

# IMPROVING RIGHTS FOR SEX WORKERS IN ENGLAND & WALES

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## Executive Summary

Despite something of a move towards a social conceptualisation of sex work as 'real work', the legal approach to prostitution in England and Wales remains heavily influenced by archaic criminal law.

Peripheral elements of sex work remain illegal. Labour law has failed to move beyond this to recognise sex workers and provide associated rights protections. This is highly problematic given the precarious living and working arrangements of many in the sex industry.

This policy brief focuses on domestic sex workers in England and Wales. It identifies 3 key labour law issues relevant to the recognition and protection of sex workers, and outlines recommendations for reform in national law.

# Issues

## 1. Lack of worker status for sex workers

Under labour law sex workers receive no statutory protection. The law generally extends to 'employees' or 'workers', sex workers hold neither legal status. Even those who work under intermediaries are unlikely to have a formal contract of employment, excluding them from employee protections. Protection as a worker is also likely out of reach as many will be framed as self-employed, so exempt.

Denying this worker status is equivalent to refusing sex workers all labour law protection, leaving the most vulnerable open to abuse and exploitation. This contributes to the 72,000 sex workers in the UK (Home Affairs Committee, 2016) left without protection for minimum wage, working hours and social benefits such as statutory sick pay. Without these basic rights, many sex workers will be forced to accept more dangerous working conditions, work extra hours, and be left with no avenue when they are unable to work due to illness or injury.

This is a result of the narrow legal construction of 'worker' which relies heavily on formal contractual relations.

**Reform:** the definition of worker ought to be extended to encompass sex workers, taking account of the realities of their working arrangements and the inherent need for protection they create. This should build on the approach of the Supreme Court in the recent Uber judgment (2021) which held drivers were in fact workers contrary to a strict legal construction of their status.

This change should be accompanied by enquiries into social welfare law and opportunities to create a safety net of accessible welfare provision for all sex workers.

## 2. Unsafe working conditions

Unsafe working conditions are promoted by the criminal law surrounding sex work. While selling sex is perfectly legal, some related activities are not, for example working together or in a brothel environment. Sex workers must work alone or risk criminal charges. This creates unsatisfactory working conditions for lone workers who are subject to an increased risk when meeting clients who may be dangerous or abusive. Legal obstacles to group working must be removed to ensure minimum standards of safety.

**Reform:** brothels and group working should be decriminalised to help mitigate the risks against individual sex workers and as a basis for securing a safe work environment.

### Sources

1. House of Commons, Home Affairs Committee 'Prostitution: Third Report of Session 2016-17
2. Uber BV v Aslam [2021] UKSC 5

## 3. Lack of bargaining power

The right to join and collective bargain through a trade union is protected by the Human Rights Act 1998 as well as international conventions, such as Conventions 87 and 98 from the International Labour Organisation.

However, prostitute collectives including the Sex Worker Advocacy and Resistance Movement and English Collective of Prostitutes are not currently recognised as trade unions. They are considered NGOs. The lack of legal status as trade unions effectively ties up their hands as they cannot perform effective collective bargaining and other trade union activities.

Without effective trade union activities, it is incredibly hard for the sex workers to demand better working conditions and wages.

**Reform:** the collectives of sex workers should be recognised as trade unions and enjoy the same capabilities as unions in other industries.

Sex workers are also often excluded from discussion regarding their rights and interests, despite being the "subject and object" of the sex industry. Their voices and choices have not been given enough emphasis, and they are underrepresented in the current discussion of future policies and reforms. This calls for a need for unionisation so that the union can convey their voices more effectively.

