

Why is it necessary:

To transpose a number of criminal law provisions contained in EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims into Irish law. This is intended to bring Ireland in compliance with the terms of the Directive.

What does the Bill do:

1. Expands the scope of exploitative activities defining human trafficking by adding **'exploitation of criminal activities'** to section 1.
2. Adds **'begging'** to forced labour, using the definition of 'begging' from the CJ (Public Order) Act 2011.
3. Adds the definition of **'forced labour'** contained in the ILO Convention on Forced and Compulsory Labour 1930.
4. Adds **aggravating factors** in sentencing of traffickers who were public officials, in performance of their duties when committing the offence of trafficking. This is incorporated in the CL (TH) Act 2008 and the Child Trafficking and Pornography Act 1998 respectively.

What other outstanding matters have to be addressed in order to implement in full the provisions of the EU Directive 2011/36/EU (not necessarily through amendments of the CL(HT) Act 2008 but through introduction of policies and other primary legislation):

1. **Gender perspective in assistance and support to victims of human trafficking, and in prevention work.**

The EU Directive specifically highlights the gender dimension of the crime and requires Member States to adopt a gender sensitive approach in the provision of support and assistance to victims. This seems to be ignored at present through providing gender-neutral accommodation and services in direct provision centres.

(See Preamble recital 3 and Article 1).

2. **Assistance and support to victims before, during and for an appropriate time after the conclusion of criminal proceeding.**

Presently it is unclear what the policy is in relation to the provision of support and assistance to victims after criminal proceedings. It is necessary for Ireland to specify a commitment in this regard, so as to be in line with the relevant provision of the Directive. (Article 11 paragraph 1)

3. Providing assistance to victims that is not conditional on cooperation.

In theory this is provided during the recovery and reflection permit, granted to victims to recover and to make an informed decision on whether or not to cooperate in any investigation. In practice, very few victims are granted this permit. This is due to the existing policy not to formally identify and issue recovery and reflection permits to victims who are already legally resident in the State. This excludes EU nationals, holders of student permits, asylum seekers, and Irish citizens amongst others. In addition, the recovery and reflection permit is not issued at an early stage of the identification process to those who are eligible. Rather, it takes a number of months to be issued.

This has created a situation in Ireland where all victims of trafficking in receipt of assistance are required to cooperate with the authorities from the start, and there is no period of courtesy where cooperation is irrelevant.

(Article 11 paragraph 2 and 3)

4. Mechanism aimed at early identification.

Presently, the identification of victims of trafficking is extended to a limited category of victims, appears to be non-transparent, and can take a number of months. Even though the authorised personnel are trained and familiar with the international guidelines for identification of victims, there is no agreed structure for this process guiding the number of interviews, minimum criteria and time limits that could give effect to the Directive's provision for 'early' identification. In addition to this problem, the vast numbers of victims remain ineligible to be identified.

(Article 11 paragraph 4)

5. Appropriate and safe accommodation and material assistance to victims.

In addition to the overall gender-specific approach to service and assistance contained in Article 1, the Directive also calls for appropriate and safe accommodation and assistance. The existing policy to secure accommodation and material assistance through the system of direct provision is controversial and perceived as inappropriate by many.

(Article 11 paragraph 5)

6. Victims of trafficking with special needs.

The EU Directive obliges Member States to 'attend to victims with special needs', where those needs derive from pregnancy, health issues, disability, mental disorder or where they have suffered from a 'serious form of psychological, physical or sexual violence'. Presently, the Administrative Immigration Arrangements only provide for the granting of Temporary Residence Permit on condition of cooperation with the authorities. As a result, considerations in relation to any of the listed special needs are absent.

(Article 11 paragraph 7)

7. Access without delay to counselling and legal representation.

The EU Directive obliges Member State to ensure victims have access without delay to counselling, and in accordance with the role of victims in the criminal justice system to legal representation, including for the purpose of compensation. Presently, victims in Ireland have access to legal counselling provided by the LAB only after referral from the

GNIB. However, access to legal representation has to be considered in full. For example, not all victims of trafficking would meet the eligibility criteria for legal aid in the State, including for the purposes of seeking compensation. It is worth exploring and eliminating any differences of eligibility that arise from a lack of formal identification as a victim of human trafficking, or where the victim is not habitually resident in the State. (Article 12 paragraph 2)

8. Preventing of the secondary victimisation of victims.

The EU Directive requires Member States to take measures to reduce the dangers of secondary victimisation. For victims cooperating with the authorities this includes avoiding unnecessary repetition of traumatic accounts. There is no specific policy (or commitment) on this matter in Ireland. There exists no memorandum of understanding or protocols between NGOs and the State as well as among the State agencies encountering victims of trafficking. As a result, it is not uncommon that a victim will give a statement to the police, followed by another to the Refugee Application Commissioner or Refugee Appeal's Tribunal, having previously given one to the supporting NGO or agency that made the first referral to the police.

Due to lack of a formal identification and flag-marking of cases of human trafficking, it is difficult to develop measures ensuring that victims are not subject to secondary victimisation by multiple delivery of personal accounts.

(Article 12 paragraph 4)

9. National rapporteur or equivalent mechanism.

Article 19 of the EU Directive requires Member States to establish a national rapporteur or equivalent mechanism. The purpose of this body is the collection of statistical data, tracking of trends, and evaluation of the adequacy of national measures against trafficking in human beings. Presently the Anti Human Trafficking Unit(AHTU) collates statistics and presents trends in this crime. However, independent evaluation cannot be provided by the AHTU as they are at the centre of the decisions on and implementation of policies and measures in this area. When a decision on such a body is taken, close cooperation with civil society organisations has to be ensured in line with the Directive.

(Article 19)

10. Integrated, holistic and human rights approach to the fight against trafficking.

Recital 7 of the preamble to the EU Directive requires that, when the instrument is being implemented, Directive 2004/81/EC on residence permits for victims from third countries as well as Directive 2009/52/EC on sanctions against employers of illegally staying third-country nationals should be taken into account. This is to ensure Member States adopt an integrated, holistic and human rights approach to the fight against trafficking. Due to the State's selective endorsement of EU instruments, we have not opted in to the two complementary Directives mentioned. This jeopardises our ability to achieve a holistic and integrated approach to the issue of human trafficking.