) unlawful detention, or
 - (iv) other reprisal;
 - (b) C intentionally exercises control over the activity; and
 - (c) C is aware, or ought to be aware, of a relevant circumstance in paragraph (a) above.

Briefing

Clauses 13 and 14 of the Bill would create new offences in England and Wales and Northern Ireland, respectively, where a person pays or promises payment for the sexual services of a prostitute whose provision of such services is controlled for gain by a third person. The

offences are of strict liability, in that it is irrelevant whether or not the client was aware that the prostitute was controlled for gain. It is important to note that the definition of 'controlled for gain' is not confined to circumstances where a prostitute is subject to intimidation or the threat of reprisal or has been trafficked into or within the UK for the purposes of prostitution against their will. In *R v Massey* [2008] 1 WLR 937 the Court of Appeal specifically rejected the notion that the prosecution would have to prove the absence of free will in order to prove the offence of 'control' of a prostitute for gain.

This amendment would alter the new offence so that it is instead committed when a person pays or promises payment for the sexual services of a prostitute who is controlled against her free will in one of the circumstances outlined in the new subsection (3)(a).

The offence created in the Bill is one of strict liability – there may be no reason for the person paying for sexual services to have suspected that the prostitute was 'controlled for gain'. While strict liability offences may be appropriate in certain contexts (such as regulatory offences or environmental pollution) we do not believe that a strict liability offence is appropriate here. We have therefore inserted a requirement that the defendant knew or at least was reckless as to whether the prostitute was controlled.

Clause 15: Amendment to offence of loitering etc for purposes of prostitution

Clause 16: Orders requiring attendance at meetings

Amendments

Clause **15**, page **14**, stand part

Clause **16**, page **15**, stand part

Clause **17**, page **16**, stand part

New clauses

Abolition of offence of loitering etc for purposes of prostitution

(1) Section 1 of the Street Offences Act 1959 is repealed.

Abolition of offence of keeping a brothel and related offences

(1) The following sections of the Sexual Offences Act 1956 (c. 69) are repealed:

- (a) Section 33,
- (b) Section 33A ,
- (c) Section 34,
- (d) Section 35, and
- (e) Section 36.

(2) The common law offence of keeping a disorderly house is abolished.

Amendment to offence of controlling prostitution for gain

(1) The Sexual Offences Act 2003 (c. 42) is amended as follows:

- (a) In section 53 (controlling prostitution for gain) omit “for gain” in the title.
- (b) Omit subsection 1(b) of that section.
- (c) In section 54 (sections 52 and 53: interpretation) after subsection (2) insert:

- (3) In section 53, a person (A) “intentionally controls” an activity of another person (B) where:
- (a) B participates in the activity because of the use or threat against B or another person of one or more of:
 - (i) violence,
 - (ii) blackmail,
 - (iii) unlawful detention, or
 - (iv) other reprisal;
 - (b) A intentionally exercises control over the activity; and
 - (c) A is aware, or ought to be aware, of a relevant circumstance in paragraph (a) above.

Briefing

We have serious concerns that the measures proposed by government in this Part of the Bill will do vanishingly little to help prostitutes who wish to leave the sex trade but will make working conditions much more dangerous for sex workers. Prostitutes working on the street are likely to be at much greater risk than many of those working in brothels. We therefore propose a clause to abolish offences relating to owning or managing a brothel. This will, we hope, also help to target resources on those who are controlling and trafficking people against their will and prevent safe brothels from being targeted and closed.

The new clause ‘Amendment to offence of controlling prostitution for gain’ would amend s53 Sexual Offences Act 2003 in order to target those who control prostitutes against their will rather than employers of willing sex workers. It would change the offence of controlling a prostitute for gain – which could apply to the employer of a prostitute working of her own free will – to an offence of controlling a prostitute, where control is defined so as to include a lack of free will on the part of the prostitute.

Clause 15 of the Bill provides that the existing offence of loitering or soliciting by a street prostitute will only apply if it takes place persistently. Clause 16 creates provision for mandatory requirements to attend meetings to be imposed on those convicted of this offence. While the intentions behind these clauses may be laudable, we do not believe that attendance at three meetings will be sufficient to solve an established substance misuse problem or difficult economic circumstances that may have led to a person’s engaging in street prostitution. We also believe that the continuing criminalisation of street prostitution may encourage it to take place in more isolated areas, leading to increased threats to sex

workers, and discourage them from seeking help from the police and other agencies. We have therefore suggested an amendment here that would instead repeal section 1 of the Street Offences Act 1959, decriminalising loitering and soliciting for the purposes of prostitution. We recognise that street prostitution may have a negative impact upon a local area but emphasise firstly, that the government's crackdown on brothels in this Bill is likely to exacerbate rather than ameliorate, this problem and secondly, that the resources spent on processing prostitutes through the magistrates' courts could be more effectively used in providing targeted services and assistance for those who wish to escape from street sex work.

