

Submission to the Joint Oireachtas Committee on Justice, Equality and Defence

Review of Legislation on Prostitution 2012

Table of Contents

Executive Summary	3
Ruhama Main Submission to the Joint Oireachtas Committee on Justice, Defence and Equality: Prostitution Legislation in Ireland	7
1. Introduction to Ruhama	7
<i>Women Accessing Ruhama's Services Today Include:</i>	7
<i>Ruhama's Mission Statement</i>	7
<i>Values Informing Ruhama's Work</i>	8
<i>Services Offered by Ruhama</i>	8
2. Prostitution as Harmful and A Violence Against Women	9
3. The Issue of Choice	10
4. Prostitution and Sex Trafficking Cannot Be Separated	11
5. HIV/AIDS and Prostitution Legislation	12
6. Legalising/Regulating Prostitution Benefits Pimps /Traffickers /Profiteers of the Sex Trade – NOT Those in Prostitution	17
Germany – Key Findings	18
Netherlands – Key Findings	19
7. Complete Decriminalisation of the Sex Trade has a Similar Effect to Legalisation ..	19
8. Complete Criminalisation of Prostitution is NOT a Positive Solution	22
9. Criminalise Buying of Sex And Decriminalise Selling of Sex: The Swedish Example	22
10. Update Prostitution Legislation to Reflect Changes in Organised Prostitution	26
11. Role of Telecommunications in Organised Prostitution	26
12. Recommendations: Prostitution Legislation	27
13. Recommendations: Exiting Prostitution	32
APPENDICES	35
Reference List	43



Executive Summary

Ruhama is a Dublin based NGO, established in 1989, which works on a national level with women affected by prostitution. It is this experience of working for over 22 years at the front line with thousands of women affected by prostitution which primarily informs the opinions and recommendations outlined in this submission.

An introduction to Ruhama, its mission and an outline of its broad range of services to women affected by prostitution will be outlined in the main submission.

We begin our submission with the premise that prostitution is harmful and constitutes a violence against those prostituted, most notably women, who make up the largest percentage of those sold in the sex trade. This understanding of prostitution is based on Ruhama's experience of working with women affected by prostitution and supported by a vast amount of research both nationally and internationally. As well as the harm to the individual, prostitution also has a harmful effect socially, culturally and globally.

This submission responds to a number of issues/questions highlighted in the Department of Justice and Equality Discussion Document on prostitution.

When speaking about those in prostitution; Ruhama's submission regularly refers to women, this reflects its front line work and client group. Ruhama wants to acknowledge that any recommendations outlined in this submission relate to all persons in prostitution and are gender neutral.

The Issue of Choice

For the majority of women, prostitution is rarely a freely-entered career choice. Women who come to Ruhama seeking help in exiting prostitution, often express their desire to have a 'normal' life or a 'normal' job; it is not a positive career choice for the majority of prostituted women. Prostitution needs to be set against a backdrop of abuse, poverty, low self-esteem, debt, addiction, and few, if any, other survival options. The question of consent or choice needs to be framed, not only in terms of the degree of freedom involved but also in terms of the range of choices open to a particular individual.



Prostitution and Sex Trafficking Cannot Be Separated

The commercial sex trade in Ireland remains very active and highly organised. It is within this thriving sex trade that sex trafficking exists. It is therefore impossible to separate sex trafficking from organised prostitution because the same mechanisms operate within both – victims of trafficking are advertised in the same places as other forms of commercial sexual exploitation, and the same degree of fraud is used by pimps in advertising women's age, nationality etc. The movement of women to ensure 'variety' for the buyers of sex applies to both trafficked and non-trafficked women.

Furthermore, the background of those women and girls trafficked strongly echo those women who otherwise find themselves in prostitution. This background creates situations of vulnerability, which make the women more susceptible to traffickers.

HIV/AIDS and Prostitution Legislation

Ruhama asserts that prostitution laws following the Swedish example of criminalising the purchase of sex while decriminalising those prostituted are compatible with an effective and appropriate response to the prevention and treatment of HIV/AIDS in Ireland. Specific issues relating to education, services relating to sexual health and attitudes towards those in prostitution are dealt with in the main submission.

Legalising/Regulating Prostitution Benefits Pimps/Traffickers/Profiteers of the Sex Trade – NOT Prostituted Persons

The call to legalise or regulate prostitution can sometimes come from a genuine concern for the welfare of the women involved. The assumption is that if prostitution was legalised it would lessen both the harm to those prostituted and the involvement of criminal gangs.

In this submission, we present evidence from jurisdictions where regulation and legalisation have been in place for over a decade and which demonstrate that aspirations to make prostitution a safe legitimate form of work for those prostituted were ill founded.

Complete Decriminalisation of the Sex Trade has a Similar Effect to Legalisation

While Ruhama advocates the decriminalisation of the selling of sex; in this submission we outline serious concerns with the complete decriminalisation of prostitution. In 2003, New Zealand introduced the decriminalisation of prostitution; including the selling and buying of sex, and brothel keeping. There is evidence to show that some of the concerns regarding the New Zealand example of decriminalisation reflect the same issues that arise in the context of legalised prostitution, such as:

- ✚ The normalisation of prostitution which results in the dramatic increase in prostitution.
- ✚ Prostitution is defined as legitimate work and an acceptable job for young poor women.



- ✚ It has done little to reduce the exploitation and danger for those prostituted.
- ✚ It is difficult to challenge brothels even if they are located near schools or in residential neighbourhoods¹
- ✚ With the increased legitimacy of brothels, it is increasingly difficult for police to ensure no exploitation is taking place.
- ✚ Funding reduced for services supporting women who want to exit prostitution.

Complete Criminalisation of Prostitution is NOT a Positive Solution

Ruhama does not recommend the complete criminalisation of prostitution and believes Ireland needs to legislate to recognise the vulnerability of prostituted people. In States where all aspects of prostitution are criminalised, including the seller, it tends to be overwhelmingly those prostituted rather than their buyers who are arrested and punished.

Ruhama do not advocate for such a legal approach which in effect criminalises those in prostitution (including victims of trafficking and children) for their own exploitation.

Criminalise Buying of Sex and Decriminalise Selling of Sex: The Swedish Example

Any prostitution legislation which aims at curbing the growth in the Irish sex trade and addressing the involvement of criminal gangs needs to take into consideration the pivotal role of the sex buyer in fuelling the market in the sex trade.

In this submission we recommend Ireland follows the Swedish example of legislation which criminalises the buying of sex and decriminalises the selling of sex. In Sweden, the criminalisation of the buying of sex counteracted the normalisation of prostitution, making it socially unacceptable for anyone to buy another person for sex. This has resulted in a decrease in the overall sex trade and sex trafficking.²

Update Prostitution Legislation to Reflect Changes in Organised Prostitution

There have been many changes in the Irish sex trade since the enactment of the Criminal Law (Sexual Offences) Act 1993, most notably: - how prostitution is organised, the profile of the women involved and the large scale profits made by criminal gangs. A range of recommendations which would update the 1993 Act are outlined in this submission.

¹ Melessa Farley Women's Studies International Forum 32 (2009 311 – 315 citing the The New Zealand Prostitution Law Review Committee (2008)

² Courant Research Centre 'Poverty, Equity and Growth in Developing and Transition Countries: Statistical Methods and Empirical Analysis' No. 96 *Does Legalised Prostitution Increase Human Trafficking?* Seo-Young Cho, Axel Dreher, Eric Neumayer. September 2011 (updated January 2012).



Role of Telecommunications in Organised Prostitution

The use of modern telecommunications (internet/mobile phone) by pimps and traffickers in the advertisement and organising of prostitution has contributed to the large scale growth in the Irish sex trade over the last decade. Its use offers anonymity to pimps and traffickers who no longer need to be on site to operate their crimes and consequently, makes traditional forms of policing organised prostitution redundant. This submission outlines a range of recommendations to equip Gardaí in the policing of organised prostitution, giving a specific focus to the significant role of telecommunications.

Recommendations: Prostitution Legislation

1 Update Current Prostitution Legislation - The Criminal Law (Sexual Offences) Act 1993

- **Section 1 – Interpretation**
- **Section 9 – Organisation of prostitution**
- **Section 11 – Brothel keeping**

2 Criminalising the Purchase of Sex

3 Address the Role of Telecommunications in Advertising and Organising Prostitution

- **Advertising Prostitution on the Internet - Criminal Justice (Public Order) Act 1994**
- **The Use of Mobile Phones in Organised Prostitution**

4 Anonymity in Respect of Vulnerable Witnesses

5 Spent Convictions

Recommendations Regarding the Need to Sustain and Enhance Supports to those Affected by Prostitution



Ruhama Main Submission to the Joint Oireachtas Committee on Justice, Defence and Equality: Prostitution Legislation in Ireland

This submission by the voluntary agency Ruhama makes recommendations relating to Ireland's prostitution legislation. These will include a recommendation to criminalise the purchase of sex, while recognising that those 'selling' in prostitution are vulnerable persons who should not be criminalised. The submission also highlights recommendations relating to other aspects of the prostitution laws which, Ruhama believes, will additionally assist in the combating of organised prostitution and sex trafficking.

Also in this document are responses to a number of issues/questions highlighted in the Department of Justice and Equality Discussion Document on prostitution, which covers a large amount of research, with different positions and opinions. Ruhama will respond to those questions which pertain in the main, to the implications for an introduction in Ireland of a law following the Swedish example.

1. Introduction to Ruhama

Ruhama (www.ruhama.ie) is a Dublin based NGO, working on a national level with women affected by prostitution, since 1989. While Ruhama began its work responding to the needs of women involved in street-based prostitution, it has developed and adapted its services over the years, to meet the various and often complex needs of women affected by prostitution.

Women Accessing Ruhama's Services Today Include:

- ✚ those currently involved in prostitution (street-based or indoor)
- ✚ those exiting prostitution
- ✚ those with a history of prostitution and
- ✚ victims of sex trafficking.

