



Dutch Policy on Prostitution Questions and Answers

Foreign Information Division,
Ministry of Foreign Affairs

in association with
the Ministry of Justice

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1. Is prostitution legal in the Netherlands?

It is not illegal to engage in prostitution. But to be employed prostitutes must be over 17 and do the work voluntarily.

September first 2000, a new law will come into force lifting the ban on brothels. Article 250a of the Criminal Code will make it an offence to traffic in persons, to force another person to engage in prostitution or to involve a minor in prostitution. All these offences carry a maximum penalty of 8 years' imprisonment. However, it will no longer be an offence to operate a brothel.

The article defines prostitution as engaging in sexual acts with another person for financial remuneration.

2. What forms of prostitution are illegal?

Article 250a of the Criminal Code defines the following acts as offences:

- forcing another person to engage in prostitution
- inducing a minor to engage in prostitution
- recruiting, abducting or taking a person to engage in prostitution in another country (pursuant to the 1933 International Convention for the Suppression of the Traffic in Women of Full Age)
- receiving income from prostitution involving a minor or a person forced to engage in prostitution
- forcing another person to surrender income from prostitution.

3. Why is the ban on brothels being lifted?

Both public opinion and the government's standpoint on prostitution are divided. Brothels were banned in the Netherlands in 1912. Up to that time they had been legal, as they were in neighbouring countries.

However, the law against them has not been enforced for many years; efforts to do so proved ineffectual. Action was only taken in cases where public order was disturbed, where people were forced to engage in prostitution against their will, or where minors engaged in prostitution. Most countries around the Netherlands pursued a similar course.

To end abuses in the sex industry, the Netherlands has decided to change the law to reflect everyday reality. It will be legal to employ prostitutes provided they have reached the age of majority, and do the work voluntarily, but stricter measures will be taken to prevent them from being exploited. By legalising the employment of prostitutes the government will be able to exercise more control over the sex industry and counter abuses. At the same time, firmer action will be taken against offenders. This approach is in the interests of prostitutes themselves, and it will also facilitate action against sexual violence and abuse and the traffic in persons.

4. How does the policy work?

The employment of prostitutes is regulated by municipal licences. The municipal authorities sets rules for brothels operating within their jurisdiction. They are authorised to publish bylaws governing their establishment, the premises in which they operate, and the way they are run, using as a guideline a model drafted by the Association of Netherlands Municipalities.

- Policy on establishment enables local authorities to exert influence on the location of brothels, ensuring that they do not disturb or intrude on the life of a neighbourhood. Brothels also have to be established in accordance with zoning and urban renewal plans and the living and working environment ordinance.
- Regulations on premises specify the minimum size of working areas and govern safety, fire precautions and hygiene. For instance, every working area must have hot and cold running water, and condoms have to be provided.
- Regulations on the operation of brothels govern the position and status of prostitutes, protecting their physical and mental integrity and prohibiting the employment of minors or people without a valid residence permit. They also include measures to prevent excessive nuisance in neighbourhoods where brothels are located.

The local authorities may grant a licence to brothels that conform to all the applicable regulations.

The A. de Graaf Institute, an advisory body that specialises in issues relating to prostitution, has been commissioned to monitor and evaluate the new policy and chart new forms of sex work. In the autumn of 1998, the Institute started a survey of the current situation. The Netherlands Institute for Sexual Research is conducting a study on the status of prostitutes.

5. How do inspections work?

Licensed brothels have to observe special regulations. Monitoring them to ensure that they satisfy the conditions for a licence is mainly an administrative matter. It is up to the local authorities to decide who is responsible for doing so. Municipal enforcement policy is coordinated by the local burgomaster, the public prosecutor and the police commissioner. Agreements reached between them are set down in enforcement instructions, on which central government has issued guidelines.

6. What measures are to be taken to combat the traffic in persons?

The introduction of a municipal licensing system will enable the police and other law enforcement agencies to carry out inspections of brothels. They will be especially alert to illegal forms of pimping, and the traffic in persons often associated with these activities. Trafficking in persons carries a penalty of up to six years' imprisonment. Keeping minors out of prostitution and combating the traffic in persons and other forms of exploitation are high priorities in the Netherlands.

Brothels that fail to observe the regulations are liable to administrative sanctions such as an *astreinte*, withdrawal of their licence and closure. They can also be prosecuted for the offences covered by article 250a of the Criminal Code (see 2.).

Dutch diplomatic missions and non-governmental organisations abroad carry out projects aimed at preventing traffic in persons. The Netherlands is also tackling this problem in partnership with other members of the European Union. The European Union conducts information campaigns in countries where victims tend to be sought. Europol supports operational and research projects in this field in its member states, and conducts studies to improve policing methods.

7. Who, apart from Dutch nationals, are allowed to engage in prostitution?

Nationals of countries outside the European Union who do not have a valid residence permit are not allowed to work in the Netherlands. By the same token, they are not allowed to engage in prostitution. This group includes visitors who are in the Netherlands on a tourist visa or who do not require a visa for a stay not exceeding three months. Foreigners who apply to settle in the Netherlands as self-employed prostitutes are in principle rejected on the grounds that their activities do not serve the country's interests.

Foreigners who are in the Netherlands illegally may be deported pursuant to the Aliens Act, regardless of whether they are employed.

