The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review

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ABOUT THE AUTHOR

Dr Geoffrey Shannon is a solicitor and is a leading authority in Child Law and Family Law. He is the current Chairman of the Adoption Authority of Ireland. He held the role of Special Rapporteur on Child Protection for the Irish government from 2006 to July 2019.

Dr Shannon has recently been asked by the European Union Agency for Fundamental Rights and the Council of Europe to assist as a child protection expert in drafting new guidelines on cybercrime for judges, prosecutors and law enforcement agencies.

Dr Shannon is the recipient of several awards for his work in the area of national and international family law. These include the 2005 JCI Outstanding Person of the Year Award, the 2006 Canon Maurice Handy Award and the 2013 Irish Law Award. On 23 June 2017, Mr Justice Peter Kelly, President of the Irish High Court presented Dr Shannon with the Dublin Solicitors Bar Association Award for outstanding contribution to legal scholarship for his entire work to date.

Dr Shannon is Chairman of the High Level Working Group.
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INTRODUCTION
This report was written to consider implementation of the Criminal Law (Sexual Offences) Act 2017. Following its enactment, the Government announced that a review of Part IV which relates to prostitution was to be carried out within three years.

The review is to include:
(a) Information as to the number of arrests and convictions in respect of offences under section 7A of the Act of 1993 during the period from the commencement of that section;
(b) An assessment of the impact of the operation of that section on the safety and well-being of persons who engage in sexual activity for payment.

It is intended that this interim report might inform the review of the legislation at a mid-way point. The report is authored by Dr Geoffrey Shannon and informed by members of the High Level Working Group, constituted to monitor and support implementation of the Act.

BACKGROUND
Many organisations became increasingly concerned about the growing commercial sex trade in Ireland and the exploitation of women and girls and its links to organised crime. The organisations, representing many sectors of Irish Society advocated for the Irish Government to review the legislative context for prostitution and sex trafficking, its protections, opportunities for redress and the surrounding services for those exploited in the sex trade. On 22 June 2012, the Department of Justice and Equality announced a consultation process on the future direction of prostitution legislation in Ireland, to be overseen by the Joint Oireachtas Committee on Justice, Equality and Defence.

The Committee received over 800 submissions and held public and private hearings with 24 organisations and individuals, over 80% of which favoured the Swedish approach to prostitution legislation. The report notes that apart from “their numerical majority” the Committee also attached “great importance to how these contributors comprise a broad cross-section of Irish civil society”, including Trade Unions, service providers and the Irish Nurses and Midwives Organisation. The Committee notes “the breadth and depth of evidence on the nature and effects of prostitution” which was presented and concludes that the harms and criminality of prostitution “outweigh any considerations in favour of voluntary prostitution where it does occur”. The Committee travelled to Sweden where it found the evidence “compelling” in relation to the reduction in the size of the prostitution industry; the effectiveness of using the criminal law to tackle demand for prostitution and in reducing trafficking; and the provision of extensive services to women in prostitution. The All-Party Committee was unanimous in its conclusions that the evidence was conclusive that the Swedish approach is the most effective one and recommended the criminalising of the buyer and decriminalisation of those in prostitution in Ireland.
The Criminal Law (Sexual Offences) Act 2017

The Criminal Law (Sexual Offences) Act was enacted in March 2017 and is a wide-ranging piece of legislation on sexual offences which includes an offence in Part IV which relates to the purchase of sexual services. The law now also ensures that those exploited in prostitution are decriminalised. It also criminalises any person who purchases or attempts to purchase sexual activity from another person. The Act strengthens the provisions in relation to the buying of a trafficked person for sexual exploitation. The Act also enhances and updates laws to combat the sexual exploitation and sexual abuse of children, including new offences relating to child sexual grooming and new and strengthened offences to tackle child pornography.