Ruhama's Mission Statement

- ✚ to reach out to and provide support services to women affected by prostitution and other forms of commercial sexual exploitation
- ✚ based on individual need, to offer assistance and opportunities to explore alternatives to prostitution
- ✚ to work to change public attitudes, practices and policies, which allow the exploitation of women through trafficking and prostitution



Values Informing Ruhama's Work

- ✚ being non-judgmental
- ✚ placing a high value on equality, inclusivity, cultural diversity, dignity and respect
- ✚ affirming every woman's right to society's protection and respect
- ✚ commitment to learning and to continual service improvement
- ✚ accountability to funders and to the women we work with

Services Offered by Ruhama

- ✚ Individual casework support and advocacy
- ✚ Out of hours emergency response
- ✚ Provision of accommodation to vulnerable women in emergency situations
- ✚ Provision of one to one and group training and development opportunities
- ✚ Support into mainstream training and/or employment
- ✚ Support with resettlement (including social welfare, budgeting and tenancy agreements)
- ✚ Mobile Street Outreach in Dublin's "Red Light" areas
- ✚ Outreach service to other key agencies/services
- ✚ Emotional and psychological support including access to counselling
- ✚ Practical support (material needs) in certain circumstances
- ✚ Interpretative support
- ✚ Referral to other key agencies that can offer supports
- ✚ Delivery of Training and awareness sessions to groups on the issue of prostitution and trafficking
- ✚ Advocating and campaigning on the issue of prostitution, including trafficking to raise awareness and support positive change in social attitudes and policies, and minimise the ongoing harm to women and girls through the sex industry

It is the experience of working at the front line with thousands of women affected by prostitution for over 22 years which primarily informs the recommendations outlined in this submission.

When speaking about those in prostitution; Ruhama's submission regularly refers to women, this reflects its front line work and client group. Ruhama wants to acknowledge that any recommendations outlined in this submission relate to all persons in prostitution and is gender neutral.



2. Prostitution as Harmful and A Violence Against Women

Ruhama firmly believes that prostitution is both intrinsically harmful and violent to the women involved.

This understanding of prostitution as harmful is based on over two decades of working as a front line service provider to women affected by prostitution and is supported by a vast amount of research, both nationally and internationally.

As well as the physical harm and damage, there is the emotional and psychological harm of being sexually objectified. Being in prostitution erodes self-esteem, self-confidence, can cause depression and symptoms of post traumatic stress disorder. It can result in infertility, unwanted pregnancies, sexually transmitted infections, fissures and many other negative physical consequences.³

As well as the harm to each individual, there is the social, cultural and global impact – the damage to the social position and perception of women both nationally and globally, the proliferation of sex tourism and trafficking and the normalisation of all forms of violence against women. The sexual exploitation of prostitution is harmful to all women. If one woman is perceived as being for sale, the implication is that all women and girls are potentially for sale and this directly undermines the potential for gender equality.

International studies show that women in prostitution experience extremely high levels of violence such as beatings, rape, sexual assault, terrifying and degrading treatment.⁴ They face constant subjection to humiliations of all kinds, theft, as well as the health risks from very frequent, rough sex and also from being sometimes required to have unprotected sex. Sexual, emotional and physical violence is a common experience for women in prostitution.⁵ The same experiences are reported across the globe, regardless of culture or race.

It is not claimed that all men who use women in prostitution are explicitly violent but, essentially, what they purchase is the power to be violent with the likelihood that there will be no sanctions. Even when the violence does not occur, the threat and the lack of protection are always there. The women that Ruhama work with report hypervigilance and constant tension due to the perpetual risk of the unknown that might occur when responding each day to knocks at the door from strangers who have paid to have sex with them. They also disclose feelings of isolation – from other people and from the rest of society; panic attacks, depression, and suicidal feelings.

³ Kelleher et al 2009, Lawless 2005

⁴ Farley et al (1998) and Lawless, K. & Wayne, A., and Ruhama (2005) Ch.7. and Raymond, J., (1998)

⁵ Farley et al (1998)



The experiences of the women in the research published by Ruhama in 2005, called ‘Next Step Initiative’ established that the effects of prostitution are long term and endure beyond their active involvement in prostitution. It also found that the survival and defence mechanisms, created by the women while involved in prostitution, are themselves the cause of serious long-term effects.⁶

Dissociation, the psychological process of banishing traumatic events from consciousness, is an emotional shutting down used by women in prostitution, similar to the experience of women being raped, battered, and among prisoners of war who are being tortured.⁷

Women with no history of drug or alcohol abuse prior to their involvement in prostitution report resorting to drugs and alcohol to deaden the psychological trauma of prostitution.

3. The Issue of Choice

Entry into prostitution for women is in the main, rarely a freely-entered choice and needs to be set against a backdrop of abuse, poverty, low self-esteem, debt, addiction and few, if any, other survival options.

For the vast majority, prostitution is not a positive career choice. It does not equate to deciding to enter a role based on genuine interests, talent and ultimate work satisfaction. It is, rather, a condition either forced upon individuals by third parties or selected as the best of a bad bunch of options.⁸

The reality is that women and girls do sometimes report making a decision to enter prostitution. However, the degree of meaningful choice involved for the majority is dubious, given the powerful social forces of poverty, violence and inequality that constrain this choice. The following are common factors which create a ‘push/pull’ into prostitution:

- ✚ Poverty
- ✚ Debt – small or large amounts
- ✚ History of abuse and/or severe neglect as a child or youth
- ✚ Institutionalisation as a child (in care)
- ✚ Partner abuse
- ✚ Homelessness
- ✚ Lack of family/social supports
- ✚ Addiction

⁶ Lawless (2005)

⁷ Farley (2003)

⁸ O’Connell Davidson, J., (1998) p.198

- ✚ Grooming/coercion (family, partner, “friend”)
- ✚ Note: the above factors reflect a background very similar to the profile of victims of trafficking.

For many, if not most women, their so-called choice is preceded by and conditioned on earlier traumatic abuse and an interplay of personal and economic factors. Factors such as those noted above all combine to make the question of free choice almost meaningless. The question of consent or choice needs to be framed, not only in terms of the degree of freedom involved, but also in terms of the range of choices open to a particular individual, i.e. a choice between what options? Further, the harsh experience of many women is that they do not realise how hard it is to leave prostitution until it is too late.⁹

4. Prostitution and Sex Trafficking Cannot Be Separated

The backgrounds of those women and girls trafficked strongly echo those of women who otherwise find themselves in prostitution. This is what creates their vulnerability to being trafficked in the first place. Traffickers completely capitalise and exploit women’s hope for a better life by means of:

- ✚ Targeting of pre-existing vulnerability (lack of family support and/or education, poverty, abuse)
- ✚ Abduction
- ✚ Deception: “new better life”
- ✚ Debt bondage
- ✚ Juju/Witchcraft
- ✚ Repeated assault: “breaking down”
- ✚ Threats to woman/woman’s family
- ✚ Lies (about police/laws/other women in the brothel)
- ✚ Deportation threat
- ✚ Organised criminality – crossing borders

The commercial sex trade in this country remains very active and highly organised. There are numerous criminal gangs organising and profiting from the prostitution of vulnerable women and girls right across the island of Ireland in urban and rural settings. While Ruhama continue to work with significant numbers of Irish women, the majority of those exploited in the indoor sex

⁹ Lawless, K., and Wayne, A., (2005), Ruhama Report ‘The Next Step Initiative’ Chapter 6. ‘Choice and the Absence of Alternatives’, Dublin: Ruhama also see Mansson, S.A. & Hedin, U.C. (1999)

trade are migrant women, and this is reflected by the fact that in 2011 Ruhama supported women of 36 different nationalities – an increase from 31 in 2010. This small island remains a destination for traffickers, pimps and procurers from all corners of the globe. For the women and girls, far from home, isolated and often highly controlled or literally coerced through trafficking, prostitution itself is an intrinsically dangerous and damaging experience.

There are cases where victims of trafficking are being forced into prostitution in brothels where there are women who are in prostitution and do not fit the narrow definition of a victim of trafficking. The pimp and the trafficker are one and the same in these cases. Their attitude towards those in the brothel is arguably equally dehumanising and controlling: these women and girls are just commodities.

To separate trafficking out from organised prostitution defies logic, given the mechanisms by which the sex trade operates. Victims of trafficking are advertised in the same places as all other forms of the commercial sex trade, not in some separate corner of the internet restricted to trafficking. The same degree of fraud is used by pimps in presenting women's ages, nationalities, sexual availability – and also their movement to ensure 'variety' across the country in respect of trafficked and 'non-trafficked' women alike. This was amply highlighted in recent RTE investigations.¹⁰ A cohesive approach to organised prostitution is also the means by which victims of trafficking can be identified and assisted. Equally, the inherent harms and risk of abuse outlined above affects those in prostitution across the board.

5. HIV/AIDS and Prostitution Legislation

Ruhama assert that prostitution laws following the Swedish example of criminalising the purchase of sex while decriminalising those prostituted are compatible with an effective and appropriate response to prevention and treatment of HIV/AIDS in Ireland.

In Chapter 4 of its Discussion Document (The Requirements of International Organisations), the DJE draws specific attention to *The report of the UNAIDS Advisory Group on HIV and Sex Work* (Dec 2011) when considering legislation in response to prostitution in Ireland.

While Ruhama accept entirely the need to give due regard to population health issues and also the human rights of those involved in prostitution, there are a number of points in relation to this report, considered in the Irish context, which merit a response.

¹⁰ RTE Prime Time: *'Profiting from Prostitution'*, February 2012

Report Disclaimer: It is important to note in the first instance that this report carries the following disclaimer: *“This document does not necessarily represent the views of all members of the Advisory group on HIV and sex work, nor the stated positions, decisions or policies of the UNAIDS Secretariat or any of the UNAIDS cosponsors.”* It does not therefore reflect official UNAIDS or UN policy on HIV and prostitution.

Starting Position: The members of the *UNAIDS Advisory Group on HIV and Sex Work* have a clear record of taking a pro-prostitution position, in particular the Global Network of Sex Work Projects. There is no representation from groups working with those in the sex trade who take an abolitionist approach to prostitution.¹¹ Therefore, a presumed bias towards a pro-prostitution position should be expected.

