

Consent:
**the defining factor in legitimising the
purchase of a person for sex in Ireland**

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Criminal Law (Human Trafficking) Act 2008

Section Five:

- illegal to “solicit or importune” a trafficked person for the purpose of prostitution
- Person found guilty of paying for sexual services with a VOT liable for fine of up to €5,000 and prison sentence up to 5 years.
- Only applies where the buyer can be proven to have known the person was trafficked.
- *Note: In line with CoE Convention*

Laws on Prostitution

- Prostitution *per se* remains legal
- “*the sale or purchase of sexual services between consenting adults”*”
- “*does not seek to prevent sexual contact and adults who sell or purchase sexual services, in private, are not breaking any law*”
- Trafficking is a distinct and separate issue: “*not directly relevant to assessing the issue of voluntary commercial sex*”

(DOJ&E, 2012)

Implications for Demand

2008 Act enshrined within Irish law and policy:

- Legal (and therefore acceptable) to purchase sex from someone who is not trafficked, regardless of the context or circumstances of the person being prostituted
- The presence of **consent** and the degree of voluntariness are thus regarded as the defining factors in the acceptability and criminalisation of the purchase of a person for sex

Rigid demarcation between VOT and all other women in prostitution

- Does not reflect the lived reality of Irish, migrant and trafficked girls in prostitution; nor the organisation of the global and Irish sex industry
- Sends an unacceptable message of permission to buy women who are not deemed to be trafficked
- Harm and violation endured justified on the basis of an erroneous interpretation of consent
- Unworkable and ineffective law for tackling the demand for trafficked persons

A “pathway of vulnerability” into prostitution

Reid (2011)

- Girls and young women: Irish, migrant and trafficked targeted and recruited for sexual exploitation
- Multiple risk factors including poverty, child sexual abuse, domestic violence, physical and emotional abuse and early home leaving in early lives
- “Constrained choice” within severely restricted personal and socio-economic contexts (*Kelly, 2008*)

Understanding Demand in Ireland

- Indiscriminate demand for supply of girls and young women
- Regarded as “interchangeable” goods
- 87% migrant
- 10% - 24% trafficked in any regime



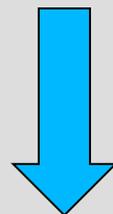
Recruiters,
smugglers,
traffickers

Pimps, prostitution
(Escort) agencies,

Organised crime

Streets, brothels,
hotels, private
apartments

Money €180m



Rape and sexual violence is not confined to victims of trafficking

- Trafficked girls and women subjected to severe physical and sexual violence but all girls and women at risk
- Street prostitution a very high risk setting but increasing evidence of sexual violence and rape in “safer” indoor venues such as brothels, apartments and hotels
- Dangerous environment: “call outs” to hotel rooms, apartments and even isolated rural locations in Ireland

The buyers and the demand for “consent”

- Adult consensual: mutual and reciprocal desire
- Prostitution sex: the buying of a person for sex
- Prostitution contract: sexual demands of the buyer to be met
- Consent in prostitution sex is better defined as acquiescence to “*unwanted sexual intrusions*”
- Consent and saying yes does not obviate harm to women’s wellbeing

Declarative, normative and punitive role of law

- Presence of consent gives permission and legality regardless of the harm caused
- The appearance of consent is a necessary and demanded illusion even where she is trafficked
- Consent exonerates individual buyer from responsibility and the State's duty to protect the sexual integrity of all girls and women

Current Irish context

Joint Oireachtas Committee on the Review of Prostitution
Legislation 2013) recognised:

- *“the breadth and depth of evidence on the nature and effects of prostitution”*
- the harms and criminality of prostitution *“outweigh any considerations in favour of voluntary prostitution where it does occur”*

All party agreement on the Swedish approach