

Education and Home Affairs Scrutiny Panel

Draft Sexual Offences (Jersey) Law 201- Review

Submission – Andrea Matolsci – 13th February 2018

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Thank you very much for your email and for the invitation to comment on the draft legislation. As my main area of expertise lies in prostitution/trafficking for sexual exploitation, I would mainly like to offer comments regarding this section of the draft law, in particular regarding section 22 ('Paying for a prostitution service by an exploited person'). I see section 22 mirrors section 53A of the Sexual Offences Act (England and Wales). I recently completed my PhD thesis on section 53A and based on this would be glad to provide some comments.

Section 53A does not appear to be widely used in England and Wales, with only about 60 convictions since it came into force in 2010, with approximately 40 convictions in the first year (although it is unclear whether some of these were actually for kerb crawling offences) and anywhere from 8 to 0 in subsequent years (CPS, 2017: A40, available at: https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_0.pdf). The reasons for its lack of use are unclear, but my research (please find a summary attached), involving interviews with 10 police representatives in 4 locations in England, found that some police appear to be unaware of the offence. Furthermore, some misunderstand its elements; for example, they are in the understanding that the need to prove the buyer's knowledge of the coercion/exploitation is necessary, which is not the case as section 53A is a strict liability offence. They view proving the buyer's knowledge as very difficult and this discourages them from using the offence. Therefore, this lack of knowledge, and perceived but nonexistent difficulty, may be reasons for the lack of use of the offence. These may be addressed with adequate training. However, all police I spoke to discussed other difficulties with the offence as well, including the need to prove the coercion/exploitation element. While this is not a reason to not use an offence, as such evidentiary challenges exist with many - particularly sexual - offences, several of my interview participants felt section 53A is a generally difficult offence and did not express enthusiasm for its use. Many also opined that the punishment, a maximum £1,000 fine, not only is not proportionate to the crime (essentially rape, as the person in prostitution has been coerced and therefore did not consent to the sex act), but also does not serve as a deterrent to those who buy sex. Some of my participants felt that the full criminalisation of the purchase of sex, i.e. where it is not required that the person in prostitution is a victim of coercion/exploitation, would be more effective and easier to use.

This is the approach I would advocate for, together with the removal of offences related to selling sex (i.e. targeting those in prostitution), as they are most often people (mainly women) facing economic hardship and few, if any, other viable options, while being exposed to significant risk and harm as a result of being involved in prostitution. This approach - fully criminalising the purchase of sex in all circumstances while decriminalising its sale - is often referred to as the Nordic model, as it was pioneered in Sweden in 1999, followed by Norway in 2008 and Iceland in 2009. In 2014, Northern Ireland became the first part of the UK to introduce this framework. France passed a similar law in 2016 and the Republic of Ireland in 2017. Sweden in particular has reported that their law has successfully reduced the scale of prostitution there (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_ban_against_the_purchase_of_sexual_services_an_evaluation_1999-2008_1.pdf).

While European anti-trafficking legislation from the EU and Council of Europe recommend the partial criminalisation of the purchase of sex insofar as the person from/with whom sex is bought has been coerced or exploited, as is proposed with section 22 of the draft legislation, as in England and Wales, other countries that have tried such offences have not seen great success. Particularly where the buyer's knowledge of the exploitation is required (this is the case in most jurisdictions and is the European recommendation, with section 53A in England and Wales being somewhat of an exception being strict liability) (please see attachments, which cover research on the partial bans in Finland and England & Wales and the full ban in Sweden, and a summary of the findings on Finland).

A full ban on the purchase of sex, while also decriminalising those who sell sex (but not those who profit from those selling sex, such as procurers and brothels), would be a more effective offence than criminalising the purchase of sex only if it can be shown that the person in prostitution has been subject to coercion/exploitation, and would also send a stronger message regarding equality between women and men.

Thank you for your consideration. If you would like to discuss any of this further, please let me know. I wish you good luck with the consultation.