

## National Laws

Legislation of Interpol member states on sexual offences against children

# Ireland - Irlande - Irlanda

Dublin

The information on this page is up to date as of spring 2006

## I. Ages for legal purposes

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### Age of simple majority

Section 2 of the Age of Majority Act, 1985 provides that a person attains the full legal age when he attains the age of eighteen (18) years, or in case where he marries before attaining that age, upon his marriage.

### Age of consent for sexual activity

The legal age at which a person is currently competent to consent to sexual intercourse is currently seventeen (17) years.

### Age of consent for marriage

Section 31 of the Family Law Act, 1995 provides that a marriage between persons either of whom is under the age of eighteen (18) years shall not be valid in law, unless the person under 18 has been exempted by the high court by virtue of an application under section 33 of this Act.

## II. Rape

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### 'Sexual intercourse with a female- no consent'

Section 2 of the Criminal Law (Rape) Act, 1981 provides for the offence of rape which is  
Sexual intercourse by a man with a woman who does not consent to it.

### Rape under Section 4 of Criminal Law (Rape) (Amendment) Act, 1990

This sexual assault includes:

- a) penetration (however slight) of the anus or mouth by the penis or;
- b) penetration (however slight) of the vagina by any object held or manipulated by another person

### **III. Other forms of child sex abuse**

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#### **'Sexual intercourse with persons U.17'**

Sexual Intercourse with girls under the age of seventeen (17) years is rendered criminal by the following legislation:

(i) Section 1 of the Criminal Law Amendment Act, 1935 provides that it is an offence punishable by a maximum penalty of imprisonment for life to have unlawful carnal knowledge of a girl under the age of fifteen (15) years.

(ii) Section 2 of the Criminal Law Act, 1935 provides that it is an offence punishable by five (5) years imprisonment on first conviction and ten (10) years imprisonment on second conviction, to have unlawful carnal knowledge of a girl aged between fifteen (15) and seventeen (17) years.

In both these cases neither consent on the part of the female or mistake on the part of the male as to her age will afford any defence.

Section 3 of the Criminal Law (Sexual Offences) Act, 1993 provides that it is an offence to commit an act of buggery with any person under the age of seventeen (17) years. Consent does not provide a defence to a charge of buggery with a person under this age.

#### **'Sexual intercourse with a child within the family'**

The Punishment of Incest Act, 1908, creates the crime of incest, which may be committed by a male who has carnal knowledge of a female who is his mother, sister, daughter or granddaughter. The primary purpose of the Act is to outlaw sexual intercourse between certain blood relatives within the family.

There is no specific legislation in this jurisdiction dealing with sexual intercourse with a child committed by a teacher or other person having authority over the child.

#### **'Other forms of sexual abuse'**

(i) Section 2 of the Criminal Law (Rape) (Amendment) Act, 1990 provides for an offence known as sexual assault, which is an indecent assault upon any person.

(ii) Section 3 of the Criminal Law (Rape) (Amendment ) Act, 1990 provides for the offence of aggravated sexual assault which is a sexual assault that involves serious violence to the person assaulted.

## IV. Child prostitution

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Section 16 of the Children Act, 1908, as amended by Section 11 of the Criminal Law (Amendment) Act, 1935 provides that it is an offence for any person to allow a child between the ages of four (4) and seventeen (17) years to reside in or frequent a brothel.

'(i) It is an offence under Section 17 of the 1908 Act, as amended by Section 11 of the 1935 Act for a person having custody of care of a girl under the age of seventeen (17) years to cause or encourage the seduction, prostitution or unlawful carnal knowledge of her.

(ii) Section 3 of the Child Trafficking and Pornography Act, 1998, which prohibits child trafficking for the purpose of sexual exploitation, includes in the meaning of sexual exploitation, not only pornography, but also prostitution. The Act of 1998 provides that it is an offence punished by imprisonment for life, for any person to organise or knowingly facilitate the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation as well as the provision of accommodation for such a purpose. Any person who takes, detains, restricts the personal liberty of a child for the purpose of his or her sexual exploitation, uses a child for such a purpose, or organises or knowingly facilitates such taking, detaining, restricting or use shall be liable on conviction on indictment to imprisonment to a term not exceeding 14 years .'

## V. Child pornography

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The Irish Constitution, Art. 40(6)(1)(i) decrees that 'the publication or utterance of indecent matter is an offence which shall be punishable in accordance with law.'

