



**AN BILLE UM GHÁINNEÁIL AR LEANAÍ AGUS
PORNAGRAFAÍOCHT LEANAÍ, 1997
CHILD TRAFFICKING AND PORNOGRAPHY BILL, 1997**

*Mar a ritheadh ag dhá Theach an Oireachtas
As passed by both Houses of the Oireachtas*

EXPLANATORY MEMORANDUM

General

The purpose of the Bill is to strengthen the legislative measures which aim to protect children from sexual exploitation by targeting two manifestations of such exploitation — child trafficking and child pornography. In so providing, account has been taken of the EU Joint Action against Trafficking in Human Beings and the Sexual Exploitation of Children, in so far as it applies to children, as well as of Article 34 of the UN Convention on the Rights of the Child which influenced the text of the Joint Action.

Provisions of the Bill

Section 1 (Short title and commencement)

This section contains standard provisions in relation to the Bill's short title and commencement date. The Bill will come into operation one month after it is passed by the Oireachtas.

Section 2 (Interpretation)

Subsection (1) provides for the definition of a number of expressions used in the Bill. Of particular relevance is the definition of "child pornography" which covers four main types of pornographic representation, description or information.

First, the definition covers visual material (i) that shows or, in the case of a document, relates to a child engaged in explicit sexual activity, (ii) that shows or, in the case of a document, relates to a child witnessing persons engaged in explicit sexual activity, or (iii) the dominant characteristic of which is the depiction, for a sexual purpose, of the genital or anal region of a child. Second, the definition extends to any audio representation of a child engaged in explicit sexual activity. Third, the definition applies to visual or audio material that advocates, encourages or counsels unlawful sexual activity with children. Fourth, the definition includes any visual material or any information that indicates or implies that a child is available to be used for the purpose of sexual exploitation.

The definition applies to child pornography irrespective of how, or the medium through which, it has been produced, transmitted or conveyed. It does not apply to books or periodicals that have been examined by the Censorship of Publications Board but in respect of

which a prohibition order is not in force or a film or video work in respect of which the appropriate certificate is in force.

In order to ensure that the provisions of the Bill extend to pornographic images that are not of real persons, such as those produced by computer-graphics, *subsection (2)* provides that a reference to a person in *paragraph (a)* of the definition of “child pornography” shall be construed as including a reference to a figure resembling a person no matter how produced.

For consistency with the age of consent to sexual relations a “child” is defined as a person under the age of 17 years.

Subsection (3) provides that in proceedings for an offence under *section 2, 3 or 4* a person will be deemed, unless the contrary is proved, to be or have been a child if the person appears to the court to be or have been a child.

Section 3 (Child trafficking and taking, etc., child for sexual exploitation)

Subsection (1) makes it an offence to organise or knowingly facilitate child trafficking, that is, the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation. The subsection also creates an offence of organising or knowingly facilitating the provision of accommodation for a child for such a purpose while in the State. The offence is punishable on conviction by up to life imprisonment.

Under *subsection (2)* a person who takes, detains or restricts the personal liberty of a child for the purpose of the child’s sexual exploitation is liable on conviction to up to 14 years imprisonment. The same penalty applies to a person who uses a child for such a purpose and to a person who organises or knowingly facilitates such taking, detaining, restricting or use.

Subsection (3) provides for a definition of “sexual exploitation” which encompasses sexual abuse.

Section 4 (Allowing child to be used for child pornography)

Subsection (1) makes it an offence for any person who has the custody, charge or care of a child to allow the child to be used for the production of child pornography. Such persons found guilty of the offence will be liable to a fine not exceeding £25,000, or up to 14 years imprisonment, or both. The expression “custody, charge or care” is broadly defined in *subsection (2)* so as to encompass persons other than parents or guardians who exercise authority over a child at any given time.

Section 5 (Producing, distributing, etc., child pornography)

Subsection (1) makes it an offence to knowingly produce, distribute, print, publish, import, export, sell or show child pornography. It also makes it an offence to knowingly publish or distribute any advertisement that conveys that the advertiser or any other person produces, etc., child pornography. Persons found guilty of such offences will be liable on conviction on indictment to a fine with no express upper limit or up to 14 years imprisonment, or both.

Subsection (2) defines distribution in such a manner as to ensure that it includes distribution to another person.

Section 6 (Possession of child pornography)

Subsection (1) makes it an offence for any person to knowingly

possess child pornography, that is, to be in possession of it for personal use. The maximum penalties provided for under the section are a £5,000 fine, or 5 years imprisonment, or both.

Subsection (2) provides that the section shall not apply to persons whose official duties require them to be in possession of child pornography. In particular persons exercising functions under the Censorship of Films Acts, the Censorship of Publications Acts and the Video Recordings Acts will not be liable under the section nor will persons such as Gardaí and Customs Officers or others who may possess child pornography for the purposes of the prevention, investigation or prosecution of offences provided for in the Bill. It will also be a defence for a person to prove that he or she possessed the child pornography for the purposes of bona fide research. All the exclusions and the defence set out in this section also apply to *section 5*.

Section 7 (Entry, search and seizure)

This is a standard provision which will enable members of the Garda Síochána to obtain warrants to search for evidence relating to child trafficking and child pornography offences.

Subsection (1) enables a judge of the District Court to issue a warrant for the search of a place, and any person found at the place, where he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under *section 3, 4, 5 or 6* of the Bill is to be found at the place.

Under *subsection (2)* the search warrant will authorise a particular Garda, alone or accompanied by any other Garda or by other persons, to enter, if necessary by the use of reasonable force, the place named in the warrant, to search the place or any persons found there, and to seize anything appearing to the Garda to be evidence of an offence under *sections 3 to 6*. A Garda searching a place may require any person found at the place to give the Garda his or her name and address (*subsection (3)*).

Subsection (4) provides that anyone who obstructs or attempts to obstruct a Garda acting in accordance with a search warrant, who fails or refuses to comply with a requirement to give his or her name and address, or who gives a name or address which is false or misleading, will be liable to a fine not exceeding £1,500, or up to 12 months imprisonment, or both. Under *subsection (5)* a Garda will have power to arrest without warrant any person whom the Garda suspects of having committed an offence under *subsection (4)*. *Subsection (6)* defines the word “place” for the purposes of the section.

Section 8 (Forfeiture)

This section gives the courts power to order the forfeiture or the destruction of anything seized following a search under *section 7* or anything else shown to the satisfaction of the court to relate to an offence under *section 3, 4, 5 or 6*.

Section 9 (Offences by bodies corporate)

This is a standard provision which enables persons working in a body corporate as well as the body corporate itself to be dealt with for child trafficking and child pornography offences.

Section 10 (Amendment of Criminal Evidence Act, 1992)

This section amends the Criminal Evidence Act, 1992 by extending the provisions of Part III of that Act to offences under the Bill. This means that, for instance, evidence may be taken from children by

live television link in cases involving child trafficking and child pornography.

Section 11 (Amendment of Sexual Offences (Jurisdiction) Act, 1996)

The purpose of this section is to amend the Sexual Offences (Jurisdiction) Act, 1996 so that if the offences at *section 3* or *4* of this Bill are committed outside the State by persons ordinarily resident here, on their return to this country they can be treated as if the offences were committed here and can be prosecuted accordingly.

Section 12 (Amendment of Bail Act, 1997)

This provides for the listing of child trafficking offences as well as child pornography production or distribution, etc., offences in the Schedule to the Bail Act, 1997. This means that a court may refuse bail to a person charged with such an offence on the ground that such a refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Meitheamh, 1998.