

Prostitution and Legality in Ireland: A Review of Ireland's Adaptation of the Neo-Abolitionist Model

by Aaron Kavanagh

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Disclosure: The following people and organisations mentioned in the article (in alphabetical order) were contacted for interview, but didn't respond: Denise Charlton; Kate McGrew; Elizabeth Nolan Brown; Thomas Pringle, TD.; Sex Workers Alliance Ireland (SWAI); Turn Off the Red Light

On February 22nd, 2017, the *Criminal Law (Sexual Offences) Act, 2017* was signed into law.¹ The Act began life when the Minister for Justice and Equality, Deputy Frances Fitzgerald, TD, sponsored the Criminal Law (Sexual Offences) Bill 2015 in Seanad Éireann.² The Bill sought to, as Fitzgerald put it, '[strengthen] existing law to combat child pornography, the sexual grooming of children, incest, exposure and other offensive conduct of a sexual nature.'³ The Bill also amended the Irish law, *vis-à-vis* prostitution, to criminalise the purchase of, but not the sale of, sex.⁴ This model of prostitution legality is known as the neo-

¹ Houses of the Oireachtas, 'Criminal Law (Sexual Offences) Act 2017', 22 February 2017 <<https://www.oireachtas.ie/en/bills/bill/2015/79/>> [accessed 6 January 2020]

² Ibid.; Rebecca Beegan and Joe Moran, 'Prostitution and Sex Work: Situating Ireland's New Law on Prostitution in the Radical and Liberal Feminist Paradigms', *Irish Journal of Applied Social Studies*, Vol. 17, Iss, 1, Art. 6, 17 May 2017, pp.59-75 (p.71)

³ The Bill sought to do this by amending the *Punishment of Incest Act, 1908*, the *Criminal Evidence Act, 1992*, the *Criminal Law (Sexual Offences Act), 2006*, and repealing the *Criminal Law (Incest Proceedings) Act, 1995*. Houses of the Oireachtas, 22/2/2017; Deputy Frances Fitzgerald, cited in Houses of Oireachtas, 'Criminal Law (Sexual Offences) Bill 2015: Second Stage', 6 October 2015 <<https://www.oireachtas.ie/en/debates/debate/seanad/2015-10-06/14/>> [accessed 6 January 2020]

⁴ Deputy Frances Fitzgerald, cited in Houses of Oireachtas, 6/10/2015

abolitionist model (also known as the ‘Nordic model’, as it originated in Sweden in 1998).⁵ This wasn’t the first time an adaptation of the neo-abolitionist model was proposed; in 2013, Independent TD Thomas Pringle introduced the Criminal Justice (Sexual Services) (Amendment) Bill to Dáil Éireann, with Pringle stating, ‘gender equality is not achievable as long as women are for sale.’⁶ The Bill was defeated by vote on March 13th, 2013.⁷ The 2017 Act was celebrated by organisations such as Turn Off the Red Light, which seeks to ‘end prostitution and sex trafficking in Ireland’, and protested by sex workers, as represented by the Sex Workers Alliance Ireland (SWAI).⁸ While the Act, undoubtedly, was an attempt to curb child prostitution, child pornography, and sex trafficking,⁹ the new law has affected the work and life of sex workers, such as SWAI Coordinator Kate McGrew¹⁰, but what was the Irish law regarding prostitution like before this, and has the new law had any real effect?

⁵ Susan Dewey, *et. al*, Ch. 18, ‘Globally circulating discourses on the sex industry: A focus on three world regions’, in *Routledge International Handbook of Sex Industry Research*, ed. by Susan Dewey, Isabel Crowhurst and Chimaraoke Izugbara, eBook (Abingdon and New York: Routledge, 2019)

⁶ Marie O’Halloran, ‘Bill to criminalise purchase of sex includes on the spot fines and jail for repeat offenders’, *Irish Times*, 3 May 2013 < <https://www.irishtimes.com/news/politics/oireachtas/bill-to-criminalise-purchase-of-sex-includes-on-the-spot-fines-and-jail-for-repeat-offenders-1.1382076>> [accessed 6 January 2020]

⁷ Houses of the Oireachtas, ‘Criminal Law (Sexual Offences) (Amendment) Bill 2013’, 13 March 2013 < <https://www.oireachtas.ie/en/bills/bill/2013/24/>> [accessed 6 January 2020]

⁸ Elaine Edwards, ‘Minister for Justice signs new laws on sexual offences’, *Irish Times*, 27 March 2017 < <https://www.irishtimes.com/news/crime-and-law/minister-for-justice-signs-new-laws-on-sexual-offences-1.3026288>> [accessed 6 January 2020]; Turn Off the Red Light, ‘About Us’ < <http://www.turnofftheredlight.ie/who-we-are/>> [accessed 6 January 2020]

