Introduction

1. The Government recognises the harm and exploitation that can be associated with prostitution, and that many of those involved in prostitution can be particularly vulnerable to sexual and other violent crime. We are committed to ensuring that legislation enables the police and others to tackle such exploitation, and support those who wish to exit.

2. Prostitution is a complex issue, and that complexity is reflected to a degree in the relevant legislation, from the Sexual Offences Act 1956, to the Serious Crime Act 2015. The legislation is summarised at Annex A. The most recent substantive changes were via the Policing and Crime Act 2009. The legislation is focused as far as possible on tackling exploitation and minimising harm.

Criminal Sanctions on those who buy and sell sex

3. As set out at Annex A, the offences that apply directly to the buyers of sex are:
   a. Soliciting a person in a street or public place for the purpose of obtaining sexual services from a prostitute (s51A Sexual Offences Act 2003, as amended by the Policing and Crime Act 2009). The maximum penalty is a level 3 fine, currently £1000.
   b. Paying for the sexual services of a prostitute subjected to force etc., including threats (whether or not relating to violence) or any other form of coercion or any form of deception (s53A Sexual Offences Act 2003, introduced via the Policing and Crime Act 2009). This is a strict liability offence, i.e. it is not a valid defence for a defendant to argue that he did not know the prostitute had been subject to force. The maximum penalty is a level 3 fine (£1000).

4. There is only one offence that applies directly to those selling sex, viz: Loitering or soliciting for purposes of prostitution (s1 Street Offences Act 1959, as amended by the Sexual Offences Act 2003, the Policing and Crime Act 2009, and the Serious Crime Act 2015). The most recent amendment stipulated that the offence applies to adults only. It is an offence for an adult to persistently solicit or loiter in a street or public place for the purposes of prostitution. Conduct is persistent if it takes place at least twice in three months. The maximum penalty is a level 3 fine or an Engagement and Support Order.

5. The sanctions that therefore apply in terms of penalties for offences linked to buying and selling sex are comparable (a level 3 fine, currently £1000).

6. However, there are a number of offences that apply to those controlling or exploiting others via prostitution, and these carry significantly higher sanctions. They include:
a. Exploitation through prostitution, including *causing or inciting prostitution for gain* and *controlling prostitution for gain*, both of which have a maximum penalty of seven years (s52 and s53, Sexual Offences Act 2003).

b. Brothel-related offences. The main offence is *keeping a brothel used for prostitution*, the maximum penalty for which is 7 years (s33 Sexual Offences Act 1956). It is also illegal for a landlord to *let premises to be used as a brothel*, or a tenant to *permit premises to be used as a brothel or for prostitution*, maximum penalty of six months (s34-36, Sexual Offences Act 1956).

c. *Trafficking into, within and out of the UK for sexual exploitation* (s57-59 Sexual Offences Act 2003) cover both adults and children and carry penalties of up to 14 years.

d. Exploitation of children:
   
i. *Paying for the sexual services of a child* (s47 Sexual Offences Act 2003), for which the maximum penalty is life when the child is under 13; otherwise 14 years when the child is under 16, or seven years if the child is 16 or 17.

   ii. *Causing or inciting sexual exploitation of a child, controlling a child in relation to sexual exploitation, and arranging or facilitating sexual exploitation of a child* (s48-50 Sexual Offences Act 2003), which all carry a maximum penalty of 14 years. These offences were amended by the Serious Crime Act 2015 to remove references to ‘child prostitution’ and ‘child pornography’.

7. Sentencing guidelines are issued by the independent sentencing council. The majority of offences linked to exploitation through prostitution are contained in the Sexual Offences Act 2003, and guidelines for sentences for that act were revised and strengthened in late 2013. The Council made many changes to the guideline following consultation, for example, to the factors that should be considered in relation to harm and culpability, sentence levels and mitigating factors. Changes included:
   
   - allowing proper consideration of the vulnerability of the victim such as through age or disability or a background of physical or emotional abuse;
   
   - broadening the wording of various aggravating factors to ensure they cover the great range of offending, for example in relation to abuse of trust where an offender has abused the trust that may come with status or image; and
   
   - adding various new aggravating factors. In relation to exploitation offences, ‘threats of exposure’ to family or others is included to cover situations where this is used as a further means of controlling victims.

