

To: Minister for Justice and Equality of Ireland
From: Sex Workers' Rights Advocacy Network of Central Eastern Europe and Central Asia (SWAN)
Subject: Submission to the Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017

11.09.2020

To whom it may concern,

With this submission, we, the Sex Workers' Rights Advocacy Network of Central Eastern Europe and Central Asia (SWAN), want to show our support for the ongoing review process of section 7A of the Criminal Law (Sexual Offences) Act 1993, especially the operation of Part 4 of that Act from 2017, which deals with Purchase of Sexual Services and the assessment of its impact on the safety and well-being of people who engage in sex work. This is a unique opportunity to hear the voices and perspectives of people who are most directly affected by this Act, and we greet and encourage your efforts to open the space for those voices out in the public and integrate them in development of further policy and operational responses to sex work in Ireland.

The Sex Workers' Rights Advocacy Network (SWAN) is a sex worker-led regional network in Central and Eastern Europe and Central Asia that advocates for the human rights of female, male and transgender sex workers. SWAN was founded in 2006 and was officially registered as the SWAN Foundation in January of 2012. Currently it unites 28 member organizations from 19 countries of CEECA region.

SWAN strongly supports your intentions to make the progress review process public and inclusive for the voices of sex workers, which is one of the most stigmatized and excluded community, and subject of many feminist, religious and abolitionist interventions across the world. "Nothing about us, without us" is the crucial element of democratic debate and policy development. Therefore, we strongly support the voices of sex workers in Ireland and their representatives in Sex Workers Alliance Ireland (SWAI) in the debate and we stand behind their demands for policy reform which will reduce stigma, discrimination and violence against sex workers in Ireland, improve their access to health and justice services and provide safe public space for participation and leadership on matters which are important for their lives and safety.

However, as international community, we are also deeply concerned about implementation of the Act which criminalizes purchase of sex services and clients of sex workers as a way to combat vulnerability of sex workers.

This model, recommended by many abolitionist feminists groups, is fiercely rejected by sex workers and their allies both in the countries where it is introduced, and in other countries fearing that it might be forced onto the community due to its harmful implications on the stigmatization, health and safety of sex workers.



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In Sweden, “sex workers object to the fact that they were not consulted in the making of the law. Since sex workers feel they are not able to influence their legal or societal situation, they feel powerless. And since the ban builds on the idea that women who sell sex are victims, weak and exploited, many claim that the law propagates stereotypical notions about sex workers.”¹

The effects of the law itself are also very controversial and contribute to increasing the vulnerability of sex workers instead of decreasing it. “Instead of the police being a source of protection, sex workers feel persecuted by them, and are subjected to invasive searches and questioning. There is also a problem in that they are in an unclear legal position – they can be made to testify in a trial (against clients) but they neither enjoy the rights of the accused nor of the victim. Some report that there is an increased dependency on third parties. Now that it is difficult to make direct contact with clients, sellers must rely on agents/pimps/helpers to find clients. Reports also conclude that since street-based prostitution has decreased, sex workers experience higher levels of vulnerability in their contact with clients. When clients are fewer on the streets, the clients have higher negotiating powers, which erodes the sellers’ bargaining power. This means that sex workers might not be able to demand safer sex practices, that they take greater risks and accept lower prices. When the negotiating has to be done in a more rapid way (due to the clients’ fear of being caught), it increases the risk of the sex worker making a faulty assessment of the client. And when clients are more stressed and frightened of being exposed, it is also more difficult for the seller to assess whether the client might be dangerous. On top of this, services have to be carried out in even more hidden, and therefore more unprotected, areas.”²

Similar findings are documented in a study from 2018, involving over 600 sex workers plus organizations working with sex workers that explore the impact of the similar law introduced in April 2016 in France:

“...The majority of the sex workers we interviewed reveal that the criminalization of clients has in practice been more detrimental to themselves than the previous laws against soliciting... Almost all sex workers and each of the organizations interviewed noted a shift in the power relationship between sex workers and their clients, as clients feel more entitled to impose their conditions (i.e. unprotected sexual practices, reduced prices, unwillingness to pay, etc.), seeing themselves as the ones taking the risk with regards to the law.

