



STATUTORY INSTRUMENTS.

S.I. No. 309 of 2015

EUROPEAN UNION (COMBATING THE SEXUAL ABUSE AND
SEXUAL EXPLOITATION OF CHILDREN AND CHILD
PORNOGRAPHY) REGULATIONS 2015.

EUROPEAN UNION (COMBATING THE SEXUAL ABUSE AND
SEXUAL EXPLOITATION OF CHILDREN AND CHILD
PORNOGRAPHY) REGULATIONS 2015.

I, FRANCES FITZGERALD, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, hereby make the following Regulations:

Part I

Title

1. These Regulations may be cited as the European Union (Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography) Regulations 2015.

Interpretation

2. (1) In these Regulations—

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

“prohibition” shall be construed in accordance with paragraph (1) of Regulation 4;

“sexual offence” means an offence under section 3(2) of the Child Trafficking and Pornography Act 1998 (as amended by the Criminal Law (Human Trafficking) Act 2008) or an offence under Regulation 3 or Regulation 9 of these Regulations, where that offence is committed after the commencement of these Regulations;

“State work or a service” means work done or a service performed by a person who—

- (a) holds office under, or is otherwise in the service of the State (including as a civil servant, within the meaning of the Civil Service Regulation Act 1956),
- (b) is a member of the Garda Síochána or the Defence Forces,
- (c) is an officer or servant of a local authority for the purposes of the Local Government Act 1941,

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 21st July, 2015.*

- (d) is an officer or servant of a harbour authority or vocational education committee, or
- (e) is an employee of the Health Service Executive.

(2) The reference in these Regulations to protecting a child or children from serious harm from an offender shall be construed as a reference to protecting any such child 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 has been released into the community, whether or not the offender is subject to a sentence involving post-release supervision.

Part II

Attendance at pornographic performance involving a child

3. (1) A person who knowingly attends a pornographic performance shall be guilty of an offence.

- (2) A person guilty of an offence under paragraph (1) shall be liable—
 - (a) on summary conviction, to a class A fine, 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 3 years, or both.

(3) In this Regulation—

“pornographic performance” means a live exhibition addressed to an audience, including by means of information and communications technology, of—

- (a) a child engaged in real or simulated sexually explicit conduct,
- (b) the sexual organs of a child for primarily sexual purposes.

Part III

Prohibition against working with children

4. (1) In determining the sentence to be imposed on an offender in respect of a sexual offence for which he or she has been convicted, the court that convicted him or her of the offence shall consider whether to impose a sentence that includes a prohibition on the offender engaging in work or a service (including State work or a service) a necessary and regular part of which consists, mainly, of the offender having access to, or contact with, a child or children.

- (2) In considering that matter, the court shall have regard to—
 - (a) the need to protect children 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 Regulation, 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

5. (1) A court may impose on an offender in respect of the sexual offence concerned a sentence including a prohibition, referred to in Regulation 4, 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 provision that during a specified period (“the prohibition period”) commencing on the date of the offender’s release from prison, the offender shall be subject to the prohibition referred to in paragraph (1) of Regulation 4.

(2) The aggregate of the sentence of imprisonment referred to in subparagraph (1)(a) and the prohibition period 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 prohibition period, the matters to which the court shall have regard shall include the matters referred to in subparagraphs (2)(a) and (2)(b) of Regulation 4.

(4) The reference in this Regulation 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 subparagraph (1)(a) expires, or as the case may be, the offender’s remission from the sentence begins.

(5) When applying subparagraph (1)(b), the court may specify a particular work or service to which the prohibition relates.

(6) The court shall not apply subparagraph (1)(b) unless it is satisfied that it is necessary to do so to protect children from serious harm from the offender.

(7) The court may apply subparagraph (1)(b) in addition to imposing a sentence involving post-release supervision under Part 5 of the Sex Offenders Act 2001.

Duty of court to explain effect of sentence to offender

6. In imposing a sentence including a prohibition on an offender, the court shall explain to him or her—

(a) the effect of the sentence, and

(b) the consequences provided for under Regulation 8 if he or she fails to comply with the prohibition.

Discharge from obligation to comply with prohibition

7. (1) An offender who is subject to a prohibition under these Regulations may apply to the court for an order discharging the offender from the obligation to comply with all or part of the prohibition on the grounds that—

- (a) it would be in the interests of justice to so do, and
- (b) the protection of children from serious harm from the offender no longer requires that the prohibition or a part of the prohibition, as the case may be, should continue in force.

(2) 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 Regulation.

(3) The Superintendent referred to in paragraph (2) or any other member of the Garda Síochána shall be entitled to appear and be heard at the hearing of that application.

(4) On the hearing of an application under this Regulation, the court shall, if satisfied that—

- (a) it would be in the interests of justice to so do, and
- (b) the protection of children from serious harm from the offender no longer requires that the prohibition or a part of the prohibition, as the case may be, should continue in force,

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

(5) In considering an application under this Regulation, the court may require to be adduced, in such form as it thinks appropriate, evidence (including expert evidence) with regard to whether or not—

- (a) the interests of justice; or
- (b) the protection of children from serious harm from the offender

would any longer be served by the applicant's continuing to be subject or partially subject, as the case may be, to the prohibition.

