

**Response from the International Union of Sex Workers to the Home Office
Consultation on legislative proposals on prostitution, brothel closures, kerb crawling
and lap dancing clubs**

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Firstly we deplore the extremely short notice given to provide a response to these proposals, and are aware we probably have this uncommon with all other respondents. However, this haste will have a disproportionate impact on the ability to respond of an entirely unfunded organisation such as the IUSW, which is dependent on the voluntary labour of people working in the sex industry. Without question, we are the people who will be most affected by these proposals.

We welcome the recognition that sex work can be a freely made choice, and the fact that the government has not bowed to pressure to criminalise all purchase of sexual services. We were also glad to read Jacqui Smith's statement in the Home Office press release of 21 September that, "The Government has a responsibility to protect those who have been groomed or trafficked into prostitution, or for those who remain involved for fear of violence from a partner or a pimp."

All who work in the sex industry are deserving of protection and we petition the Home Office to create a legislative framework that enhances the safety of us all, enables us all to enjoy the full protection of the law and work in safe, fair and non-exploitative environments. There are no more vehement or dedicated opponents of trafficking, coercion and exploitation of sex workers than sex workers themselves.

The IUSW offers a unique source of expertise and experience of people actually in the sex industry who see the way the industry works day to day. We can enable you to create laws that effectively target the very real abuses that occur within the industry, in ways which decrease the social exclusion of sex workers and improve the situations for local communities.

Present law relating to the sex industry is already complicated, ineffective and in breach of the UN Declaration of Human Rights (particularly Articles 7, 20, 21 and 23). By preventing us from working together and decreasing the protection available from the police, it actively endangers people working in the sex industry and prevents the development of good working practice.

These new proposals, however well-intentioned, would put us all at greater risk of violence, exploitation and abuse. However, it is the most vulnerable – the trafficked, the pimped, the exploited, who would suffer disproportionately.

To target exploitation we need transparency. To create transparency, we need co-operation and dialogue. To do this you, the Home Office, must remove mistrust and fear and involve the people you say that you are intending to protect.

We ask you to listen to us, to protect our physical safety and our human rights, and to work with us to end exploitation and trafficking.

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(a) to introduce a new offence of paying for sex with a person controlled for gain

Terms of the proposal.

In the Home Office press release of 21 September “Think twice about paying for sex”, it is stated that this is “aimed at protecting vulnerable individuals, for example those who have been trafficked or exploited in some other way” and further aims to “improve the protection of vulnerable women including criminalising those supporting the exploitation by purchasing sex from them”.

Definition of “controlling for gain”.

Under the current legal definition of “controlling for gain” proposals would not target clients of the vulnerable, but criminalise all clients of anyone who works in premises run by a third party or for an escort agency: the very kinds of working situations that offer most support and safety to vulnerable workers. Working for a third party is probably the most common working arrangement in the indoor industry; many people choose to work for someone else rather than entirely independently for a wide range of reasons. If the definition of “controlling for gain” were applied to other industries, vast numbers of employers would be liable to prosecution, despite the absence of exploitation or coercion. For example, there are great similarities with the working arrangements of barristers. If the attention of new law is to target abuse and exploitation, frame laws that refer to abuse and exploitation, not common practice.

Sex workers demand the right to chose to work for someone else.

Under current law, there is no incentive for fair and law abiding citizens to create safe and honest working spaces for people to sell sex. Nevertheless, this does happen, and it particularly common for someone to retire from selling sex themselves and gradually establish a brothel or an agency by starting with a little maiding or driving work and build from there.

Typical services provided by a brothel that could be considered to be controlling for gain

- providing premises from which to work
- paying for advertising
- providing phone lines to work space
- providing receptionist/telephonist
- ensuring clients are aware of boundaries and services provided by the establishment as a whole and by individual sex workers
- providing security and security equipment, e.g., cctv
- cleaning premises
- laundry services
- providing clothing
- providing equipment
- providing a waiting room for clients
- providing a rest room for workers not with a client, usually supplied with tv, radio etc
- providing gloves, condoms and lube
- providing tea, coffee, juice, mineral water, beer, wine for staff and clients
- providing cooking equipment and kitchen space for food preparation
- running errands for sex worker – collecting dry cleaning, shopping etc.