The Context - The Commercial Sex Trade in Ireland

Throughout the first two decades of this century, Garda operations, investigative journalists and service providers indicated a significant growth of a highly profitable sex trade run by organised crime. In 2008, the Immigrant Council of Ireland commissioned the first extensive research in order to examine the sexual exploitation of both trafficked and migrant women within the Irish sex industry, in collaboration with the Women’s Health Service (HSE) and Ruhama. The research revealed a criminal underworld in which international traffickers, Irish pimps, prostitution agencies and buyers collaborate in the commercial sexual exploitation of women and girls. It indicated a highly lucrative industry worth approximately €180 million and easily accessible indoor prostitution in every part of Ireland.

In 2012, a special Prime Time report into prostitution in Ireland, ‘Profiting from Prostitution’ was produced and presented by journalist Paul Maguire which involved almost a year of intensive investigation and surveillance. In excess of 8,800 profiles advertised on ‘escorting’ websites were examined, and allowing for possible duplication, they estimated that between 500 and 700 women are available each day.

Of the women, 97, or 1.1%, of the total number were advertised as being Irish, while 283 or 3.2% were advertised as UK citizens. The vast majority, 95.69%, were advertised as foreign nationals. A database was set up which recorded the movements of each ‘escort’ advertised – this indicated a high level of organisation and management behind the movement of hundreds of women across the country on a weekly basis. On average 438 women either moved or were moved every week revealing the level of organisation and control within the sex trade. The vast majority, 99.24%, were advertised as working for themselves as ‘independent escorts’. The research revealed that this was completely untrue. A researcher was also set up with a profile to act as a woman in prostitution on the website. Most of the recorded calls from potential buyers were looking for people who were very young. The evidence identified by the Immigrant Council of Ireland’s research and revealed in the Prime Time investigation has been further validated by An Garda Síochána (AGS). AGS estimate a figure of 800 individual women advertised on the internet at any given time and that the Irish sex trade is highly organised and controlled with women being circulated around the country in the manner described by Prime Time. Gardaí testified to the Justice Committee that there were upwards of 40 criminal gangs operating prostitution rackets in Ireland.

Following on from this RTÉ expose of prostitution in 2012, the RTÉ Investigations Unit collated four years of data tracking each profile, phone and movement of every woman advertised online, updated daily. A further documentary ‘Sex for Sale’ revealed the inner workings of organised prostitution in Ireland and revealed how over 100 women in prostitution rings are controlled by organised criminals, in Ireland.
KEY FINDINGS OF THE RESEARCH

PROFILE OF WOMEN EXPLOITED IN THE IRISH SEX TRADE

1. 1,000 women in indoor prostitution with over 800 women advertised on the internet with sexually explicit pictures and detailed lists of the sexual acts which can be bought; 102 women identified as trafficked for sexual exploitation; 11% were girls at the time.

2. 87% - 97% of those involved are migrant women aged between 18-58, with some evidence that girls as young as 16 years are involved; 51 different nationalities of women advertised; women are targeted by traffickers, pimps and prostitution (‘escort’) agencies from impoverished regions in Africa, Latin America and Central European countries.

3. While some women may operate independently, the Irish sex trade is for the most part highly organised with women being constantly moved from place to place. Prostitution agencies and pimps exercise different levels of payment, penalty, debt bondage, control and violence.

4. Apartments and hotels are the main locations (19 of the 26 counties were named); ‘call outs’ to the home of the buyers are in frequent demand.

DEMAND

1. Surveys indicate that one in 15 men in Ireland have paid for sex. They tend to be educated with incomes from the middle range; a significant proportion buy sex during the daytime (lunchtime) and in the evenings after work.

2. Dangerous, unprotected sexual activities are commonplace with a high proportion of buyers stating they had unprotected sex; there is increasing pressure on women to engage in high risk sexual acts which can damage women’s sexual, reproductive, mental and physical health.

3. In an analysis of over 1,000 sex buyer reviews posted online the key ratings were of: good value for money; physical attributes; explicit details of sexual acts demanded; his/her degree of sexual gratification; the expectation that he/she enjoys it and an expectation of ‘the girlfriend experience’ with severe criticism of women who were not satisfactory.

