

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 2 – Sexual Offences and Sex Establishments

Prostitution

Section 14 Paying for sexual services of a prostitute subjected to force etc: England and Wales

71. This section inserts a new section 53A into the Sexual Offences Act 2003. The new section creates a strict liability offence which is committed if someone pays or promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment. The person responsible for the exploitative conduct must have been acting for or in the expectation of gain for himself or herself or another person, other than the payer or the prostitute.
72. Subsection (2) of the new section provides that it does not matter where in the world the sexual services are to be provided. An offence is committed regardless of whether the person paying or promising payment for sexual services knows or ought to know or be aware that the prostitute has been subject to exploitative conduct. In other words the offence is one of strict liability and no mental element is required in respect of the offender's knowledge that the prostitute was forced, threatened, coerced or deceived.
73. Subsection (3) states that a person engages in exploitative conduct if he or she uses force, threats (whether or not relating to violence) or any other form of coercion, or if he or she practices any form of deception.
74. Subsection (4) provides that the maximum penalty for this offence is a fine not exceeding level 3 on the standard scale, currently £1000.
75. The terms of "prostitute", "prostitution" and "payment" as used in this section are defined in section 51 of the Sexual Offences Act 2003.

Section 15 Paying for sexual services of a prostitute subject to force etc: Northern Ireland

76. **Section 15** amends the Sexual Offences (Northern Ireland) Order 2008 so as to create an offence in Northern Ireland which mirrors the offence created in England and Wales by section 14.

Section 16 Amendment to offence of loitering etc for the purposes of prostitution

77. This section amends the offence of loitering or soliciting for the purposes of prostitution, as set out in section 1 of the Street Offences Act 1959 ("the 1959 Act"). Under section 1 of the 1959 Act it was an offence for a "common prostitute" (whether male or female) to loiter or solicit in a street or public place for the purpose of prostitution.

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78. Subsection (2) removes the term “common prostitute” from section 1 of the 1959 Act, but inserts the word “persistently” so that the offence is committed only if the person acts persistently.
79. Persistent conduct is defined by the amendments made by subsection (3) as conduct which takes place on two or more occasions in any three month period.
80. The amendments made by subsection (3)(b) mean that this offence is committed only by those offering services as a prostitute, not by those receiving such services. (Those receiving services may however be committing offences under section 19 or 20 of the Act.)
81. Subsection (4) repeals section 2 of the 1959 Act, which allows a person cautioned for an offence under section 1 of that Act to apply to a magistrates’ court to have the caution removed from the police record.
82. Subsection (5) provides that in deciding whether a person’s conduct is persistent any conduct that took place before the commencement of this section will be disregarded.

Section 17 Orders requiring attendance at meetings and Schedule 1 Schedule to the Street Offences Act 1959

83. Subsections (1) and (2) amend section 1 of the 1959 Act to introduce a new penalty for those convicted of loitering or soliciting for the purpose of prostitution, allowing the court to make a rehabilitative order instead of imposing a fine or any other penalty.
84. The order will require the offender to attend a series of three meetings with a named supervisor or another person directed by the supervisor. The purpose of the order is to assist the offender, through attendance at those meetings, to address the causes of their involvement in street prostitution and to find ways of ending that involvement. The offender may be the subject of only one order at any time.
85. Subsection (3) inserts a new section 1A into the 1959 Act, and provides further details about the new order.
86. An order can only be made if a suitable person has agreed to act as ‘supervisor’. A person is only suitable to act as a supervisor if that person appears to the court to have the appropriate qualifications or experience for helping the offender to make the best use of the meetings.
87. The order must specify the local justice area in which the offender resides or will reside while the order is in force. The order must also specify a date by which the three meetings must take place. This must be no later than six months from the date the order is made.
88. Specific details about the time, location and duration of the three meetings will not be included in the order. These will be at the discretion of the supervisor, who is responsible for making arrangements necessary to enable the three meetings to take place and notifying the court that the order has been complied with.
89. Subsection (4) introduces Schedule 1 to the Act which inserts a new Schedule into the 1959 Act. This new Schedule makes further provision about the new order, including the consequences of breach and the mechanism for amending an order.
90. Paragraph 1 of the new Schedule to the 1959 Act defines ‘the offender’ and ‘the supervisor’ for the purposes of the Schedule and provides that a failure to attend any meeting at the time and place directed by the supervisor constitutes failure by the offender to comply with the order.
91. Paragraph 2 of the new Schedule states what will happen when it appears to the supervisor that the offender has breached the order. Sub-paragraph (1) requires the supervisor to notify a justice of the peace if the supervisor is of the opinion that the

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offender has failed to comply with the order without reasonable excuse. If it appears to the justice of the peace that the offender has failed to comply with the order, he may issue a summons, under sub-paragraph (2), requiring the offender to appear at a specified time at the appropriate court.