⁹ Deputy Frances Fitzgerald, TD, ‘Tánaiste and Minister for Justice and Equality, Frances Fitzgerald, T.D., address Barnardos Domestic Abuse survivor’, Department for Justice and Equality, 5 December 2016 < <http://www.justice.ie/en/JELR/Pages/SP16000368>> [accessed 6 January 2020]

¹⁰ ‘People see as us even more outside society, as vulnerable, as even less likely to call gardai or draw attention’, Kate McGrew, cited in Ruairi Casey, ‘Does the Nordic Model work? What happened when Ireland criminalised buying sex’, *New Statesman*, 26 March 2018 < <https://www.newstatesman.com/politics/feminism/2018/03/does-nordic-model-work-what-happened-when-ireland-criminalised-buying-sex>> [accessed 6 January 2020]; Sex Workers Alliance Ireland (SWAI), ‘Who We Are’ <<https://sexworkersallianceireland.org/who-we-are/>> [accessed 6 January 2020]

Prostitution has been around in Ireland for centuries. The Monto in Dublin has been called ‘the largest red-light district in Europe at the turn of the century.’¹¹ Prior to 1993, prostitution was covered under Section 16 of the *Criminal Law Amendment Act, 1935*, which sought to punish ‘[e]very common prostitute who is found loitering in any street [...]’¹² On July 7th, 1993, the *Criminal Law (Sexual Offences) Act 1993* was put into force, in order to amend the *Offences Against the Person Act, 1861* and the *Criminal Law Amendment Acts, 1885 to 1935*, and to repeal the *Vagrancy Act, 1989*.¹³ The main purpose for this new Act was to amend the common law offence of ‘buggery’ from the *Offences Against the Person Act, 1861*, which served as a *de facto* outlaw of homosexuality, after decades of campaigning from David Norris and his Irish Gay Rights Movement.¹⁴ Prior to this Act, prostitution was treated as a vagrancy offense¹⁵, but the regulation actually seemed to endanger sex workers, as a lot of sex workers were charged with soliciting when reporting violence to the Gardaí, and faith had decreased in reporting to the Gardaí. In a 1996 EUROPAP survey of 84 sex workers, about a half said they felt that violence towards prostitutes had increased; 1 in 5 had been attacked while working, 11% had been raped, and 69% would not report an attack.¹⁶ The *Criminal Justice (Public Order) Act, 1994* outlawed brothel ownership and advertisement of

¹¹Liam Lanigan, cited in Michael Rubenstein, ‘Review of *James Joyce, Urban Planning, and Irish Modernism: Dublins of the Future*, by Liam Lanigan’, *James Joyce Quarterly*, Vol. 53, No. 1, Fall 2015 – Winter 2016, pp. 157-159

¹² Irish Statute Book, ‘Criminal Law Amendment Act, 1935, Section 16’ <<http://www.irishstatutebook.ie/eli/1935/act/6/section/16/enacted/en/html#sec16>> [accessed 6 January 2020]

¹³ Houses of the Oireachtas, ‘Criminal Law (Sexual Offences) Act, 1993’, 7 July 1993 <<https://www.oireachtas.ie/en/bills/bill/1993/29/>> [accessed 6 January 2020]

¹⁴ Loveday Hudson, ‘Activists and Lawyers in the ECtHR: The Struggle for Gay Rights’, in *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-Level European System*, ed. by Dia Anagnostou (Oxford and Portland: Hart Publishing, 2014), pp.181-205 (p.187); Fergus Ryan, ‘Mapping a Transformed Landscape: Sexual Orientation and the Law in Ireland’, in *Law and Gender in Modern Ireland: Critique and Reform*, ed. by Lynsey Black and Peter Dunne (Oxford: Hart Publishing, 2019), pp.73-105 (p.75)

¹⁵ Caitriona Clear, *Social change and everyday life in Ireland, 1850 – 1922* (Manchester and New York: Manchester University Press, 2007), p.135

¹⁶ Julie Bindel and Liz Kelly, ‘A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden’, Routes Out Partnership Board, London Metropolitan University, 2003, p.21

prostitution services.¹⁷ The *Criminal Law (Human Trafficking) Act, 2008* tackled laws against trafficking.¹⁸

