

**CRIMINAL JUSTICE  
(SEXUAL OFFENCES AND HUMAN TRAFFICKING) BILL 2022  
GENERAL SCHEME**

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**PART 1**  
**Preliminary and General**

**Head 1          Short Title and commencement**

Provide that:

- (1) This Act may be cited as the Criminal Justice (Sexual Offences and Human Trafficking) Act 2022.
  
- (2) This Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**Note**

Head 1 is a standard provision concerning the Short Title of the Bill and commencement arrangements.

## **Head 2                      Interpretation**

Provide that:

In this Act—

“Act of 1981” means the Criminal Law (Rape) Act 1981;

“Act of 2008” means the Criminal Law (Human Trafficking) Act 2008;

“the Minister” means the Minister for Justice unless otherwise stated.

### **Note**

Head 2 is a standard provision which defines words and terms used in the Bill.

**PART 2**  
**Sexual Offences**

**Head 3          Amendment of section 2 of Act of 1981**

Provide that:

The Act of 1981 is amended by the substitution of the following section for section 2

—

“2. (1) A man commits rape if—  
    (a) he has sexual intercourse with a woman who at the time of the intercourse does not consent to it, and  
    (b) at that time he—  
        (i) knows that she does not consent to the intercourse, or  
        (ii) is reckless as to whether or not she consents to the intercourse, or  
        (iii) does not reasonably believe that she consents to the intercourse,  
and references to rape in this Act and any other enactment shall be construed accordingly.

(2) If the question of reasonable belief that a woman consents to the intercourse arises in a rape trial, the jury shall have regard to the following circumstances related to the accused’s personal capacity -

- (a) any physical, mental or intellectual disability of the man,
- (b) any mental illness of his, and
- (c) his age and maturity.

(3) If the question of reasonable belief that a woman consents to the intercourse arises, the jury is also to have regard to the steps, if any, taken by the accused to ascertain whether the woman consented to the intercourse.

(4) It shall not a defence that the accused was so intoxicated by the effect of alcohol or some other drug that he did not have the capacity to understand whether the woman was consenting; but, where his level of self-induced intoxication was such that he did have the capacity to understand whether the woman was consenting, the jury shall determine whether the man’s belief was reasonable by reference to whether his belief would have been reasonable if he had not been intoxicated.”

## Note

This head will implement recommendations related to consent from the Law Reform Commission Report; *Knowledge or Belief Concerning Consent in Rape Law*.

The reforms recommended are:

1. The fault or mental element of the rape offence in section 2 of the 1981 Act should be reformed by adding that the accused man commits rape if, at the time of the sexual intercourse, he “does not reasonably believe” that the woman was consenting. This is an objective test, and would be in addition to the current two situations under the 1981 Act, that is, where the accused man knows that the woman is not consenting or is subjectively reckless as to whether she is consenting.
2. Where the question of reasonable belief arises in a rape trial, the jury is to have regard to a specific list of circumstances related to the accused’s personal capacity, and only those circumstances. These are: any physical, mental or intellectual disability of the man, any mental illness of his, and his age and maturity. The Commission emphasises that these factors are only to be considered relevant where any of them are such that the man lacked the capacity to understand whether the woman was consenting. Requiring the consideration of these circumstances introduces a subjective element to the test.
3. Where the question of reasonable belief arises, the jury is also to have regard to the steps, if any, taken by the accused man to ascertain whether the woman consented to the intercourse.
4. Where the man, by virtue of self-induced intoxication, was at the time of the sexual intercourse so intoxicated by the effect of alcohol or some other drug that he lacked the capacity to understand whether the woman was consenting, this shall not be a defence to a charge of rape; and that it should also provide that, where the level of self-induced intoxication was such that the man did have the capacity to understand whether the woman was consenting, the jury shall determine whether the man’s belief was reasonable by reference to whether his belief would have been reasonable if he had not been intoxicated.

**Head 4****Amendment to Section 3 of the Act of 1981**

Provide that:

Section 3 of the Act of 1981 is amended by the insertion after “judge” in each place where it occurs of “or trial court”.

**Note**

Head 4 is a consequential amendment required from the Criminal Procedure Act 2021 in order to ensure that the complainant is entitled to legal aid if the application to question him or her under section 3 of the Criminal Law (Rape) Act 1981 is heard at a preliminary trial hearing.