92. Paragraph 3 of the new Schedule deals with instances where the offender fails to appear in answer to a court summons issued under paragraph 2. In such cases, the magistrates' court may issue a warrant for the arrest of the offender, requiring the offender to be brought before the appropriate court.
93. Paragraph 4 of the new Schedule sets out the powers of a magistrates' court when an offender appears or is brought before it following a summons or warrant issued under paragraph 2 or 3, and it is proved to the court's satisfaction that the offender has failed to comply with the order without a reasonable excuse. In such cases, the court must revoke the order, if it is still in force, and may deal with the offender for the original offence, taking into account the extent to which the offender complied with the order. The court has the power to impose any penalty that would have been available to it if the offender had just been convicted by the court of the original offence. This includes making another order under new section 1(2A) of the 1959 Act. Breach of an order is not in itself a criminal offence.
94. Under paragraph 4(4) a person sentenced under paragraph 4 may appeal against the sentence to the Crown Court.
95. The procedure to be followed to change the supervisor specified in the order is set out in paragraphs 5 and 6 of the new Schedule. It is only possible for the supervisor to be changed if the current supervisor is unable to continue acting in that capacity.
96. The current supervisor, the offender, or a police officer may apply to the appropriate court to specify a different supervisor in the order. If the court is satisfied that the supervisor is unable to continue in his or her role, it must either amend the order to include a different supervisor, or, if no other supervisor is available, revoke the order. Any new supervisor must be a suitable person as defined in the new section 1A of the 1959 Act.
97. Paragraph 6 of the new Schedule provides that if the court revokes the order (because no other supervisor is available) it can deal with the offender for the original offence, imposing any penalty which would have been available to it if the offender had just been convicted by the court of that offence. It cannot, however, impose another order under new section 1(2A) of the 1959 Act and it must take into account the extent to which the offender complied with the original order.
98. Paragraph 7 of the new Schedule deals with a change of local justice area specified in the order. Both the offender and the supervisor are able to apply for the specified local justice area to be changed to the area in which the offender resides or will reside. The court must make the change following an application from the supervisor and may do so following an application from the offender.
99. Paragraph 8 of the new Schedule provides that if a court proposes to change the supervisor (or revoke the order) following an application under paragraph 5 made by a person other than the offender, it must summon the offender to appear. If the offender fails to attend in answer to the summons, the court may issue a warrant for the offender's arrest.
100. Paragraph 9 of the new Schedule provides for the detention of an offender when arrested under a warrant issued under the Schedule (for example, following a breach of an order and subsequent failure to answer a summons) if the offender cannot be brought immediately before the court named in the warrant.
101. In such cases, the offender must be brought before any youth court (if the offender is under 18) or any magistrates' court (if the offender is 18 or over) as soon as practicable

following arrest and in any event before the end of the period of 72 hours beginning with the time of the arrest.

102. If under 18, the offender must be detained in a place of safety within the meaning of the Children and Young Persons Act 1933. Section 107 of that Act defines “place of safety” as: a community home provided by a local authority or a controlled community home, any police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person.
103. Paragraph 10 of the new Schedule specifies the procedure to be followed if the offender is brought before a court other than that named in the warrant. The alternative court is able either to order the release of the offender or to remand him to appear at a later date before the appropriate court so named. Section 128 of the Magistrates' Court Act 1980 will apply with minor amendments. This section deals with the powers of magistrates' courts to remand in custody or on bail.
104. An offender committed to custody under paragraph 10 will be committed to prison, unless he or she is aged under 18 at the time of committal, in which case he or she will be committed to accommodation provided by or on behalf of a local authority.
105. Paragraph 11 of the new Schedule states the procedure for adjourning a hearing relating to an offender held by either a youth court or other magistrates' court under the Schedule.
106. Paragraph 12 of the new Schedule deals with the process of notifying the offender, the supervisor and the relevant court(s), following any change to the terms of the order.

Section 18 Rehabilitation of offenders: orders under section 1(2A) of the Street Offences Act 1959

107. This section deals with rehabilitation periods for those given orders under the new section 1(2A) of the 1959 Act.
108. Subsection (2) amends section 5 of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) to apply a specific rehabilitation period for those sentenced to an order under section 1(2A) following conviction for loitering or soliciting. The rehabilitation period is six months from the date of conviction.
109. Subsection (3) inserts a new subsection (3A) into section 6 of the 1974 Act. This provides for a case in which an offender is dealt with again for the offence for which the order was made, the rehabilitation period for the original sentence has ended and the rehabilitation period for the new sentence ends later than that for the original order. The effect is that the offender is not treated as a rehabilitated person under the 1974 Act until the longer rehabilitation period has expired.

Section 19 Soliciting: England and Wales

110. This section creates a new single offence of soliciting. The section inserts a new section into the Sexual Offences Act 2003, which replaces both sections 1 and 2 of the Sexual Offences Act 1985. These two sections currently cover the offences of kerb-crawling in a street or public place (section 1) and persistent soliciting in a street or public place (section 2) for the purposes of prostitution. Both activities require an element of persistency in relation to the person kerb-crawling or soliciting in order for an offence to have been committed or, in the case of kerb-crawling, for the soliciting to be shown to be likely to cause nuisance or annoyance to the person solicited or nuisance to others in the neighbourhood.
111. Subsection (1) of the new section states that it is an offence for a person in a street or public place to solicit another person for the purpose of obtaining the person's sexual services as a prostitute. Subsection (2) makes it clear that a person in a street or public place includes a person in a vehicle in a street or public place. The new section removes the need for persistency making kerb-crawling or soliciting punishable on the first

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occasion. In the case of kerb-crawling it also removes any requirement for the soliciting to be shown to cause nuisance or annoyance to others. Subsection (3) provides that the maximum penalty for this offence will be a fine not exceeding level 3 on the standard scale, currently £1000.

Section 20 Soliciting: Northern Ireland

112. **Section 20** amends the Sexual Offences (Northern Ireland) Order 2008 so as to create an offence in Northern Ireland which mirrors the offence created in England and Wales by section 19.