The division on the legality of prostitution affects both the political left and the political right. In Ireland, there's been plenty of dissent for the legality of sex work from the left, such as Ruth Coppinger, a TD for the Solidarity-People Before Profit party, calling 'sex work' a 'despicable euphemism', and prostitution 'an abuse of human rights.'¹⁹ Indeed, it was John Leahy, the leader of the right-wing Renua party until 2019²⁰, who argued for the legalisation of prostitution, in an interview with *Hot Press*.²¹ I spoke with Cllr Keith Redmond, formerly of Fine Gael, Renua, and the Progressive Democrats²² and co-founder of the right-wing think-tank The Hibernia Forum.²³ Redmond, who identifies as a libertarian²⁴, told me that he doesn't think the want or resent for the legalisation of prostitution is right-wing versus left-wing, but rather 'authoritarian versus libertarian.'²⁵ To him, the question is who should

¹⁷ Irish Statute Book, *Criminal Justice (Public Order) Act, 1994*, Section 23

<<http://www.irishstatutebook.ie/eli/1994/act/2/section/23/enacted/en/html>> [accessed 6 January 2020]

¹⁸ Irish Statute Book, *Criminal Law (Human Trafficking) Act, 2008*

<<http://www.irishstatutebook.ie/eli/2008/act/8/enacted/en/print.html>> [accessed 6 January 2020]

¹⁹ Ruth Coppinger, TD, cited in Zoe, 'An Appeal to the Left from Sex Workers' Feminist Ire (blog), 25 February 2016 <<https://feministire.com/2016/02/25/an-appeal-to-the-left-from-sex-workers/>> [accessed 6 January 2020]

²⁰ Harry McGee and Vivienne Clarke, 'Renua left with no elected politician as leader John Leahy steps down', *Irish Times*, 11 June 2019 <<https://www.irishtimes.com/news/politics/renua-left-with-no-elected-politician-as-leader-john-leahy-steps-down-1.3921856>> [accessed 6 January 2020]

²¹ The Hot Press Newsdesk, 'Prostitution Should Be Legalised & The "Silent Majority" Will Defeat 8th Amendment Referendum, warns Renua Ireland leader John Leahy', *Hot Press*, 7 February 2018 <<https://www.hotpress.com/culture/prostitution-should-be-legalised-the-silent-majority-will-defeat-8th-amendment-referendum-warns-renua-ireland-leader-john-leahy-21734964>>

²² Fiach Kelly, 'Retain Eight campaign seeks to shift key message as vote looms', *Irish Times*, 23 May 2018 <<https://www.irishtimes.com/news/ireland/irish-news/retain-eighth-campaign-seeks-to-shift-key-message-as-vote-looms-1.3504824>> [accessed 6 January 2020]

²³ Harry McGee, 'Eirexit: Could Ireland follow Britain out of the EU?', *Irish Times*, 12 November 2016 <<https://www.irishtimes.com/news/politics/eirexit-could-ireland-follow-britain-out-of-the-eu-1.2864539>> [accessed 6 January 2020]

²⁴ Keith Redmond, *Interview with Aaron Kavanagh* (Interviewed by Aaron Kavanagh for CA 2) (Dublin: Newswriting CA, 28 November 2019)

²⁵ Ibid.

control your body: you or the State?²⁶ This seems to be a common sentiment when it comes to the libertarian perspective on sex work; for example, senior editor of *Reason* magazine, ‘the bastion of libertarian philosophy’²⁷ and the co-founder of the libertarian feminist group Feminists for Liberty, Elizabeth Nolan Brown has written extensively about the ‘U.S. government’s war on sex.’²⁸

There’s a divide within feminist between feminists who want to legalise prostitution (‘liberal feminists’) and those who want to criminalise it (‘radical feminists’).²⁹ While it is more nuanced and complicated than these positions and labels, this article will use these labels to describe these positions. I spoke with Dr Eilis Ward, a lecturer in the School of Political Science and Sociology at the National University of Ireland, Galway (NUIG), who has written many of peer reviewed articles on sex work and sex trafficking.³⁰ She felt that the neo-abolitionist model was starting from a radical feminist perspective of sex work, and was ‘reductionist and deterministic’, assuming, first, that sex work is always gendered, with a female seller and a male buyer, and, second, it assumes that those who sell sex are without agency.³¹ This is exemplified in the *Act, Prohibiting the Purchase of Sexual Service*, the Swedish Act which is essentially the template for the neo-abolitionist model, defining prostitution as ‘a form – a serious form – of male violence against women.’³² Paul J. Maginn

²⁶ Ibid.

