Coimisiún na hÉireann um Chearta an Duine agus Comhionannas
Irish Human Rights and Equality Commission

An Rapóirtéir Náisiúnta um Gháinneáil ar Dhaoine a Chosc
National Rapporteur on the Trafficking of Human Beings

Part 4 and Part 5 of the General Scheme of the Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025

Irish Human Rights and Equality Commission

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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Introduction

About the Commission

The Irish Human Rights and Equality Commission ('the Commission') is both the 'A' status national human rights institution and the national equality body for Ireland.[1] In accordance with our founding legislation, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to examine any legislative proposal and report our views on any implications for human rights or equality.

In October 2020, we were designated Ireland's Independent National Rapporteur on the Trafficking of Human Beings pursuant to Article 19 of the European Union's 2011 Anti-Trafficking Directive.[2]. Our Strategy Statement 2025–2027 has the specific aim of maintaining and continuing to fulfil, at an expert level, our role as Independent National Rapporteur on Trafficking of Human Beings.[3]

The Commission has also been designated the Independent Monitoring Mechanism ('IMM') for Ireland under the United Nations Convention on the Rights of Persons with Disabilities ('UNCRPD').[4] We expect to be assigned the role of Co-ordinating National Preventive Mechanism ('NPM') under the Optional Protocol to the Convention against Torture, pending ratification.[5] Alongside Northern Ireland's national human rights and equality bodies, we have a mandate to consider and report on equality and human rights issues with an island of

[1] The Commission was established under the Irish Human Rights and Equality Commission Act 2014. IHREC is an 'A' status national human rights institution in accordance with the UN Paris Principles and the Global Alliance of National Human Rights Institutions Statute.
[2] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
[3] IHREC (2025) Strategy Statement 2025–2027
[4] Section 103 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022 amends section 10(2) of the Irish Human Rights and Equality Commission Act 2014 to provide that one of our functions is to promote and monitor the implementation in the State of the UNCRPD
[5] To be provided under the Inspection of Places of Detention Bill, when enacted.

Ireland dimension.[6] We also have legal powers under the Gender Pay Gap Information Act 2021,[7] and a role in relation to the EU Artificial Intelligence Act.[8]

Purpose and scope of this submission

This submission is from the perspective of the Commission as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. As such, it engages with Parts 4 and 5 of the **General Scheme of the Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025**[9] **('General Scheme')** which relate to human trafficking. It does not engage or address all elements of the **General Scheme**. The fact that we do not address an issue or Head within this submission should not be considered as an endorsement of relevant provisions.

This submission has been prepared within limited timeframe and relates to complex legislative provisions of EU and domestic law. We intend to engage in additional analysis as there are further developments in respect of transposition. Civil society groups active in the area of trafficking do not appear to have been invited to engage in pre-legislative scrutiny of the **General Scheme** despite having critical perspectives.[10]

The **General Scheme** is stated to:

> "bolster our legislation on preventing and combating human trafficking"

and to contain measures to transpose EU Directives on combating human trafficking.[11]

[6] We work with the Northern Ireland Human Rights Commission (NIHRC) in the Joint Committee, as set out in the Belfast Good Friday Agreement. Following the UK's withdrawal from the EU, we, along with the NIHRC and the Equality Commission for Northern Ireland (ECNI) comprise the Article 2(1) Working Group of the Dedicated Mechanism. This group is mandated to provide oversight of, and report on, rights and equality issues falling within the scope of the Article 2 [Windsor Framework] commitments that have an island of Ireland dimension
[7] Gender Pay Gap Information Act 2021
[8] We have been included in a list of nine national public authorities responsible for protecting fundamental rights (Article 77 bodies) under the EU Artificial Intelligence Act. Department of Enterprise, Trade and Employment (2024) Minister Calleary Announces Key Milestone in the Implementation of the EU Regulation on AI (2024)
[9] Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025 General Scheme
[10] IHREC consultation with civil society organisations on 20 November 2025.
[11] Department of Justice, Home Affairs and Migration (29 October 2025) Minister Jim O'Callaghan secures government approval to progress the Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025.

The **General Scheme** makes direct reference to Directive (EU) 2024/1712 ('amended Directive') amending Directive 2011/36/EU ('original Directive') on preventing and combating trafficking in human beings and protecting its victims.[12]

Article 1 of the amended Directive makes clear that it is the main EU legal instrument on preventing and combatting trafficking in human beings and protecting its victims. The amended Directive constitutes a significant development in the response to trafficking and will shape anti-trafficking measures, policies, legislation, and actions in coming years. It introduces new legal obligations and minimum standards on Ireland and all Member States in their response to trafficking.[13] It includes common provisions to strengthen the prevention of trafficking, the assistance provided to victims, as well as their protection, taking into account gender, disability and children's perspectives, and using a victim-centred approach.[14] The deadline for transposition is 15 July 2026.