This bias is evident in the report itself with persistent reference to pimps as ‘managers’ and the extraordinary reference at the bottom of page 17, which refers to victims of trafficking being supported to become more ‘independently’ involved in prostitution. This demonstrates that the report starts from the premise that prostitution in and of itself is not harmful. It is suggesting that even those who have been most horrifically abused within the sex trade can unambiguously transfer their experience of multiple rape in the sex trade to a more positive one of freely selling their bodies for sex ‘with support from their fellow sex workers, their clients, their intimate partners and their managers or agents’ (p.17). This report ignores and sidesteps the massive trauma of trafficking on the person, the broader physical and emotional health consequences of involvement in prostitution and the desire on the part of 90% of those in prostitution (including those not trafficked) to exit.¹²

The Importance of Context: it is important to acknowledge that the global combating of the HIV/AIDS pandemic is vital and should be taken very seriously. Education and prevention, and where required, treatment for all vulnerable groups is essential. However, remembering the context of considering **the law relating to prostitution in Ireland** is critical if one is to consider the actual value of this report to the discussion.

The *report of the UNAIDS Advisory Group on HIV and Sex Work*, highlights a speech UN Secretary General Ban Ki-moon made to the International AIDS conference in 2008 in which he called for laws to protect those affected by prostitution, drug use, and homosexual sex among others. **“...In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities,”...“This must change. ...In countries without laws to protect sex workers, drug users, and men who have sex with men, only a fraction of the population has access to prevention.”**

¹¹ ‘Pro-prostitution’ is taken to mean a position which favours the legitimising, regulating and legalising of all aspects of the sex trade. ‘Abolitionist’ is taken to mean a position that regards all forms of prostitution as intrinsically harmful and aims to eliminate it as a form of exploitation, particularly of women and girls.

¹² Farley et al 2003



Firstly, while this *report of the UNAIDS Advisory Group on HIV and Sex Work* purports to focus on “Sex Work & HIV”, in fact the recommendations made largely draw on those made for all categories of vulnerable groups including intravenous drug users and men who have sex with men.

Secondly, most examples of initiatives for HIV prevention in prostitution in this report focus on countries with a far higher prevalence of poverty, HIV/AIDS and/or far lower availability of services and health care for the general population overall (e.g. Kenya, Brazil, India). In Ireland, the rate of HIV among the adult population (19-49 years) is 0.2%, compared with 6.7% in Kenya.¹³

Drug Users: In Ireland there are comprehensive schemes and health services available to support and offer health services to those suffering with drug misuse.

Men Who Have Sex with Men: Homosexuality is not criminalised in Ireland, and it is in jurisdictions where this is the case that are highlighted by the UNAIDS group as being those that put men who have sex with men at greater risk of contracting HIV.

It is important also for the purpose of this discussion to make a clear distinction between the rights of men who have sex with men engaging in consensual same-sex relations, and the experience of being sexually exploited in prostitution, which has no bearing on the sexual orientation of those prostituted, whether male or female.

Prostitution: In Ireland, sexual health screening, including for HIV for those in prostitution is available **free and confidentially** through the HSE Women’s Health Service (WHS) and has been for over 20 years. Indeed, the whole population irrespective of ethnic status can avail of free testing in GUM (Genito Urinary Medicine) clinics nationally. Equally, the prevalence of HIV among those in prostitution is far lower than the very high risk categories identified in Asia and other countries. The HSE WHS indicated on enquiry that the numbers screened through their services with HIV are extremely low. Additionally, in nearly every case where a positive screen is found the cause of infection is more likely to be either as a result of intravenous drug use (IDU) or a pre-existing infection contracted in sub-Saharan Africa, rather than directly through contact with an infected sex buyer in Ireland.

General Support for Those with HIV/AIDS: There are a number of well established NGOs in Ireland operating comprehensive support services for those living with HIV/AIDS in Ireland which can be accessed by individuals who fall into any of the above categories.

¹³ CIA World factbook: HIV AIDS adult prevalence 2011

Mandatory Testing: for HIV/AIDS, which **can** be discriminatory and repressive of the human rights of at-risk groups and is a punitive approach used in other countries, **is not** policy in Ireland.

Therefore, many of the contentions by this report do not have a significant bearing when considering both services available to at-risk groups and discriminatory practices that impact negatively on their ability to access sexual health services in an Irish context.

Education/Attitudes to Condom Use: Recommendations for education of men in changing attitudes to condom use are to be welcomed, but should not, and arguably **cannot** be restricted to sex buyers. Such initiatives must (and generally do) target all men who are sexually active, who can be classed as ‘potential buyers’. The UNFPA Broad Activity Achievement report, referencing the work of UNAIDS is clear that this is the approach taken, rather than initiatives for actual *acknowledged* sex buyers. The logistics of ‘engaging’ sex buyers as a separate cohort is not feasible – especially as the majority are married and unlikely to engage as a part of this categorised group.¹⁴ The greatest barrier to condom use is the men who refuse to use them – whether with those in prostitution or other sex partners. The *report of the UNAIDS Advisory Group on HIV and Sex Work* expounds at length on the violence demonstrated towards those in prostitution by police, but alludes only vaguely to changing buyers ‘attitudes’ towards sex workers to encourage condom use. No allusion is made to potential violence/coercion by buyers themselves and the impact that this has on women’s ability to negotiate condom use.

For women in prostitution, safe sex/reproductive health practices are encouraged by many of the services specifically accessed by them through both condom distribution and sexual health awareness sessions.

A law that does not criminalise those ‘selling’ in prostitution but does target those who buy sex should not impact on the availability or access to either sexual health services or education initiatives because these are already in place for those in prostitution – although they could be enhanced across the country. Any education initiatives for men will target a broader male population and not a narrow cohort of ‘identified sex buyers’ therefore a criminal offence in relation to this activity should not preclude general safe sex education.

¹⁴ Macleod, J., Farley, M., Anderson, L, and Golding, J. (2008) *Challenging Men’s Demand for Prostitution in Scotland: A Research Report Based on Interviews with 110 Men Who Bought Women in Prostitution*. Glasgow: Women’s Support Project.



Considering A Scenario Where the Sex Trade is Decriminalised/Legalised As A Mechanism to Reduce HIV: We know from the Irish context (Ruhama, HSE WHS and RTE Prime Time programme *'Profiting from Prostitution'*) that pimps and buyers actively encourage and expect harmful practices such as CIM (ejaculate/'cum' in mouth) and OWO (oral sex without a condom) from women in prostitution. A scenario where the legalisation of the sex trade would suddenly better 'empower' those women to negotiate safe sex does not seem reasonable. In the legal context, competition and danger are just as apparent due to the enlarged size of the trade and there is no reason to believe that in a European context there would be any shift because of a change to the prostitution laws by decriminalising/legalising the trade (as opposed to broader social education and awareness programmes for instance) to decrease this reality inherent in prostitution.¹⁵

*"Men are constantly looking for sex without condoms, including anal sex, which I do not do... Men want more and more thing... not just normal sex. I have to move around... I do not stay in any one place for too long as they will get to know by the reviews that you will not do these things (Floria)."*¹⁶

Buyers In Their Own Words: See Appendix 1 to read a sample of the attitudes of current sex buyers in Ireland towards the women they buy. These excerpts of 'reviews' men write online about women they buy sex with show the expectation of unprotected sex, the fact that they react negatively and even angrily when women refuse, and other indicators that sex buyers in the round do not have much interest in the welfare or wellbeing of the women they buy for sex. These same attitudes are borne out in several research studies of sex buyers.¹⁷

As buying sex is currently not illegal in Ireland this exemplifies the fact that even when 'decriminalised' these individuals are not taking on board their 'responsibilities' to behave with respect towards the human right to bodily integrity and dignity of women in prostitution. This should not therefore be an argument against criminalising their actions.

¹⁵ Reports from both the Netherlands and Germany find negative consequences to having legalised the sex trade. Additionally data can only be taken from the 'legal' trade and in parallel an 'illegal' trade has flourished in both jurisdictions. The health and wellbeing of those in prostitution in the 'illegal' side is likely to be even worse than that of those in the 'legal' sector. Reference: A.L. Daalder, Prostitution in the Netherlands Since the Lifting of the Brothel Ban, WODC (Research and Documentation Centre, Dutch Ministry of Security and Justice), 2007, www.wodc.nl/images/ob249a_fulltext_tcm44-83466.pdf

Sozialwissenschaftliches FrauenForschungsInstitut an der Evangelischen Fachhochschule Freiburg, *The Act Regulating the Legal Situation of Prostitutes – implementation, impact, current developments*, 2007

¹⁶ Kelleher et al (2009) p.99

¹⁷ Farley et al 2011, *Comparing Sex Buyers with Men Who Don't Buy Sex: "You can have a good time with the servitude" vs. "You're supporting a system of degradation."* Paper presented at Psychologists for Social Responsibility Annual Meeting July 15, 2011, Boston, MA. San Francisco: Prostitution Research & Education, Macleod, J., Farley, M., Anderson, L, and Golding, J. (2008) *Challenging Men's Demand for Prostitution in Scotland: A Research Report Based on Interviews with 110 Men Who Bought Women in Prostitution*. Glasgow: Women's Support Project, Escort Surveys (Ireland) 2006.

A greater targeting of pimps and organisers of prostitution who have responsibility for encouraging/coercing unsafe sex practices will be easier for Gardaí in the context of a smaller sex trade which would reduce if demand is criminalised. Prioritising policing of organised crime rather than making pimping a legitimate business activity will arguably also have a positive impact on the small minority of individuals ‘independently’ in prostitution, by reducing the risks of these criminals to their welfare.

The Swedish Example: The report makes a criticism of the Swedish laws by alleging that: “*the approach of criminalising the client has been shown to backfire on sex workers. In Sweden sex workers who were unable to work indoors were left on the street with the most dangerous clients and little choice but to accept them.*”

On enquiry to the Swedish authorities and also the Swedish expert on violence against women (EWL Observatory), this allegation has been roundly refuted and no evidence has been demonstrated to support the claim. A verbatim response to the query about the allegations of the report by the **social work team** of the **Stockholm Prostitution Unit** is noted in Appendix 2. This team work independently and also in conjunction with the police and comprise the **only** frontline service that operate a dedicated service to those in prostitution on the streets of Stockholm.

Criminalising the purchase of sex, [provided that those ‘selling’ in prostitution are not criminalised] does not prove an impediment for those in prostitution seeking to access support, including health services, or make it more dangerous to be in prostitution. Prostitution is inherently dangerous no matter what the legal regime.