4. More recent research indicates the profile of buyers: employed, mid to high income, majority in a relationship, 25% admit having witnessed exploitation in prostitution but almost none have considered reporting to the police; buyers are well informed about trafficking in women but ignore it when buying.
THE INTERNATIONAL CONTEXT
As Ireland and other countries follow the ‘equality’ approach,\(^{13}\) it is critical that we are fully cognisant of the wide range of institutional mechanisms and measures that have been put in place by other jurisdictions to ensure the success of all the objectives of the law.

For example, the continuing commitment of the Swedish State to providing resources for implementation, policing, services, evaluation and monitoring have ensured that the laws on prostitution and trafficking are embedded in government policy.\(^{14}\)

In addition, the French law has also now provided an exemplar of a comprehensive law which not only criminalises the purchase of sex and de-criminalises those exploited in prostitution, but also provides a statutory basis for service provision and exit routes.\(^{15}\)

Subsequent to the introduction of the law in France, in a historic decision, the Conseil Constitutionnel (French Supreme Court) has validated the constitutionality of the French 2016 Act\(^{16}\) introducing the criminalisation of the purchase of sex, the full decriminalisation of prostituted persons, and the creation of a nation-wide public exit, protection and assistance policy for victims of prostitution, pimping, procuring and trafficking.

RELATED AREAS OF IMPLEMENTATION AND RECOMMENDATIONS
There are several observations regarding the implementation process that inform key recommendations that need to be progressed. These will ensure the optimum implementation of the 2017 Act, to ensure the intention of the law is realised.

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1. PROTECTION, LEGAL ADVOCACY AND EXIT SUPPORTS

Civic society organisations are critical of the insufficient resources provided by the Irish State for comprehensive exit supports for women affected by prostitution and sex trafficking. According to Ruhama approximately 90% of women want to exit at some point but have a perception that there are not any viable alternatives for them.

There are a number of barriers in exiting the sex trade, including:

- Poverty and a lack of viable alternatives;
- Being under third party coercion, violence and control from pimps, traffickers and/or intimate partners;
- Homelessness and precarious housing and a lack of safe, gender-specific accommodation both emergency and longer term;
- Immigration status;
- A lack of formal educational qualifications;
- Psychological trauma and post-traumatic stress disorder;
- Isolation – geographic and emotional.

Ireland has a responsibility to respond to the long-term needs of women who have been sexually exploited in its jurisdiction, regardless of migrant status, including access to welfare, education, training and employment.

Decriminalisation is a core element of the 2017 Act. The introduction of the law on the purchase of sex must also be accompanied by a wide range of measures to ensure there are no negative consequences for prostituted and trafficked women. Research has highlighted the importance of early and specialised legal intervention for victims of trafficking and Ireland has been repeatedly criticised for failing to meet standards. Given that an overwhelming majority of women in prostitution are migrant women and that many may be undocumented, it is critical that all women have immediate access to accurate information and legal advice. Legal representation from specialised lawyers ensures that women obtain consistent information regarding their rights, including the right to remain in the state.

Specialised accommodation should be available and there has been some movement by the State on it. However, the steps undertaken are insignificant to date and any commitments to gender-specific accommodation remain vague at this stage. Additional resources were to accompany the legislative change, facilitating increase service provision by specialist services such as the Women’s Health Service (WHS) and civil society organisations. Services like WHS are vital because for many vulnerable migrant women in prostitution in Ireland, this is literally the only health service in the country they are accessing. We also need the more flexible type of supports provided by Ruhama, ICI and other NGOs – where cooperation with the Gardaí is not a requirement, and that have a real exiting-focus – helping women to leave prostitution for good and plan new futures. Extra resources were promised and have not been delivered on – hence both State and NGO provider services are struggling to meet needs.

RECOMMENDATIONS

The right to protection, accommodation, legal advocacy and exits routes and support for victims.

The provision of supports and exit routes for those in prostitution must be enshrined into policy in Ireland, and resources increased so that women can be supported across the entire country. Those who are most isolated in rural areas face the most barriers in accessing services and exit supports and these need to be taken into account when developing increased exit supports.