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Typical services provided by an escort agency that could be considered to be controlling for gain

- paying for advertising
- dealing with phone calls
- arranging appointments
- providing driver/security
- checking clients against the electoral roll
- checking postcodes accord with the address given
- checking arrival and departure for safety reasons
- ensuring clients are not listed as unsafe/possibly dangerous
- recording earnings and payment of agency fees etc., e.g., against credit cards
- providing a rest room for workers working from the escort agency premises, usually supplied with tv, radio etc
- ensuring clients are aware of boundaries and services provided by individual sex workers

You will see from these lists some of the reasons people chose to work for third parties, all of whom are criminalised under current law.

Negative consequences of criminalising clients.

Sex workers don't want it.

Council of Europe Resolution 1579 "Prostitution – Which stance to take?" recommends "respecting the right of prostitutes who freely choose to work as prostitutes to have a say in any policies at national, regional and local level concerning them". There can be no doubt that we are the group who would be most affected by criminalisation of our clients. As one of the participants of the meeting at Open Doors on July 15th attended by Vernon Coaker, a woman with more than ten years experience of selling sex both on street and indoors, said "My clients are the one group of people who don't exploit me – they give me money." It should not be the aim of government to judge and/or punish consensual adult sexual behaviour.

Clients can report abuse, and are less likely to if criminalised.

Clients are the most effective source of information on abuse within the sex industry and there is evidence clients are keen to report this if informed of means to do so – and while laws relating to brothel keeping create a frequent practice of one woman working with a maid, sex workers themselves may not see the treatment of other sex workers in the same workplace. If the intention is to create a law to target those paying for sex with "vulnerable individuals ...those who have been trafficked or exploited" such law will be more effective if those intentions are communicated to those at whom it is aimed – i.e., clients.

Any law which criminalises clients decreases the likelihood they will report anxieties about coercion and trafficking. Thus the introduction of this law would increase perpetuation of the very abuses it aims to target.

Criminalisation drives out the best clients but fails to deter the worst.

Those clients most likely to be deterred by such legislation are the kind of clients we all most welcome – the law abiding, the responsible, the benign. Clients least likely to be affected by this legislation are those who already abuse and take advantage of our vulnerability in law – rapists, robbers, exploiters. If they are not already deterred by existing laws against these crimes, they will not be affected by criminalising paying for sex.

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There is also evidence that a small minority of clients' excitement is increased by a sense of doing something outside the law and that this has affected street sex workers clients. There is every reason to believe the same effect will take place on indoor workers clients, and the last thing that will increase our safety is a sense of being further outside the law.

(b) a new civil order to enable police to close brothels

Terms of the proposal.

As described in the email of 26 September, such orders would target almost every indoor workplace, from a location where two women work together to cut costs and increase safety, to sites where exploitation, coercion and abuse are routine. However, the Home Office press release of 21 September refers to "premises where sexual exploitation takes place". As with "controlling for gain" the definition of a brothel is very broad, including premises where two women work together as equals and even environments of casual sex where no money changes hands, and to our knowledge there is no clear definition of "sexual exploitation".

We see no benefit to extending police powers wholesale and in a way easily open to abuse. If powers are given in law they will always be used: the law is the law, and police will utilise any extension of powers. Existing powers already allow investigation, rescue and prosecution of offenders. Sex work premises suspected of employing illegal workers or of mistreating their workers should be treated in the same way as establishments in other industries. We know from developing workers' rights in other industries what works effectively to protect workers. What is it about the sex industry that requires exceptional handling, other than the social stigma, prejudice and ignorance that usually play a large part in decision-making?

Negative consequences of enabling police to close brothels.

Present law makes no distinction between clean, well run brothels with fair and safe working practices, and those in which workers are coerced, exploited or treated as slaves. Vernon Coaker, in the one meeting with sex workers conducted as part of the consultation, met with people who run flats and want to do so in as safe and legal a way as possible. Despite the fact they have no incentive for doing so, they are eager to pay tax and to offer good working conditions to their staff. Any measure that increases the criminalisation of ordinary, otherwise law-abiding people working in the sex industry will have these effects:

- It increases our alienation from society and the oppressive sense of social exclusion we suffer.
- Anything that further criminalises and drives us underground will drive out good practice in brothel and agency management, but will not deter those who break the law with impunity, bringing sex workers into greater contact with danger and exploitation.
- It exacerbates our alienation from the police, who should be a source of protection and are instead seen as a threat to our businesses and livelihoods. Already many sex workers choose not to report to the police, or experience such reports being dismissed by unconcerned officers.

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Negative consequences of enabling police to close brothels, continued.