6. Legalising/Regulating Prostitution Benefits Pimps /Traffickers /Profiteers of the Sex Trade – NOT Those in Prostitution

The call to legalise or regulate prostitution can sometimes come from a genuine concern for the welfare of women involved. The assumption is that if prostitution can be constructed as work, it will thereby lessen the threats of harm and stigmatisation.

Others making this argument, however, are promoters of the sex trade; pimps, procurers and traffickers. They have a vested interest in promoting this model of legislation as the benefits for them would be huge; they would no longer be considered criminals but would become legitimate businessmen/women. Once prostitution is considered as legitimate work, it is the responsibility of the health and safety officers to inspect brothels and no longer falls under the scrutiny of police. In fact, it heavily constrains police in identifying and intervening in potential exploitation because it is more difficult to enter ‘legitimate business premises’ than an illegal operation.



‘Sex work’ and ‘sex worker’ are part of a terminology and rhetoric used by those who seek to normalise prostitution. They promise that women in prostitution will achieve respect when prostitution itself is accepted as normal legitimate activity. It argues that prostitution is ordinary work, a legitimate form of work for women and a valid form of female economic empowerment. It presents prostitution as a job like any other, using traditionally female, low-paying service jobs as comparisons. It is argued that the more ‘professional’ the sex worker the more care she will take of herself.

However, a review of prostitution regimes in nine countries concluded that it is not feasible to treat sex work like any other occupation, integrate it into employment law or create the conditions in which women's health and safety can be protected.¹⁸

The evidence from jurisdictions where regulation and legalisation have been in place for over a decade demonstrates that aspirations to make prostitution a safe legitimate form of work for women were ill-founded. In Germany, an extensive evaluation published in 2007 indicates there is no evidence that women are safer, only a tiny number of women have accessed health insurance or registered as ‘sex-workers’, the illegal sector continues to grow and profit and the people who have benefited most are the organisers and owners of the businesses.¹⁹

Germany – Key Findings:²⁰

- ✚ *Sex trafficking on the rise (70% over a five year period) – including trafficking by German nationals*
- ✚ *No change on the stigma for women involved in prostitution (women not registering, health insurance discrimination)*
- ✚ *It has been found to be completely impractical to try to impose employment contracts without risking contractual bound exploitation – drawing the conclusion by police that prostitution simply cannot be considered in the same way as a ‘normal job’*
- ✚ *Flat rate sex promotion in brothels, discount to cyclists – huge ‘competition’ in a now massive market*
- ✚ *No help for foreign prostitutes (no legal work permit)*
- ✚ *More prostitution of African women*
- ✚ *Increase of organised criminality*
- ✚ *Some prosecutions of traffickers but no jail time*
- ✚ *Failure to help women to leave prostitution (no ‘exiting’ supports resourced)*

¹⁸ Kelly et al (2008)

¹⁹ Kavemann (2007)

²⁰ Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes, Berlin 2007, www.bmfsfj.de, US TIP Report 2010



In the Netherlands, extensive evaluation of the industry has found that legalisation has not brought any more safety for women but rather a massive legal and illegal trade in migrant girls and women; that combating the exploitation of involuntary prostitution is 'virtually impossible'; that pimping is widespread and that the emotional well-being of women is now lower than in 2001 on all measured aspects, and the use of sedatives has increased.²¹

Netherlands – Key Findings:²²

- + *Majority of women still under pimp control*
- + *Increase of trafficking 'enterprises' (more than 750)*
- + *50-90% of women in prostitution estimated as being there 'involuntarily'²³*
- + *Prostitutes' emotional well-being has decreased*
- + *Very few registered formally as prostitutes (less than 5%)*
- + *While some resources in place to support trafficking victims – almost none to support women wishing to exit prostitution*
- + *Plans to close down businesses with links to organised crimes (including brothels) – some designated 'red light' areas already shut down*
- + *In 2011, a deputy mayor of Amsterdam, Lodewijk Asscher, stated that decriminalising procuring has been a "national error"²⁴ and that the government has been "reprehensibly naïve"*
- + *Plans to raise the minimum age for selling sexual acts from 18 to 21 years old*
- + *Plans to criminalise the use of services from 'trafficked' women*

7. Complete Decriminalisation of the Sex Trade has a Similar Effect to Legalisation

Prostitution was decriminalised in New Zealand in 2003 and after nearly a decade of this form of legislation, there is evidence to show that it has some disturbing consequences for the women involved, and has resulted in an increase in prostitution in at least some areas.

One can safely draw the conclusion that when prostitution is considered as work whether through legalisation, regularisation or decriminalisation, it results in the normalisation of the buying of sex and the sex trade increases.

²¹ Daalder (2007)

²² *ibid*

²³ KLPD (Korps Landelijke Politiediensten) – Dienst Nationale Recherche (juli 2008). Schone schijn, de signalering van mensenhandel in de vergunde prostitutiesector. Driebergen.

²⁴ http://www.lemonde.fr/m/article/2011/12/23/pays-bas-flop-de-la-legalisation-de-la-prostitution_1621755_1575563.html.



The New Zealand Prostitution Law Review Committee (PLRC) noted that street prostitution in Auckland more than doubled in just one year (2006-2007), with press reports and local support services suggesting even higher increases.²⁵

Decriminalised prostitution in New Zealand not only made prostitution acceptable and encouraged men to buy sex, but it also transformed prostitution into a more attractive option for young, poor women. In one of the PLRC's own surveys 25% of those involved in prostitution interviewed stated that they entered the sex trade **because** it had been decriminalised (PLRC 2008:39).²⁶

Other concerns raised are in relation to the actual mechanisms in place to monitor and police the sex trade. The manager of support service 'Street Reach' in Auckland, which works with women in on-street and some off-street prostitution, has outlined serious concerns with the decriminalisation of prostitution, which reflect some of the same issues that arise also in the context of legalised prostitution.

- ✚ *Increase in gang activity in organising prostitution/pimping. On-street prostitution in particular is highlighted: where pimping was not legal before the 2003 legislation, it now is and it is reported that there is more third party control of women.*
- ✚ *No meaningful change for women in terms of criminalisation, as they were largely not arrested before the law was introduced because selling sex itself was not illegal. The PLRC reported that, despite the continuation of violence and sexual abuse ("the majority of sex workers felt that the law could do little about violence that occurred"²⁷) most women in prostitution continue to mistrust police and were reluctant to report crimes against them following the enactment of the law.²⁸*
- ✚ *Increased challenge to police to ensure no exploitation. Once brothels are legitimate premises, the burden of evidence to acquire a warrant is very high. Police must go to court to acquire a warrant and serve notice of this which would of course allow any minors or exploited persons to be moved from the premises.*
- ✚ *Funding for exiting prostitution cut from services that assisted women seeking to leave prostitution. (Note: the New Zealand Prostitutes Collective, the largest lobbying group was established on foot of concerns about HIV prevention and offers no programmatic support such as job training/advocacy/exiting supports for women stuck in the sex trade.²⁹)*

²⁵ The New Zealand Prostitution Law Review Committee (PLRC) (2008) page 118

²⁶ Melessa Farley Women's Studies International Forum 32 (2009 311 – 315 citing the The New Zealand Prostitution Law Review Committee (2008)

²⁷ PLRC, 2008: 14 & 57

²⁸ PLRC, 2008: 122

²⁹ Farley 2009, WSIF. p 313



- ✚ *The interpretation of trafficking in New Zealand does not allow for trafficking internally, which has been criticised by the US TIP report as a failing in responding to, and identifying trafficking. This legislation does not account for, or record instances of the internal trafficking of indigenous Maori girls, for instance.*
- ✚ *Even where a suspected minor is in a car with a buyer, police have no right to ask for age identification unless a sex act is actually taking place – therefore, violation of a child has already happened before police can intervene.*
- ✚ *Pimps are circumventing the need for regulation, certification and location of brothels provided for in the law by opting to establish a ‘Small Owner Operated Business’ or SOOB. This can be done by setting up premises with less than four prostitutes and SOOBs can be located anywhere without being susceptible to regulators. There are no figures as to how many SOOBs are operating as de-facto brothels, but similar to the Netherlands and Germany, there is a clear indication that an illegal trade becomes established in parallel to the ‘legal/regulated’ one. There is anecdotal evidence that this is the case in New Zealand, with this mechanism being a convenient way for pimps to do so.³⁰*

New Zealand explicitly rejected the regulation/legalisation model on the basis that a licensing regime would need extensive administrative and enforcement resources, and risked the creation of a two-tier industry, in which the legal side of the market would come under the control of big business and the illegal side would be populated by individuals who are most vulnerable to exploitation. While offering the benefits associated with the reduction of prostitution stigma and the greater visibility of those in prostitution (which was thought to render them less vulnerable to abuse), it was argued that decriminalisation may offer the added advantage of limiting state intrusion into the private lives of those in prostitution, and permitting them greater flexibility in their working practices.

However, significant issues outlined above are emerging in relation to this approach and equally serious questions need to be asked as to whether the law has in fact circumvented the acknowledged problems with legalising and if it has in fact done anything significant to reduce exploitation and danger to those in, or vulnerable to, coercion into prostitution. The downside of a premise of a lack of state intervention (in the main to reduce ‘administrative resources’) in circumstances where pimping and brothel keeping are made legal, is that a lack of regulation simply permits abuses to go unchecked. In addition, the hands-off ethos of decriminalisation avoids difficult ideological questions about the status of prostitution as a form of condoned labour only at the cost of selective blindness to the harms that are inherent in the sale of sex.

³⁰ All bullet points above, where not otherwise cited, are drawn from Debbie Baker, Manager ‘Streetwork’ Auckland. Presentation to Grosse Freiheit Conference on prostitution and trafficking, Copenhagen 8th May 2011

8. Complete Criminalisation of Prostitution is NOT a Positive Solution

States which take measures to criminalise all aspects of prostitution, including the seller, such as the majority of the States in the USA, fail to recognise and legislate for the vulnerability of those in prostitution. In such regimes, it tends to be overwhelmingly those prostituted rather than their buyers who are arrested and punished.

Ruhama does not advocate for such a legal approach which in effect criminalises those in prostitution (including victims of trafficking and children) for their own exploitation.

9. Criminalise Buying of Sex And Decriminalise Selling of Sex: The Swedish Example

At a time when the sex trade has increased and expanded throughout Ireland at an unprecedented rate, it is hugely important that we generate strong deterrents which will curb the demand for prostitution, which is fuelling the current market and creating huge profits for criminal gangs.

