

STATUTES

THE STREET OFFENCES ACT, 1959

ONE of the first things which American and other overseas visitors to Britain interested in social problems have usually remarked upon, when visiting London, has been the open solicitation of men by women prostitutes in the London streets. If the Street Offences Act, 1959, continues to have the success which it seems to enjoy at present, this topic will no longer appear as routine in our conversations with these visitors, and we shall all be relieved. For there can be no doubt that the visible and obvious presence of large numbers of prostitutes in the streets in some parts of London and of a few large provincial towns has been a source of grave embarrassment in the last few years, and it was the rising public concern over this which forced the Government when setting up the Wolfenden Committee to include in its terms of reference the subject of offences against the criminal law in connection with prostitution and soliciting for immoral purposes.¹ The intention of the present Act is to place on the Statute Book most of the Committee's recommendations in this connection, with the declared object of "cleaning the streets" of the more obvious manifestations of this trade in vice.

The statistical picture

Whether in fact there had been an increase in the actual number of prostitutes the Wolfenden Committee was unable to discover. The mere fact that there had been a sharp rise in the number of prosecutions and convictions suggests this, but it by no means proves it. The rise may only reflect an increase in police activity in this direction.² Nevertheless, the figures for the number of prosecutions and convictions are quite startling, as the following extract will show:

*Extract from Table XII of the Wolfenden Report.*³

STREET OFFENCES (ENGLAND AND WALES)

<i>Year</i>	<i>No. of prosecutions</i>	<i>No. of convictions</i>
1938	3,280	3,192
1946	4,423	4,393
1952	10,819	10,291
1955	11,916	11,878

¹ See Report of the Committee on Homosexual Offences and Prostitution, Cmd. 247, September 1957, paras. 229-232, pp. 81-82.

² *Ibid.* para. 231, p. 81.

³ *Ibid.* p. 143.

The Committee's Report, which appeared in September 1957, only gives the figures to the end of 1955, but we are now in a position to complete the picture as follows⁴:

<i>Year</i>	<i>No. of prosecutions</i>	<i>No. of convictions</i>
1956	11,947	11,855
1957	15,583	15,486
1958	19,663	19,536

Whether these increases do in fact represent a real increase in the amount of prostitution or simply reflect increased police activity cannot be determined, but even if the latter be true, this may well be in turn a reflection of the growing public concern about this problem. Indeed, the very existence of this Committee, and the publication of its Report, may well have had some influence upon the figures for the last few years. There is some evidence to suggest that in the past the number of prosecutions has been drastically affected by adverse criticism of the police. The Report cites the figures for the number of prosecutions for street offences by prostitutes in the Metropolitan Police District for the years 1922 and 1923. The respective figures are 2,231 and 595, and the severe drop was attributed to severe criticism of the conduct of the police in connection with a prosecution.⁵ It may be equally true that the number of prosecutions has increased because the police have realised that they had public support in this matter at the present time.⁶

It seems quite likely that there has been a change in the areas where prostitution is prevalent, which has forced the problem upon the attention of local residents and business people in those areas where the activities are now prevalent, and given them ground for complaint.⁷ This certainly seems to be true of London, and it may also be true in rural areas where the presence of military establishments has created new problems.⁸

The Wolfenden Committee's recommendations

Like its predecessor, the Street Offences Committee of 1928,⁹ the Wolfenden Committee found two main defects in the way in which the law defined solicitation for immoral purposes. The first was the requirement to prove annoyance of the party solicited, which arose in England and Wales every time the case was contested, but was not part of the law of Scotland. The second was the use of the term "common prostitute" as part of the definition of the offence. On the subject of each of these defects there was a long

⁴ See the annual Home Office *Criminal Statistics* for these years, Tables D and II.

⁵ *Loc. cit.*, *supra*, para. 231, p. 81.

⁶ *Ibid.*

⁷ *Ibid.* para. 232, p. 82.

⁸ *Ibid.* para. 266, p. 90.

