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Explanatory Memorandum](#)

**AN BILLE UM AN DLÍ COIRIÚIL (GÁINNEÁIL AR
DHAOINE) 2007**
CRIMINAL LAW (HUMAN TRAFFICKING) BILL 2007

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
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 3. Trafficking etc., of children.
 4. Trafficking, taking, etc., of child for purpose of sexual exploitation.
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 11. Anonymity of victims of trafficking.
 12. Amendment of Criminal Evidence Act 1992.
 13. Amendment of Act of 2001.
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ACTS REFERRED TO

Bail Act 1997	1997, No. 16
Child Trafficking and Pornography Act 1998	1998, No. 22
Criminal Evidence Act 1992	1992, No. 12
Criminal Law (Sexual Offences) Act 1993	1993, No. 20
Criminal Law (Sexual Offences) (Amendment) Act 2007	2007, No. 6
Sex Offenders Act 2001	2001, No. 18



**AN BILLE UM AN DLÍ COIRIÚIL (GÁINNEÁIL AR
DHAOINE) 2007**
CRIMINAL LAW (HUMAN TRAFFICKING) BILL 2007

BILL

5

entitled

AN ACT TO GIVE EFFECT TO COUNCIL FRAMEWORK
DECISION OF 19 JULY 2002¹ ON COMBATING TRAF-
FICKING IN HUMAN BEINGS; TO GIVE EFFECT, IN
PART, TO THE UNITED NATIONS PROTOCOL TO
10 PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN
PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUP-
PLEMENTING THE UNITED NATIONS CONVENTION
AGAINST TRANSNATIONAL ORGANISED CRIME,
DONE AT NEW YORK ON 15 NOVEMBER 2000, AND
15 THE COUNCIL OF EUROPE CONVENTION ON ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS DONE AT
WARSAW ON 16 MAY 2005; FOR THOSE PURPOSES TO
AMEND CERTAIN ENACTMENTS; TO AMEND
SECTION 3 OF THE SEX OFFENDERS ACT 2001; AND TO
20 PROVIDE FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Criminal Law (Human Trafficking) Act 2007. Short title and commencement.

(2) This Act shall come into operation one month after its passing.

25 2.—In this Act— Interpretation.

“Act of 1998” means the Child Trafficking and Pornography Act 1998;

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

“child” means a person under the age of 18 years;

30 “exploitation” means—

(a) labour exploitation,

(b) sexual exploitation, or

¹OJ No.L 203 of 1.8.2002, p.1

- (c) exploitation consisting of the removal of one or more of the organs of a person;

“labour exploitation” means, in relation to a person (including a child)—

- (a) subjecting the person to forced labour, 5
- (b) forcing him or her to render services to another, or
- (c) enslavement of the person or subjecting him or her to servitude or a similar condition or state;

“sexual exploitation” means, in relation to a person—

- (a) the production of pornography depicting the person either alone or with others, 10
- (b) causing the person to engage in sexual activity for the purpose of the production of pornography,
- (c) the prostitution of the person,
- (d) the commission of an offence specified in the Schedule to the Act of 2001 against the person; causing another person to commit such an offence against the person; or causing the person to commit such an offence against another person, or 15
- (e) otherwise causing the person to engage or participate in any sexual, indecent or obscene act; 20

“trafficks” means, in relation to a person (including a child)—

- (a) procures, recruits, transports or harbours the person, or
 - (i) transfers the person to,
 - (ii) places the person in the custody, care or charge, or under the control, of, or 25
 - (iii) otherwise delivers the person to, another person,
- (b) causes a person to enter or leave the State or to travel within the State, 30
- (c) takes custody of a person or takes a person—
 - (i) into one’s care or charge, or
 - (ii) under one’s control, or
- (d) provides the person with accommodation or employment.

Trafficking etc., of children.

3.—(1) A person who trafficks a child for the purposes of the exploitation of the child shall be guilty of an offence. 35

(2) A person who—

(a) sells a child, offers or exposes a child for sale or invites the making of an offer to purchase a child, or

(b) purchases or makes an offer to purchase a child,

shall be guilty of an offence.

5 (3) A person who causes an offence under *subsection (1)* or *(2)* to be committed shall be guilty of an offence.

(4) A person who attempts to commit an offence under *subsection (1)*, *(2)* or *(3)* shall be guilty of an offence.