The law is used as a very effective educator; making society aware of the harmful effects of certain behaviour i.e. drink driving, passive smoking, driving without seat belts etc.

The criminalisation of certain behaviour acts as a deterrent, particularly for those who are in the ‘potential perpetrator’ category; they are less likely to commence behaviour that is classed as a criminal act.

In July 2010, the Swedish government published an evaluation of its 1999 law which prohibits the purchase of a sexual service (and not the selling of such service).³¹ The evaluation was led by the Ministry of Justice.³²

➤ By tackling the demand, the prohibition to purchase sexual services functions as a barrier against the establishment of organised traffickers and pimps in Sweden.

According to the National Police, the law contributed to the fight against international networks of procurers. By tackling the demand and therefore reducing their possibilities to gain from the exploitation of prostitution, Sweden has discouraged criminal networks to invest on its territory.³³

³¹ Website of the Swedish government: <http://www.regeringen.se/sb/d/13358/a/149231>.

³² It is interesting to notice that this positive assessment has been made by a government led by the political party which, 10 years earlier, had voted against the law as it was in the opposition side.

³³ This deterrent effect has been confirmed by police phone-tapping activities which reveal the lack of ‘profitability’ of procuring investment in Sweden.



- **The number of persons exploited in street prostitution has halved and there is a general stabilisation of the number of prostituted persons, compared to the significant increase in neighbouring countries.**

The evaluation of the Swedish law shows that:

- ✚ The number of persons exploited in street prostitution has halved since 1999, while it increased in Denmark and Norway for the same period – to the extent that Norway followed Sweden’s example in legislation to criminalise the sex buyer in November 2008.
- ✚ Prostitution through the Internet has increased in Sweden as it has in other countries, due to the development generally of online technology. The numbers of individuals that are sold via Internet web pages/ads are much larger in similar neighboring countries such as Denmark and Norway.³⁴
- ✚ The proportion of prostituted persons from third-countries did not increase in the same way it exploded in neighboring countries.

- **The law proves to have normative effects through the reversal of mentalities in 10 years: there is more than 70% of public support to the law.**

While the majority of the Swedish population was opposed to the prohibition of the purchase of a sexual service before the adoption of the law, 10 years later three polls have shown that more than 70% of the population support it fully. The normative effect of the law seems even stronger as support to the law is higher amongst the young people who have grown up in a state where the purchase of another person’s body for sex is deemed unacceptable.

- **The prohibition acts as a deterrent for the buyers of a sexual service: there is a decrease of the demand.**

According to polls in Sweden, the proportion of men who buy sex has decreased. In 1996, 13.6% of Swedish men said they had bought someone for prostitution purposes. In 2008, it is only 7.8%. A large number of interviewed men said they don’t buy sex anymore because of the law. The Swedish police consider that the legislation prevented many potential sex buyers from taking the plunge in the first place.³⁵

The Department of Justice and Equality Discussion Document on Prostitution Legislation poses some specific questions in relation to a law that would follow the Swedish example (pp39-40). Most have been responded to in the broader context of arguments presented above. However some specific questions are responded to here:

³⁴ In 2007, the Swedish national agency for social affairs studied during 6 weeks the ads posted in the Internet and took inventory of only 400 persons proposing sexual services. In 2008, more than 800 persons in Denmark, and almost 1400 persons in Norway were proposing services on the Internet only. Source: <http://www.assemblee-nationale.fr/13/pdf/rap-info/i3334.pdf> (p. 226).

³⁵ Since the legislation coming into force in 1999, 4225 men have been apprehended.



❖ *Might a ban on the purchase of sexual services drive prostitution further underground?*

Since the enactment of legislation in Sweden, there has been no increase in ‘hidden’ prostitution. Social services and the police highlight that prostitution cannot completely ‘go underground’ as it needs some form of publicity to attract sex buyers (see Appendix 2).

❖ *Would immunity from prostitution for sellers expose the purchasers of sex to a risk of blackmail?*

This proposition takes no account of the fact that in consistent examination of the issue of prostitution, it is the prostitute that faces far greater social stigma and judgement as ‘a prostitute’ than a ‘sex buyer’ does. Those in prostitution do not want to be identified as such. This is evidenced by the extremely low numbers who register in states where it is legal/decriminalised. Blackmail is in fact a common mechanism for pimps and traffickers to coerce victims to remain in prostitution – for fear that their families/loved ones will find out what they are doing. There is little or no evidence of those in prostitution blackmailing their clients, and little conceivable motivation for them to do so as they would risk their own, highly undesired, personal exposure in doing so. **Blackmail of buyers is far more likely to be carried out by criminal organisers of prostitution.** For example, convicted Irish pimp Tony Linnane (jailed May 2010) had cameras hidden in smoke alarms recording activities in the brothels he ran – suggesting the potential for blackmail not only clients but the women also.³⁶

❖ *Given the stigma associated with convictions for solicitation, could a Swedish style ban have undesirable consequences for persons convicted of an offence (which would be minor) of purchasing sexual services? AND:*

❖ *Would it have unacceptable knock-on effects on innocent parties, for example, the spouses or children of defendants?*

The purpose of criminalising the purchase of sex is **specifically** to have a deterrent effect in much the same way as any other law, and therefore the consequences are, by definition, designed to draw public opprobrium on the activity – be it speeding, drink driving or buying sex. It is difficult to see why an argument should be made to protect the purchasers of sex because of the stigma associated with soliciting when in this country the media have historically had few pangs in relation to exposing **women** arrested and convicted of minor offences relating to prostitution: thereby exposing them, their families and children to pain and suffering. This two-tiered argument is highly hypocritical as it is the sex buyer who has the agency and can choose to buy or not buy sex with their disposable income, whereas those ‘selling’ are largely there through the

³⁶ <http://www.independent.ie/national-news/courts/jailed-brothel-operator-to-pay-total-tax-bill-of-15m-2177900.html> excerpt from article: “The brothels all had cameras hidden in smoke detectors and power-sockets -- with patrons now terrified that any potential recorded images could fall into the wrong hands”

absence of other viable choices. The exposure of sex buyers may indeed hurt their relationships and their reputations, but just as it is the case with drink driving, this is their own responsibility.

❖ *Would enforcement of a ban on the purchase of sexual services divert the Gardaí from operations targeting serious and organised crime, including human trafficking and organised prostitution?*

It is envisaged that this legislation would assist Gardaí in the first instance by reducing the size of the sex trade through reduced demand and therefore reduced incentive to criminals to establish or expand prostitution in Ireland.

A very recent study demonstrates empirically, that the size of the prostitution trade in a jurisdiction has a proportionate impact on the numbers trafficked to service demand. In countries with a larger trade e.g. Germany, there are larger numbers of victims of trafficking and in countries where there is less overall prostitution e.g. Sweden, there is less overall trafficking in proportion.³⁷

It is also envisaged that the policing of sex buyers would occur largely in the context of operations also targeting organised prostitution/trafficking. In Sweden and Norway this is the approach, combined with some co-ordinated and targeted operations annually, which focus on the buyer to ensure continued awareness that buying sex is an offence. This is resource effective and has the added benefit of keeping the law in the public perception, thereby increasing its normative and deterrent effect.

In relation to legal questions raised by the enacting of a law that criminalises the purchase, but not the selling of sex, please refer to the specific section of this submission (Section 12: Proposed Legislation).

³⁷Courant Research Centre 'Poverty, Equity and Growth in Developing and Transition Countries: Statistical Methods and Empirical Analysis' No. 96 *Does Legalised Prostitution Increase Human Trafficking?* Seo-Young Cho, Axel Dreher, Eric Neumayer .September 2011 (updated January 2012)

10. Update Prostitution Legislation to Reflect Changes in Organised Prostitution

Since the enactment of the Criminal Law (Sexual Offences) Act 1993, there have been many changes in the Irish sex trade, notably; how prostitution is organised, the profile of the women involved and the large scale profits made by criminal gangs.

Prostitution was mainly urban and street based in the 1980s and early 1990s; thus influencing the drafting of the 1993 legislation, which criminalised the public order offences surrounding prostitution, rather than the act of prostitution itself.

The penalties attached to the organisation of prostitution are comparatively small scale and do not reflect the profits gained by today's standards.

In 2012, the Irish sex trade portrays a very different reality; indoor prostitution is predominately the largest section of the sex trade. It is highly organised by criminals (both Irish and foreign) and operates in every county in Ireland. Criminals running the sex trade are making huge profits at the expense of vulnerable women, most of whom are foreign, coming from backgrounds of poverty and a lack of options.

An RTE Prime Time special investigation³⁸ into organised prostitution which was broadcast in February 2012, exposed not only the scale of organised prostitution in Ireland but also the apparent ease with which pimps and buyers of sex can operate with impunity. The only people who featured before the courts during this nine month intensive investigation were three foreign prostituted women who were under the control of a pimp.

11. Role of Telecommunications in Organised Prostitution

In 1999, the In Dublin Magazine, which was one of the main sources of advertising prostitution, was banned. However, the impact of this ban was short lived because at the same time, the internet was emerging as a new form of communication and the criminals were quick to switch over to this new medium to advertise and organise prostitution with impunity.

The use of mobile phones have played a significant role in organising prostitution. Therefore, it is of critical importance that Gardaí are equipped with legislation that allows them to shut down mobile phone numbers known to advertise prostitution.

³⁸ 'Profiting From Prostitution' RTE Prime Time (2012) www.rte.ie/news/av/2012/0207/primetime.html#page=2

The traditional approach to policing indoor prostitution involved surveillance, police raids, sometimes arrests and closure of premises. Before the introduction of modern telecommunications, pimps needed to be on site to organise the brothel and collect their money. The pimps were visible and this gave Gardaí an opportunity to arrest the main players in the sex trade. The introduction of modern telecommunications, has given anonymity to the pimps and traffickers.




The traditional policing approach of closing a premises, only causes a short-term inconvenience for the organisers of today's sex trade. With the mobile phone number advertising the brothel still in circulation; if a client rings this number, they will simply be directed to a new location and 'business' continues as usual.

