



Number 8 of 2008

CRIMINAL LAW (HUMAN TRAFFICKING) ACT 2008

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[No. 8.] *Criminal Law (Human Trafficking) Act 2008.* [2008.]

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 Justice (Miscellaneous Provisions) Act 1997	1997, No. 4
Criminal Law (Sexual Offences) Act 1993	1993, No. 20
Criminal Law (Sexual Offences) Act 2006	2006, No. 15
Criminal Law (Sexual Offences) (Amendment) Act 2007	2007, No. 6
Sex Offenders Act 2001	2001, No. 18



Number 8 of 2008

CRIMINAL LAW (HUMAN TRAFFICKING) ACT 2008

AN ACT TO GIVE EFFECT TO COUNCIL FRAMEWORK DECISION OF 19 JULY 2002¹ ON COMBATING TRAFFICKING IN HUMAN BEINGS; TO GIVE EFFECT, IN PART, TO THE UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME, DONE AT NEW YORK ON 15 NOVEMBER 2000, AND 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 PROVIDE FOR MATTERS CONNECTED THEREWITH.

[7th May, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—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;

“exploitation” means—

- (a) labour exploitation,
- (b) sexual exploitation, or
- (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,
- (b) forcing him or her to render services to another, or

¹OJ No. L 203 of 1.8.2002, p.1

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- (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,
- (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
- (e) otherwise causing the person to engage or participate in any sexual, indecent or obscene act;

“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
- (iii) otherwise delivers the person to,
- another person,
- (b) causes a person to enter or leave the State or to travel within the State,
- (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.

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

(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.

(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.

(5) A person guilty of an offence under this section shall be liable upon conviction on indictment—

(a) to imprisonment for life or a lesser term, and

(b) at the discretion of the court, to a fine.

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

3.—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):

“(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—

(a) to imprisonment for life or a lesser term, and

(b) at the discretion of the court, to a fine.

(2) A person who—

(a) sexually exploits a child, or

(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 upon conviction on indictment—

(i) to imprisonment for life or a lesser term, and

(ii) at the discretion of the court, to a fine.”,

and

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

“(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—

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- (a) to imprisonment for life or a lesser term, and
- (b) at the discretion of the court, to a fine.

(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—

- (a) to imprisonment for life or a lesser term, and
- (b) at the discretion of the court, to a fine.

(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,
- (b) the prostitution of the child or the use of the child for the production of child pornography,
- (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,
- (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,

and ‘sexually exploits’ shall be construed accordingly;

‘trafficks’ means, in relation to a child—

- (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
 - (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—
 - (i) into one’s care or charge, or
 - (ii) under one’s control,or
- (d) provides the child with accommodation or employment.”.

4.—(1) A person (in this section referred to as the “trafficker”) who trafficks another person (in this section referred to as the “trafficked person”), other than a child or a person to whom *subsection (3)* 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—

Trafficking of persons other than children.

- (a) coerced, threatened, abducted or otherwise used force against the trafficked person,
- (b) deceived or committed a fraud against the trafficked person,
- (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,
- (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
- (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) In proceedings for an offence under this section it shall not be a defence for the defendant to show that the person in respect of whom the offence was committed consented to the commission of any of the acts of which the offence consists.

(3) 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.

(4) 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,

shall be guilty of an offence.

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

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

(7) A person guilty of an offence under this section shall be liable upon conviction on indictment—

(a) to imprisonment for life or a lesser term, and

(b) at the discretion of the court, to a fine.

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

Soliciting or importuning for purposes of prostitution of trafficked person.

5.—(1) Where, for the purposes of the prostitution of a trafficked person, a person (other than that trafficked person) solicits or importunes another person, including that trafficked person, in any place, he or she shall be guilty of an offence.

(2) A person (other than the trafficked person in respect of whom the offence under *subsection (1)* is committed) who accepts, or agrees to accept a payment, right, interest or other benefit from a person for a purpose mentioned in *subsection (1)* shall be guilty of an offence.

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

(a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 12 months, or both, or

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

(4) In proceedings for an offence under this section it shall be a defence for the defendant to prove that he or she did not know and had no reasonable grounds for believing, that the person in respect of whom the offence was committed was a trafficked person.

(5) This section is in addition to, and not in substitution for, section 7 of the Act of 1993 in so far as an offence under that section is committed by, or in respect of, a trafficked person.

(6) In this section—

“Act of 1993” means the Criminal Law (Sexual Offences) Act 1993;

“solicits or importunes” has the same meaning as it has in the Act of 1993;

“trafficked person” means—

(a) a person in respect of whom an offence under *subsection (1) or (3) of section 4* has been committed, or

(b) a child who has been trafficked for the purpose of his or her exploitation.

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.

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 2 or 4*, 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.

Jurisdiction.

(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 2 or 4*, 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.

(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 2 or 4*, 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.

(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 2 or 4*, 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) 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 2 or 4*, 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.

(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 2 or 4*, 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.

(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—

- (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
- (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.

Double jeopardy.

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.

(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.

Exclusion of members of public from proceedings.

10.—(1) In proceedings for an offence under *section 2* or *4*, 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.

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

Anonymity of victims of trafficking.

11.—(1) Where a person is charged with an offence under *section 2* or *4*, or *section 3* (other than subsections (2A) and (2B)) of the Act of 1998, any person who publishes or broadcasts any information, including—

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

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.

(2) The judge of the court in which proceedings for an offence under *section 2* or *4*, 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.

(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—

“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.

12.—The Criminal Evidence Act 1992 is amended—

Amendment of
Criminal Evidence
Act 1992.

(a) in the definition of “sexual offence” (inserted by section 16 of the Criminal Justice (Miscellaneous Provisions) Act 1997) in section 2, by—

(i) the deletion of paragraph (iv) (inserted by section 7(2) of the Criminal Law (Sexual Offences) Act 2006), and

(ii) the substitution of the following paragraph for paragraph (e):

“(e) the Criminal Law (Sexual Offences) Act 2006;”,

and

(b) by the substitution of the following section for section 12 (amended by section 10 of the Act of 1998):

“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,

(d) an offence under *section 2, 4 or 7 of the Criminal Law (Human Trafficking) Act 2008*, 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).”.

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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):

“(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,”

(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

(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

(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.”

(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—

(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:

“(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:

“16A. An offence under the *Criminal Law (Human Trafficking) Act 2008* 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.

“8A. An offence under the *Criminal Law (Human Trafficking) Act 2008*.”.

15.—(1) This Act may be cited as the *Criminal Law (Human Trafficking) Act 2008*. Short title and commencement.

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