⁹ Cmd. 3231, November 1928.

history of controversy. Further defects were the lack of any single law of universal application in England and Wales (a great deal of the task of regulating the activities of prostitutes fell to local by-laws), and the lack of adequate penalties, so that the prostitute plied her trade without much fear of the criminal law.

(i) *The requirement of annoyance.* The Street Offences Committee of 1928 had found this requirement objectionable since it required the evidence of a police officer to be available to testify to the state of mind of the person or persons accosted, who were rarely available themselves to give evidence. That Committee suggested that the requirement should be eliminated and the law reframed along different lines.¹⁰ The Wolfenden Committee re-examined the whole matter, and likewise concluded that the requirement was unsatisfactory, and should be eliminated.¹¹ This has now been done, for the requirement does not appear in the new version of the offence of solicitation for immoral purposes, enacted by section 1 (1) of the Street Offences Act, 1959.¹² The Act substitutes a simple uniform law for the multifarious legislation hitherto in force on this subject, much of which is repealed.¹³

(ii) *The phrase "common prostitute."* There were strong arguments against perpetuating the description "common prostitute" in the offence of solicitation, on the ground that it discriminates against this unfortunate class of women, by introducing a most unfair element into the trial prior to the finding of guilt, namely, the fact that the offender is known to have done this before. Moreover, it was argued that the reformation of prostitutes is hindered by having this outcast label attached to them. The Wolfenden Committee did not accept these contentions. It said that no evidence had been received showing that prostitutes felt a sense of grievance or feared injustice on this score, nor any evidence that this had interfered with their reformation.¹⁴ The Committee was greatly impressed by the need to safeguard the reputations of innocent women, who might be arrested and charged with offences of solicitation if there were no such requirement that the person accused should be a known prostitute. It tried to devise an alternative formula based on the notion of habitual or persistent conduct, but was not satisfied with the result, and therefore concluded on balance that the phrase "common prostitute" should remain.¹⁵

¹⁰ The Committee proposed a new offence aimed at every person who in any street or public place importunes any person of the opposite sex for immoral purposes: para. 37, p. 17.

¹¹ *Loc. cit.* para. 256, p. 87.

¹² s. 1 (1) reads: "It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution."

¹³ See s. 5 (2) and the Sched.

¹⁴ Para. 259, p. 88.

¹⁵ Paras. 260-262, pp. 88-89.

This negative conclusion was severely attacked and criticised by various bodies and persons, including the Church of England Moral Welfare Council,¹⁶ and was strongly opposed in the parliamentary debates on the Bill. But the new Act retains the phrase as part of the definition of the offence, and at first the present writer was disposed to accept the wisdom of this retention.¹⁷ But in view of the fact that a comprehensive system of cautions is being introduced which obliges the police to give at least two informal warnings before prosecuting for soliciting,¹⁸ it now seems that the case for retaining the phrase in the interest of the innocent woman has worn pretty thin, if not entirely disappeared. Moreover, the interests of the innocent woman are further protected by section 2 of the new Act, which provides that a woman who claims that she has been wrongly cautioned can apply to the magistrates' court within fourteen days to have the record or entry of the caution, which is kept at the police station, expunged. These proceedings will be conducted *in camera* unless the woman desires a public hearing. At an appropriate moment the pressure groups should renew their efforts to remove this undesirable designation "common prostitute" from our law.

(iii) *Heavier penalties for prostitution.* The Wolfenden Committee recommended the introduction of heavier penalties,¹⁹ and the new law follows closely the Committee's recommendations. Formerly, in London the maximum fine was normally forty shillings, and imprisonment was not available. In the provinces, a similar limitation existed on the maximum fine, but imprisonment could be ordered for not more than fourteen days. Now, by virtue of section 1 (2) of the new Act, a person guilty of an offence under section 1 will be liable, on a first conviction, to a fine not exceeding ten pounds, on a second conviction, to a fine not exceeding twenty-five pounds, and for a third or subsequent conviction, to a fine not exceeding twenty-five pounds or imprisonment for a period not exceeding three months, or both.

