



**Submission to the Department of Justice and Equality on the Operation of
Part 4 of the Criminal Law (Sexual Offences) Act 2017
31 August 2020**

The Abortion Rights Campaign (ARC) is an all-island grassroots movement for choice and change. ARC was a founding member of Together for Yes, which in 2018 successfully removed the 8th Amendment from the Constitution. ARC campaigns for bodily autonomy and reproductive justice across the island of Ireland.

ARC welcomes the opportunity to submit to this consultation on the 2017 ban on purchasing sex and other changes to the regulation of the sex industry. Informed by the expertise of sex workers as well as Amnesty International's policy recommendationsⁱ, ARC strongly recommends the following:

- The Review Commission should consult directly with Sex Workers Alliance Ireland (SWAI), the only frontline organisation of sex workers in Ireland; and
- The Oireachtas should fully decriminalise all aspects of consensual sex work performed by adults.

We recommend these measures because the review's purpose is to assess the law's impact on "the safety and well-being of persons who engage in sexual activity for payment."ⁱⁱ We believe the law has had a negative impact on the welfare of sex workers, in particular by:

- Criminalising safety strategies such as working in pairs or small groups under the overly broad definition of "brothel keeping" and increasing the risk of eviction;
- Implementing the law in an unfair and racist manner against migrant sex workers; and
- Perpetuating stigma and fear among sex workers, which has in turn reduced the likelihood of workers negotiating for safer practices with clients, accessing health and social services, or reporting crime to the Gardai.

Abortion Rights Campaign position

ARC believes that directly affected people should be at the centre of policy-making. We therefore believe SWAI, as the only Irish organisation directly representing sex workers, should have its unique expertise recognised and be invited to play a central part in this consultation process. The World Health Organisation, UNAIDS, Amnesty International, and HIV Ireland have all called for sex workers to play a central role in shaping government policy on the sex industry.ⁱⁱⁱ

As a pro-choice organisation, we believe bodily autonomy extends to all aspects of a person's self, including consensual adult sex work. In line with the international body of evidence discussed below, we believe that the 2017 legislation, which did not effectively decriminalise sex work for workers, must be revised to do so now.^{iv}

The law must also be amended to clarify that consensual adult sex work is **not** a form of gender-based violence or human trafficking. Sex work and human trafficking are distinct issues, and as long as government policies and services conflate them, sex workers will suffer. Amnesty International does not consider victims of sex trafficking to be sex workers. Including consensual sex work within the government's response to sex trafficking only serves to take resources away from victims of sex trafficking.^v

Distinguishing sex work from trafficking does not require anyone to condone or celebrate sex work. Rather, it requires the government to recognise sex work *as work* and to listen to the expertise of the people engaged in it. By criminalising clients, the 2017 Act denies sex workers the legal protections afforded to other workers and forces them to resort to illegal avenues instead. The government must listen to sex workers themselves about what changes would improve their working conditions, health, well-being, and right to live without stigma or discrimination as full members of Irish society.

International support for full decriminalisation of sex work

Amnesty International is only one of many organisations advocating for the full decriminalisation of consensual adult sex work. In its recent report to the United Nations, the Irish Network Against Racism (INAR) concluded, "The State must acknowledge the harms caused by prosecution of self-employed sex workers," and recommended that the State "should give due consideration to more extensive decriminalisation in line with UN reports."^{vi}

Many other human rights and health institutions call for decriminalising consensual adult sex work, including the World Health Organisation, which counsels that: "All countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."^{vii} However, decriminalising sex workers' actions while retaining criminal penalties for clients or other aspects of the work environment does not protect sex workers, let alone promote sex workers' well-being. Therefore, the changes instituted in 2017 are unfit for their stated purpose: "to provide additional protection to persons involved in prostitution."

