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Rape Crisis Network Ireland

Briefing Note on Part 4 of Criminal Law (Sexual Offences) Act 2017 Purchase of Sexual Services: Sections 25, 26 and 27

Policy background: As part of the process of developing the new laws on sexual violence, the purchase of sexual services was considered and added to the Criminal Law (Sexual Offences) Act 2017. While the RCNI led on much of the sexual offences aspects of the Act we did not take a lead on the purchase of sexual services, instead, we joined a coalition of NGOs under the umbrella Turn Off the Red Light to advocate for ‘the Swedish model’ of criminalising demand for prostitution and decriminalising those sold in prostitution. A coherent and united front was achieved and the law passed in 2017. The law provides that the section on sale of sexual services will be reviewed. Throughout this period there were those who disagreed with this law and who advocated for different approaches to be taken and continue to raise questions about both what the law sets out to do and what it achieves. This briefing paper sets out what is currently known.

Legal Background: Part 4 of the Criminal Law (Sexual Offences) Act 2017 is set out in full in the Appendix to this Briefing. This is a summary of what it contains.

Section 25 CLSOA 2017: On 27th March 2017, legal history was made when the purchase of sexual services itself was criminalised for the first time, in line with the Nordic model of statutory control of the demand for sexual services from women (and men) in prostitution which is now in place in Sweden among other countries.

Up to this point, “soliciting and importuning” by providers of sexual services had been criminalised (ie looking for prospective sex purchasers in a public place). Failing to obey a Garda direction to stop doing so was also an offence. These activities are no longer criminal offences. However, it is still an offence to solicit or importune someone in order to purchase sexual services from them in a public place (ie kerb-crawling and related activities), or to solicit or importune prospective purchasers of sex on behalf of someone providing sexual services (ie pimping activities), or to fail to obey a Garda direction to stop doing either.

Section 26 CLSOA 2017: Separate offences of soliciting or importuning victims of trafficking for sexual purposes and accepting payment for such purposes already existed. These offences remain on the statute book, and the maximum penalty of five years imprisonment remains the same. A new offence of purchasing sexual services from a trafficked person has been added, with the same maximum penalty as the other two offences.



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Section 27 CLSOA 2017: This section obliges the Minister for Justice to compile a report three years after the new offences come into effect (by 27th March 2020) and send it to all members of Oireachtas. It should contain information on the number of arrests and convictions for the offence of purchase of sex, and should also report on the impact which the operation of this offence has had on the safety and wellbeing of people providing sexual services for payment, within this three year period.

Statistics on the new offence of purchasing sexual services

RCNI has asked the Central Statistics Office to provide statistics for reported offences of purchase of sex for 2017. We have been informed that every effort is being made to disaggregate statistics for this offence from the rest of their category, “other sexual offences”, but it is difficult to do this. The CSO will also provide us with statistics for these two offences recorded under “prostitution offences”, if they can disaggregate them. We will circulate any statistics on this offence which we receive as soon as we can. It should be noted that all CSO statistics on reported crime is published “under reservation”, for the present at least.

However, it appears from Ruhama’s Annual Report for 2017 Press Release, published today, that there have been **no convictions for this offence to date**¹. Neither the Report nor the press release contains information on the number of offences *reported*. Their press release issued on the anniversary of the commencement of the new offence lists observations on the possible reasons for the lack of convictions.² These include the recognition that changing cultural values to the point where purchase of sex is no longer socially acceptable, is a slow process, and that there a need to increase both awareness initiatives and supports for women wishing to exit prostitution, particularly those who have been trafficked. Concern was also raised that a golden opportunity would be missed to stem demand for sexual services if law enforcement did not take a very proactive approach to investigating and prosecuting this crime.

This press release also recognized that since soliciting and importuning by people in prostitution themselves was decriminalised, Ruhama’s clients were more willing to report violent behaviour by clients to the Gardaí. This is a very welcome development.

Ruhama’s Annual Report for 2017 tells us that just over 300 people in prostitution availed of its services in 2017.³ Shockingly, about 100 of these had been victims of trafficking for sexual purposes.

¹ <http://www.ruhama.ie/assets/Press-Releases/Ruhama-TimesUp-Press-Release-for-2017-Annual-Report.pdf>

² <http://www.ruhama.ie/assets/First-anniversary-of-new-law-to-tackle-sex-buyers-more-needs-to-be-done.pdf>

³ The full Report may be accessed through this web-link: <http://www.ruhama.ie/assets/Press-Releases/Ruhama-2017-Annual-Report.pdf>



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What can be done to increase arrests and convictions for purchase of sex offences?

