



An Bille um an Dlí Coiriúil (Gáinneáil ar Dhaoine) (Leasú), 2022
Criminal Law (Human Trafficking) (Amendment) Bill 2022

Mar a tionscnaíodh

As initiated



AN BILLE UM AN DLÍ COIRIÚIL (GÁINNEÁIL AR DHAOINE) (LEASÚ), 2022
CRIMINAL LAW (HUMAN TRAFFICKING) (AMENDMENT) BILL 2022

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AN BILLE UM AN DLÍ COIRIÚIL (GÁINNEÁIL AR DHAOINE) (LEASÚ), 2022
CRIMINAL LAW (HUMAN TRAFFICKING) (AMENDMENT) BILL 2022

Bill

entitled

An Act to amend the Criminal Law (Human Trafficking) Act 2008 and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

Amendment of Criminal Law (Human Trafficking) Act 2008

1. The Criminal Law (Human Trafficking) Act 2008 is amended—

(a) in section 1 by the insertion of the following definitions: 10

“ ‘Delphi Indicators’ means the operational indicators of trafficking in human beings identified by a Delphi survey conducted by the International Labour Office and the European Commission, first published in March 2009 and includes any revision, amendment, replacement or alteration; 15

‘Early Identification Assessment’ shall be construed in accordance with section 5A;

‘Minister’ means the Minister for Justice;

‘prescribed’ means prescribed by regulations made by the Minister under section 11A; 20

‘relevant authority’ means the Garda Síochána, the Health Service Executive, the Child and Family Agency, the Workplace Relations Commission, trade unions and such other bodies or persons that specialise in advocating for the rights of trafficked persons prescribed by the Minister under section 11A(1); 25

‘suspected victim’ means a person identified on foot of an Early Identification Assessment carried out under section 5A as a person who is likely to have been the victim of human trafficking;

‘trade union’ means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act 1941 or is an excepted body within the meaning of section 6 of that Act;” 30

(b) by the insertion of the following sections after section 5:

“Early identification of suspected victim by relevant authority

- 5A.** (1) Where a relevant authority has reasonable grounds for believing that a person is the victim of human trafficking, that relevant authority shall, as soon as is practicable, carry out an assessment (in this Act referred to as an Early Identification Assessment) of the person concerned. 5
- (2) In making an Early Identification Assessment the following shall be taken into account by the relevant authority concerned:
- (a) the Delphi Indicators;
 - (b) the person’s particular circumstances;
 - (c) the person’s cultural context; 10
 - (d) the person’s particular needs;
 - (e) any other factors the relevant authority considers appropriate.
- (3) Where, following completion of the Early Identification Assessment, it appears to the relevant authority that it is likely that the person is the victim of human trafficking, the relevant authority shall consider the person to be a suspected victim. 15
- (4) Where a person is considered to be a suspected victim the relevant authority shall apply as soon as practicable to the Minister under section 5B for the formal identification of that person as a suspected victim. 20
- (5) Where a relevant authority is unable to determine the age of the person being assessed under subsection (1), but has reasonable grounds to believe that the person is a child, that person is presumed to be a child for the purposes of the Early Identification Assessment, unless the contrary is proved. 25
- (6) Where a member of the Garda Síochána completes an Early Identification Assessment that member shall not conduct or assist in conducting any criminal investigation in connection with the suspected victim.
- (7) A relevant authority may co-operate, where appropriate and duly permitted by law, with corresponding authorities situated outside the State when carrying out an Early Identification Assessment under subsection (1). 30
- (8) Where in the conduct of any case before a court, the Court has reasonable grounds for believing that a person before the court may be the victim of human trafficking, the Court may of its own volition or on application to it by any of the parties refer that person to— 35
- (a) the Health Service Executive,
 - (b) the Garda Síochána, or
 - (c) such other relevant authority as the court considers appropriate in the circumstances, 40

and that relevant authority shall carry out an Early Identification Assessment in accordance with this section.

Application to the Minister for formal identification of suspected victim

- 5B.** (1) Where a relevant authority has conducted an Early Impact Assessment and is of the view that a person is a suspected victim that relevant authority shall apply to the Minister to have the person formally identified as a suspected victim. 5
- (2) The application shall be in writing, or in such form as the Minister may prescribe.
- (3) At any time after receiving an application and before determining it the Minister may by notice in writing require the relevant authority to provide additional information to the Minister. 10

Guardian *ad litem*

- 5C.** (1) Where an application to the Minister for formal identification of a child as a suspected victim is submitted under section 5B, the relevant authority shall, if satisfied that it is necessary and in the best interests of the child to do so, apply to the court, on notice to the Minister, to appoint a guardian *ad litem* for the child. 15
- (2) The court may, if it is satisfied that it is necessary in the best interests of the child and in the interests of justice to do so, appoint a guardian *ad litem* for the child. 20
- (3) The court, in deciding whether to appoint a guardian *ad litem* under subsection (2), shall have regard to—
- (a) the best interests of the child,
 - (b) the age and level of understanding of the child, 25
 - (c) the welfare of the child,
 - (d) whether and to what extent the child should be given the opportunity to express the child's wishes in the provision of assistance and support under section 5F, and
 - (e) any submission made in relation to the matter of the appointment of a guardian *ad litem* that is made to the court by or on behalf of a party to the proceedings or any other person to whom the proceedings relate. 30
- (4) The fees and expenses of a guardian *ad litem* appointed pursuant to subsection (2) shall be paid by such parties to the proceedings concerned, and in such proportions, or by such party to the proceedings, as the court may determine. 35
- (5) In this section 'court' means the District Court.

