



Number 22 of 1998

CHILD TRAFFICKING AND PORNOGRAPHY ACT 1998

REVISED

Updated to 30 June 2017

This Revised Act is an administrative consolidation of the *Child Trafficking and Pornography Act 1998*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Criminal Justice Act 2017 (14/2017)*, enacted 28 June 2017, and all statutory instruments up to and including *European Communities (Minimum Conditions for Examining Agriculture Plant Species (Amendment) Regulations 2017 (S.I. No. 311 of 2017)*, made 30 June 2017, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Child Trafficking and Pornography Acts 1998 to 2004: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Child Trafficking and Pornography (Amendment) Act 2004* (17/2004), s. 2(2)). The Acts in this group are:

- *Child Trafficking and Pornography Act 1998* (22/1998)
- *Child Trafficking and Pornography (Amendment) Act 2004* (17/2004)

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1994, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ARRANGEMENT OF SECTIONS

Section

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6. Possession of child pornography.
7. Entry, search and seizure.
8. Forfeiture.
9. Offences by bodies corporate.
10. Amendment of Criminal Evidence Act, 1992.
11. Amendment of Sexual Offences (Jurisdiction) Act, 1996.
12. Amendment of Bail Act, 1997.
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ACTS REFERRED TO

Bail Act, 1997	1997, No. 16
Censorship of Films Acts, 1923 to 1992	
Censorship of Publications Acts, 1929 to 1967	
Criminal Evidence Act, 1992	1992, No. 12
Sexual Offences (Jurisdiction) Act, 1996	1996, No. 38

[No. 22.] *Child Trafficking and Pornography Act 1998* [1998.]

Video Recordings Acts, 1989 and 1992



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AN ACT TO PROHIBIT TRAFFICKING IN, OR THE USE OF, CHILDREN FOR THE PURPOSES OF THEIR SEXUAL EXPLOITATION AND THE PRODUCTION, DISSEMINATION, HANDLING OR POSSESSION OF CHILD PORNOGRAPHY, AND TO PROVIDE FOR RELATED MATTERS. [29th June, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Short title and commencement.

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

Interpretation.

2.—(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 18 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 real or simulated sexually explicit 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) that shows, for a sexual purpose, the genital or anal region of a child or of a person depicted as being 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, any 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.

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

3.—[(1) A person who trafficks a child for the purposes of the sexual exploitation of the child shall be guilty of an offence and shall be liable upon conviction on indictment—

- (a) to imprisonment for life or a lesser term, and
(b) at the discretion of the court, to a fine.

(2) A person who—

- (a) sexually exploits a child, or
(b) takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,

shall be guilty of an offence and shall be liable upon conviction on indictment—

- (i) to imprisonment for life or a lesser term, and
(ii) at the discretion of the court, to a fine.]

(2A) [...]

(2B) [...]

[(3) A person who causes another person to commit an offence under *subsection (1) or (2)* shall be guilty of an offence and shall be liable upon conviction on indictment—

- (a) to imprisonment for life or a lesser term, and
(b) at the discretion of the court, to a fine.]

[(4) A person who attempts to commit an offence under *subsection (1), (2) or (3)* shall be guilty of an offence and shall be liable upon conviction on indictment—

- (a) to imprisonment for life or a lesser term, and
(b) at the discretion of the court, to a fine.

(5) In this section—

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

[“sexual exploitation” means, in relation to a child—

- (a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography,
(b) the prostitution of the child or the use of the child for the production of child pornography,
(c) the commission of an offence specified in the Schedule to the Sex Offenders Act 2001 against the child, causing another person to commit such an offence against the child, or inviting, inducing or coercing the child to commit such an offence against another person,
(d) inducing or coercing the child to engage or participate in any sexual, indecent or obscene act,

(e) inviting the child to engage or participate in any sexual, indecent or obscene act which, if done, would involve the commission of an offence against the child, or

(f) inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child,

and “sexually exploits” shall be construed accordingly;]

“trafficks” means, in relation to a child—

(a) procures, recruits, transports or harbours the child, or—

(i) transfers the child to,

(ii) places the child in the custody, care or charge, or under the control, of, or

(iii) otherwise delivers the child to,

another person,

(b) causes the child to enter or leave the State or to travel within the State,

(c) takes custody of the child or takes the child—

(i) into one’s care or charge, or

(ii) under one’s control,

or

(d) provides the child with accommodation or employment.]]