The overall legal framework to address and combat trafficking has evolved in a piecemeal manner to date and the Commission recommends a root-and-branch review of the Irish law relating to trafficking and exploitation to underpin and facilitate a coherent and consistent approach. While our overarching recommendation is for such a root-and-branch review, the purpose of this submission is to provide succinct and focused expert input from an anti-human trafficking perspective into the **General Scheme** with reference to the amended Directive. The core focus is on legislative amendments required to properly transpose the amended Directive. Broader policy recommendations are set out in detail in our previous publications.[15]

Head 7: Amendment to the Criminal Law (Human Trafficking) Act 2008 and Head 8: Amendment to the Criminal Law (Human Trafficking) Act 2008 in the **General Scheme** refer to

[12] Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

[13] The Commission previously identified an urgent need for EU-level guidelines on the transposition of the recast Directive, including a common understanding of the new concepts. To our knowledge, no such guidelines have issued to date. IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation on the Implementation of the EU Anti Trafficking Directive. p.321.

[14] Recital 13. Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

[15] See in particular IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation on the Implementation of the EU Anti Trafficking Directive

trafficking and therefore relate directly to transposition of the amended Directive. This is notwithstanding the several additions provided for in the amended Directive which, in our view, necessitate legislative changes to ensure optimal transposition, and to support and contribute to a strengthened approach by the State to combatting trafficking. Our submission comments on the relevant Heads and necessarily comments on the multiple and significant gaps in the **General Scheme** with reference to relevant Articles of the amended Directive. It provides recommendations on the key issues arising.

Finally, it is imperative that this short submission be considered in the context of recent publications of the National Rapporteur, which directly address the scope of the amended Directive and the steps required for optimal transposition which are all available online, linked below.[16]

[16] IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation on the Implementation of the EU Anti Trafficking Directive. IHREC (2025) Submission to the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings Fourth Evaluation Round

Forms of exploitation

It is important that any legislative change reflects the purpose and intent of the Directive in respect of the new forms of exploitation.

Article 2 of amended Directive adds three new forms of exploitation to the non-exhaustive list contained in Article 2(3): exploitation of surrogacy,[17] of forced marriage, and of illegal adoption.[18] No clear definitions of the additional forms of exploitation are set out in the amended Directive. The amended Directive states that definitions of the concepts of 'forced marriage', 'surrogacy', illegal adoption' must take account of relevant domestic legal provisions.[19] Domestic legislation does not provide clear definitions of these additional forms as they relate to human trafficking.

Head 7 of the General Scheme proposes amendment to the Criminal Law (Human Trafficking) Act 2008 ('the 2008 Act') to expand the definition of 'exploitation' to mean 'exploitation of surrogacy', 'exploitation of forced marriage', and 'exploitation of illegal adoption'.

Such amendment is welcome however the legislation must include definitions of each of these forms of exploitation in line with the approach in the 2008 Act on other forms of

[17] Article 2(5) of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims indicates that while exploitation of surrogacy 'involves a child' in a broad sense, the 'means' criterion must be fulfilled in order for it to be considered an instance of trafficking under the Directive, unless the surrogate mother is a child. Part 8 of the Health (Assisted Human Reproduction) Act 2024 provides for recognition and regulation of international surrogacy. Part 8 has not yet been commenced. It provides for the recognition of international surrogacy arrangements through a two-stage process of pre-authorisation by the Assisted Human Reproduction Regulatory Authority, followed by the granting of a Parental Order once certain conditions have been met, amongst several other regulatory provisions. Exploitative surrogacy is explored in IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation on the Implementation of the EU Anti Trafficking Directive p.319 to 344.

[18] Recital 6 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims states that these new forms of exploitation can already fall within the scope of offences concerning trafficking in human beings as defined in Directive 2011/36/EU but it was nonetheless decided to expressly include these forms of exploitation due to the "gravity of these practices" and the "steady increase" in these other of exploitation. Also see Council of the EU (2024) 'Fight against human trafficking: Council and European Parliament strike deal to strengthen rules' (23 January 2025).

[19] Recital 6 also indicates that amendments to Directive 2011/36 are without prejudice to the definitions of marriage, adoption, forced marriage and illegal adoption or to those offences related thereto other than trafficking, where provided for in national or international law. The rules are also stated to be without prejudice to the national rules on surrogacy, including criminal law or family law.

exploitation.[20] The definitions must be consistent across other pieces of trafficking legislation, including the Criminal Law (Sexual Offences and Human Trafficking) Act 2024 ('the 2024 Act') which has not yet commenced.[21]

Heads 9, 10 and 11 of the General Scheme provide for amendments relating to jurisdiction but do not address trafficking *per se* and relate only to forced marriage and domestic violence. Issues in relation to jurisdiction are considered below.

Article 3 of the original Directive is unchanged by the amended Directive. It is relevant however to transposition as it requires Member States to take the necessary measures to criminalise offences referred to in Article 2. Legislation transposing the amended Directive will therefore require corresponding offences of inciting, aiding and abetting, and attempting to commit the new forms of exploitation i.e. illegal adoption, forced marriage and exploitation of surrogacy. The **General Scheme** does not currently provide for such amendments.

The Commission recommends that the Criminal Law (Human Trafficking) 2008 Act (as amended) and the Criminal Law (Sexual Offences and Human Trafficking) Act 2024 are amended to expressly include the exploitation of forced marriage, the exploitation of surrogacy, and the exploitation of illegal adoption, including definitions of each new form of exploitation in the context of human trafficking.

