

# **GENERAL SCHEME OF**

**Criminal Law (Trafficking in Persons and Sexual  
Offences) Bill 2006**

# **CRIMINAL LAW (TRAFFICKING IN PERSONS AND SEXUAL OFFENCES) BILL 2006**

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**CRIMINAL LAW (TRAFFICKING IN PERSONS AND Sexual Offences)  
BILL 2006**

**GENERAL SCHEME**

**Head 1:      Short title and commencement**

Provide that -

- (1) This Act may be cited as the Criminal Law (Trafficking in Persons and Sexual Offences) Act 2006.
  
- (2) This Act shall come into operation one month after the day of its passing.

## **Head 2: Interpretation**

Provide that -

(1) In this Act, except where the context otherwise requires –

“Act of 1981” means the Criminal Law (Rape) Act 1981;

“Act of 1990” means the Criminal Law (Rape) (Amendment) Act 1990;

“Act of 2001” means the Sex Offenders Act 2001;

“child” means a person under the age of 18 years, unless otherwise indicated;

“exploitation” means labour or sexual exploitation or the removal of a person’s organ for the purpose of transplanting into another person;

“labour exploitation” means

- (a) forced labour or services,
- (b) slavery or practices similar to slavery,
- (c) servitude;

“organ” means any part of a human body consisting of a structured arrangement of tissues which, if wholly removed, cannot be replicated by the body and in *head 4* “organ” refers only to such a part of a human child’s body;

“sexual exploitation” means

- (a) the production of child pornography or for the participation of a child in child pornography or in something that is indecent or obscene,
- (b) the prostitution of another person, or
- (c) any sexual activity with a person which is an offence under any enactment.

- (2) In this Act a reference to a section, subsection or paragraph is to the section, subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.
  
- (3) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the passing of this Act, by or under subsequent enactment.

**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 activityis 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 activityis 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 9      Harassment order**

Provide that –

- (1) A court may, when imposing sentence on a person who has been convicted of a sexual offence, as well as sentencing that person, impose an order under this head on that person.
- (2) The court may consider making an order under this head on its own motion or following an application from the victim or any other person.
- (3) An order under this head may, for the purpose of protecting the victim or any other person named in the order from harassment, prohibit the person convicted of the sexual offence from doing anything, or going anywhere, described in the order which the court is satisfied would cause the victim or the other person fear, distress or alarm or which would amount to intimidation.
- (4) In making an order under this head, it is only necessary for the court to be satisfied that there is a reasonable expectation that the person convicted of the sexual offence may –
  - (a) harass the victim or any other person, or
  - (b) that the victim or other person has a genuine fear of being contacted or intimidated in any way by the offendersuch as would cause the victim or other person fear, distress or alarm.
- (5) The order shall have effect for a specified period or until a further order is made under *subhead (6)*.

(6) At any time after the order has been made, the person in respect of whom it was made, the victim or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(7) If the court makes an order varying the order or discharging the person in respect of whom it was made from the obligation to comply with its requirements, the court shall cause the Garda Síochána to be notified of the variation or discharge.

(8) If without reasonable excuse the person in respect of whom the order was made does anything which he or she is prohibited from doing by the order, he or she is guilty of an offence.

(9) A person guilty of an offence under this head is liable –

(a) on summary conviction to a fine not exceeding €3,000 or a term of imprisonment not exceeding 12 months or both, or

(b) on conviction on indictment to a fine not exceeding €10,000 or to a term of imprisonment not exceeding 5 years or both.

(10) In this section –

“sexual offence” has the meaning assigned to it by section 3 of the Act of 2001.

## **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 11: Proceedings relating to offences committed outside the State**

Provide that -

Proceedings for an offence to which *head 10* applies in relation to an act committed outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

**Head 12:**

**Double jeopardy**

Provide that-

A person who has been acquitted or convicted of an offence outside the State shall not be proceeded against for an offence under this Act consisting of the acts that constituted the offence of which that person was so acquitted or convicted.

**Head 13:**                    **Entry, search and seizure**

Provide that -

(1) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under *heads 3 to 6 and 8 and 9* is to be found at a place specified in the information, the judge may issue a warrant for the search of the place and any persons found at that place.

(2) A warrant issued under this head shall authorise a named member of the Garda Síochána, alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary -

(a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search it and any persons found there, and

(c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under *Heads 3 to 6 and 8 and 9*.

(3) A member of the Garda Síochána acting in accordance with a warrant issued under this head may require any person or persons found at the place where the search is carried out to give the member his or her name and address.

(4) Any person who -

- (a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under *subhead (1)*,
- (b) fails or refuses to comply with a requirement under this head, or
- (c) gives a name or address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3000 or to imprisonment for a term not exceeding 12 months or both.