Responses should include an assessment of the potential threat of re-victimisation; the level of trauma experienced and exhibited by the person; his/her psychological and physical health needs and secure gender specific accommodation.

Funding should be increased to ensure additional resourcing of services supporting women and offering pathways to exit. Additional resourcing should be available to ensure legal representation, accommodation, redress, migration advice and representation and access to employment.
2. LEGISLATION AND ENFORCEMENT

Legislation targeting the third party organisers of prostitution is vital, and laws against brothel keeping must be in place to act as a deterrent. However, there is a concern that women who are not themselves organising prostitution or profiting from the exploitation of the prostitution of others may have, on occasion, been targeted under this law. The highest profile incidence of this happening was the conviction and the sentencing of two young Romanian women for brothel keeping, one of whom was pregnant. The women pleaded guilty, were granted bail and were sentenced to nine months in prison for which they are currently appealing. They have not served any sentence to date. We need to continue to work with those enacting and implementing the legislation to ensure the exploiters are the target of criminal sanctions and those exploited are protected.

To date, there have been a total of four outcomes of criminal proceedings against buyers (three convictions and one where the Probation of Offenders Act was applied). There are 13 persons pending prosecution as per the latest official data available – provided by An Garda Síochána in July 2019.

On 26, 27 and 28 April 2019, An Garda Síochána conducted intelligence led operations across six of its divisions nationally, urban and rural (DMR North, DMR East, DMR South Central, Wexford, Louth and Kildare) to target the demand for prostitution and to enforce the legislation which criminalises the purchase of sexual services. These ‘Days of Action’ were coordinated by the ‘Operation Quest’ team at the Garda National Protective Services Bureau, in liaison with local Detective Units. During the course of this intelligence led operation, thirty-six individuals were stopped and questioned by members of An Garda Síochána, arising from suspicions of having purchased sexual services from an individual involved in prostitution. A number of files will now be prepared for forwarding to the Director of Public Prosecutions, with a view to establishing if any criminal prosecution should be initiated arising from the Days of Action. Further Days of Action and similar measures took place on 21 and 22 November and are planned for the future.

In April, September and November of 2019, 36, 38 and 23 suspected sex buyers were respectively stopped and questioned under Part IV of the 2017 Act. These actions served the dual purpose of holding buyers to account and raising awareness of the legislation. This operation reinforces An Garda Síochána’s commitment to target the demand for prostitution and to protect vulnerable persons, including victims of human trafficking involved in prostitution.

The Gardaí are currently developing information which will be given directly to women involved in prostitution by Gardaí during a brothel raid. This will highlight the new law, decriminalisation, the role of the Gardaí and available supports. It should be made available in the main languages spoken by women in prostitution in Ireland – e.g. English, Portuguese (for Brazilian women), Romanian, French (for African women) and other languages identified as necessary by frontline support services.

Civil society organisations are working with An Gardaí Síochána, particularly the Operation Quest Team and the Garda National Protective Services Bureau to respond to cases of commercial sexual exploitation and in seeking positive outcomes for those exploited in the trade. Gardaí are increasingly referring women to Ruhama’s services when they come into contact with them during welfare checks and brothel raids.
RECOMMENDATIONS

There is a need to continue to work with those enacting and implementing the legislation to ensure the exploiters are the target of criminal sanctions and those exploited are protected.

Training for police should continue to be resourced and conducted in co-operation with specialist services to ensure a gender specific, victim-centred and human rights approach.

Training should continue to focus on encouraging the Gardaí to understand the vulnerabilities of those who have been drawn into prostitution, what might make women reticent to speak to the Gardaí, how to overcome these barriers and support women better and also the level of criminal organisation involved.
3. MONITORING AND EVALUATION

The enactment of new legislation needs to be monitored and evaluated to ensure there are no unforeseen consequences. The following needs to be in place to ensure the legislation is monitored and evaluated and any findings should result in interventions to ensure optimum implementation of the law.

