

Release

Drugs, The Law & Human Rights

SEX WORKERS AND THE LAW

HELPLINE 020 7324 2989

ask@release.org.uk

www.release.org.uk

Release is the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society.

CONTENTS

Editor's note	7
Introduction	8
Legal Reform	10
PART 1 – CRIMINAL JUSTICE ISSUES	
Chapter 1 - Sex Working Offences	14
- Street Work Offences	15
- Soliciting	15
- Condoms as Evidence	17
- Highway Obstruction	17
- Disorderly Behaviour	17
- "Controlling Offences" – the risk of managing sex working activities	19
- Keeping a Brothel	20
- Causing, Inciting, and Controlling Prostitution for Gain	22
- Money Laundering Offences	24
- Buying Sex – Offences and Penalties	25
- Kerb Crawling and Soliciting	25
- Paying for the Sexual Services of a Prostitute Who Has Been Forced	26
- Paying for Sex with someone under the age of 18	27
- Other Relevant Offences	28
- Sex in a Public Lavatory	28
- Clipping	28
- Sexual Transmission of Infection	29
- Possession of an Offensive Weapon	31
- Identity documents	32
- Assaults arising from S&M / Fetish Services	32
- Welfare benefits issues	33
Chapter 2 - Sex Working and Premises	34
- Keeping a Disorderly House	35
- Allowing children in brothels	36

- Planning regulations	36
- Licensing	36
- Landlords	37
- Tenants	37
- Closure of Premises	38
- Brothels – Closure Orders	38
- Possession proceedings	41
Chapter 3 - Anti-Social Behaviour	42
- Criminal Behaviour Order (CBO)	42
- Injunctions	44
- Community Protection Notices (CPNs)	46
- Dispersal Powers	47
- Public Spaces Protection Orders (PSPOs)	47
- Closure of Premises	48
- Possession proceedings	50
Chapter 4 - Advertising	52
- Obscene Articles	52
- Indecent Displays	53
- Carding in Public Telephones	53
- Soliciting	54
- Advertising on the Internet	54
Chapter 5 - Dealings with the Police	58
- Right to be Treated Fairly and With Respect	58
- Entrapment / Agents Provocateurs	59
- Surveillance	60
- Abuse of Process	61
- Police Misconduct	62
- Search of Premises	63
- Stops on the Street	64
- Rights on Arrest	65
- Taking of Photographs, Fingerprints and DNA	66
- In Police Custody	67
- Children of Detainees	70
- Return of Seized Property	70
Chapter 6 - Police Penalties	72
- Prostitutes' Cautions	72
- Formal cautions & Conditional cautions,	73
- Youths	74
Chapter 7 - Getting Legal Help	76
- At the Police Station	76
- Going to See a Solicitor	76
- Paying Privately	78
- Citizens Advice Bureaus	78

Chapter 8 - Going to Court	80
- Useful Tips	80
- Legal Advice and Representation	80
- Checking In	81
- Representing Yourself	82
Chapter 9 - Penalties at Court	84
- Fines	85
- Community Orders and Treatment Requirements	86
- Prison Sentences and Suspended Sentences	87
- Victim Surcharge	88
- Criminal Courts Charge	89
- Confiscation Proceedings	89
Chapter 10 - Criminal Records	94
- Rehabilitation periods	94
- Criminal records and employment	97
- Filtering	100
- Removal	100

PART 2 – OTHER ISSUES FACED BY SEX WORKERS

Chapter 11 - Crimes Against Sex Workers	102
- Rape	103
- Assault	106
- Administering Drugs without Consent	106
- Criminal Injuries Compensation	106
- Injunctions	107
- Refuges	107
Chapter 12 - Sex Working Parents	108
- Care Proceedings	108
- Criminal Risks	109
- Prison	109
Chapter 13 - Sexually Exploited Children and Young People	110
- Criminality v. Child Protection	111
- Age of Consent	112
Chapter 14 – Child Sex Offences	114
Chapter 15 – Paying Tax and Tax Evasion	116

PART 3 – HEALTH & SAFETY

Chapter 16 - Sex Work & Drugs	120
- Drug Offences	120
- Possession and Supply	122

- Production, Supply or Use of drugs on premises	122
- Safer Drug Use	123
Chapter 17 - Safety	126
- Prevention	126
- Self Defence	128
PART 4 – NON-BRITISH SEX WORKERS	
Chapter 18 - Employment rights of migrants	130
- Workers	130
- Employers	132
- EU Nationals	132
- Victims of Trafficking	133
- Trafficking Offences	136
USEFUL CONTACTS	138

EDITOR'S NOTE

This booklet is a comprehensive update to the version published in 2011, and has been written by Kirstie Douse (Head of Legal Services) with help from Niamh Eastwood (Executive Director), Jodie Cudworth (Legal Researcher) and Release's legal and drugs teams.

A big thank you to Sebastian Gardiner, barrister at 25 Bedford Row Chambers, for peer reviewing 'Sex Workers and the Law'. We also thank Colin Wells – Barrister, 25 Bedford Row Chambers – and Audrey Mogan – Pupil, 25 Bedford Row Chambers – for their input into this version of the booklet.

Thanks also go to the wonderful staff and sex workers at the English Collective of Prostitutes (ECP), Sex Workers' Opera, and to those who responded to our national survey. The consultation process and the feedback we received helped to inform this publication.

The information contained in this booklet is meant only as guidance and NOT to be solely relied on. ALWAYS seek appropriate legal advice. The areas of law discussed in this publication are subject to change. Check with Release for developments and changes in the law at www.release.org.uk or 020 7324 2989.

With thanks to the Pilgrim Trust for funding this edition.

INTRODUCTION

PROSTITUTION IS LEGAL

Prostitution is legal in England and Wales, but many of the activities surrounding the exchange of sex for money or other goods are criminal offences. In this booklet, we explain your rights as well as the relevant offences and other risks that you should be aware of.

The police have limited resources and need to prioritise their work. In general, indoor work is targeted less often than street work, but patterns of law enforcement vary at different times and in different places. Find out what laws the police are currently enforcing in your area and try to work within those boundaries. Keep your activities low-key to avoid attracting attention. It is also crucial that you try to maintain good relations with local residents.

Whatever your situation, police involvement is more likely where there are underage or illegal immigrant workers, where there is drug dealing, money laundering or violence on the premises. Anti-social behaviour (such as openly soliciting in the street in residential areas, or leaving used syringes in public places) might also attract police attention.

There are a number of organizations that can offer you support and assistance, these are listed in the useful contacts section on page 138. If you need free legal advice, do not hesitate to contact the Release legal helpline, we can advise and refer you to a solicitor if necessary.

GENDER

The information in this booklet applies to men, women and transgender persons. If you are a transgender person you can apply to the Gender Recognition Panel for a certificate stating

that, for legal purposes, you should be treated as having your acquired gender¹.

SCOTTISH LAW

This booklet is primarily concerned with the law and practice in England and Wales. While the position in Scotland is often similar, it does differ in certain respects. If you are in Scotland, you can consult one of the local agencies listed on page 138. You can obtain printed information about your legal rights from SCOT-PEP in Edinburgh (see page 141).

LEGAL REFERENCES

As well as explaining what the law says, we provide the relevant legal references as footnotes (e.g. section 33, SOA 1956) so that you can easily do further research yourself if you like. For a briefer guide to the law as it relates to sex work, you might be interested in one of our “Sex Workers’ Rights” cards. These are pocket-sized summaries of useful information. Contact our publications department on 020 7324 2979 if you would like to know more about these or would like to order copies of any other publications.

SENTENCING

This book details the maximum sentences for an offence, in practice, however, most offences will not receive the maximum tariff available. This is a complicated subject and if you wish to discuss this please contact the Release helpline on 020 7324 2989.

ABBREVIATIONS

The following abbreviations are used throughout this booklet:

“PCA 2009”	Policing and Crime Act 2009
“SOA 2003”	Sexual Offences Act 2003
“SOA 1985”	Sexual Offences Act 1985
“SOA 1967”	Sexual Offences Act 1967
“SOA 1956”	Sexual Offences Act 1956

LEGAL REFORM

Since the last edition of this booklet was published in 2011, there have been no legal changes specifically around sex working. However, the Anti-Social Behaviour Crime and Policing Act 2014 has serious implications for sex workers, particularly those working on the street. This Act reformed the previous anti-social behaviour laws and has introduced a number of measures which disproportionately affect sex workers (especially those working on the street). This has left them vulnerable to further criminalisation and exclusion, including:

- Dispersal powers;
- Community Protection Notices;
- A mandatory ground for housing possession in certain circumstances, including where someone is convicted of keeping a brothel or a closure order has been made.

These are discussed in detail in Part 1, Chapter 3.

Additionally, the Modern Slavery Act 2015 consolidates, replaces and broadens the scope of existing trafficking offences including:

- Trafficking for the purpose of sexual exploitation²;
- Committing an offence with the intention to commit human trafficking for sexual exploitation³.

2. SEXUAL OFFENCES ACT 2003, S 59A.

3. SEXUAL OFFENCES ACT 2003, S 62.

The Modern Slavery Act 2015 also increased the sentence for trafficking for the purpose of sexual exploitation from a maximum of 14 years up to life imprisonment.

PAST REFORM

The SOA 2003 removed gender-specific offences (except rape, which can still only be committed by a man) and abolished many offences directed at homosexual activity. It also included important changes to the law in relation to rape which were intended to make it easier to bring successful prosecutions. There were also changes to the law concerning the registration of sex offenders and strengthened provisions were added which were intended to tackle sex work and pornography involving children and people trafficking.

Some examples of offences that were abolished by the SOA 2003 are:

- Gross indecency between men;
- Procuring another man to commit an act of buggery with a third man;
- Persistent soliciting or importuning by men (men are now subject to the same laws as women in relation to soliciting).

The PCA 2009 saw further significant changes to the policing of sex work. In particular, a new offence was created in relation to the payment of sexual services where the person being paid is forced, threatened or deceived into providing sexual services. The PCA 2009 amended the SOA 1959 in a number of ways including:

- Removal of the term 'common prostitute' from the legislation;
- A new system for dealing with loitering or soliciting;
- The introduction of closure orders for brothels;
- The introduction of Prostitutes' Cautions.

All of these offences and powers are dealt with in the main section of this publication. However, other aspects of the PCA 2009 are not addressed, such as orders imposed on sex offenders, indecent photographs of children and the licensing changes to sex establishments. This is because the primary aim of this publication is to inform sex workers and their colleagues of their rights and of the legal risks they face.

FUTURE REFORM

The UK Home Affairs Committee has recently published an interim report⁴, following their Inquiry into prostitution. The conclusions and recommendations are not binding but are very positive for sex workers and their safety. Especially important are the following points:

- Soliciting should not be an offence;
- Brothel-keeping laws should allow sex workers to share premises;
- The Rehabilitation of Offenders Act should be amended to allow for criminal records for prostitution to be deleted;
- There is not enough evidence to support introducing a sex-buyer law at this time;
- More evaluation of models in other countries, including decriminalisation in New Zealand, is needed.

The government have responded⁵ to the interim report, committing to commissioning a research project into prostitution in England and Wales. An interim report to Parliament on this study is intended for June 2017.

For up to date information on this please contact Release on 020 7324 2989.

4. HOUSE OF COMMONS HOME AFFAIRS COMMITTEE (2016). PROSTITUTION THIRD REPORT OF SESSION 2016-17, HOC: WESTMINSTER. ([HTTP://WWW.PUBLICATIONS.PARLIAMENT.UK/PA/CM201617/CMSELECT/CMHAFF/26/26.PDF](http://www.publications.parliament.uk/pa/cm201617/cmselect/cmha/26/26.pdf) ACCESSED DECEMBER 10, 2016).

5. SECRETARY OF STATE FOR THE HOME DEPARTMENT BY COMMAND OF HER MAJESTY (2016) THE GOVERNMENT RESPONSE TO THE THIRD REPORT FROM THE HOME AFFAIRS SELECT COMMITTEE SESSION 2016-17 HC 26: PROSTITUTION, CROWN COPYRIGHT: LONDON ([HTTPS://WWW.PARLIAMENT.UK/DOCUMENTS/COMMONS-COMMITTEES/HOME-AFFAIRS/GOVT-RESPONSE-CM9361-PROSTITUTION.PDF](https://www.parliament.uk/documents/commons-committees/home-affairs/govt-response-cm9361-prostitution.pdf) ACCESSED ON DECEMBER 10, 2016).

SEX WORKING OFFENCES

- STREET WORK OFFENCES
- “CONTROLLING OFFENCES”
- BUYING SEX – OFFENCES AND PENALTIES
- OTHER RELEVANT OFFENCES

It is difficult to separate the various offences into separate categories of street working and indoor working as there is possible crossover between the two, for example, ‘controlling prostitution for gain’ applies to both activities. We have tried to categorise the relevant offences into 4 areas:

1. Street work offences
2. Controlling offences – the risk of managing sex working activities
3. Offences related to those who buy sex
4. Other relevant offences

The next chapter will outline those offences that relate directly to activities which occur in premises used for sex working. Some of the sections will also deal with management activities where there is crossover. Also please refer to the contents page (3) for a detailed overview of the subjects covered by this chapter.

STREET WORK OFFENCES

Offences associated with street work

Maximum penalties

Soliciting

Engagement & Support Order/Fine

Sex in a public lavatory

6 mths and/or fine ⁶

Highway obstruction

Fine

Disorderly behaviour

Fine

NOTE. THE TERM "COMMON PROSTITUTE" WAS WITHDRAWN BY THE PCA 2009.

6. THE SENTENCING COUNCIL HAS SUGGESTED THAT THE SENTENCE FOR THIS OFFENCE CHANGES SO THAT THE MAXIMUM IS A COMMUNITY ORDER, INSTEAD OF PRISON (UNLESS SOMEONE HAS COMMITTED THE OFFENCE LOTS OF TIMES). RELEASE SUPPORTS THIS, BUT NO DECISION HAS BEEN MADE YET, AND IS NOT EXPECTED UNTIL 2017. PLEASE CALL RELEASE TO CHECK THE UP TO DATE POSITION.

7. STREET OFFENCES ACT 1959, S1(1) AS AMENDED BY THE PCA 2009

8. BEHRENDT V. BURRIDGE [1977] 2 ALL ER 285.

9. KERB CRAWLING USED TO BE A SEPARATE OFFENCE - SEXUAL OFFENCES ACT 1985, S 1.

10. STREET OFFENCES ACT 1959, S 1(4) AS AMENDED BY THE PCA 2009.

The police often target street work over indoor work because it is more noticeable and the public sometimes complain about it.

SOLICITING

It is an offence for a **person persistently to loiter or solicit** in a street or public place for the purpose of prostitution⁷. The person soliciting does not need to be in a public place as long as the solicitation extends into a public place⁸.

Please note that 'Kerb Crawling' is also charged as soliciting⁹.

"Persistently" is defined as behaviour that takes place on two or more occasions in any three-month period¹⁰. If you have any 'Prostitutes' Cautions' recorded against you (see page 72 for details) these can be used as evidence of persistence.

"Soliciting" includes inviting possible customers with things like words, winks, glances, gestures, smiles or seductive movements. It also includes loitering (see below), either on foot or in a vehicle, where you have no intention to move on. It can also include sitting in a window if you are clearly soliciting, for instance wearing revealing clothing, sitting under a red light, in an area where prostitutes are sought (red light area or 'beat').

"Loitering" is lingering, or hanging around, with no intention to move on either by foot or in a vehicle.

“Street or public place” includes any bridge, road or lane, footway, subway, court, square, alley, passageway, doorway or entrance to premises bordering a street, and any ground next to and open to a street. It also covers working from windows and balconies and/or in hotels. Inside of a car could be classed as a public place. There is no one definition of public place, and arguments about this will have to be resolved on the particular facts¹¹. A public place can include any place where the public go, regardless of whether they have the right to go there.

11. **GLYNN V. SIMMONDS**
[1992] 2 ALL ER.

The first two times that you are stopped the police will probably give you a **Prostitutes' Caution** – they might go straight to charging you but this is unlikely as they would have problems proving that you were **persistently** loitering or soliciting; see page 15 for more details of this scheme. These cautions are different from ordinary Police cautions because the behaviour leading to the caution might not itself be evidence of a criminal offence, and there is no requirement for someone to admit guilt before being given a Prostitute's Caution.

If you do get charged and you think this is unfair, for example you were actually shopping or going to meet a friend at the time of your arrest, you can plead “not guilty” and the prosecution will have to prove their case in a trial at the Magistrates' Court. Be aware that you might get extra hassle from the police following a plea of “not guilty” but it is your right to give this plea if you are not guilty of the offence of loitering or soliciting for the purposes of prostitution.

It is up to the police and prosecution to persuade the court that they are sure (sometimes described as beyond reasonable doubt) that you were soliciting on any particular occasion rather than, for example, waiting for a friend. But some magistrates might simply “rubber stamp” what the police say.

TIP – Try to remember everything you can about the time of your arrest – for example, exactly where cars or people are – and write it down as soon as possible, to help you argue against statements by the police.

CONDOMS AS EVIDENCE

The police might try to use the fact that you were in possession of condoms to support other evidence that you were soliciting. This is very controversial and condoms can't be used as the only evidence of an offence. The fewer condoms you are carrying, the less meaning they will have as evidence in your case, but your priority should always be protecting your sexual health.

If the Court finds you guilty of loitering or soliciting for the purposes of prostitution they can order you to pay a fine or to attend three meetings with a specified person¹². These orders are called '**Engagement and Support Orders**', and the aim of the meetings is to find out the reasons for your sex working and to help you find ways to stop doing this.

Failing to obey an 'Engagement and Support Order' will result in a breach – this means that you will be summoned to attend court. If you don't go to the hearing an arrest warrant might be issued by the Court. When you are then arrested you must be taken to court as soon as possible, but you might be held for up to 72 hours¹³. Where the order has been breached the Court can withdraw the original order and make a new one, or the Court can give you a fine instead.

HIGHWAY OBSTRUCTION

It is an offence for a person, without lawful authority or excuse, to in any way wilfully obstruct the free passage along a **highway**¹⁴.

"Highway" includes roads, bridges, carriageways, footways and pavements. People working on the street are sometimes, though rarely, charged with this offence. The penalty is a fine.

DISORDERLY BEHAVIOUR

Sex workers are sometimes charged with this if they act in a certain way, because it is an offence to:

- Use threatening, abusive words or behaviour, or disorderly behaviour¹⁵; or
- Display any writing, sign or other visible representation which is threatening or abusive

12. STREET OFFENCES ACT 1959, S 1(2A) AS INSERTED BY THE PCA 2009.

13. SCHEDULE 1 PCA 2005 AMENDMENT TO STREET OFFENCES ACT 1959.

14. HIGHWAYS ACT 1980, S 137.

15. THIS WAS AMENDED BY CRIMINAL COURTS ACT 2013, S 57 (2) TO REMOVE THE WORD 'INSULTING' WITH EFFECT FROM 1 FEBRUARY 2014.

within the hearing or sight of a person (**this can include a police officer**) who is likely to be caused harassment, alarm or distress by it¹⁶.

16. PUBLIC ORDER ACT
1986, S. 5.

To commit the offence it must be shown that either you intended for the act to be threatening/abusive or you were aware it could be. This equally applies to disorderly behaviour.

Examples of what might be seen as disorderly behaviour are:

- Causing a disturbance in a residential area or communal area of a block of flats;
- Causing a disturbance in a shopping centre or somewhere else members of the public might go to;
- Shouting abuse or comments at people walking by;
- Bothering people waiting to catch a bus;
- Loud behaviour in a street late at night which might worry people living there or passing by (especially elderly or children).

Harassment, alarm and distress means bothering someone, making them feel scared, worried or anxious.

This might be different for different people, so it is hard to know beforehand if your behaviour might make someone feel this way. **What you think of as having fun or a good time, someone else might see as harmful**, especially if they are sensitive for some reason.

The offence can be committed in a private or public place but not inside a private home.

You can defend yourself by proving that:

- You had no reason to believe that there was anyone within hearing or sight who was likely to be caused harassment, alarm or distress; **or**
- You were inside a dwelling and had no reason to believe that anyone outside the dwelling would hear or see the words or behaviour used; **or**
- Your behaviour was reasonable.

The sentence at court is a fine, but the police will often try to deal with it the first time without charging, by issuing a warning or formal caution (which might have conditions attached). If you do go to court for this offence, you are unlikely to qualify for legal aid but speak to the Duty Solicitor – see page 76 for more information – or call Release if you need advice.

If you do work outdoors you should also be aware of the potential for the police or local authority to seek an Anti-Social Behaviour Order ('ASBO') – please see page 42 for more details.

CONTROLLING OFFENCES – THE RISK OF MANAGING SEX WORKING ACTIVITIES

“Controlling” offences	Maximum penalties
Keeping a brothel	7 years and/or fine
Causing or inciting prostitution for gain	7 years and/or fine
Controlling prostitution for gain	7 years and/or fine
Money laundering	14 years and/or a fine

Tougher sentences can be expected for those who benefit financially from controlling or employing others who provide sexual services.

The three controlling offences are:

- Keeping a brothel;
- Causing or inciting prostitution for gain;
- Controlling prostitution for gain.

These are covered in turn below.

Remember that you can be guilty of ‘keeping a brothel’ if you work in shared premises and you are also involved in the running or management of it.

KEEPING A BROTHEL

The law around brothels applies to men, women, transgender people and to heterosexual and homosexual activities.

It isn't an offence to work as a prostitute or maid in a brothel, but it is an offence to **keep, manage or act or assist in the management** of a brothel¹⁷. The sentence is a fine or up to seven years in prison.

17. SOA 1956, SS 33 AND 33A.

The prosecution has to prove 3 things:

- That the premises you are working would be classed as a brothel; **and**
- That you were aware of this; **and**
- That you were keeping the brothel, managing it or assisting in its management.

These elements are each looked at in detail below.

Would your working premises be classed as a brothel?

Any property – for example, private flats, saunas, massage parlours – might be classified as a brothel if they are **used by more than one man, woman or transgender person** for the purposes of prostitution, whether they work on the same day or on different days.

So, if you **share property** with someone else and work on different days or weeks, the premises will still count as a brothel even though there is never more than one person working at any one time.

Where rooms or flats in one building are rented separately to different people offering sexual services, the premises as a whole might still count as a brothel if the people are working together. Evidence of shared keys, washing and toilet facilities, staircases, tenancy agreements etc. will be relevant.

If you are the only person who provides sexual services in a property, with or without the help of a non-working maid, the premises is not a brothel.

Payment for sex doesn't have to be shown – even if sexual services are offered for free, it could still be classed as a brothel¹⁸.