**Enforcement response**

8. Local areas are in the best position to identify and respond to specific issues linked to prostitution. Police forces retain a degree of discretion in applying legislation appropriately and proportionally.
9. Police forces are assisted in doing so by the National Policing Lead for prostitution’s strategy, the current draft of which is currently being consulted on. It stresses the priority of the public protection duty that police services have in relation to the safety of those involved in prostitution. The main ethos behind the strategy is to reduce threat, harm and risk to all individuals as well as increasing public confidence, and encourages work with partner organisations offering support services for those involved in prostitution.

10. The Home Office has also provided practical support to improve the response to prostitution. This has included reviewing effective practice in terms of policing, exiting, minimising harm, holistic support and general multi agency working in prostitution (published in October 2011, and available on the Home Office website).

11. In addition, we have supported the establishment of the National ‘Ugly Mugs’ Scheme to help protect people involved in prostitution from violent and abusive individuals. A Home Office funded pilot in 2012 brought together a number of locally-run ‘Ugly Mugs’ projects, which encourage sex workers to report incidents of violence and abuse. Details of perpetrators are then shared with other people involved in prostitution to help improve safety, and can be passed on to the police if the victim consents. The scheme, which involves partnership working with local police forces and the National Crime Agency, has been successful in encouraging victims of sexual violence who are involved in prostitution to report incidents, providing intelligence and improving access to justice.

Crown Prosecution Service

12. It is recognised that prostitution is a complex issue. The role of the CPS is to prosecute those who force others into prostitution, who exploit abuse and harm them and our joint approach with the police, with the support of other agencies, is to help those involved in prostitution to develop routes out. However, voluntary engagement in sex work is also a matter of personal choice and the CPS does not promote the need to end prostitution. A summary of the CPS’s position and prosecution figures are at Annex B.

13. When making the decision to prosecute, the CPS reviews each case referred to them from the police in accordance with the two-stage test as set out in the Code for Crown Prosecutors (the Code); the evidential stage and the public interest stage. At the evidential stage of the test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. If the case meets the standard required at the evidential stage, prosecutors must then go on to decide if a prosecution is required in the public interest.

14. In addition to the public interest factors set out in the Code, CPS legal guidance on exploitation of prostitution provides further public interest aims and considerations which reflect the national policing strategy.
15. Generally the more serious the incident is, the more likely that a prosecution will be required - with the aim being to prevent people leading or forcing others into prostitution and to target those who make a living from the earnings of prostitutes. Charging practice is to tackle those who recruit others into prostitution for their own gain or someone else’s by charging offences of causing, inciting or controlling prostitution for gain, or trafficking for sexual exploitation. In addition to attracting significant sentences, these offences also provide opportunities for seizure of assets through Proceeds of Crime Act orders and the application of Trafficking Prevention Orders. The CPS has recently successfully applied for Trafficking Prevention Orders against 8 defendants (in separate cases) convicted of trafficking into prostitution and controlling prostitution for gain.

16. For those offences which are summary only – loitering and soliciting, kerb crawling, paying for sexual services and advertising prostitution, the police retain the discretion not to arrest or report those suspected of committing an offence, or they can charge the offence without reference to a prosecutor, regardless of whether the suspect intends to plead guilty or not guilty.

17. When considering prosecution for offences committed by those involved in prostitution (loitering or soliciting for prostitution), guidance to prosecutors is to encourage those offering services as a prostitute to find routes out of prostitution and to deter those who create the demand for it. All CPS Areas have developed agreements with respective police forces focusing on rehabilitation through cautions and encouragement to access support services. In cases where charging is necessary, the police should consider whether a section 17 Engagement and Support Order is appropriate.