The Commission recommends that the State:

> urgently reviews Part 8 of the Health (Assisted Human Reproduction) Act 2024 against obligations of the amended Directive; and

[20] Section 1 of the 2008 Act provides for a definition of 'exploitation' which encompasses various forms of exploitation; it then provides for specific definitions of 'labour exploitation' and 'sexual exploitation' to indicate how these forms of exploitation must be interpreted in the context of human trafficking.
[21] Part 3 of the 2024 Act provide for a new National Referral Mechanism but the provisions have not yet been commenced. Section 20, similar to section 1 of the 2008 Act, provides for definitions of certain forms of exploitation including 'labour exploitation'.

> Provides for the planned review process of the provisions of the Health (Assisted Reproduction) Act 2024 including specifically relating to international surrogacy. [22]

The Commission recommends amendment of the Criminal Law (Human Trafficking) Act 2008 to provide for the expanded definition in Article 2 and therefore provide for the corresponding offences of inciting, aiding and abetting, and attempting to commit the inclusion of the offences of newer forms of exploitation.

[22] Section 6 of the Health (Assisted Human Reproduction) Act 2024 sets out a statutory basis for such a review no later than three years following passing of the Act. IHREC (2024) '*The review of how the legislation is operating will be critically important. As such, the Commission recommends that a Review Process be established before the commencement of the provision relating to international surrogacy. This review process must be fully independent, sufficiently funded, and given access to all relevant information and data. Annual interim reports, and the final report must be made public.*' IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation on the Implementation of the EU Anti Trafficking Directive p.343-344

Supports and assistance for victims of trafficking

The 2024 Act will provide for a new National Referral Mechanism for victims of trafficking but only provides that services and 'assistance with' accommodation *may* be made available to a presumed or identified victim of trafficking.[23] Article 11 of the amended Directive obliges Member States to implement a National Referral Mechanism. It also places a specific and further obligation on Member States to provide specialised assistance and support, and appropriate and needs-based accommodation to presumed and identified victims.[24]

The amended Directive requires Member States to take a

> "victim-centred, gender-, disability- and child-sensitive approach".[25]

The amended Directive does not include a definition of such an approach. The Commission has previously articulated a victim-centred approach is one which puts the needs of the victim at the centre of the response, and prioritises the victim's interests over other policy objectives, including the victim's cooperation with criminal proceedings.[26]

[23] Section 32 of the Criminal Law (Human Trafficking and Sexual Offences) Act 2024 makes reference to support which may be available to a presumed victim or identified victim of trafficking, including: social welfare benefits; assistance with accommodation; civil legal aid; supports for access to education, training and employment opportunities; the services of the Child and Family Agency (when the victim is a child); information and advice from a competent authority or trusted partner including on rights and entitlements; and assistance with voluntary return to their country of origin, if requested. Section 32(3) states that nothing in the section shall be construed as imposing an obligation on any competent authority, trusted partner, relevant body or other person to provide any service or entitling them to receive any service. This further reinforces that the Act does not provide for a mandatory obligation to make such supports available to victims notwithstanding the wording of the amended Directive.

[24] Article 11 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims requires Member States to make specific provision for presumed and identified victims, specifically: the provision of specialised assistance and support to victims in a victim-centred, gender-, disability- and child-sensitive approach; the establishment of national referral mechanisms; the provision of shelters and other interim (short-term) accommodation in sufficient numbers for presumed and identified victims, equipped to accommodate the specific needs of victims, including child victims; and, the provision of information on a reflection and recovery period and on the application for international protection.

[25] Recital 3. Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

[26] In its Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct | UNHCR UN High Commissioner for Refugees has articulated a victim-centred approach as a way of engaging with victims that prioritizes listening, avoids re-traumatization, and systematically focuses on their safety, rights, well-being, expressed needs and choices. It states that the purpose of such an approach is to give back as much control to victims as feasible and ensure empathetic delivery of services in a non-judgmental manner. A joint NGO

In respect of accommodation, Article 11(5a) of the amended Directive obliges Member States to ensure that "*shelters and other appropriate interim accommodation*" shall be provided in "*sufficient numbers*", be "*easily accessible*" and must provide "*adequate and appropriate living conditions with a view to a return to independent living*" and be equipped to accommodate the specific needs of children.[27]

The provisions of the 2024 Act, albeit not commenced, are manifestly not consistent with the amended Directive and fail to adequately transpose Article 11 in several respects. The **General Scheme** fails to address this gap.

If not appropriately amended, the provisions may give rise to a serious breach of a binding European Union law obligation.

The new Article 11a of the amended Directive mandates Member States to ensure complementarity and coordination between the authorities involved in anti-trafficking activities and the asylum authorities.[28] Under the current Administrative Immigration Arrangements, victims of trafficking cannot simultaneously apply to become a recognised victim and apply for International Protection;[29] the revised NRM as provided for in the 2024 Act does not prevent this simultaneous application. [30] As previously indicated, the 2024 Act has not yet been commenced and there is no clear timeline for commencement.