12. Recommendations: Prostitution Legislation

12.1 Update Current Prostitution Legislation – The Criminal Law (Sexual Offences Act 1993)

Three amendments are recommended to the Criminal Law (Sexual Offences) Act 1993 – **Sections 1, 9, and 11.**

These amendments would:

-  create a legal interpretation which recognises the vulnerability of prostituted people and prevent their criminalisation.
-  act as a strong deterrent against organised prostitution and revise penalties to reflect the current scale of the crime
-  strengthen existing legislation to criminalise landlords who are complicit in organised prostitution

Section 1 – Interpretation

Introduction

The background of those who find themselves prostituted is one of poverty, coercion, lack of options, violence, addiction, mental health issues and previous experiences of abuse. The vulnerability and marginalisation of those selling sex is exacerbated through the experience of being prostituted.



The majority of women involved in prostitution do so because they have, or believe they have, few other viable economic options³⁹.

Legislation needs to acknowledge the particular vulnerability and marginalisation of prostituted people, by affording them a vulnerable status and not criminalising them.

Suggested amendment:

In Section 1 (2) In this Act a person solicits or importunes for the purposes of prostitution where the person – We are suggesting the removal of part (a) ‘offers his or her services as a prostitute to another person’.

This amendment will recognise the vulnerable status of those who are prostituted, while continuing to criminalise the buyers.

Section 9 – Organisation of prostitution

Introduction

The sentencing of those convicted of organising prostitution needs to reflect the harm inflicted on vulnerable victims and the profits gained.

In comparison to other offences, the penalties for this exceedingly lucrative crime and its harm to the lives of vulnerable people are disproportionately low.

Suggested amendment:

Given the huge profits accrued through the sex trade, we recommend a fine not exceeding €10,000,000 or to imprisonment for a term not exceeding 10 years or both.

Section 11 – Brothel keeping

Introduction

While most landlords are tricked into renting out apartments which are then used as brothels, there are however some landlords renting out properties to women, knowing they will be used as brothels. At the moment Sections (c) requires a high burden of proof that the person ‘knowingly’ or ‘with the knowledge’ allowed their premises to be used as a brothel. There needs to be a lower burden of proof so that landlords do not use the defence of not being aware of how their property was being used. As in Section 18 of the Criminal Justice (Theft

³⁹ Barry, 1995; Hardman, 1997; Scambler and Scambler, 1995.

and Fraud Offences) Act 2001, the word ‘reckless’ could be added to Section 11 (c) of the Criminal Law (Sexual Offences) Act 1993 to lower the burden of proof.

Suggested amendments:

(c) being the lessor or landlord of any premises or the agent of such lessor or landlord, lets such premises or any part thereof with the knowledge or was reckless that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel.

12.2 Criminalise the Purchase of Sex

Ruhama acknowledges the Government’s efforts to tackle demand in the Criminal Law (Human Trafficking) Act 2008. This legislation has a very narrow scope and has resulted in no prosecutions to date. By allowing the defence that he or she did not know that the person in respect of whom the offence was committed was a traffick person leaves an insurmountable burden for the police to prosecute under this Act.

Ruhama recommends legislation to criminalise the purchase of sex. A legal opinion has been published on a draft amendment to the Criminal Law (Sexual Offences) Act 1993, commissioned by the Immigrant Council of Ireland in 2009.⁴⁰

During debates about the proposed legislation to criminalise the buyers, some people have expressed concern about the issue of ‘Strict liability’. Ruhama believes this strict liability should not be problematic in introducing this legislation (see Appendix 4).

⁴⁰ An analysis on the potential for implementation of provisions criminalising the purchase of sexual services in Ireland, by Aileen Donnelly, Immigrant Council of Ireland 2010.

12.3 Address the Role of Telecommunications in Advertising and Organising Prostitution

➤ *Advertising Prostitution on the Internet*

Criminal Justice (Public Order) Act 1994

The Criminal Justice (Public Order) Act 1994 deals with the publication or distribution of advertisements for prostitution; however the maximum penalty on conviction is £10,000.

Currently, some of the websites advertising prostitution in Ireland earns an estimated €150,000 per month; therefore the penalty attached to this Act is not a serious deterrent for these criminals.

The Criminal Justice (Public Order) Act 1994 seems broad enough to include the prosecution of persons advertising prostitution on the internet. Denis Kelleher and Karen Murray in their book 'Information Technology Law in Ireland' are of the legal opinion that the advertisement of prostitution as contained in the Criminal Justice (Public Order) Act 1994 and 2003 can be applied to advertising on the internet (Appendix 3).

However amendments need to be added to the Act to improve its effectiveness and operate as a strong deterrent against this lucrative crime.

Suggested amendments:

(a) making it an indictable offence which would give the Gardaí power to arrest the perpetrators, (currently it is a summary offence).

(b) increase the penalties to a substantial amount of money and a custodial sentence of 10 years.

Ruhama believes there is precedent in case law which would give a strong legal argument for the prosecution of the advertising of prostitution on the internet.

➤ *The use of Mobile Phones in Organised Prostitution*

Introduction

The recommended legislation outlined in this submission to address the role of mobile phones in organised prostitution is targeted specifically at pimps/traffickers/profiteers and not prostituted individuals.



Suggested legislation:

1. Legislation needs to be enacted which makes it a criminal offence to own, possess or control a *sim card* which is advertised for prostitution.

There needs to be certain stipulations in this proposed legislation to avoid the criminalisation of prostituted individuals.

Stipulations need to include:

- + that a high ranking Garda (Superintendent) in consultation with the DPP be convinced that the person was not a victim of exploitation/controlled in prostitution or completely independent of organised prostitution before they go ahead with a prosecution
- + there is a tiered system of sentencing, from a caution, fine or custodial sentence. This would avoid the conviction of victims of pimping/trafficking and/or individual prostituted persons and give maximum sentencing to the major criminals
- + offences of a minor nature to be considered under the adult caution offence

This legislation would also need to prevent the telephone number from going back into circulation without the permission of the Gardaí.

2. It could be argued that telephone companies need to take much more responsibility in co-operating with authorities in tackling this area of organised crime. In the absence of any actions taken by phone companies, it is necessary to enact legislation so that when Gardaí gather evidence that a particular phone number or numbers are used for advertising or organising prostitution, they can get a Court Order to seize and own the number. With the phone number in the Gardaí's name, they can serve an order on the phone company to shut the number down.
3. We propose legislation to include a Court Order which could be served on mobile phone providers authorising them to remove telephone numbers associated with advertising, possessing, organising and/or controlling for the purpose of prostitution. This order could be obtained in the District Court on the sworn information of a member of An Garda Síochána not below the rank of Sergeant and should authorise the immediate removal of the mobile phone number from the mobile phone provider's network.

12.4 Anonymity in Respect of Vulnerable Witnesses

Women involved in prostitution find themselves prey to pimps, clients, protection racketeers and anyone wanting to exploit vulnerable women. Violence to women is prevalent in the sex trade.



There is a major under reporting of crimes against women involved in prostitution and unwillingness by women to cooperate as witnesses in court cases due to the stigma attached to prostitution and their fear of being identified by the media and fear of reprisal.

Suggested legislation:

To introduce anonymity provisions for women involved in prostitution who have been victims of crime.

To allow victims to give evidence to the court by video link.

12.5 Spent Convictions

Through Ruhama's work, we have identified the existence of a criminal record (for soliciting) as a barrier for women exiting prostitution and accessing the labour market. In our experience we have witnessed women turn down the opportunity of employment when they discovered a Garda clearance was necessary. This is due to the stigma attached to prostitution which results in the women feeling too ashamed or scared of the consequences if their past was revealed.

Suggested legislation:

We acknowledge the Criminal Justice (Spent Convictions) Bill 2012 includes crimes committed under Section 6, 7 and 8, however we would recommend legislation needs to include a full expunging of the criminal records.

13. Recommendations: Exiting Prostitution

If the law in Ireland changes to criminalise the purchase of sex the number exploited in prostitution are likely to diminish considerably – particularly in relation to organised prostitution. However it will nonetheless be critical for the state to prioritise support and assistance to those who still remain trapped in the sex trade given that the vast majority do not wish to remain in prostitution.

For those in the sex trade trying to get out it is critical to ensure the maintenance and further development of resourced exiting programmes that create real alternative and choices to women trapped in the sex trade. Exiting prostitution is very difficult given that many of the circumstances that brought people into prostitution also create barriers to exiting.



Forthcoming UK research (2012) by EAVES involving over 100 women in process of exiting or just exited prostitution outlines the most significant barriers⁴¹:

Barriers	Definitions
1. Dependency	Drug or alcohol dependency
2. Housing	Homeless or living in unsuitable accommodation
3. Physical or mental health problems	Physical or mental health problems as reported by participants
4. Experiences of childhood violence	Sexual, emotional, physical or verbal violence and abuse
5. Criminal record	Criminal convictions relating to both prostitution or non-prostitution offences
6. Debt	Personal debts of any amount
7. Coercion	From partner, pimp, relative or other person
8. No qualifications	No formal qualifications or training
9. Age of entry into prostitution	Under 18 years / 18 years and over
10. Disposable cash	Viewing income from prostitution as 'disposable cash'
11. Victim of trafficking	As defined by the United Nations Palermo Protocol 2000 (section 3.a)
12. Entrenchment	Prostitution is not simply a 'part' of the woman's identity but rather all aspects of her life are connected to her involvement. She finds it difficult to imagine a life where she is not involved in prostitution. Entrenchment may be signalled by a lengthy and habitual involvement, however, the duration of a woman's involvement is not the key consideration.

The research preliminary findings conclude:

*“Early exploratory analysis indicates that women who experienced a higher number of trapping factors [barriers] were much more likely to have experienced entrenchment, have a criminal record, have experienced coercion during their involvement in prostitution and to have entered prostitution when under 18 years than women with fewer trapping factors. It is important to note that with an increasing number of trapping factors present, women's attempts to exit become more complicated as each factor interacts with each of the other factors.”*⁴²

⁴¹ PE:ER Research on Exiting prostitution. Forthcoming 2012, <http://eaves4women.net/Documents/PeerNewsletters/PEERInterimFindings.pdf>

⁴² Ibid



Ruhama operates an exiting model of support to women affected by prostitution following several key principles:

- ✚ Understand exiting not a linear process for most women. Ruhama supports women irrespective of whether they wish to exit or not – the service is open and non-judgemental regardless.
- ✚ Exiting not the same as “stopping” for a while. A process of change.
- ✚ Supports which can facilitate exiting an integral part of the service not separate and distinct.
- ✚ Non-judgemental service (no requirements to exit, recognise re-entry not as a “failure”, building trust)
- ✚ Led by the woman’s own priorities not those of the service.
- ✚ Collaborate on identifying meaningful and achievable goals to support confidence building.
- ✚ Review care plans regularly – flexibility
- ✚ Development/education tailored to individual needs: no “one size fits all” model.
- ✚ Offering a “Wrap-around” model: Practical support combined with empathic emotional supports. Accessed to greater or lesser extent depending on individual needs, working towards complete independence of the service.