18. It is accepted that there are higher levels of violence committed against street sex workers compared with off-street workers; therefore those offering prostitution services might take steps to improve their safety including by working together and employing the services of a maid. Here, there is greater discretion for prosecutors when considering offences of keeping a brothel where the maid may be assisting in its operation. To assist in assessing the involvement of the maid when making a decision on charging, the CPS guidance directs prosecutors to a number of models ranging from minor involvement to serious crime.

**Modern Slavery Act**

19. The Modern Slavery Act 2015 gives law enforcement the tools to tackle modern slavery, ensures that perpetrators can receive suitably severe sentences, enhances support and protection for victims, and ensures large businesses will report annually on what they doing to stop modern slavery occurring in their supply chains.

20. The Government has rapidly implemented most provisions in the Modern Slavery Act 2015. A large package of provisions was commenced on 31 July 2015 including new criminal offences, tougher sentences, Slavery and Trafficking Prevention and Risk Orders, the Independent Anti-Slavery Commissioner provisions, a statutory defence for victims and Slavery and Trafficking Reparation
Orders. A further series of provisions was commenced in Autumn 2015 including transparency in supply chains, the duty to notify and the presumption of age.

21. It is too early to properly assess the impact of the Modern Slavery Act 2015 on modern slavery, including in relation to trafficking for the purposes of prostitution. The new criminal offences only apply to conduct which took place after 31 July 2015. Trials reaching court now are prosecuted under the previous legislation. Therefore we would not expect to see the effect of the new Act on prosecutions, convictions or sentencing for modern slavery offences until criminal justice statistics for 2016 become available. Before the Act came into force, there was an upward trend in the identification of both potential victims of trafficking for sexual exploitation and potential victims of modern slavery overall (measured through National Referral Mechanism data and the National Crime Agency strategic assessment on the nature and scale of human trafficking), as well as prosecutions and convictions for modern slavery offences between 2012 and 2013, and between 2013 and 2014.

22. There is no specific criminal offence of trafficking for the purposes of prostitution. We propose to improve our intelligence assessment of modern slavery activity, including in relation to the threat from trafficking for the purposes of prostitution. This will help us track this specific issue over time.

23. This will form part of the work of new Modern Slavery Threat Group, which met for the first time in September 2015, and brings together the key operational partners under the Chairmanship of the National Policing Lead Chief Constable Shaun Sawyer. The Threat group will improve the coordination of our operational response and ensure that we make best use of the new Modern Slavery Act powers.

24. An important priority for the Home Office and the Threat Group is to better understand the problem of modern slavery in the UK in order to improve our operational response. The Threat Group has committed to a new process which will to go beyond looking at the problem through the broad categories of sexual exploitation, labour exploitation, criminal exploitation and domestic servitude. Therefore intelligence from a range of agencies will be brought together on key themes relating to modern slavery. The Home Office has proposed the threat from trafficking for prostitution as a high priority area for early thematic assessment under the new process. The threat from modern slavery is set out publicly on an annual basis through the National Crime Agency strategic assessment on the nature and scale of human trafficking.

25. There are also already early indications that key powers under the Modern Slavery Act 2015 are being used, and provide a new way to prevent trafficking relating to prostitution. Slavery and Trafficking Prevention Orders allow the court to restrict the behaviour of those convicted of modern slavery offences anywhere in the world in any way necessary to prevent the harm that would be caused by further modern slavery offending.
Case study of the use of a Slavery and Trafficking Prevention Order in a 2015 case:

In a recent case, a Polish male pleaded guilty to 16 charges of trafficking Polish women into and around the UK for the purpose of sexual exploitation and 16 charges of intentionally controlling the activities of those women in prostitution for gain between 2012 and 2015, as well as money laundering offences. His co-accused, who was his girlfriend, pleaded guilty to 6 charges of trafficking for sexual exploitation.