Were you aware of the circumstances that make the premises a brothel?

To be guilty of **keeping a brothel**, you have to have been **aware** of the circumstances which made the premises a brothel. So, if you work on premises for, say, two days a week and have no idea what they are used for on the other days, you have a defence. But the Court might “infer” knowledge if they think you were blinding yourself to the obvious.

Were you keeping, managing or assisting in the management of a brothel?

Working in a brothel, as a maid, sex worker or in any other capacity, is not an offence itself. The police and prosecution have to show that you were **managing**, or **assisting in the management of**, the operation in some way. Just being the tenant or occupier of the premises is not enough to prove this element of the offence but it might be relevant depending on other circumstances (also see offences relating to tenants on page 37).

There are no set rules about what activities would be seen as management. Each individual case will be considered on its own facts, and you should get legal advice. Some guidance is given below.

The prosecution would have to show that you had some **degree of control** over the running of the business. These activities are examples of what the courts have established as evidence to prove control, but this is not a complete list:

- Having a say in what services are offered and how much is paid for them;
- Taking money from clients and noting this in a cashbook;
- Putting up adverts;
- Paying bills;
- Hiring and firing staff;
- Supplying materials;
- Banking and book keeping.

Activities like letting clients in, cleaning, removing rubbish, making coffee or other minor jobs are not usually enough to prove this offence. But, there is no definite way to avoid prosecution and possibly having assets taken by police. Any activity involving the taking or safeguarding of cash might be used to claim that control exists.

If you are providing sexual services but the prices and the services have been set beforehand by someone else, and you have no power to discuss or change them, you are also unlikely to be said to have enough control to be guilty of keeping a brothel.

Maids

It is legal to have a maid or housekeeper to help you and increase your safety. But, the police might claim that the maid is selling sex and that the premises therefore count as a brothel, especially if s/he is young. They might say that a person has to be over a certain age to be a maid – this is not true, but it is a separate offence to allow a child between 4 and 15yrs old to spend time in a brothel¹⁹.

Maids or housekeepers in brothels are clearly at risk of being accused of keeping a brothel²⁰. But, if your jobs are of a basic nature and you have no control over prices or services, normally you won't be committing an offence. When working with one sex worker, it might help your defence if you have a clear, written agreement setting out what your duties are (e.g. cleaning and raising the alarm if there is an assault by a client).

19. CHILDREN AND YOUNG PERSONS ACT 1933, S 3.

20. SOA 1956, S 33.

CAUSING, INCITING AND CONTROLLING PROSTITUTION FOR GAIN

The offences of causing or inciting prostitution²¹ for gain and controlling prostitution²² are closely related, and so they are dealt with together here. They could apply to indoor or street work. The following terms apply to both offences:

21. SOA 2003, S 52.

22. SOA 2003, S 53.

“Gain” means any financial advantage, including having a debt forgiven or providing goods or services (including sexual services) free or at a discount; or the kindness of any person which is, or appears likely to in time bring a financial advantage.

“Prostitute” means a person who, on at least one occasion, and whether or not made to do so, offers or provides sexual services to another person in exchange for payment or a promise of payment to themselves or another person.

“Payment” means any financial advantage, including the discharge of an obligation to pay, or the provision of goods or services (including sexual services) gratuitously or at a discount.

23. SOA 2003, S 52.

The offence of **causing or inciting prostitution for gain**²³ is committed where a person:

- Intentionally causes or incites another person to become a prostitute in any part of the world; **and**
- Does so for, or in the expectation of, gain for him/herself or a third person.

The law doesn't define 'cause or incite' but it means **make or encourage**, and includes any behaviour that gets (or tries to get) another person to become a sex worker. **Cause** would include any physical force, threats, incentives or persuasion that leads to someone else becoming a sex worker and **incite** means to suggest, recommend, or persuade someone to do so perhaps by promising a reward or by being dishonest.

The sentence is a fine or up to seven years in prison.

24. SOA 2003, S 53.

The offence of **controlling prostitution for gain**²⁴ is committed where a person:

- Intentionally controls any of the activities of another person connected to that person's prostitution in any part of the world, **and**
- Does this expecting gain for themselves or a third person.

To be charged with controlling prostitution for gain, it is irrelevant whether or not the sex worker was already engaged in sex work from the start without involvement of a third party, as long as they are now being forced or told to do it.

It can be enough to tell a person to do a particular thing or to do it in a certain way to be guilty of this offence.

Usually threats or actual violence or blackmail of some sort is needed, but it is enough to control someone by offering a 'lure'²⁵ – this could be payment or some other reward.

25. SEE R. V. MASSEY [2008] 1 WLR 937.

The penalty is a fine or up to seven years in prison.

Who is at risk of prosecution?

Any person, including family members, boyfriends or girlfriends could be at risk of being arrested and prosecuted for these offences, if it can be proven that they were involved in some way.

It is also possible to be charged with aiding and abetting (helping) someone to commit the offences.

A level of **control** must be proven beyond reasonable doubt to convict someone of one of these offences. Just living with, or regularly being in the company of, a sex worker shouldn't be enough. The old offences of living on the earnings of prostitution or living on immoral earnings don't exist anymore.

Landlords and people providing services like "carding" and publishing promotional material shouldn't normally be at risk of conviction for one of these offences because there isn't control (but see page 37 for landlords). Pimps and managers of brothels and escort agencies will be at risk.

MONEY LAUNDERING OFFENCES

People involved in or associated with controlling prostitution are also at risk of prosecution for money laundering.

It is an offence to acquire, use, or possess criminal property²⁶ and to conceal, disguise, convert, transfer, or remove it from the UK²⁷.

26. PROCEEDS OF CRIME ACT 2002, S 329.

27. PROCEEDS OF CRIME ACT 2002, S 327.

Criminal property is money or goods that you know are the benefit of criminal conduct (from anything that is a criminal offence).

For example, the profits of or wages paid by a brothel would be caught under this definition and you should note that the offences have such a wide scope that almost whatever you try to do with the money or property (other than contact HMRC or the police) would make you vulnerable to prosecution. (See the sections on confiscation proceedings at page 89 and on paying tax and tax evasion at page 116 for more information).

The sentence is a fine or up to 14 years in prison.

28. SOA 2003, S 51A.

29. SOA 2003, S 53A.

30. SOA 2003, S 47.

31. SOA 2003, S 47.

32. SOA 2003, S 47.

BUYING SEX – OFFENCES AND PENALTIES

Offences for those who buy sex	Maximum penalties
Kerb Crawling & Soliciting²⁸	Fine
Paying for the Sexual Services of a Prostitute Subject to Force²⁹	Fine
Paying for sex with someone who is under 18³⁰	7 years and/or a fine
Paying for sex with someone who is under 16³¹	14 years and/or a fine
Paying for sex with someone who is under 13³²	Life imprisonment³³

33. THE SENTENCING COUNCIL'S DEFINITIVE GUIDELINE ON SEXUAL OFFENCES OUTLINES THE VARIOUS DIFFERENT SENTENCES FOR THIS OFFENCE. THE SENTENCING COUNCIL (2013) DEFINITIVE GUIDELINE ON SEXUAL OFFENCES. CROWN COPYRIGHT: LONDON. PG. 95 ([HTTPS://WWW.SENTENCINGCOUNCIL.ORG.UK/WP-CONTENT/UPLOADS/FINAL_SEXUAL_OFFENCES_DEFINITIVE_GUIDELINE_CONTENT_WEB1.PDF](https://www.sentencingcouncil.org.uk/wp-content/uploads/final_sexual_offences_definitive_guideline_content_web1.pdf))

34. SOA 2003, S 51A.

35. SOA 2003, S 51A.

KERB CRAWLING & SOLICITING

Please note that kerb crawling is charged as 'soliciting'.

It is illegal to **solicit** another person (or different people) for the purpose of prostitution in a street or public place³⁴. This offence used to have a requirement that the soliciting was persistent and caused a nuisance – this is no longer the case³⁵. The penalty is a fine.

PAYING FOR THE SEXUAL SERVICES OF A PROSTITUTE WHO HAS BEEN FORCED

It is not illegal to pay for the services of a sex worker unless it can be proved that the worker was being exploited by someone else.

Basically, a person (A) commits an offence if they make or promise to make a payment for sexual services and a third person (C) has used exploitative (abusive or unfair) behaviour leading to the sex worker (B) providing sexual services.

Exploitative conduct is considered to be '**force, threats, other forms of coercion, or deception**'. This is a strict liability offence which means that the person buying sexual services (A) doesn't need to know that the sex worker (B) has been subject to this treatment.

The sentence is a fine.

The Home Office has set out definitions for force; threats; coercion and deception³⁶:

Force

"Force should be given its ordinary meaning as applied in other legislation"³⁷ and includes the use of physical violence.

Threats

The use of threats can include physical and psychological violence and could involve:

- Reporting someone to the immigration authorities or police;
- Limiting someone's access to their children, family and friends;
- Removing accommodation, financial support or other basic necessities;
- Withholding drugs and/or alcohol;
- Ending a relationship or withdrawing love or affection;
- Threatening to take action that would leave someone feeling guilty or responsible e.g. threats by (C) to take own life;
- Restricting movement or other personal freedom;
- Telling family or friends about someone's involvement in sex working;
- Threatening to harm family and/or friends.

36. HOME OFFICES (2010) PROVISIONS IN THE POLICING AND CRIME ACT 2009 THAT RELATE TO PROSTITUTION, HOME OFFICES: LONDON, SECTIONS 14 -21, HOME OFFICE CIRCULAR 006/2010.
37. IBID AT SECTION 18

Coercion

Coercion includes situations of unequal relationships, or where someone is being dominated or their vulnerabilities are being taken advantage of. Vulnerabilities could include: young age; physical or mental incapacity; illness or disability; drug or alcohol dependence; history of experiencing abuse; poverty; immigration status.

Deception

Deception means situations where (B) is deceived into providing sexual services³⁸. This could include dishonesty as to the terms on which the services are supplied or the identity of the person receiving the services – “(A)” may be guilty even if “(B)” is not aware that he/she has been exploited because of the deception in question.

The Home Office Circular provides a wide definition of these terms and it is worth noting that many of the definitions have not been tested in the courts.

PAYING FOR SEX WITH SOMEONE UNDER THE AGE OF 18

It is an offence to pay for sex with someone who is under the age of 18. This is a very serious offence and sentences reflect the age of the person whom sex is paid for with, and whether penetration (of mouth, vagina or anus) is involved. The elements of the offence are:

A person (A) commits an offence if:

- S/he intentionally gets sexual services of another person (B) for himself, **and**
- S/he has made (or promised) payment for those services either directly with (B) or with another person, **and**
- B is either under 18 and (A) does not reasonably believe they are over 18, or (B) is under 13³⁹.

As stated above, penetration must be proved by the prosecution – this is defined through a number of acts and is detailed in s. 47(6) SOA 2003.

38. IBID AT SECTION 22

39. SOA 2003, S 47

Where (B) is under the age of 13 and (A) is found guilty of the above offence they will face a maximum life imprisonment; if (B) is between 13 and 16 years old the maximum sentence is 14 years and/or a fine; where (B) is aged 16 – 18 years old the maximum sentence is seven years and/or a fine.

OTHER RELEVANT OFFENCES

Other Relevant Offences	Maximum penalties
Sex in a public toilet	6 months and/or fine
Assault occasioning actual bodily harm	5 years and /or fine
Clipping (fraud)	10 years and/or fine
Possession of an offensive weapon	4 years and/or fine
Obstructing a Police Officer	6 months and/or fine
Perverting the Course of Justice	Life imprisonment and/or fine
Benefit Fraud	7 years and/or fine

SEX IN A PUBLIC LAVATORY

It is an offence for any person (male, female or transgender person) to intentionally engage in an **activity** which is **sexual** if s/he is in a toilet that the public (or a section of the public) has or is permitted to have access, whether on payment or otherwise⁴⁰.

40. SOA 2003, S 71.

An “activity” which is “sexual” is defined as an activity which a reasonable person would, in any circumstance think is sexual – this means it is open to interpretation.

The sentence is up to 6 months in prison or a fine.

CLIPPING

If you take money from a potential client and don’t intend to give the service you offered, this is seen as fraud⁴¹. Although some clients might not want to report the incident, others will

41. FRAUD ACT 2006, S 2.

not worry about doing this, but they might have problems in proving their case.

The client hasn't committed an offence him/herself, unless you are underage or you are being forced, coerced or deceived into sex working or s/he has been kerb crawling.

SEXUAL TRANSMISSION OF INFECTION

It is possible for a client who spreads a sexual infection to a sex worker to be prosecuted and face imprisonment. A sex worker who spreads a sexual disease to a client could also face the same. Cases in this area are rare, but are treated very seriously and the Crown Prosecution Service (CPS) has issued detailed guidance⁴² to their lawyers on this.

Any person, male, female, or transgender, can give an infection to any other person – this includes people of the same sex. It is also important to note that a person who does not disclose their sexual infection prior to having consensual intercourse with another is NOT guilty of rape.

Transmitting an infection that has serious, and/or potentially life-threatening consequences for the infected person can be viewed as 'grievous bodily harm' (GBH). The definition of this legal term is simply, 'really serious harm' and in the past, HIV and Hepatitis B infections have resulted in convictions and prison terms for the defendants. It is unclear what exactly would constitute really serious harm, especially as developments in medical science make many conditions manageable – expert evidence will usually be called at trial. Less harmful infections such as Chlamydia could also form the basis of an assault or actual bodily harm (ABH) charge.

The offence can be intentional or reckless.

Intentional

Intentional GBH is an extremely serious crime and carries a maximum sentence of life imprisonment⁴³. The prosecution will have to prove that the defendant intended to infect the victim, and that they were in fact infected by the defendant. This involves complicated medical and scientific analysis, and will possibly need details of the victim's sexual history to decide

42. CROWN PROSECUTION SERVICE (2016), INTENTIONAL OR RECKLESS SEXUAL TRANSMISSION OF INFECTION, CPS: LONDON. ([HTTP://WWW.CPS.GOV.UK/LEGAL/H_TO_K/INTENTIONAL_OR_RECKLESS_SEXUAL_TRANSMISSION_OF_INFECTION_GUIDANCE](http://www.cps.gov.uk/legal/h_to_k/intentional_or_reckless_sexual_transmission_of_infection_guidance) ACCESSED ON DECEMBER 10 2016).

43. OFFENCES AGAINST THE PERSON ACT 1861, S 18.

when the infection was caught and who from. If the defendant admits to intending to infect their sexual partner, but the date of infection can't be proved, the defendant can still be prosecuted for attempting to commit this offence, and the same penalties apply.

Recklessness

Usually, however, prosecutions are brought on this less serious reckless basis.

'Reckless' has a specific legal definition that needs the defendant to have predicted that some bodily harm might come from their actions, but they still took that risk. To establish this, the prosecution will have to show that the defendant knew, or ought to have known, that they were infected, and that they understood there was a chance that their sexual partner may catch the infection. Again, complex medical and scientific evidence will be needed as well as, in most cases, the sexual history of the parties. The charge is simply causing GBH (rather than *intentionally* causing GBH) as there is no intention to do so. This is still a serious crime and carries a maximum penalty of five years in prison⁴⁴.

44. OFFENCES AGAINST THE PERSON ACT 1861, S 20.

If the 'victim' consented to taking the risk of infection, this can be a defence. A person will be seen to have consented if they knew about the defendant's condition. This might be because the defendant told them, but can also happen where the 'victim' becomes aware on their own (for example, hearing from a third party or visiting the defendant during treatment for the condition). Whether or not the victim consented to the risk will be determined by the jury.

The knowledge of the infected person is very important in these situations. This will be especially important to any sex worker who might suspect that they have a sexually transmitted infection. Knowledge in one form or another is needed for both the offences set out above. This is another issue for the jury to decide, and can be easily proven where there is evidence of a diagnosis of the condition prior to the sexual act. However, knowledge can still be proven in other circumstances. For instance, if the defendant had been told to take a follow-up examination after an initial test showed an infection, but then failed to do so; or the defendant had clear symptoms that

indicated a sexual disease so they ought to have known about it; or that a previous sexual partner has recently been diagnosed with an infection and it is likely that the defendant has become infected.

These problems can be avoided by regular sexual health checks and practicing safe sex. Evidence that a defendant took reasonable steps to prevent infecting another can show that they were not acting recklessly and certainly didn't intend to infect anybody.

POSSESSION OF AN OFFENSIVE WEAPON

You might feel that you need to carry something to protect yourself with when working, but it is illegal to carry an offensive weapon in a public place without lawful authority or reasonable excuse. The sentence is a fine or up to four years' in prison, or both.

“Offensive weapon” means any object that is made or changed to use for causing injury to someone, that you intend to be used for this reason by you or another person. This obviously includes things like knives, guns or broken bottles. Things like a handbag or umbrella, could also be offensive weapons if the police can show that you intended to cause injury with them, or if you admit that you did.

“Public place” includes any place that the public are able to go into, whether they have to pay to enter or not.

Once it has been shown that you had an offensive weapon with you in a public place, it is up to you to show that you had lawful authority or a reasonable excuse for possessing it. For example, if you were carrying a tool because you were on your way to do a carpentry job.

Carrying an offensive weapon to defend yourself in case you are attacked is not a reasonable excuse

unless you can prove fear of an “imminent attack”⁴⁵ – the jury will have to decide how imminent, how soon, how likely and how serious the expected attack had to be to create good reason. A knife or other weapon can often make a situation worse and it could end

45. MCAULEY [2010] 1 CR APP R 148.

up being used against you. There are other ways to stay safe on the street, see page 126 for more information.

The sentence is a fine or up to four years in prison, or both.

IDENTITY DOCUMENTS

It is legal to use any name you want. But if you have given a fake name to avoid outstanding fines, disclosing a criminal record or other legal issues, you could be charged with fraud, obstructing a police officer in the execution of his/her duty or, very rarely, attempting to pervert the course of justice.

If you give a false name and this is discovered, it might harm your chances of getting bail.

ASSAULTS FROM S&M / FETISH SERVICES

If you offer sado-masochistic services involving striking and other actions intended to, or likely to, cause injury, and that injury amounts actual bodily harm, you might be charged with assault. This can carry a prison sentence.

Examples of injuries that would usually lead to prosecution include: loss or breaking of teeth, loss of consciousness, multiple bruising, minor fractures, minor (but not superficial) cuts requiring stitches; and, psychiatric injury.

Although assault usually requires an absence of consent, it has been held that it is not in the public interest that a person should harm another in order to gratify sexual desire. The fact that the client requested or consented to the actions might not be a defence. To avoid accidentally doing something that the client doesn't want, you should consider agreeing a 'safe word' with them beforehand, which they can use during the session to show that they want to stop.

WELFARE BENEFITS ISSUES

If you're claiming benefits at the same time as working and haven't declared it to the Department for Work and Pensions (DWP), you might be guilty of an offence. Most cases are charged under the Social Security Administration Act 1992⁴⁶, but more serious cases can be prosecuted under the Fraud Act 2006.

If you are found out, which can happen if, for example, you get involved with the police for any reason, you will be investigated. If you have received more money than you were entitled to because of a genuine error, you cannot be guilty of fraud.

You might be asked to repay any overpayments and/or be prosecuted and fined by a court. In serious cases you might get a prison sentence.

Your ongoing benefits can also be sanctioned including reduced or stopped completely

- If an offence results in an **administrative penalty** – a fine by DWP instead of prosecution – **or a caution**, the sanction will be for **four weeks**.
- If you are **convicted** of a benefit fraud offence, the sanction will be **13 weeks**.
- If you are **convicted of a second benefit fraud offence within five years** (a 'linking' offence), the sanction will last for **26 weeks**.
- If you are **convicted of a third benefit fraud offence within five years of the second** (and within 10 years of the first), the sanction will last for **three years**.

If an offence involves serious organised fraud or identity fraud it will result in an immediate loss of benefit penalty for three years.

If you have problems with your benefits, or are concerned about fraud, you should seek legal advice. Also please see page 116 regarding paying taxes.

SEX WORKING AND PREMISES

- KEEPING A DISORDERLY HOUSE
- ALLOWING CHILDREN IN BROTHELS
- PLANNING REGULATIONS
- LICENSING
- LANDLORDS
- TENANTS
- CLOSURE OF PREMISES
- BROTHELS - CLOSURE ORDERS
- POSSESSION PROCEEDINGS

Other indoor offences

Maximum penalties

Keeping a disorderly house

Imprisonment or fine at the discretion of the Court

Allowing children in brothels

6 months and/or fine

Breach of planning regulations

Fine

Breach of Licence

Fine

Landlord knowingly allowing use of premises as a brothel

6 months and/or fine

Tenant knowingly allowing premises to be used as a brothel or for use for prostitution

6 months and/or fine

by a single person

Closure of Premises

Civil order – breach can result in 3 months and/ or a fine

***Please also see the controlling offences outlined in the previous chapter.**

Even if you are working alone, or working in a brothel without any responsibility for the running of the business, there are other possible problems which you should be aware of. These are set out below.

KEEPING A DISORDERLY HOUSE

It is an offence to keep a disorderly house – this is a common law offence which means it has been developed by case law through the courts.

To be convicted of this offence the prosecution must prove three elements:

- There must be some element of keeping an open house, **and**
- The house must not be regulated by the restraints of morality, or must be unchaste or of bad repute, **and**
- It must be conducted so as to violate law and good order⁴⁷.

47. R. V. TAN [1983] QB 1053.

Basically, this can mean people coming and going from the house, and the behaviour at the property offends public decency – this is not limited to a house being used for sexual purposes. There is a risk of sex workers being charged with this offence when working alone from home, where the property isn't a brothel (see above). Case law⁴⁸ has decided that this offence shouldn't be used where the premises aren't considered to be a brothel (except if the behaviour falls within the test set out in the previous case law).

48. R. V. COURT AND GU [2012] EWCA CRIM 133.

Anyone accused of this offence must have knowledge that the house is being used in this way, so if you are away on holiday and your home is used in this way you could argue that you are not guilty of keeping the disorderly house.

In practice, anti-social behaviour powers are more likely to be used to deal with these situations where it can be proved that the activity is causing a nuisance.

This is covered in detail at Chapter 3.

The penalty is a fine and/or imprisonment at the discretion of the court. Sentences of up to 12 months have previously been upheld by the Court of Appeal.

ALLOWING CHILDREN IN BROTHELS

It is an offence to allow a child or young person who is between 4 and 15 years old, who you are responsible for, to live in or visit a brothel⁴⁹. The sentence is a fine and/or up to 6 months imprisonment. A conviction could also be used against you in care proceedings. It is not a criminal offence for a child under 4 to be in a brothel, but might attract the attention of social workers from Children's Services. The police are also more likely to take an interest in the property if children are there.