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

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

(8) Where a prohibition is partially discharged following an application under paragraph (1), the applicant may, at any time after the expiry of a further 2 years following that application, make a further application for discharge of the prohibition and any such further application shall be in accordance with the provisions of this Regulation.

(9) In this Regulation—

“applicant” means the person referred to in paragraph (1);

“court” means the Circuit Court.

Non-compliance with prohibition

8. (1) An offender who fails to comply with a prohibition shall be guilty of an offence.

(2) An offender who—

- (i) applies to another person to be employed by that person to do relevant work or a service;
- (ii) enters into a contract of employment to do relevant work or a service;
- (iii) applies to another person to do relevant work or a service on that other person’s behalf (whether in return for payment or for any other consideration or not); or
- (iv) enters into a contract for services to perform relevant work or services,

shall be guilty of an offence.

(3) A person guilty of an offence under paragraphs (1) or (2) shall be liable—

- (a) on summary conviction, to a class C fine 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 3 years, or both.

(4) The conviction of an offender for an offence under this Regulation shall not prevent the prohibition period continuing to have effect.

(5) In this Regulation “relevant work or a service” means work or a service (including State work or a service) which the offender has been prohibited from engaging in by a sentence imposed under subparagraph (1)(b) of Regulation 5.

Part IV

Offences by a person in authority

9. (1) A person who engages in a sexual act with a child where that person is a person in authority in relation to the child shall be guilty of an offence.

(2) A person who attempts to commit an offence under paragraph (1) shall be guilty of an offence.

(3) It shall be a defence to proceedings for an offence under this Regulation for the defendant to prove that he or she was reasonably mistaken 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 this Regulation, it falls to the court to consider whether the defendant was reasonably mistaken 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 consider whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained the said age.

(5) It shall be a defence to proceedings for an offence under this Regulation, for the defendant to prove that he or she was reasonably mistaken that, at the time of the alleged commission of the offence, he or she was not a person in authority in relation to the child against whom the offence is alleged to have been committed.

(6) Where, in proceedings for an offence under this Regulation, it falls to the court to consider whether the defendant was reasonably mistaken that, at the time of the alleged commission of the offence, he or she was not a person in authority in relation to the child against whom the offence is alleged to have been committed, the court shall consider whether, in all the circumstances of the case, a reasonable person would have concluded that he or she was not a person in authority in relation to the child.

(7) The standard of proof required to prove that the defendant was reasonably mistaken in believing that—

- (a) the child against whom the offence is alleged to have been committed had attained the age of 18 years; or
- (b) the defendant was not a person in authority in relation to the child against whom the offence is alleged to have been committed,

shall be that applicable to civil proceedings.

(8) It shall not be a defence to proceedings for an offence under this Regulation for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

(9) Any person guilty of an offence under this Regulation shall be liable on conviction on indictment to a term of imprisonment not exceeding 3 years.

(10) In this Regulation—

“child” means a child aged 17 years or more but under the age of 18 years;

“person in authority” means—

- (a) a parent, step-parent, guardian, grandparent, uncle or aunt of the victim,
- (b) any person who is, for the time being, in *loco parentis* to the victim, or
- (c) any person who is, for the time being, responsible for the education, supervision or welfare of the victim;

“sexual act” means—

- (a) an act consisting of—
 - (i) sexual intercourse, or
 - (ii) buggery,

between persons who are not married to each other, or

- (b) an act described in section 3(1) or 4(1) of the Criminal Law (Rape) (Amendment) Act of 1990.



GIVEN under my Official Seal,
17 July 2015.

FRANCIS FITZGERALD,
Minister for Justice and Equality.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations, which have been made under section 3 of the European Communities Act 1972, give effect to certain provisions of Directive 2011/93/EU of the European Parliament and the European Council on combating the sexual abuse and sexual exploitation of children and child pornography.

Regulation 3 makes it an offence to knowingly attend a pornographic performance involving a child which is punishable by up to three years in prison.

Regulation 4 obliges a court, when sentencing a person convicted of a sexual offence against a child, to consider prohibiting the offender from working with children for a specified time after his or her release from prison.

Regulation 5 gives the court the power to impose the prohibition, referred to in Regulation 4, on the offender and sets out the conditions under which it can be imposed and Regulation 6 obliges the court to explain the effect of that sentence to the offender.

Regulation 7 establishes the circumstances under which an offender can have a prohibition discharged and Regulation 8 creates an offence for failing to comply with a prohibition, punishable by up to three years in prison.

Regulation 9 creates an offence where a person in a position of authority in relation to a child engages in a sexual act with that child. This offence only applies to children aged between 17 and 18 years as there is an equivalent offence already provided for in relation to children under the age of 17 in the Criminal Law (Sexual Offences) Act 2006. An offence under this Regulation is punishable by up to three years in prison.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.05



Wt. (B31386). 375. 7/15. Clondalkin. Gr 30-15.