10 (5) A person guilty of an offence under this section shall be liable upon conviction on indictment to a fine, or imprisonment for life, or both.

(6) In this section “exploitation” does not include sexual exploitation.

15 **4.—**Section 3 (amended by section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the Act of 1998 is amended by—

Trafficking, taking, etc., of child for purpose of sexual exploitation.

(a) the substitution of the following subsections for subsections (1) and (2):

20 “(1) A person who trafficks a child for the purposes of the sexual exploitation of the child shall be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for life, or both.

(2) A person who—

(a) sexually exploits a child, or

25 (b) takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,

shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.”, and

30

(b) the substitution of the following subsections for subsection (3):

35 “(3) A person who causes another person to commit an offence under subsection (1) or (2) shall be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for life, or both.

(4) A person who attempts to commit an offence under subsection (1), (2) or (3) shall be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for life, or both.

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(5) In this section—

‘child’ means a person under the age of 18 years;

‘sexual exploitation’ means, in relation to a child—

- (a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography, 5
- (b) the prostitution of the child or the use of the child for the production of child pornography, 5
- (c) the commission of an offence specified in the Schedule to the Sex Offenders Act 2001 against the child; causing another person to commit such an offence against the child; or inviting, inducing or coercing the child to commit such an offence against another person, 10
- (d) inviting, inducing or coercing the child to engage or participate in any sexual, indecent or obscene act, or
- (e) inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child, 15

and ‘sexually exploits’ shall be construed accordingly;

‘trafficks’ means, in relation to a child— 20

- (a) procures, recruits, transports or harbours the child, or—
 - (i) transfers the child to,
 - (ii) places the child in the custody, care or charge, or under the control, of, or 25
 - (iii) otherwise delivers the child to,
 - another person,
- (b) causes the child to enter or leave the State or to travel within the State,
- (c) takes custody of the child or takes the child— 30
 - (i) into one’s care or charge, or
 - (ii) under one’s control, or
- (d) provides the child with accommodation or employment.”.

Trafficking of persons other than children.

5.—(1) A person (in this section referred to as the “trafficker”) 35 who trafficks another person (in this section referred to as the “trafficked person”), other than a child or a person to whom *subsection (2)* applies, for the purposes of the exploitation of the trafficked person shall be guilty of an offence if, in or for the purpose of trafficking the trafficked person, the trafficker— 40

- (a) coerced, threatened, abducted or otherwise used force against the trafficked person,

(b) deceived or committed a fraud against the trafficked person,

5 (c) abused his or her authority or took advantage of the vulnerability of the trafficked person to such extent as to cause the trafficked person to have had no real and acceptable alternative but to submit to being trafficked,

10 (d) coerced, threatened or otherwise used force against any person in whose care or charge, or under whose control, the trafficked person was for the time being, in order to compel that person to permit the trafficker to traffick the trafficked person, or

15 (e) made any payment to, or conferred any right, interest or other benefit on, any person in whose care or charge, or under whose control, the trafficked person was for the time being, in exchange for that person permitting the trafficker to traffick the trafficked person.

(2) A person who trafficks a person who is mentally impaired for the purposes of the exploitation of the person shall be guilty of an offence.

20 (3) A person who—

(a) sells another person, offers or exposes another person for sale or invites the making of an offer to purchase another person, or

(b) purchases or makes an offer to purchase another person,

25 shall be guilty of an offence.

(4) A person who causes an offence under *subsection (1), (2) or (3)* to be committed shall be guilty of an offence.

(5) A person who attempts to commit an offence under *subsection (1), (2), (3) or (4)* shall be guilty of an offence.

30 (6) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(7) In this section “mentally impaired” has the same meaning as it has in the Criminal Law (Sexual Offences) Act 1993.

35 6.—Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. Offences by bodies corporate.

45 7.—(1) Where a person who is an Irish citizen or ordinarily resident in the State does an act in a place other than the State that, if done in the State, would constitute an offence under *section 3 or 5, or section 3 (other than subsections (2A) and (2B))* of the Act of Jurisdiction.