49. CHILDREN AND YOUNG PERSONS ACT 1933, S3.

PLANNING REGULATIONS⁵⁰

Even if you are working alone you might be breaking planning regulations. If you work from home, the test is whether or not the main use of your property is still residential. Important factors include the amount of space given over to the business, numbers of clients, whether there are employees and the potential nuisance to neighbours.

50. USEFUL GUIDANCE IS AVAILABLE AT: [HTTPS://WWW.PLANNINGPORTAL.CO.UK/INFO/200130/COMMON_PROJECTS/56/WORKING_FROM_HOME](https://www.planningportal.co.uk/info/200130/common_projects/56/working_from_home)

For example, if you are working from your 2-bedroom home and only use one bedroom for work, you might not be prosecuted. But, if you rent a residential property mainly to use for work, you risk being found in breach of the regulations.

In practice, the planning authorities only really become concerned after complaints from neighbours or police involvement. They can enter your property if they give you 24 hours' notice⁵¹ or if you agree. If they think you are breaching regulations and if they decide to take action and are successful, you will be asked to stop working. If you carry on, you might be prosecuted and fined.

51. TOWN AND COUNTRY PLANNING ACT 1990, S19G.

The bigger and noisier your operation, the more likely you are to face intervention.

LICENSING

If you are providing or advertising massage services and you live in London, a licence is needed under the London Local Authorities Act 1991⁵². A London licence can be refused or withdrawn by the borough council on many grounds, including the following:

52. LONDON LOCAL AUTHORITIES ACT 1991, PART 2 - SPECIAL TREATMENT PREMISES.

- There is a **likelihood of nuisance** being caused by the running, management or location of the premises or the character of the local area or the use of any premises in the neighbourhood;
- The people concerned or intended to be concerned in the running or management of the premises used for massage services could be reasonably seen as not being **fit and proper persons** to hold such a licence;
- The premises have been, or are being, **improperly conducted**.

You can appeal to the Magistrates' Court against a refusal or withdrawal within 21 days, starting on the day you are told of the refusal or withdrawal in writing.

If you are outside London, there might be similar licensing requirements – you should check what the situation is in your area by asking your local authority. Failing to have a licence, or working outside the limits of the licence, is a criminal offence – the punishment is a fine.

LANDLORDS

It is an offence for a **landlord to let premises knowing that they are to be used as a brothel**⁵³, or wilfully to allow their continued use as a brothel. The sentence is a fine and/or six months in prison.

53. SOA 1956, S 34.

A landlord does not commit an offence by allowing premises to be used for sex work by one person. But, if the landlord charges an increased rent, this might be used as evidence for the offence of controlling prostitution for gain. In this situation, it must be proved beyond reasonable doubt that the landlord had enough control over the prostitution⁵⁴.

54. SOA 2003, S 53.

TENANTS

It is an offence for a **tenant, occupier or any person in charge of premises to knowingly permit them to be used as a brothel**⁵⁵. The sentence is a fine and/or six months in prison. If a tenant is convicted of this offence, the landlord might have the right to end the tenancy agreement.

55. SOA 1956, S 35.

It is also an offence for a **tenant to knowingly permit their premises to be used for prostitution by a single person**, even though that person is not doing anything illegal⁵⁶. The sentence is a fine and/or six months in prison.

56. SOA 1956, S 36.

Using premises for prostitution might be a **breach of your tenancy agreement** if it bans “illegal or immoral” use. If your landlord finds out s/he might ask you to stop working and/or start possession proceedings; often the police put pressure on landlords to do this. You can’t be evicted overnight, however – the landlord will have to take you to court, following strict procedures. If you have problems, contact a solicitor, Law Centre or Citizens’ Advice Bureau.

CLOSURE OF PREMISES

Closure Orders are a type of anti-social behaviour order (‘ASBO’), **ASBOs** are civil orders preventing certain behaviour or activities – see Chapter 3 for more information.

BROTHELS – CLOSURE ORDERS

Since April 2010, the courts have had the **power to temporarily close** down properties which are being used in relation to activities connected to **certain sexual offences** when specific criteria are satisfied⁵⁷.

57. POLICING AND CRIME ACT 2009, S 21 AND SCHEDULE 2.

The relevant sexual offences are:

- Causing or inciting prostitution for gain⁵⁸.
- Controlling prostitution for gain⁵⁹.
- Paying for the sexual services of a child⁶⁰.
- Causing or inciting child prostitution or pornography⁶¹.
- Controlling a child prostitute or a child involved in pornography⁶².
- Arranging or facilitating child prostitution or pornography⁶³.

58. SOA 2003, S 52.

59. SOA 2003, S 53.

60. SOA 2003, S 47.

61. SOA 2003, S 48.

62. SOA 2003, S 49.

63. SOA 2003, S 50.

The offence of keeping a brothel⁶⁴ is **not** one of the specified offences. But, you should be aware of the possibility for closure, especially if the premises you are working from is also your home or if you are the owner of a property. The police and prosecution might argue that, as the premises is a brothel, there

64. SOA 1956, S 33.

is reasonable suspicion that one of the controlling offences exists. Reasonable grounds for suspicion depend on the circumstances in each case – the suspicion must be based on relevant facts, information, and/or intelligence and not on personal factors.

There are two stages to the closure process, **Closure Notices** and **Closure Orders**.

Closure Notices

A closure notice is the first stage in a property being closed down. It informs of the intention to apply for a full closure order.

For a **closure notice** to be issued initially by the police the following conditions must be met⁶⁵:

65. SOA 2003, S 136B.

- There must be reasonable grounds to believe that the premises had been used for activities relating to **one or more of the specified offences** during the three months before the Notice is issued;
- There must be reasonable grounds to believe that a Closure Order is **necessary to prevent** the premises from being used for activities relating to one or more of the specified offences;
- Reasonable steps must have been taken to identify the person who lives in the property, or who has control/responsibility for the premises.

It is important to be aware that a closure notice can be issued even if someone hasn't been convicted for one of the relevant offences.

The Notice will be served by a copy being attached to at least one obvious place on the property and as far as is reasonably possible by giving it to people identified as living in or having control/responsibility of the premises. Reasonable force can be used to enter premises if this is necessary to make sure the Notice is served.

The closure notice will have effect until the Court has made a decision on an application for a Closure Order.

Closure Orders

The Court must hear the application for a closure order within **48 hours** of the notice being issued. This is obviously a very short timeframe and can cause problems with getting legal representation. If you don't have a solicitor you should **call the Release helpline** as soon as possible so that you can be referred to a lawyer. It is possible for the hearing to be adjourned for up to 14 days, and not having proper representation or not enough time to gather evidence would be a good reason for this. The Court can, and probably will, order that the closure notice continues to be effective during any adjournment period.

For the order to be made the same conditions as for the closure notice must be satisfied⁶⁶.

66. SOA 2003, S 136D.

Hearsay evidence (i.e. reporting what someone else has said) is allowed when applying for, or defending against, a closure order.

The effect of the order is to close the premises completely, including to owners and residents, for up to three months. This can be extended for a further three months if another application is made.

The Court can allow for access to any part of the property during the closure period.

It should be noted that a closure order can't be made where there has only been one customer for all of the sexual services in question. This is in line with the purpose of the order being to address anti-social behaviour associated with brothels.

Associated offences

Remaining on or entering the premises without reasonable excuse whilst an order or Notice is in force is a **criminal offence**. The punishment is a fine of up to £5,000 or three months in prison or both, at the Magistrates' Court, or up to 51 weeks' imprisonment at the Crown Court⁶⁷.

67. NOTE THAT BREACHING A CLOSURE ORDER MADE UNDER PART 2A SEXUAL OFFENCES ACT 2003, AS INSERTED BY THE POLICING AND CRIME ACT 2009 CARRIES A MAXIMUM SENTENCE OF 6 MONTHS' IMPRISONMENT IN THE MAGISTRATES' COURT.

POSSESSION PROCEEDINGS

Closure of premises can cause a number of other problems if you are the tenant of that property.

Rent still needs to be paid, and whilst Housing Benefit might carry on, there will still be the issue of rent for anywhere else you stay during the period of closure.

Landlords will normally start possession proceedings to take the property back once the order has been made, using the grounds for the closure as reason for the tenancy to be ended. This is likely to cause ongoing problems if applying for social housing in the future as you are likely to be considered to have made yourself intentionally homeless.

Closure Orders apply to both residential and business premises.

Closure Orders & Drugs

The police and courts used to have a specific power to close down premises where there is use, supply or production of Class A drugs and serious nuisance or disorder⁶⁸. If the police reasonably suspect the existence of both these factors, they could issue a closure notice and apply for an order in the same way as for a brothel. This has now been replaced with a more general power for premises where there is nuisance⁶⁹ – see Chapter 3 for more information on these orders.

68. POLICE REFORM ACT 2002.

69. ANTI-SOCIAL BEHAVIOUR,
CRIME AND POLICING ACT
2014, PART 4, CHAPTER 3.

ANTI-SOCIAL BEHAVIOUR

- CRIMINAL BEHAVIOUR ORDER (CBO)
- INJUNCTIONS
- COMMUNITY PROTECTION NOTICES (CPNs)
- DISPERSAL POWERS
- PUBLIC SPACES PROTECTION ORDERS (PSPOs)
- CLOSURE OF PREMISES
- POSSESSION PROCEEDINGS

There are a range of powers for the police, local authorities and courts to tackle “anti-social behaviour”. These powers are used against sex workers, to limit activities which might be offensive to the public.

These powers can have a huge impact on your life, freedom and home – you need to understand what they mean and how to try and avoid action being taken against you.

Please note that since 2014, a new system has been in place and the old “ASBOs” don’t exist. The key powers are explained below.

CRIMINAL BEHAVIOUR ORDER (CBO)⁷⁰

This power replaces an ASBO on conviction and acts in a very similar way to the old order.

If you are **convicted and sentenced for soliciting/loitering** the prosecutor might also ask the Court to make a Criminal Behaviour Order (CBO).

⁷⁰ ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014, PART 2.

They can make this order if they:

- Are sure that your behaviour **has caused or was likely to cause harassment, alarm or distress to any person; and**
- Think that making the **order will help to prevent** you taking part in this behaviour.

Harassment, alarm and distress means bothering someone, making them feel scared, worried or anxious. This might be different for different people, so it is hard to know beforehand if your behaviour might make someone feel this way. The second part of the test is easier to prove than for the old ASBOs which had to be **necessary** to prevent you taking part in this behaviour⁷¹.

71. DPP V. KAREN BULMER
[2015] EWHC 2323.

It must be proved **beyond reasonable doubt** that the past acts of anti-social behaviour that are claimed actually took place. The court must then judge and evaluate whether an order will help to prevent future anti-social behaviour⁷².

72. DPP V. KAREN BULMER
[2015] 1 WLR 5159.

Hearsay evidence (i.e. reporting what someone else has said) is allowed when applying for, or defending against, a CBO.

The order can include:

- Things you must stop doing (prohibitions); **and**
- Things that you must actively do (requirements).

Unlike the old ASBOs, a CBO can put **positive requirements** on you e.g. taking a job readiness course to help move away from circumstances that cause you to commit anti-social behaviour. Any requirement must be suitable for you, compatible with any other requirements, not interfere with education/work/other commitments, and will be supervised by a named person or organisation, who will report on how well you are doing.

A CBO will last between two years and life (or for one – three years if you are under 18), but prohibitions and requirements might be for only part of that time (e.g. engaging with services

for 6 months during a two year order).

If you do something you aren't supposed to, or don't do something that you have been told to by a CBO, then you will be breaching (breaking) the order. This is a separate offence and you might need to go back to court – you could be sentenced to up to six months in prison, a fine or both in the Magistrates' Court, and up to five years in prison, a fine or both in the Crown Court.

INJUNCTIONS⁷³

An injunction can be made if:

- The Court is satisfied, on the balance of probabilities, that you have taken part in anti-social behaviour, or that there is a risk of this, **and**
- Making the injunction is a fair way to prevent you from taking part in anti-social behaviour.

Anti-social behaviour means:

- Actions that have caused, or is likely to cause, harassment, alarm or distress to any person.
- Actions that are able to cause nuisance or annoyance to a person connected to where they live.
- Actions that are able to cause housing-related nuisance or annoyance to any person.

Harassment, alarm and distress means bothering someone, making them feel scared, worried or anxious. This might be different for different people, so it is hard to know beforehand if your behaviour might make someone feel this way.

An injunction can:

- Make you stop doing anything (prohibition); **and/or**
- Make you do anything (requirement).

As far as possible, the prohibitions and requirements must not get in the way of times where you would normally be at work or going to school or other education.

73. ANTI-SOCIAL BEHAVIOUR,
CRIME AND POLICING ACT
2014, PART 1.

If you break one of the prohibitions or requirements, the person who asked for the injunction can ask the Court to issue a warrant for you to be arrested. You might not be released from court if they can't deal with the issue at the first hearing.

The Court can also add a power of arrest to any of the prohibitions or requirements at the time they make the order if they think that your anti-social behaviour:

- includes using or threatening use of violence against other people, or
- there is a significant risk of harm to other people.

This means that if you break one of these prohibitions or requirements not to do something you can be arrested without a warrant.

A power of arrest can't be added to a positive requirement that you have to take part in certain activities. The power of arrest might also only be for a certain part of the injunction – for example the first 3 months of a 12 month order.

The injunction must include how long it lasts for – if you are under 18 it can't be for more than 12 months.

You can ask the Court to change or end the injunction – you might want to do this if something has changed that affects you being able to stick to the prohibitions or requirements. This might include moving house or changing working hours. The person who applied for the injunction can also ask for it to be changed – this might mean that they want to add prohibitions or requirements.

If the Court can't decide at the first hearing they can make a temporary injunction until the next hearing.

The most important difference between the Injunction and the previous ASBOs is that the burden of proof required is the civil standard rather than the criminal standard. This means it will be quicker and easier to obtain such an order from the Court.

Breach of the order is not a criminal offence but would be punishable through civil contempt of court which carries a sentence of up to two years in prison and/or an unlimited fine.

COMMUNITY PROTECTION NOTICES (CPNs)⁷⁴

These can be issued by police, council officers, and social landlords (if allowed by the council).

CPNs can be issued to people aged **16 or over** if satisfied on reasonable grounds that:

- Your behaviour⁷⁵ is having a **detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality**, and
- The behaviour is **unreasonable**.

You must be given a written warning that if you don't stop the alleged behaviour a notice will be issued. The CPN **must identify the behaviour** that is having a detrimental effect etc. and explain the **consequences of failing to comply**.

A Notice can include:

- Requirements to stop doing certain things;
- Requirements to do certain things; **and**
- Requirements to take reasonable steps to achieve certain specified results.

The requirements in CPN need to be **reasonable to prevent or reduce detrimental effect** etc.

Failing to follow the terms in the notice is a criminal offence which can be punished by a fixed penalty notice ('FPN') – an FPN will be **no more than £100, paid to the council** and must be paid **within 14 days**. If this is not paid in time there is a risk of prosecution for non-payment and/or the original offence, although the CPS will have to decide if prosecution is in the public interest. At court, punishment for not following the terms is a fine (**level 4 – see penalties section for further information**). But, you can defend yourself by showing that you took **all reasonable steps to abide by** the conditions or there is a **reasonable excuse** for why you couldn't.

74. ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014, PART 4, CHAPTER 1.

75. EXAMPLES OF BEHAVIOUR THAT MIGHT LEAD TO A CPN CAN BE FOUND IN 'HOME OFFICE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014: REFORM OF ANTI-SOCIAL BEHAVIOUR POWERS, STATUTORY GUIDANCE FOR FRONTLINE PROFESSIONALS' (JULY 2014) AT P39 [HTTPS://WWW.GOV.UK/GOVERNMENT/UPLOADS/SYSTEM/UPLOADS/ATTACHMENT_DATA/FILE/352562/ASB_GUIDANCE_V8_JULY2014_FINAL_2_.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_GUIDANCE_V8_JULY2014_FINAL_2_.PDF)

DISPERSAL POWERS⁷⁶

This power allows a police officer, or in some cases a Police Community Support Officer, to direct any person whose behaviour has '**contributed or is likely to contribute**' to anti-social behaviour to leave a particular place. 'Likely to contribute' means that the police might use your past behaviour, including criminal record, to assume that you will do the same thing again.

A senior officer (Inspector or above) must be satisfied the powers are necessary to remove or reduce the likelihood of:

- Members of the public in the area being harassed, alarmed or distressed; **or**
- Crime or disorder happening in the area.

Once a senior officer has authorised the powers to be used, they will be in place for 48 hours. Anyone made to leave won't be able to return to the excluded area for up to 48 hours.

Breach of an order is a criminal offence punishable by fine and/or up to three months' imprisonment.

This power could see individual officers abusing its use, especially in relation to certain groups including sex workers.

PUBLIC SPACES PROTECTION ORDERS (PSPO)⁷⁷

These are issued for a geographical area, rather than an individual, and can be authorised by the council after consultation with the police.

A council can make a PSPO if satisfied **on reasonable grounds** that:

- Activities carried on in a public place are having, or are likely to have a detrimental effect on the quality of life of those in the locality, and
- The effect of the activities are, or are likely to be of a persistent or continuing nature, such as to make the activities unreasonable and this justifies the restrictions imposed.

The order then:

- Prohibits specified things being done in the restricted area;
- Requires specified things to be done by people carrying on specified activities in that area; **or**
- Does both of these things.

Breach is a criminal offence punishable by a Fixed Penalty notice or a fine on prosecution.

It is very likely that this type of order could be used by councils and the police in an attempt to stop street sex working in certain areas increasing the risk of criminalisation of sex workers and potentially forcing them into riskier environments.

CLOSURE OF PREMISES⁷⁸

Closure Notices

A senior police officer (Inspector or above), or the local authority, can issue a closure notice if satisfied on reasonable grounds:

- That the **use of particular premises has resulted**, or (if the notice is not issued) is likely soon to result, **in nuisance to members of the public; or**
- That there **has been**, or (if the notice is not issued) is likely soon to be, **disorder near those premises associated with the use of those premises**; and
- That the notice is **necessary to prevent the nuisance or disorder from continuing, recurring or occurring.**

The notice will be served by a copy being attached to at least one obvious place on the property and, as far as is reasonably possible, by giving it to people identified as living in or having control/responsibility of the premises. Reasonable force can be used to enter premises if this is necessary to make sure the notice is served.

78. THIS IS SEPARATE FROM CLOSURE ORDERS UNDER THE SEXUAL OFFENCES ACT 2003 (SOMETIMES CALLED BROTHEL CLOSURE ORDERS).

The closure notice will have effect until the Court has made a decision on an application for a closure order.

Closure Orders

The Court must hear the application for a closure order within **48 hours** of the notice being issued. This is obviously a very short timeframe and can cause problems with getting legal representation. If you don't have a solicitor you should **call the Release helpline** as soon as possible so that you can be referred to a lawyer. It is possible for the hearing to be adjourned for up to 14 days; and not having proper representation or not enough time to gather evidence would be a good reason for this. The Court can, and probably will, order that the closure notice continues to be effective during any adjournment period.

For the order to be made the Court must be satisfied:

- That a **person has engaged**, or (if the order is not made) is likely to engage, **in disorderly, offensive or criminal behaviour on the premises; or**
- That the **use of the premises has resulted**, or (if the order is not made) is likely to result, **in serious nuisance to members of the public; or**
- That there **has been**, or (if the order is not made) is likely to be, **disorder near those premises associated with the use of those premises; and**
- That the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

Hearsay evidence (i.e. reporting what someone else has said) is allowed when applying for, or defending against, a closure order.

The effect of the order is to close the premises completely, including to owners and residents, for up to three months. This can be extended for a further three months if another application is made.

The Court can allow for access to any part of the property, during the closure period.

Associated offences

Remaining on or entering the premises without reasonable excuse whilst an order or notice is in force is a **criminal offence**. The punishment is a fine of up to £5,000 or three months in prison or both.

POSSESSION PROCEEDINGS

Closure of premises can cause a number of other problems if you are the tenant of that property.

Rent still needs to be paid, and whilst Housing Benefit might carry on, there will still be the issue of rent for anywhere else you stay during the period of closure.

Landlords will normally start possession proceedings to take the property back once the order has been made, using the grounds for the closure as reason for the tenancy to be ended. This is likely to cause ongoing problems if applying for social housing in the future as you are likely to be considered to have made yourself intentionally homeless.

Absolute grounds for possession⁷⁹

If the landlord makes an application for possession of the property, the Court must order possession if one of the following situations apply:

- The tenant, or someone living with or visiting the tenant, has been convicted for breaching a prohibition in a Criminal Behaviour Order and the breach occurred in the area of the property or affected a person with a right to live in the area, or affected the landlord. It is important to note that a breach of a 'requirement' provision of a CBO is not a ground for possession.
- Convicted of a serious offence (this includes keeping a brothel)⁸⁰;
- Breaching an injunction under Part 1 of the 2014 Act (see section on injunctions above on page 44);
- Tenant's property has been closed for 48 hours under a closure order under Part 4, chapter 3 of the 2014 Act;
- Convicted for breaching a noise abatement notice.

79. HOUSING ACT 1985, S 84A AS INSERTED BY PART 5 ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014.

80. ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014, SCHEDULE 2A CONTAINS THE FULL LIST.

The tenant can ask for **review of landlord's decision** to seek possession, within 7 days, if the Landlord is a local authority or a housing trust.

Although the Court must order possession, there is still a possibility to persuade the landlord not to enforce it immediately so that eviction doesn't happen.

ADVERTISING

- OBSCENE ARTICLES
- INDECENT DISPLAYS
- CARDING IN PUBLIC TELEPHONES
- SOLICITING
- ADVERTISING ON THE INTERNET

Advertising offences

Maximum penalties

Publishing an obscene article	3 years and/or fine
Indecent displays	2 years and/or fine
Placing adverts for prostitution on a public telephone	6 months and/or fine
Unauthorised advertising	Fine
Criminal damage valued at less than £5k	6 months and/or fine

It is not illegal to advertise sexual services, except in the following circumstances.

OBSCENE ARTICLES

It is an offence, though rarely charged, to publish an obscene article⁸¹.

This offence applies to anything to be read or looked at, and any sound or picture recording. The test is whether the effect of the article is such as to 'deprave or corrupt' people who see it.

Publishing means any act of distributing, circulating, selling, or lending the article, or showing or playing if it is in visual or audio form.

81. OBSCENE PUBLICATIONS ACT 1959, S 2.

As a consequence of this offence, some telephone directories aren't willing to display adverts from massage parlours and escort agencies.

The penalty is a fine or up to five years in prison.

