

CRIMINAL LAW (TRAFFICKING IN PERSONS AND SEXUAL OFFENCES)

BILL 2006

GENERAL SCHEME

(...)

Head 3: Trafficking in persons for purpose of exploitation

Provide that-

(1) Any person ("the trafficker") who recruits, transports, transfers to another person, harbours or knowingly arranges or facilitates -

(a) the entry into, travel within or departure from the State of a person ("the trafficked person"), or

(b) the provision of accommodation or employment in the State for that person,

for the purpose of the trafficked person's exploitation, is guilty of an offence, provided that, where the trafficked person is not a child it shall be necessary to show that -

(i) use has been made by the trafficker of coercion, force, threats or abduction,

(ii) use has been made by the trafficker of deception or fraud, or

(iii) abuse is made of a position of authority by the trafficker or of the vulnerability of the trafficked person by the trafficker, including the giving of payments or benefits by the trafficker to a person who has the care, charge or control of the trafficked person.

(2) Any person who attempts to commit an offence under subhead (1) is guilty of an offence.

(3) Any person convicted of an offence under subhead (1) or (2) is liable on conviction on indictment -

(a) in case the trafficked person is a child, to a fine or to imprisonment for life or both,

(b) in any other case, to a fine or to imprisonment for a term not exceeding 14 years or both.

Head 4: Sale etc. of children for purpose of exploitation

Provide that -

(1) Any person who -

(a) sells or offers for sale to another person or accepts or buys from another person, by any means, including through a computer system,

(b) takes or delivers, for the purpose of selling or offering for sale to another person, or

(c) delivers to another person,

a child, for the purposes of the exploitation of the child, is guilty of an offence.

(2) A person who attempts to commit an offence, or causes an offence to be committed, under subhead (1) is guilty of an offence.

(3) A person guilty of an offence under this head is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(4) In this head -

“computer system” means any device or a group of interconnected or related devices, one or more of which, pursuant to a programme, performs automatic processing of data.

(5) References to buying or selling mean buying or selling for payment resulting in any financial or other advantage to the purchaser or seller or both.

Head 5: Soliciting or paying for purpose of sexually exploiting a child

Provide that -

(1) A person who, in any place or by any means,

(a) solicits or importunes a child,

(b) pays, offers or promises to pay or attempts to pay a child or another person money, or

(c) provides, offers or promises to provide or attempts to provide a child or another person with some other form of financial advantage,

for the purpose of the sexual exploitation of the child by that or any other person is guilty of an offence.

(2) A person who accepts or agrees to accept money or some other form of financial advantage in the circumstances referred to in subhead (1) is guilty of an offence.

(3) It shall be a defence to proceedings for an offence under subheads (1) and (2) for the defendant to prove that he/she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years

(4) Where, in proceedings for an offence under subheads (1) and (2), it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years, the court shall have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances.

(5) A person guilty of an offence under this head is liable on conviction on indictment -

(a) in case the child was under 15 years of age, to imprisonment for a term not exceeding 7 years, and

(b) in case the child was 15 years of age or over but under 18 years of age, to imprisonment for a term not exceeding 3 years.

Head 6: Organisation etc of sexual exploitation of children

Provide that –

(1) A person who -

(a) controls or directs the activities of a child for the purpose of the child's sexual exploitation,

(b) organises the sexual exploitation of children by controlling or directing the activities of more than one child for that purpose,

(c) compels, coerces or recruits a child for the purpose of the child's sexual exploitation,

(d) arranges or knowingly facilitates the sexual exploitation of a child, or gains from such exploitation, or

(e) causes or incites a child to become involved in an activity which would constitute the sexual exploitation of the child,

is guilty of an offence and is liable on conviction on indictment to a term of imprisonment of not more than 14 years.

(2) A person who attempts to commit an offence under subhead (1) is guilty of an offence and on conviction on indictment is liable to a term of imprisonment not exceeding 5 years.

Head 7: Provisions relating to 17 year old children

Provide that –

(1) In this head -

“sexual act” means any act if committed against a person under 17 years of age would constitute an offence under section 2 (Defilement of child under 15 years of age) or 3 (Defilement of child under 17 years of age) of the Criminal Law (Sexual Offences) Act 2006.

(2) Any person who engages in a sexual act with a child who is 17 years of age where,

(a) money or other forms of remuneration or consideration is given by the person or some other person on behalf of that person in exchange for the child engaging in a sexual act, or

(b) the person abuses a recognised position of trust, authority or influence over the child,

is guilty of an offence.