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statement published in response to the revised Directive made reference to such an approach and stated*: "A real human rights-based approach detaches victim's identification and assistance from participation in criminal proceedings and places their interests and their support and protection of their rights at the centre. Such an approach will ultimately lead to reduced vulnerabilities, fewer re-trafficking cases, more credibility of State protection systems, and safer communities."* La Strada International, Platform for International Cooperation on Undocumented Migrants, European Council on Refugees and Exiles, Global Alliance Against Traffic in Women, '*Joint NGO Statement on recast EU Anti-Trafficking Directive'* (25 April 2024), p.3-4.

[27] Article 11(5) corresponds broadly with the language of Article 12(1)(a) of the Council of Europe Convention on Action against Trafficking in Human Beings, which refers to 'appropriate and secure accommodation'

[28] Recitals 19, 20 and 21 of the Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims are relevant to the obligation created by the new Article and acknowledge the specific situation of vulnerability of victims of trafficking who can be in need of international protection, recognise the risk of being re-trafficked when victims are transferred to another Member State, and make clear reference to the right of victims of trafficking to apply for international protection or equivalent national status.

[29] The Administrative Immigration Arrangements only apply to those who have no permission to be in the State, and applicants for International Protection have a permission under section 16 of the International Protection Act 2015. Department of Justice, 'Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking'.

[30] Criminal Law (Human Trafficking and Sexual Offences) Act 2024

The International Protection Bill 2025 will transpose the elements of the EU Migration and Asylum Pact which the State has opted into. Article 11a of the amended Directive obliges the State to ensure that victims of trafficking are able to exercise their right to apply for international protection, including when the victim is receiving assistance, support and protection as a presumed or identified victim of trafficking in human beings.[31] The International Protection Bill 2025 does not clearly address alignment with the amended Directive to ensure the State's obligations to presumed and identified victims of trafficking in the domestic provisions implementing the Pact are met.[32] These issued are not addressed in the **General Scheme**, providing a further lack of legal clarity and potential gaps in transposition.

To allow for detection and early identification of victims of trafficking as mandated by Article 11(4) of the 2024 Anti-Trafficking Directive, the Commission recommends that the State urgently amends the International Protection Bill 2025 to make provision for the exemption of international protection applicants who are presumed or identified victims of trafficking from the asylum border and accelerated procedures.

The Commission recommends that the State ensures the alignment of the International Protection Bill 2025 with legislation or legislative amendments transposing the 2024/1712 EU Anti-Trafficking Directive, paying particular regard to the mandatory obligations on the State contained in Article 11.

The Commission recommends that the State amends relevant laws, including the Criminal Law (Sexual Offences and Human Trafficking) Act 2024, to bring them into compliance with Article 11 of the 2024 Anti-Trafficking Directive.

[31] Article 11, Recital 21 Directive (EU) 2024/1712

[32] The Joint Committee on Justice, Home Affairs and Migration 'Report on Pre-Legislative Scrutiny of the General Scheme of the International Protection Bill 2025' (December 2025) states: *"The Committee recommends that Part 12 be amended to exempt the following categories of applicants from the Asylum Border Procedure: unaccompanied and separated children, victims of trauma or trafficking and persons with disabilities, and persons with serious medical issues, including mental health issues."* (p.6).

The Commission recommends that the Bill should specifically mandate provision of:

- appropriate and safe accommodation that is easily accessible to presumed and identified victims;
- adequate and appropriate living conditions to support survivors return to independent living;
- accommodation to meet the specific needs of children, including child victims; and
- specialised services and assistance.

The Commission recommends that the State puts on a statutory basis the right for presumed and identified victims of trafficking to apply for international protection, including when receiving assistance, support, and protection as a presumed or identified victim of trafficking in human beings, as mandated by Article 11a of the 2024 Anti-Trafficking Directive.

The Commission recommends that the Criminal Law (Sexual Offences and Human Trafficking) Act 2024 is amended to provide for a victims' right to specialised assistance and support that is victim-centred, gender-, disability- and child-sensitive[33] and that their statutory right to support is not made conditional on their willingness to cooperate with the criminal investigation, prosecution or trial.[34]

[33] Article 11(1), Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

[34] Article 11(3), Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Non-prosecution principle or non-application of penalties to the victim

Article 8 of the original Directive obliges Member States to take measures to ensure for the non-prosecution or punishment of victims of trafficking for criminal activities, which victims may have been compelled to commit as a direct consequence of their trafficking. The amended Directive extends the non-prosecution principle to 'other unlawful activities', making reference in Recital 14 to 'administrative offences'.[35]

There is currently no statutory defence available to victims of trafficking in Irish criminal law where they have committed an offence as a direct consequence of being trafficked.[36] There are very limited protections forthcoming in the 2024 Act: Section 36 of the 2024 Act will give limited statutory effect to the non-prosecution and non-punishment principles by limiting the secondary criminal liability of victims of human trafficking with respect to offences under that Act; Section 5A of the 2024 Act prevents prosecution of a victim of human trafficking for the offence of assisting in his or her own trafficking.

Legislation in England and Wales provides for such a statutory defence.[37] In Ireland, prosecutors can rely on internal Guidelines for Prosecutors which provide for the consideration of the public interest and mitigating factors, such as coercion, when deciding whether to charge an individual with a crime.[38] Notwithstanding these guidelines, some

[35] Recital 14 of the Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims provides some guidance on the scope of 'other unlawful activities' and references administrative offences related to prostitution, begging, loitering or undeclared work, or other acts which are not criminal in nature but are subject to administrative or pecuniary penalties. Changes made to the text of Article 8 brings it in closer alignment with the non-prosecution provision in the Council of Europe Convention on Action against Trafficking in Human Beings, in terms of application of the principles to "*unlawful activities*" above and beyond violations of criminal law.