There is also scope for prosecution under the common law offence of conspiracy to corrupt public morals or outrage public decency. These are brought to court even less often – contact Release for further advice if you need it.

INDECENT DISPLAYS

It is an offence, though rarely charged, to **'publicly display'** any **'indecent matter'**⁸².

82. INDECENT DISPLAYS
(CONTROL) ACT 1981, S 1.

The offence was brought in to deal with the problem of posters advertising prostitution in shop windows but **'matter'** includes any materials other than an actual human body or human body part.

It is enough that the matter is visible from a public place. It doesn't have to be within a public place itself.

Indecent has its normal dictionary meaning and it will be a matter for the jury whether something is indecent or not. Material that is just suggestive or indirect is unlikely to fall within the test.

The penalty is a fine and/or up to two years in prison.

“CARDING” IN PUBLIC TELEPHONES

It is an offence to place an advertisement relating to prostitution on, or in the immediate area of, a public telephone⁸³. This doesn't apply to telephones in places where under 16-year-olds aren't allowed. The penalty is a fine or up to six months in prison.

83. CRIMINAL JUSTICE AND
POLICE ACT 2001, S 46.

People employed to insert prostitutes' cards in telephone kiosks also risk being prosecuted for unauthorised advertising⁸⁴.

However, it is more likely that a charge will be brought under the above offence of placing an advertisement relating to prostitution in or near a public telephone. There is also a risk of being charged with criminal damage.

84. TOWN AND COUNTRY
PLANNING (CONTROL
OF ADVERTISEMENTS)
REGULATIONS 1992.

SOLICITING

“Loitering or soliciting” in a street or public place for the purpose of prostitution is a form of advertising⁸⁵, and is an offence (see page 15).

85. BEHRENDT V. BURRIDGE
[1976] CR APP R 202.

ADVERTISING ON THE INTERNET

It is difficult to be prosecuted for advertising sexual services on the Internet. Because internet sites can be viewed anywhere in the world, in theory you could be subject to the laws of whatever country your advert is seen in. This is particularly so if your website is hosted offshore or in another country.

Under English law, the acts of **soliciting** or **obscene publication** could be said to have taken place, so you should be careful to follow the advice given in the relevant sections above about the elements of these offences.

You should also be careful before paying others to place an advert on the Internet on your behalf. If you do this, you should make sure you are able to check the advert yourself first, make sure it has actually been placed, and that it stays on the Internet for the agreed time.

Online sexual activity

It is possible for online broadcasts to be considered obscene under the Obscene Publications Act 1959⁸⁶ as outlined above. Decisions about prosecution will look at factors like:

86. AS EXPANDED BY THE
OBSCENE PUBLICATIONS ACT
1964, S 1.

- The degree and type of obscenity;
- The form the material is presented in;
- The type and scale of any commercial business;
- Whether publication was made to a child (or the possibility that this would be likely to happen)⁸⁷.

87. THE ATTORNEY GENERAL,
IN A PARLIAMENTARY
WRITTEN ANSWER ON 16
JUNE 1997.

More recently, the Audio-visual Media Services Regulations ('AVMSR') 2014 amended the Communications Act 2003, to ban a number of acts from online porn that is produced in the UK. It brings the law for video-on-demand (VoD) productions in line with the law for videos and DVDs. *The law applies to UK producers, **NOT** performers or consumers, although they will be indirectly affected by the restrictions.*

A service is classed as an 'on-demand programme service' if all 5 of the following apply⁸⁸:

88. THE COMMUNICATIONS ACT 2003, S 368A(1) AS INTRODUCED BY THE AUDIOVISUAL MEDIA SERVICES REGULATIONS 2009.

89. DIRECTIVE 2010/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 10 MARCH 2010 ON THE COORDINATION OF CERTAIN PROVISIONS LAID DOWN BY LAW, REGULATION OR ADMINISTRATIVE ACTION IN MEMBER STATES CONCERNING THE PROVISION OF AUDIOVISUAL MEDIA SERVICES (AUDIOVISUAL MEDIA SERVICES DIRECTIVE) (TEXT WITH EEA RELEVANCE).

90. A NEW LEGISLATIVE PROPOSAL AMENDING THE AVMSD WAS ADOPTED BY THE EUROPEAN COMMISSION ON 25 MAY 2016, BUT HAS YET TO BE ADOPTED BY THE EUROPEAN PARLIAMENT (REFERENCE 2016/0151(COD)).

91. THE COMMUNICATIONS ACT 2003, S 368A(2) AS INTRODUCED BY THE AUDIOVISUAL MEDIA SERVICES REGULATIONS 2009.

- The main purpose of the service is to provide programmes that are similar to the form and content of programmes normally included in television programme services;
- Access to the service is on-demand;
- There is a person who has editorial responsibility for it;
- Programmes are publicly available; **and**
- The provider of the service is under the jurisdiction of the UK for the purposes of the Audio-visual Media Service Directive ('AVMSD').^{89 90}

Free-to-view pornography isn't included here because this doesn't meet the first criteria.

Access to a service is 'on-demand' if⁹¹:

- The service allows the user to select and view programmes, at a time they choose, from among the programmes included in the service; **and,**
- The programmes viewed are received by an electronic communications network (whether before or after the user has selected which programmes to view).

***Web cam sessions aren't covered by AVMSR.**

The British Board of Film Classification (BBFC) has control over classification of material. Its detailed guidelines state:

“The following content is not acceptable:

- material which is in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959
- material (including dialogue) likely to encourage an interest in sexually abusive activity which may include adults role-playing as non-adults
- the portrayal of sexual activity which involves real or apparent lack of consent. Any form of physical restraint which prevents participants from indicating a withdrawal of consent
- the infliction of pain or acts which may cause lasting physical harm, whether real or (in a sexual context) simulated. Some allowance may be made for moderate, non-abusive, consensual activity
- penetration by any object associated with violence or likely to cause physical harm
- sexual threats, humiliation or abuse which do not form part of a clearly consenting role-playing game. Strong physical or verbal abuse, even if consensual, is unlikely to be acceptable.”⁹²

What this means is that, **the following activities are banned:**

- Spanking
- Caning
- Aggressive whipping
- Penetration by any object “associated with violence”
- Physical or verbal abuse (regardless of if consensual)
- Urolagnia (known as “water sports”)
- Role-playing as non-adults
- Physical restraint
- Humiliation
- Female ejaculation
- Strangulation
- Face-sitting
- Fisting

92. BRITISH BOARD OF FILM CLASSIFICATION (2014) THE BBFC CLASSIFICATION GUIDELINES 2014, BBFC: LONDON, PG. 24 ([HTTP://WWW.BBFC.CO.UK/SITES/DEFAULT/FILES/ATTACHMENTS/BBFC%20CLASSIFICATION%20GUIDELINES%202014_5.PDF](http://www.bbfc.co.uk/sites/default/files/attachments/bbfc%20classification%20guidelines%202014_5.pdf) ACCESSED ON DECEMBER 10, 2016).

Although the guidelines are supposed to apply regardless of sexual orientation, activities will vary according to gender, sexual orientation and preference so people may be affected differently. In particular, the fact that female ejaculation is banned whilst male ejaculation is not is clearly inconsistent.

**93. INTRODUCED TO
PARLIAMENT ON JULY 5, 2016
AND EXPECTED TO BECOME
LEGISLATION IN EARLY 2017.**

The Digital Economy Bill⁹³ proposes to restrict access to online pornography by introducing a new legal requirement for internet service providers to block sites hosting content that wouldn't be certified by the BBFC. The Bill introduces strict age verification controls for online pornographic content in the UK, along with a regulatory framework and civil sanctions.

DEALINGS WITH THE POLICE

- RIGHT TO BE TREATED FAIRLY AND WITH RESPECT
- ENTRAPMENT / AGENTS PROVOCATEURS
- SURVEILLANCE
- ABUSE OF PROCESS
- POLICE MISCONDUCT
- SEARCH OF PREMISES
- STOPS ON THE STREET
- RIGHTS ON ARREST
- TAKING OF PHOTOGRAPHS, FINGERPRINTS AND DNA
- IN POLICE CUSTODY
- CHILDREN OF DETAINEES
- RETURN OF SEIZED PROPERTY

RIGHT TO BE TREATED FAIRLY AND WITH RESPECT

You might be investigated, arrested and charged by any branch of the police, sometimes this will be the vice or club squads or the neighbourhood police. The police are moving away from the term 'vice' and are using terms such as 'human/sexual exploitation commands'.

If you resist a lawful arrest, you might be charged with obstruction of a police officer in the course of duty⁹⁴, assault, or a Public Order Act offence. If you feel that you have been unfairly treated or unlawfully dealt with, you can lodge a complaint against the police officer/s. If you suffer any physical

94. POLICE ACT 1996, S 89(2).

injuries or damage to property, you could also start a civil action against the police.

You have the right to be treated fairly and with respect whilst in police detention.

UNDERCOVER OFFICERS, ENTRAPMENT / AGENTS PROVOCATEURS

The police sometimes carry out operations where they work undercover pretending to be clients. Permission for this has to be given by an **Assistant Chief Constable** or above⁹⁵ and this must be notified to the Office of Surveillance Commissioners⁹⁶ (OSC), or approved by a Chief Constable if the operation will last over 12 months (and the OSC has also given permission).

95. REGULATION OF INVESTIGATION POWERS ACT (COVERT HUMAN INTELLIGENCE SOURCES: RELEVANT SOURCES) ORDER 2013, ARTICLE 16(2).

96. REGULATION OF INVESTIGATION POWERS ACT (COVERT HUMAN INTELLIGENCE SOURCES: RELEVANT SOURCES) ORDER 2013, ARTICLE 4.

97. COVERT HUMAN INTELLIGENCE SOURCES: CODE OF PRACTICE (DECEMBER 2014), PARA 2.14.

98. COLLEGE OF POLICING CODE OF ETHICS, PARA 16-17.

99. R. V. LOOSELY [2001] 1 WLR 2060.

Any officer acting undercover has to follow the College of Policing Code of Ethics⁹⁷ which specifically says that officers “must act with honesty and integrity and keep in mind the principles set out in the code”⁹⁸. If an officer persuades or encourages another person to commit an offence which they would not otherwise have done they would be an agent provocateur and this could be seen as entrapment. For example, if s/he pressurised a masseur into providing sexual services for money, or offered some other incentive (such as assistance with immigration matters) then this may render his/her acts as entrapment. But if the officer does no more than provide you with an opportunity that may exist in any event, his/her conduct will not amount to entrapment⁹⁹.

If the defendant has been “entrapped” then this may lead to the Court ordering the proceedings to be brought to an end as an “abuse of process”. However, this is rare and in usual circumstances, the defendant who commits the act in question will have no defence in law.

Local councils might also use undercover officers, and the same Code of Practice applies.

SURVEILLANCE

Secret (covert) surveillance

This includes activities such as telephone tapping and the secret use of cameras. Most of these activities affect someone's right to privacy,¹⁰⁰ but they are allowed where they are necessary and proportionate (fair) to prevent crime and to protect the rights of others.

100. HUMAN RIGHTS ACT 1998, ART. 8.

All forms of police surveillance have been justified in these terms. Secret surveillance must be carried out in line with the Regulation of Investigatory Powers Act 2000 ('RIPA 2000') and its codes of practice. This requires surveillance to be authorised by warrant, which can only be granted if the action is necessary, proportionate, and will be of substantial value in the prevention or detection of serious crime and this cannot reasonably be achieved in another way.

In this situation, serious crime might include criminal activity which results in large financial gain, or if the activity involves a large number of people working together for a common aim. It is possible that sharing a room or property with other people for the purposes of sex working would fall within this definition.

It is unusual for covert surveillance such as telephone tapping to be carried out in cases of individual sex working, unless the police suspect a syndicated/organised operation or that drugs are involved.

Local councils can also carry out secret surveillance, but the authority's authorisation must be approved by a Magistrates' Court if the surveillance is directed or intrusive.¹⁰¹

101. PROTECTION OF FREEDOMS ACT 2012.

Intrusive surveillance is anything carried out in relation to activities happening in a residential property or a private vehicle, and involves someone being present in the property/vehicle, or using a device.¹⁰²

102. RIPA 2000, S 48(2).

Direct surveillance is secret surveillance that isn't intrusive as above, but is likely to result in obtaining private information about a person.¹⁰³ Private information includes any information about a person's private or family life, even if the surveillance is

103. RIPA 2000, S 26(9)(A).

104. RIPA 2000, S 26(10).

105. REGULATION OF INVESTIGATION POWERS ACT (DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES) (AMENDMENT) ORDER 2012.

106. RIPA 2000, S 23A AS INSERTED BY S.37 PROTECTION OF FREEDOMS ACT 2012.

107. HOME OFFICE, MARCH 2015, ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA CODE OF PRACTICE, [HTTPS://WWW.GOV.UK/GOVERNMENT/UPLOADS/SYSTEM/UPLOADS/ATTACHMENT_DATA/FILE/426248/ACQUISITION_AND_DISCLOSURE_OF_COMMUNICATIONS_DATA_CODE_OF_PRACTICE_MARCH_2015.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/acquisition_and_disclosure_of_communications_data_code_of_practice_march_2015.pdf)

108. INVESTIGATORY POWERS ACT 2016, S 87.

109. R. V. JOHN BARRETT AND OTHERS [2007].

taking place in a public setting where there is less expectation of privacy.¹⁰⁴ Also, authorities can only use directed surveillance for investigations into offences attracting sentences of six months or more (or those offences that relate to underage sale of alcohol or tobacco).¹⁰⁵

The Covert Surveillance and Property Interference Code of Practice 2014 provides detailed information and examples on surveillance by local authorities. For communications data specifically – details of calls, emails, text messages etc. – local authorities must get a court order approving the grant/renewal of an authorisation to obtain this data.¹⁰⁶ For more information see Acquisition and Disclosure of Communications Data Code of Practice 2015.¹⁰⁷

The Investigatory Powers Act 2016 now also allows police, security services and other public bodies to tell internet and phone companies to store records of websites visited by every customer for 12 months, and allow them access to these.¹⁰⁸

Overt (open) surveillance

This is more likely to happen in relation to less serious crime. For example, in the course of searching premises under a warrant, the police might record the search by photograph or video, and might present such footage as evidence in court.

ABUSE OF PROCESS

In some situations, the actions of the police during their investigations will mean that a prosecution can't go ahead even when a criminal offence has been committed. This is because normal procedure hasn't been followed and this has resulted in unfairness to the defendant.

Local practice

Where police have adopted a policy (official or otherwise) of not arresting and prosecuting offences, this effectively gives workers an implied permission to operate. This could create a legitimate expectation against prosecution and so any future prosecutions might be unfair and stayed as an abuse of process.¹⁰⁹ These are cases where the Court concludes that you cannot receive a fair trial or that it would be unfair to try you.

This test has a very high threshold and, in practice, it is very difficult to meet.

Prosecution

Before a sex worker is prosecuted for a criminal offence, as with any offence, the CPS must decide whether or not there is enough evidence and also if it is in the public interest to prosecute.

Special consideration should be given to the prosecutions of trafficked sex workers and the possibility of not imposing penalties on people who have been trafficked and then made to offend. This has been confirmed in a number of cases¹¹⁰ which gave guidance to courts on the approach to be taken towards those who were, or might be, victims of people trafficking, after criminal proceedings against them had begun,¹¹¹ and forms part of the Council of Europe Convention on Action against Trafficking Human Beings 2005.¹¹² A victim of trafficking shouldn't be prosecuted where there is reliable evidence that force or pressure has been used to make the person commit a crime.¹¹³ Additionally, the Modern Slavery Act 2015 gives a defence for victims who are made to commit a crime.¹¹⁴ See the section on victims of trafficking at page 133 for further details.

110. LM AND OTHERS [2010] EWCA CRIM 2327; NR AND LE [2012] EWCA CRIM 189; NR AND LE [2012] 1 CR. APP. R.35; AND L,T,THN AND HVN [2013] EWCA CRIM 991. .

111. L,T,THN AND HVN [2014] 1 ALL.E.R.113

112. ARTICLE 26

113. R. V. O [2008] EWCA CRIM 2835.

114. MODERN SLAVERY ACT 2015, S 45.

POLICE MISCONDUCT

If the police ask for sexual services in return for not reporting you for an offence, they are breaching their code of professional conduct and committing an offence. If you report them, they should be subjected to disciplinary action or criminal charges. The most common offence is 'misconduct in a public office' and many police officers have been charged with this for asking for 'special favours'.

If you suffer bad treatment at the hands of the police you might have grounds for a civil action against them, for example, harassment, wrongful imprisonment, assault, intimidation or wrongful interference with goods.

The first place to complain is to the Inspector at the police station where the officer/s come from. If you don't feel comfortable doing this, you can complain to the Independent Police Complaints Commission. They might investigate

the behaviour or refer it to the relevant station to deal with, depending what the complaint is and how serious it is. The IPCC is also the place to escalate a complaint if you're not happy with the way it is dealt with by the Inspector (see page 140 for contact details).

You should seek advice at a local law centre or Citizens' Advice Bureau, from your local sex work support project (contact UKNSWP on 0161 629 9861) or from your solicitor.

SEARCH OF PREMISES

Without consent

The police might enter your premises without your consent if they have a search warrant or an arrest warrant relating to someone they reasonably believe to be on the premises. They might search the premises without your consent if they have a search warrant or if they make an arrest on your premises, or following arrest.

Before they enter the premises, the police must:

- Identify themselves and, if not in uniform, produce their warrant card;
- Show you the search (or arrest) warrant; **and**
- Give you a copy of the search (or arrest) warrant.

The police should conduct the search at a reasonable hour unless it appears that entry then would frustrate the purpose of the search. The police might use reasonable force to gain entry.

A search warrant only authorises entry on one occasion. It must be dated and it must be executed within three calendar months of the date of issue. When the police have completed the search they must record on the warrant if any articles or persons were found, and seized.

Officers from other relevant authorities might sometimes accompany the police in searches. For example, the social services, immigration, planning authorities and the Inland Revenue.

With consent

Many police searches take place with the consent of the occupants. If you give your consent for the police to conduct a search on your premises without a warrant, you can ask them to leave at any time and they should do so.

STOPS ON THE STREET

If you are stopped by the police:

- If they are not in uniform, then ask to see their warrant card.
- Ask why you have been stopped and, at the end, ask for a record of the search.

You might be stopped and searched if the police have a reasonable suspicion that you have in your possession, stolen property, drugs, an offensive weapon or an item to be used to commit a crime.

Reasonable suspicion means that the officer has a real belief that they will find what they are looking for and this must be based on **facts, information/intelligence or specific behaviour**.¹¹⁵ It can never be based on personal factors including physical appearance (unless there is specific intelligence about a description of someone carrying something), generalisations or stereotypes.¹¹⁶ Officers must be able to **explain with reference to specific aspects of a person's behaviour why they formed an opinion. A hunch or instinct about a person's behaviour that cannot be explained or justified objectively, can never amount to reasonable grounds for searching a person.**¹¹⁷

The police should explain the reason for the search based on the above. You can ask why you are being searched, what the officer is looking for and why the officer thinks that you have those things. **It might be that by asking these questions the officer reconsiders whether he has formed a reasonable suspicion.**¹¹⁸ Our Y-STOP project has useful tips for dealing with a stop and search, and complaining if you aren't happy with the way an encounter has been handled.

115. POLICE AND CRIMINAL EVIDENCE ACT CODES OF PRACTICE, CODE A, 2015, PARA 2.2.

116. POLICE AND CRIMINAL EVIDENCE ACT CODES OF PRACTICE, CODE A, 2015, PARA 2.2B.

117. POLICE AND CRIMINAL EVIDENCE ACT CODES OF PRACTICE, CODE A, 2015, PARA 2.6B.

118. POLICE AND CRIMINAL EVIDENCE ACT CODES OF PRACTICE, CODE A, 2015, PARA 3.8 (D)(II).

RIGHTS ON ARREST

- You don't have to say anything to the police, BUT if you are later charged with a crime and you haven't mentioned, when questioned by the police, something that you later rely on in court your silence might be used against you as evidence of your guilt. You shouldn't normally be questioned until you are being interviewed at the police station.
- There might be a good reason why you don't want to say anything to the police and you shouldn't be intimidated into answering questions. You are entitled to have a solicitor when being questioned. If you don't have one, you can ask for the Duty Solicitor. The Duty Solicitor at the police station is independent, is NOT employed by the police and is FREE.
- If you have asked for a Duty Solicitor and one isn't available, you have a right to stay silent during a police interview until one is available. It is NOT wise to discuss the case with the police until you have spoken privately with a solicitor.
- There might be times when, if you give an innocent explanation for what you have done, the police will leave you alone and take no action BUT, it is always best NOT to discuss the case with the police until you have spoken with a solicitor. **There is no such thing as an 'off the record chat' or a 'friendly chat' with the police.** Anything you say can be used against you later in court.
- You have a right to read the police Code of Conduct which controls your rights and how you should be treated.
- You have a right to speak to the Custody Officer, who is responsible for your wellbeing.
- You have a right to have someone told about your arrest, although this might be delayed in exceptional circumstances. This is sometimes confused with making a phone call yourself – this is not a right you have, but some custody officers will allow it.

TAKING OF PHOTOGRAPHS, FINGERPRINTS AND DNA

There are some exceptions, but generally when you are arrested the police have the right to take your fingerprints, photographs, DNA (from a swab of your mouth) and other non-intimate samples (such as hair), without your consent. Intimate samples, such as blood, semen, urine, pubic hair, and swabs from orifices other than the mouth require your consent before they are taken but note if you do not give your consent and the matter goes to trial, the Court could use this as evidence of your guilt.¹¹⁹

119. POLICE AND CRIMINAL EVIDENCE ACT 1984, S 62(10).

The rules on whether these can be kept or must be destroyed depend on your age and whether or not you have been convicted.

Fingerprints and DNA must be destroyed as soon as 'reasonably practicable'¹²⁰ unless any of the following apply¹²¹:

120. EXPLANATORY NOTES TO PROTECTION OF FREEDOMS ACT 2012, PARA 8.3.

- Convicted for recordable offence: kept indefinitely.
- Charged with serious offence: kept for three years.
- Arrested for serious offence: kept three years (if consent given).
- Arrested or charged with serious offence AND previous conviction for recordable offence (except excluded offence): kept indefinitely.
- Arrested or charged with minor offence AND previous conviction for recordable offence (except excluded offence): kept indefinitely.
- Penalty notice: kept for two years.
- Convicted of first minor offence (committed when under 18):
 - Less than five-year custodial sentence: kept for length of sentence + five years.
 - More than five-year custodial sentence: kept indefinitely.