## Head 5

## Amendment of section 4A of the Act of 1981

Provide that:

Section 4A of the Act of 1981 is amended by the substitution of the following two subsections for subsection (6) –

“(6) Where the judge has given leave in accordance with section 3 or 4 for any evidence to be adduced or question to be asked in cross-examination, the complainant shall be entitled to be heard in relation to the evidence and, for this purpose, to be legally represented in the proceedings for the duration of the evidence or, as the case may be, question concerned.

(7) This section applies to a sexual assault offence.”

### Note

Head 5 is implementing recommendations from the O’Malley *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* which was published in 2020; specifically that -

1. There should be an additional provision allowing the barrister who is briefed to represent the victim when an application is being made to engage in questioning a victim on their previous sexual experience to continue to represent the victim while the questioning, if permitted by the trial judge, is taking place.
2. The right to separate legal representation for victims under section 4A of the Criminal Law (Rape) Act 1981 (in circumstances where an application is made to question a victim about other sexual experience) should be extended to include trials for sexual assault.

“Sexual assault offence” is defined in the 1981 Act as a rape offence and any of the following, namely, aggravated sexual assault, attempted aggravated sexual assault, sexual assault, attempted sexual assault, aiding, abetting, counselling and procuring aggravated sexual assault, attempted aggravated sexual assault, sexual assault or attempted sexual assault, incitement to aggravated sexual assault or sexual assault and conspiracy to commit any of the foregoing offences.

## **Head 6            Amendment of section 6 of the Act of 1981**

Provide that:

Section 6 of the of the Act of 1981 is amended –

(a) in subsection (1), by the substitution of “sexual assault offence or an offence under section 21 or 22 of the Criminal Law (Sexual Offences) Act 2017” for “rape offence or the offence of aggravated sexual assault or attempted aggravated sexual assault or of aiding, abetting, counselling or procuring the offence of aggravated sexual assault or attempted aggravated sexual assault or of incitement to the offence of aggravated sexual assault or conspiracy to commit any of the foregoing offences”, and

(b) by deleting subsection (4).

### **Note**

Head 6 is implementing the following recommendations from the O’Malley Review of protections for vulnerable witnesses –

1. Express statutory provision (in terms similar to those currently contained in s.6 of the Criminal Law (Rape) Act 1981) should be made for the exclusion of the public from the trials of other sexual offences that are not covered by existing legislation, where a victim may be called upon to give evidence or where there is a risk that the victim’s identity might be publicly revealed
2. Those provisions in, for example, s.6(4) of the Criminal Law (Rape) Act 1981 and s. 29(2) of the Criminal Law (Sexual Offences) Act 2017 which require that, even where a trial is held otherwise in public, the verdict and sentence (if any) must be announced in public should be repealed.

## **Head 7          Amendment of section 7 of the Act of 1981**

Provide that:

Section 7 of the Act of 1981 is amended –

(a) by the insertion after “sexual assault offence” in each place where it occurs of “or an offence under section 21 or 22 of the Criminal Law (Sexual Offences) Act 2017”,  
and

(b) by the substitution of the following subsection for subsection (7) —

“(7) In this section—

‘broadcast’ means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

‘publication’ includes a film, sound track or any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

‘published’ means published to any person, and includes published on the internet;

‘written publication’ includes a film, sound track or any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.”

### **Note**

Head 7 seeks to provide for the following recommendations from the O’Malley Review of the protections for vulnerable witnesses –

1. Introduce legislation to extend anonymity to victims in trials for offences contrary to ss.21 and 22 of the Criminal Law (Sexual Offences) Act 2017. These sections deal with sexual abuse of persons with mental illness or a mental or intellectual disability.

2. The definitions of “published” and “broadcast” in the Criminal Law (Rape) Act 1981 should be reviewed to ensure that they are sufficiently comprehensive to cover publication in electronic media, including social media.

The definition for “broadcast” is taken from the Broadcasting Act 2009. This definition was also used in Harassment, Harmful Communications and Related Offences Act 2020. The definition for “published” is taken from the Criminal Law (Sexual Offences) Act 2017. “Publication” and “written publication” to remain the same as there have been no updated definitions to either.

## **Head 8**

## **Amendment of section 8 of the Act of 1981**

Provide that:

Section 8 of the Act of 1981 is amended by the substitution of “sexual assault offence or an offence contrary to sections 3, 4, 5, 6, 7, 8, 21 or 22 of the Criminal Law (Sexual Offences) Act 2017” for “rape offence” in each instance where it occurs.