- It is unacceptable to give the police extensive powers to arrest across the board and simply hope they will use them only to target abuse. Raids under the Pentameter operations were supposed to be intelligence lead and target trafficking, but there have been instances of police using brothel legislation to arrest UK women working together for their own safety. In addition, there were raids on premises which had previously had positive relationships with police and passed on information regarding suspicions trafficked women or girls aged under 18.
- It increases the likelihood of criminal gangs targeting indoor sex workers for robbery and rape in the knowledge we are unlikely to report crimes against us.
- It decreases the likelihood third parties (managers of brothels and agencies) will report anxieties about coercion and trafficking – there is evidence that third parties will do this, despite the risk of prosecution, and some have been prosecuted as a result of coming to the attention of the authorities in this way, even though their anxieties have been proven correct.
- Whilst we recognise that there are some brothels that cause nuisance to the community (and would welcome clarification of what constitutes nuisance), it is also the case that a small number of individuals from the wider community may harass an otherwise trouble free home or work place and search out reasons to complain. The fact that some members of the community are uncomfortable with the idea of living or working in proximity to sex workers does not constitute “nuisance” on the part of sex workers.
- This will increase the vulnerability of all indoor workers to vigilante action from the local community, who are already being encouraged by ngos to search out information on sex work locations and report them to the local authorities. Sex workers are a vulnerable group and are deserving of protection from harassment, vigilantism and discrimination in their communities.

(c) amendments to the Sexual Offences Act 1985, to remove the requirements of persistence, annoyance and nuisance from the offence of kerb-crawling.

The principal effect of these changes will be to add more unworkable law to statute as criminalisation is extended to men who pause to consult an A-Z in a red light area, and the attribution of a moral agenda to statute as kerb-crawling is seen as something inherently bad regardless of it causing annoyance or nuisance to the community.

The attitudes behind legislation were revealed in the Home Secretary’s reference to the “blight of street prostitution” in her statement to the Labour Party conference. We ask the Home Secretary to recognise that all sex workers are part of the community, not a blight upon it. There is evidence of violence inflicted on street sex workers by so-called community members, and such action is encouraged by this inflammatory and objectifying language. More aggressive prosecution of kerb crawlers does not increase the options and support available to street sex workers, but increases antagonism between street workers and police and decreases street workers’ safety. There is considerable evidence that police crackdowns on kerb crawlers result in a higher number of attacks as greater desperation and looser safety networks lead women to work from un-patrolled locations (i.e., in more deserted areas, further from other sex workers), to make agreements with insufficient pre-negotiation or to accept clients they would otherwise turn down. Dispersal also makes it more difficult for outreach workers to contact sex workers for safe sex counselling, drug rehabilitation or support in pursuing routes out of prostitution.

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Lap dancing clubs.

We fully support stringent application of licensing regulations to lapdance clubs. However, we do not agree that licensing regulations for such clubs need to be changed. The Licensing Act 2003 already gives police and local communities the ability to object to clubs opening on firm quantifiable grounds (the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm), and licensing authorities the ability to turn a license application down if it breaches these grounds. The Licensing Act is not intended to regulate taste, decency, or the moral appropriateness of a form of entertainment, and indeed licensing decisions should not do so - what one individual finds immoral another may not.

Licenses should be granted with a view to satisfying the four conditions the Licensing Act 2003 sets out. Local authorities can impose additional regulations on venues, such as opening times, visibility of outside signage, the distance which dancers should remain away from customers during a performance and the way they should conduct themselves during that performance. We welcome such regulation to ensure the entertainment offered by the venues stays within the law, and that such entertainment is enjoyed by those men and women who choose to enter the clubs whilst having minimum impact on those who prefer not to.

Local communities must have a say in what happens around them, and are able to have this say under the Premises License application system. They should not be able to stop a legitimate business providing a legal form of entertainment, adhering to licensing regulations and frequented by consenting adults (both as staff, workers and customers), from opening on moral grounds.

Requiring these clubs to hold Sex Establishment Licenses would create a dual licensing system which would be cumbersome, costly and is not necessary. Local authorities should receive stronger guidance on how to use existing regulations. Durham MP Roberta Blackman-Woods, who brought the lapdance club licensing question before the House of Commons on June 18, herself acknowledged in her speech to the House that any apparent inadequacies in the current system: "might partly be a lack of confidence among local authorities about how to use the Act, including over-cautious legal guidance".