121. EXPLANATORY NOTES TO PROTECTION OF FREEDOMS ACT 2012, S 63E-L AS INSERTED BY THE PROTECTION OF FREEDOMS ACT 2012.

Serious offence = Murder, manslaughter etc.

Qualifying offence = serious violent, sexual and terrorist offences.

Recordable offence = any offence that can be punished with prison.

Excluded offence = a conviction for a minor (non-qualifying) offence, committed when the person was under the age of 18, and was given less than five years' imprisonment (or equivalent).

Also, fingerprints and DNA profiles **must be destroyed** if they **were taken unlawfully** or either were taken as a **result of an arrest that was unlawful or based on mistaken identity.**¹²²

Please phone the Release helpline on 020 7324 2989 for advice if you're not sure what applies to you.

IN POLICE CUSTODY

Normally the police can only detain you for a maximum of 24 hours before you are charged or released. This period might be extended to 36 hours in serious cases. The police might apply to the Magistrates' Court for further extensions in exceptional circumstances.

Once the police have completed their investigations following your arrest, one of the following four things might happen:

- You are released with no further action.
- You are released but have to return to the station at a later date (on bail).
- You get a caution for an offence (a caution will form part of your criminal record – please see page 94 for more information on criminal records).
- You are charged with an offence. You might be released on bail to attend the Magistrates' Court, or you might be kept in custody and taken to the hearing from the police station.

You might not get bail if:

- Your name and address cannot be established or the police have grounds to believe that it is false;
- There is a risk you will fail to appear (a history of failing to appear when given bail might support this);
- There is a risk that you might commit a further offence while on bail;
- There is a risk that you might interfere with investigations;
- There is a risk that you might intimidate witnesses; **or**
- Detention might be necessary for your own protection and safety.

Bail might be given with conditions attached, like not being able to go to certain places or having to live at a certain address.

Failing to answer to bail will result in a warrant of arrest being issued against you. This means that you will have committed a further offence unless you can show 'good cause' to the court for failing to attend.

Medical Treatment in Custody

If you ask for a medical examination, an appropriate health care professional must be called as soon as possible to assess your needs. If you are suffering from a minor illness or injury which doesn't need attention, the police don't have to call a doctor even if you ask for one. But, the illness or injury must be recorded in the custody record and, if there is any doubt, an appropriate health professional must be called.

If you are dependent on a drug (including alcohol) and are suffering from harmful effects due to withdrawal, where there is any doubt police should always act urgently to call an appropriate health care professional or an ambulance.

You have a right to ask to see your own doctor, but they might not be willing to attend and can charge a fee for coming to you.

The police doctor will examine you and assess your condition. This is important for health reasons as well as your legal position in terms of your fitness to be interviewed by the police. If you need to take any medication, you can only do so under supervision. If you are on prescribed medication, the police doctor can only issue a prescription based on their short clinical findings because they have no knowledge of your medical history.

If you have your prescription and need to take your medication, you can:

- Ask for an assessment by the police doctor, after which they might give a similar prescription and allow you to take your medication under supervision; **or**
- Show the police your prescription and tell them that they can call your doctor to confirm that you need your medication; **or**
- Show the police your prescription, and they might collect it for you, and then let you to take it under supervision; **or**
- If the above is not possible, you can give permission in writing, including the name of your Custody Officer and his contact number for verification purposes, for a responsible adult to collect the medication on your behalf.

The police should not stop you from taking your medication unless:

- They believe that it would affect their safety; **or**
- The police doctor is unavailable.

If no doctor is available, or there is going to be a delay, the police don't have to give you a reason for the delay or a time estimate for the doctor's arrival. However, they should follow their Code of Practice which requires them to treat you fairly.

If you have been unfairly treated or unreasonably prevented from taking your medication, you might lodge a complaint to the Independent Police Complaints Commission (IPCC) or contact your solicitor.

CHILDREN OF DETAINEES

The police are legally required to make sure that the children of parents or guardians being detained in custody are looked after. Usually the police will get a relative or friend to take care of them. If this isn't possible, the police might contact Social Services. (See the section on Sex Working Parents at page 108)

Please consult a family solicitor if you have any problems. If you have difficulty in contacting a solicitor, please contact Release on 020 7324 2989.

RETURN OF SEIZED PROPERTY

If the police take any property that belongs to you in the course of an enquiry or an investigation (for example, condoms, clothes, money, videos or sex equipment) they must return it to you if:

- You are not charged with an offence; **or**
- You are charged with an offence and the items won't be used as evidence against you; **or**
- The items aren't involved in any other criminal investigations; **or**
- The items haven't been used in the commission of an offence; **or**
- The police have no reasonable grounds to believe that you aren't the legal owner of the item/s.

If the police refuse to return any item/s seized from you, you can make an application to the Magistrates' Court for an order that the police return your property under the Police (Property) Act 1897, s 1. Please speak to a solicitor or a civil liberties organisation such as Release if you need any clarification or assistance.

POLICE PENALTIES

- PROSTITUTES' CAUTIONS
- FORMAL CAUTIONS & CONDITIONAL CAUTIONS
- YOUTHS

PROSTITUTES' CAUTIONS

There is an agreement between the Metropolitan Police Commissioner and the Chief Officers of the Provincial Police Forces that someone who hasn't previously been convicted of **soliciting** under s1(1) Sexual Offences Act 1959 won't be charged with this offence unless they have already received two 'Prostitutes' Cautions'¹²³. These types of cautions can't be given to anyone under the age of 18.

'Prostitutes' Cautions' are not formal cautions as discussed below. The behaviour leading to a Prostitutes' Caution might not actually be evidence of the criminal offence of soliciting or loitering – it only needs two officers to witness the activity to have reasonable cause to believe that you have committed the offence. Also, **you don't have to admit guilt** to get a Prostitutes' Caution.

This scheme protects against early and unnecessary criminalisation, but it also allows police to gather evidence of **persistence** to prove a criminal charge. The PCA 2009 repealed s2 Sexual Offences Act 1959 which allowed for Prostitutes' Cautions to be removed, but if you think that the Prostitutes' Caution was wrongly given, get legal advice as it might be possible to do a Judicial Review of the decision.

¹²³. HOME OFFICE CIRCULAR NO. 109/1959, REPLACED IN RESPECT OF CHILDREN UNDER 18 YEARS OLD BY HOME OFFICE CIRCULAR NO. 20/2000.

FORMAL CAUTIONS & CONDITIONAL CAUTIONS

The caution given when arrested (“You do not have to say anything. But it might harm your defence...”) is **NOT** a formal caution it is known as an arrest caution.

A formal **caution** is not a criminal conviction; it is something offered by police as an alternative to court proceedings. It goes on your criminal record as a mark that you have engaged in low-level criminal conduct. It might or might not have conditions attached.

A formal caution can only be given to you if:

- There is enough evidence for a conviction; **and**
- It is not in the public interest to start court proceedings; **and**
- You have admitted guilt; **and**
- If you have agreed to a caution.

The decision whether you should be given a formal caution is within the discretion of the police. Formal cautions are usually given to those who haven't been previously cautioned.

The police can also offer you a **conditional caution**. The same rules for a formal caution set out above apply, but a conditional caution will be offered if the conditions would be a good way to address your behaviour or make amends (reparation) for how the offence has affected a victim or the community. Failure to comply with any of the conditions could mean that you will be prosecuted for the original offence.

Rehabilitation conditions can include: drug treatment; alcohol treatment; and anger management courses.

Reparation conditions can include: repairing damage caused to property; restoring stolen goods; paying modest financial compensation; apologising to the victim.

NEVER agree to a caution or a conditional caution unless you have committed the offence AND the police can prove it.

YOUTHS

Reprimands and warnings for youths were stopped nationally with effect from April 2013¹²⁴ and replaced with youth cautions.¹²⁵ Youth cautions are given by the police.

The same conditions as for an adult caution apply, and conditional cautions are also available.

124. LEGAL AID SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012, S 135(1).

125. CRIME AND DISORDER ACT 1998, SS 66ZA AND 66ZB, INSERTED BY LEGAL AID SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012, S 135(2).

GETTING LEGAL HELP

- AT THE POLICE STATION
- GOING TO SEE A SOLICITOR
- PAYING PRIVATELY
- CITIZENS ADVICE BUREAU

AT THE POLICE STATION

Legal advice and assistance is available to everyone **FREE** of charge, regardless of their income and/or savings.

You have a right to have a solicitor with you at the time of interview, and if you don't have details of one, you can ask for the Duty Solicitor.

The **Duty Solicitor** at the police station is independent, is **NOT** employed by the police and is **FREE**. The Duty Solicitor is approved by the Criminal Defence Service.

Also, the Duty Solicitor scheme at the police station is different to the legal aid scheme for representation at court. There is no problem with changing representative between these stages as long as you haven't signed forms for the Duty Solicitor to also represent you at court while in the police station. So, **make sure you know what you are signing** and tell the solicitor that you want to shop around before deciding who you want to represent you at court.

GOING TO SEE A SOLICITOR

Legal Aid is overseen by the Legal Aid Agency (LAA) which offers two separate schemes for civil and criminal cases. You

should make sure you deal with a solicitor who is approved by the LAA.

To access these services, you will normally have to pass the 'interests of justice' or merits test, and in some cases a financial test too. It can be difficult to pass the interests of justice test where the offence doesn't carry a prison sentence (like soliciting) but always speak to a solicitor to see whether there are special circumstances in your case that mean you could qualify.

If you get certain welfare benefits, or have a low enough income, you will automatically pass the financial test. Otherwise a detailed assessment of savings and income will be needed. Depending on this assessment, if you are granted legal aid you might have to make contributions to the cost of your defence in criminal cases.

Your solicitor will explain the interests of justice test and financial calculations that need to be done in your first meeting. Make sure that you tell your solicitor the right information about your finances and the facts of your case, because if you provide false information, your public funding might be taken away and/or you might be investigated by the police or Her Majesty's Revenue and Customs (HMRC).

You can find out about local legal aid solicitors' firms by calling the Law Society or by searching on their website at www.lawsociety.org.uk/findasolicitor. Or, you can call Release.

Once legal aid for representation at court has been granted, it can be very difficult to get a transfer to another firm – you have to apply to the court and the transfer is rarely granted (the longer the case has been going on the less likely the transfer will be allowed). So, it is sensible to shop around before committing to someone.

In cases at the Crown Court, you will be represented by a barrister or another higher court advocate. You don't have to accept the solicitor's choice if you know someone you want to use.

PAYING PRIVATELY

You can pay privately for a solicitor or a barrister.

Many barristers can now also represent you without going through a solicitor, through the Public Access Scheme. You can search for a barrister at www.directaccessportal.co.uk or call the Bar Council on 020 7611 1472.

Find out the costs involved before making a commitment. It is wise to shop around, and there are also solicitors who will offer a free or low-cost first interview, if you aren't given legal aid – make sure you ask about this possibility.

CITIZENS ADVICE BUREAU (CAB)

CABs and Law Centres can sometimes offer free independent legal advice in lots of legal areas like housing, welfare benefits, debt and employment, regardless of your income (although they often work on a legal aid contract too). These organisations don't normally provide representation for you at court.

To access a CAB or Law Centre in your local area, look at www.lawcentres.org.uk for Law Centres and, for CABs, look at www.citizensadvice.org.uk.

GOING TO COURT

- **USEFUL TIPS**
- **LEGAL ADVICE AND REPRESENTATION**
- **CHECKING IN**
- **REPRESENTING YOURSELF**

USEFUL TIPS

- See a solicitor before the first hearing.
- If you don't have a solicitor on the day, see the court usher who should direct you to a Duty Solicitor.
- Arrive on time, preferably 30 minutes early.
- Be prepared to wait around as the court can be very busy and your case might not be called into court for a few hours.
- If you can't attend because of an emergency, contact the court and your solicitor immediately.
- Dress appropriately.
- Be polite and respectful.
- Bring a friend or relative with you, or somebody from your local sex work support project.
- If at all possible, don't bring children under 16 to court as they won't be allowed in the courtroom when your case is called on.

LEGAL ADVICE AND REPRESENTATION

If at all possible, you should see a solicitor before the first hearing or at least arrange to meet the solicitor at court. Please note that there will only be a short time between being charged at the police station and your first appearance at court. It is best to get advice before you go to court.

You can find out about local legal aid solicitors' firms by calling the Law Society or by searching on their website at www.lawsociety.org.uk/findasolicitor. Or, you can call Release.

If your matter is to be heard at the Magistrates' Court and you don't have a solicitor, there will usually be a Duty Solicitor available either at the Court or on call to give you free advice and representation on your first appearance. Ask the usher (they might be wearing a black gown and carrying a clip board) or a member of the court staff for the Duty Solicitor. If no Duty Solicitor is available, or if your matter is to be heard at the Crown Court and you have no legal representation, you need to explain to the court that you haven't had legal advice. The court might then adjourn your matter to another date, and will expect you to have arranged legal representation by the next hearing date.

Duty Solicitors are independent and are not employed by the police or the court. Their service is provided free of charge. They can discuss your case with you and give you legal advice.

CHECKING IN

Always arrive early, preferably 30 minutes before you are due to appear in court. If you were charged at the police station, you will have been given a bail sheet, which will inform you of the time you need to arrive. If you have received a summons in the post to attend court, you should also arrive on time.

If you are late or fail to attend without a reasonable excuse, it is very likely that the Court will issue a warrant of arrest. When caught by the police, you will stay in custody until you can be brought to court where it will be decided whether your failure to attend is a further criminal offence or if you have a 'reasonable excuse' defence.

The Court can also refuse to renew your bail and keep you in custody until the end of your case. This might affect your chances of getting bail in the future.

If some emergency prevents you from attending, you should contact the court and your solicitor immediately to explain.

When you arrive at court, you should find out in which courtroom you are due to appear. Go to the main reception, or check the notice board, where you will find a list with your name and details of the courtroom.

Find the courtroom and wait to speak to the usher, who will make a note of your name, and might ask if you are going to plead guilty or not and whether you have a solicitor. If you don't have a solicitor, inform the usher and s/he should direct you to the Duty Solicitor.

REPRESENTING YOURSELF

If you don't want any legal representation, you can represent yourself.

Before the hearing, make notes of your case, write down the questions you intend to ask, and prepare a clear statement that you can read out. You can have a friend attend with you to support you but they cannot address the court or present the case on your behalf.

If you are unsure about a point of law, you can ask the judge or legal adviser that sits in front of them.

Before your sentence is given, you are allowed to present to the court your 'mitigating circumstances' – details about you or the offence that might persuade the court to give a lesser sentence. Examples include difficult personal circumstances, no criminal record, being sorry for what you have done, family support and responsibilities. If it is suggested that you have previous convictions, you should ask the court to see a copy of them so you can check that the record is right.

PENALTIES AT COURT

- FINES
- COMMUNITY ORDERS AND TREATMENT REQUIREMENTS
- PRISON SENTENCES AND SUSPENDED SENTENCES
- VICTIM SURCHARGE
- CRIMINAL COURTS CHARGE
- CONFISCATION PROCEEDINGS

The penalties that might be given for the offences dealt with in this booklet might vary from a fine to a treatment order, time in prison, or some combination of these. In the earlier sections of this booklet we highlighted the maximum sentence available for an offence – in practice it is extremely rare for maximum sentences to apply. If you need advice about this topic please contact Release on 020 7324 2989.

When deciding the appropriate sentence, the judge or magistrate will consider the following:

- Whether you pleaded guilty
- Mitigating circumstances
- Aggravating factors
- Seriousness of the offence
- Previous convictions
- Personal circumstances

126. DETAILS OF EXPECTED FINES RELATED TO YOUR INCOME CAN BE FOUND HERE: THE SENTENCING COUNCIL FOR ENGLAND AND WALES (2016) FINE BANDS, SENTENCING COUNCIL: LONDON. ([HTTPS://WWW.SENTENCINGCOUNCIL.ORG.UK/EXPLANATORY-MATERIAL/ITEM/FINES-AND-FINANCIAL-ORDERS/APPROACH-TO-THE-ASSESSMENT-OF-FINES-2/2-FINE-BANDS](https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/2-fine-bands) ACCESSED ON DECEMBER 10, 2016).

FINES

The amount of the fine¹²⁶ will depend on different factors, including:

- The seriousness of the offence committed
- Any previous convictions
- Your ability to pay
- Your personal circumstances
- The practice of that particular court

The Court should **not** impose a fine that will take you more than 12 months to pay off. Give a realistic answer when the Court enquires about your ability to pay. If you aren't able to pay in a lump sum, let the court know and ask for payment by instalments. It is possible for payments to be taken directly from your benefits or wages. But, always take some cash with you to court, even if it is as little as £5, as the Court will usually expect the first payment on the day that you are sentenced. Be aware that the dock officers have the power to search you – don't say you have less on you than you do.

If you fall behind with your payments, contact the fines officers at the court to explain why and try to rearrange payment, i.e. to pay a lower amount. This will show that you are responsible and they are more likely to be sympathetic and helpful. You might be asked to attend another means enquiry to assess your circumstances.

DO NOT ignore unpaid fines as the enforcement procedure will be started against you. A warrant of arrest or a distress warrant instructing bailiffs will be issued against you. This might lead to you losing your belongings or spending time in custody.

If you aren't able to cope with your debts on your own, get free help from a Citizens' Advice Bureau, Law Centre or debt counselling service.

COMMUNITY ORDERS & TREATMENT REQUIREMENTS

Community orders are served in the community and can be very tough and strictly enforced; they can only be given if the offence is serious enough.¹²⁷

127. POWERS OF CRIMINAL COURTS (SENTENCING) ACT 2000, S 35.

Community orders are made up of several different **requirements**, depending on what the court and probation services think will best meet the aims of sentencing for you – i.e. punishment; reduction of crime, including by deterrence; reform and rehabilitation; protection of the public; and, reparation.

Requirements can include:¹²⁸ unpaid work; activities such as education or skills training; programmes like the drink impaired drivers programme; curfew; exclusions prohibiting you from entering a certain place or area; residence at a particular place; supervision; or, treatment for mental health issues, or drug or alcohol dependency.

128. CRIMINAL JUSTICE ACT 2003, S 177.

Before making both **Drug Rehabilitation Requirements** and **Alcohol Treatment Requirements** under a community order, the Court must be satisfied that you are drug or alcohol dependent and that you are willing to comply. The Treatment and Testing period must be for at least six months and might be residential or in the community. For Drug Rehabilitation Requirements, the Court might make you attend court at monthly intervals to review your progress.

You will be put in breach if you don't obey a community order either by failing to attend, being regularly late for meetings, or failing to engage when attending. If you have had a warning issued by the responsible officer (officer responsible for your case) in the previous 12 months, **breach proceedings** will start at court and you can then be made subject to more onerous requirements or you can be re-sentenced for the original offence, including to prison in some cases.

A community order is different to an Engagement and Support Order which is also served in the community. An Engagement and Support Order is only available where you are convicted of the offence of loitering or soliciting for the purpose of prostitution; see page 15 for further details.

PRISON SENTENCES & SUSPENDED SENTENCES

Imprisonment is reserved for the most serious cases.

Remember, where you are given a sentence of imprisonment, you are likely to be **released on licence half-way through** the sentence, or earlier. Also, time you have spent on remand in custody, or under an electronic curfew whilst on bail can be deducted from the time you have to spend in prison. When sentencing the Judge will make it clear how the date you are going to be released on licence, or eligible for release, is to be calculated in your case.

In February 2015, the Offender Rehabilitation Act 2014 changed the framework so that everyone who gets a sentence of under two years has to complete an extended period of supervision by probation. The table below shows the changes:

	Offences committed before 1st February 2015		Offences committed after 1st February 2015	
Sentence	Time spent in prison	Release arrangements	Time spent in prison	Release arrangements
6 months	3 months	3 months' community sentence, no licence conditions or supervision	3 months	3 months' licence and 9 months' post-sentence supervision. Total supervision of 12 months
12 months	6 months	6 months' community sentence, no licence conditions or supervision	6 months	6 months' licence and 6 months' post-sentence supervision. Total supervision of 12 months
18 months	9 months	9 months' licence	9 months	9 months' licence and 3 months post-sentence supervision. Total supervision of 12 months.

Whilst on licence, you must stick to whatever terms and conditions are considered necessary to prevent you from reoffending and to protect the public. These conditions can include, for example, drug testing.

A **suspended sentence** is for less serious cases and it means that you don't have to go to prison if you comply with certain requirements, or unless you commit another offence. You can also be fined for breaching an order.

The list of requirements is the same as for community orders – a suspended sentence is normally combined with a community order and supervision.

Sentences of between 14 days and two years can be suspended.¹²⁹

The longest you can have a suspended sentence is two years.

VICTIM SURCHARGE

The Court must order a surcharge to be paid when dealing with an offence.¹³⁰ Even though this is called a victim surcharge it applies to any offence even if there isn't an actual victim e.g. drug possession.

Amount of surcharge for adults:¹³¹

Conditional Discharge	£20
Fine	10 per cent of the fine value – £30 minimum & £170 maximum (rounded up or down to the nearest pound)
Community Sentence	£85
Suspended sentence order (6 months or less)	£115
Immediate custody (6 months or less)	£115

129. THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT (LASPO) 2012, S 68.

130. CRIMINAL JUSTICE ACT 2003 (SURCHARGE) ORDER 2012, AS AMENDED BY THE CRIMINAL JUSTICE ACT 2003 (SURCHARGE) (AMENDMENT) ORDER 2014.

131. FOR OFFENCES COMMITTED BEFORE 8TH APRIL 2016, AND AMOUNTS FOR UNDER 18S, SEE: THE SENTENCING COUNCIL FOR ENGLAND AND WALES (2016) VICTIM SURCHARGE, SENTENCING COUNCIL: LONDON. (WWW.SENTENCINGCOUNCIL.ORG.UK/EXPLANATORY-MATERIAL/ITEM/FINES-AND-FINANCIAL-ORDERS/ VICTIM-SURCHARGE ACCESSED ON DECEMBER 10, 2016).

132. PROSECUTION OF OFFENCES ACT 1985 (CRIMINAL COURT CHARGE) REGULATIONS 2015.

CRIMINAL COURTS CHARGE

This was introduced in 2015¹³² to cover court administration costs if a defendant was convicted of an offence, had an unsuccessful appeal, or had to go to a breach hearing.

133. THE PROSECUTIONS OF OFFENCES ACT 1985 (CRIMINAL COURT CHARGE) (AMENDMENT) REGULATIONS 2015.

The Regulations were later amended,¹³³ and the practical effect of this is that it no longer applies.

CONFISCATION PROCEEDINGS

The courts have power through the Proceeds of Crime Act 2002 to confiscate your money and property in a number of situations.

