

Child Trafficking and Pornography Act, Number 22 of 1998

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Be it enacted by the oireachtas as follows:

1. Short title and commencement ➡

1. This Act may be cited as the Child Trafficking and Pornography Act, 1998.
commencement
2. (2) This Act shall come into operation one month after the date of its passing.

2. Interpretation. ➡

1. In this Act, except where the context otherwise requires -

"audio representation" includes-

- a. any such representation by means of tape, computer disk or other thing from which such a representation can be produced, and
- b. any tape, computer disk or other thing on which any such representation is recorded;

"child" means a person under the age of 17 years;

"child pornography" means -

- a. any visual representation-
 - i. that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity,
 - ii. that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such

- activity by any person or persons, or
- iii. whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child,
 - b. any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity.
 - c. any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or
 - d. any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of section 3 ,

irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer-graphics or by any other electronic or mechanical means but does not include-

- I. any book or periodical publication which has been examined by the Censorship of Publications Board and in respect of which a prohibition order under the Censorship of Publications Acts, 1929 to 1967, is not for the time being in force,
- II. any film in respect of which a general certificate or a limited certificate under the Censorship of Films Acts, 1923 to 1992, is in force, or
- III. any video work in respect of which a supply certificate under the Video Recordings Acts, 1989 and 1992, is in force;

"document" includes-

- a. any book, periodical or pamphlet, and
- b. where appropriate, any tape, computer disk or other thing on which data capable of conversion into any such document is stored;

"photographic representation" includes the negative as well as the positive version;

"visual representation" includes-

- a. any photographic, film or video representation, accompanying sound or any document,
 - b. any copy of any such representation or document, and
 - c. any tape, computer disk or other thing on which the visual representation and any accompanying sound are recorded.
2. The reference in paragraph (a) of the definition of child pornography to a person shall be construed as including a reference to a figure resembling a person that has been generated or modified by computer-graphics or otherwise, and in such a case the fact, if it is a fact, that some of the principal characteristics shown are those of an adult shall be disregarded if the predominant impression conveyed is that the figure shown is a child.
 3. In any proceedings for an offence under section 3, 4, 5 or 6 a person shall be deemed, unless the contrary is proved, to be or have been a child, or to be or have been depicted or represented as a child, at any time if the person appears to the court to be or have been a child, or to be or have been so depicted or represented, at that time.
 4. For the purposes of this Act, except where the context otherwise requires-

- a. a reference to a section is to a section of this Act,
- b. a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs,
- c. a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the passing of this Act, by or under any subsequent enactment.

3. Child trafficking and taking, etc., child for sexual exploitation ➡

1. Any person who organises or knowingly facilitates-
 - a. the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation, or
 - b. the provision of accommodation for a child for such a purpose while in the State,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

2. Any person who-
 - a. takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,
 - b. uses a child for such a purpose, or
 - c. organises or knowingly facilitates such taking, detaining, restricting or use,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

3. In this section "sexual exploitation" means-
 - a. inducing or coercing the child to engage in prostitution or the production of child pornography,
 - b. using the child for prostitution or the production of child pornography,
 - c. inducing or coercing the child to participate in any sexual activity which is an offence under any enactment, or
 - d. the commission of any such offence against the child.

4. Allowing child to be used for child pornography. ➡

1. Without prejudice to section 3, any person who, having the custody, charge or care of a child, allows the child to be used for the production of child pornography shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 14 years or both.
2. For the purposes of this section-
 - a. any person who is the parent or guardian of a child or who is liable to maintain a child shall be presumed to have the custody of the child and, as between parents, one parent shall not be deemed to have ceased to have the custody of the child by reason only that he or she has deserted, or does not reside with, the other parent and child,

- b. any person to whose charge a child is committed by any person who has the custody of the child shall be presumed to have charge of the child, and
- c. any person exercising authority over or having actual control of a child shall be presumed to have care of the child.