1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(2) Where a person does an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute an offence under *section 3* or *5*, or *section 3* (other than subsections (2A) and (2B)) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both. 5

(3) Where a person conspires with, or incites, in the State, another person to do an act in a place other than the State that, if done in the State, would constitute an offence under *section 3* or *5*, or *section 3* (other than subsections (2A) and (2B)) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both. 10

(4) Where a person who is an Irish citizen or ordinarily resident in the State conspires with, or incites, in a place other than the State, another person to do an act in a place other than the State that, if done in the State, would constitute an offence under *section 3* or *5*, or *section 3* (other than subsections (2A) and (2B)) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both. 15 20

(5) Where a person conspires with, or incites, in the State or in a place other than the State, another person to do an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute an offence under *section 3* or *5*, or *section 3* (other than subsections (2A) and (2B)) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both. 25

(6) Where a person conspires with, or incites, in a place other than the State, a person who is an Irish citizen or ordinarily resident in the State to do an act in a place other than the State that, if done in the State, would constitute an offence under *section 3* or *5*, or *section 3* (other than subsections (2A) and (2B)) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both. 30 35

(7) Where a person attempts to commit an offence under *subsection (1), (2), (3), (4), (5) or (6)*, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(8) For the purposes of this section a person shall be deemed to be ordinarily resident in the State if— 40

(a) he or she has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence,

(b) it is a company registered under the Companies Acts, or 45

(c) in the case of any other body corporate, it is established under the law of the State.

Proceedings relating to offences committed outside State.

8.—Proceedings for an offence under *section 7* 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. 50

9.—(1) Where a person has been acquitted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under this Act consisting of the alleged act or acts constituting the first-mentioned offence. Double jeopardy.

5 (2) Where a person has been convicted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under this Act consisting of the act or acts constituting the first-mentioned offence.

10 **10.**—(1) In proceedings for an offence under *section 3* or *5*, or section 3 (other than subsections (2A) and (2B)) of the Act of 1998, or incitement or conspiracy to commit any such offence, all persons, other than officers of the court, persons directly concerned in the proceedings and such other persons (if any) as the judge of the court may determine, shall be excluded from the court during the proceedings. Exclusion of members of public from proceedings.

(2) In proceedings to which this section applies the verdict or decision and the sentence (if any) shall be pronounced in public.

20 **11.**—(1) Where a person is charged with an offence under *section 3* or *5*, or section 3 (other than subsections (2A) and (2B)) of the Act of 1998, any person who publishes or broadcasts any information, including— Anonymity of victims of trafficking.

(a) any photograph of, or that includes a depiction of, the alleged victim of the offence, or

25 (b) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the alleged victim of the offence,

30 that is likely to enable the identification of the alleged victim of the offence, shall, subject to any direction under *subsection (2)*, be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for a term not exceeding 10 years, or both.

35 (2) The judge of the court in which proceedings for an offence under *section 3* or *5*, or section 3 (other than subsections (2A) and (2B)) of the Act of 1998, are brought may, where he or she considers that the interests of justice so require, direct that such information to which *subsection (1)* applies as he or she shall specify in the direction may be published or broadcast in such manner and subject to such conditions as he or she may specify in the direction.

(3) A direction under this section shall be in writing.

40 (4) A person who contravenes a direction under this section, including a condition in such a direction, shall be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for a term not exceeding 10 years, or both.

(5) In this section—

45 “broadcasts” means transmits, relays or distributes by wireless telegraphy or by any other means, or by wireless telegraphy in conjunction with any other means, of communications, sounds, signs, visual images or signals intended for reception by any person whether such communications, sounds, signs, visual images or signals are received by that person or not;

“publishes” means publishes to any person, and includes publishes on the internet.

Amendment of
Criminal Evidence
Act 1992.

12.—The Criminal Evidence Act 1992 is amended by the substitution of the following section for section 12 (amended by section 10 of the Act of 1998)—

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“12.—This Part applies to—

- (a) a sexual offence,
- (b) an offence involving violence or the threat of violence to a person,
- (c) an offence under section 3, 4, 5 or 6 of the Child Trafficking and Pornography Act 1998, 10
- (d) an offence under *section 3, 5 or 7 of the Criminal Law (Human Trafficking) Act 2007*, or
- (e) an offence consisting of attempting or conspiring to commit, or of aiding or abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a), (b), (c) or (d).” 15

Amendment of Act
of 2001.