Lifestyle Offences

134. POCA 2002, S 6(4)(A).

135. POCA 2002, SCHEDULE 2.

136. POCA 2002, S 75.

The law is that a person has a 'criminal lifestyle'¹³⁴ where certain types of offences¹³⁵ or types of offending¹³⁶ take place. A number of offences qualify, but especially relevant are the following:

137. SEXUAL OFFENCES ACT 1956, SS 33 OR 34.

138. SEXUAL OFFENCES ACT 2003, S 52.

139. SEXUAL OFFENCES ACT 2003, S 53.

140. POCA 2002, SS 327 AND 328.

141. SEXUAL OFFENCES ACT 2003, SS 14, 48, 49, AND 50.

- Keeping or letting premises for use as a brothel;¹³⁷
- Causing or inciting prostitution for gain;¹³⁸
- Controlling prostitution for gain;¹³⁹
- Concealing criminal property or assisting another to retain criminal property¹⁴⁰ (a.k.a. 'money laundering');
- Causing, inciting, arranging, or facilitating child prostitution or pornography or controlling a child prostitute or a child involved in pornography.¹⁴¹

142. POCA 2002, S 75.

143. POCA, S 75(4).

You will also be found to have a criminal lifestyle where you are convicted of an offence that took place over at least six months, where you have benefited from the conduct which constitutes the offence¹⁴² and the benefit is at least £5000.¹⁴³

A criminal lifestyle may also be asserted where your offence is conduct forming part of a course of criminal activity. A course of criminal activity is proved if you are convicted of four offences at the same time (and where you have benefited from each of them) or if you are convicted separately for two such offences in the six years prior to your current conviction.

Where you are found to have a criminal lifestyle, the Court assumes that all of the property (including money) that has

been transferred to you, held by you, or spent by you in the six years prior to your arrest was the proceeds of crime and therefore the whole value of this property (called 'the recoverable amount') can be made subject to a confiscation order.

You can show that these assumptions are wrong by producing evidence of the source of all the money and other assets that have passed through your hands in the last six years. Helpful evidence can include wage-slips from your employer, a copy of a tenancy contract from the lodger who pays you rent or a statement from a relative that they lent or gave you specific property and why. The Court looks at every detail, so you will want to get your own copy of your bank statements for the last six years as soon as possible so that you can have the best chance of explaining things. It is much easier to do this on bail than on remand, so if you think you might be vulnerable to such proceedings, you might want to start keeping records of your lawful income straight away.

You can also defeat the assumptions by showing that there is a serious risk of injustice if they are made,¹⁴⁴ in that there would be double-counting of the same money if they were applied literally. The safeguard does not extend to arguments that you would suffer hardship by virtue of the order – the serious risk of injustice provision cannot be used to avoid a confiscation order that deprives the defendant of his home.¹⁴⁵

144. PROCEEDS OF CRIME ACT 2002, S 10(6)(B).

145. R. V. DORE [1997] 2 CRAPPR(S) 152. CA.

The Court will value your assets as they stand at the time (minus any court fines, preferential debts, or legitimate and evidenced third-party interests). This becomes the amount that you are required to pay, or the 'available amount'. However, where you have given property away, or sold items for less than they are worth, the Court has the power to consider such transfers as false and assume that you are still able to access the value of that property and so this value is included in the available amount.

You should be aware that if the Court finds that you have benefited from criminal conduct and values the benefit as being worth a particular amount, then any assets or money you have, even if from a legitimate source, can be included in the amount you have to pay the court.

A confiscation order must usually be paid on the date it is made, but the court can grant 6 months, or in exceptional circumstances 12 months, to pay.¹⁴⁶ On making the order, the Court will fix a term of imprisonment that you will have to serve if you do not pay and, depending on the size of your available amount, this can be quite lengthy. Any sentence is served after any other sentence that you might face **BUT**, serving the time does not wipe out the debt and you will continue to owe and be charged interest upon this until it is paid.

Particular Criminal Conduct

If you do not have a 'criminal lifestyle' the Court will look to see whether you have benefited from the particular criminal conduct that has been proved or admitted in the current proceedings, including other offences that are taken into consideration (TICs). TICs can come about when a defendant who has been arrested on suspicion of an offence, and admits it to the police, is invited to confess to similar offences on the provisional understanding that the extra offences won't be prosecuted separately. Instead they will be brought to the attention of the Court when sentencing for the main offence. The Court can then decide whether to take these additional offences into account, and will generally increase the sentence because of the TICs as they show that the offender has committed multiple offences, but the extra penalty will usually be less than if the offences had been prosecuted separately. It gives people the opportunity to 'clean the slate' so that at the end of their sentence, having admitted their offences, they can put their past behind them. This can play a role in supporting their rehabilitation.¹⁴⁷

147. SEE: THE SENTENCING COUNCIL FOR ENGLAND AND WALES (2016), A SHORT GUIDE: SENTENCING FOR OFFENCES TAKEN INTO CONSIDERATION (TICS), SENTENCING COUNCIL: LONDON. ([HTTPS://WWW.SENTENCINGCOUNCIL.ORG.UK/WP-CONTENT/UPLOADS/PUBLIC_GUIDE_TICS_FOR_WEB.PDF](https://www.sentencingcouncil.org.uk/wp-content/uploads/public_guide_tics_for_web.pdf) ACCESSED ON DECEMBER 11, 2016).

Benefiting from criminal conduct means that you have obtained property as a result of, or in connection with, your offence.¹⁴⁸ Your benefit is assessed as the value of the property you obtained (not the profit you made) and, again, property can mean anything from money to cars and houses. The amount of this benefit becomes the recoverable amount, and the procedure outlined above for lifestyle offences then applies.

148. POCA 2002, S76(4).

Civil Recovery

There is also scope for confiscation of your assets where you have not been convicted of any offence although the detail of these procedures is outside the scope of this book.¹⁴⁹

However, you should be aware that if the police or Customs find you in possession of large amounts of cash that they have reason to suspect was obtained by you through unlawful conduct or is intended for use in unlawful conduct, they can seize this money, and civil proceedings will then begin in the Magistrates' Court to forfeit this money. Sometimes, where the Crown Prosecution Service has failed to secure a conviction and so cannot use the confiscation powers detailed above, they will seek forfeiture under this method.

149. SEE: POCA 2002, CHAPTER 2 FOR CIVIL RECOVERY PROCEEDINGS IN THE HIGH COURT AND CHAPTERS 3 AND 4 FOR CASH FORFEITURE PROCEEDINGS IN THE MAGISTRATES' COURT.

CRIMINAL RECORDS

- REHABILITATION PERIODS
- CRIMINAL RECORDS AND EMPLOYMENT
- FILTERING
- REMOVAL

A criminal record is a record of any criminal convictions, cautions or arrests held about someone on the Police National Computer (PNC). Information contained on the PNC might be consulted in relation to court proceedings. The Court will want information on relevant criminal convictions and cautions when determining sentence. The PNC will also be checked when carrying out a search of criminal convictions or cautions in respect of an application for employment. Whether a criminal record has any impact on employment will depend on whether the convictions are spent or on the type of employment sought. This will be discussed further in the section below 'Criminal records & Employment'.

THE REHABILITATION OF OFFENDERS ACT 1974

The Rehabilitation of Offenders Act 1974 ('the 1974 Act') gives a legal framework for the disclosure of convictions and cautions. According to the 1974 Act, if no offences have been committed in a set period of time after a conviction/caution (called the 'rehabilitation period') and the sentence was less than two and a half years in prison, the conviction/caution becomes 'spent' (forgotten). On the other hand, a sentence of more than four years, or a public protection sentence, will never be spent.

Please see the table below for further information on rehabilitation periods. Note, however, that if you are convicted of a further

offence during the rehabilitation period, the original offence will not become spent until the end of the rehabilitation period for the second offence.

Once a conviction is spent it cannot normally be mentioned in court, or referred to in some other circumstances. In general, with some exceptions, it really can be forgotten.

The Act only applies to the United Kingdom. So if, for example, someone was to apply for a visa to visit another country, and was asked to disclose previous convictions, they would be governed by the law of the other country. Many countries have much harsher rules than the UK. For more information about travelling abroad when you have a criminal record contact the Release legal helpline.

To work out your rehabilitation period, you must know when you were first convicted and what sentence you received. If you received a prison sentence, you need to know how long you were sentenced for. Any new convictions after this date will alter your rehabilitation period. There are different arrangements if you have committed a motoring offence and the matter was not dealt with by a fixed penalty notice (FPN).

Table of rehabilitation periods:

Sentence	Rehabilitation Period (NOTE: Offenders under 18 means under 18 at date of conviction, NOT offence)
Imprisonment, detention in a young offender institute or youth custody, for more than 30 months up to 48 months	7 years for adults (from date sentence completed) 3½ years under 18 (from date sentence completed)
Imprisonment, detention in a young offender institute or youth custody, for more than 6 months up to 30 months	4 years for adults (from date sentence completed) 2 years under 18 (from date sentence completed)
Imprisonment, detention in a young offender institute or youth custody, for 6 months or less	2 years for adults (from date sentence completed) 18 months under 18 (from date sentence completed)
Fine	2 months for adults (from date of conviction) 6 months under 18 (from date of conviction)
Absolute discharge	Nil
Conditional Discharge, Order under Street Offences Act 1959, s 1(2A) (loitering), Hospital Order, Referral Order, Bind Over, Order imposing disqualification, disability, prohibition.	The date the order ceases to have effect OR 24 months from date of conviction where the order makes no mention of last day on which order is to have effect.
Compensation Order	Date on which payment is made in full
Community or Youth Rehabilitation Order	12 months for adults (beginning with last day the order is to have effect) 6 months under 18 (beginning with the last day the order is to have effect) OR for adults and under 18s: 24 months from date of conviction where order makes no mention of last day on which order is to have effect.
Conditional caution	3 months
Simple caution	Immediately

The following sentences will never become spent:

- Life imprisonment;
- Imprisonment, detention in a young offender institution, or youth custody for a term exceeding four years;
- Detention during Her Majesty's pleasure;
- Detention under the PCC(S)A 2000, s 91, for life or for a term exceeding 30 months;
- Custody for life;
- Imprisonment for public protection under the CJA 2003, s 225;
- Detention for public protection under the CJA 2003, s 226;
- An extended sentence under the CJA 2003, s 227 or s 228.

If you have been given a simple or conditional caution and you are asked if you have any criminal convictions, you should say no. If you are asked whether you have a criminal record you will normally say no as simple cautions, reprimands and warnings become spent from the moment they are issued. Conditional cautions become spent 3 months after the date they are given.

CRIMINAL RECORDS AND EMPLOYMENT

Impact of a criminal record on your employment prospects

Having a criminal record can make it harder to find work. However, the 1974 Act offers protection to people who have been convicted but have not offended again within a certain period of time. As stated earlier, where a rehabilitation period has ended and a conviction has become 'spent' it is no longer necessary to disclose that conviction.

The exception to this is if the employment involved is considered to fall within the exempted professions. Professions falling within this category will always have to disclose convictions or cautions, and will be subject to enhanced searches by the Disclosure and Barring Service ('DBS'). If you are applying for a job in one of the professions below, and you are asked whether you have a criminal record **including spent convictions or cautions** you must disclose them.

The following is a list of exempted professions, the list not exhaustive, for more details access: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299916/rehabilitation-of-offenders-guidance.pdf:

- Medical practitioner
- Barrister (in England and Wales), advocate (in Scotland), solicitor
- Chartered accountant, certified accountant
- Dentist, dental hygienist, dental auxiliary
- Veterinary surgeon
- Nurse, midwife
- Ophthalmic optician, dispensing optician
- Pharmaceutical chemist
- Registered teacher (in Scotland)
- Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act.
- Chartered psychologist
- Legal executive
- Taxi driver
- Judicial appointment
- Court clerk
- Police officer
- Member of the military
- Prison officer
- Probation officer

Any employment involving work with children or vulnerable adults will also be subject to an enhanced search by the DBS. Cautions and convictions for certain offences¹⁵⁰ will automatically bar someone from working in regulated activity¹⁵¹ with one or both of these groups¹⁵² and may or may not allow appeal representations to be made against the bar.¹⁵³

150. A CRIMINAL RECORD FOR CAUSING OR INCITING PROSTITUTION FOR GAIN UNDER SOA 2003 S 52 OR CONTROLLING PROSTITUTION FOR GAIN UNDER SOA 2003, S 53 MAY BAR SOMEONE FROM WORKING IN REGULATED ACTIVITY RELATING TO CHILDREN AND/OR VULNERABLE ADULT.

151. THE DEFINITION OF REGULATED ACTIVITY IS CONTAINED IN THE SAFEGUARDING VULNERABLE GROUPS ACT 2006, SCHEDULE 4.

152. SAFEGUARDING VULNERABLE GROUPS ACT 2006.

153. A FULL LIST CAN BE FOUND HERE: DISCLOSURE AND BARRING SERVICE (2012) RELEVANT OFFENCES FOR ENGLAND AND WALES, DBS: LONDON. ([HTTPS://WWW.GOV.UK/GOVERNMENT/UPLOADS/SYSTEM/UPLOADS/ATTACHMENT_DATA/FILE/500139/RELEVANT_OFFENCES_FOR_ENGLAND_AND_WALES.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500139/RELEVANT_OFFENCES_FOR_ENGLAND_AND_WALES.PDF) ACCESSED ON DECEMBER 11, 2016).

If your conviction is spent, you do not have to tell employers about it on application forms or during interviews for most jobs. If your conviction is not spent, you should tell an employer about your record if you are asked.

If you are applying for an 'exempted' job, you must tell the employer about your criminal record, including any spent convictions. This applies to certain jobs involving work with children and vulnerable people, and some other specific professions such as medicine and law. For these jobs you might be required to tell your prospective employer about all convictions, including spent convictions.

If you have to disclose any conviction it might help to give an employer a good reason why you should not be rejected because of it. If the conviction is related to a personal problem which has now been sorted out it might help to explain this. Although it is not always the case, some employers are more understanding about criminal convictions than you might expect. It is sometimes advisable to write a disclosure letter to an employer when applying for jobs so that you can fully explain the circumstances around your conviction. A sample disclosure letter can be obtained from the Apex Trust (<http://www.apextrust.com/>).

FILTERING

A caution will be 'filtered out' after six years from the date given (for those under 18 at the time of the caution was issued the period is two years), and can happen for any number of cautions as long as the offence does not appear on the list of 'specified offences' (see the link to government guidance on filtering, below).

A conviction can be filtered out only in the following circumstances:

- 11 years have passed since the date of conviction (for those under 18 the period is five-and-a-half years);
- It is your only conviction;
- The conviction did not result in a custodial or suspended sentence;
- The conviction does not appear on the list of specified offences.

Many sexual offences appear on the list of offences that will *NEVER* be filtered,¹⁵⁴ including:

- **Soliciting;**¹⁵⁵
- **Causing or inciting prostitution for gain;**¹⁵⁶
- **Controlling prostitution for gain;**¹⁵⁷
- **Paying for sexual services of a prostitute subjected to force etc.**¹⁵⁸

More information about filtering can be found here:
<https://www.gov.uk/government/collections/dbs-filtering-guidance>

REMOVAL

An application can be made to the National Police Chiefs' Council (NPCC) Criminal Records Office (ACRO) for a conviction to be removed from your record, in exceptional circumstances. It is very rare for this to be successful and unfortunately there isn't any real guidance on what will be considered an exceptional circumstance. However, in our experience, applications might be successful if a long time has passed since the caution was issued or if a significant negative effect can be shown to have occurred (for instance, if someone is prevented from taking a job in the USA because a visa is refused).

154. DISCLOSURE AND BARRING SERVICE AND HOME OFFICE (2013) LIST OF OFFENCES THAT WILL NEVER BE FILTERED FROM A DBS CERTIFICATE, DBS: LONDON. ([HTTPS://WWW.GOV.UK/GOVERNMENT/PUBLICATIONS/DBS-LIST-OF-OFFENCES-THAT-WILL-NEVER-BE-FILTERED-FROM-A-CRIMINAL-RECORD-CHECK](https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check) ACCESSED ON DECEMBER 11, 2016)

155. SOA 2003, S 51A.

156. SOA 2003, S 52.

157. SOA 2003, S 53.

158. SOA 2003, S 53A.

CRIMES AGAINST SEX WORKERS

- RAPE
- ASSAULT
- ADMINISTERING DRUGS WITHOUT CONSENT
- CRIMINAL INJURIES COMPENSATION
- INJUNCTIONS
- REFUGES

If you are attacked, the legal system is there to protect you as much as anyone else. Complaints and legal action can be difficult and time consuming, but there are services available to help you and sometimes taking action can make a difference for you and others. Approach your local law centre, Citizens' Advice Bureau, contact your solicitor or call Release.

People involved in sex work have the right to be protected by the law as much as other citizens. Crimes committed against them including robbery, grievous bodily harm, stalking, or rape (or any offence under law) should be taken seriously by the police. If you are uncertain about whether you want to report a crime to the police and would like to talk this through with someone contact UK Network of Sex Work Projects (Tel: 0161 629 9861/ www.uknswp.org) to find out information about your local sex work support project. If you decide not to report a crime to the police you have the option of reporting the incident to an "ugly mugs" incident report scheme within a local sex work support

project, this would give you the option of information being used to alert other sex workers and of the information being passed on anonymously to the police should you consent.

Some police forces treat crimes against sex workers as hate crimes, this means sex workers will be taken seriously and should get an enhanced response.

RAPE

The SOA 2003 introduced important changes to the law about rape which are intended to make it easier to convict rapists. The current law is explained below.

The fact that the victim of an alleged rape is, or has been, a sex worker should not affect the case, although it may be brought up in court. It's advisable to be up front with the police at the start about your sex working status. If you have been raped, you should try to go to a Sexual Assault Referral Centre (SARC) as soon as possible. This will allow you to get medical care as well as for forensic or DNA evidence to be taken, which can be stored for you. You can then decide whether to go to the police later (even months later) or can have the centre give anonymous information to the police on your behalf. In the London area, these centres are called The Haven Projects (there are three Haven Projects in London, details of which are on page 140. Please contact UKNSWP project for details of your local SARC or contact your local hospital).

If there is no SARC in your area go to your local police station and ask to speak to a specially trained police officer. These officers are trained to work with victims of rape and serious sexual assault. These officers are very supportive and understand fully that rape by a client, someone pretending to be a client, a partner or a pimp is just as serious as rape by a stranger. If convicted, your attacker should not receive a lighter sentence because you are a sex worker.

Only you can decide whether to press charges. If you decide to do so, you will need evidence to support your statement of what happened. If you decide to make a full statement and the matter goes to court, you may be treated as a "vulnerable witness" and be allowed to give evidence via video link, or behind a screen. These considerations are known as 'Special Measures' and people who have been raped are almost always granted special measures.

The police have previously been known to be supportive when people who are not here in the UK legally, including EU nationals who are not exercising treaty rights as a worker, have been victims of sexual assaults. However, we are getting more reports about victims of crime, including domestic abuse, who are questioned about their immigration status when reporting an offence to the police.¹⁵⁹ But you shouldn't let fear of this stop you reporting a crime – seek the support of agencies such as the English Collective of Prostitutes, Women Against Rape, Legal Action for Women, Rights of Women, or other agencies listed on page 138. If you want to prosecute but the Crown Prosecution Service does not accept that you have enough evidence, it is possible to press charges yourself.

159. THE ENGLISH COLLECTIVE OF PROSTITUTES ARE BRINGING CASES ABOUT ROMANIAN SEX WORKERS ROUNDED UP FOR DEPORTATION & REMOVAL BY OPERATION NEXUS. THE AIRE CENTRE ARE ALSO BRINGING A JUDICIAL REVIEW ON SIMILAR ISSUES.

Whether you decide to report a rape or other sexual offence to the police or not, you are entitled to help and support. If you go to a SARC, they will ask if you would like a referral to an Independent Sexual Violence Advisor (ISVA). ISVAs are specially trained to work with victims of rape and sexual assault from shortly after the incident, through the criminal justice process (if you report formally) and into aftercare. If you choose not to formally report, you can contact an ISVA yourself and still receive help and support. Go to www.thesurvivorstrust.org or www.rapecrisis.org.uk to find locations of SARCs and ISVAs and other services for victims in your local area. Many sex work projects offer support to sex workers who have been victims of rape, sexual assault and other crimes, some have specialist ISVAs for sex workers.

If you choose not to report to the police, consider linking into your local sex work project to report into their UGLY MUGs or “Dodgy Punters” incident report scheme. This information is then used to warn other sex workers of people who may pose a risk to them. For a list of sex work projects in the UK, go to www.uknswp.org.

The Offence

The offence of rape can only be committed by a man. The victim can be a man or a woman. A person commits the offence of rape if he intentionally penetrates the vagina, anus or mouth of another person without their consent, and without reasonably believing that there was consent. Even if the prosecution cannot prove actual penetration, the defendant could still be found guilty of attempted rape.

If the defendant claims that he believed that the victim consented to the penetration, the Court will decide whether that belief was reasonable, taking into account all of the circumstances, including any steps the defendant took to ascertain whether there was consent. It is easier to prove that there was no consent (and therefore that it was rape) if you can prove any of the following circumstances:

- Your attacker intentionally deceived you as to the nature or purpose of the penetration; **or**
- Your attacker intentionally induced you to consent to the penetration by impersonating a person known personally to you; **or**
- Someone was, at the time of the alleged rape or immediately before it began, using violence against you or causing you to fear that immediate violence would be used against you; **or**
- Someone was, at the time of the alleged rape or immediately before it began, causing you to fear that violence was being used, or that immediate violence would be used, against another person; **or**
- You were, and your attacker was not, unlawfully detained at the time of the relevant act; **or**
- You were asleep or otherwise unconscious at the time of the relevant act; **or**
- Because of your physical disability, you would not have been able at the time of the alleged rape to communicate to your attacker whether you consented; **or**
- Someone had administered to you or caused to be taken by you, without your consent, a substance which may have rendered you stupefied or overpowered at the time of the alleged rape.

ASSAULT

Assault and battery, whether sexually motivated or not, are also offences that you do not have to tolerate.

Prosecutions can be brought even where there is no injury, but simply where you have been caused to fear and expect immediate and unlawful violence or where unlawful force has been inflicted on you. Unlawful force is force that you don't consent to or that can't be justified by reference to self-defence or crime prevention, (for example, see the discussion on S&M and consent at page 32). Where you have been caused injuries, such incidents can be prosecuted under different titles, like actual bodily harm or grievous bodily harm.

As discussed under the offence of rape above, do not hesitate to seek assistance where you have been the victim of assault or if you need support to see the prosecution through.

