



Number 24 of 2013

**CRIMINAL LAW (HUMAN TRAFFICKING) (AMENDMENT)
ACT 2013**

ARRANGEMENT OF SECTIONS

Section

1. Amendment of section 1 of Criminal Law (Human Trafficking) Act 2008.
 2. Amendment of Criminal Law (Human Trafficking) Act 2008.
 3. Amendment of Child Trafficking and Pornography Act 1998.
 4. Amendment of Criminal Evidence Act 1992.
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[No. 24.] *Criminal Law (Human Trafficking)* [2013.]
(Amendment) Act 2013.

ACTS REFERRED TO

Child Trafficking and Pornography Act 1998	1998, No. 22
Criminal Evidence Act 1992	1992, No. 12
Criminal Justice (Public Order) Act 2011	2011, No. 5
Criminal Law (Human Trafficking) Act 2008	2008, No. 8
Criminal Procedure Act 1967	1967, No. 12
Ethics in Public Office Act 1995	1995, No. 22



Number 24 of 2013

**CRIMINAL LAW (HUMAN TRAFFICKING) (AMENDMENT)
ACT 2013**

AN ACT TO GIVE EFFECT TO CERTAIN PROVISIONS OF DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 5 APRIL 2011¹ ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS AND PROTECTING ITS VICTIMS, AND REPLACING COUNCIL FRAMEWORK DECISION 2002/629/JHA; FOR THOSE AND OTHER PURPOSES TO AMEND AND EXTEND THE CRIMINAL LAW (HUMAN TRAFFICKING) ACT 2008, THE CHILD TRAFFICKING AND PORNOGRAPHY ACT 1998 AND THE CRIMINAL EVIDENCE ACT 1992; AND TO PROVIDE FOR RELATED MATTERS.

[9th July, 2013]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—Section 1 of the Criminal Law (Human Trafficking) Act 2008 is amended—

Amendment of section 1 of Criminal Law (Human Trafficking) Act 2008.

(a) by substituting the following definition for the definition of “exploitation”:

“ ‘exploitation’ means—

- (a) labour exploitation,
- (b) sexual exploitation,
- (c) exploitation consisting of the removal of one or more of the organs of a person, or
- (d) exploitation consisting of forcing a person to engage in—
 - (i) an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain, or
 - (ii) an activity in a place other than the State that—

¹OJ No. L101 of 15.4.2011, p. 1

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(I) constitutes an offence under the law of that place and would, if done in the State, constitute an offence, and

(II) is engaged in for financial gain or that by implication is engaged in for financial gain;”,

(b) by substituting the following definition for the definition of “labour exploitation”:

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

(a) subjecting the person to forced labour (including forcing him or her to beg),

(b) forcing the person to render services to another person, or

(c) enslavement of the person or subjecting him or her to servitude or a similar condition or state;”,

and

(c) by inserting the following definitions:

“ ‘beg’ has the same meaning as it has in section 1(2) of the Criminal Justice (Public Order) Act 2011;

‘forced labour’ means a work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily, but shall not include any of the following:

(a) a work or service exacted by virtue of compulsory military service laws for work of a purely military character;

(b) a work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) a work or service exacted from a person as a consequence of a conviction in a court of law if—

(i) the work or service is carried out under the supervision and control of a public authority, and

(ii) the person is not hired to, or placed at the disposal of, a person who is not a public authority;

(d) a work or service exacted in a case of an emergency that endangers or that may endanger the existence or the well-being of the whole or part of the population, including war, fire, flood,

famine, earthquake, violent epidemic or epizootic diseases or invasion by animal, insect or vegetable pests;

- (e) a minor communal service of a kind which, being performed by the members of the community in the direct interest of the community, can be considered as a normal civic obligation incumbent upon the members of the community, and where the members of the community, or their direct representatives, have the right to be consulted in regard to the need for that service;”.