- (5) A member of the Garda Síochána may arrest without warrant any person whom the member suspects of having committed an offence under *subhead (4)*.

- (6) In this head “place” includes any dwelling, any building or part of a building and any vehicle, vessel, structure or container used or intended to be used for the carriage of goods by road



## **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 15: Amendments of Child Trafficking and Pornography Act, 1998**

Provide that -

The Child Trafficking and Pornography Act, 1998, is hereby amended –

a. in section 2 by the substitution of ““child” means a person under the age of 17 years” with ““child” means a person under the age of 18 years”, and

b. in section 5 by the addition of the following subsection:

(3) A person who attempts to commit an offence under subsections (1)(a) to (c) shall be guilty of an offence and shall be liable –

1. on summary conviction to a fine not exceeding €1,000 or to imprisonment for a term not exceeding 6 months or both, or

2. on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or both.

**Head 16:**

**Amendment of Criminal Evidence Act, 1992**

Provide that -

1. The Criminal Evidence Act, 1992, (as amended by section 10 of the Child Trafficking and Pornography Act 1998) is hereby amended in section 12-
  - (a) by the deletion of “or” in paragraph (c) where it last occurs and by the insertion of “or” after paragraph (d), and
  - (b) by the insertion of the following paragraph after paragraph (d):

“(e) an offence under section 3, 4, 6, 8 or 9 of the Criminal Law (*Trafficking in Persons and Sexual Offences Act 2006*).”.

**Head 17: Amendment of Sexual Offences (Jurisdiction) Act, 1996**

Provide that -

1. The Sexual Offences (Jurisdiction) Act, 1996, is hereby amended -
  - (a) in section 1, subsection (1) by the substitution of:  
“a child means a person under the age of 17 years” with  
“a child means a person under the age of 18 years”
  - (b) in section 8 by the substitution of:  
“under the age of 17 years” with “under the age of 18 years”, in each place it appears, and
  - (c) in the Schedule thereto by the insertion of the following paragraph after paragraph 11:  
“12. *Section 3 of the Criminal Law (Trafficking in Persons and Sexual Offences) Act, 2006* [in so far as it refers to sexual exploitation of children].”

**Head 18:            Amendments of Sex Offenders Act 2001**

Provide that –

The Sex Offenders Act 2001 is hereby amended –

(1) - by the insertion of the following after section 3:

"3A – (1) Subject to *subsection 2*, where a person has been convicted of an offence to which *section 3(2)* applies, but sentence has not been imposed at the time of conviction, the offence shall not be a sexual offence for the purposes of this Act."

(2) An offence under *subsection (1)* shall become a sexual offence if the person convicted has been sentenced to any punishment involving deprivation of liberty for a limited or unlimited period of time or been made subject to any measure involving such deprivation of liberty.

(3) The provisions of Part 2 shall apply to any person to whom *subsection (2)* refers as if that person had received the punishment referred to in that subsection at the time of conviction.

(2) – in section 3 by the insertion of the following after *subsection (3)*:

"(4) The offences referred to in *subsection (2)(a)*, and *subsection (2)(d)* in so far as they relate to an offence referred to in *paragraph (a)*, shall be sexual offences for the purposes of this Act where the victim or, as the case may be, the other party to the offence was mentally impaired and was aged, at the time of the offence, 17 years or more.

(5) 'Mentally impaired' has the meaning assigned to it by section 5 of the Act of 1993."

(3) - in section 12 by the deletion of subsection (3) and its substitution by –

(3) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years.

(4) - in Section 33 by the insertion of the following after subsection (3)

(4) An offence under *subsection (1)* may be prosecuted by a probation and welfare officer

(5) - in the Schedule thereto by the insertion of the following paragraph after paragraph 17:

17A. An offence under any of the following provisions of the Criminal Law (*Trafficking in Persons and Sexual Offences*) Act 2006 -

(a) *section 3* (trafficking of persons for purpose of exploitation) [in so far as it relates to sexual exploitation of children],

(b) *section 4* (sale etc. of children for purpose of sexual exploitation),

(c) *section 5* (soliciting or paying for purpose of sexually exploiting a child),

(d) *section 6* (organisation etc. of sexual exploitation of children),

(e) *section 8* (sexual grooming)

**Head 19**      **Insertion into Part 2 of Sex Offenders Act 2001**

Provide that –

The following section is inserted into Part 2 of the Sex Offenders Act 2001 after section 14:

*Assessment of risk posed by sex offenders*

14A(1)(i).- In this head –

“Commissioner” means the Commissioner of the Garda Síochána;

“Director” means the Director of the Probation and Welfare Service.