The male defendant ran seven brothels across the UK and used an on-line advertising service to advertise the services of the women under his control. He was responsible for making and financing the travel arrangements to bring prostitutes to the UK from Poland. Investigation showed that he moved the girls from brothel to brothel, as well as directing punters to the girls via mobile phone texts. He kept half of the earnings of the prostitutes he controlled.

In this case the judge granted the first Slavery and Trafficking Prevention Order against the male defendant. The provisions in the Order restrict the defendant’s travel, prevent him organising transport and accommodation for anyone, prevent him possessing identity documents belonging to others, prevent him contacting any of his 16 named victims, restrict him to owning one mobile phone, prohibit him from residing with anyone connected with the sex industry or travelling with them in a car, prevent him operating accounts on adult sites on the internet and include a requirement to report his name and address to the police whenever he may be resident in the UK. This is effective for 5 years and can be renewed. Breach of the order is a criminal offence punishable by up to 5 years in prison.

Exiting Prostitution

26. The Government is clear that people who want to leave prostitution should be given every opportunity to find routes out. ‘Exiting’ prostitution was a key strand of the review of effective practice in responding to prostitution published by the Home Office in 2011 (hyperlink). This includes use of Engagement and Support Orders, introduced via the Policing and Crime Act 2009. This provides the courts with an alternative to fining those convicted of loitering or soliciting, and instead requires attendance at meetings with a court appointed supervisor. This is deemed to be an effective tool in providing support and access to services that might otherwise be out of reach, including medical care, housing and drug/alcohol dependency programmes.

Potential further measures

27. The Government is aware of other jurisdictions’ differing legislative models to approach the issues that can be associated with prostitution. However, we have not seen unequivocal evidence that any one approach is more effective at tackling harm and exploitation, which remains our priority. Recent developments in Northern Ireland, where in July 2015 legislation was commenced that criminalises all purchasing of sex whilst decriminalising all selling, provides an opportunity to observe the implementation and impact of such a change.
Conclusion

28. Within the context of the complex issues linked to prostitution, the clear priority to protect an often vulnerable group from sexual and other violent crime is shared across Government and the criminal justice system.

29. Current legislation and the sanctions available reflect this complexity, as well as emphasising the focus on minimising the harm and exploitation that can be associated with prostitution. This, in combination with appropriate use of Police, and Crown Prosecution Service discretion in the application of the legislation, results in the burden of criminality falling heaviest on those who exploit.
Annex A: Prostitution legislation in England and Wales

In summary, the acts of buying and selling sex are not in themselves illegal in England and Wales. However, many activities that can be associated with prostitution are offences. This includes activities linked to exploitation, such as controlling prostitution, or managing a brothel, and activities that can present a public nuisance, such as buying or selling sex in public.

The relevant legislation is spread over several Acts, with the most recent significant changes made via the Policing and Crime Act 2009 and the Sexual Offences Act 2003, which introduced offences related to the exploitation of those involved in prostitution. Most recently, the Serious Crime Act 2015 replaced references to ‘child prostitution’ in statute with ‘sexual exploitation of a child’.

Prostitution policy and legislation are devolved matters, and it is open to both Scotland and Northern Ireland to legislate separately. Most distinctly, as of 1st June 2015, it is illegal to pay for sex in Northern Ireland.

All prostitution legislation is gender-neutral.

Controlling and trafficking

- The offences principally directed against those who exploit others through prostitution include controlling prostitution for gain and causing or inciting prostitution for gain both of which have a maximum penalty of seven years (s53 and s52, Sexual Offences Act 2003).

- It is illegal to keep a brothel, i.e. a venue where more than one prostitute works (not necessarily at the same time). The main offence is keeping a brothel used for prostitution, the maximum penalty for which is 7 years (s33 Sexual Offences Act 1956, with the maximum penalty amended by Sexual Offences Act 2003). It is also illegal for a landlord to let premises to be used as a brothel, or a tenant to permit premises to be used as a brothel or for prostitution, maximum penalty of six months (s33-36, Sexual Offences Act 1956)

- The 2003 Act introduced the offences of trafficking into, within and out of the UK for sexual exploitation (s57-59). These offences cover both adults and children and carry penalties of up to 14 years.