ADMINISTERING DRUGS WITHOUT CONSENT

It is an offence to administer a substance with intent.¹⁶⁰ This offence is committed where a person intentionally administers a substance to, or causes a substance to be taken by, another person (B):

160. SOA 2003, S 61.

- Knowing that (B) does not consent; **and**
- With the intention of stupefying or overpowering (B), so as to enable any person to engage in a sexual activity that involves (B).

The penalty is up to 10 years' imprisonment.

If you think you may have taken a substance without your knowledge, for example in a drink, and you think you may have been overpowered while under the influence of that substance, you can report it to the police, and a prosecution could be brought under this section.

CRIMINAL INJURIES COMPENSATION AUTHORITY (CICA)

If you have suffered physical and/or mental injury as a result of a violent crime, you may be able to get compensation from the CICA (see contact details on page 140), whether or not

your attacker has been prosecuted or convicted in a court. It is important, however, that you have reported the incident to the police and co-operated with any subsequent investigation(s).

You should be aware that where a victim of crime has themselves previously committed criminal offences, this can reduce in part or in whole any compensation offered by CICA. In pursuing your claim, you can seek the help of organisations such as the English Collective of Prostitutes or Legal Action for Women (see page 139 for contact details) or your local Citizens' Advice Bureau or Law Centre.

INJUNCTIONS

If you are suffering from persistent harassment or aggression from a particular source, you can apply through a solicitor for an injunction to stop the behaviour. If the injunction is breached, the police can arrest the offender, who will be in contempt of court and may face imprisonment.

Injunctions can be implemented quickly in an emergency. Legal aid is available.

You can also report someone for harassment under the Protection from Harassment Act 1997 – the police can issue a harassment warning in cases where there is evidence for stalking or harassment. Breach of this civil injunction can lead to criminal proceedings, with a maximum sentence of 6 months imprisonment and/or a fine.

REFUGES

Another course of action to consider, where you are suffering from persistent aggression from a particular source, is seeking accommodation in a safe refuge. In these circumstances, you can seek help from organisations such as Women's Aid, Refuge, or Crisis (see page 139 for contact details).

SEX WORKING PARENTS

- CARE PROCEEDINGS
- CRIMINAL RISKS
- PRISON

CARE PROCEEDINGS

Many sex workers are great parents and there will not generally be cause for the local authority's Social Services department to intervene simply because you are a sex worker.

However, where your working practices make it so there are concerns that your child is suffering or is likely to suffer significant harm because of the standard of care you provide, the local authority may seek to intervene under the Children Act 1989. Harm is defined as ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another.¹⁶¹

The local authority can take a number of steps including conducting a child protection conference. It is very important to attend a child protection conference as it is your opportunity to answer any concerns that the professionals and others involved with your child may have; you are entitled to be assisted by a legal advisor.

The local authority may also take formal steps such as issuing care proceedings to apply for a Care or Supervision Order. You will normally be given notice of such proceedings or the intention to apply for them. However, in emergency circumstances the local authority may apply without notice.

161. CHILDREN ACT 1989, S 31(9) AS AMENDED BY THE ADOPTION AND CHILDREN ACT 2002.

In any of the above circumstances, you should immediately seek legal advice if you are told that legal proceedings are being started. The Law Society runs a helpline that can provide you with details of local solicitors who are specialists in childcare law. If you would like more advice on this please call the Release helpline on 020 7324 2989.

CRIMINAL RISKS

Whatever the attitude of social services, you should know that it is an offence to allow a child between the age of 4 and 16 years old to live in or attend a brothel.¹⁶² The maximum punishment is six months in prison and/or a fine.

162. CHILDREN AND YOUNG PERSON'S ACT 1933, S 3(1).

PRISON

Always arrange for a responsible adult to look after your child/ children when you are working and try to have a suitable guardian on standby in case you are arrested and/or have to go to prison. If an appropriate adult can't be found, your child will be taken into care, and there is a risk they might be put in foster care or adopted.

If you are pregnant there are specialist services in prison for you to give birth and to keep your baby with you up until the age of 18 months.

SEXUALLY EXPLOITED CHILDREN AND YOUNG PEOPLE

- CRIMINALITY V. CHILD PROTECTION
- AGE OF CONSENT

When it comes to young sex workers, there can be tension between the criminal law and the duty of the state to protect young people.

Agencies who have child protection powers must, at all stages, consider whether the child might need urgent action to secure their safety because of the risk to the child's life or likelihood of serious harm.

The law allows children as young as 10 to be arrested for an offence – this might lead to them being given a youth caution or charged and have to appear before the youth court. In this situation, if you are under 18, you should have an “appropriate adult” with you at the police station. This would usually be a parent, friend or guardian, but could be anyone aged 18 or above and is considered appropriate and who is not employed by the police. However, in relation to sex working offences, young people are rarely dealt with through the criminal justice system.

CRIMINALITY V. CHILD PROTECTION

Anyone aged 10 years and over is seen as being fully responsible for their actions and can be cautioned or charged with soliciting or any other offence. But, local authorities have a duty to safeguard and promote the welfare of children who are in need, and to investigate cases where a child is suffering, or is likely to suffer, significant harm. Any child involved in prostitution is said to be at risk of significant harm, both physically and emotionally.

Statutory guidelines have been issued by the Department of Children, Schools & Families (now the Department for Education) about the treatment of young people involved in prostitution. The guidance, 'Safeguarding Children and Young People from Sexual Exploitation: Supplementary guidance to Working Together' (2009) is available to download at: www.education.gov.uk/publications/eOrderingDownload/00689-2009BKT-EN.pdf

The guidance says that:

Children who are sexually exploited are the victims of sexual abuse and should be safeguarded from further harm. Sexually exploited children should not be regarded as criminals and the primary law enforcement response must be directed at perpetrators who groom children for sexual exploitation.¹⁶³

163. DEPARTMENT OF CHILDREN, SCHOOLS & FAMILIES (2009), 'SAFEGUARDING CHILDREN AND YOUNG PEOPLE FROM SEXUAL EXPLOITATION: SUPPLEMENTARY GUIDANCE TO WORKING TOGETHER', PG.4

Action to safeguard and promote the welfare of children and young people who are sexually exploited should be child-centred and focus on the child's needs.¹⁶⁴

164. *IBID* AT PG. 13

The identification of a child or young person involved in sexual exploitation, or at risk of being drawn into sexual exploitation, should always trigger the agreed local safeguarding children procedures. If someone believes a child is at risk, then they should always refer their concerns to the local authority social care department.¹⁶⁵

165. *IBID* AT PG. 41

When a parent, professional, or another person contacts LA children's social care with concerns that a child is being sexually exploited, children's social care should decide on its course of action within 24 hours. This will normally

follow discussion with any referring professional or service, and involve other professionals and services as necessary, including the police, as a criminal offence may have been committed against a child.

The initial assessment led by LA children's social care, of any children in need (whether or not there are child protection concerns) should be completed within a maximum of 7 working days of the date of referral. In the course of this assessment, LA children's social care should ask:

- Is this a child in need? (section 17 of the Children Act 1989)
- Is there reasonable cause to suspect that this child is suffering, or is likely to suffer, significant harm? (section 47 of the Children Act 1989)¹⁶⁶

166. IBID AT PG. 49

AGE OF CONSENT

The age of consent for heterosexual and homosexual sex is 16 in England, Wales, Scotland and Northern Ireland. It is illegal to engage in sexual activity with anyone under the age of consent. But, the underage person won't commit an offence.

People engaging in sexual activity with under 18 year-olds might also be committing other offences. If you need further information, contact a solicitor or law centre, or call Release.

CHILD SEX OFFENCES

There is a range of offences concerning sexual abuse and children, some of which are summarised below for information purposes. Advice in relation to these matters is outside the scope of this book and they are therefore not covered in any detail. Unless otherwise stated, “child” means someone under the age of 16.

RAPE AND OTHER OFFENCES AGAINST CHILDREN UNDER 13

The issue of consent is irrelevant to the following offences

- Rape of a child under 13.
- Assault of a child under 13 by penetration.
- Sexual assault of a child under 13.
- Causing or inciting a child under 13 to engage in sexual activity.

CHILD SEX OFFENCES

- Sexual activity with a child.
- Causing or inciting a child to engage in sexual activity.
- Engaging in sexual activity in the presence of a child.
- Child sex offences committed by children or young persons.
- Arranging or facilitating commission of a child sex offence.
- Meeting a child following sexual grooming.

FAMILIAL CHILD SEX OFFENCES

- Inciting a child family member to engage in sexual activity.

INDECENT PHOTOGRAPHS OF CHILDREN

- Taking, distributing or possessing indecent photographs or pseudo-photographs of persons under the age of 18.

ABUSE OF CHILDREN THROUGH PROSTITUTION OR PORNOGRAPHY

- Paying for sexual services of anyone under 18.
- Causing or inciting prostitution or pornography involving anyone under 18.
- Controlling a prostitute who is under 18 or someone under 18 who is involved in pornography.
- Arranging or facilitating prostitution or pornography involving anyone under 18.

The penalties for these offences range from a fine up to life imprisonment. If you need further information, you should contact a solicitor or call Release.

THE SEX OFFENDERS REGISTER

Part 2 of the SOA 2003 re-enacts, with certain amendments, Part 1 of the Sex Offenders Act 1997. This is not aimed at sex workers and is outside the scope of this book, but it is mentioned here briefly for information purposes.

The Register and its associated powers allow the police to monitor convicted sex offenders and people who pose a risk of sexual harm. This means people who have been convicted of offences such as rape, sexual assault, incest and child sex offences (including causing or encouraging the prostitution of children). Such people may be required to notify the police of their name and address so that they can be included on the Sex Offenders Register.

For further information, contact a solicitor or law centre, or Release.

PAYING TAX AND TAX EVASION

Sex workers are **liable¹⁶⁷ to declare their earnings** to HMRC and pay income tax, National Insurance Contributions and, depending on their income, VAT, by filing annual returns where necessary. Sex workers are also liable to declare income from any other sources, such as interest received on any bank accounts held.

167. HM REVENUE AND CUSTOMS (2016) BUSINESS INCOME MANUAL: PROSTITUTION, HMRC: LONDON. ([HTTP://WWW.HMRC.GOV.UK/MANUALS/BIMMANUAL/BIM65001.HTM](http://www.hmrc.gov.uk/manuals/bimmanual/bim65001.htm), ACCESSED ON DECEMBER 11, 2016).

If you are employed, your employer should pay you through a Pay As You Earn (PAYE) scheme. Under this scheme your Class 1 National Insurance Contributions and any income tax due on your earnings should be paid directly to HMRC on your behalf on a monthly basis. Therefore, only if you have any other untaxed income or have a significant amount of income liable to tax over a year¹⁶⁸ will you need to make an annual income tax return to HMRC.¹⁶⁹

168. SEE [HTTPS://WWW.GOV.UK/GOVERNMENT/PUBLICATIONS/RATES-AND-ALLOWANCES-INCOME-TAX](https://www.gov.uk/government/publications/rates-and-allowances-income-tax)

If you are wholly self-employed, or even just moonlighting, you should register with HMRC within 3 months of starting work or advertising for work. A fine can be levied if you do not register within this time frame. You do not have to give your profession as a sex worker when you register; you can say entertainer or masseuse or something else more general that fits in with what you do.

169. SEE [HTTPS://WWW.GOV.UK/SELF-ASSESSMENT-TAX-RETURNS/WHO-MUST-SEND-A-TAX-RETURN-FOR-MORE-INFORMATION](https://www.gov.uk/self-assessment-tax-returns/who-must-send-a-tax-return-for-more-information).

Release has received many calls from sex workers who have no interference from, or have good relationships with, their local police and communities. However, this might be affected if you are raided by HM Revenue and Customs (HMRC) and made subject to investigations, fines, and in the worst cases, prosecutions, simply for non-payment of tax, as it draws attention to you. It is therefore clearly necessary for workers in a field such as this to keep on top of their tax affairs and any payments due to HMRC in this respect.

It is important to **get good tax advice early on** to help you with your record keeping and expenses as this will ensure that you don't pay too much tax. It will also assist you to get whatever working benefits you are eligible for. By obtaining correct and timely advice you reduce the risk of paying fines, surcharges and interest for being late with either filing your tax return or making payments due in respect of your tax and National Insurance liabilities.

However, if you have previously undeclared income or are involved in sex work in a way that amounts to a criminal offence so that the money on which you wish to pay tax could be considered the benefit of criminal conduct, you should be aware that accountants have a duty under anti-money laundering regulations¹⁷⁰ to notify the authorities that you have broken the law. Before taking such a step you might want to contact Tax Aid, Release or HMRC's confidential helpline to go over your options and the likely consequences and/or benefits of self-reporting. Certainly, although the tax will remain due and some civil penalties will have to be paid, a criminal prosecution is less likely where you have self-reported to HMRC¹⁷¹ than where you have been found out. Where a criminal prosecution does follow in such a case, you will receive a lesser penalty for having self-reported and co-operated.

170. PROCEEDS OF CRIME ACT 2002, S 330.

171. HM REVENUE AND CUSTOMS (2015) GUIDANCE: HMRC POLICY. HMRC: LONDON. (WWW.HMRC.GOV.UK/PROSECUTIONS/CRIM-INV-POLICY.HTM ACCESSED ON DECEMBER 11, 2016).

Also, although sex work itself is legal, many of the circumstances surrounding it are not (e.g. keeping a brothel etc.). Therefore, even if you pay your tax, there is a risk that the remainder of your income might be seen as the benefit of criminal conduct and could be made subject to civil forfeiture proceedings under Proceeds of Crime Act 2002, s 240 (see page 89). It seems in practice, however, that such enforcement action is only likely where your illegal earnings are significant and where you have not been paying tax.

You might be worried about **information sharing** between HMRC and the police, unfortunately there is no guarantee that this will not happen. Information can be shared further to a production order issued by a court in limited circumstances¹⁷² or further to the initiative of HMRC where they believe that it is in the public interest¹⁷³ to do so. Be reassured, however, that the use and disclosure of information by HMRC is tightly regulated by the Commissioners for Revenue and Customs Act 2005, sections 17 to 23, and remains protected also by the Data Protection Act 1998. Of course, there is a risk that information will be shared that could support a criminal prosecution against you in relation to your sex-working activities, but this is most likely to materialise where the police are already investigating you and so seek a production order. So, please weigh this risk against the real risk that you are also liable to criminal prosecution and financial penalties for failing to pay your taxes.

The **legal risks** if you do not pay your taxes are firstly, that **you will be investigated by HMRC**. In most cases civil investigations and penalties are pursued by HMRC, but criminal investigations do take place where there is, amongst other aggravating factors: 'wider criminality'; money laundering; deliberate concealment; or, where false statements have been made in the course of a civil investigation.¹⁷⁴

In very limited circumstances you can be **placed under surveillance**¹⁷⁵ by HMRC. However, HMRC are more likely to contact you directly with a disclosure notice¹⁷⁶ to provide them with certain information. Where they think that forewarning you in this way of their investigation might cause you to do something to prejudice it, they can apply to the court for a warrant to enter and search your property using reasonable force.¹⁷⁷ It is an offence to wilfully obstruct the lawful execution

172. SEE E.G.: DRUG TRAFFICKING ACT 1994, S 55; PROCEEDS OF CRIME ACT 2002, SS 345 AND 350. SEE ALSO: ANTI-TERRORISM, CRIME AND SECURITY ACT 2001, S 19(2)(B) AND 19(3).

173. COMMISSIONERS FOR REVENUE AND CUSTOMS ACT 2005, S 20.

174. HM REVENUE AND CUSTOMS (2015) HMRC CRIMINAL INVESTIGATION POLICY, HMRC: LONDON. (WWW.HMRC.GOV.UK/PROSECUTIONS/CRIM-INV-POLICY.HTM ACCESSED ON DECEMBER 11, 2016).

175. POWERS ARISE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND THE POLICE ACT AND THE POLICE ACT 1997.

176. SERIOUS ORGANISED CRIME AND POLICE ACT 2005, S 62.

177. SERIOUS ORGANISED CRIME AND POLICE ACT 2005, S 66.

178. SERIOUS ORGANISED
CRIME AND POLICE ACT
2005, S 67.

179. R. V. STEED [2011] EWCA
CRIM 75; R. V. MAWJI [1987] 1
WLR 1388.

180. R. V. HUDSON [1956] 2
QB 252.

of such a warrant with a maximum punishment of 51 weeks in prison.¹⁷⁸

Second, you might be charged with the common law offence of **cheating the public revenue**. The offence can be committed simply by omission – i.e. dishonestly failing to declare a tax or a National Insurance liability¹⁷⁹ – or by dishonestly making a false statement with the intention of deceiving or prejudicing HMRC.¹⁸⁰ The penalty is ‘at large’ which means that there is no maximum sentence given. There is also the statutory offence of fraudulent evasion of income tax contrary to Finance Act 2000, s 144. The maximum penalty is seven years in prison. In either case, you might also be made subject to confiscation proceedings under the Proceeds of Crime Act 2002 (see page 89).

Finally, whether or not you are criminally prosecuted, you will be liable to repay the tax owed plus interest.

SEX WORK AND DRUGS

- DRUG OFFENCES
- POSSESSION AND SUPPLY
- PRODUCTION, SUPPLY OR USE OF DRUGS ON PREMISES
- SAFER DRUG USE

Using drugs whilst sex working can be a dangerous combination. Involvement with controlled drugs increases the risk of getting involved in the criminal justice system and can dramatically increase the risks to your safety that are associated with sex work.

The most important way of minimising risks to your safety is to avoid using drugs while you are working.

In the following paragraphs, we set out basic information about the laws that are most likely to be relevant. If you want further information, you should contact your solicitor or call Release. The UK Network of Sex Projects has an excellent guide: 'Keeping Safe: Safety Advice for Sex Workers in the UK' (<http://www.uknswp.org/wp-content/uploads/RSW2.pdf> or contact 0161 629 9861).

DRUG OFFENCES

The main drugs offences are created by the Misuse of Drugs Act 1971 (the "MDA 1971"). This creates the basic offences of possession, supply and production, as well as the cultivation of cannabis, importation/exportation of drugs and drug use on premises. It also sets out the penalties for breaches of the law in relation to controlled drugs.

New Psychoactive Substances ('NPS'), often called "legal highs", are now controlled under the Psychoactive Substances Act 2016 (the 'PSA 2016'). Any substance that has a psychoactive effect is banned, but certain items are exempt, including: alcohol; nicotine/tobacco; caffeine; medicinal products; and food and drink. Under the Act, possession for personal use is not an offence, but possession with intent to supply, supply, production, importation (including for personal use) and exportation are all criminalised.

The maximum sentence is 6 months' imprisonment and/or a fine at the Magistrates' Court and seven years imprisonment and/or a fine at the Crown Court. Possession in a prison is also an offence with maximum sentences of 6 months' imprisonment and/or a fine at the Magistrates' Court and two years' imprisonment and/or a fine at the Crown Court. For all offences, the prosecution will have to prove that a substance is psychoactive, something that we believe will be very difficult in court. We have produced a Guide about the PSA, dealing with the possible issues (see <http://www.release.org.uk/law/2016-psychoactive-substances-act>).

Because this is a new law, it is hard to say what will happen until some cases come to court – we will be keeping an eye on this and update our Guidance when needed.

The MDA 1971 does not deal with all drugs but only those that Parliament considers to be the most harmful to individuals and society. It categorises controlled drugs into two sets of lists. The first set of lists puts controlled drugs into three classes, "Class A", "Class B" or "Class C". It is possible for the Class of a drug to be changed so please check with Release if you want to be sure. The class signifies the severity of the maximum sentence for offences relating to that drug. The most severe sentences are applied to Class A drugs.

The second set of lists are the five schedules. The schedule will dictate, amongst other things, the circumstances in which a drug can be lawfully possessed or supplied and whether it can be prescribed.

POSSESSION AND SUPPLY

It is illegal to possess any controlled drug, unless you have a prescription for it or the schedule of the drug permits it. It is also illegal to produce, supply or possess with intent to supply any controlled drug, unless you are licensed to do so. If you have a controlled drug in your possession, even if you are just holding on to it for someone else, you will be guilty of possession, and possibly intent to supply.

If you hand a controlled drug to someone else, even if no money is changing hands, you could be charged with supply. Sentences, especially for supply or intent to supply (including giving or selling to friends), can be severe. Possession of even a small quantity of a controlled drug can lead to a charge for intent to supply, if other relevant circumstantial evidence is found. This would include paraphernalia such as scales, bags, Clingfilm and large sums of unexplained cash. The way the drugs were wrapped could also be used as evidence of intent to supply. Surrounding factors other than quantity will be relevant when a court considers whether there was intent to supply. Sentences for drug offences depend upon the quantities involved, previous convictions and other relevant circumstances. Please see our website for more information on sentencing.

PRODUCTION, SUPPLY OR USE OF DRUGS ON PREMISES

Personal liability

It is illegal for occupiers of premises knowingly to permit on those premises:

- The production or attempted production of any controlled drug;
- The supply or attempted supply of any controlled drug;
- The preparation of opium for smoking;
- Smoking cannabis, cannabis resin or prepared opium.¹⁸¹

181. MDA 1971, S 8.

“Occupiers of premises” includes anyone “concerned in the management of premises”. This could apply if you are working from home, or other premises, and allow customers to engage in any of the above activities. This will also certainly include managers of projects operating at residential or day centres and may include some employees. It would also include landlords, tenants or owners of residential or work premises.

SAFER DRUG USE

Alcohol and drugs

Alcohol and drugs can affect your awareness and ability to recognise and act on your instinct. They can also prevent you using your safety strategies to best effect. You are at much greater risk if you are under the influence of drink or drugs. Try not to use when you are working. If you do use when you are working, try to use an amount that keeps you stable. Use just enough so you are not withdrawing but not so much that you are 'drunk', 'gouching' or 'off your head'. If you are in any of these states, you may be less likely to use your safety strategies effectively, and might be targeted by some people.

Drugs reduce your inhibitions and could lead you to engage in activities which are unsafe or which you would not otherwise agree to. It can also lead workers to engage in a much longer session with a client, for much lower pay.

Letting customers know you use drugs gives them more opportunity to take advantage of you. It can allow them to tempt you with drugs rather than cash, which means you might lose out on the cash you need.

Spiked drink, drugs and food

If your client offers you a drink in private, ask for an unopened can or bottle, or serve yourself. Don't take any drink you haven't seen prepared from start to finish. Make sure your client is happy to drink from the same bottle or glass as you.

If your client offers you food in private, don't accept it unless it's pre-packed and still in its sealed wrapper, or you have seen it prepared from start to finish. Make sure your client is happy to eat the same food.

Avoid accepting drugs from or taking drugs with clients; you can never be sure what they are or what they have been cut with.

