



AN BILLE UM CHEARTAS COIRIÚIL, 1993
CRIMINAL JUSTICE BILL, 1993

EXPLANATORY MEMORANDUM

General

1. The Bill has three objects:

- to provide a procedure for the review of unduly lenient sentences;
- to require courts, when determining the sentence to be imposed for a sexual offence or an offence involving violence or the threat of violence, to take into account any effect (including any long-term effect) of the offence on the victim;
- to give courts a general power to require offenders to pay compensation for any resulting personal injury or loss.

2. *Section 1* (interpretation) makes it clear that the sentences that can be reviewed under the Bill include not only sentences of imprisonment but also any other orders made in dealing with convicted persons, such as orders for payment of fines and probation orders. However, some orders are excluded. These are orders postponing sentence for the purpose of obtaining medical or psychiatric reports or reports by probation officers and also orders for the detention of accused persons found to be insane during the proceedings or to have been insane at the time the offence was committed (*subsection (1)*). *Subsection (3)* provides that the Act will not apply to sentences imposed on persons convicted before it comes into operation, i.e. one month after the Bill is passed (see *section 11 (2)*).

3. *Section 2 (1)* provides that the Director of Public Prosecutions may apply to the Court of Criminal Appeal to review a sentence if it appears to him to be unduly lenient. The sentences reviewable under this provision are those imposed on a person who has been convicted on indictment or — see *section 1 (2)* — who has signed a plea of guilty in the District Court and been sent forward for sentence to what would otherwise have been the court of trial. *Subsection (3)* empowers the Court of Criminal Appeal either to impose a different sentence or refuse the Director's application. *Subsection (4)* prohibits any communications with various persons (the Attorney General or an officer of the Attorney General, the Director or an officer of the Director, the Acting Director, a member of the Garda Síochána or a solicitor acting for the Attorney General, or the Director, in his official capacity) for the purpose of influencing the making of a decision in relation to an application for review of a sentence. This is achieved by applying section 6 of the Prosecution of Offences Act 1974 to any such communications.

4. *Section 3 (1)* provides for an appeal to the Supreme Court from the Court of Criminal Appeal's decision. The appeal can be taken, either by the convicted person or by the Director of Public Pros-

ecutions, only if the Court of Criminal Appeal, the Attorney General or the Director certifies that a point of law of exceptional public importance is involved and that it is desirable in the public interest that the appeal should be taken. Having determined the point of law, the Supreme Court may remit the case to the Court of Criminal Appeal to deal with or it may deal with it itself. Any sentence imposed by the Court of Criminal Appeal may be quashed in the light of the Supreme Court's decision and another sentence substituted (*subsection (2)*).

5. *Section 4* contains minor and consequential provisions. These relate to the supply of copies of relevant documents by the registrar to the Director of Public Prosecutions, the Court of Criminal Appeal and the person whose sentence is being reviewed (*subsection (1)*). It also entitles the convicted person to free legal aid (*subsection (2)*).

6. *Section 5* specifically requires a court, when determining the sentence to be imposed for a sexual offence or an offence involving violence or the threat of violence, to take into account any effect (whether long-term or otherwise) of the offence on the victim. Where necessary, it may receive evidence or submissions on that issue (*subsection (1)*). "Sexual offence" has the comprehensive meaning given to it by section 2 (1) of the Criminal Evidence Act 1992, i.e. it includes such offences as rape, buggery, sexual assault, aggravated sexual assault, rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990, gross indecency, incest etc.

7. *Section 6 (1)* gives courts a general power to require offenders to pay compensation to the victim for any resulting personal injury or loss. The power is to be exercised unless the court sees reason to the contrary. The compensation must not exceed the amount of the damages that the court thinks the injured party would be entitled to recover in a civil action for the injury or loss in question (*subsection (2)*) but the court must have regard to the convicted person's means or to those of the parent or guardian, where a parent or guardian is made liable to pay the compensation (*subsection (5)*). *Subsection (4)* proposes that compensation will not be payable for injury or loss resulting from the use of a motor vehicle in a public place except in two instances. One is where the convicted person was not insured. The other is where the vehicle was taken by the convicted person out of the owner's possession and damaged before being recovered. (By virtue of *subsection (3)*, such damage is treated as resulting from the offence, irrespective of how the damage was caused or who caused it.) The amount of the compensation may include an amount representing the whole or part of any consequential loss of or reduction in preferential rates of insurance.

8. *Subsection (6)* allows for payment of compensation by instalments. Under *subsection (7)*, the court may give preference to awarding compensation where it would be appropriate both to impose a fine and to make a compensation order but where the offender, or the parent or guardian as the case may be, cannot afford to pay both in full, though in such a case it may impose a fine as well. *Subsection (8)* provides for review of a compensation order where the convicted person shows that there has been a substantial reduction in his means or the injured party shows that they have substantially increased. The review may be carried out by the District Court, provided that the amount of the compensation order is below the limit of its jurisdiction in tort (at present £5,000). *Subsections (9) to (11)* and *(12) (b)* and *(c)* are technical provisions. *Subsection (12) (a)* makes it clear that, where a death has resulted from the offence, compensation may be paid for any matter (including mental distress resulting from the death

and funeral expenses) for which damages could be awarded in respect of the death by virtue of Part V of the Civil Liability Act 1961.

9. *Section 7* provides that payments under a compensation order are to be made through the appropriate district court clerk, who is being authorised, at the written request of the injured party, to enforce recovery of any sums in arrears whether by proceeding in his own name for an attachment of earnings order or otherwise. This object is achieved by applying to compensation orders the relevant provisions of the Family Law (Maintenance of Spouses and Children) Act 1976 in relation to the enforcement of maintenance orders.

10. *Section 8* provides that the operation of a compensation order will be suspended until the ordinary time for giving notice of appeal has expired or, where notice of appeal is given within that time, until the appeal is finally disposed of or withdrawn or abandoned. The compensation order will not take effect if the conviction is reversed. The appeal court may annul or vary the compensation order, whether the appeal is against conviction or sentence or merely against the order itself. Where the compensation order has been made in respect of an offence taken into consideration in determining sentence, the order will cease to have effect if the convicted person successfully appeals against the offence, or all the offences, of which he was convicted.

11. *Section 9* deals with the effect of a compensation order on civil proceedings in relation to the injury or loss concerned. Any damages awarded in such proceedings must not be more than the amount (if any) by which the damages awarded exceed the amount paid under the compensation order. If the damages assessed are less than any amount paid under the order, the person in whose favour the compensation order was made may be ordered to repay the difference. Once any damages are awarded or an order for repayment made, the compensation order ceases to have effect.

12. *Section 10* is a technical provision about compliance with the requirement in *sections 2 (2)* and *4 (1) (b)* to give certain documents to a convicted person whose sentence is being reviewed.

13. *Section 11* makes it clear that, where evidence is given by live television link at the preliminary examination of an indictable offence, a written deposition will not be taken of the evidence. (In such cases a videorecording of the evidence is admissible at the trial of the accused.) This is a "removal of doubts" provision.

14. *Section 12* provides for the repeal of sections 9, 10 and 11 of the Criminal Damage Act 1991. These sections are being replaced by *sections 6, 8 and 9* of the Bill.

15. *Section 13* contains the short title and provides that the Act will come into operation one month after the date of its passing.

*An Roinn Dlí agus Cirt,
Feabhra, 1993*

