

DEPARTMENT OF JUSTICE

**ASSESSMENT OF REVIEW OF OPERATION OF
ARTICLE 64A OF THE SEXUAL OFFENCES ORDER
(NORTHERN IRELAND) 2008: OFFENCE OF
PURCHASING SEXUAL SERVICES**

SEPTEMBER 2019

Introduction

1. The Department of Justice (DOJ) commissioned the attached research from Queen's University Belfast to assist in fulfilling its duty under section 15 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 ('the 2015 Act') to review the operation of Article 64A of the Sexual Offences (Northern Ireland) Order 2008 ('the 2008 Order'). Article 64A makes it an offence to purchase sexual services. This research follows previous baseline research on prostitution commissioned by the DOJ and carried out in 2014.

Background

2. The legislation states:

(1) A person (A) commits an offence if A obtains sexual services from a person (B) in exchange for payment—

(a) if the payment is made or promised by A; or

(b) if the payment is made or promised by a third party and A knows or believes that the payment is made or promised by a third party.

(2) A person guilty of an offence under this Article is liable—

(a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment to imprisonment for a term not exceeding one year or a fine, or both.

(3) In paragraph (1), "payment" means any financial advantage to B, or any person other than B, including the discharge of an obligation to pay or the provision of goods or services (other than sexual services) gratuitously or at a discount.

(4) No offence is committed under this Article unless the sexual services that are provided or are to be provided by B to A involve—

(a) B being physically in A's presence,

(b) B touching A or A touching B, and

(c) the touching being sexual; or

(d) B touching B in a sexual manner for the sexual gratification of A, B being physically in A's presence.

(5) B does not commit an offence by doing anything which (apart from this paragraph) would amount to—

(a)aiding, abetting, counselling or procuring the commission of an offence under this Article by A;

(b)conspiring with A to commit an offence under this Article; or

(c)an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting offences) in relation to the commission of an offence under this Article by A.

3. Section 15 of the 2015 Act requires the Department to carry out a review of the operation of the Article 64A offence after a period of three years. The legislation states:

‘The Department must, at the end of the period of 3 years beginning with the coming into operation of subsection (5), review the operation of Article 64A of the Sexual Offences (Northern Ireland) Order 2008 and lay before the Assembly a report on that review; that report must in particular include—

(a)information as to the number of arrests and convictions during that period in respect of offences under Article 64A;

(b)the Department’s assessment of the impact of Article 64A on the safety and well-being of persons providing for payment sexual services of the kind to which that Article applies;

(c)information as to the number of arrests and convictions in the period covered by the report in respect of—

(i)offences under section 2 committed with a view to exploitation that consists of or includes behaviour within section 3(3) (sexual exploitation);

(ii)offences under section 4 committed with the intention of committing an offence mentioned in sub-paragraph (i); and

(d)the Department’s assessment of the extent to which Article 64A has operated to reduce human trafficking for the purposes of sexual exploitation.

The research

4. The Department tendered for external researchers to carry out the review and, following a public procurement process, Queen’s University Belfast was awarded the contract in October 2018. The specification for the review required that it include the following elements:

- Quantitative research into the numbers impacted by the legislation
- Qualitative research on the impact of the legislation.

- Comparative analysis of the impact of the legislation pre and post its introduction in June 2015.

5. The Department is satisfied that the report provided by QUB meets the contract specification and provides findings which allow for a comprehensive assessment of the operation of the legislation, including the impact of the law on the two particular specifics targeted by section 15, namely the safety and wellbeing of sex workers and the extent to which the offence has operated to reduce human trafficking.

Findings

6. In quantitative terms, the research found that:

- In the period from introduction (June 2015) to 31 December 2018, there were 15 arrests and two convictions for purchasing sexual services, and 31 arrests and five convictions for human trafficking for sexual exploitation.