(3) It shall be a defence to proceedings for an offence under subheads (1) and (2) for the defendant to prove that he/she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years

(4) Where, in proceedings for an offence under subheads (1) and (2), it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years, the court shall have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances.

(5) Any person guilty of an offence under subhead (2) is liable on conviction on indictment to a term of imprisonment not exceeding 3 years.

(6) A person who attempts to commit an offence under subhead (2) is guilty of an offence and on conviction on indictment is liable to a term of imprisonment not exceeding 2 years.

Head 8: Sexual grooming

Provide that -

(1) Any person who, for the purpose of obtaining sexual gratification, intentionally engages in sexual activity -

(a) when a child is present or is in a place from which the person can be observed, and

(b) knowing or believing that the child is aware, or intending that the child should be aware, that the person is engaging in sexual activity

is guilty of an offence.

(2) Any person who, for the purpose of obtaining sexual gratification, intentionally causes a child -

(a) to watch another person engaging in any sexual activity, or

(b) to look at an image of that person or another person engaging in any sexual activity

is guilty of an offence

(3) It shall be a defence to proceedings for an offence under subheads (1) and (2) for the defendant to prove that he/she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 17 years

(4) Where, in proceedings for an offence under subheads (1) and

(2), it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 17 years, the court shall have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances.

(5) Any person who -

(a) intentionally meets with a child, or travels with the intention of meeting a child, having communicated by any means with the child on at least two previous occasions,

(b) at the time, intends to do anything to, or in respect of, that child, during or after the meeting and in any part of the world, which if done would constitute a sexual offence under any enactment, and

(c) does not reasonably believe the person with whom he communicated is aged 17 years or over

is guilty of an offence

(6) Any person guilty of an offence under this head is liable on conviction on indictment -

(a) in case the child was under 15 years of age, to imprisonment for a term not exceeding 14 years, and

(b) in case the child was under 17 years of age, to imprisonment for a term not exceeding 7 years.

(7) In this head -

"child" means a person under 17 years of age;

"sexual activity" means activity which by its nature may be sexual and because of its circumstances or the purpose of a person in relation to it or both it is sexual.

(...)

Head 10: Jurisdiction

Provide that-

(1) Offences under heads 3 to 9, an offence under sections 5 and 6 of the Child Trafficking and Pornography Act 1998 and a rape offence and a sexual assault offence, as defined at section 1 of the Criminal Law (Rape) Act 1981, or anything done outside the State which if done in the State would constitute one or more of the above offences apply to an act committed outside the State if the act -

(a) is committed for the benefit of a legal person established in the State,

(b) is committed by a citizen of Ireland,

(c) is committed on board a ship or aircraft registered in the State,

(d) is committed by a person who is habitually resident in the State, or

(e) is committed against a person who is a citizen of Ireland.

(2) In this head "ship" includes any vessel used in navigation.

(...)

Head 14: Liability for offences by bodies corporate

Provide that -

(1) Where a body corporate commits an offence under this Bill and the offence is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of a person who, when the offence was committed -

(a) was a director, manager, secretary or other officer of that body, or

(b) purported to act in any such capacity,

that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished accordingly.

(2) A person may be proceeded against for an offence referred to in subhead (1) whether or not the body corporate has been proceeded against or convicted of the offence committed by that body.

(3) Where the affairs of a body corporate are managed by its members, subheads (1) and (2) apply in relation to the acts and defaults of a member in connection with the member's management functions as if the member were a director or manager of the body corporate.

(...)

Head 20

Provide for -

New Part in Sex Offenders Act 2001

20.- The Act of 2001 is hereby amended by the insertion of the following Part

after section 37:

"Part 7

PROHIBITION FROM WORKING WITH CHILDREN AND MENTALLY

IMPAIRED PERSONS

(...)

Non-compliance with requirements relating to prohibitions

Provide that -

43.- (1) A person who fails to comply with a prohibition condition shall be guilty of an offence and shall be liable –

(a) on summary conviction to a fine not exceeding €3,000.00 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding 5 years or both.

(2) Subject to subsection (3), the conviction of a person for an offence under this section shall not prevent the period during which he or she is subject to a prohibition condition from continuing to have effect

(3) If a sentence of imprisonment is imposed on a person for an offence under this section, that sentence shall, for the period the person spends in prison on foot of that sentence, operate to suspend the period of the prohibition condition and the period for which the condition is suspended shall not be reckoned in calculating the date on which the period of prohibition expires.

(...)