The prevention of illegal prostitution will be given a high priority in the coming years. In particular, the Aliens Police will be on the lookout for fronts for criminal operations.

Nationals of the European Union countries may settle in the Netherlands and engage in sex work, providing that their earnings are not merely incidental.

Prostitutes from countries that have signed an association agreement with the European Union may establish themselves as independent workers, providing they satisfy the conditions for doing so (private capital, business plan, commercial skills). In this event, they may not work for an employer.

8. Is help available for victims of the traffic in persons?

Prostitutes who are in the Netherlands illegally and who are victims of traffic in persons are entitled to assistance from the government. Anyone who lays charges against a trafficker is granted a temporary residence permit pending the outcome of legal proceedings. In some cases they may be eligible for a permanent residence permit on humanitarian or personal grounds.

9. What is being done to improve conditions for prostitutes?

Lifting the ban on brothels is a crucial step in this direction. Prostitutes will gain more autonomy as a result. They will be in a position to demand better working conditions and premises, for example by entering into formal tenancy agreements. Municipal ordinances governing safety, hygiene and working conditions in general will also set higher standards.

They are given three months to decide whether they wish to lay charges. They are allowed to stay in the Netherlands legally during this period and may use all public facilities and services, such as counselling, medical care, and financial and legal services. People with a temporary residence permit are not allowed to work in the Netherlands.

These ordinances may forbid the compulsory consumption of alcoholic drinks with clients or unsafe sex; they may compel the owners of brothels to allow health services or interest groups unrestricted access to their premises; or they may require them to enter into written contracts with the prostitutes they employ, if necessary in the prostitute's own language. Municipalities will designate a counsellor to whom prostitutes can turn for advice or to report complaints against their employers.

10. What is the policy on health care?

The municipalities are responsible for ensuring that prostitutes have easy access to health care, with readily available services and no sanctions. Of course, prostitutes themselves and their trade organisations and employers are ultimately responsible for health and labour conditions. The local authorities' job is to ensure that employers fulfil their obligations. For instance, they can set conditions for granting licences and take steps to ensure that those conditions are met.

11. Can a municipality ban brothels from operating within its jurisdiction?

Municipalities can regulate the establishment and location of brothels, but the new legislation makes it impossible for them to ban them altogether. In any event, banning them would violate the right to a free choice of work.

Employers' responsibilities include pursuing a safe sex policy, giving their workers the opportunity to benefit from information activities, and encouraging them to have regular medical checkups for sexually transmissible diseases. General practitioners and specialists have been given special guidelines on STD screening among sex workers. Local authorities can monitor the quality of screening projects.

Local authorities can, however, ban certain types of prostitution, such as window prostitution. They can also check whether prospective licensees have a criminal record and refuse a licence on this basis. Bar and café managers undergo similar checks. The licensing system does not apply to escort agencies, although the government intends to introduce regulations and a monitoring system for this sector as well.

12. How are foreigners prevented from setting up brothels in the Netherlands?

Nationals of countries outside the European Union may be refused permission to settle in the Netherlands and establish a brothel, on the grounds that this would not serve a Dutch interest. However, under European law these grounds cannot be invoked for EU nationals, although anyone who conducts an illegal operation can be charged with a criminal offence. A brothel that employs illegal aliens loses its licence and is forced to suspend operations.

13. Are the police allowed to keep a register of prostitutes?

No. This would contravene the various laws protecting personal privacy. However, the police are allowed to keep a temporary register for a specific, law enforcement purpose, for example to investigate traffic in persons. They are obliged to report this to the Registration Board.

14. How does the new legislation affect labour relations?

The repeal of the ban on brothels means that private law, which includes labour law, will apply to relations between prostitutes and their employers. The most important point is that individuals can decide whether they wish to engage in prostitution and, if so, how, and that they themselves can also choose to terminate the business relationship.

15. How does the new legislation affect prostitutes' rights to social security?

Anyone who chooses to stop working as a prostitute, whether for an employer or as a self-employed operator, is not eligible for a benefit under the Unemployment Insurance Act, because they have become unemployed voluntarily. They may register as jobseekers. In certain circumstances, prostitutes are eligible for unemployment benefit. Like any other unemployed person, they are obliged to seek employment. They must be available for work and accept any suitable offers. Obviously no-one can be obliged to take a job in the sex industry, nor will employment offices advertise such jobs.

The Working Conditions Act and most other legislation that applies to the business sector in general applies to prostitution as well. Brothels are therefore required to register with the Safety, Health and Welfare Service, which is concerned with health-related working conditions, such as working hours and the physical and mental stress a job involves. Brothel workers should therefore undergo annual medical checkups.

Prostitutes who are not self-employed but work for an employer who is required to pay insurance under the Invalidity Insurance Act are eligible for invalidity benefit. They are entitled to benefit only if they are no longer able to do their own or any other generally acceptable work. The Labour Inspectorate has a monitoring function, especially in the case of complaints or accidents.

16. What arrangements are made for the collection of tax and social security contributions?

Prostitutes and their employers are required to pay tax. The tax department applies a target group scheme which is as uniform as possible throughout the country as regards the registration of self-employed workers, the assignment of VAT numbers and the assessment of tax-deductibles.

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