According to Grenfell et al, writing in the *British Medical Journal*, decriminalisation could redress the "extensive harms that sex workers have experienced as a criminalised population, particularly if they are coupled with measures to remove penalties against clients." Allowing sex workers to work in groups or share work spaces are important safety precautions, and decriminalisation would also allow workers to "screen out potentially violent clients." Overall, the public health evidence shows that "criminalization of sex work is an important determinant of violence," with criminalised sex workers being up to **seven times more likely to experience violence** than those working in decriminalised settings.^{viii}

It is no wonder then that organisations including UN bodies, the International Labour Organisation, Human Rights Watch, and Open Society Foundations all support decriminalisation.^{.ix}

Partial criminalisation has backfired and made sex workers less safe

We are concerned that the review calls for consultation on “legislation that aims to protect those offering sexual services and that criminalises the purchase of sexual services.”^x It appears from this wording that it has been predetermined that the criminalisation of clients will remain in Irish law. Yet this is not the only option. We advocate for the full decriminalisation of the workplace for those involved in consensual adult sex work, following New Zealand’s model, in which no aspect of sex work or the people involved is criminalised. Evidence shows that this is the most effective public policy to ensure the equal treatment and well-being of sex workers, in addition to combating the stigma that pushes sex workers to the margins of society.^{.xi}

Our neighbours to the North offer lessons for us. The recent three-year review of similar legislation in Northern Ireland concluded that criminalising clients **has not reduced the prevalence of sex work**, but only made workers less safe. The review highlighted that sex workers have informally reported more violent crimes since the introduction of the legislation: the number of reported assaults increased from 3 to 13, sexual assaults from 1 to 13, and threatening behaviour from 10 to 42.^{.xii} In addition, the review found that “sex workers are exposed to higher rates of anti-social and nuisance behaviour” and “sex workers reported higher levels of anxiety and unease, and increased stigmatisation.”^{.xiii} Sex workers in Northern Ireland opposed the legislation when it was being considered in 2014, on grounds that it would make them less safe and fail to stop human trafficking.^{.xiv} Their views were not reflected in the law adopted.

Even partial criminalisation deters sex workers from seeking police help when they are victims of crime and from using health and social services, as well as putting workers at risk of eviction. A study of Sweden, another country that uses the Nordic model, found that “sex workers experience difficulties with the authorities, law enforcement, and have further difficulties with social services and in gaining access to service provision.”^{.xv} Sex workers often have complex service needs, including STI prevention, addiction treatment, rape crisis intervention, or housing support. The fear of stigma or criminalisation makes it difficult for workers to access these services.^{.xvi} Migrant sex workers, who are disproportionately targeted by law enforcement, are especially vulnerable to these negative outcomes because the fear of deportation discourages them from interacting with police or other state services.^{.xvii} Because clients are criminals under the law, they may refrain from reporting instances where they suspect that someone is not working voluntarily. Thus, criminalising clients makes it harder to stop trafficking.

In an extensive review of research on sex work laws, policing, and health published between 1990 and 2018, the authors found that the threat of police harassment or arrest “displaced sex workers into isolated work locations, disrupting peer support networks and service access, and limiting risk reduction opportunities.”^{.xviii} Partial criminalisation also exacerbates inequalities that especially affect transgender, migrant, or drug-using sex workers, in addition to discouraging sex workers from carrying condoms, which are used as evidence against

them. Sex workers operating in countries where sex work is decriminalised were found to have better experiences with the criminal justice system and social services, in addition to having more power to negotiate the terms of service - including condom use - with clients.^{.xix} In contrast, research on Sweden found that partial criminalisation resulted in riskier forms of sex work, reduced workers' ability to screen out problematic clients, and increased the difficulties faced by survival sex workers.^{.xx}

In Ireland, the definition of "brothel keeping" is overly broad and endangers sex workers. The offence of "soliciting for prostitution" has been removed, but only for an individual working alone. If sex workers collaborate in pairs or groups for safety, they are still involved in criminal activity because this collaboration is defined as "brothel keeping." As a practical matter, the 2017 Act did not truly decriminalise sex work. The law must be amended to clarify that small groups of sex workers sharing premises for their own safety do not constitute a brothel. By forcing people to work alone or risk arrest, the law undermines a key harm reduction strategy that sex workers have long used to keep themselves safe. The Irish Human Rights and Equality Commission voiced concern that the definition of brothel keeping places sex workers "in greater danger as they may opt to work alone despite the risks involved."^{.xxi} The direct service charity Chrysalis confirms this worry is well-founded; it has heard from sex workers that the 2017 Act makes them feel less safe because they are unable to negotiate with potential clients or work in groups for safety.^{.xxii}

Even though the 2017 Act was meant to target sex buyers, rather than sex workers, workers are arrested in greater numbers than their clients. In September 2019, 38 people suspected of purchasing sexual services were "stopped and spoken to" by police on suspicion of purchasing sexual services.^{.xxiii} According to former Minister for Justice Charles Flanagan, an operation conducted over two days in November 2019 resulted in another 23 people being "stopped and spoken to" by police.^{.xxiv} While these files are now presumably pending investigation and possible future charges, these examples show how sex workers and their clients are treated differently by law enforcement: clients are "stopped and spoken to," while sex workers are arrested and charged.