[36] Section 36 of the 2024 Act, when commenced, will give very limited statutory effect to the non-prosecution and non-punishment principles by limiting the secondary criminal liability of victims of human trafficking with respect to offences under that Act. The effect of section 5A of the 2024 Act is very limited in that it only prevents prosecution of a victim of human trafficking for the offence of assisting in his or her own trafficking.

[37] In England and Wales a statutory defence is available to victims pursuant to Section 45 of the Modern Slavery Act 2015. This provides a defence for slavery or trafficking victims who are over 18 when the offence is committed and is available when: they are compelled to do the act, the compulsion is attributable to relevant exploitation, and where a reasonable person in the same situation would have no realistic alternative to doing the act and where they may be compelled to do something by another person or by the person's circumstances, and the compulsion is relevant to relevant exploitation.

[38] Office of the Director of Public Prosecutions (2019) Guidelines for Prosecutors

victims of trafficking continue to be prosecuted and punished for acts committed as a direct consequence of their situation as trafficked persons or which they were compelled to commit.[39]

Administrative offences do not exist in Ireland in the same manner as in civil law jurisdictions. There are no 'administrative' offences related to prostitution, begging or loitering in Irish law rather these are ordinary offences.[40] Irish law provides for a range of regulatory offences which can be prosecuted by regulatory agencies without reference to the Director of Public Prosecutions or An Garda Síochána, relating, for example to employment permits or social welfare fraud.

The Guidelines for Prosecutors referenced above do not apply to regulatory prosecutions. It is not clear, in these circumstances, how decision-makers can apply the non-prosecution and non-punishment principles in the exercise of their prosecutorial power if engaged with the case of a victim of trafficking.

The **General Scheme** makes no reference or provision for the non-prosecution and non-punishment principle for victims of trafficking in human beings for their involvement in criminal or other unlawful activities which they have been compelled to commit as a direct consequence of being trafficked, as provided for in Article 8 of the amended Directive. This presents a further gap in transposition of the amended Directive.

The Commission reiterates its recommendation that to adhere to the non-prosecution and non-punishment principles contained in the amended Directive, the Criminal Justice (Sexual

[39] The 2025 Trafficking in Persons Report recommended that victims of trafficking not be inappropriately penalised solely for the unlawful acts committed as a direct result of being trafficked, especially in cannabis production facilities. It reported '*A government-funded report, international organizations, and experts, including the 2022 GRETA report, raised concerns that the number of victims formally identified by police did not represent the true scale of trafficking in Ireland and left many unidentified victims to face penalization or deportation*.' '*the government remained without a specific legal provision to ensure victims were not inappropriately penalized solely for unlawful acts committed as a direct result of being trafficked' 'The decision to prosecute a trafficking victim rested entirely with the ODPP and was not subject to scrutiny. NGOs noted the process for victims to seek immunity from punishment for criminal activity as a result of trafficking was complex and required early legal representation. If authorities prosecuted an individual before they were formally identified as a trafficking victim, their criminal record could not be expunged. In 2024, NGOs continued to report officials arrested and charged potential victims found in cannabis production facilities*.' US State Department (2025) Trafficking in Persons Report: Ireland

[40] These ordinary offences can be prosecuted by the DPP under the Prosecution of Offences Act 1974 or by AGS under section 8 of the Garda Síochána Act 2005.

Offences and Trafficking) Act 2024 should amend the Criminal Law (Human Trafficking) Act 2008 to include a specific statutory defence for victims of trafficking where they have committed crimes as a direct consequence of them being trafficked.

The Commission recommends that the State legislates for application of the non-prosecution and non-punishment principles in the exercise of prosecutorial power in the context of regulatory and/or civil offences and issues related guidance for decision makers.[41]

[41] Article 8 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims: Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal or other unlawful activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.
Recital (14) of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims: Directive 2011/36/EU sets out the possibility of non-prosecution of, and the non-application of penalties to, victims of trafficking in relation to criminal offences that they have been compelled to commit as a direct consequence of being subject to trafficking. It is appropriate to expand the scope of the relevant provision to all unlawful activities that victims have been compelled to commit as a direct consequence of being subject to trafficking, such as administrative offences related to prostitution, begging, loitering or undeclared work, or other acts which are not criminal in nature but are subject to administrative or pecuniary penalties, in accordance with national law, in order to further encourage the victims of trafficking to report the crime or seek support and assistance, and to reassure them of the possibilities of not being held responsible.

Liability and penalties

Article 18a: Criminalising Users of Services of Trafficked Victims

The new Article 18a[42] imposes a mandatory requirement on Member States to create a criminal offence for using a service with the knowledge that it is provided by a victim of trafficking.[43]

Ancillary amendments to Articles 5, 6, and 10 require that legal persons can be held criminally liable[44] for knowing use of services and have sanctions imposed,[45] and that this offence is subject to the rules on jurisdiction contained in Articles 10(1) and (2) in the same manner as other trafficking offences.[46]

Article 18a appears to be broadly framed as encompassing services provided by victims of *all* forms of exploitation that are covered by Article 2.[47] Due to the provision's applicability to legal persons, this provision may also cover companies who use the services of victims of trafficking to produce goods.