- The Policing and Crime Act 2009 amended the 2003 Act to introduce closure orders. These allow a police constable to apply to a court for an order closing premises associated with specified prostitution or pornography related offences for up to three months (which can be extended by up to three months if the court deems it necessary. However the total period for which the order has effect must not exceed six months).

Children

- It is always illegal to buy sex if the seller is under-18. The 2003 Act introduced an offence of paying for the sexual services of a child (s47), for which the maximum penalty is life when the child is under 13; otherwise 14 years when the child is under 16, or seven years if the child is 16 or 17.
• The 2003 Act also introduced offences specifically in respect of the exploitation of children and young people through prostitution or pornography. These were amended by the Serious Crime Act 2015 to remove references to ‘child prostitution’ and ‘child pornography’. The offences of causing or inciting sexual exploitation of a child, controlling a child in relation to sexual exploitation, and arranging or facilitating sexual exploitation of a child (s48-50) carry a maximum penalty of 14 years.

• The Serious Crime Act 2015 also amended s1 of the Street Offences Act 1959 – loitering or soliciting for the purposes of prostitution (see below regarding street-based prostitution), so that it applies only to adults, i.e. children involved in prostitution are not criminalised.

**Paying for sex**

• Soliciting a person in a street or public place for the purpose of obtaining sexual services from a prostitute is illegal under the Sexual Offences Act 2003 (as amended by the Policing and Crime Act 2009). This replaced the old offences of ‘kerb crawling’ and ‘persistent soliciting’ (Sexual Offences Act 1985) and includes a person soliciting from a vehicle in a street or public place. The maximum penalty is a level 3 fine.

• The 2003 Act was amended by the Policing and Crime Act 2009 to introduce an offence which made it illegal to pay for the sexual services of a prostitute subjected to force, threats (whether or not relating to violence) or any other form of coercion or any form of deception of a kind likely to induce or encourage the prostitute to provide those services. It is a strict liability offence, i.e. it is not a valid defence for a defendant to argue that he did not know the prostitute had been subject to force etc. The maximum penalty is a level 3 fine.

**Men and women involved in street-based prostitution**

• The Street Offences Act 1959 (as amended by the Sexual Offences Act 2003, the Policing and Crime Act 2009, and the Serious Crime Act 2015) criminalises loitering or soliciting for purposes of prostitution. It is an offence for an adult to persistently solicit or loiter in a street or public place for the purposes of prostitution. Conduct is persistent if it takes at least twice in three months. The maximum penalty is a level 3 fine or an Engagement and Support Order.

• In terms of exiting and support, the Policing and Crime Act 2009 introduced Engagement and Support Orders. These orders provide the courts with an alternative to fining those convicted of loitering or soliciting, and instead requires attendance at meetings with a court appointed supervisor. This helps provide support and access to services that might otherwise be out of reach, including medical care, housing and drug/alcohol dependency programmes.

**Advertising prostitution**

• The Criminal Justice and Police Act 2001 made placing of advertisement relating to prostitution an offence. This only applies to public telephones (although the Secretary of State may, by order, apply the offence to any specified public structure). Maximum penalty is six months imprisonment and/or an unlimited fine.
Annex B – Crown Prosecution Service additional information

The relevant CPS statements on prostitution can be found here: http://www.cps.gov.uk/legal/p_to_r/prostitution_and_exploitation_of_prostitution/

Prostitution is addressed as sexual exploitation within the overall CPS Violence Against Women (VAW) strategy because of its gendered nature. As with other VAW crimes, a multi-agency approach is needed to enable women involved in prostitution to develop routes out of prostitution, and to provide the most appropriate support.

Statistics on prostitution related offences:

Table 1 outlines the CPS data collected on prostitution\(^1\).