# Good Practice



List of Countries	Is Prostitution legal within these countries?	Model (legal stance in prostitution)	Are brothels allowed to operate?	Notes
Netherlands	Legal	Legalisation	Brothels can operate	Organised and regulated
UK (specifically GBR)	Limited legality	Abolitionism	Brothels are illegal	Prostitution is legal, brothels and solicitation illegal
New Zealand	Legal	Legalisation	Brothels can operate	Organised and regulated
Germany	Legal	Legalisation	Brothels can operate	Organised and regulated
Switzerland	Legal	Legalisation	Licensed Brothels are available	Organised and regulated. However, pimping and forced prostitution still illegal.
Hungary	Legal	Legalisation	Licensed Brothels are available	Organised and regulated
Greece	Legal	Legalisation	Licensed Brothels are available	Organised and regulated. Illegal prostitution also common.
Australia (New South Wales)	Legal	Legalisation	Brothels can operate – Prostitution is almost completely decriminalised	Varies by State territory. New South Wales brothels need not to be licensed and are subjected to local council planning laws

## Recommendations

1. The **legal definition** of “worker” under the Employment Rights Act 1996 should be **expanded** to cover prostitutes that work for brothels.
2. A **purposive approach** should be adopted to take into consideration of the **realities of the relationship** between sex workers and their “employers” when determining their legal status as workers.
3. The above labour law reform should be accompanied by enquires into **social welfare provision** that can provide a safety net for **all sex workers**.
4. A **full decriminalisation** of consensual adult prostitution including prostitution-related activities such as soliciting, working in groups, brothel-keeping and so on. Child prostitution and any prostitution involving force and coercion should still be targeted and penalised by the criminal law.
5. Granting **recognition** to sex workers' collectives as **trade unions**, facilitating the **meaningful discussions** involving **sex workers representatives**, policymakers and city councils that should be held with sex workers as **equal parties**.



# Sources

Crown Prosecution Service (2019) *Prostitution and Exploitation of Prostitution Legal Guidance*. Available at: <https://www.cps.gov.uk/legal-guidance/prostitution-and-exploitation-prostitution> (Accessed: 9th March 2022)

Cruz K, The Future of Sex Work: Labour unfreedom & Criminality at work (2019) *Futures of Work*. Available at: <https://futuresofwork.co.uk/2019/05/24/the-future-of-sex-work-labour-unfreedom-and-criminality-at-work/?msclkid=6b9bb6d8a54811ec96e06ae210b1c0b5> (Accessed 9th March 2022)

Home Affairs Committee (2016) *'Prostitution: Third Report of Session 2016-17'*

O'Neill M. (2010) 'Cultural Criminology and Sex Work: Resisting Regulation through Radical Democracy and Participatory Action Research (PAR)' *Journal of Law and Society* Vol. 37, No. 1 pp. 210-232. Available at: <https://www.jstor.org/stable/25622015> (Accessed 8th March 2022)

'Safer Sex in the City: The Experience and Management of Street Prostitution' *Contemporary Sociology*, 39(5), pp. 624. <https://journals.sagepub.com/doi/10.1177/0094306110380400a> (Accessed 10th March 2022)

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Sullivan B. (2008) 'Working in the Sex Industry in Australia: The Reorganisation of Sex Work in Queensland in the Wake of Law Reform' (2008) *Labour & Industry* 18, pp 73-92 Available at: <https://www.tandfonline.com/doi/abs/10.1080/10301763.2008.10669375> (Accessed 9th March 2022)

World Population Review (2022) Countries where Prostitution is Legal 2022. Available at <https://worldpopulationreview.com/country-rankings/countries-where-prostitution-is-legal> (Accessed: 11th March 2022)

## Legal

### Caselaw

Uber BV v Aslam [2021] UKSC 5

### Legislation (England and Wales, UK)

Employment Rights Act 1996, s230(3)

Human Rights Act 1998

Sexual Offences Act 1956, s33

Street Offences Act 1959, s(1) (amended by Policing and Crime Act 2009, s16)

### International Conventions

International Labour Organisation, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

International Labour Organisation, Right to Organise and Collective Bargaining Convention, 1949 (No. 98)