5. Producing, distributing, etc., child pornography. ➡

1. Subject to sections 6(2) and 6(3), any person who-
 - a. knowingly produces, distributes, prints or publishes any child pornography,
 - b. knowingly imports, exports, sells or shows any child pornography,
 - c. knowingly publishes or distributes any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, prints, publishes, imports, exports, sells or shows any child pornography,
 - d. encourages or knowingly causes or facilitates any activity mentioned in paragraph (a), (b) or (c), or
 - e. knowingly possesses any child pornography for the purpose of distributing, publishing, exporting, selling or showing it,

shall be guilty of an offence and shall be liable-

 - i. on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
 - ii. on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or both.
2. In this section "distributes", in relation to child pornography, includes parting with possession of it to, or exposing or offering it for acquisition by, another person, and the reference to "distributing" in that context shall be construed accordingly.

6. Possession of child pornography. ➡

1. Without prejudice to section 5(1)(c) and subject to subsections (2) and (3), any person who knowingly possesses any child pornography shall be guilty of an offence and shall be liable -
 - a. on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
 - b. on conviction on indictment to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 5 years or both.
2. Section 5(1) and subsection (1) shall not apply to a person who possesses child pornography-
 - a. in the exercise of functions under the Censorship of Films Acts, 1923 to 1992, the Censorship of Publications Acts, 1929 to 1967, or the Video Recordings Acts, 1989 and 1992, or
 - b. for the purpose of the prevention, investigation or prosecution of offences under this Act.
3. Without prejudice to subsection (2), it shall be a defence in a prosecution for an

offence under section 5(1) or subsection (1) for the accused to prove that he or she possessed the child pornography concerned for the purposes of bona fide research.

7. Entry, search and seizure. ➡

1. Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under section 3, 4, 5 or 6 is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.
2. A warrant issued under this section shall authorise a named member of the Garda Síochána, alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary-
 - a. to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,
 - b. to search it and any persons found there, and
 - c. to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under section 3, 4, 5 or 6.
3. A member of the Garda Síochána acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address.
4. Any person who
 - a. obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under subsection (1),
 - b. fails or refuses to comply with a requirement under this section, or
 - c. gives a name or address which is false or misleading,shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both.
5. A member of the Garda Síochána may arrest without warrant any person whom the member suspects of having committed an offence under subsection (4).
6. In this section "place" includes any dwelling, any building or part of a building and any vehicle, vessel or structure.

8. Forfeiture. ➡

1. The court by or before which a person is convicted of an offence under section 3, 4, 5 or 6 may order-
 - a. anything seized pursuant to section 7 or
 - b. anything shown to the satisfaction of the court to relate to the offence,to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.
2. A court shall not order anything to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court,

unless the opportunity has been given to him or her to show cause why the order should not be made.

3. An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

9. Offences by bodies corporate. ➡

1. Where an offence under section 3, 4, 5 or 6 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other similar officer of such body or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
2. Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member of that body in connection with the member's functions of management as if he or she were a director or manager of it.

10. Amendment of Criminal Evidence Act, 1992. ➡

The Criminal Evidence Act, 1992, is hereby amended in section 12-

- a. by the deletion of "or" in paragraph (b) where it last occurs and by the substitution of "paragraph (a) or (b), or" for "paragraph (a) or (b)." in paragraph (c), and
- b. by the insertion of the following paragraph after paragraph (c):

"(d) an offence under section 3' 4' 5 or 6 of the Child Trafficking and Pornography Act, 1998.".

11. Amendment of Sexual Offences (Jurisdiction) Act 1996. ➡

The Sexual Offences (Jurisdiction) Act, 1996, is hereby amended in the Schedule thereto by the insertion of the following paragraphs after paragraph 9:

"10. Section 3 of the Child Trafficking and Pornography Act, 1998.

11. Section 4 of the Child Trafficking and Pornography Act 1998.".

12. Amendment of Bail Act, 1997. ➡

The Bail Act, 1997, is hereby amended in the Schedule thereto by the insertion of the following paragraph after paragraph 12:

"12A. Any offence under the following provisions of the Child Trafficking and Pornography

Act, 1998 -

- a. section 3 (child trafficking and taking, etc., child for sexual exploitation);
- b. section 5 (producing, distributing, etc., child pornography).".