

NOONAN & LINEHAN

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Our Ref: 14104/A

22nd January, 1992

BY FAX 01 - 764453

Rachel Martin,
5, Oak House,
Oaklands Park,
Dublin 4.

FAX
CONFIRMATION COPY

Dear Rachel,

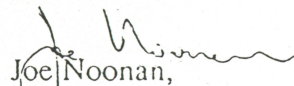
I refer to your recent visit and to the memorandum which I have given you on the Health (Family Planning) Acts. The memorandum sets out the penalties which may be incurred by a person who commits an offence under the act as described in the memorandum.

A person selling contraceptives contrary to the provisions of the act could include the proprietor of a premises such as a public house or club where a vending machine was installed; the person installing the machine; the person owning the machine; and in the case that any of these were operating as a limited company then it is possible (although rare in fact) that the directors of the limited company could be prosecuted personally.

I have already written to you confirming that prosecutions can be brought by private individuals in the event that the Gardai did not act. In that event, the prosecution costs and expenses could also be ordered to be paid in addition to any fine that the Court might levy.

I enclose for reference a further copy of my memorandum and would be glad to answer any further queries that may arise.

Yours sincerely,


Joe Noonan,
NOONAN & LINEHAN.

Encl.



Number 4 of 1985

HEALTH (FAMILY PLANNING) (AMENDMENT) ACT, 1985

AN ACT TO AMEND THE HEALTH (FAMILY PLANNING)
ACT, 1979. [12th March, 1985]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS: 5

"Principal Act" 1.—In this Act "the Principal Act" means the Health (Family
Planning) Act, 1979.

Control of sale and 2.—Section 4 (1) of the Principal Act is hereby amended by the
supply of contracep- substitution of the following subparagraphs for subparagraph (i) of
tives. paragraph (b): 10

"(i) (I) he is, or is the servant or agent acting as such
of, a pharmaceutical chemist, or a dispensing
chemist and druggist, who keeps open shop for
the compounding and dispensing of medical
prescriptions in accordance with the provisions 15
of the Pharmacy Acts, 1875 to 1977, and the
sale is made at the place where such open shop
is kept, or

(II) he is a registered medical practitioner and the sale
is made at a place where he ordinarily carries 20
out his professional duties, or

(III) he is an employee of a health board acting as such
and the sale is made at a health institution, or

(IV) he is, or is the servant or agent acting as such of,
a person making available a family planning 25
service in accordance with section 3 (3) of this
Act and the sale is made at the place where
that service is being made available, or

(V) he is an employee acting as such of a hospital
providing maternity services or services for the 30
treatment of sexually transmitted diseases and
the sale is made at the hospital,

and either—

THE HEALTH (FAMILY PLANNING) ACTS

The principal legislation in this area is the Health (Family Planning) Act 1979 together with the amendment of 1985. The Health (Family Planning) (Amendment) Bill 1991 also proposes changes to the current law.

Under the current legislation a person "shall not" sell contraceptives unless he comes within one of five categories.

1. He is a pharmaceutical chemist, dispensing chemist, or druggist or the servant or agent of such a chemist.
2. He is a registered medical practitioner.
3. He is an employee of the Health Board and the sale is at a Health institution.
4. He is a person making available a family planning service in accordance with the legislation, or the servant or agent of such.
5. He is an employee of a hospital providing maternity services or services for the treatment of sexually transmitted diseases and the sale is made at the hospital.
(See extract of 1985 Act)

As the law currently stands the person to whom the contraceptives are sold must be over the age of eighteen years or be buying with a prescription or authorisation in writing (section 4 of the 1979 Act.)

The 1979 Act further provides in Section 7 that a person shall not take any part in the publication of an ad or notice in relation to contraception, or display or procure the display of contraceptives except in accordance with the legislation.

Breach of any of these sections is an offence under the Acts.

Section 14 of the Act provides for penalties for any such offence. A person guilty of a first offence shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 6 months or both (at the discretion of the court). Second or subsequent offences are punishable on conviction on indictment to a fine not exceeding £5,000 together with (in case of continuing offence) fine not exceeding £250 for

each day or part of a day when the offence is continued after the first such day or (at the discretion of the court) to imprisonment for a term not exceeding 12 months or to both.

The Health (Family Planning) (Amendment) Bill 1991 amends the law in this area. Section 3 of that bill provides that a person shall not sell contraceptives unless the sale is in accordance with the exceptions provided for in that section. These are similar to the exceptions provided for in the 1979 Act. However, Section 4 of the 1991 Bill provides a further exception in the case of the sale of contraceptives sheaths and spermicides. There are certain provisos attached however.

1. The person to whom the sale is made must be over the age of 17.
2. The person by whom the sale is effected must be over the age of 18.
3. The sale must not be by means of a vending machine
4. The sale is effected at premises entitled to sell contraceptives under the legislation, or premises registered under Section 3 of the 1991 Bill.

There is provision for the Health Board approving premises which are suitable for the sale of contraceptives sheaths and spermicides, and establishing and maintaining a register of such premises.

It appears that as the law currently stands the sale of contraceptives is forbidden except within certain fairly limited circumstances (see extract of the 1985 Act attached hereto amending the 1979 Act). The penalties provided for offences under these acts are fairly severe.

If and when the 1991 Bill comes into effect there will be a certain liberalising of the legislation in this area, but note that the sale of condoms by vending machines will still be forbidden and any such sale will constitute an offence under these acts.

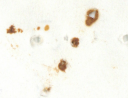
Section 4(3) of the 1979 Act also provides that a person shall not supply contraceptives otherwise than by way of sale under and in accordance with this section.

Sale is defined by the Act. It "includes agree or offer to sell or invite an offer to buy".

This seems to be wide enough to catch both the supplier of a vending machine, and the occupier of a premises who allows a wall of his premises to be used for the purposes of selling condoms.

Note should also be taken of the general liability of a occupier under Tort Law, and the rules of contract which would govern the licence.

FOH



Sale is defined by the Act. It includes any or all of the following:
 invite an offer to buy
 This section to be read subject to each of the following:
 vending machine, and the operator of a premises who, for the
 wall of his premises to be used for the purposes of selling
 condoms
 Note should also be taken of the general liability of a person
 under Part 2, and the rules of contract which will govern the
 licence

FOH