Decision of Minister

- 5D.** (1) The Minister shall, within 28 days of receipt of the application in accordance with section 5B, formally identify a person as a suspected 40

victim where the Minister is satisfied that the application complies with that section.

- (2) The Minister shall, within 7 days of making a decision under subsection (1), inform the relevant authority in writing of the decision and the reasons for it.

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Appeals

5E. (1) The relevant authority may, within 28 days of the receipt of the Minister's decision under section 5D, appeal to the High Court on a question arising from the decision of the Minister.

- (2) The orders that may be made by the High Court on the hearing of an appeal under this section include (but are not limited to) one or more of the following:

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(a) an order affirming the decision of the Minister;

(b) an order setting aside the decision;

(c) such other order in relation to the matter as it considers just and equitable in the circumstances;

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(d) such order as to costs as it thinks fit.

- (3) The Minister may be made a party to an appeal under this section.

(4) The decision of the High Court on the hearing of such an appeal is final, other than that a party to the appeal may apply to the Court of Appeal to review the decision on a question of law (but only with the leave of either of those courts, as appropriate).

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(5) A decision of the Minister does not take effect, and may not be implemented, while an appeal under subsection (1) or an application under subsection (4) is pending in relation to the decision.

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Provision of assistance and support to suspected victim

5F. (1) Where a person is formally identified under section 5D as a suspected victim, the Minister shall, after consulting with the relevant authority, specify the assistance and support the Minister deems appropriate to be provided to the suspected victim in order to meet the suspected victim's particular needs.

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- (2) In considering the particular needs of the suspected victim, the Minister shall take account of the following:

(a) the age, or presumed age, of the suspected victim;

(b) the physical health of the suspected victim, including whether they are pregnant;

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(c) any disability the suspected victim may have;

(d) any mental or psychological disorder the suspected victim may have;

(e) the personal circumstances of the suspected victim;

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- (f) any physical, sexual or psychological harm the suspected victim may have suffered.
- (3) Where a suspected victim is a child—
 - (a) the best interests of the child shall be the paramount consideration of the Minister, 5
 - (b) the Minister may require that the Child and Family Agency undertake an assessment of the child to take account of the child's views, needs and concerns with a view to providing appropriate assistance and support to the child, and
 - (c) the Minister shall have regard to the views of a guardian *ad litem* appointed under section 5C(2). 10
- (4) The provision of assistance and support referred to in subsection (2) may, as appropriate to the particular needs of the suspected victim, include:
 - (a) financial assistance; 15
 - (b) accommodation;
 - (c) immigration permission;
 - (d) health services;
 - (e) access to education for a suspected child victim;
 - (f) counselling; 20
 - (g) legal assistance;
 - (h) translation services;
 - (i) support for the family of a suspected child victim;
 - (j) support to access employment opportunities;
 - (k) such other services necessary to facilitate both the suspected victim's removal and recovery from trafficking. 25
- (5) The provision of assistance and support to a suspected victim shall not be conditional on the suspected victim assisting the Garda Síochána with a criminal investigation or prosecution.
- (6) The assistance and support provided to a suspected victim shall continue for such time as may be deemed appropriate by those providing the specified assistance and support. 30
- (7) Notwithstanding the generality of the assistance and support that may be provided to a suspected victim, the assistance and support shall be provided without prejudice to any other rights or entitlements the suspected victim may have under any other enactment. 35

Immunity from prosecution

5G. Where criminal proceedings for an offence are commenced against a person who has been formally identified under section 5D as a suspected

victim it shall be a valid defence for such person to show that he or she was compelled to commit the offence as a result of being trafficked.”,

and

(c) by the insertion of the following section after section 11:

“Regulations

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11A. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to the generality of subsection (1), the Minister may by regulations provide for any matter for the purposes of giving full effect to this Act, including the following:

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(a) Early Identification Assessment for the purposes of section 5A;

(b) application for formal identification as a suspected victim for the purposes of section 5B;

(c) assistance and support for purposes of section 5F;

(d) such other consequential or ancillary matters as the Minister considers necessary.

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(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.”.

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Short title and commencement

2. (1) This Act may be cited as Criminal Law (Human Trafficking) (Amendment) Act 2022.

(2) This Act comes into operation 18 months after the date of its passing or on such earlier date than the said 18 months as the Minister for Justice may by order appoint either generally or with reference to any purpose or provision, and different days may be so appointed for different purposes and different provisions.

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An Bille um an Dlí Coiriúil (Gáinneáil ar
Dhaoine) (Leasú), 2022

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta um an Dlí Coiriúil
(Gáinneáil ar Dhaoine), 2008 agus do dhéanamh
socrú i dtaobh nithe gaolmhara.

*An Teachta Pádraig Ó Coistealbha a thug isteach,
27 Eanáir, 2022*

Criminal Law (Human Trafficking)
(Amendment) Bill 2022

BILL

(as initiated)

entitled

An Act to amend the Criminal Law (Human
Trafficking) Act 2008 and to provide for related
matters.

*Introduced by Deputy Patrick Costello,
27th January, 2022*

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