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**AN BILLE UM AN DLÍ COIRIÚIL (CIONTA GNÉASACHA)  
(LEASÚ), 2013  
CRIMINAL LAW (SEXUAL OFFENCES) (AMENDMENT)  
BILL 2013**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

This Bill makes provision for the introduction of the criminalisation of the purchasers of sexual services. It will reduce the demand for sexual services thereby reducing the incidence of prostitution in society. It will create a situation that will remove the attractiveness of prostitution and trafficking from organised criminal elements by creating the risk for purchasers of sexual services to be prosecuted with the element of “name and shame” acting as a deterrent.

This Bill sets out a number of offenses for the purchase of sexual services that are initially intended to act as a deterrent and lead to serious consequences for repeat offenders only.

Ireland’s current approach to the regulation of prostitution is the partial criminalisation of prostitution. The sale or purchase of sexual services in Ireland is currently not criminalised, provided it is conducted out of public eye. However, activities associated with prostitution such as pimping, soliciting in public or brothel keeping is a crime. It is also an offence to organise prostitution, coerce or compel a person to be a prostitute or knowingly live on the earnings of a prostitute. The rationale behind these offences is the protection of prostitutes and an attempt to protect society from the nuisance and public-order problems associated with prostitution. However, the buying and selling of sex indoors remains protected by omission under the presumption that this is a private contract between consenting adults.

Since 2008, there is also specific legislation in relation to human trafficking which makes it an offence to knowingly solicit or importune a trafficked person, in any place, for the purpose of prostitution. Prostitution by children is also outlawed. The nature of prostitution in Ireland has changed dramatically over the past decade. Street prostitutes, the most visible face of prostitution, have been outnumbered by off-street prostitutes who can be contacted over the internet or by phone. Many more foreign prostitutes operate in Ireland than a decade ago and the extent of the trafficking of women into and within Ireland for sexual exploitation is unknown.

One in four sex buyers in Ireland (24%) have come across women and girls who appeared trafficked, controlled or underage according to a major survey on prostitution published recently by the

Immigrant Council of Ireland. In addition, the findings show that fear of a criminal record, jail time or name in a local newspaper have been selected as effective deterrents by the sex buyers and are only surpassed by fear of contracting disease.

In 1999, Sweden was the first country to pass a law that prohibits the purchase of sex. Those who sell sex were decriminalised in view of their subordinate status and limited life choices. The rationale for the offence was rooted in the belief that prostitution is a serious barrier to gender equality and it causes serious harm to the people involved in prostitution as well as to the wider society. A High Level Inquiry, headed up by a Swedish Supreme Court Judge in 2010, showed that since the introduction of the ban, street prostitution has halved. In 1995, the estimated total of women in prostitution was 2,500-3,000, with 650 of those on the streets. In 2008, there were 350 advertised prostitutes on the internet and 300 on the street. The law in Sweden assumes that prostitution is incompatible with contemporary values and that it is a serious social problem, which can and should be abolished. The purpose of the Bill is to adopt the Swedish model.

It is hoped that this Bill will contribute to a society where the purchase of one human being for the gratification of another will be seen as unacceptable.

#### *Purpose of the Bill*

The primary purpose of this Bill is to ensure that in respect of prostitution, criminal liability is imposed only on the buyer of such services. This constitutes a partial de-criminalisation of prostitution in Ireland and this approach is based on that which is already being adhered to in Sweden.

#### *Provisions of the Bill Explained*

*Section 1* defines the term “1993 Act” which is used in other sections. The Criminal Law (Sexual Offences) Act 1993 is the principal piece of legislation which provides for the criminalisation of activities concerning prostitution. The key provisions of this Bill effect amendments to the 1993 Act.

*Section 2* inserts a definition of the term “sexual services” into the 1993 Act. This term is relied upon in section 3 of the Bill.

*Section 3* seeks to replace section 7 of the 1993 Act with an entirely new provision. The effect of this is the decriminalisation of persons who engage in prostitution and instead imposes criminal liability on persons who buy services from prostitutes.

Specifically, the proposed new section 7 of the 1993 Act makes it an offence for a person to actually engage or attempt to engage, in any place, a person for the purpose of buying sexual services. It also makes it an offence for a person, in any place, to obtain sexual services by means of prostitution.

The proposed new section 7 goes on to provide that first time offenders will be liable to an on-the-spot fine; second-time offenders will be liable to a Class C fine (currently a maximum of €2,500); and, third time and other repeat offenders will be liable to a Class B fine (currently a maximum of €4,000) and a possible jail term of up to 4 weeks.

*Section 4* inserts a new section 7A into the 1993 Act so as to put in place the arrangements for the collection of the on-the-spot fines which are provided for in section 3 of the Bill. The proposed new

section 7A provides that a Garda may issue a fixed payment notice to a first-time offender. This requires the offender to pay a fine of €500 within 21 days. In respect of first-time offenders, a prosecution is only instituted where the payment is not made within that period.

*Section 5* is a transitional provision which seeks to preserve the power to continue prosecutions which had been initiated prior to the substitution of section 7 of the 1993 Act (as is provided for in section 3 of this Bill).

*Section 6* sets out the short title of the Bill and provides for its citation along with other related Acts. It also provides that the Bill will commence one month after the date of its passing.

*Deputy Thomas Pringle,*  
*March, 2013.*