### **Note**

Head 8 is implementing the following recommendations from the O’Malley Review of the protections for vulnerable witnesses –

- 1.** Accused persons in all trials for sexual assault offences, and not just in trials for rape offences as at present, should be entitled to anonymity unless convicted. If convicted, they may be identified unless to do that would lead to the identification of the victim.
- 2.** Persons accused of any offence contrary to ss.3 to 8 of the Criminal Law (Sexual Offences) Act 2017 (which outlaw various forms of child sexual exploitation) should be entitled to anonymity on the same basis as now applies to an accused on trial for a rape offence.

## **Head 9            Amendment of Sexual Offences (Jurisdiction) Act 1996**

Provide that:

The Schedule to the Sexual Offences (Jurisdiction) Act 1996 is amended by the insertion of the following paragraph after paragraph 14 –

“14A. Section 3 of the Criminal Law (Sexual Offences) Act 2017.”

### **Note**

Head 9 provides for extra-territorial jurisdiction, as provided for in the Sexual Offences (Jurisdiction) Act 1996, for the offence of obtaining, providing etc. a child for purpose of sexual exploitation under section 3 of the Criminal Law (Sexual Offences) Act 2017.

The purpose of the Head is to legislate for one of the last obstacles to the ratification by the State of the Second Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

## **Head 10      Amendment of Criminal Justice (Mutual Assistance) Act 2008**

Provide that:

The Criminal Justice (Mutual Assistance) Act 2008 is amended by –

(a) in section 2(1) –

(i) in the definition of “international instrument”, the insertion of the following paragraph after paragraph (ja) –

“ (jb) Second Optional Protocol”; and

(ii) the insertion of the following definition –

““Second Optional Protocol” means the Second Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography made by resolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the United Nations on 25 May 2000”; and

(b) the insertion after Schedule 14 of Schedule 15 as set out in the *Schedule* to this Act,

### **Note**

The purpose of this Head is to add the Second Optional Protocol to the list of international agreements to which the Criminal Justice (Mutual Assistance) Act 2008 applies, so that mutual assistance can be provided to Convention states in accordance with Article 10 of the Protocol.

The text of each instrument listed in the definition of “international instrument” is scheduled to the Criminal Justice (Mutual Assistance) Act 2008.

The text of the Protocol is in the Schedule.

## **Head 11      Repeals**

Provide that:

The following are repealed –

- (a) section 2(2) of the Criminal Law (Incest Proceedings) Act 1995;
- (b) section 8(3) of the Criminal Justice (Female Genital Mutilation) Act 2012;
- (c) section 29(2) of the Criminal Law (Sexual Offences) Act 2017.

### **Note**

Head 11 is implementing a recommendation from the O'Malley Review of the protections for vulnerable witnesses –

1. Those provisions in, for example, s.6(4) of the Criminal Law (Rape) Act 1981 and s. 29(2) of the Criminal Law (Sexual Offences) Act 2017 which require that, even where a trial is held otherwise in public, the verdict and sentence (if any) must be announce in public should be repealed.



**PART 3**  
**National Referral Mechanism for Victims of Human Trafficking**

**Head 12 Interpretation for Part 3**

Provide that:

In this Part —

“applicant” means a person who has applied to a Competent Authority or Trusted Partner to be recognised as a victim of human trafficking;

“child” means a person under the age of 18 years;

“Competent Authority” has the meaning assigned to it under Head 13;

”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—
    - (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;

“labour exploitation” means, in relation to a person —

- (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;

“National Referral Mechanism” means the framework through which the State fulfils its obligations to protect and promote the human rights of trafficking victims;

“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 —

- (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;

“Trusted Partner” means an organisation or body which has been designated by the Minister to accept applications under Head 14 to refer to the Operational Committee for decision under Head 17;

“victim of human trafficking” means, where appropriate —

- (a) a person who has been or is being trafficked for the purposes of exploitation,
- (b) a person who makes an application under Head 14 for recognition as a victim of human trafficking on the ground that he or she has been trafficked,
- (c) a person who is referred under Head 14 by a Competent Authority, or as the case may be a Trusted Partner, to the National Referral Mechanism Operational Committee for the purposes of determining whether the person has been trafficked, or
- (d) a person who is identified as a victim of human trafficking under Head 17 on the ground that he or she has been trafficked,

‘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.

**Note**

Head 12 is a standard provision which defines words and terms used in the Bill. The definition for ‘trafficks’, ‘exploitation’, ‘sexual exploitation’, ‘forced labour’ and ‘labour exploitation’ come from the 2008 Act. ‘Trusted Partner’ and ‘Competent Authority’ will be members of the Operational Committee.