2.—The Criminal Law (Human Trafficking) Act 2008 is amended by inserting the following section after section 4:

Amendment of Criminal Law (Human Trafficking) Act 2008.

“Aggravating factor: offences under section 2 or 4 committed by public official during performance of duties.

4A.—(1) Where a court is determining the sentence to be imposed on a person for an offence under section 2 or 4, the fact that the offence was committed by a public official during the performance of his or her duties as such public official shall be treated for the purpose of determining the sentence as an aggravating factor.

(2) Accordingly, the court shall (except where the sentence for the offence is one of imprisonment for life or where the court considers that there are exceptional circumstances justifying its not doing so) impose a sentence that is greater than that which would have been imposed in the absence of such factor.

(3) The sentence imposed shall not be greater than the maximum sentence permissible for the offence.

(4) In this section—

‘public body’ shall be construed in accordance with the Ethics in Public Office Act 1995;

‘public official’ means an officer or employee of a public body.”.

3.—The Child Trafficking and Pornography Act 1998 is amended by inserting the following section after section 3:

Amendment of Child Trafficking and Pornography Act 1998.

“Aggravating factor: certain offences under section 3 committed by public official during performance of duties.

3A.—(1) Where a court is determining the sentence to be imposed on a person for an offence under section 3 (other than an offence under subsection (2A) or (2B) of that section), the fact that the offence was committed by a public official during the performance of his or her duties as such public official shall be treated for the purpose of determining the sentence as an aggravating factor.

(2) Accordingly, the court shall (except where the sentence for the offence is one of imprisonment for life or where the court considers that

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there are exceptional circumstances justifying its not doing so) impose a sentence that is greater than that which would have been imposed in the absence of such factor.

(3) The sentence imposed shall not be greater than the maximum sentence permissible for the offence.

(4) In this section—

‘public body’ shall be construed in accordance with the Ethics in Public Office Act 1995;

‘public official’ means an officer or employee of a public body.”.

Amendment of
Criminal Evidence
Act 1992.

4.—The Criminal Evidence Act 1992 is amended—

(a) in section 15—

(i) in subsection (1), by substituting the following paragraphs for paragraphs (a), (b) and (c):

“(a) under Part IA of the Criminal Procedure Act 1967, the prosecutor consents to the sending forward for trial of an accused person who is charged with an offence to which this Part applies,

(b) the person in respect of whom the offence is alleged to have been committed, or a person who has made a videorecording under section 16(1)(b)(ii), is under 18 years of age on the date consent is given to the accused being sent forward for trial, and

(c) it is proposed that a videorecording of a statement made by the person concerned during an interview as mentioned in section 16(1)(b) shall be given in evidence pursuant to that section.”,

and

(ii) by substituting the following subsection for subsection (2):

“(2) The judge hearing an application under section 4E of the Criminal Procedure Act 1967 may consider any statement made, in relation to an offence, by a person in a videorecording mentioned in section 16(1)(b) if the person is available for cross-examination at the hearing of the application.”,

(b) in section 16(1), by substituting the following paragraph for paragraph (b):

“(b) a videorecording of any statement made during an interview with a member of the Garda

Síochána or any other person who is competent for the purpose—

- (i) by a person under 14 years of age (being a person in respect of whom such an offence is alleged to have been committed), or
- (ii) by a person under 18 years of age (being a person other than the accused) in relation to an offence under—
 - (I) section 3(1), (2) or (3) of the Child Trafficking and Pornography Act 1998, or
 - (II) section 2, 4 or 7 of the Criminal Law (Human Trafficking) Act 2008,”

and

- (c) in section 19, by substituting “16(1)(a) and (b)(ii) to a person under 18 years of age and the reference in section 16(1)(b)(i)” for “16(1)(a) to a person under 18 years of age and the reference in section 16(1)(b)”.

5.—(1) This Act may be cited as the Criminal Law (Human Trafficking) (Amendment) Act 2013. Short title and commencement.

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