



AN BILLE UM AN DLÍ COIRIÚIL (CIONTA GNÉASACHA), 1993
CRIMINAL LAW (SEXUAL OFFENCES) BILL, 1993

EXPLANATORY MEMORANDUM

Purpose of Bill.

1. The primary purpose of the Bill is to decriminalise buggery between adult persons. It does this by repealing the existing law prohibiting buggery between persons and proposing new provisions prohibiting that conduct with mentally impaired persons and with persons under 17 years of age.

2. The Bill also repeals the law that makes gross indecency between men an offence and proposes new prohibitions on that conduct with mentally impaired males and with males under 17 years of age. In addition, consequential changes are made to the law on prostitution and new provisions to strengthen that law are also proposed.

Section 1 (Interpretation).

3. The definitions of "public place", "street" and "motor vehicle" are intended to save repetition in the main body of the Bill. The expression "solicits or importunes" is defined as including soliciting or importuning from or in a motor vehicle, i.e. kerb-crawling. The reference to "prostitution" will ensure that the word will in future be understood to mean male prostitution as well as female prostitution.

Section 2 (Abolition of offence of buggery between persons).

4. Buggery is a common law offence; section 61 of the Offences against the Person Act, 1861 merely provides the penalty, it does not create the offence. Section 2 abolishes any such rule of law that makes buggery between persons an offence. It does not affect the law on buggery between persons and animals (bestiality) which will continue to be an offence. The section is subject to sections 3 and 5 of the Bill which protect persons under 17 years of age and persons who are mentally impaired, respectively.

Section 3 (Buggery of persons under 17 years of age).

5. This section protects persons under 17 years of age from buggery or attempted buggery (the same age under which girls are protected against persons having unlawful carnal knowledge of them). A person who commits or attempts to commit an act of buggery with a person under 17 years of age (unless he is married to or believes with reasonable cause that he is married to that person) will be guilty of an offence under this section. The penalties on indictment are the same as for having unlawful carnal knowledge or attempted unlawful carnal knowledge of a girl under 15 years of age or between 15 and 17 years of age as provided at sections 1 and 2 of the Criminal Law Amendment Act, 1935. At present the maximum penalty for buggery of any person is life imprisonment and, for attempted buggery, ten years imprisonment (sections 61 and 62 of the Offences against the Person Act, 1861).

Section 4 (Gross indecency with males under 17 years of age).

6. Section 11 of the Criminal Law Amendment Act, 1885 proscribes acts of gross indecency between men with a maximum penalty on

conviction of 2 years imprisonment. Section 11 is being repealed and is being replaced by this section which will make it an offence for a male person to commit an act of gross indecency with another male person who is under 17 years of age. The penalty on conviction on indictment will remain a maximum of 2 years imprisonment.

Section 5 (Protection of mentally impaired persons).

7. This section will protect mentally impaired women from persons who attempt to have or have sexual intercourse with them or who attempt to commit or commit buggery with them. It will also protect mentally impaired men from buggery or an attempt to commit buggery, or gross indecency, with them. The present law, at section 4 of the 1935 Act, protecting women who, in the words of the section are idiots, imbeciles or feeble-minded, is being repealed and replaced by the sexual intercourse provisions of this section.

8. *Subsection (1)* creates the offence of having, or attempting to have, sexual intercourse or committing, or attempting to commit, an act of buggery, with a mentally impaired person. The penalties on conviction are up to ten years imprisonment in the case of having sexual intercourse or committing an act of buggery and up to three years for a first conviction in the case of an attempt and up to five years in the case of a second or any subsequent attempt. The present penalty under section 4 of the 1935 Act is imprisonment for not more than two years.

9. *Subsection (2)* provides the same protection to mentally impaired males against gross indecency as *section 4* provides for persons under 17 years of age.

10. *Subsection (3)* provides that it will be a defence for a person accused of an offence under this section to show that he did not know and had no reason to suspect that the person in respect of whom he is charged was mentally impaired at the time of the alleged offence.

11. *Subsection (4)* provides that proceedings against a person charged with an offence under this section cannot be taken except by or with the consent of the Director of Public Prosecutions.

12. *Subsection (5)* defines "mental impairment" for the purposes of this section. It includes mental impairment resulting from handicap or illness and the impairment must be such as to render the person concerned incapable of living an independent life or of guarding against serious exploitation.

Section 6 (Soliciting or importuning for purposes of commission of sexual offence).

13. This section creates a new offence of soliciting or importuning another person for the commission of an act which would constitute an offence under specified sections of the Bill as well as section 1 or 2 of the Criminal Law Amendment Act, 1935. Under the section, it will be an offence to so solicit or importune a girl under 17 years of age or a mentally impaired woman to commit buggery or to have sexual intercourse or a boy under 17 years or a mentally impaired man to commit buggery or for the purposes of gross indecency. It replaces a provision at section 1 (1) of the Vagrancy Act, 1898 which made it an offence for a male person to, in a public place, persistently solicit or importune for immoral purposes.

Section 7 (Soliciting or importuning for purposes of prostitution).