In 2014-15 there were 83 prosecutions started for controlling prostitution compared to 58 in the previous year. The number of kerb crawling prosecutions that were commenced fell slightly from 237 offences prosecuted in 2013-14 to 227 in 2014-15. Brothel keeping offences rose. Prosecutions started for offences of advertising prostitution (through carding in public places) fell from 91 in 2013-14 to 37.

Offence data is not available by gender of defendant or victim.

Table 1: VAWG crime prosecutions: prostitution offences

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<tr>
<td>A Control of prostitution</td>
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<tr>
<td>Causing or inciting prostitution for gain</td>
<td>11</td>
<td>24</td>
<td>19</td>
<td>11</td>
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<td>25</td>
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<tr>
<td>(s52 Sexual Offences Act 2003)</td>
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<td>Controlling prostitution for gain</td>
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<td>87</td>
<td>61</td>
<td>39</td>
<td>49</td>
<td>58</td>
</tr>
<tr>
<td>(s53 Sexual Offences Act 2003)</td>
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<tr>
<td>TOTAL</td>
<td>98</td>
<td>111</td>
<td>80</td>
<td>50</td>
<td>58</td>
<td>83</td>
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\(^1\) Data relates to the number of offences, in which a prosecution commenced, recorded in magistrates’ courts on the CMS system. Offences data are not held by defendant, outcome or equalities data. Offences recorded in the Management Information System Offences Universe are those which reached a hearing. There is no indication of final outcome or if the charged offence was the substantive charge at finalisation. This data has been drawn from the CPS’s administrative IT system, which, as with any large scale recording system, is subject to possible errors with data entry and processing. The figures are provisional and subject to change as more information is recorded by the CPS.
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<tr>
<td>Keeping a brothel (s33 Sexual Offences Act 1956)</td>
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<td>48</td>
<td>35</td>
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<td>Keeping a brothel used for prostitution (s33A Sexual Offences Act 1956)</td>
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<td>106</td>
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<td>Landlord letting premises for use as a brothel (s34 Sexual Offences Act 1956)</td>
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<td>Tenant permitting premises to be used as brothel (s35 Sexual Offences Act 1956)</td>
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<td>3</td>
<td>3</td>
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<td>2</td>
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<tr>
<td>Tenant permitting premises to be used for prostitution (s36 Sexual Offences Act)</td>
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<td>2</td>
<td>1</td>
<td>3</td>
<td>2</td>
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<td>Paying for sexual services of a prostitute subjected to force etc. (s53A Sexual Offences Act 2003)²</td>
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<td>40</td>
<td>7</td>
<td>8</td>
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<td>Kerb-crawling (from a motor vehicle) (s1(1)(a) Sexual Offences Act 1985)</td>
<td>375</td>
<td>161</td>
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<td>Kerb-crawling (from vicinity of a motor vehicle) (s1(1)(b) Sexual Offences Act 1985)</td>
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<td>Persistent soliciting (s2 Sexual Offences Act 1985)</td>
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<td>38</td>
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<td>Soliciting (s51A Sexual Offences Act 2003)³</td>
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<td>305</td>
<td>230</td>
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<td>314</td>
<td>233</td>
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<tr>
<td>Placing of advertisement relating to prostitution (s46 Criminal Justice and Police Act 2001)</td>
<td>457</td>
<td>331</td>
<td>149</td>
<td>80</td>
<td>91</td>
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However, as these are all summary only offences, many offences are likely to be dealt with directly by the police, or by way of caution or Engagement and Support Order.

² In 2010 a new offence S53A of the SOA 2003 criminalised those who make or promise payment for sexual services from a prostitute who is subject to force or exploitation.

³ In relation to prosecutions, a new offence S51A of the SOA 2003 was introduced in 2010 for a person in a street or public place to solicit another for the purpose of obtaining a sexual service as a prostitute. This includes a person in a motor vehicle in a street or public place and replaced the offences of kerb crawling and persistent loitering under S1 and 2 of SOA 1985.