Increase in Garda powers: Gardaí do not have powers of arrest, detention, search or seizure under this legislation (purchase of sex offence, new Section 71 of the Criminal Law (Sexual Offences) Act 1993 inserted by Section 25 of the Criminal Law (Sexual Offences) Act 2017. Neither do they have power to issue on-the-spot fines. In addition, the maximum penalty is a low fine, so that even the most prolific offenders are not at risk of a prison sentence. Some road traffic offences which do not involve danger to others carry stiffer maximum penalties, such as failure to produce a driving licence or failure to display a tax disc.

Possible unintended consequences: The counter-argument is sometimes made that attaching Garda powers of arrest, detention, search and seizure to this offence, and/or making it imprisonable, will have the unintended consequence of

- Dissuading providers of sexual services from reporting it to Gardaí for fear of serious repercussions from their clients or pimps;
- There can be no doubt that some people who organise and control prostitution businesses are capable of using violence to deter complaints or exact revenge.
- In addition, any prospective purchasers of sex have much to lose if they find themselves facing arrest, detention, charge and conviction which may result in imprisonment.
- We suspect that some purchasers of sexual services would consider threatening or assaulting anyone who makes a complaint to the Gardaí to deter them from following through on it.
- That said, many otherwise law-abiding prospective purchasers of sexual services would be very much afraid of court proceedings which could result in prison, as their standing in the community, their good name, and their employment, would all be at risk. A more draconian set of measures may have a powerful deterrent effect on this group.

It may be that the best way forward is to amend this legislation to provide a regime which allows the Gardaí more powers to gather and use evidence from other sources besides providers of sexual services to ensure that purchasers of sexual services are charged and convicted. As we do not have the evidence base from which to make definite recommendations in this area, we will not do so.



Appendix 1: Part 4 Criminal Law (Sexual Offences) Act 2017, in force since 27 March 2017

Purchase of Sexual Services

Amendment of Act of 1993

25. The Act of 1993 is amended—

- (a) in subsection (2) of section 1, by the deletion of paragraph (a),
- (b) by the insertion of the following section after section 7:

“Payment etc. for sexual activity with prostitute

7A. (1) A person who pays, gives, offers or promises to pay or give a person (including a prostitute) money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute shall be guilty of an offence and shall be liable on summary conviction—

- (a) in the case of a first offence, to a class E fine, and
- (b) in the case of a second or subsequent offence, to a class D fine.

(2) In this section ‘sexual activity’ means any activity where a reasonable person would consider that—

- (a) whatever its circumstances or the purpose of any person in relation to it, the activity is because of its nature sexual, or
- (b) because of its nature the activity may be sexual and because of its circumstances or the purposes of any person in relation to it (or both) the activity is sexual.”,

(c) in section 8, by the substitution of the following subsection for subsection (2):

“(2) A person who without lawful authority or reasonable excuse fails to comply with a direction under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class D fine or imprisonment for a term not exceeding 6 months or both.”,

(d) in section 9, by the substitution of the following subparagraphs for subparagraphs (i) and (ii):

“(i) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or



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(ii) on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.”,

(e) in subsection (1) of section 10, by the substitution of “to a class A fine or imprisonment for a term not exceeding 12 months or both” for “to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both”,

(f) in section 11, by the substitution of the following subparagraph for subparagraph (i):

“(i) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or”,

and

(g) in subsection (1) of section 13, by the insertion of “7A,” after “7,”.

Amendment of section 5 of Act of 2008

26. Section 5 of the Act of 2008 is amended by—

(a) the insertion of the following subsection:

“(2A) A person who pays, gives, offers or promises to pay or give a person (including the trafficked person) money or any other form of remuneration or consideration for the purposes of the prostitution of a trafficked person shall be guilty of an offence.”,

and

(b) in subsection (5), by the substitution of “sections 7 and 7A of the Act of 1993 in so far as an offence under those sections” for “section 7 of the Act of 1993 in so far as an offence under that section”.

Report on operation of Act

27. (1) The Minister for Justice and Equality shall, not later than 3 years after the commencement of this Part, cause a report to be prepared on the operation of section 7A of the Act of 1993 and shall cause copies of the report to be laid before each House of the Oireachtas.

(2) The report shall 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, and

(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.