## **Head 13      Competent Authorities of the National Referral Mechanism**

Provide that:

(1) The following bodies shall be Competent Authorities for the purposes of identifying victims of human trafficking within the framework, in this Part, of the National Referral Mechanism—

- (a) An Garda Síochána,
- (b) The Child and Family Agency,
- (c) The Health Service Executive
- (d) The Minister for Children, Equality, Disability, Integration and Youth,
- (e) The Minister for Justice,
- (f) The Minister for Social Protection,
- (g) The Workplace Relations Commission.

### **Note**

Head 13 provides a list of bodies that are to be designated Competent Authorities for the purpose of identifying victims of human trafficking. Competent Authorities will be members of the Operational Committee.

## **Head 14      Application for recognition as a victim of human trafficking**

Provide that:

(1) Any person who believes that he or she has been, or is, or may be, a victim of human trafficking may make an application to be recognised as a victim of human trafficking.

(2) An application under subhead (1) may be made to –

- (a) a Competent Authority, or
- (b) a Trusted Partner.

(3) Where a Competent Authority or a Trusted Partner receives an application for recognition as a victim of human trafficking under subhead (1), and the relevant Competent Authority or, as the case may be, Trusted Partner is satisfied that –

- (a) the application is credible, and
- (b) is based on reasonable grounds,

the relevant Competent Authority or, as the case may be, Trusted Partner shall refer the application to the Operational Committee for the purposes of determining whether the applicant is a victim of human trafficking.

(4) When making a decision to refer an application to the Operational Committee for recognition as a victim of human trafficking under subhead (3), the relevant Competent Authority or, as the case may be, the Trusted Partner, may consider the following reasonable grounds for the purposes of recognising a person as a victim of human trafficking -

- (a) Evidence that the person has been trafficked for the purposes of exploitation;
- (b) Evidence that the person has been coerced by another person, including for the purposes of forced criminality, prostitution or labour exploitation;
- (c) Failure to pay the minimum wage to the person, or absence of records to show such payment, or
- (d) Evidence of deception of the person by another person in relation to terms and conditions of employment, the nature of the work the person will undertake, or conditions for travel to the State.

## **Note**

The purpose of Head 14 is to provide for the mechanism of identifying a victim of human trafficking by a Competent Authority or Trusted Partner. It provides for a person to apply to be recognised as a victim of human trafficking. It includes a non-exhaustive list of criteria which may be used considered reasonable grounds that a person has been trafficked.

**Head 15      National Referral Mechanism Operational Committee for the  
identification of victims of human trafficking**

Provide that:

- (1) The Competent Authorities shall meet together as an Operational Committee for the purpose of identifying victims of human trafficking.
- (2) Each Competent Authority shall be represented at meetings of the Operational Committee.
- (3) The Operational Committee shall make decisions collectively in accordance with procedures agreed by the Competent Authorities.
- (4) Subsections (1), (2) and (3) shall apply to Trusted Partners that have been so designated.
- (5) The Operational Committee shall agree operational guidelines and these should include –
  - (i) The frequency of meetings of the Operational Committee;
  - (ii) Interim arrangements for applicants awaiting a determination on their application, including provision of support services.

**Note**

Head 15 provides for the functions of the NRM Operational Committee. The objectives of the Committee will be (a) to act as the National Referral Mechanism of the State in order to identify victims of human trafficking, (b) to make collective decisions on the identification of a victim of human trafficking and (c) to carry out related functions under this Part.



## **Head 16      Sharing of information by Competent Authorities and Trusted Partners**

Provide that:

(1) Subject to subhead (3), where a Competent Authority or a Trusted Partner refers a person to the Operational Committee for the purposes of determining whether the person is a victim of human trafficking under Head 14 –

- (a) the Competent Authority or Trusted Partner that makes the referral -
  - (i) shall share the contents of the application with the other Competent Authorities or Trusted Partner in the Operational Committee, and
  - (ii) may share other such information known to it about the person as is relevant for the purposes of making a determination, including but not limited to the information set out in subhead (2).
- (b) the Competent Authorities or Trusted Partners, other than the Competent Authority or Trusted Partner that made the referral, may share such information known to it about the person as is relevant for the purposes of making a determination, including but not limited to information set out in subhead 2.

(2) Subject to *subhead (3)*, the information referred to in subhead (1) shall include the following:

- (a) details of any application received from the person;
- (b) information necessary to verify the details of the application received from the person;
- (c) information relating to the person's arrival in the State;
- (d) information relating to any criminal investigation, prosecution or conviction, if any, in respect of which the person is, or is likely to be, connected;
- (e) any other information which may assist the Operational Committee in making a determination under Head 17.