(ii) The Commissioner and Director acting together under this head shall be known as the “Responsible Persons”.

(2) The Responsible Persons shall establish arrangements to assess and manage the risks posed by any offender who is subject to the requirements of this Part for the purposes of protecting the public from such offenders and for the investigation, where appropriate, of sexual offences.

(3) The Responsible Persons shall share all relevant information in their possession and knowledge with one another necessary to accurately assess and manage an offender referred to in *subhead (2)*.

(4) Information shared under this head shall not be disclosed to any other person or body except in so far as information can be disclosed by either the Commissioner or Director in circumstances that are outside the scope of this head or in accordance with *subhead (5)*.

(5) (i) Information in respect of an offender which has been shared under this head who travels or intends to travel to another jurisdiction may be disclosed by the relevant authority in the State to a relevant authority in another jurisdiction in accordance with the terms of any written agreement or understanding for the reciprocal exchange of such information and the information shared can only be used in accordance with such terms.

(ii) The relevant authority in the State shall be a member of the Garda Síochána not below the rank of chief superintendent nominated for that purpose by the Commissioner.



## **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**

#### **38.- Interpretation (*Part 7*)**

In this Part –

(1) “child” means a person who is less than 18 years of age:

“mentally impaired” has the meaning assigned to it by section 5 of the Act of 1993;

“sex offender” has the meaning assigned to it in Part 5;

“State work or a service” has the meaning assigned to it by section 25.

(2) The reference in this Part to protecting a child or children or a mentally impaired person or persons from serious harm from the offender shall be construed as a reference to protecting any such child or person from death or serious injury, whether physical or psychological, which would be occasioned if the offender were to commit a sexual offence after he or she had been

released into the community, whether or not a sentence involving post-release supervision had been imposed.

## **Duty of Court to consider imposition of sentence involving a prohibition**

Provide that-

39.- (1) In determining the sentence to be imposed on a sex offender in respect of the sexual offence concerned, the court shall consider whether to impose a sentence that includes a condition prohibiting the offender from doing work (including State work or service) a necessary and regular part of which consists, mainly, of the offender having unsupervised access to, or contact with, a child or children or a mentally impaired person or persons..

(2) In considering that matter, the court shall have regard to –

(a) the need to protect children and mentally impaired persons from serious harm from the offender, and

(b) the need to prevent the commission by the offender of further sexual offences.

(3) For the purposes of this section, the court may, if it thinks it necessary to do so, receive evidence or submissions from any person concerned.

## **Power of court to impose prohibition**

Provide that –

40. - (1) A court may impose on a sex offender in respect of the sexual offence concerned a sentence involving a prohibition condition, that is to say a sentence which consists of –

- (a) the imposition of a sentence of imprisonment for a specified term (whether in addition to the imposition of a fine or not), and
- (b) a condition that during a specified period commencing on the date of the offender's release from prison, the offender shall be subject to a prohibition as provided for in *subhead (1) of section 21*.

(2) The aggregate of the sentence of imprisonment referred to in *subsection (1)(a)* and the period during which the offender is subject to a period of prohibition shall not exceed the duration of the maximum term of imprisonment that may be imposed in respect of the sexual offence concerned.

(3) In determining the period to be specified as the period of prohibition, the matters to which the court shall have regard shall include the matters referred to in *section 39(2)*.

(4) The reference in this section to the date of the offender's release from prison is a reference to the date on which the offender's sentence of

imprisonment referred to in *subsection (1)(a)* expires, or as the case may be, the offender's remission from the sentence begins.

(5) When imposing a condition under *subsection (1)(b)*, the court may specify a particular work or service to which the prohibition applies.

(6) The court shall not impose a condition under *subsection (1)(b)* unless it is satisfied that it is in the best interests of children or mentally impaired persons to do so.

(7) The court may impose a condition under this section in addition to imposing a sentence involving post-release supervision under Part 5.

**Duty of court to explain effect of sentence to offender.**

Provide that –

41.- In imposing a sentence involving a prohibition condition on a sex offender, the court shall explain to him or her –

(a) the effects of the sentence, and

(b) the consequences provided for under *section 43* if he or she fails to comply with the prohibition condition.

## **Discharge from obligation to comply with requirements of this Part**

Provide that –

42.- (1) A person who is subject to a prohibition condition under this Part for a period of an indefinite duration may apply to the court for an order discharging the person from the obligation to comply with all or part of the condition on the grounds that-

(a) it would be in the interests of justice to do so, and

(b) the protection of children or mentally impaired persons from serious harm from the offender no longer requires that the condition should continue either fully or partially, as the case may be, in force.