14. This section will make it an offence to solicit or importune another person or other persons for the purposes of prostitution. It replaces the present laws on soliciting or importuning for the purposes of prostitution which have been rendered inoperable, by the courts,

due to the use of the term "common prostitute" in the present law and the general requirement that there be evidence of annoyance to passers-by.

15. The penalty on summary conviction will be a fine of up to £1,000 or 3 months imprisonment, or both. The previous fine was £2. The offence will apply to soliciting or importuning by a prostitute, by a client or by a third party (e.g. tout) on behalf of a prostitute or client, and will apply whether the prostitute, the client or the third party is male or female. The soliciting or importuning can take place in or from a motor vehicle (*section 1 (1)*).

Section 8 (Loitering for purposes of prostitution).

16. The present laws which make loitering for the purposes of prostitution or solicitation an offence which were also rendered inoperable by the courts are being repealed. *Section 8* does not reintroduce the offence of loitering. Instead, it gives a Garda power to direct a person to leave a street or public place where he has reason to suspect that the person is loitering in that street or public place in order to solicit or importune another person or other persons for the purposes of prostitution. The section applies to prostitutes, clients and third parties and includes loitering in a motor vehicle. An offence will only be committed where a person fails, without reasonable cause, to comply with a direction from a Garda.

Section 9 (Organisation of prostitution).

17. This section provides for three new offences. They replace the existing law which makes it an offence for a woman to exercise control over prostitutes for gain. The new offences are gender neutral. An offence can be committed through the control or direction of one prostitute or of more than one prostitute or by coercing or compelling a person to be a prostitute. The penalties are a fine of up to £10,000 or up to 5 years imprisonment where the conviction is on indictment. The penalty for the existing offence of a woman exercising control over a prostitute is a maximum of 2 years imprisonment.

Section 10 (Living on earnings of prostitution).

18. This section replaces the existing provision at section 1 (1) (a) of the Vagrancy Act, 1898 which has a penalty on conviction of up to 2 years imprisonment. In order to protect persons such as dependent children or parents of a prostitute, the new offence can only be committed where the person living on the earnings of prostitution also aids and abets that prostitution.

19. *Subsection (1)* creates the offence with a penalty on summary conviction of a maximum fine of £1,000 or imprisonment for a term not exceeding 6 months, or both.

20. *Subsection (2)* provides that in proceedings for an offence under this section, the onus will be on the accused to show that he was not aiding and abetting the prostitution of the prostitute. This reflects the provision in the existing law.

21. *Subsection (3)* updates section 1 (2) of the Vagrancy Act, 1898. Under it, a member of the Garda Síochána not below the rank of sergeant can apply to a District Court judge for a search warrant for a premises where it is suspected that the premises is used by a person for the purpose of prostitution and that a person residing in or frequenting the premises is living in whole or in part on the earnings of prostitution.

22. *Subsection (4)* makes it an offence to obstruct or interfere with a Garda acting under the authority of a warrant under *subsection (3)*.

The penalty on summary conviction for such an offence is a fine not exceeding £1,000 or imprisonment for up to 6 months, or both.

Section 11 (Brothel keeping).

23. This section repeats section 13 (1) of the Criminal Law Amendment Act, 1935, but with increased fines. At present, a person found guilty of brothel keeping is liable on first conviction to a fine not exceeding £100 or up to 6 months imprisonment or to both and, for a subsequent conviction, the maximum fine is £250 and up to 5 years imprisonment. Under this section, the fine on summary conviction will be up to £1,000 or up to 6 months imprisonment or both, and on conviction on indictment the maximum fine will be £10,000 or up to 5 years imprisonment, or both.

Section 12 (Amendment of section 19 of Criminal Law Amendment Act, 1935).

24. Section 19 of the 1935 Act is concerned with the issue of search warrants in respect of premises suspected of being brothels. During a search the Gardaí may demand the name and address of every person found on the premises and any person refusing to comply with such a demand or who gives a false name or address is guilty of an offence and liable on summary conviction to a fine not exceeding £5. This section increases the fine to a maximum of £500. Also for conformity with *section 10* the duties of a member of the Garda Síochána of at least inspector rank under section 19 of the 1935 Act will now be performed by a member not below the rank of sergeant. Those duties include satisfying a District Court judge, when applying for a search warrant, that there are reasonable grounds for suspecting that a premises is a brothel.

Section 13 (Powers of arrest).

25. This section gives the Gardaí power to arrest without warrant anyone they reasonably suspect of having committed an offence under *section 4, 6, 7, 8 (2) or 10 (4)* of this Act. Alternatively, they can demand the name and address of such person or persons and failure to give a name or address, or giving a false name or address, will be an offence for which the Gardaí can arrest without warrant.

Section 14 (Repeals) and Schedule.

26. *Section 14* deals with repeals (most of these have been referred to at the appropriate paragraphs above relating to the substantive provisions of the Bill to which the repeals relate). It also repeals sections 61 and 62 of the Offences against the Person Act, 1861 (except in so far as they apply to buggery or attempted buggery with animals).

Section 15 (Short title and collective citation).

27. This section gives the short title of the Bill and a collective citation which cites it with the Criminal Law Amendment Acts, 1885 to 1935.

*An Roinn Dlí agus Cirt.
Meitheamh, 1993.*