The Act has been enforced in discriminatory and harmful ways

According to the government's terms of reference for this review, the stated purpose of the 2017 change in law was to protect vulnerable persons, specifically, "to provide additional protection to persons involved in prostitution, especially vulnerable persons and victims of human trafficking."^{.xxv} The law fails to do this, however, both in terms of how it was written and how it is enforced.

Enforcement of the law is racially discriminatory. As the report on racial discrimination submitted to the United Nations by INAR explains, "Migrant women are disproportionately arrested (often without interpreters present) and prosecuted for 'brothel keeping' (more than one sex worker operating from the same property) where they have sought to work together for safety."^{.xxvi} Since the new law came into effect in 2017, only one Irish person has been charged with a crime related to sex work. Eighteen people have been charged for brothel keeping: 10 Romanians, 5 Hungarians, and 3 Chinese people.^{.xxvii} Another six people have been charged with the organisation of prostitution, including 1 Hungarian, 1 Chinese person, 3 Nigerians, and 1 Irish person.^{.xxviii} In June 2019, two Romanian migrant women were jailed

after being arrested for brothel keeping in a raid in Kildare the previous November.^{xxxix} These examples show starkly that the law has been disproportionately enforced against migrants.

Continued harm to trafficked persons: an unwanted consequence of partial criminalisation

A key finding from the Northern Ireland review is that partial criminalisation **does nothing to fight human trafficking or sexual exploitation**.^{xxx} A literature review published in the *American Medical Association Journal of Ethics* found that fear of prosecution, stigma, or other negative consequences prevents people from “disclosing that they are involved in sex work, regardless of whether they are so engaged through choice, circumstance, or coercion.”^{xxxi}

The 2017 Act has unfortunately blurred the lines between consensual adult sex work on the one hand, and sex trafficking on the other. The current review of the law repeats this error. We advocate for the right to bodily autonomy of consenting adults, including the right to engage in sex work, alone or in small groups for protection, while condemning in the strongest terms the trafficking and non-consensual sexual exploitation of any individual. When consensual sex work is included in the government’s response to sex trafficking, desperately needed attention and resources are taken away from the victims of trafficking.

Survivors of sex trafficking and academic experts on the topic attest that decriminalising sex work would make it easier for victims of sex trafficking to come forward because they would not fear being arrested or deported. Freedom Network USA, the largest American organisation working with sex trafficking survivors, supports decriminalisation, as do the organisations La Strada International and the Global Alliance Against Traffic in Women.^{xxxii} Dr. Kimberly Mehlman-Orozco, a criminologist who studies sex trafficking and author of the book *Hidden in Plain Sight: America’s Slaves of the New Millennium*, has argued that fully decriminalising sex work will help victims of sex trafficking to come forward.^{xxxiii}

Furthermore, sex workers who no longer fear arrest, prosecution, or deportation can become valuable allies in the fight against trafficking by reporting their concerns about particular individuals and sharing their insights on effective strategies to help trafficked persons regain their freedom.

Conclusion

We urge the government to consult directly with SWAI, the only organisation that represents workers engaged in Ireland’s sex industry. Sex workers are most familiar with the effects the 2017 law has had on their safety and well-being, and they are best equipped to advise the government on how the law can be changed to better protect sex workers, especially those from vulnerable groups.

In line with the recommendations of the United Nations, World Health Organisation, Amnesty International, and other human rights organisations, we propose that the government fully decriminalise all aspects of consensual sex work performed by adults. Despite the current law’s stated purpose, sex workers are arrested in far higher numbers than their clients. The threat of arrest or prosecution is detrimental to sex workers’ health and safety because it makes them vulnerable to client misconduct and fearful to interact with the police, healthcare

providers, and other social services. When sex work is fully decriminalised, both law enforcement and social care resources will be more effectively utilised. Full decriminalisation is essential to protect the rights of sex workers, especially those who are migrants, transgender, homeless, or drug-using.

Just as Ireland has recently recognised individuals' right to self-determination regarding marriage, abortion, and gender identity, so too is it time to treat the issue of consensual adult sex work with evidence rather than judgment or stereotype.

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