7. The key findings of the research include:

- A trend analysis of 173,460 advertisements indicates that the legislation has had little effect on the supply of or demand for sexual services;
- This analysis indicates there has been a 5% increase in the number of sex work advertisements since the law was changed;
- Sex workers reported a surge in business in the period following introduction of the legislation;
- The number of unique sex workers advertising also increased in the post law period from 3,351 to 3,973, an increase of 622;
- 1,450 advertisements for sexual services were noted over a 6-day period in April 2019;
- It is estimated that the number of sex workers advertising per day is 308, similar to the number noted in the earlier research;
- based on the premise that criminalisation would end demand for commercial sexual services there should have been a greater 'tailing off' of sex worker advertising during the period following the implementation of Article 64A. This has not occurred;

- The on-street prostitution sector has declined further since the 2014 research, from around 20 to less than 10;
- Serious crimes against sex workers in Northern Ireland are comparatively rare. However, between 2015 and 2018 there has been an increase in the number of reports on the Uglymugs.ie website in relation to, for example, assaults (from 3 to 13) sexual assaults (from 1 to 13) and threatening behaviour (from 10 to 42);
- Sex workers are exposed to higher rates of anti-social and nuisance behaviour;
- Sex workers reported higher levels of anxiety and unease, and increased stigmatisation.

Operation of the legislation

8. As noted above, the statistics provided in the report for the post legislative period to December 2018 show that there have been 15 arrests and two convictions for purchasing sexual services, and 31 arrests and five convictions for human trafficking for sexual exploitation.

9. The PSNI officers interviewed for the review highlighted the earlier concerns made by the organisation around the difficulties in enforcing Article 64A for consensual sexual transactions because of issues involved in gathering evidence to secure a successful prosecution. The PPS representatives confirmed the difficulties. The PSNI do not have access to the covert surveillance the Swedish police are permitted to conduct given that Article 64A does not meet the necessary threshold under the Regulation of Investigatory Powers Act 2000.

10. The report concludes that the PSNI is targeting its resources at those activities that it deems serious and with the highest level of harm to victims.

Assessment of impact

11. On the basis of the findings in the research report, the Department has concluded that there is no evidence that the offence of purchasing sexual services

has produced a downward pressure on the demand for, or supply of, sexual services.

12. Evidence obtained from the survey with people who purchase sexual services shows that the legislation has had a limited deterrent effect on client behaviour. For example, a majority of clients in Northern Ireland (53%) state that the law has made no difference to how often they purchase sex and they will continue to purchase sex with the same frequency. A further 27% are likely to continue to purchase sex at a reduced level. 11% said they would stop buying sex. Almost 76% of those surveyed felt that the law had no impact on the ease with which they purchase sex. The research also found that there had been no reduction in sex worker advertising, which would have been expected had demand fallen post 2015.

Safety and well-being of sex workers

13. On the first of the specific areas on which the Department is required to make an assessment, ie the impact of the offence on the safety and well-being of sex workers, we have concluded that, although the incidence of serious offending against sex workers is comparatively rare, there are other implications for well-being which the report describes in some detail. The research into self-reported data supplied by Uglymugs.ie (UM) does indicate there while there have been increases in several kinds of more serious offences, overall, the incidence is still lower than elsewhere.

14. The report also makes clear that it is not possible to say that the change in the law is responsible for any increase in crime against sex workers. Other factors may include the increase in the number of sex workers active in Northern Ireland, existing sex workers fulfilling higher levels of demand, more sex workers using the UM app, better reporting or recording techniques, and a more enhanced awareness of crime amongst the sex worker population in general.

15. However, what the UM data featured in the report does suggest is that there has been an increase in instances of anti-social and abusive behaviours since 2016. This has led to a heightened fear of crime, and the report suggests that the legislation has contributed to a climate whereby sex workers feel further marginalised and stigmatised.

16. The Department noted that the report refers to the continuing aim of the PSNI sex work liaison officers, working within National Police Chiefs Council (NPCC) guidelines, to enhance the safety of sex workers and increase the likelihood of them reporting offences to the police, based on national principles found in the NPCC guidance.

Human trafficking

17. The extent to which Article 64A has operated to reduce human trafficking for the purposes of sexual exploitation was also covered by the research.

18. There is no clear evidence presented in the report to suggest that the legislation has had an impact on the levels of trafficking for sexual exploitation. The research found that the legislation had minimal effect on the demand for sexual services therefore it is difficult to see in what way it could impact on human trafficking for sexual exploitation. The referrals from Northern Ireland to the National Referral Mechanism (NRM) have remained fairly constant. The report also points out that the very small numbers from Northern Ireland involved in the NRM make it problematic in social scientific terms to suggest that Article 64A has had any impact on referrals with any degree of statistical significance.

Conclusion

19. The research report and this assessment fulfil the statutory requirement placed on the Department by section 15 of the 2015 Act.