[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.

(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.]]

Allowing child to be used for child pornography.

4.—(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.

[Organising etc. child prostitution or production of child pornography

4A. (1) A person who—

- (a) controls or directs the activities of a child for the purposes of the prostitution of the child or the use of the child for the production of child pornography,
- (b) organises the prostitution of children or the production of child pornography by controlling or directing the activities of more than one child for those purposes,
- (c) compels, coerces or recruits a child to engage or participate in child prostitution or the production of child pornography,
- (d) knowingly gains from the prostitution of a child or the production of child pornography, or
- (e) incites or causes a child to become involved in child prostitution or production of child pornography,

shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or both.]

Producing, distributing, etc., child pornography.

[5. (1)] Subject to *subsections (3) and (4) of section 6*, a person who—

- (a) knowingly produces any child pornography,
- (b) knowingly distributes, transmits, disseminates, prints or publishes any child pornography,
- (c) knowingly imports, exports, sells or shows any child pornography,
- (d) knowingly supplies or makes available any child pornography to another person,
- (e) knowingly publishes, distributes, transmits or disseminates any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, transmits, disseminates, prints, publishes, imports, exports, sells, shows, supplies or makes available any child pornography,
- (f) encourages, knowingly causes or facilitates any activity mentioned in *paragraphs (a) to (e)*, or
- (g) knowingly possesses any child pornography for the purpose of distributing, transmitting, disseminating, publishing, exporting, selling or showing it,

shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years or both.

(2) A person who attempts to commit an offence under *subsection (1)* shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years or both.

(3) In this section “distributes”, “transmits” or “disseminates”, in relation to child pornography, includes parting with possession of it to, or exposing or offering it for acquisition by, another person, and the references to “distributing”, “transmitting” and “disseminating” in that context shall be construed accordingly.]

[Participation of child in pornographic performance

5A. (1) A person who—

(a) causes, incites, compels or coerces, or

(b) recruits, invites or induces,

a child to participate in a pornographic performance, or gains from such participation, shall be guilty of an offence.

(2) A person who attempts to commit an offence under *subsection (1)* shall be guilty of an offence.

(3) A person guilty of an offence under *subsection (1)* or (2) shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(4) A person who knowingly attends a pornographic performance shall be guilty of an offence.

(5) A person guilty of an offence under *subsection (4)* shall be liable—

(a) on summary conviction, to a class A fine, or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 10 years, or both.

(6) In this section—

“attends a pornographic performance” includes viewing the performance by means of information and communication technology,

“pornographic performance” means a live exhibition aimed at an audience, including by means of information and communication technology, of—

(a) a child engaged in real or simulated sexually explicit activity, or

(b) the sexual organs of a child for primarily sexual purposes.]

Possession of child pornography.

[6. (1) Without prejudice to *section 5(1)(g)* and subject to *subsections (3)* and (4), any person who—

(a) knowingly acquires or possesses child pornography, or

(b) knowingly obtains access to child pornography by means of information and communication technology,

shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(2) Any person who attempts to commit an offence under *subsection (1)* shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(3) *Subsections (1) and (2) of section 5 and subsections (1) and (2)* shall not apply to a person who possesses or obtains access to 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.

(4) Without prejudice to *subsection (3)*, it shall be a defence in a prosecution for an offence under *section 5(1) or (2)* or this section for the accused to prove that he or she possessed or obtained access to the child pornography concerned for the purposes of *bona fide* research.]

Entry, search and seizure.

7.—(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.

Forfeiture. **8.—**(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.

Offences by bodies corporate. **9.—**(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.

Amendment of Criminal Evidence Act, 1992. **10.—**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*.”.

Amendment of Sexual Offences (Jurisdiction) Act, 1996. **11.—**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*.”.

Amendment of Bail Act, 1997. **12.—**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).”.

[Houses of the Oireachtas.

13.—Nothing in this Act prevents—

- (a) the giving of or compliance with a direction under [section 67 or 83 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013], or
- (b) the possession, distribution, printing, publication or showing by either House of the Oireachtas, a committee (within the meaning of that Act) or any person of child pornography for the purposes of, or in connection with, the performance of any function conferred by the Constitution or by law on those Houses or conferred by a resolution of either of those Houses or resolutions of both of them on such a committee.]