(2) An application under this section shall not be made before the expiration of the period of 10 years from the date of the applicant's release from prison.

(3) The applicant shall, not later than the beginning of such period before the making of the application as may be prescribed, notify the superintendent of the Garda Síochána of the district in which he or she ordinarily resides or has his or her most usual place of abode of his or her intention to make an application under this section.

(4) That superintendent or any other member of the Garda Síochána shall be entitled to appear and be heard at the hearing of that application

(5) On the hearing of an application under this section, the court shall, if satisfied that -

(a) it would be in the interests of justice to do so, and

(b) the protection of children or mentally impaired persons from serious harm from the offender no longer requires that the condition should continue in force

make an order discharging the applicant from the obligation to comply with all or part of the prohibition condition.

(6) In considering an application under this section, the court may require to be adduced, in such form as it thinks appropriate, evidence (including expert evidence) with regard to whether –

(a) it would be in the interests of justice to do so, and

(b) the protection of children or mentally impaired persons from serious harm from the offender

would any longer be served by the applicant's continuing to be subject to the prohibition condition.

(7) If the court makes an order discharging the applicant from the obligation to comply with all or part of the prohibition condition, the court shall cause the Garda Síochána to be notified, in writing, of that discharge.

(8) The jurisdiction of the court in respect of an application under this section may be exercised by the judge of the circuit where the applicant ordinarily resides or has his or her most usual place of abode.

(9) Where a prohibition condition is partially discharged following an application under *subsection (1)*, the applicant may, at any time at least



2 years following the application, make a further application to discharge the remaining parts of the condition and any such application shall be in accordance with the provisions of this section.

(10) In this section-

“applicant” means the person referred to in *subsection 1*;

“court” means the Circuit Court:

“date of the applicant’s release from prison” means the date on which the applicant’s sentence of imprisonment referred to in *section 22 (1) (a)* expires or, as the case may be, his or her remission from the sentence begins.

## **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.

## Head 21      Amendment of the Criminal Law (Incest Proceedings) Act 1995

Provide that-

The Criminal Law (Incest Proceedings) Act 1995 is hereby amended by the insertion of the following after section 3 -

"3A - (1) Where a person is charged with both an offence under the Act of 1908 and a sexual assault offence and the incest charge is not proceeded with or there is no finding of guilt on any incest charge, the law governing the anonymity of complainants provided for at section 7 of the Act of 1981, as amended by section 17 of the Act of 1990, shall apply."

(2) Where the circumstances provided for in *subsection (1)* arise and the court lifts the anonymity requirements relating to the complainant, the anonymity provisions applying to the person charged with an offence under section 3 of the Act of 1908 shall be lifted when that person has been found guilty of a sexual assault offence.

(3) In this section –

“Act of 1908” means the Punishment of Incest Act 1908;

"a sexual assault offence" has the meaning assigned to it by section 1 (1) of the Act of 1981 as substituted by section 12 of the Act of 1990."

**Head 22:**                    **Amendment of Bail Act, 1997**

Provide that -

The Bail Act, 1997, is hereby amended in the Schedule thereto by the insertion of the following paragraph after paragraph 12A:

“12B. Any offence under the following provisions of the Criminal Law (*Trafficking in Persons and Sexual Offences*) Act, 2006 -

- (a) *Section 3* (trafficking in persons for the purpose of exploitation);
- (b) *Section 4* (sale etc of children for purpose of sexual exploitation);
- (c) *Section 6* (organisation etc of sexual exploitation of children);
- (d) *Section 8* (sexual grooming);
- (e) *Section 9* (harassment order).

**Head 23:                    Amendment of Children Act, 2001**

Provide that -

The Children Act 2001 is hereby amended in section 249, subsection 4, by the deletion of "“child” means a child under 17 years of age”."

**Head 24: Amendments of Criminal Law (Rape) Act 1981**

Provide that –

- (1) The Act of 1981 is hereby amended in section 6, as substituted by section 11 of the Act of 1990, by the insertion after “attempted aggravated sexual assault” where it first appears in subsection (1) of “or an offence of trafficking in persons for the purpose of exploitation under section 3 of the Criminal Law (*Trafficking in Persons and Sexual Offences*) Act 2006”.
- (2) The Act of 1981 is hereby amended in section 7, as amended by section 17(2) of the Act of 1990, by the substitution of “sexual assault offences and offences under section 3 of the Criminal Law (*Trafficking in Persons and Sexual Offences*) Act 2006” for “sexual assault offences” in subsections (1), (2), (3), (4), (5), (8)(a) and (10).

**Head 25**

**Repeal**

Provide that -

Section 3 (1) of the Child Trafficking and Pornography Act 1998 is repealed.