Further research should be resourced:
The Sexual Exploitation Research Programme in UCD is conducting research to consider the harm within the commercial sex trade and any unforeseen consequences of the legislation. The research will document the consequences of prostitution for the health and well-being of girls and women and the ongoing needs and any barriers for women in relation to exiting. It is also working with An Garda Síochána and other stakeholders to explore the application and enforcement of the law, and the impact on those within the Commercial Sex Trade. These will be important pieces of work for the review process.
However, further resources should be made available to conduct empirical research and gather data in critical areas to monitor and evaluate implementation of the legislation.

Some suggested areas include:
- Mapping the scale and extent of prostitution and trafficking for sexual exploitation on the streets and in indoor locations;
- Identifying emerging patterns of the sex trade in terms of targeting and recruitment;
- Investigating the number of prostitution-related activities and number of individuals advertised online;
- Sentencing patterns of buyers and organisers should be monitored closely to ensure consistency and that the sentence is commensurate with the seriousness of the offence;
- Analysis of the link between those attempting to exit prostitution and those securing their immigration status;
- The link between Child Abuse and the Commercial Sex Trade.
Assessment of research and evidence:
Research is critical in providing an evidence base for policy development and interventions. The Review should be mindful of the following considerations when assessing research and evidence presented in relation to the impact of the law:

- Oversight of the research by qualified researchers;
- Ethical approval has been given for the research by a recognised institute;
- Methodology and collection of data is transparent;
- Origin of data is verifiable;
- Data is interrogated for double counting;
- Numbers in the trade are not calculated by number of mobile phone numbers recorded as women in the sex trade typically have multiple mobile phone numbers which would result in over-counting;
- Reports of offences and violence to be verified by incident, date, location and perpetrator (buyer or pimp for example);
- Researchers should have no past or present association with or financial relationship with the sex trade organisers or those profiting or benefitting from or promoting the sex trade;
- Need to take cognisance of the weight of the evidence and representation by service providers i.e. the numbers of clients a service responds to should be taken on board by the review;
- Reviewers should have a track record of examining laws and implementation, in particular on sexual offences.
4. A NATIONAL RAPPORTEUR

For a detailed country specific assessment of the impact of the laws on prostitution and trafficking to be effectively undertaken, the Higher Level Working Group recommends the appointment of an Independent National Rapporteur on Gender-based Violence and Exploitation. The Rapporteur should have the authority to review non-identifiable data from the statutory and non-governmental agencies. Annual reports should include the data outlined above and be presented to the Oireachtas on a regular basis. The presence of the Special Rapporteur on Child Protection is a good model in the Irish context. Other international models, such as the Finnish and Danish examples, are also models that could be applied in the Irish context.

5. PUBLIC AWARENESS, EDUCATION AND RESEARCH

Public awareness and preventative strategies should be central to government strategies which recognise the wider declarative and normative intentions and spirit of the purchase of sex laws which has gender equality at its core. In comparative research done on attitudes of sex buyers in member states, younger buyers could more easily recognise the negative impacts on those in prostitution. The research found that education and awareness-raising is most important from a young age before it becomes entrenched and normalised.\textsuperscript{19} It is also incumbent on the State, at the very minimum, to inform its citizens of a law change of this nature.

RECOMMENDATIONS

Attitudinal surveys to assess public support for the legal and policy approach to prostitution and surveys on the number and percentage of the population who have purchased sex should be conducted periodically to assess any changes in same over time.

Educational modules should be developed and delivered in schools, firstly as a preventative measure in relation to the recruitment of girls into the commercial sex trade and secondly to deter young men from becoming buyers of sex. These programmes need to be regularly evaluated to assess their impact on attitudinal and behavioural change and should be a part of a wider sexual education programme that promotes healthy relationships and gender equality.
New law does not change society overnight, and in Ireland it’s still in its infancy. There is a need to be vigilant and monitor its implementation to ensure the spirit of gender equality underpinning the law is realised.

Survivor Activist & Consultant, Mia De Faoite