

CRIMINAL LAW (TRAFFICKING IN PERSONS AND SEXUAL OFFENCES)

BILL 2006

GENERAL SCHEME

(...)

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 activity

is 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 activity

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 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 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.

(...)