Many interviews highlighted a worrying decrease in condom use as well as increased difficulties continuing treatment for those who are living with HIV. Stress created by worsening working conditions causes various psychosomatic health issues from consumption of alcohol, tobacco and other drugs, to depression and suicidal thoughts. The results of the qualitative survey also reveal that cases of violence, of all kinds, have increased: insults in the street, physical violence, sexual violence, theft, and armed robbery in the workplace. Impoverishment, increased health risks and increased exposure to violence form a vicious circle.”³

¹ The Swedish Sex Purchase Act: Claimed Success and Documented Effects - Susanne Dodillet and Petra Östergren;

² The Swedish Sex Purchase Act: Claimed Success and Documented Effects - Susanne Dodillet and Petra Östergren; Impacts of the Swedish Criminalization of the Purchase of Sex on Sex Workers - Jey Levy, Cambridge University;

³ What do Sex Workers Think about the French Prostitution Act? Hélène Le Bail and Calogero Giametta;



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Another issue we want to address is that the criminalization of clients is frequently promoted by abolitionist feminists as a tool to combat trafficking in human beings. However, many global organizations fighting against trafficking recognize that rights affirming approach to sex work, including full decriminalization, is the most effective approach. The Global Alliance Against Traffic in Women (GAATW) published an influential report in 2011, which speaks about criminalization of clients as non-effective mode in the fight against human trafficking from one side, but it creates increased risks for violence and exploitation for sex workers in the countries where it is introduced.⁴

So, instead of a model of criminalization, for the benefit of the people, justice and health system in Ireland, we urge you to recommend the model of decriminalization (developed in New Zealand, adopted in some states in Australia), which after years of evaluation and lived experiences of sex workers is proven and accepted as a legal framework which allows empowerment, safer working conditions, reduces the risks of exploitation and trafficking, and allows sex workers to act as workers with labor rights and responsibilities toward the state. So far, this is the model, which regulates the industry in a way which is most beneficial for both for the state and protection of the rights and health of sex workers.

In 2016 Amnesty International published its [Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers](#). The policy supports and recommends the decriminalization of consensual sex work, including those laws that prohibit associated activities—such as bans on buying, solicitation and general organization of sex work. This is based on evidence that these laws often make sex workers less safe and provide impunity for abusers with sex workers often too scared of being penalized to report crime to the police. Laws on sex work should focus on protecting people from exploitation and abuse, rather than trying to ban all sex work and penalize sex workers or clients.

Therefore, we call upon the Ministry for Justice of the Republic of Ireland, and Independent reviewers to:

1. Listen to and acknowledge the voices of sex workers as most affected by the laws regulating sex work;
2. Ensure that all decisions are made not on a moral, but on pragmatic grounds, based on evidence and documented implications to health and safety of sex workers;
3. Adopt terminology, which is non-stigmatizing, neutral, and provide space for self-identification of sex workers instead of condemning them as criminals or victims. This is crucial for providing a space for inclusion and participation in public debates of sex workers as equal citizens in a democratic country.
4. Repeal the Act which criminalizes clients of sex workers and current model of sex work regulation which is rejected by sex workers community across the globe, due to its harmful implications on the livelihood, safety and rights of sex workers;
5. Adopt the “New Zealand Model” of decriminalization of sex work, as a model which insures the health and rights of sex workers and decreases the vulnerability to violence and exploitation;

⁴ MOVING BEYOND ‘SUPPLY AND DEMAND’ CATCHPHRASES: Assessing the uses and limitations of demand-based approaches in anti-trafficking, Global Alliance Against Traffic in Women (GAATW)



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We, the international community, are willing to share all our knowledge and experiences on existing legal frameworks and their documented impacts furthermore. Therefore, please do not hesitate to send your questions or comments to swansecretariat@swannet.org or stasa.plecas@swannet.org.

Sincerely,

Staša Plečaš
Executive Director
SWAN