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[42] Article 18a of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims states '…where the victim is exploited to render such services and the user of the services knows that the person providing the service is a victim of an offence referred to in Article 2.'.

[43] Recital 26 of the Directive 2024/1712 sets out that the objective of the new mandatory criminalisation is to 'develop a coherent policy response to tackle demand that fosters trafficking in human being, and to further reinforce and harmonise the criminal justice efforts across Member States to reduce such demand'.

[44] Articles 5(1), Article 5(2) and Article 5(3) Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

[45] Article 6 (2) of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

[46] Recital 27 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims outlines important guidance on inferring 'knowledge'. It provides that knowledge can be inferred from certain objective, factual circumstances and these can be taken into account in the course of an investigation and/or prosecution of this offence. These circumstances can be as follows: the victims themselves; the conditions under which services are provided; signs of control of a trafficker over the victims; lack of proficiency in a national or regional language; manifest signs of psychological or physical harm or of fear; or the lack of knowledge of the area where they are or have been. The living standards and working conditions of the provider of the service can be taken into account and the condition of the premises where services are provided. It is important to note that knowledge is to be interpreted in line with national law.

[47] Recital 26 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims clarifies that Article 18a targets the knowing use of "*services provided within the framework of exploitation that are covered by the offence of trafficking in human beings*", appearing to be broadly framed as encompassing services provided by victims of *all* forms of exploitation that are covered by the anti-trafficking framework (i.e., including sexual exploitation, forced labour or services, exploitation of forced marriage, of illegal adoption, or of surrogacy) under Article 2 of the amended Directive.

Head 8 of the General Scheme proposes an amendment of section 5 of the 2008 Act with the insertion of section 5A creating the offence of knowingly using the services of a victim of trafficking where the victim of trafficking is exploited to render such services.

Section 5 of the 2008 Act currently states:

> "Soliciting or importuning for purposes of prostitution of trafficked person."

Section 5 does not encompass services resulting from all types of exploitation as required by 18(a). Section 5 is not covered by the provisions relating to jurisdiction contained in section 7.

While provision of a legislative amendment at **Head 8 in the General Scheme** is welcome, the provision as proposed as '5A' links it to section 5 of the 2008 Act and therefore appears to limit its application and not encompass services resulting from all types of exploitation.

The defence contained at section 5(4) of the current 2008 Act to the effect that the person had 'no reasonable grounds to believe' that the person was a victim of trafficking, may hinder prosecutions for this offence.[48] The important contextual information on the interpretation of 'knowledge', contained in Recital 27 of the amended Directive should be taken into consideration.[49]

Any legislative amendment or new provisions should capture the full scope of 'services' under Article 18a with summary offences that are effective, proportionate and dissuasive as required by the amended Directive.

[48] On the experience in EU Member States, see Commission Evaluation, at 23. As of 2023, only one Member State (CY) had a strict liability standard for the use of services from victims of sexual exploitation. Two Member States (DE and FI) require knowledge or a standard similar to serious negligence. However, "the data from these Member States that adopt stricter approaches does not show higher numbers of prosecution or convictions, in comparison to Member States that adopt the knowing use approach." IHREC proposed in its Third Evaluation Report that the concept of 'recklessness' must be considered in the context of the transposition of Article 18a, in order "to make the evidential burden more practicable, thus making the offence of the knowing use of services provided by victims of trafficking easier to prove" IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation on the Implementation of the EU Anti Trafficking Directive

[49] Recital 27 of the Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

Article 4: Penalties

Article 4 is amended to add reference to 'physical or psychological harm' as elements of serious harm to a victim[50] and to oblige Member States to provide for certain aggravating circumstances in the context of offences.[51] The reference to 'physical and psychological harm' is not currently provided for in Irish law. The provisions of the amended Directive under Article 4(2) could be incorporated through amendment of the 2008 Act to expressly include such. The **General Scheme** makes no reference to the new provision regarding 'physical and psychological harm' or any such amendments.

In relation to aggravating circumstances referenced in the amended Directive, Irish trafficking-specific legislation does not clearly provide for ICT-facilitated dissemination as an aggravating factor.[52,] Treating the fact that such an offence was committed against a person who had been trafficked as an aggravating factor would require legislative amendment.[53] This is not provided for in the **General Scheme** but could be incorporated through an amendment to the 2008 Act.[54]

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[50] Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims where the offence '(d) was committed by use of serious violence or has caused particularly serious harm to the victim, *including physical or psychological harm' (emphasis added)*.[50] Pursuant to Article 4(2) Member States are now obliged to take the necessary measures to ensure that such an offence is punishable by a maximum penalty of at least 10 years imprisonment when the particularly serious harm caused to the victim includes physical or psychological harm. Article 4(3) of the amended Directive requires Member States to provide in national law for certain aggravating circumstances.
IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, p. 85

[51] Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims at Article 4(3) requires the State to recognise that offences committed by a public official in the course of their duties and the dissemination by the perpetrator of image or videos or similar material of a sexual nature involving the victim be recognised as aggravating circumstances.

