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Explanatory Memorandum](#)

**AN BILLE UM AN DLÍ COIRIÚIL (GÁINNEÁIL AR
DHAOINE) (LEASÚ), 2013
CRIMINAL LAW (HUMAN TRAFFICKING) (AMENDMENT)
BILL 2013**

*Mar a tionscnaíodh
As initiated*

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. Short title and commencement.
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ACTS REFERRED TO

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



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BILL

entitled

AN ACT TO GIVE EFFECT TO CERTAIN PROVISIONS OF
DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIA-
MENT AND OF THE COUNCIL OF 5 APRIL 2011¹ ON
10 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
15 TRAFFICKING) ACT 2008 AND THE CHILD TRAFFICK-
ING AND PORNOGRAPHY ACT 1998; AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

20 **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,

25 (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—

30 (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

¹OJ No. L101 of 15.4.2011, p. 1

- (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 5
 - (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”: 10
 - “ ‘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 15 person, or
 - (c) enslavement of the person or subjecting him or her to servitude or a similar condition or state;”,
- and 20
- (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 25 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; 30
 - (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 35 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 40 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 45 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 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. 5

(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.”. 10

Short title and commencement.

4.—(1) This Act may be cited as the Criminal Law (Human Trafficking) (Amendment) Act 2013.

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



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EXPLANATORY AND FINANCIAL MEMORANDUM

Main Purposes of the Bill

The main purposes of the Bill are:

- (1) To extend the scope of exploitative activities criminalised by the Criminal Law (Human Trafficking) Act 2008 to fully comply with the criminal law provisions of *Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*;
- (2) To provide that the commission of a human trafficking offence by a public official shall be treated as an aggravating circumstance for sentencing purposes, as required by the directive;
- (3) To define the term “forced labour” as used in the Criminal Law (Human Trafficking) Act 2008; and
- (4) Provide for related matters.

Provisions of the Bill

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

Section 1 of the Bill substitutes the definitions of “exploitation” and “labour exploitation” in section 1 of the Criminal Law (Human Trafficking) Act 2008 to add forced begging and exploitation of criminal activities to the scope of exploitative conduct criminalised by the 2008 Act.

In line with the directive, “criminal activity” is an activity constituting an offence engaged in for financial gain, or that, by implication, is engaged in for financial gain.

Section 1 also inserts two new definitions — “beg” and “forced labour” into section 1 of the 2008 Act.

The term “beg” has the same meaning as in the Criminal Justice (Public Order) Act 2011.

The definition of “forced labour” is based on the definition of that term in *International Labour Organisation (ILO) Convention No. 29 of 1930 concerning Forced or Compulsory Labour*. The 2008 Act criminalises, inter alia, human trafficking for labour exploitation, including subjecting a person to forced labour, but does not define the phenomenon of forced labour.

Section 2: Amendment of Criminal Law (Human Trafficking) Act 2008

Section 2 of the Bill provides that where the offence of trafficking a child for exploitation other than sexual exploitation (section 2 of the 2008 Act) or trafficking an adult (section 4 of the 2008 Act) is committed by a public official during the performance of his/her duties as a public official, that fact shall be treated as an aggravating factor for the purpose of determining sentence.

Except where the sentence for the offence is one of life imprisonment or where the court considers that there are exceptional circumstances justifying its not doing so, the court is obliged to impose a sentence that is greater than would have been imposed in the absence of such a factor. However, the court cannot impose a sentence that is greater than the maximum sentence permissible for the offence.

“Public official” is defined as an officer or employee of a public body, the term “public body” to be construed in accordance with the Ethics in Public Office Act 1995.

Section 3: Amendment of Child Trafficking and Pornography Act 1998

Section 3 of the Bill provides that where the offence of trafficking a child for sexual exploitation (section 3 of Child Trafficking and Pornography Act 1998) is committed by a public official during the performance of his/her duties as a public official, that fact shall be treated as an aggravating factor for the purpose of determining sentence.

Except where the sentence for the offence is one of life imprisonment or where the court considers that there are exceptional circumstances justifying its not doing so, the court is obliged to impose a sentence that is greater than would have been imposed in the absence of such a factor. However, the court cannot impose a sentence that is greater than the maximum sentence permissible for the offence.

“Public official” is defined as an officer or employee of a public body, the term “public body” to be construed in accordance with the Ethics in Public Office Act 1995.

Section 4: Short title and commencement

Section 4 specifies the short title of the Act and provides for its coming into operation one month after its passing.

Financial implications

The Bill does not have any financial implications for the Exchequer.

*An Roinn Dlí agus Cirt agus Comhionannais
Aibreán, 2013*

Wt. —. 622. 4/13. Clondalkin. (36456). Gr.30-15.