This service also requires considerable collaborative effort with other stakeholders:

- ✚ Sexual Health/General Health Services: referral and outreach to clinics.
- ✚ Addiction Services: mutual referral and supports
- ✚ Migrant support Services: Legal advice and advocacy.
- ✚ Gardaí/Judiciary: Support to report crimes, through investigation, advocate where woman focus of a criminal charge.
- ✚ Others: as required in individual cases

The state should give priority to preserving the voluntary and health services currently in place to tailor to the complex needs of women in prostitution. Additionally consideration should be given to supporting and encouraging other services, particularly outside Dublin, who have contact with this vulnerable group (e.g. immigration, sexual health or addiction services) to broaden the scope of their work regionally to include a focus on exiting prostitution as part of their own responses.



APPENDICES

APPENDIX 1

Sex Buyers in Their Own Words

The quotes below are taken from an Irish escorting website which allows buyers to review those who they have bought, based on their satisfaction with the ‘service’.

A large number of negative reviews are because buyers are angry that women would not perform OWO (oral sex without condom) or CIM (ejaculation in the mouth: ‘cum in mouth’). In many cases, with some examples below, the buyer seems clearly aware that someone else (i.e. a pimp) has put up a woman’s ad and indicated that she is available for sex acts, which it turns out she does not want to provide.

However, rather than understanding and compassion that they are probably buying sex with a woman controlled for prostitution who is likely vulnerable, they write a negative review. In some cases (again samples below), there appear to have been clear indications that women are unhappy – beyond their refusal to engage in undesirable and unsafe sex acts, which are ignored by these men in favour of complaining online about what a ‘bad time’ the buyer has had.

Still, other reviews clearly indicate the reductive and judgemental way sex buyers view women they buy; like no more than pieces of meat (e.g. referring to sex as the ‘main course’), or blow up dolls rather than a human being (e.g. scoring points out of ten for performance). There is never anything to prevent a sex buyer making an anonymous report about a woman who they think is vulnerable and yet this rarely occurs. Reviews however, abound.

The sample below was compiled from sex buyer reviews on the largest ‘escort-advertising’ website in Ireland. **NOTE:** The names attributed to the buyers below are the ones they chose for themselves.

❖ Complaints about refusal to engage in unsafe sex: No ‘OWO’ (oral sex without condom)

“The Legend”

- met with [name] last nite 4 a late one ! nice on the fone so gave her a spin... no owo was a big let down and didnt fancy french kissing wit her .. anal available and decent ride ... nothing special just ok punt ... 6/10 for THE LEGEND ...
- dropped mrs. legend off at airport as she is go n home 4 two months - yippee ... anyway made a few calls - early and got [name]... agreed services and fees.. lovely looking girl - small petite and super body .. gave her a gud c n 2 and we both were breathless after a 5 star performance from us both ... sex was super and i highly recommend [name] ... anyway -- THE LEGEND is on the loose now so BEWARE !
- hi.. meet [name]at short notice. went to her place meet this very tall attractive girl fabulous figure and thats it. everything i asked was no ! no owo cim kissing just shag me and go.. big waste of time felt cheated and a total waste of money. we think 100 euros is cheap ? spend the xtra lads and get the value ! my advice is give this girl a big miss 1/10...



James Cork

- In the bedroom: I am not a GFE man on first visit but didn't get the sense it was forthcoming anyway. Nice large boobs, nice shape. Foreplay was attempted, and condom was out faster than one could say Bernard Manning. Oral was good, but who can really tell when it is COVERED.

Espensen

- Ok, nice girl, but NO OWO!!!!!! I am tired of this kind of thing being listed and then not offered. She offered money back and I absolutely accepted. It's not her who writes the ad she says, so she should honestly lambast whoever IS writing the ad and REMOVE OWO. I had to travel there, it took time, the weather was crap, ONLY to have to LEAVE again. She's a nice pleasant girl, but I left with my money back.
- The niceness is a bit forced to be honest. And the big one, the dealbreaker, owo, NOPE!! That for me is an automatic RED.
- Nice girl, but AGENCY. NO OWO or TEABAGGING or KISSING, even though advertised. Whoever writes these ads for the girls should explain what these things are, so that they can remove them from their ads and avoid reviews like mine. Feckin hell!!

❖ **Derogatory attitude to women**

James Cork

- First impressions: Dismay. I feel she made no effort whatsoever to make herself attractive to me the client. She looked a bit dishevelled and tired. Although under close scrutiny I am happy it is she in the photos, her presentation is no where near what I expected to greet me. She is somewhat older than the beauty the photos portray, and not as pretty, nor toned. Even if she had arranged her hair or had worn a touch of makeup, or even had worn a pair of heels she MAY have come near to the advertised profile. I felt she really didn't give a damn, and this I found disappointing.

In the bedroom: Ok, here, she picked up a bit, OWO was good with acceptable technique. GFE was attempted and she was tactile throughout. But I didn't feel a sexy or sensual mood so allowed her to conclude with CIM. Boobs are delightfully natural but also looked tired. All in all, main course lasted about 10 minutes.

Espensen

- Photos are well, old and very touched up. And she is a bit overweight, so if you were expecting a slim woman from the photos, u will not get her. She is shall I say a bit heavy and if you don't believe me, then go for yourself.

MILF Hunter

- The Good: Good looking (and sexy) girl + firm boobs + Ok apartment + Nice pussy + 'Zero attitude'... which is always a plus + wore a uniform as requested + accurate pics + didnt have any issue with her english + avergae DFK which is ok + €80 price (OWO included)
The Bad: Zero enthusiasm + Poor OWO + robotic service



Pinkorbrown

- first of all she is not the girl in the photos, kept me waiting half hour met her at apartment then with another girl, had the choice of two, went with the so called {name}, one good thing she has a tight pussy but thats where it ends, i would avoid

Indications of women unhappy in prostitution resulted in a 'bad review' on a public website rather than a compassionate response/contact with Gardaí.

John Rambo

- Well, the thing is, [name] is a smiley HOT lady with sexy body, but i was not satisfied with the service i got...Shes not that time watcher but i didnt feel she likes this job, I can understand why but i paid for a good time and i didnt get that...
- Met [name] today she is a very nice girl but she not a good escort she just did not want to be their, her English is very poor

SMAN

- Nice girl, but clearly didnt want to be touched, not a great experience.

Click-n-pick

ill start with the worst and most horrid

- she has a very bad ****REMOVED****.
- no shower offered.
- the bed did not even have a sheet on it... very classy? i think not! no tissue of any sort to clean myself after,nice touch eh?
- this girl does not take care of herself.
- i did my biz and got the hell outta there as quickly as i could.
- not sure its her in the photos,dont think it is.
- no way i can recommend.

Jack 78

- nice enough girl, very thin so if thats your thing then this is for you. Location was the familiar appt block ***removed*** not my fav in the city but seems to be where all the action is these days. OWO was good with nice ball licking but she had no real interest in being fucked lay on bed, no movement or sound and left me felling a bit shit for fucking her nad enjoying it, maybe i'm just fucked up in te head??[SIC]

MILF Hunter

- Met with [name] and her girlfriend for a 15 mins duo session yesterday around 8.30 pm
1. Dingy apartment @ basement of an old house in D8.
 2. Her receptionist answers the call (OK English). Good directions.
 3. Pics are FAKE. I decided to stay as I had travelled a long distance
 4. NO kissing....
- OK OWO (received from 1 girl only).



5. The other girl was cheeky...she put a condom on when I wasn't looking. FFS
6. No towel. No shower before and after.
7. Dirty room (you will have to pass through the kitchen which is also dirty)
8. Good hygiene. However, I had to ask her to use mouthwash before.
9. Both girls are extremely arrogant....didn't climax....had to go see another girl afterwards
10. Waste of time and money.
11. I would rather stick it in my neighbour's dog

Pussyman

- Not the girl in the photos in my opinion. If she is they are photoshopped because not as attractive in the flesh. Was very quiet throughout our meeting and not much responsive to touch. Enjoyed the intercourse but not much else.
- Bit disappointing. First of all she's an agency escort, not an independent as advertised. Also none of the advertised services on offer -- only covered BJ and sex. My first impressions weren't great but she has a great body when naked. Nice to talk to but left me with feeling she wanted me to come ASAP so that she could get dressed as quickly as possible.
- Pictures real -- most of them anyway. Looks more than 22 though -- probably in late 20's. I had hoped to see Sara but she was booked up. Nice girl. Very blunt and to the point which was a bit off-putting. Tall and leggy but tits quite small. Nice pussy but put limits on how long it could be touched. Gave me OWO and I came very quickly before we could have intercourse. Didn't really enjoy the experience but then she wasn't really my type. Others may prefer. Hopefully has cured me of punting for a while!

The Longman

- what a load of ***removed*** the worst of them all I have been with a lot of girls and most of them have been very good but this girl is rude I would have been better of my hand
- first of all I like to say this girl is not independent she works for an agency because the girl I talk to on the phone could speak English when I went to the apartment the girl could speak no English when I told her what I wanted she had to ring a girl and I had to tell her what I wanted then she had to tell [woman on phone] and it went down hill from there the sex was crap everything she does not like her job then she should stop this work lads stay away at all costs

Nineby three

- this is a strange one for me, I have no doubt that this is an agency run in a kip of apartment. I had a conversation with [name] on the phone, good chat so I said I'd chance it. Arrived and was met by a lady I spoke to on the phone and she showed me into room. The real [name] was there exactly like her pics. Not a word of English only Hungarian.
will I stay or go? I stayed and was pleasantly surprised. She was not bad at all even though I would say a bit innocent.
All and all not the worst punt I ever had but far from the best.