The principle act dealing with the welfare of children is the Child Care Act, 1991 which defines a child as a person under the age of eighteen (18) years other than a person who is or who has been married (s.2(1)).

The Child Trafficking and Pornography Act, 1998 is dealing specifically with the matter of child pornography. It gives in the **Section 2 ss(1)** a definition of child pornography:

'Child pornography means: a) any visual representation

1. that shows or in a case of a document, relates to 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,

2. 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
3. whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child,

any audio representation of a person who is or is being represented as a child and who is engaged in or is represented as being engaged in explicit sexual activities,

any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or

any visual representation or description of, or information related 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 mechanical means but does not include:

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,

any film in respect of which a general certificate or a limited certificate under the Censorship of Films Acts, 1923 to 1993, is in force, or

any video work in respect of which a supply certificate under the video recording acts, 1989 and 1992, is in force... '

In the following subparagraphs, the Act gives a list and a definition of all the mediums that could be used for representing child pornography (documents, visual representation... ).

**The section 3** is related to sexual exploitation. In this section, 1998's Act describes the actions considered as child trafficking and taking in the purpose of a sexual exploitation:

**Section 3 ss(1)** 'Any person who organises or knowingly facilitates —

the entry into, transit through or exit from the State of child for the purpose of his or her sexual exploitation or 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.'

**Section 3 ss(2)** 'Any person who —

takes, detains, or restricts the personal liberty of a child for the purpose of his or her sexual exploitation, uses a child for such a purpose, or 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 term not exceeding 14 years.'

The definition of sexual exploitation is given in **Section 3 ss(3)**. According to this subsection sexual exploitation means '... inducing or coercing the child to engage in prostitution or the production of child pornography, using the child for prostitution or the production of child pornography, inducing or coercing the child to participate in any sexual activity which is an offence under any enactment, or the commission of any such offence against the child.'

**Section 4** deals with the liability of the persons having the custody, charge or care of a child and allowing him or her to be used for pornography:

**Section 4 ss(1)** '... 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 of indictment to a fine not exceeding £25,000 or to imprisonment to a term not exceeding 14 years or both.'

**ss(2) §(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 a child by reason only that he or she has deserted, or does not reside with, the other parent and child,

**ss(2) §(b)** any person to whose charge a child is committed by any person who has the custody of a child shall be presumed to have the charge of the child, and

**ss(2) §(c)** any person exercising authority over or having actual control of a child shall be presumed to have care of the child .'

**The sections 5 and 6** concern the production, the distribution and the possession of child pornography:

**Section 5 ss(1)** '... any person who —

knowingly produces, distributes, prints or publishes any child pornography,

knowingly imports, exports, sells, or shows any child pornography,

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,

encourages or knowingly causes or facilitates any activity mentioned in a), b) or c),  
or

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.'

**Section 6** prohibits the possession of child pornography: '... any person who knowingly possesses any child pornography 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 not exceeding £5,000 or to imprisonment for a term not exceeding 5 years or both.'

### **Sexual Offences (Jurisdiction) Act, 1996**

In order to extend the Criminal law of the State to sexual acts involving children done outside the State by citizens of the State or by persons ordinarily resident in the State (the conditions are to have his or her principal residence within the State for a period of 12 months immediately preceding the commission of the offence Section 2 ss 7), the Sexual Offences Act 1996 provides that a person being a citizen of the State, does an act or attempt to do an act, in a place other than the State, against or involving a child which -

- constitutes an offence under the law of the place, and
- if done within the State, would constitute an offence under or referred to in, an enactment specified in the Schedule of this Act,

-he or she shall be guilty of the second mentioned offence.

Offences, according to this Act are:

1. to aid, to abet, to counsel or to procure, in the State or outside the State for a person being a citizen of the State, the commission of an offence (Section 2 ss 3,4).
2. to conspire, to incite, in the State or outside the State, another person to commit an offence (Section 2 ss 5,6).
3. to transport a person in the State or outside the State for purposes of enabling the commission of an offence (Section 3 ss 1,2).
4. to publish informations likely to promote, advocate or incite the commission of an offence (Section 4)

The 1996's Act includes also offences which would be committed by body corporates (Section 5).

The penalties required for the dispositions of Section 3, 4, 5 are: for a summary conviction a fine not exceeding £1,500 or an imprisonment for a term of 12 months or both, and for a conviction on indictment, a fine not exceeding £10,000 or an imprisonment for a term not exceeding 5 years or both.