The risks associated with drug use can be dramatically reduced by avoiding injecting. If you are injecting, you must use clean needles, water and other paraphernalia in order to avoid infection from blood borne viruses. Local agencies providing support to drug users or sex workers may offer a needle exchange service, and may be able to provide you with advice to help you reduce the risks to your health. You can also get injecting equipment free from most pharmacies.

If you want help or advice in relation to drug use, contact your local drug treatment services, or call Release .

SAFETY

- PREVENTION
- SELF DEFENCE

PREVENTION

Here are some ideas for ways to try and prevent getting into a dangerous situation.

Get information and advice

- There may be a local project, drop-in, or outreach service for sex workers. Go there, find out what services are available to you, and seek safety advice. Your local sexual health clinic may be able to offer advice.
- Many projects give out free personal safety alarms.
- Consult Ugly Mugs lists via your local sex work project or online warning boards and pass on information about dangerous clients.
- Report into Ugly Mugs if anything happens to you, even if you also report to the police.
- Take advantage of any self-defence classes on offer locally.

Avoid drink and drugs

- Don't use drugs or alcohol while you are working. They make you less alert and less able to maintain control of the situation.
- Don't take drinks from clients or, if you must, watch them being made in order to avoid spiking.

Be prepared

- Think carefully about safety measures that are appropriate for your particular work situation.
- Wear shoes that come off easily or that you can run in.
- Long earrings or hoops may be pulled – try small earrings or clip-ons instead. Avoid necklaces, scarves and across the body shoulder bags, which can all be tightened around your throat.

- Try not to carry any money with you-if you must, hide it in different places about your person. That way, if the worst happens and you are robbed, you won't lose it all.
- Carry a personal safety alarm, a torch and a whistle.
- Always keep an eye out for concealed weapons or things which could be used as weapons. If you are considering carrying a weapon yourself, remember that it could end up being used against you, also you could be prosecuted if found with a weapon as it's an offence.
- Above all, trust your own instincts and common sense.
- If you feel uncomfortable about someone, it is probably safer to avoid them.

Keep in touch

- Team up with a colleague and work out a system to keep in touch with each other and raise the alarm if help is needed.
- Carry a mobile phone when meeting clients and have a pre-drafted text ready to send to a friend or colleague if you need help.
- Give that friend a time frame for notifying the police or your local sex work support project if you are not back when you say, make sure the friend has your details and the phone numbers of police & support project.
- If you are working on the street, ask a friend to take vehicle numbers.

Approaching a car

- When you approach a client's car, study the client, anyone else in the car, the registration number and the door lock system.
- Arrange price, service and location outside the car.
- Have a brief conversation with the client, observing his or her body language.
- Wave goodbye to a work partner, or pretend to, and shout the expected return time.

Working indoors

- If you work indoors, make an effort not to have objects lying around that can be used as weapons, but have things tucked away that you can arm yourself with. Bear in mind, however, that these could be used against you.
- Have a safe room with a door stopper and a phone in it, so that you can be safe while phoning the police.

If you are attacked

- Create a disturbance. Screaming “Fire” can be more effective than “Police” or “Help”.
- If there are people around, try to appeal to a specific individual for help rather than to everybody generally.
- If you are in the street, try to run into a shop or café where there are people.
- If you are indoors, make as much noise as you can, throw objects around, break windows, scream.
- If you can, run away – run, shout, set off alarms, put obstacles in the way of the attacker.
- If you can't run away – you might want to physically fight, but bear in mind the advice about self-defence below.
- If you can't run or fight – try not to show your fear and talk your way out.

SELF DEFENCE

If you injure someone, you risk being charged with an offence such as assault, assault occasioning actual or grievous bodily harm, or malicious wounding. However, you are allowed to use reasonable force to defend yourself against an attack.

What counts as reasonable force will depend on all the circumstances, including your assessment of the situation at the time and the fact that you have acted instinctively in the heat of the moment. You must have acted in response to an attack.

It is not necessary for you actually to be attacked first before you are lawfully able to defend yourself. There is no duty to retreat rather than defend yourself in the face of an actual or threatened attack.

EMPLOYMENT RIGHTS OF MIGRANTS

- WORKERS
- EMPLOYERS
- EU NATIONALS
- VICTIMS OF TRAFFICKING
- TRAFFICKING OFFENCES

WORKERS

If you are **subject to immigration control** and do not have leave to work but do so anyway you will be considered to be **working illegally**.

As of 12 July 2016, illegal working is a criminal offence.¹⁸²

If you work during a time when you have been disqualified from working because of your immigration status, and at this time you know or should have known that you were disqualified because of your immigration status, then you are guilty of illegal working. The penalty for illegal working can be a fine and/or up to 6 months in prison. Your wages might also be seized as proceeds of crime.

Illegal working can also have a seriously negative impact on your immigration history that can count against you when applying to enter or stay in the UK in the future, or affect any current permission to remain. Also, if discovered by the authorities, you could face detention and removal, subject to any other claims you might have.

182. IMMIGRATION ACT 2016, S 34.

If you are in difficulty, contact a solicitor registered with the Office of the Immigration Services Commissioner or one of the agencies listed in this publication that specialise in immigration matters.

183. UK BORDERS ACT 2007,
SS 32 – 39 APPLY.

If you are convicted of any offence and a sentence of imprisonment for 12 months or more is imposed, the Secretary of State has a duty¹⁸³ to make you subject to a **deportation order** unless one of a number of exceptions apply, e.g. there would be a breach of your rights under the European Convention of Human Rights or under the Refugee Convention, for example.

A deportation order does not mean you will be automatically deported. You will first get a notice stating that you are liable to deportation after which you have an opportunity to respond, giving reasons why you shouldn't be deported. It is important that you respond to this notice as soon as possible and it is advisable to contact a solicitor or an advice agency to help at this point.

The Court can also recommend deportation in other situations, but these are rarely used in practice. Ask your lawyer to advise you on how these provisions are likely to relate to your case before considering your plea.

Also, remember that even where an automatic recommendation for deportation is not made, as with illegal working, any conviction can count against you at an Immigration and Asylum Tribunal when making a decision on any claim for permission to enter or stay in the UK.

Contact either the Migrant Helpline or Asylum Aid for information and advice (details can be found on page 141). Bail for Immigration Detainees (BID) and The AIRE Centre provide pro bono advice and representation for individuals facing deportation.

EMPLOYERS

If you are employing someone as a sex worker, you risk prosecution for one of the controlling offences – see

page 19 for more information. There are also other roles within the industry, for instance a maid or receptionist, where offences could be committed for employing someone who is not allowed to work in the UK.

It is a **criminal offence** to employ a person who does not have permission to work in the UK.¹⁸⁴ You will be guilty of the offence if you should have known that the employee was working illegally. The maximum sentence is 5 years in prison.

It is also a **civil offence**, punishable by a fine, to unknowingly employ a person who does not have permission to work in the UK.¹⁸⁵ There is a statutory defence available where you have had sight of specified original documents (such as a passport), taken reasonable steps to check its validity, and kept copies; please note, it might be necessary to check your employees on a yearly basis. The UK Border Agency has issued step-by-step guidance for employers on staying within the law.¹⁸⁶

EU NATIONALS

If you are an EU national or the family member of an EU national, you are not subject to immigration control and can move to the UK for up to 3 months without any restrictions. In order for an EU national or the family member of an EU national to live and work in the UK for longer than 3 months, you will have to show that you are ‘exercising treaty rights’.¹⁸⁷ This can be shown in a number of ways including having a job, being self-employed or enrolled in an educational institution.

If an EU national is not exercising treaty rights, they can be administratively removed – which means they can be forced to leave the UK. If you are administratively removed you will be banned from entering the UK for 12 months unless you can clearly show that you will be exercising treaty rights when you return.

Sex work can count as demonstrating the exercise of treaty rights.¹⁸⁸ UK tribunal case law has stated that registration with

184. IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006, S 21 AS AMENDED BY IMMIGRATION ACT 2016, S 35.

185. IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006, S 15.

186. UK BORDER AGENCY (2016) EMPLOYERS: ILLEGAL WORKING PENALTIES, UKBA: LONDON. ([HTTPS://WWW.GOV.UK/GOVERNMENT/COLLECTIONS/EMPLOYERS-ILLEGAL-WORKING-PENALTIES](https://www.gov.uk/government/collections/employers-illegal-working-penalties) ACCESSED ON DECEMBER 12, 2016).

187. TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION; DIRECTIVE 2004/38; IMMIGRATION (EUROPEAN ECONOMIC AREA) REGULATIONS 2006.

188. ALDONA MALGORZATA JANY AND OTHERS V. STAATSECRETARIS VAN JUSTITIE [2001] C – 268/99.

HMRC is not necessarily required for an EEA national to be exercising treaty rights as a self-employed person, so even if you are not registered with HMRC you can still argue you are self-employed through sex work.

Administrative removal is different from deportation. Deportation usually follows a criminal conviction and carries a 10-year ban against re-entry. An EU national can only be deported if it can be shown that they pose a **genuine, present and sufficiently serious threat** against one of the fundamental interests of society, which are public policy, public security or public health. The longer an EU national has lived in the UK, the more difficult it will be to deport them.

VICTIMS OF TRAFFICKING

Do not be frightened of seeking help in the UK if you are a victim of trafficking. There are measures in place to protect you against your trafficker and there is safe temporary accommodation available. Bail for Immigration Detainees (BID) and The AIRE Centre provide free advice on this.

The UK has a **legal duty to protect victims of trafficking** as a result of the Council of Europe's Convention on Action against Trafficking in Human Beings ('the Convention') and the EU Directive 2011/36/EU, both of which provide substantial protection to victims of trafficking as well as requiring EU Member States to provide support for rehabilitation, establishment and protection. Additionally, a victim of trafficking shouldn't be prosecuted where there is reliable evidence that force or pressure has been used to make the person commit a crime.¹⁸⁹

189. R. V. O [2006] EWCA CRIM 2835.

Trafficking is defined in Article 4 of the Convention and, in general terms, it involves the use of coercion or fraud to exploit a person either for prostitution or some other purpose.

These obligations extend to all state agents, including the police, the Crown Prosecution Service and the immigration authorities. As a result, it is important to say if you are a victim of trafficking when dealing with these agencies: if you consent, they will make a referral to the UK Border Agency or the UK Human Trafficking Centre who, in turn, will assess whether

there are reasonable grounds to believe that you are a victim of trafficking.

An initial decision will be made within 5 and 10 days¹⁹⁰ and if it is positive, you will be granted 45 days leave to remain in the UK for you to reflect on what you want to do, recover from your experience and, if you want, to be placed in a safe house. You will also be entitled to applicable benefits, which include Housing Benefit; council tax reduction; Income Support, Job Seeker's Allowance (JSA), State Pension Credit, Child Benefit, Employment and Support Allowance (ESA). These benefits are not contingent on the victims' willingness to act as a witness against their traffickers.

190. NRM DATA 2013 (AS OF 08/09/14) AVERAGE 7 DAYS FOR ALL DECIDED CASES.

During the 45 day period, a conclusive decision should be made determining whether you are a victim of trafficking. If the decision is positive, you may be considered for discretionary leave to remain in the UK for up to 12 months either because you do not wish to return home or because you are assisting the police with their enquiries.¹⁹¹ It is possible to apply to renew this leave after 12 months. Alternatively, you can apply for refugee status or humanitarian protection. Whether or not you qualify will depend on all the circumstances of your case and the situation in your country of origin and the fact that you have been trafficked will assist your case but might not be decisive.

191. SEE UK BORDER AGENCY (2011) ASYLUM PROCESS GUIDANCE ON SPECIAL CASES "VICTIMS OF TRAFFICKING: GUIDANCE FOR COMPETENT AUTHORITIES" UKBA: LONDON. PG. 35 ([HTTP://WWW.UKBA.HOMEOFFICE.GOV.UK/SITECONTENT/DOCUMENTS/POLICYANDLAW/ASYLUMPROCESSGUIDANCE/SPECIALCASES/6GUIDANCE/COMPETENT-GUIDANCE](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/ASYLUMPROCESSGUIDANCE/SPECIALCASES/6GUIDANCE/COMPETENT-GUIDANCE) ACCESSED ON DECEMBER 12, 2016).

If you are an EEA national you will not automatically be considered for discretionary leave to remain, as you have rights of residence under EU law. As an EU national you have the right to live and work or study in the UK, and you will be allowed to remain in the UK for as long as you are exercising treaty rights. However, due to the trauma suffered by many victims of trafficking, individuals are often unable to start working or enroll in education, understandably needing a longer recovery period. It is possible to argue that EEA nationals should be granted discretionary leave. Contact The AIRE Centre for advice on this issue.

If you are charged with a criminal offence, it is particularly important to **notify your legal representative that you are a victim of trafficking** as this will affect whether or not you are charged, whether you have a defence, and if not, what your sentence should be.

192. MODERN SLAVERY ACT, S 45 (1).

The Modern Slavery Act 2015 introduces a new defence of compulsion attributable to slavery or to relevant exploitation.¹⁹² A similar defence is available to minors under the age of 18 where the question is not one of compulsion but whether the act was done 'as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation'.¹⁹³

193. BLACKSTONES A3.53.

You will not be held accountable for your actions if:

- You did the act because you were compelled to do it (if you are over 18);
- The compulsion is attributable to slavery or to relevant exploitation; **and**
- A reasonable person in the same situation as the person (having the person's relevant characteristics) would have no realistic alternative to doing that act.

This defence will not apply to a number of offences including murder, kidnapping and false imprisonment. However, even where it is not made out but you are a credible victim of trafficking, the Crown Prosecution Service are required to consider whether it is in the interests of justice to prosecute.¹⁹⁴ In making such a decision, the CPS will take into account a number of factors including the nature of the offence with which you are charged and your role in it, whether the offence was a direct consequence of your trafficked situation, whether violence, threats, or coercion was used against you, and whether you were in fear.

194. SEE R. V. D [2008] EWCA CRIM 2835 AND THE CPS LEGAL GUIDANCE ON HUMAN TRAFFICKING AND SMUGGLING (HTTP://WWW.CPS.GOV.UK/LEGAL/H_TO_K/HUMAN_TRAFFICKING_AND_SMUGGLING/#A37 ACCESSED ON DECEMBER 12, 2016).

As a victim of trafficking, **compensation** is theoretically possible through the Criminal Injuries Compensation Scheme, and a civil action for damages can be brought against your trafficker for false representations, false imprisonment, battery, assault and harassment.¹⁹⁵

195. SEE AT, NT, ML AND AK V. DULGHIERU [2009] EWHC 225 (QB).

TRAFFICKING OFFENCES

There are many offences related to **trafficking people either within the UK or in or out of the country, for sexual exploitation**. The Modern Slavery Act 2015 consolidates, replaces and broadens the scope of existing trafficking offences¹⁹⁶ including:

- Trafficking for the purpose of sexual exploitation;¹⁹⁷
- Committing an offence with the intention to commit human trafficking for sexual exploitation.¹⁹⁸

You commit a human trafficking offence if you **arrange or facilitate the travel of another person ("V") with a view to (V) being exploited**.¹⁹⁹ It is irrelevant if (V) consents to travel.²⁰⁰

Arranging or facilitating travel includes: recruiting (V); transporting or transferring (V); harbouring or receiving (V); or transferring or exchanging control over (V).²⁰¹

To be guilty of this offence you must intend to exploit (V) (in any part of the world) during or after the travel,²⁰² or know/ought to know that another person is likely to exploit (V) (in any part of the world) during or after the travel.²⁰³

"Travel" means:

- Arriving in, or entering, any country;²⁰⁴
- Departing from any country;²⁰⁵
- Travelling within any country.²⁰⁶

If you are a UK national, this is committed as an offence under this section regardless of where the arranging or facilitating takes place, or where the travel takes place.²⁰⁷

If you are not a UK national, you commit this offence if any part of the arranging or facilitating takes place in the United Kingdom, or the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.²⁰⁸

196. IT REPEALS AND REPLACES SOA 2003, SS 58A – 60C; THE PROTECTION OF FREEDOMS ACT 2012, S 109 ALSO REPEALED SOA 2003, SS 57 – 59, SUBSTANTIALLY AMENDED S 60 AND INSERTED S 59A.

197. SEXUAL OFFENCES ACT 2003, S 59A.

198. SEXUAL OFFENCES ACT 2003, S 62.

199. MODERN SLAVERY ACT 2015, S 2(1).

200. MODERN SLAVERY ACT 2015, S 2(2).

201. MODERN SLAVERY ACT 2015, S 2(3).

202. MODERN SLAVERY ACT 2015, S 2(4)(A).

203. MODERN SLAVERY ACT 2015, S 2(4)(B).

204. MODERN SLAVERY ACT 2015, S 2(5)(A).

205. MODERN SLAVERY ACT 2015, S 2(5)(B).

206. MODERN SLAVERY ACT 2015, S 2(5)(C).

207. MODERN SLAVERY ACT 2015, S 2(6).

208. MODERN SLAVERY ACT 2015, S 2(7).

The specific exploitation is sexual if something is done to or in respect of (V) which involves the commission of an offence under:

- Protection of Children Act 1978, s 1(1)(a) (indecent photographs of children); **or**
- Sexual Offences Act 2003, Part 1 (sexual offences), as it has effect in England and Wales; **or**
- something is done to or in respect of (V) which would involve the commission of such an offence if it were done in England and Wales.²⁰⁹

209. MODERN SLAVERY ACT
2015, S 3(3).

The penalty for any of the offences is a fine or up to life in prison. The Court also has the power to make confiscation orders, as well as slavery and trafficking reparation order (which is the same as a compensation order) or to order forfeiture of a land vehicle, aircraft or ship. For further information, contact your solicitor or call Release.

USEFUL CONTACTS

NATIONAL SERVICES

LEGAL SERVICES

Release

www.release.org.uk
020 7324 2989

Liberty (Human rights law only)

www.liberty-human-rights.org.uk
020 3145 0461 and 0845 123 2307
(Monday and Thursday 6:30pm-8:30pm,
Wednesday 12:30pm-2:30pm)

Immigration Advisory Service (Immigration advice and representation)

www.iasuk.org
0333 305 4846
Various numbers throughout the UK –
please check the website

Civil Legal Advice

0345 345 4 345
Monday to Friday – 9am to 8pm
Saturday – 9am to 12:30pm

Community Legal Service Direct

<http://www.clsdirect.org.uk/>
contact@clsdirect.org.uk

Rights of Women (family law advice)

www.rightsofwomen.org.uk
020 7251 6577

Citizens Advice Bureau

www.citizensadvice.org.uk (includes details of local offices)
If in Wales call 03444 77 20 20
If in England call 03444 111 444
If in Scotland call 0808 800 9060
If in Northern Ireland call 0800 028 1881

Law Centres

Visit: www.lawcentres.org.uk
to find details of local law centres

Apex Trust Jobcheck Helpline

(advice on ex-offender employment matters including CRB checks and disclosure of criminal records)
www.apextrust.com
01744 612 898

SEX WORKERS ORGANISATIONS

The English Collective of Prostitutes

www.prostitutescollective.net
020 7482 2496

International Union of Sex Workers

www.iusw.org
07772 638 748

TLC Trust

www.tlc-trust.org.uk

DRUGS ADVICE

Release

(for specialist advice – office hours only)
www.release.org.uk
020 7324 2989

DOMESTIC VIOLENCE

Women's Aid / Refuge Crisis

www.womensaid.org.uk
(24 hours) 0808 2000 247

MEDICAL (NON-EMERGENCY) – in an emergency, dial 999

NHS Choices

<http://www.nhs.uk/pages/home.aspx>
(24 hours) Dial 111

COMPLAINTS AGAINST THE POLICE

Independent Police Complaints Commission

www.ipcc.gov.uk
0300 020 0096

VICTIM OF RAPE/SEXUAL ASSAULT OR OTHER CRIME

Haven Project – Camberwell, London

King's College Hospital,
Denmark Hill, London
www.thehavens.co.uk
020 3299 6900

Haven Project – Paddington, London

St Marys Hospital,
Praed Street, London
www.thehavens.co.uk
020 3299 6900

Haven Project – Whitechapel, London

The Royal London Hospital,
9 Brady Street, London
www.thehavens.co.uk
020 3299 6900

Victim Support

0808 16 89 111
<https://www.victimsupport.org.uk/>
For local support
www.victimsupport.org.uk/help-and-support/get-help/support-near-you

Criminal Injuries Compensation Authority (CICA)

www.cica.gov.uk
0800 358 3601

SUPPORT FOR THOSE WHO HAVE BEEN TRAFFICKED

Asylum Aid

www.asylumaid.org.uk

0207 354 9264

(Tuesday only – 1-4pm)

Migrant Help

<http://www.migranthehelpuk.org/>

0808 8000 630

Salvation Army Safe House

020 7367 4500

<http://www.salvationarmy.org.uk/safehouses>

TAX ADVICE

Tax Aid

www.taxaid.org.uk

0345 120 3779

(Monday – Friday 10am-12 midday)

LOCAL SERVICES

For local services please contact the UK Network of Sex Work Projects who have a comprehensive database of projects throughout the UK:

www.uknswp.org

0161 629 9861

SCOTLAND

SCOT-PEP

For advice on the law in Scotland

www.scot-pep.org.uk

0131 622 7550

WALES

StreetLife (Safer Wales)

www.saferwales.com

029 2022 0033

OTHER RELEASE PUBLICATIONS

Other Release Publications

'Sex Workers' Rights Card – Indoor'

'Sex Workers' Rights Card – Outdoor'

'Bust Card'

'Drugs and the Law'

'Y-STOP Search Card'

These, and other drug specific publications,
are available to download for free at
www.release.org.uk/publications/advice-booklets

“Sex Workers and the Law” outlines: the criminal offences related to sex working and the buying of sexual services; offences specific to premises used for sex working; the law around anti social behaviour orders; dealing with the police and the criminal justice system more generally; criminal records; trafficking offences; advice on tax and the rules around non British sex workers. In short, it is hoped that this publication will be a practical guide for those whose sex work and those involved in the industry as well as statutory and voluntary agencies, and other professionals who come into contact with those involved in the sex industry.

Release is a charity which since 1967 has offered advocacy, education, campaigning and the only free helpline specialising in drug-related legal issues. Our advice is professional and confidential and it is our aim to promote understanding of drug-related issues and to support an often marginalised section of society.

“This excellent, much needed and well researched publication provides sensible and invaluable advice for those working in the sex industry”

Sebastian Gardiner, Barrister, 25 Bedford Row

Release

Drugs, The Law & Human Rights

Tel: +44 (0) 20 7324 2989

Email: ask@release.org.uk

Web: www.release.org.uk

124-128 City Road, London, EC1V 2NJ

ISBN - 0-904932-24-9

© Release 2017

Designed by SVIDesign