APPENDIX 2

Response from the sole frontline outreach service to those in Street Prostitution in Stockholm, to the argument that the law has made things more dangerous for those on the street, and that it has pushed the indoor trade ‘underground’.

“As you may well know, I do outreach work in the street here in Stockholm, and I many times hear from women (and men) that it’s easier for them to report crimes committed towards them (abuse, rape, robbery) because of the law. Many feel that they are being met with more compassion and understanding and less prejudice from the police and courts etc. And I would say that this is something we can see too. That other authorities in fact ARE being more compassionate and understanding towards the selling part in prostitution. They now understand that prostitution is NOT solely about money and that “the free choice” is merely an illusion.

Some opponents of the law here in Sweden (and abroad) say that since the law was enacted prostitution has moved from the street and went underground (with the help of internet). And therefore is more violent and dangerous now. We as a unit would say that this is NOT correct. Prostitution has ALWAYS been dangerous for the selling part. I have colleagues who worked before the law and women were being raped, abused, robbed etc. even then. And that the law has moved prostitution indoors is quite a strange thing to say. Around 1999, when the law was enacted, the use of internet and mobile phones increased tremendously. Everything is on sale on the internet now! And what does underground mean? It can’t be that hidden and underground since the buyers can find the women, right?

In conclusion, we are very positive about the law. I do believe that in a longer perspective the law is helping our clients, women and men, buyers and sellers. The law is establishing norms under which no woman, man, boy or girl can be sold and no one has the right to sexually exploit another human being. This is a question of values. Prostitution and human trafficking is a societal problem that touches all of us. But especially the women and men we meet that have sold themselves. And after understanding that and getting a deeper knowledge about what prostitution does to human beings, the deep hurt it inflicts upon the selling part (and from what we can see with our work with the buying part – sometimes the hurt inflicts even them...) you can’t but have a positive attitude towards the Swedish law.

...the police working on the street would say exactly the same thing as us and in Stockholm ONLY me and [my colleagues] do outreach (as you know, the number of women on the street isn’t that big) so we know what we’re talking about.”

Direct quotes from Miki Nagata, (Social Worker, Social Welfare Services Outreach Unit of the Prostitution Unit).



APPENDIX 3

Kelleher, Denis and Karen Murray (xxxx) Information Technology Law in Ireland

Authors: Denis Kelleher and Karen Murray

[29.23] Book: Information Technology Law in Ireland

(Have underlined words to emphasise relevant sections)

must be viewed as a whole; and I think the jury should be invited, where appropriate, to remember that they live in a plural society, with a tradition of tolerance towards minorities and that this atmosphere of toleration is itself part of public decency'.⁶³

Advertisements for prostitutes

[29.23] There would appear to be a significant phenomenon of prostitutes, or rather their pimps, advertising their services online:

'The sex industry in Ireland is booming as never before ... On-street prostitution is all but gone, apart from small numbers of more chaotic, drug-using women. The core of the industry has moved indoors, using mobile phones, the internet and private rented apartments to offer a discreet, though surprisingly accessible, 'service' ... Completely legally, anyone can access numerous websites listing mobile-phone numbers for Ballsbridge, Clondalkin and elsewhere in Dublin, as well as Limerick and Galway 'agencies'.⁶⁴

[29.24] The apparent pervasiveness of such advertisements is surprising, given that it is an offence to publish these. But, unless they are very unwise, the publishers of these sites will ensure that they are hosted in jurisdictions beyond the reach of the gardai. The Criminal Justice (Public Order) Acts 1994 and 2003 provide that an offence will be committed by any person who:

'publishes or causes to be published⁶⁵ or distributes⁶⁶ or causes to be distributed an advertisement which advertises a brothel or the services of a prostitute in the State or any premises or service in the State in terms, circumstances or manner which gives rise to the reasonable inference that the premises is a brothel or that the service is one of prostitution shall be guilty of an offence.'⁶⁷

[29.25] This provision would seem to apply to the Internet, the Criminal Justice (Public Order) Acts 1994 and 2003 provides that the term 'advertisement' includes:

'every form of advertising or promotion, whether in a publication or by the display of notices or posters or by the means of circulars, leaflets, pamphlets or cards or other documents or by way of radio, television, computer monitor, telephone, facsimile transmission, photography or cinematography or other like means of communication.'⁶⁸

[29.26] Given that this legislation was enacted in 1994 it may seem surprising that the above does not include any reference to the Internet. But the definition seems broad enough to encompass the placing of an advertisement online. The Criminal Justice (Public Order) Act 1994 and 2003 provide a defence for an accused who can:

'show that he is a person whose business it is to publish or distribute or to arrange for the publication or distribution of advertisements and that he received the advertisement in

⁶³ [1973] AC 435 at 495.

⁶⁴ Holland, 'Trafficking in misery' (2006) The Irish Times, 6 May.

⁶⁵ 'Publish' is defined as 'publish to the public or a section of the public': Criminal Justice (Public Order) Act 1994, s 23(5).

⁶⁶ 'Distribute' is defined as 'distribute to the public or a section of the public': Criminal Justice (Public Order) Act 1994, s 23(5).

Blasphemy, Seditious, Indecency and Criminal Libel

[29.29]

question for publication or distribution in the ordinary course of business and did not know and had no reason to suspect that the advertisement related to a brothel or to the services of a prostitute.⁶⁹

[29.27] In other words, this is a defence of innocent dissemination and as such it should be read in conjunction with the Directive on e-Commerce. Anyone convicted on indictment of such an offence may be fined a maximum of €12,697 (£10,000). In 2000, a publisher was fined €50,000 after he published advertisements which promoted prostitution.⁷⁰ Section 7 of the Criminal Justice (Public Order) Act 1994–2003 also provides that it:

'shall be an offence for any person in a public place to distribute or display any writing, sign or visible representation which is threatening, abusive, insulting or obscene with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned ... A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 3 months or to both'.

Censorship

[29.28] Censorship has a controversial history in Ireland, and a dispute about censorship policy between the Government and the Catholic Church is said to have been the driving force behind *Attorney-General v Simpson*.⁷¹ Ireland has a specific censorship regime for three different technologies:

- (i) printed matter, such as books and magazines, is dealt with by the Censorship of Publications Acts;⁷²
- (ii) films are dealt with by the Censorship of Films Acts; and
- (iii) videos and DVDs are dealt with by the Video Recordings Act 1989.

[29.29] Of the above, the Video Recordings Act 1989 has the greatest application to information technologies. The Act defines video recording as: 'any disc or magnetic tape containing information by the use of which the whole or a part of a video work may be reproduced'. A video work is defined as meaning 'any series of visual images (whether with or without sound) ... produced, whether electronically or by other means, by the use of information contained on any disc or magnetic tape, and ... shown as a moving picture'.⁷³ It is an offence to supply a video work that has not been certified by the Official Censor, unless the supply is a supply of work exempted by the Act.⁷⁴ This offence is punishable by a maximum term of imprisonment of three years.⁷⁵ The continuing

⁶⁹ Criminal Justice (Public Order) Act 1994, s 23(3).

⁷⁰ '€50,000 fine for publisher who made €400,000 a year from brothel ads' (2000) The Irish Times, 19 October.

⁷¹ See Whelan and Swift, *Spiked: Church-State Intrigue and The Rose Tattoo* (New Island, 2002).

⁷² See *Melton Enterprises Ltd v Censorship of Publications Board* [2003] 3 IR 623 for an analysis of the decision-making processes of the Censorship Board under the Censorship of Publications Act 1946.

⁷³ Video Recordings Act 1989, s 1(1).



APPENDIX 4

Legal opinion concludes that strict liability should not be an issue in the introduction of a new law to criminalise the purchase of sex.

In light of the CC decision it is understandable that policy-makers are concerned to ensure that any new offences are not found to be unconstitutional on the basis of including an element of strict or absolute liability. However the suggested new offence does not include any such element and so would not be at risk of a finding of unconstitutionality on that basis.

Future proposals for reform of criminal law require drafters to be careful that serious offences do not entail an element of absolute liability. However the proposed new offence outlined in this submission is not considered a serious offence as it would carry low maximum penalties and therefore it may be acceptable to include an element of absolute or strict liability based on the rationale of the CC judgement.

Based on the presumption that the new offence would assume *mens rea* ‘guilty mind’ it would most likely take 2 parts (a) *the intention to obtain the sexual service* (b) *the knowledge the service was being offered by way of prostitution*. In order for the transaction and the sexual act to take place, a certain degree of intention will always be present, as the defendant will have to engage in at least some form of discussion with the person offering the sexual service by way of prostitution. Therefore a certain minimum degree of intention (*mens rea*) will always be present and similarly, in order to obtain the sexual service the accused person would ordinarily need to be aware that it was obtained by way of prostitution.



APPENDIX 5

Ireland's Obligations under International Law which address the issue of prostitution from a human rights perspective⁴³

These instruments qualify prostitution as a form of violence against women, an obstacle to equality between women and men, an obstacle to human dignity, or a violation of human rights. Ireland has ratified almost all these instruments, and should join the 18 other EU Member States which have ratified the 1949 UN Convention.

United Nations

1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others – “Prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person” (Preamble) Articles 1, 2 and 6

1989 Convention on the Rights of the Child – Articles 34 and 35

1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – Article 6

1992 CEDAW General Recommendation No. 19 on Violence against Women – Article 6

1994 Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (The Palermo Protocol) – Article 9

European Parliament

European Parliament Report of 17 January 2006 on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation

European Parliament resolution of 2 February 2006 on the current situation in combating violence against women and any future action

European Parliament resolution of 26 November 2009 on the elimination of violence against women

European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women

Council of Europe

2005 Council of Europe Convention on Action against Trafficking in Human Beings (entered into force in 2009) – Article 6

UN Special Rapporteur on Trafficking in Persons, Especially Women and Children

2006 Report of Sigma Huda: “Integration of the Human Rights of Women and a Gender Perspective with a Special Focus on the Demand for Commercial Sexual Exploitation and Trafficking”

⁴³ Submission of the European Women's Lobby to the Joint Oireachtas Committee on Justice, Equality and Defence, on ‘Review of Legislation on Prostitution’.

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