[52] Article 4(3) of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims adds reference to an aggravating factor where the offence was committed by public officials in the performance of their duties. This appears to be addressed in section 4A of the 2008 Act.
Harassment, Harmful Communications and Related Offences Act 2020 (the 2020 Act) provides for an offence but not in a trafficking context. IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, p. 85

[53] IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, p. 85

[54] The 2008 Act could be amended to include that the perpetrator facilitated or committed, by means of information and communication technologies, the dissemination of images or videos or similar material of a

Articles 5 and 6: Liability of Legal Persons and Sanctions on Legal Persons

Article 5 of the amended Directive adds reference to Article 18(a)(1). It relates to the liability of legal persons, rather than natural persons.

As noted, **Head 8 of the General Scheme** proposes an amendment to the 2008 Act incorporating the offence in relation to 'knowing use' through insertion of section 5A. Section 6 of the 2008 Act states that where an offence under the Act is committed by a body corporate, they shall be guilty of an offence. This appears to provide for liability of legal persons in respect of 'knowing use'.

A separate question arises as to whether the proposed sanctions for any such offences would be effective, proportionate and dissuasive against legal persons as is required by Article 6 of the amended Directive.[55]

Irish law appears to comply with Article 6(2)'s minimum requirement that criminal or non-criminal fines be *capable* of being imposed on bodies corporate however few of the optional sanctions listed in that amended Article are provided for in law.[56] This could be remedied by amendment through the **General Scheme.** For example, Irish law contains no provision for the winding-up of a legal person as a sanction for a trafficking offence, although the High

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sexual nature involving the victim as an aggravating factor when it comes to the sentence to be imposed by the court. This would align with the approach taken in respect of public officials. The 2020 Act provides an example of how this could be implemented. Section 11(a) of the 2020 Act inserted Sections 40(5) and (aa) amending the Domestic Violence Act 2018 where the relationship between the defendant and victims is an aggravating factor in sentencing for certain offence, including offences contained in the 2020 Act. IHREC (2024) Trafficking in Human Beings in Ireland. Third Evaluation of the Implementation of the EU Anti-Trafficking Directive, p. 85

[55] Recital 12 of the Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims states that as well as enhancing the criminal justice approach in respect of legal persons, the amendments to Article 6 are intended to bring the EU Anti-Trafficking Directive "in line with other Union criminal law instruments". The low rate of detection, prosecution and conviction of trafficking offences make it difficult to assess of the effectiveness of the current rules against this legal threshold in the amended Directive.

[56] The sanctions referred to in Article 6(2) of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims include (a) exclusion from entitlement to public benefits or aid; (b) exclusion from access to public funding, including tender procedures, grants, concessions and licences; (c) temporary or permanent disqualification from the practice of business activities; (d) withdrawal of permits and authorisations to pursue activities that resulted in the relevant offence; (e) placing under judicial supervision; (f) judicial winding-up; (g) closure of establishments used for committing the offence; (h) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the sanctions or measures imposed, without prejudice to rules on privacy and the protection of personal data.

Court has the power to wind up a company in certain circumstances.[57] In addition, there is no provision in Irish law for 'judicial supervision' or temporary or permanent disqualification from the practice of commercial activities – save in the context of winding-up a company, where the director can be restricted in certain circumstances.[58]

Overall, the area of sanctions for legal persons is under explored and would benefit from comprehensive review to ensure alignment with Article 6.

Article 10: Jurisdiction

Article 10 of the amended Directive addresses extra-jurisdictional obligations and has been expanded to include Article 18(a) and the offences referred to in Article 2 and 3. Member States are therefore obliged to take the necessary measures to establish their jurisdiction, including outside of its territory, over the offences of trafficking for the purposes of the additional forms of exploitation, namely forced marriage, illegal adoption and exploitation of surrogacy, and provide for mandatory penalties for persons (including legal persons) who knowingly use services of victims of trafficking.[59]

There is no reference to extra-territorial application of these offences at **Head 8 or under any other Heads of the General Scheme**. Legislative amendment is needed to provide for transposition of Article 10 of the amended Directive. Section 7 of the 2008 Act should be amended to ensure it is consistent.

The Commission recommends that the important contextual information on the interpretation of 'knowledge', contained in Recital 27 of the amended Directive is reflected in the interpretative provisions of General Scheme of the Criminal Law (Sexual Offences, Domestic Violence and International Instruments) Bill 2025.

The Commission recommends that amending legislation implementing Article 18(a) of the 2024 Anti-Trafficking Directive reflect the interpretative guidance on 'knowing use' of a service

[57] Section 569(1)(g) of the Companies Act 2014 (as amended).
[58] IHREC (2023) Trafficking in Human Beings in Ireland. Second Evaluation of the Implementation of the EU Anti-Trafficking Directive, p. 73

provided by a victim of trafficking as contained in Recital 27 of the 2024 Anti-Trafficking Directive.