Amendment

Clause 15, page 14, line 28, after “person” insert “aged 18 or over”

Briefing

This amendment is put forward as an alternative to the suggested amendment above that would decriminalise loitering or soliciting for the purposes of prostitution by all prostitutes. This amendment would leave the government’s changes in place for those aged 18 or over (making loitering or soliciting an offence only if it is persistent), but would mean that section 1 of the Street Offences Act 1959 did not apply to children and young people under 18. In its latest set of concluding observations on the UK’s compliance with the United Nations Convention on the Rights of the Child, the UN Committee on the Rights of the Child emphasised that:¹

The State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.

This policy was acknowledged by the government in 2008 during the passage of the Criminal Justice and Immigration Bill, when the Minister said that he wished to give the:²

clear message that child sexual exploitation is a grave crime that will not be tolerated and that the child is always the victim.

We believe that the continued criminalisation of children involved in prostitution is likely to deter them from seeking assistance from the authorities and plays into the hands of abusers. We therefore believe that even if the offence of loitering/soliciting is retained for adult prostitutes it should be repealed for children.

¹ UN Doc CRC/C/GBR/CO/4, 20 October 2008, para 74.

² *Hansard*, House of Commons Tuesday 27th November. Column 537ff

Amendment

Clause 18, page 17, stand part

New clause

Abolition of offences of soliciting and persistently soliciting for the purpose of prostitution

- (1) Sections 1 and 2 and subsection 4(1) of the Sexual Offences Act 1985 (c. 44) are repealed.

Briefing

Clauses 18 and 19 of the Bill would create an offence of soliciting (ie by potential clients of street prostitutes) in England and Wales and Northern Ireland, respectively. While we recognise the negative impact that kerb-crawling may have upon an area and the concerns that local residents may understandably have about it, we do not support the creation of these offences. Criminalisation of kerb-crawlers will not deter those with little respect for the law and is likely to lead to an increase in violence against sex workers: we understand that this has already occurred in Sweden after kerb-crawling was outlawed.³ Like other prohibitory measures, it is likely to push street prostitution into more isolated areas. We believe that these provisions will make prostitutes less safe. We also emphasise that the measures against brothels in this Bill are likely to make more prostitutes engage in street work, thus further undermining the intention of these provisions.

We therefore suggest this stand part amendment and also a new clause that would repeal existing criminal offences of persistent or nuisance kerb-crawling. We emphasise that we do not condone such conduct but are concerned that its criminalisation is counter-productive. We recognise that decriminalisation should be accompanied by powers to enforce appropriate zoning so that street prostitution and kerb-crawling could take place only in designated areas.

³ See www.prostitutescollective.net

Amendment

Schedule 2, paragraph 1, page 110, leave out lines 4-7.

Briefing

Under the provisions of Schedule 2 to the Bill the closure powers created could be applied not only for premises used for the sexual exploitation of children but also for brothels where adult prostitution takes place. Again, the legislation fails to distinguish between premises where people are being forced into sex work by violent or coercive pimps and traffickers, and brothels where prostitutes are working of their own free will. In relation to trafficking and coercion, the appropriate remedy again lies in criminal proceedings against the pimps and traffickers concerned; undercover policing, surveillance and other techniques should suffice to facilitate prosecution of those responsible. We question whether a closure order would do more than force determined traffickers or violent pimps to move the sex workers to other premises (perhaps further away from the public eye, where they may be even less safe).

Where a brothel is operating with the free consent of those working within it, however, different considerations should apply. The closure of brothels through closure orders is likely to have counter-productive effects: forcing some prostitutes into street prostitution, or into working in their own homes or client's homes, which is likely to be less safe and will also expose children of prostitutes to risk; pushing other brothels 'underground' into further connection with organised criminals and in less safe, more isolated locations. Like other provisions related to prostitution, therefore, these orders are likely to be counter-productive. If the government wishes to remove brothels from residential areas for understandable reasons, they should provide a safe alternative (for example, licensed brothels in designated non-residential areas).

This suggested amendment would therefore leave the closure orders regime in place in relation to child sexual exploitation but remove adult brothels from the ambit of the provisions.