The purpose of these heavier penalties, as conceived by the Wolfenden Committee, was twofold: first, it was hoped to deter some persons and cause them to give up prostitution or never take to it in the first instance; secondly, it was hoped that it would encourage both courts and offenders to make more use of probation.

¹⁶ See the pamphlet entitled *The Street Offences Bill—A case for its amendment*, 1959, published for The Church of England Moral Welfare Council by The Church Information Board.

¹⁷ See article entitled "The Wolfenden Report—An Appraisal," *Political Quarterly*, Vol. 29, pp. 132 *et seq.* (April-June 1958).

¹⁸ The Lord Chancellor described the system which the Commissioner of Police for the Metropolis is to adopt for giving two cautions before making an arrest, in the Second Reading debate on the Bill, H.L.Parl.Deb. (5th ser.), Vol. 216, col. 72 *et seq.* (May 5, 1959). The Home Secretary has commended the provincial police to follow the same procedure.

¹⁹ Para. 275, p. 92.

Since this requires the consent of the probationer, if over fourteen years old, and the alternatives in the past were simply small fines, few prostitutes were willing to accept probation even if it was offered to them. The Committee was particularly anxious to encourage the young prostitute to accept probation.²⁰ So far, it appears that little use is being made of probation. Mrs. Rosalind Wilkinson, writing in *The Sunday Times*,²¹ reported that in London in the first seven weeks of the Act's operation, only one person was placed on probation out of 264 persons convicted. The large majority received fines of up to £5. It had been expected that there would be many more pleas of "not guilty," but in fact these amount to only about 10 per cent.

Many social workers and criminologists have wondered whether it was wise to introduce short terms of imprisonment as penalties under the new law. No special form of detention is provided for prostitutes sentenced to imprisonment: they go to the local gaols where they mix with the other prisoners, and a certain amount of contamination undoubtedly occurs. The Wolfenden Committee considered the question whether any special arrangements were desirable, and concluded against, and they were probably right.²² However, the success of the deterrent policy embodied in the new law will be measured largely by the number of persons sent to prison. The degree to which imprisonment can be avoided will be a barometer of the Act's success. So far, the position is that in the first two months of the Act's operation thirty-three women were sent to prison for offences under the Act. In addition, fifty-three women served terms of imprisonment in default of payment of a fine.²³ From these figures, it would appear that only a very small percentage of those persons convicted have been sent to prison. This figure should be compared with the total number of women imprisoned in the year 1958 for the offences of prostitution, which was 138.²⁴ Clearly we shall have substantially more than that in a twelve-month period, but how much more remains to be seen.

The Wolfenden Committee also recommended that more use should be made of the power to remand offenders for a social or medical report prior to sentence. This would be especially valuable in the case of first or second offenders, and although the courts already have power to remand up to three weeks for such purposes, under the Magistrates' Courts Act, 1952, it was recommended that

²⁰ Paras. 277-278, p. 93.

²¹ *The Sunday Times*, December 6, 13, 20, 1959.

²² Paras. 282-283, pp. 94-95.

²³ Mr. Vosper gave these figures in the House of Commons in reply to a question asked by Mr. Finch, November 5, 1959: H.C.Parl.Deb. (5th ser.), Vol. 612, col. 1195.

²⁴ *The Criminal Statistics*, 1958. Cmd. 803, Table VII, pp. 48-49.

an express power be enacted for the case of prostitutes.²⁵ No such special provision appears in the Street Offences Act, 1959.

(iv) *The penalty for living on immoral earnings.* One direction in which the Street Offences Act does go further than the Committee was prepared to go is in raising the penalty for living on immoral earnings. Previously the maximum penalty was two years' imprisonment, and the majority of the members of the Committee felt that this was adequate.²⁶ However, the women members wanted to increase this to five years' imprisonment.²⁷ The Act raises it to seven years' maximum, which seems an unnecessary gesture: the maximum is extremely unlikely to be imposed, but of course it is primarily intended to deter.