13.—The Act of 2001 is amended—

(a) in section 3, by—

- (i) the substitution of the following paragraph for paragraph (a) of subsection (2): 20

“(a) paragraph 2 of the Schedule (sexual assault or indecent assault), other than an offence of sexual assault or indecent assault of a person who, at the time of the commission of the offence, was mentally impaired,” 25

- (ii) the substitution of the following paragraph for paragraph (ii) of subsection (2):

“(ii) the person guilty of the offence—

(I) is, for the time being, the subject of an order of the court remanding him or her on bail or in custody pending the passing of sentence, or 30

(II) has not, in respect of the offence, 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.”, and 35
40

- (iii) the insertion of the following subsection:

“(4) In this section ‘mentally impaired’ has the same meaning as it has in section 5 of the Criminal Law (Sexual Offences) Act 1993.”,

5 (b) in section 12, by the substitution of the following subsection for subsection (3):

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

10 (a) on summary conviction, to a fine not exceeding €5,000, 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, or both.”,

(c) in section 33, by the insertion of the following subsection:

15 “(4) Proceedings for an offence under subsection (1) may be brought and prosecuted by a probation and welfare officer.”, and

(d) in the Schedule, by the insertion of the following paragraph:

20 “16A. An offence under the *Criminal Law (Human Trafficking) Act 2007* in so far as the offence is committed for the purposes of the sexual exploitation of a person.”.

14.—The Schedule to the Bail Act 1997 is amended by the insertion of the following paragraph: Amendment of Bail Act 1997.

25 “8A. An offence under the *Criminal Law (Human Trafficking) Act 2007*.”.



**AN BILLE UM AN DLÍ COIRIÚIL (GÁINNEÁIL AR
DHAOINE) 2007**
CRIMINAL LAW (HUMAN TRAFFICKING) BILL 2007

EXPLANATORY MEMORANDUM

Introduction

The primary purpose of the Bill is to create offences criminalising trafficking in persons for the specific purposes of their sexual or labour exploitation or the removal of their organs and to provide severe penalties for anyone found guilty of committing the offences. The offences are in line with international norms as established in the EU Framework Decision on combating trafficking in human beings; the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against international organised crime, and the Council of Europe Convention on action against trafficking in human beings (CAHTEH). It also criminalises the selling or purchasing of human beings, both children and adults, for any purpose. The sale of children for the purpose of exploitation is a requirement of the Optional Protocol to the United Nations Convention on the rights of the child on the sale of children, child prostitution and child pornography.

Provisions of the Bill

Section 1 (Short title and commencement) — This is a standard provision which provides the short title of the Bill and the commencement date, which will be one month after the passing of the Bill.

Section 2 (Interpretation) — This section provides the definitions for the Bill. The definition of “labour exploitation” applies to both children and adults who have been trafficked for that purpose. The definition of “sexual exploitation” applies to the trafficking of adults for the purpose of sexual exploitation — the provision criminalising the trafficking of children for the purpose of sexual exploitation is being inserted into the Child Trafficking and Pornography Act 1998 in substitution for the existing child trafficking provision in that Act. The definition of “trafficks” applies to the trafficking of adults for the purposes of sexual or labour exploitation or the removal of organs and the trafficking of children for the purpose of labour exploitation and the removal of organs. A similar definition of “trafficks” is inserted into the Child Trafficking and Pornography Act 1998 by section 4 of the Bill under which it is an offence to traffick children for the purpose of sexual exploitation.

Section 3 (Trafficking etc. of children) — This section criminalises the trafficking of children into, through or out of the State for the purposes of labour exploitation or the removal of their organs. It also creates offences of causing the trafficking or attempting to commit or cause the offences. In addition, it creates an offence of selling or purchasing a child. The maximum penalty for all the offences is life imprisonment on conviction on indictment.

Section 4 (Trafficking, taking etc. a child for purpose of sexual exploitation) — Section 3 of the Child Trafficking and Pornography Act 1998 created offences of child trafficking and taking etc. a child for the purpose of sexual exploitation. This section replaces section 3 of the 1998 Act (apart from the provisions on sexual grooming inserted by section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007) with a new provision bringing the offence of trafficking in children for sexual exploitation into line with the other new trafficking offences as required by the international instruments. It re-enacts subsection (2) of section 3 concerning the taking, detaining or restricting the personal liberty of a child for the purpose of the child's sexual exploitation but with the maximum penalty on conviction on indictment raised from 14 years to life imprisonment. Subsection (3) defines "sexual exploitation" in a manner that is consistent with the definition of sexual exploitation of an adult but is adapted so that it is relevant to the sexual exploitation of children. The definition of "trafficks" for the purpose of the section is similar to the definition of that term in section 2.