²⁷ James Warren, ‘Reason’s new editor on politics, intern life and leading the magazine into its next 50 years’, Poynter Institute, 17 June 2016 <<https://www.poynter.org/business-work/2016/the-new-boss-of-a-libertarian-bastion/>> [accessed 6 January 2020]

²⁸ ‘Elizabeth Nolan Brown’, *Reason* <<https://reason.com/people/elizabeth-nolan-brown/>> [accessed 6 January 2020]

²⁹ Beegan and Moran, pp.59-75

³⁰ For Dr Ward’s credentials and work, see: ‘Staff’, NUI Galway <<http://www.nuigalway.ie/colleges-and-schools/arts-social-sciences-and-celtic-studies/political-science-and-sociology/staff/eilisward/>> [accessed 6 January 2020]

³¹ Dr Eilis Ward, *Interview with Aaron Kavanagh* (Interviewed by Aaron Kavanagh for CA 2) (Dublin and Galway: Newswriting CA, 27 November 2019)

³² Beegan and Moran, p.69

and Graham Ellison wrote in an essay in *Male Sex Work and Society* that ‘In Ireland, as in most Western liberal democracies, the regulatory gaze on sex work is biased in that political, policy, and moral concerns tend to focus on the experiences of female sex workers.’³³

However, it should be acknowledged that male prostitution was discussed during Committee Stages of the 2017 Act.³⁴

But how has the law affected anyone? The law defines a brothel as a place where two or more sex workers work, and, as such, two pregnant Romanian nationals working together as sex workers in Newbridge, Kildare were arrested for ‘brothel keeping.’³⁵ In October 2019, three men were charged with theft and assault of two sex workers in Roscommon.³⁶ When asking for information from the public, superintendent Declan Daly made sure to that they were not looking to prosecute any sex worker, stating ‘[t]hat’s not even a consideration for us.’³⁷ This seems to be an improvement in attitude, compared to the arrest of sex workers in 1996.

It will be interesting to see how the law progresses. Gardaí have begun interviewing people for purchasing sex.³⁸ In Northern Ireland, which adopted the neo-abolitionist model before

³³ Paul J. Maginn and Graham Ellison, ‘Male Sex Work in the Irish Republic and Northern Ireland’, in *Male Sex Work and Society*, ed. by Victor Minichiello and John Scott (New York: Harrington Park Press, 2014), pp.426-462 (p.426)

³⁴ Houses of the Oireachtas, ‘Senead Éireann debate – Friday, 11 Dec 2015’, 11 December 2015 < <https://www.oireachtas.ie/en/debates/debate/seanad/2015-12-11/6/> > [accessed 6 January 2020]

³⁵ Eilis Ward and Aoife Kirk, ‘Criminalisation of purchase of sex punishes wrong person’, *Irish Times*, 22 August 2019 < <https://www.irishtimes.com/opinion/criminalisation-of-purchase-of-sex-punishes-wrong-person-1.3993093> > [accessed 6 January 2020]

³⁶ Pat McGrath, ‘Three charged over attacks on sex workers in Roscommon’, RTÉ, 21 November 2019 < <https://www.rte.ie/news/connacht/2019/1121/1094310-roscommon-sex-worker-attack/> > [accessed 6 January 2020]

³⁷ Sean Murray, ‘They need to be more vigilant’: Appeal for sex workers to come forward over recent spate of assaults’, *TheJournal.ie*, 14 November 2019 < <https://www.thejournal.ie/sex-workers-attacks-4891173-Nov2019/> > [accessed 6 January 2020]

³⁸ Hayley Halpin, ‘Gardaí speak to 23 people suspected of purchasing sexual services’, *TheJournal.ie*, 27 November 2019 < <https://www.thejournal.ie/gardai-sex-work-operation-4908564-Nov2019/> > [accessed 6 January 2020]

the Republic, the purchase of sex has actually increased under the new model.³⁹ Prior to its implementation in the Republic, Fine Gael Minister Eoghan Murphy said he didn't see the new law working.⁴⁰ Keith Redmond told me that he thinks the Act is 'unusable', akin to the blasphemy law that was removed in 2018.⁴¹

³⁹ Aoife Moore, PA, 'Increased sex sales reported following law change', *Independent*, 18 September 2019 < <https://www.independent.ie/breaking-news/irish-news/increased-sex-sales-reported-following-law-change-38511298.html> > [accessed 6 January 2020]

⁴⁰ Garreth MacNamee, 'I don't see it as a solution': Government minister says proposed sex worker laws won't work', *TheJournal.ie*, 26 October 2016 < <https://www.thejournal.ie/eoghan-murphy-sex-laws-3048096-Oct2016/> > [accessed 6 January 2020]

⁴¹ Redmond

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