(v) *All-night cafés.* The Committee discussed very briefly the law and practice relating to the control of refreshment houses which stay open all night, and which are frequently the meeting-place of prostitutes and undesirable persons, but made no recommendation.²⁸ By virtue of section 3 of the Act, these all-night cafés are to be subjected to more rigorous penalties for infringement of the licensing regulations. The maximum penalties for these offences are to be increased from £5 to £20 for a first offence, and from £20 to £50 for subsequent offences.

(vi) *Scotland and Northern Ireland; Commencement.* The Street Offences Act, 1959, does not apply to Scotland or Northern Ireland. It came into effect on August 16, 1959.

(vii) *"Street or public place"; the police officer's power of arrest.* Under section 1 (3) of the Act, a constable is given power to arrest without warrant anyone he finds in a street or public place and suspects, with reasonable cause, of committing an offence under this section. He previously had a right of arrest where the offence was committed "in his view." For this purpose, the expression "street" is given an extended meaning by virtue of subsection (4) to include any bridge, lane or passage open to the public, whether a thoroughfare or not, and also the entrances of premises abutting on the street, and doorways, and any ground adjoining the street and open to it. Apparently no extended definition of "public place" was required, and recently a magistrates' court in London held that a woman who was leaning out of an upstairs window to attract the attention of male passers-by was soliciting in a public place, although she was quite obviously not in the street, even on the extended view sanctioned by subsection (4).

²⁵ Paras. 279-280, pp. 93-94.

²⁶ Para. 307, p. 101.

²⁷ Reservation V, p. 128, by Mrs. Cohen, Mrs. Lovibond and Lady Stopford.

²⁸ Para. 349, p. 113.

The effects of the new law

It is still rather soon to estimate the effects of this change in the law relating to prostitution. It was feared that certain undesirable consequences would flow from the attempt to clear the streets, such as the emergence of new classes of middlemen in the ranks of taxi-drivers and hotel porters, who could supply the names and addresses of prostitutes. Also it was feared that the "call-girl" system would become more prevalent. The small shops would receive many more bogus advertisements for display in their windows, offering the service of girls as "models," "masseuses" and the like. The Wolfenden Committee frankly recognised these dangers,²⁹ and Mr. James Adair, the brave Scottish dissenter on the Committee, thought there should be some form of public control over such advertisements.³⁰

It is difficult to say to what extent these developments may already have come to pass, and how far the situation will develop in this direction. But one fact seems to be established, and that is that the Act has succeeded in its main aim of clearing the streets to an extent which is quite unexpected, and very satisfactory. Figures recently published for the Metropolitan Police District for the first three months of the Act's operation show that the number of prosecutions was no more than approximately 10 per cent. of the figure for the corresponding period in 1958,³¹ and Mrs. Wilkinson found as a result of her inquiries that this trend was pretty general. How far it is temporary, and whether those who were frightened off the streets at first will eventually drift back, remains to be seen. It is too soon to come to any firm conclusion.³²

However, if street offences have been reduced, it must follow that the use of premises for the purposes of prostitution has been increased, unless there has been a decline in prostitution generally. The very careful inquiry made by the Wolfenden Committee into the legal position governing premises used for the purpose of prostitution, and the recommendations for new powers to be given to the magistrates' courts,³³ have been completely ignored, presumably because the Government are not prepared to accept them. There is still much to be done to effect improvements in that direction.

J. E. HALL WILLIAMS.

²⁹ Paras. 285-290, pp. 95-97.

³⁰ Reservation I (e), p. 122.

³¹ Earl Bathurst gave these figures in reply to a question asked by Earl Winterton in the House of Lords, November 25, 1959: H.L.Parl.Deb. (5th ser.), Vol. 219, col. 918. The total number of prosecutions for offences against s. 1, Street Offences Act, 1959, was given as 464 in the first three months, compared with the figure of 4,318 prosecutions for similar offences in the Metropolitan Police Area in the same period in 1958.

³² *Loc. cit.*

³³ Chap. XI, pp. 101-109.