Section (5) (Trafficking in persons other than children) — This section criminalises trafficking in adults, i.e., persons aged 18 years or over, for the purposes of sexual or labour exploitation or the removal of their organs. It also makes it an offence to cause the offence of trafficking or to attempt to commit the offence or to cause it to be committed. For trafficking to occur under this section, coercion, deception or threats etc. must have been used against the trafficked person or threats, coercion or force must have been used against any person who has the charge or care of, or under whose control, the trafficked person was for the time being. Trafficking can also occur where the trafficker has made any payment or conferred any benefit etc. on any person in whose care or charge, or under whose control, the trafficked person was for the time being, in exchange for the person permitting the trafficker to traffick the trafficked person. This is in line with the requirements of the international trafficking instruments. The penalty on conviction on indictment for an offence under this section is a maximum of life imprisonment. This section also provides an offence of selling or purchasing a person aged 18 years or over that mirrors the offence in section 3 relating to the sale or purchase of children. In addition, it creates an offence of trafficking persons who are mentally impaired. This offence is similar to the offence of trafficking in children in that there is no need to show that a mentally impaired person consented to the trafficking.

Section 6 (Offences by bodies corporate) — This is a standard provision under which it is an offence for a body corporate to commit any of the offences in the Bill.

Section 7 (Jurisdiction) — This section establishes a wide range of extra-territorial jurisdictions. Under *subsection (1)*, it is an offence for an Irish citizen or a person ordinarily resident in the State to traffick or sell or purchase a person outside the State if to do so would constitute the offence of trafficking or selling or purchasing in this jurisdiction. The expression "ordinarily resident in the State" is defined in *subsection (8)* in similar terms to its definition in the

Sexual Offences (Jurisdiction) Act 1996, i.e., a person who has had his or her principal residence in the State for the period of 12 months preceding the alleged commission of the offence. It also means a company registered in the State or, in the case of any other body corporate, one that is established under the law of the State.

Under *subsection (2)*, it is an offence for a person to do something outside the State to an Irish citizen which if done in the State would constitute the offence of trafficking or selling or purchasing human beings.

Subsection (3) creates an offence of conspiring with or inciting a person in the State to traffick or sell or purchase a human being in an other country and *subsection (4)* makes it an offence for an Irish citizen or a person ordinarily resident in the State to conspire with or incite another person outside the State to traffick or sell or purchase a human being. Under *subsection (5)* it is an offence for a person to conspire with or incite in the State or another country another person to traffick or sell or purchase an Irish citizen outside the State and *subsection (6)* makes it an offence to conspire with or incite, in another country, an Irish citizen or person ordinarily resident in the State to do an act in another country that if done in the State would constitute the offence of trafficking or selling or purchasing human beings. The maximum penalty for committing or attempting to commit any of the above offences is an unlimited fine and/or life imprisonment.

Section 8 (Proceedings relating to offences committed outside State) — This is a standard provision under which where proceedings are commenced for an offence committed outside the State, they may be taken in any place in the State.

Section 9 (Double Jeopardy) — This is also a standard provision under which a person cannot be proceeded against for a trafficking or selling or purchasing human beings offence if he or she has been acquitted or convicted of a similar offence in another country.

Section 10 (Exclusion of members of public from proceedings) — This section gives the judge power to exclude persons from the court, other than officers of the court, persons directly concerned in the proceedings and such other persons as the judge may determine, during proceedings for trafficking or selling purchasing offences under this Bill. This will insure a lack of publicity surrounding cases where persons are alleged to have been trafficked in circumstances where publicity might place them and their families at risk.

Section 11 (Anonymity of victims of trafficking) — This section guarantees the anonymity of alleged victims of trafficking, unless the judge fully or partially waives the anonymity in the interests of justice. Breach of this section could have serious consequences for an alleged victim. Accordingly, an offence under this section will be triable on indictment with a maximum penalty on conviction of an unlimited fine and/or 10 years imprisonment.