(3) Details of an application and any information referred to in subheads (1) or (2) may only be shared between Competent Authorities and Trusted Partners for the purposes of making a determination or providing the delivery of services under Head 19 and shall not be used for any other purpose.

(4) Details of an application and any information referred to in subheads (1) or (2) shall not be disclosed by a Competent Authority or Trusted Partner with whom it was shared under this Head save for the purposes of providing services to the person concerned or for such other purpose as are provided for by law.

(5) Information can only be shared with the consent of the person.

(6) Where the person is a child, the consent of the parent or guardian of the person shall be required. If the child does not have a parent or guardian, the Child and Family Agency shall represent the interests of the child.

(7) *Subsections (3) and (4)* are without prejudice to any power or duty which the Competent Authorities may have to provide information to each other under any other enactment or rule of law.

### **Note**

Head 16 is to provide for all necessary cooperation between the members of the Competent Authorities and Trusted Partners, including the exchange of relevant information required to make a determination that a person is a victim of human trafficking. The provisions make clear the duty on each member to cooperate with the operations of the National Referral Mechanism.

## **Head 17 Identification of a victim of human trafficking by the National Referral Mechanism Operational Committee**

Provide that:

- (1) Where the Operational Committee is satisfied that –
  - (a) on the balance of probabilities, an application received under Head 14 is credible, and
  - (b) is based on reasonable grounds,

the Operational Committee shall make a determination that the person is a victim of human trafficking.

- (2) When making a determination that a person is a victim of human trafficking under subhead (1), the Operational Committee may consider the following reasonable grounds for the purposes of recognising a person as a victim of human trafficking –

- (a) Evidence that the person has been trafficked for the purposes of exploitation;
- (b) Evidence that the person has been coerced by another person, including for the purposes of forced criminality, prostitution or labour exploitation;
- (c) Failure to pay the minimum wage to the person, or absence of records to show such payment, or
- (d) Evidence of deception of the person by another person in relation to terms and conditions of employment, the nature of the work the person will undertake, or conditions for travel to the State.

- (3) The Operational Committee shall make its decision as soon as is practicable after it has received the information required to make an informed decision.

### **Note**

Head 17 is to provide for the establishment of arrangements to identify victims of human trafficking by the Operational Committee. The multi-disciplinary team will bring a cross agency perspective to the process of making recognition decisions, with positive decisions to recognise being taken on an assessment that, on the balance of probabilities, the application is credible.

## **Head 18      Designation by Order of Trusted Partner**

Provide that:

(1) A civil society organisation or body that works with or provides services to victims or potential victims of human trafficking may apply to the Minister, in accordance with this section, to be designated as a Trusted Partner for the purposes of Head 14.

(2) An application by an organisation or body under *subsection (1)* shall be made in the manner specified by the Minister and shall be accompanied by particulars in writing of the following matters in relation to the organisation or body:

- (a) the nature and type of services provided by the organisation or body;
- (b) the numbers of persons to whom services were provided by the organisation or body before the date of the application for such period or periods as the Minister may specify;
- (c) the legal status of the organisation or body; and
- (d) the code of practice (if any) of the organisation or body (by whatever name called) with regard to the provision of its services and, in particular, its procedures and protocols for ensuring compliance with this Act.

(3) If, in relation to an application under *subsection (2)*, the Minister is satisfied, having regard to the provisions of this Part, that it is appropriate to do so, he or she may designate the organisation or body concerned as a Trusted Partner for the purposes of this Part.

(4) If, in relation to an application under *subsection (2)*, the Minister is not satisfied having regard to the provisions of this Part that it is appropriate to designate the organisation or body concerned as a Trusted Partner for the purposes of that section, he or she shall refuse the application.

(5) The Minister shall inform the organisation or body concerned in writing of his or her decision in relation to an application under *subsection (2)* and of the reasons for that decision.

(6) Where an organisation or body has been designated as a Trusted Partner by the Minister under this section for the purposes of this Part, the Minister may, if he or she is of opinion that it is no longer appropriate for the organisation or body to be so designated, revoke that designation of the organisation or body by order made under this subsection for that purpose.

(7) Whenever the Minister proposes to make an order under *subsection (6)*, he or she shall inform the organisation or body concerned in writing of the proposal and of the reasons for it and he or she may specify a period for the making of a submission under *subsection (8)*.