Jackie Westlake asks in her 'Re: Prostitution Legislation' letter for views "on the impact of legislation on different communities, both positive and negative, which you believe should be taken into consideration". Tougher licensing, where the success of applications could be affected by the moral views of individuals in the local community, may result in lapdance clubs becoming located in out-of-town areas; this isolation may create stigma which would be detrimental to workers, and as with any business in an isolated location make the clubs more likely targets for crime. Any refusal to renew licenses under new conditions would put many legally-employed and hard-working individuals out of work, not just dancers but the staff of the club and all the other businesses such establishments help support (security, cleaning etc.).

We urge the Home Office to keep in mind the plain facts regarding lapdance club licensing, and not allow the licensing system to be perverted to meet a moral agenda.

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Trafficking.

Underlying these debates, though unmentioned in your consultation request, are issues around trafficking and migrant sex work. Minister for Women and Equality Harriet Harman said in the Home Office press release of 21 September, "The trade [human trafficking for sexual exploitation] only exists because men buy sex, so to protect women we must stop men buying sex from the victims of human trafficking." If this were the case trafficking would exist only in sex industry – we have seen from other industries that effective solutions to trafficking can be found, principally by protecting workers' rights.

However, once again UK law fails to protect the vulnerable while imposing on those migrant workers who chose to sell sex. UK law on human trafficking for sexual exploitation (HTfSE) should be altered in order to reflect what the international community, the media, the British people, Parliament and indeed Home Office Ministers perceive to be HtfSE. Therefore S 57-60 of the Sexual Offences Act 2003 should be repealed and replaced with a measure properly reflecting and enforcing the internationally agreed Palermo protocol.

Present UK trafficking law, whilst failing to address the actions of someone who knowingly accommodates trafficked persons in transit for a trafficker (so long as they have no involvement in transport arrangements), can imprison for up to 14 years a person who knowingly gives a prostitute a lift to a brothel, even if they give her the lift for free and at the prostitute's own request.

Article 3 of the Palermo Protocol states

"(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

The absence of the means element in UK trafficking law subverts the whole purpose of Palermo, which is aimed at those who deny individuals their volition. This denial of volition through force, coercion, deceit etc is a constant theme of publicity releases by both the police and the Home Office on trafficking matters, yet volition or lack of it plays no part in the legislation itself.

Male sex work.

The topic of male sex work is completely absent from this consultation, but male and female sellers of sexual services have similar needs. In terms of the male sex industry, the criminalisation of the purchase of sexual services harks back to years before the Wolfenden report, before the legalisation of homosexuality, and when significant damage was inflicted on the gay community as consensual adult sexual relations were seen to require intervention from the state to remain within the realms of 'morality'.

If privately enacted sexual transactions between consenting adults are criminalised in England and Wales, publically disgraced figures would be prosecuted under the letter of the law, and once again, as in the days pre the Wolfenden Report, legislation would decide what sexual practices are 'morally' acceptable for consenting adults to engage in, in private. The proposed criminalisation for the purchase of consensual sexual activity has the potential (from a male sex work perspective) to take gay liberation back 50 years, and increase the vulnerability of both the men who sell sex, and those who purchase it to bribery, corruption and exploitation; and in essence, could push the activity underground.

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Conclusions.

Much of the debate around sex work seems to be strongly influenced by the personal opinions of certain government ministers that prostitution is violence against women. This is an ideological viewpoint contradicted by much academic study of the industry, and not least the voices of sex workers themselves, who campaign for human civil and labour rights as the key to ending our oppression – by social stigma, exploitation and by the state itself.

By binding more tightly the web of criminalisation that surrounds us all, the government increases all our vulnerability, but effects will fall most harshly on the very groups the intention is to help.

Recommendations.

The IUSW calls for decriminalisation of the sex industry as the first essential step towards greater safety, fairness and social inclusion.

But changing the law is not the only way to make sex work safer – the government can prioritise safety and justice more effectively through measures such as:

- Encouraging clients to report concerns about trafficking or coercion, either by a dedicated hotline or through Crimestoppers.
- Resources aimed at those who purchase sex should focus on addressing the perpetrators of violence against sex workers rather than all purchasers of sexual services.
- Reversing government-endorsed restrictions on advertising sexual services in local newspapers, which have driven the industry further underground .
- Taking violence against sex workers seriously by categorising it as hate crime
- Adopting a more human rights-based approach in supporting victims of trafficking, as in Italy
- Increasing funds for support services that meet sex workers' needs.
- Including people from the sex industry in development of policy

A wider range of recommendations are available in the IUSW response to tackling demand for prostitution review, also attached.