Section 12 (Amendment of Criminal Evidence Act 1992) — This section substitutes a new section for section 12 of the Criminal Evidence Act 1992. It extends the scope of Part III of that Act to the offences created by this Bill. This means, for example, that it will be possible for an alleged victim of trafficking to give evidence through a live television link, with the leave of the court in the case of adults, from either within the State or abroad.

Section 13 (Amendment of Act of 2001) — This section makes five amendments to the Sex Offenders Act 2001. *Paragraph (a)(i)* amends section 3 of the 2001 Act by substituting a new paragraph for paragraph (a) of subsection 2. Section 3 provides for exceptions to what are defined in the Schedule to the Act as sexual offences for the purposes of the Act. Conviction and sentence for such a sexual offence can have several consequences, including an obligation to notify ones name and address, and any changes to the name and address, to the Garda Síochána (sex offenders register). One of the exceptions is that in certain limited circumstances the offence of indecent assault or sexual assault is not a sexual offence for the purposes of the Act. The effect of the amendment at paragraph (a)(i) is that where the victim of an offence of indecent or sexual assault is mentally impaired the offence will always be a sexual offence for the purposes of the 2001 Act.

Paragraph (a)(ii) further amends subsection 2 of section 3 of the 2001 Act by substituting a new paragraph for paragraph (ii) of that subsection. A person guilty of an offence referred to in subsection (2) of section 3 would, in certain circumstances, not be required to notify the Garda Síochána of his or her name and address if he or she does not receive a custodial sentence. However, in such cases the person would have been required to so notify the Garda Síochána at the time of conviction. The effect of this amendment is that in such cases the person would not be required to notify the Garda Síochána at the time of conviction and would subsequently only have to make such a notification if he or she receives a custodial sentence.

The third amendment in this section to the 2001 Act is to section 12. Failure by a person to notify the Garda Síochána of his or her name and address is an offence with a maximum penalty on summary conviction of a fine of €1,905 and/or 12 months imprisonment. This amendment raises the monetary penalty on summary conviction to €5,000 and provides for the offence to be tried on indictment, with a maximum penalty of €10,000 and/or 5 years imprisonment. An effect of this is to make breach of the offences in connection with the notification requirements arrestable offences.

The fourth amendment to the 2001 Act is to section 33. This will aid the smooth operation of Part 5 of the Act by giving probation and welfare officers power to prosecute persons who fail to comply with the conditions attaching to an order for post-release supervision.

Finally, the offence of trafficking for the purpose of sexual exploitation is being added to the Schedule to the 2001 Act, ensuring it is a sexual offence for the purposes of that Act.

Section 14 (Amendment to Bail Act 1997) — This section adds the offences created in this Bill to the Schedule to the Bail Act 1997. This means that they are serious offences for the purposes of that Act.

Screening Regulatory Impact Analysis

Purpose

1. The primary purpose of the Bill is to provide protection through the application of the criminal law to persons who have been trafficked into, through or out of Ireland for the purpose of sexual or labour exploitation or for the removal of their organs. The criminal law has a limited but important role in providing such protection against what is generally described as modern day slavery. It is a global phenomenon that involves the labour or sexual exploitation of persons through the use of measures such as force, fraud or coercion. **The Bill is solely concerned with the criminal law response.** The protection of and provision of services for victims of trafficking will be dealt with administratively and immigration issues will be included in the Immigration, Residence and Protection Bill.

Why does this issue now require attention?

2.1 The EU Framework Decision on combating trafficking in human beings is overdue for compliance. In accordance with Title VI of the Treaty of the European Union, the European Council may adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions are binding on Member States as to the result to be achieved but leave to the national authorities the choice of form and methods. They do not have direct effect and, accordingly, must be given effect in legislation.

2.2 Other international instruments on trafficking and the protection of children against sexual exploitation have been negotiated in recent years. In some respects they range further than invoking criminal law responses. However, the preparation of the legislation necessary to comply with the Framework Decision referred to in *para 2.1* provides a timely opportunity to take into account the criminal law elements of those instruments and to contribute towards Ireland being in a position to become a party to them. They are: The Protocol to prevent, suppress and punish trafficking in persons, supplementing the UN Convention against transnational organised crime; the Council of Europe Convention on action against trafficking in human beings (CAHTEH); and the Optional Protocol to the UN Convention on the rights of the child on the sale of children, child prostitution and child pornography.