(8) An organisation or body to which a proposal to make an order under *subsection (6)* relates may make a submission to the Minister within the period (if any) specified by the Minister under *subsection (7)* regarding the proposal specifying the reasons why the order should not be made.

(9) The Minister shall consider any submission made to him or her under *subsection (8)* before making an order under *subsection (6)*.

### **Note**

The purpose of Head 18 is to provide an application mechanism for civil society organisations that support or provide services to victims of human trafficking – including NGOs, registered charities, advocacy groups, professional associations, cultural institutions - to be designated as a Trusted Partner for the purposes of receiving and referring applications for victims of human trafficking under Head 14.

## **Head 19      Access to services by victims of human trafficking**

Provide that:

(1) Where the Operational Committee determines that a person is a victim of human trafficking under Head 17, the person shall be accepted into the National Referral Mechanism.

(2) On a person being accepted into the National Referral Mechanism, it shall be the responsibility of Competent Authorities, acting individually, or collectively as part of the Mechanism, to ensure provision of an appropriate care package to such person, to include but not limited to access to such of the following services as may be appropriate and necessary in the opinion of the relevant Competent Authority, or other responsible public body, concerned:

- (a) the Social Welfare Acts;
- (b) assistance with accommodation to include as may be necessary and appropriate to the specific case within the system known as Direct Provision, or by a local authority pursuant to its obligations under the Housing Acts 1966 to 2021;
- (c) health services within the meaning of the Health Acts 1947 to 2020;
- (d) civil legal aid within the meaning of the Civil Legal Aid Act 1995;
- (e) support for access to appropriate education, training and employment opportunities, including those provided by Solas within the meaning of the Further Education and Training Act 2013, or an Education and Training Board within the meaning of the Education and Training Boards Acts 2013 and 2014
- (f) in the case of a child, access to child protection services of the Child and Family Agency;

(g) information and advice including but not limited to information on such person's rights and entitlements as a victim of human trafficking; and

(h) where the person so chooses, assistance with repatriation.

(3) Specific services as may be agreed as part of a care package for the purposes of subsection (a) may be provided, as may be appropriate, by

(a) a Competent Authority (within the meaning of this Act);

(b) such other public body as has statutory responsibility in that regard; or

(c) a non-governmental organisation funded by the Minister for that purpose, or funded by another Minister of the Government [with the agreement of that Minister].

(4) Nothing in this section places a responsibility on a public body to provide services beyond its statutory remit or creates an entitlement for any person to receive services from any public body.

### **Note**

The intention of Head 19 is not to create an entitlement to a specific service, as this is a matter to be accessed on a case-by-case basis, or to duplicate the existing statutory basis on which specific services are provided, but instead to give an outline of the type of supports and services that may be available to meet the needs of the specific victim.

## **Head 20      Prohibition on deportation of victim of trafficking**

Provide that action shall not be taken in respect of a person under section 3 of the Immigration Act 1999

- a) while that person's application to be recognised as a victim of human trafficking is being considered by a Competent Authority or the Operational Committee,  
or
- b) after a determination in respect of that person has been made under Head 17(1).

in respect of immigration offences committed by the person during the period in which the person was deemed to have been a victim of trafficking

### **Note**

Head 20 provides that a victim of human trafficking will not be deported for immigration offences committed whilst being trafficked.



## **Head 21      Protection from prosecution for a human trafficking offence**

Provide that:

Notwithstanding section 7 of the Criminal Law Act 1997, it shall not be an offence for a person to aid, abet, counsel or procure another person to commit an offence under the Act of 2008 or the Act of 2013 relating to the trafficking, in the State, of the first-mentioned person.

### **Note**

Head 21 provides that a person cannot be prosecuted for their role in their own trafficking.

## Schedule

Text of Second Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

### “Schedule 15

Text of Second Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

#### *Article 1*

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

#### *Article 2*

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

#### *Article 3*

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:
  - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
    - a. Sexual exploitation of the child;

- b. Transfer of organs of the child for profit;
  - c. Engagement of the child in forced labour;
    - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

#### *Article 4*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
- (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
  - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in

its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### *Article 5*

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

#### *Article 6*

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

#### *Article 7*

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

#### *Article 8*

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

#### *Article 9*

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

#### *Article 10*

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their

authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

#### *Article 11*

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

#### *Article 12*

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

#### *Article 13*

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 14*

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

#### *Article 15*

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

#### *Article 16*

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

#### *Article 17*

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.



2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.”

**Note**

This is the text of the Second Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as provided for in Head 10.