The Commission recommends that the Criminal Law (Trafficking) Act 2008 (as amended) is amended to include when an offence referred to in Article 2, has 'caused particularly serious harm to the victim, including physical or psychological harm' , it includes penalties which are effective, proportionate and dissuasive

The Commission recommends that the Criminal Law (Human Trafficking) Act 2008 (as amended) is amended to provide for an aggravating factor when a perpetrator has facilitated or committed, by means of information and communication technologies, the dissemination of images or videos or similar material of the victim of a sexual nature.

The Commission recommends that the Criminal Law (Human Trafficking) Act 2008 (as amended) is amended to incorporate the offences of the knowing use of services of trafficking victims by legal persons as provided for by Article 18(a)(1) of the 2024 Anti-Trafficking Directive, and that it includes penalties that are effective, proportionate and dissuasive against legal persons.

The Commission recommends that the State:

- considers legislative amendments to make reference to, and provide for the full range of the criminal or non-criminal sanctions or measures, as set out in Article 6(2) of the 2024 Anti-Trafficking Directive; and
- undertakes a review of the adequacy of sanctions for legal persons in the context of transposition.

The Commission recommends that the Criminal Law (Human Trafficking) Act 2008 (as amended) is amended to provide for the extraterritorial application of the additional offences provided for in the 2024 Anti-Trafficking Directive.

Data

Article 19a of the 2024 Directive imposes a new obligation for Member States to ensure that a system is in place for recording, production and provision of anonymised statistical data to monitor the effectiveness of their systems to combat offences referred to in the Directive including the criminalisation of offences, against human trafficking.[60] Minimum requirements regarding the statistical data are detailed along with a requirement on Member States to report on it annually.

The new National Referral Mechanism provides a timely point at which to establish a centralised uniform data collection system to which all Competent Authorities and Trusted Partners contribute information, and which would facilitate this new reporting obligation.[61]

The Commission recommends legislative amendments to underpin a new data collection system, as required under Article 19a of the amended Directive.

The Commission reiterates its recommendation that, to enable it to fulfil its role as Independent National Rapporteur, the right to request and receive relevant information and data from the State and State agencies is placed on a statutory basis.

[60] As previously stated by the Commission, the appropriate and safe handling of data is essential to ensure the protection of highly sensitive information pertaining both presumed and identified victims of human trafficking in Ireland. A comprehensive system would include both quantitative and qualitative data following strong procedures that observe principles based on anonymity, privacy, safety and GDPR, via consultation with data experts (software developers, data analysts and sensitive data managers, and social scientists/experts to interpret the data).

[61] IHREC (2024) Summary Comments on the Draft Operational Guidelines for the revised National Referral Mechanism, pp. 13-14

"Child pornography" to be construed as "child sexual abuse material"

The Commission welcomes **Head 12 of the General Scheme** which is of direct relevance to our long-standing recommendation that the State support legislative and other efforts aimed at removing all reference to 'child pornography' in legislation, policy and official usage, referring instead to such acts as forms of child sexual abuse and child sexual exploitation.[62]

The Commission reiterates its recommendation that the State support legislative and other efforts aimed at removing all reference to 'child pornography' in legislation, policy and official usage, referring instead to such acts as forms of child sexual abuse and child sexual exploitation

[62] IHREC (2022) Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive, p. 24

Conclusion

The **General Scheme** fails to adequately transpose the amended Directive. The Heads of the **General Scheme** directly related to trafficking do not contain the necessary legislative changes as required by the amended Directive. There are extensive gaps in **General Scheme** to provide for proper transposition.

Expanded amendments pursuant to the **General Scheme** could enable transposition of Article 2 including in relation to definitions of the additional forms of exploitation and Article 18a in relation to 'knowing use'. There are several related issues that require consideration including on extra territorial jurisdiction and adequacy of sanctions on legal persons.

The Commission is particularly concerned about the several gaps in the **General Scheme** as outlined in this submission. There is a clear risk that the State will not adequately transpose the Directive, therefore missing a vital opportunity to strengthen the response to trafficking. Particular concerns arise in relation to the lack of legal certainty on assistance measures under the Article 11 of the amended Directive including the provision of accommodation and supports, and the misalignment between the **General Scheme** transposition measures and the International Protection Bill.

As stated at the outset, the focus of this submission has been on the legislative amendments required to adequately and properly transpose the amended Directive.

It is important to note that there are several areas of policy requiring action, including for example:

- A recognition of the increased risk of trafficking of persons with disabilities, in particular women and children, and the need for the State to consider the specific needs of such victims when providing them with support measures;[63]

[63] Recital 17 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

- The obligation on the State to ensure adequate expertise and technological capabilities of the investigative prosecutorial authorities;[64]
- The importance of ensuring the rights of victims of trafficking are protected also as victims of crime, in line with Directive 2012/29;[65]
- The provision of assistance and support to child victims including programmes to support their transition to emancipation and adulthood in order to avoid re-trafficking;[66] and
- The importance of preventive measures including in relation to education, training and campaigns with specific attention to the online dimension, and in a gender-sensitive and child-friendly way.[67]

In order for the State to ensure optimal transposition of the amended Directive, it is essential that all of these gaps be sufficiently addressed.

[64] See Article 9 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
[65] See Article 12 of the Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims on victims in the criminal justice system.
[66] See Article 14 of the Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.
[67] See Article 18 of Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

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