Intended effects of legislation

3.1 In accordance with the various international instruments to which reference has been made, the Bill proposes to create a criminal offence of trafficking persons into, through or out of Ireland for the purpose of their sexual or labour exploitation or the removal of their organs. Such an offence, with severe penalties, will highlight Ireland as a high risk destination for traffickers and ensure that it remains a relatively low incidence offence.

3.2 The legislation will offer protections that go beyond what is strictly required by the international instruments and these have been added during the drafting stage. For example, mentally impaired persons will receive the same protection as children, that is, consent will not be an issue and the offence of selling or purchasing children is being extended to include adults.

Background to legislation

4.1 Trafficking in humans involves the movement of people from one country to another using coercion, force, threats, deception or fraud, or by abusing a position of authority, for the purpose of

exploitation. It can also take place within countries. At present, trafficking in children for the purpose of sexual exploitation is an offence under section 3 of the Child Trafficking and Pornography Act 1998. There is no specific trafficking offence under which traffickers of adults (usually women) can be prosecuted and up to now any prosecution would have had to be taken under the Illegal Immigrants (Trafficking) Act 2000, an Act primarily designed to tackle smuggling in migrants for economic purposes.

4.2 By its nature the level of trafficking into Ireland is difficult to quantify. To date trafficking for the purpose of sexual exploitation is likely to have been a relatively minor activity but has the potential to grow. A figure of 100 women trafficked into Ireland for sexual exploitation has been mentioned but this figure cannot be confirmed. It could be distorted by a blurring in the distinction between trafficking and smuggling and by different perceptions of what constitutes trafficking, in particular in relation to consent. Trafficking for labour exploitation is even more difficult to quantify and it is unlikely that any trafficking into Ireland has taken place for the removal of organs.

4.3 The General Scheme of the Bill included additional provisions protecting children against sexual exploitation. These have been excluded from the Bill in order to speed up the drafting and publication of the trafficking aspects. Also, some of those protection provisions may have to be reconsidered in the light of the Report of the Joint Oireachtas Committee on Child Protection and any constitutional referendum that includes measures protecting children against sexual abuse.

Options

5. Reforming the criminal law in order to comply with international obligations or to provide additional measures aimed at offering further protection to vulnerable persons, in particular children, against sexual abuse reduces the options to the point where the only realistic one is to enact the appropriate legislation. Debate can take place on the details of the legislation (although there is minimal opportunity for innovation when legislating for compliance with international instruments) and the platform for such debate will come from public and Oireachtas reaction to the proposals. Accordingly, the alternative options of doing nothing, or doing things differently, have been rejected as not being in the interests of the country or of vulnerable persons.

Identification of costs, benefits and impact of the option recommended

6. There will be no direct cost implications to enacting and implementing the proposed criminal offences. It is, therefore, possible to consider the benefits on a cost neutral basis. Specific laws against trafficking for the purposes of sexual and labour exploitation should offer greater protection to women and children in particular when such activity comes to notice and, everything else being equal, should reduce the already relatively low incidence of such trafficking. Also, by bringing forward the day when the United Nations and Council of Europe instruments can be ratified, Ireland's reputation in the world can be maintained and greater international co-operation in dealing effectively with trafficking in persons will ensue.

Consultation

7. Discussions have taken place with Ruhama, a voluntary agency working with women in prostitution, and Ireland en Route, a forum

on trafficking in women and children for sexual exploitation. Contacts have been maintained with the Garda Síochána on the incidence of trafficking and how the criminal law can help counter it. These contacts have been mainly in the context of a Standing Group on Trafficking on which the Department's Criminal Law Division, Crime Division, Immigration Division, the National Bureau of Crime Investigation and the Garda National Immigration Bureau are represented.

Enforcement and Compliance

8. As all the proposals in the General Scheme are strictly criminal law provisions, enforcement will be a matter for the Garda Síochána, the Director of Public Prosecutions and the Courts.

Review

9. The new offences will be kept under continuing review as to their practicality and workability. This is a feature of all new criminal law but is particularly relevant in the case of sexual offences where there have been 9 Acts since 1990 dealing solely with sexual offences.

Further Analysis

10. As this Bill deals exclusively with criminal law, it is not proposed to conduct a full Regulatory Impact Analysis.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí
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